SB

35

(7)

HOUSE COMMITTEE REPORT

Date Referred: May 20, 1991 FURTHER REFERRALS: Finance

Date of Committee Action: 2/12/92

The JUDICIARY Committee considered: CSSB 35(JUD)

CS FOR SENATE BILL NO. 35 (JUDICIARY) USE OF RENTED PROPERTY/LAW VIOLATIONS
"An Act relating to termination of tenancies and recovery of rental premises for nonpayment of rent and certain illegal activities, to tenant responsibilities, to the civil remedies of forcible entry and detainer and nuisance abatement, and to the duties of peace officers to notify landlords of arrests involving certain illegal activity on rental premises."

RECOMMENDATIONS: be replaced with HCS CSSB 35 (JUD)
[ ] the same title
[X] a new title
technical change: providing for an effective date

[ ] have attached amendments(s)
[ ] do pass
[ ] do not pass
[ ] no recommendations
[X] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: HOUSE JUDICIARY letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact _____
[ ] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Dave Donley	X	B. Greenberg II		✓	
Mark Hanley	X				
Terry Martin	X				
Mike Miller	X				
Kevin Pat Parnell	✓				
		Jay Ellis		✓	

Dave Donley
CHAIRMAN'S SIGNATURE

Alaska State Legislature

House of Representatives
House Judiciary Committee

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

LETTER OF INTENT

HCS CSSB 35 (JUD)

It is the intent of the legislature that the Department of Law delay revising or publishing the information pamphlet on landlord and tenant rights required under AS 44.23.020(b)(8) until the Division of Legal Services has completed its rewrite of AS 09.45.060 - AS 09.45.160 (Forcible Entry and Detainer) and AS 34.03 (Uniform Residential Landlord and Tenant Act). It is also the intent of the legislature that the Department of Law submit an appropriate fiscal note when the bill that rewrites AS 09.45.060 - AS 09.45.160 (Forcible Entry and Detainer) and AS 34.03 (Uniform Residential Landlord and Tenant Act) is introduced.

Dave Donley

Representative Dave Donley, Chair
House Judiciary Committee

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HCS CS SB 35

Revision Date:
Title: "...relating to termination of tenancies and recovery of rental premises for nonpayment of rent..."
Sponsor: Senators Pourchot, Halford
Requestor:

Department Affected: Community and Regional Affairs
BRU: Housing Assistance
Component: Housing Loan Administration

COMPONENT SERIAL NO. 0 6 8 7

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Remond Henderson
Phone: 465-4708
Division: Administrative Services Division
Date: 11/14/92

Approved by Commissioner: Ed Burke
Agency: Department of Community and Regional Affairs
Date: 11-14-92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).
Rev 10/7/91

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HCSCSSB 35(L&C)

Revision Date: 01/16/92 Department Affected: Public Safety

Title: Use of Rented Property/ BRU: Alaska State Troopers

Drug Violations Component: Detachments

Sponsor: Senator Pourchot

Requestor: House Judiciary COMPONENT SERIAL NO. | | 7 | 9 | 9 |

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Please see attached.

Prepared By: F/Sgt. Robert Barnes Phone: 269-5436

1/21/92 Division: Alaska State Troopers Date: 01/16/92

Approved by Commissioner: Richard L. Burton

Agency: Department of Public Safety Date: 01/20/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DER, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/7/91

HCSCSSB 35(L&C) amends existing landlord-tenant laws to allow property owners to terminate rental agreements for residential property with renters engaged in certain alcohol and drug violations. The bill creates a duty on the part of police officers who arrest persons for certain alcohol, drug, and imitation drug offenses committed in residential rental property to make a reasonable effort to discover the identity of the property owner and to notify the owner of the tenant's arrest either in person or at the last address listed on tax records or at any other address known to police.

The notice requirement applies to alcohol violation arrests for sales from unlicensed premises and for possession or sale of alcohol where prohibited by local option; to drug violations involving the manufacture or distribution of all drugs except small amounts of marijuana; and to imitation drug violations involving the manufacture or distribution of imitation drugs, or possession of certain precursor chemicals used in the manufacture of imitation drugs. Based upon past arrests for these offenses, it is estimated that the Department of Public Safety will have to notify approximately three hundred property owners per year. We anticipate that in-person notice would be given in many (perhaps most) cases. If a written notice is necessary, we estimate that research required to identify the property owner, determine the last address listed on tax roles and any other addresses known to police, and to prepare the written notice, will take approximately one hour per occurrence.

The Alaska State Troopers estimates approximately 100 arrests for violation of the "local option" laws, and approximately 200 arrests for applicable drug offenses. It is expected that approximately 80% of the alcohol offenders and 60% of the drug offenders reside in rented property.

There will be fiscal impact upon the Alaska State Troopers. For arrests requiring a written notice, a clerk would have to research the identity of the owner and prepare notices as required. There will be costs for materials, preparation time, and postage. Since these offenses will be spread throughout the state, no one person would handle them all; the impact would be felt by detachment personnel handling the cases. There is no way to quantify this impact, however. It will be absorbed, as best as can be, within the existing workload. Notices will be mailed out in the normal course of business, as clerical staff can find time to process them. They would not be handled on any sort of emergency or expedited basis.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HCS CSSB 35 (L&C)

Revision Date: January 15, 1992 Department Affected: Department of Law
Title: "...relating to termination of tenancies...rental premises..." BRU: Fair Business Practices
Component: Fair Business Practices
Sponsor: Senator Pourchot
Requestor: House Judiciary COMPONENT SERIAL NO. 8 4

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	10.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	10.0	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	10.0	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

POSITIONS:

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

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Richard I. Pegues

Prepared By: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: January 15, 1992
Approved by Commissioner: Richard I. Pegues for Charles E. Cole, Attorney General
Agency: Department of Law Date: January 15, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HCS CSSB 35 (L & C)

This bill amends several statutes relating to termination of tenancies and recovery of rental premises for nonpayment of rent and certain illegal activities. The bill adds illegal activity involving alcoholic beverages, a controlled substance, or an imitation controlled substance to the list of activities that constitute a nuisance that may be enjoined and abated in a place used for the activity. All of the changes will have the effect of substantially changing the information the Department of Law provides to the public in its pamphlet on landlord and tenant rights. The department's publication of the pamphlet is mandated by AS 44.23.020 (b)(8).

The department therefore requests $10,000 to revise and republish the information pamphlet. Of this amount, $2,500 will be used to publish a pamphlet supplement in the state BAR association's monthly newsletter, and $7,500 will be used to publish a revised pamphlet for use by the general public. These funds should be sufficient to publish between 7,500 and 10,000 pamphlets.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HCS CSSB 35 (L&C)

Revision Date: January 28, 1992 **Department Affected:** Department of Law

Title: "...relating to termination of tenancies...rental premises..." **BRU:** Fair Business Practices

Component: Fair Business Practices

Sponsor: Senator Pourchot

Requestor: House Judiciary **COMPONENT SERIAL NO.** 8 4

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Richard L. Pegues

Prepared By: Richard I. Pegues, Director **Phone:** 465-3672

Division: Administrative Services **Date:** January 28, 1992

Richard E. Pegues /FAX/

Approved by Commissioner: Charles E. Cole, Attorney General

Agency: Department of Law **Date:** January 28, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/7/91

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HCS CSSB 35 (L & C)

Based upon the following legislative intent language, provided by the House Judiciary Committee, the costs shown in the Department of Law's fiscal note of January 15, 1992, are herewith withdrawn. The department will submit its request when the rewrites of the Forcible Entry and Detainer statutes and the Uniform Residential Landlord and Tenant Act are considered by the legislature.

LETTER OF INTENT

"HCS CSSB 35 (JUD)
An Act relating to termination of tenancies and recovery of rental premises for nonpayment of rent and certain illegal activities, to tenant responsibilities, to the civil remedies of forcible entry and detainer and nuisance abatement, and to the duties of peace officers to notify landlords of arrests involving certain illegal activity on rental premises."

"It is the intent of the legislature that the Department of Law delay revising or publishing the information pamphlet on landlord and tenant rights required under AS 44.23.020(b)(8) until the Code Revision Commission has completed its rewrite of AS 09.45.060 - AS 09.45.160 (Forcible Entry and Detainer) and AS 34.03 (Uniform Residential Landlord and Tenant Act)."

FISCAL NOTE

No. 3

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill Version HCS CSSB 35(L&C)
(H) Publish Date: 5/20/91

Revision Date: _____ Department Affected: Department of Law

Title: "...relating to termination of tenancies...rental promises..." BRU: Consumer Protection

Component: Consumer Protection

Sponsor: Senator Pourchot

Requestor: House Labor & Commerce COMPONENT SERIAL NO. 8 4

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	10.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	10.0					
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	10.0					
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-					
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672

Division: Administrative Services Date: May 15, 1991

Approved by Commissioner: Richard I. Pegues for Charles E. Cole, Attorney General

Agency: Department of Law Date: May 15, 1991

Distribution (by preparer): Legislative Finance, Executive Agency, Requestor, OMB, & Impacted Agency(ies).

COMMITTEE COPY

Rev 10/90

No. 2

FISCAL NOTE

Bill Version: SB 35

(S) Publish Date: 2/6/91

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date:
Title: An Act amending ... civil remedy ... Uniform Residential Landlord & Tenant Act
Sponsor: Pourchot
Requestor: Pourchot

Department Affected: Alaska Court System
BRU: Trial Courts
Components:

COMPONENT SERIAL NO. 000 | 000 | 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

Changes in CSSB35 (Jud) have no fiscal impact. This fiscal note is appropriate.

March 13, 1991 (date) [signature] Comte Aide (initial)

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel [signature] Phone: 264-8228
Division: Alaska Court System Date: 02/04/91

Approved by: Arthur H. Snowden, II, Administrative Director by [signature]
Agency: Alaska Court System Date: 02/04/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

FISCAL NOTE No. 1

Bill Version: SB 35

(S) Publish Date: 2/6/91

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Community & Regional Affairs

Title: "An Act..amending the Uniform Residential Landlord & Tenant Act.." BRU: _____

Component: _____

Sponsor: Senator Pourchot

Requestor: _____ COMPONENT SERIAL NO. [ ][ ][ ][ ]

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Changes in CS SB35 (fwd) have no fiscal impact. This fiscal note is appropriate.

March 13, 91 DB Baile
date Comte Aide(initial)

Prepared By: Rimond Henderson Phone: 465-4750

Division: Administrative Services Date: 1/31/91

Approved by Commissioner: Ed. Ruth

Agency: Community & Regional Affairs Date: _____

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CSSB 35 (Jud)

Revision Date: _____ Department Affected: Department of Law

Title: "...relating to termination of tenancies...rental promises..." BRU: Consumer Protection

Component: Consumer Protection

Sponsor: Senator Pourchot

Requestor: House Labor & Commerce COMPONENT SERIAL NO. 8 4

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	10.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	10.0					
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	10.0					
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-					
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672

Division: Administrative Services Date: May 15, 1991

Approved by Commissioner: Richard I. Pegues (FOR) Charles E. Cole, Attorney General

Agency: Department of Law Date: May 15, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 35 (Jud)

This bill amends several statutes relating to termination of tenancies and recovery of rental premises for nonpayment of rent and certain illegal activities. The bill adds illegal activity involving alcoholic beverages, a controlled substance, or an imitation controlled substance to the list of activities that constitute a nuisance that may be enjoined and abated in a place used for the activity. All of the changes will have the effect of substantially changing the information the Department of Law provides to the public in its pamphlet on landlord and tenant rights. The department's publication of the pamphlet is mandated by AS 44.23.020 (b)(8).

The department therefore requests $10,000 to revise and republish the information pamphlet. Of this amount, $2,500 will be used to publish a pamphlet supplement in the state BAR association's monthly newsletter, and $7,500 will be used to publish a revised pamphlet for use by the general public. These funds should be sufficient to publish between 7,500 and 10,000 pamphlets.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CSSB 35 (JUD)

Revision Date: _____
Title: Termination of Tenancies
Sponsor: Rep. Pourchot
Requestor: Senate Judiciary

Department Affected: Public Safety
BRU: Alaska State Troopers
Component: Detachments
Bureau
COMPONENT SERIAL NO. | | 7 | 9 | 9 |

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year impact _____

ANALYSIS: (Attach a separate page if necessary)

(See attached).

Prepared by: Lt. John Myers
Division: Alaska State Troopers
Phone: 269-5976
Date: 2/11/91

Approved by Commissioner: Richard L. Burton
Agency: Department of Public Safety
Date: 3/08/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

CSSB 35(JUD) amends existing landlord-tenant laws to allow property owners to terminate rental agreements for residential property with renters engaged in certain alcohol and drug violations. The bill creates a duty on the part of police officers who arrest persons for certain alcohol, drug, and imitation drug offenses committed in residential rental property to make a reasonable effort to discover the identity of the property owner and to notify the owner of the arrest either in person or at the last address listed on tax records and at any other address known to police. The notice requirement applies to alcohol violation arrests for sales from unlicensed premises and for possession or sale of alcohol where prohibited by local option; to drug violations involving the manufacture or distribution of all drugs except small amounts of marijuana; and to imitation drug violations involving the manufacture or distribution of imitation drugs, or possession of certain precursor chemicals used in the manufacture of imitation drugs. Based upon past arrests for these offenses, it is estimated that the Department of Public Safety will have to notify approximately three hundred property owners per year. We anticipate that in-person notice would be given in many (perhaps most) cases. If a written notice is necessary, we estimate that research required to identify the property owner, determine the last address listed on tax roles and any other addresses known to police, and to prepare the written notice, will take approximately one hour per occurrence.

The Alaska State Troopers estimates approximately 100 arrests for violation of the "local option" laws, and approximately 200 arrests for applicable drug offenses. It is expected that approximately 80% of the alcohol offenders and 60% of the drug offenders reside in rented property.

There will be fiscal impact upon the Alaska State Troopers. For arrests requiring a written notice, a clerk would have to research the identity of the owner and prepare notices as required. There will be costs for materials, preparation time, and postage. Since these offenses will be spread throughout the state, no one person would handle them all; the impact would be felt by detachment personnel handling the cases. There is no way to quantify this impact, however. It will be absorbed, as best as can be, within the existing workload. Notices will be mailed out in the normal course of business, as clerical staff can find time to process them. They would not be handled on any sort of emergency or expedited basis.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CS SB 35

Revision Date: _____ Department Affected: Community & Regional Affair

Title: "An Act..termination of tenancies.. illegal activities.." BRU: _____

Component: _____

Sponsor: Senators Pourchot & Halford

Requestor: _____ COMPONENT SERIAL NO. [ ][ ][ ][ ]

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Remond Henderson

Prepared By: Remond Henderson, Director Phone: 465-4708

Division: Administrative Services Date: 3/11/91

Approved by Commissioner: [signature]

Agency: Community & Regional Affairs Date: 3/11/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill No. SB 35

Revision Date:
Title: An Act amending ... civil remedy ... Uniform Residential Landlord & Tenant Act
Sponsor: Pourchot
Requestor: Pourchot

Department Affected: Alaska Court System
BRU: Trial Courts
Components:
COMPONENT SERIAL NO. 000 | 000 | 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel
Phone: 264-8228
Division: Alaska Court System
Date: 02/04/91

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System
Date: 02/04/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

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(7)

HOUSE COMMITTEE REPORT

5/20/91

Judiciary

Date Referred: May 6, 1991 FURTHER REFERRALS:

Date of Committee Action: 5-2091

The LABOR AND COMMERCE Committee considered: CSSB 35(JUD)

CS FOR SENATE BILL NO. 35 (JUDICIARY)

USE OF RENTED PROPERTY/LAW VIOLATIONS

"An Act relating to termination of tenancies and recovery of rental premises for nonpayment of rent and certain illegal activities, to tenant responsibilities, to the civil remedies of forcible entry and detainer and nuisance abatement, and to the duties of peace officers to notify landlords of arrests involving certain illegal activity on rental premises."

RECOMMENDATIONS: [✓] the same title

be replaced with HSCS SB 35 (L&C) [ ] a new title

[ ] have attached amendments(s)

[ ] do pass

[ ] do not pass

[✓] no recommendations

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[X] fiscal impact Dept. of Corr

[ ] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____

(2) [X] Senate zero fiscal note(s) DCRA 2/4/91 & Ct. 545 2/4/91

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
		Finkelstein		X	
		Parnell		✓	
		Ivan		✓	
					✓
		Brucker		÷	

Finkelstein

CHAIRMAN'S SIGNATURE

JOSE COMMITTEE REPO[redacted]

ıte Referred: May 6, 1991 FURTHER REFERRALS: Judiciary

ıte of Committee Action: 5-2-91

ıe LABOR AND COMMERCE Committee considered: CSSB 35(JUD)

; FOR SENATE BILL NO. 35 (JUDICIARY)

USE OF RENTED PROPERTY/LAW VIOLATIONS

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ECOMMENDATIONS: [ ] the same title
· replaced with HRSCS HB 35 (L+C) [ ] a new title
] have attached amendments(s)
] do pass
] do not pass
] no recommendations
] individual recommendations
] additional referral to the _____ Committee

DOPTS: _____ letter of Intent

.TTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

X] fiscal impact Dept. of Corr ~~[X]~~ fiscal note(s) _____

] zero fiscal note _____ [X] zero fiscal note(s) DCRA & Ct. System

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
				X	
				✓	
				✓	
					✓
				—	

CHAIRMAN'S SIGNATURE

House Labor and Commerce Committee

Representative David Finkelstein, Chair
Representative Parnell, Vice-Chair • Representatives
Bruckman, Donley, Ivan, Taylor and Zawacki, Members

Date:

Place:

Subject of meeting:

Name (Please Print)	Representing	Mailing Address	Zip	(H) Phone	(W) Phone	Do you want to testify?		What subject or bill?
ELLEN NORTHUP	GLORY HOLE	PO Box 21997 JUNEAU	99802	789-3423	586-4459	(Y)	N	SB 35
Robert Libby	Dept Labor	mailstop 0700		789-0600	465-2700	(Y)	N	SB 262
Nancy Adams	J.A.M.I.	PO 22090, Juneau 99802		463-4910		Y	N	SB 35
Lauri Lee	JAMI	PO Box 22090 Juneau	99801	789-9569	463-3303	Y	N	SB 35
Sherrie Goll	Alaska Women's Lobby	P.O. Box 22156 Juneau 99802			463-6744	(Y)	N	SB 35
						Y	N	
Eldon Mulder	Sen. Fahrenkamp					(Y)	N	SB 262
						Y	N	
						Y	N	
						Y	N	
						Y	N	

```
****************************************************************
*                                                              *
* DELIVER TO: LIOCACB                                          *
*                                                              *
*                                                              *
* ORIGINAL                                                     *
* SENT:            05/14/91   TIME: 13:36                      *
* FROM:            LIOCMIL                                     *
* SUBJECT:         91-05-048;PL#2;(H)L&C;5/14                  *
* PRINT DATE:      05/14/91   TIME: 13:36                      *
*                                                              *
****************************************************************
```

SUBJECT LINE TO READ: TC NO.; PL FS;SHORT SUBJECT;DATE

T/C NO: 91-05-048
DATE: 05-14-91
SPONSOR: H L&C
SUBJECT: SB 35, SB 188, SB 258, HB 295
MODERATOR: JUDY
SITE: ANCHORAGE

PARTICIPANT LIST

TO TESTIFY

When rescheduled

NAMES/REPRESENTING	ADDRESS	PHONE	BILL NO.	
1. GLENDA STRAUBE	1318 N ST 99501	274-2010	SB 35	
2. DON CLOKSIN	1527 H ST 99501	277-8611	SB 35	278-4688
3. RICHARD ILLGEN	420 L ST 99501	276-1969	SB 35	278-7704
~~4. DON MITCHELL~~	~~1335 F ST 99501~~	~~276-1681~~	~~SB 35~~	
5. ALICE BREWER	1201 W 45 99503	563-6734	SB 35	
~~6. JOE GRAHAM~~	~~4107 MINNESOTA 99503~~	~~563-[illegible]~~ 563-4915	~~SB 35~~	Bad #
7. BARBARA JITTOOD/AK LEG. SVS	1016 W 6	272-9431	SB 35	
8. KATHLEEN PLUNKET	4828 E 5 99508	337-2451	SB 35	

TO OBSERVE:

NAME/ REPRESENTING	ADDRESS	PHONE	BILL NO.
1.		586-4151	
2. Ellen Northup		789-3473	
3. John Egan		463-3303	
4.			
5. Janice Bollenbach			

BACK UP NUMBER: 561-1199
EMAIL ADDRESS: LIOCMIL

Nancy Grozek

witness

245

4648

Chenoweth
Grozek - 279-2541(w)
Pourtalas + 258-9336(h)
-3879
Teleconf.

~~Dept. of Law -3603~~
~~Rick Reynes -3672~~

Alaska State Legislature

Senate Judiciary Committee

March 13, 1991

LETTER OF INTENT

CSSB 35 (JUD)
An Act relating to termination of tenancies and recovery of rental premises for nonpayment of rent and certain illegal activities, to tenant responsibilities, to the civil remedies of forcible entry and detainer and nuisance abatement, and to the duties of peace officers to notify landlords of arrests involving certain illegal activity on rental premises.

Omission of other criminal behavior or activities not addressed in this bill should not be construed as acceptable behavior by tenants.

Senator Rick Halford, Chair
Senate Judiciary Committee

Adopted by the Senate: 5/3/91

Post Office Box V • Juneau, Alaska 99811

SUMMARY

HCS CSSB 35 (L&C) would expedite eviction of tenants in the following situations:

1) For nonpayment of rent - Currently, a landlord must give the tenant a 10-day written notice of intent to evict for nonpayment of rent. The House Labor and Commerce CS would reduce the notification period to 8 days as opposed to the 5-day notification required in the Senate version. Alaska has the longest notification period of the other 12 western states: three states require a five day notice; nine states require only a three day notice.

2) For engaging in felony alcohol or drug activities - There is no specific provision in statute allowing a landlord to evict for illegal alcohol or drug activities. As proposed in this bill, a commercial or residential tenant who engages in these activities could be noticed and evicted under the same procedures as for nonpayment of rent.

3) To assist neighborhoods in halting drug trafficking - The nuisance statutes are amended to include felony alcohol and drug activities related to manufacture and delivery. This would allow a landlord or neighbors to petition the court to abate the nuisance. The order of abatement would terminate a rental agreement. Under the nuisance statutes, evidence of reputation would be admissible by the court in proving the existence of a nuisance.

In all cases where a tenant refuses to pay rent or move after having received notice, the landlord must seek eviction under the forcible entry and detainer (FED) statutes which provide due process protection. To eliminate statutory ambiguity and in accordance with court practice, a provision is included to allow the notice required under the landlord-tenant statutes to serve as the notice required under the FED statutes.

Finally, a provision is included requiring a police officer to make a reasonable effort to notify the owner in person or in writing when a tenant is arrested for violation of felonies relating to manufacture or delivery of drugs or alcohol.

The House Labor and Commerce CS carries a $10,000 fiscal note.

Senator Pat Pourchot
May 17, 1991

SUMMARY

CS SB 35 (JUD) would expedite eviction of tenants in the following situations:

1) For nonpayment of rent - Currently, a landlord must give the tenant a 10-day written notice of intent to evict for nonpayment of rent. SB 35 would reduce the notification period to 5 days. Alaska has the longest notification period of the other 12 western states: three states require a five day notice; nine states require only a three day notice.

2) For engaging in felony alcohol or drug activities - There is no specific provision in statute allowing a landlord to evict for illegal alcohol or drug activities. As proposed in this bill, a commercial or residential tenant who engages in these activities could be noticed and evicted under the same procedures as for nonpayment of rent.

3) To assist neighborhoods in halting drug trafficking - The nuisance statutes are amended to include felony alcohol and drug activities related to manufacture and delivery. This would allow a landlord or neighbors to petition the court to abate the nuisance. The order of abatement would terminate a rental agreement. Under the nuisance statutes, evidence of reputation would be admissible by the court in proving the existence of a nuisance.

In all cases where a tenant refuses to pay rent or move after having received notice, the landlord must seek eviction under the forcible entry and detainer (FED) statutes which provide due process protection. To eliminate statutory ambiguity and in accordance with court practice, a provision is included to allow the notice required under the landlord-tenant statutes to serve as the notice required under the FED statutes.

Finally, a provision is included requiring a police officer to make a reasonable effort to notify the owner in person or in writing when a tenant is arrested for violation of felonies relating to manufacture or delivery of drugs or alcohol.

The bill carries a zero fiscal note.

SUMMARY

EVICTION FOR NONPAYMENT OF RENT

[Amends both the Forcible Entry and Detainer (FED) statutes and the Landlord-Tenant (LLT) Act]

The proposed CS for SB 35 retains the provision in the original bill that reduces the length of time a landlord must wait after giving written notice to vacate from 10 to 5 days before instituting FED proceedings.

EVICTION FOR CERTAIN ILLEGAL ALCOHOL/DRUG ACTIVITIES

Originally, SB 35 focused on making it easier for the landlord to evict a tenant under LLT statutes by allowing "arrest" to trigger eviction through the FED process.

Because of constitutional problems, this provision was dropped. Instead, two separate options are proposed which would: 1) shorten the notification period for eviction for certain illegal activities under current LLT/FED statutes, and 2) amend the nuisance statutes to allow landlords or **neighbors** to get the nuisance abated.

Current Statutes

Under current LLT/FED statutes, to get rid of a tenant who is in noncompliance with a rental agreement takes approximately 34 days (20 day notice required under the LLT statutes plus 10 days for the FED proceedings).

Option 1

Using the same remedy (LLT/FED), Option 1 under the proposed CS would take approximately 20-23 days. To accomplish this the LLT and FED statutes are amended to reduce the notice period to 5-days for specified illegal activities - treated with the same severity as nonpayment of rent.

Option 2

Option 2 would amend the Nuisance statutes to allow abatement of property being used for certain illegal alcohol or drug activities. This procedure involves filing a complaint, the court issuing an

injunction or restraining order, a 20-day period for the defendant to respond, followed by a short trial at which a**n order of abatement would be issued terminating the rental agreement.** Evidence of reputation would be admissible by the court to prove the existence of a nuisance. From time of filing complaint to issuance of abatement order would be approximately 24 days. Although it is highly unlikely the tenant would not voluntarily move from the premises before the order of abatement were issued (to protect his/her personal property), if such were the case, the landlord would be able to resort to the FED remedy.

Although the eviction process under Option 1 (and probably Option 2) is shorter than under current law, Option 2 has the advantage of giving the landlord an additional tool for getting rid of a recalcitrant tenant, as well as providing a means, not now available, for neighbors to halt specified illegal drug activities.

Other Considerations:

Violation of an injunction or restraining order is **criminal contempt.**

To remove an occupant who refuses to leave - regardless of the reason - requires going through the FED process; i.e., a landlord can't physically move a tenant out.

To eliminate confusion, a provision is included to **allow the FED notification period to run concurrently with the notification period required under the LLT and nuisance statutes.**

A provision is included to allow the court to enter an order to vacate and a writ of assistance at the same time (although the tenant still has two days to vacate) to save the landlord another court visit.

OPTION 1 — OPTION 2

[Time frames represent best possible scenario. If day court assistance is needed falls on Saturday, Sunday or holiday, time will be extended. If tenant cannot be served, court has to set new hearing date. If tenant fights eviction, Judge may grant continuance.]

Landlord/Tenant Approach		Nuisance Approach
5-day notice given to tenant	**DAY 1**	File complaint/Summons/ temporary restraining order or injunction (may run into day 2). Tenant has 20 days to respond as to why order of abatement should not be issued. During this time, tenant is liable for criminal contempt if injunction is violated.
Institute FED Process Complaint filed in Court Hearing date set. (usually takes 7-10 days)	**DAY 7**	
Court Hearing date/obtain Order to Vacate	**DAY 15**	
Tenant remains/Writ of Assistance	**DAY 18**	
House back in Landlord's Possession	**DAY 20**	
	DAY 22	
	DAY 23	Half-day trial/Order of abatement issued/rental agreement terminated. **Institute FED process.** File complaint in court, get hearing date (usually 7-10 days)
	DAY 31	Court Hearing date/ Order to Vacate and Writ of Assistance issued.
	DAY 33	House back in landlord's possession.

Senator Pat Pourchot
February 5, 1991

SUMMARY

SB 35 would make two major changes to the Alaska Uniform Residential Landlord-Tenant Act.

The first proposal would expedite eviction of tenants who fail to pay their rent when due by shortening the notification period from ten to five days prior to eviction. Currently, landlords who are trying to evict tenants for nonpayment of rent must give a ten-day notice of intent to evict prior to filing a complaint. The earliest the eviction process can be completed is approximately three weeks (see attached Flow Chart); the more likely eviction scenario is a month to six weeks. This places an undue hardship on landlords, many of whom rely on rental income for their livelihood.

Compared to 12 other western states, Alaska provides a long notice period. For example, only three days' notice by the landlord to the tenant is required in California, Colorado, Idaho, Montana, New Mexico, Oregon, Utah, Washington, and Wyoming. Five days required notice is required in Arizona, Hawaii and Nevada.

I believe the five-day notification period would still allow well-intentioned tenants to work out their difficulties but accelerate the eviction process for tenants unwilling to pay. This proposal in no way interferes with the tenant's rights in the judicial Forcible Entry and Detainer (FED) process.

The second proposal would assist landlords trying to evict tenants who are engaged in specified drug-related or bootlegging activities (related to manufacture and distribution). SB 35 would allow landlords to immediately start the eviction process if the tenant was arrested for one of the specified violations. Law enforcement officials would also be required to make a concerted effort to notify a property owner(s) when making an arrest for these types of offenses. The tenant's rights in court under the FED process are unaffected.

FLOW CHART FOR EVICTION FOR NONPAYMENT OF RENT
(AVERAGE TIME SCENARIO UNDER CURRENT STATUTE)

DAY

1 **Rent due (rent due on 1st and deliquent on 6th in most rental agreements)**

6 **10-day notice given tenant** **[SB35 would reduce notification period from 10 to 5 days]**

(If landlord accepts full or partial payment of rent, the process is voided; must start over by giving another 10-day notice.)

17 **Complaint filed in Court - Court sets Hearing date**

(Law states that tenant must be served by Process Server at least 2 days prior to Hearing date which is usually set 7-10 days following filing of Complaint. If tenant cannot be served in time, landlord must go back to Court for a new Hearing date.)

25 **Court Hearing date - obtain Order to Vacate**
(Tenant has minimum of 2 days to vacate; Judge may grant additional time.)

28 **Tenant remains: obtain Writ of Assistance - deliver to Troopers**
(Troopers usually remove tenant within 24 hours)

30 **House back in landlord's possession**

NOTE:

1) TIME MAY BE EXTENDED
- if, the day Court assistance is needed (filing Complaint, Hearing, etc.) falls on a Saturday, Sunday or holiday - extend days accordingly;
- if tenant fights eviction, Judge may grant Continuance;
- if tenant cannot be served, landlord has to go back to Court for new hearing date;
- if 10-day notice not immediately given - time extended accordingly.

2) TIME MAY BE SHORTENED
- if there is no 5-day "grace" period in rental agreement;
- if tenant can be served immediately; Hearing date can legally be set for 3rd day after filing of Complaint if Court calendar permits.

3) The eviction process does not recover any cost other than for filing fees, service and process fees and postage under Court Rule 79 and attorney fees under Court Rule 82; motion to recover costs must be filed within 10 days of Clerk entering FED Order; treated as a judgement. Getting back rent is another more lengthy process.

4) If process is not completed within the 1st month, landlord will be out rent for additional time tenant remains on premises.

FLOW CHART FOR EVICTION FOR ILLEGAL ALCOHOL OR DRUG ACTIVITIES AS PROPOSED IN SB 35

[Time frames represent best possible scenario. If day court assistance is needed falls on Saturday, Sunday or holiday, time will be extended. If tenant cannot be served, court has to set new hearing date. If tenant fights eviction, Judge may grant continuance.]

Landlord/Tenant/FED Approach		Nuisance Approach
5-day notice given to tenant	**DAY 1**	File complaint/Summons/ temporary restraining order or injunction (may exceed one day). Tenant has 20 days to respond as to why order of abatement should not be issued. During this time, tenant is liable for criminal contempt if injunction is violated.
Institute FED Process if tenant refuses to move. Complaint filed in Court Hearing date set. (usually takes 7-10 days)	**DAY 7**	
Court Hearing date/obtain Order to Vacate	**DAY 15**	
Tenant remains/Writ of Assistance	**DAY 18**	
House back in Landlord's Possession	**DAY 20**	
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	DAY 23	Half-day trial/Order of abatement issued/rental agreement terminated. **Institute FED process if tenant refuses to move.** File complaint in court, get hearing date (usually 7-10 days)
	DAY 31	Court Hearing date/ Order to Vacate and Writ of Assistance issued.
	DAY 33	House back in landlord's possession.

PROPOSED AMENDMENTS TO EVICTION STATUTES (AS 09.45 ET SEQ.)

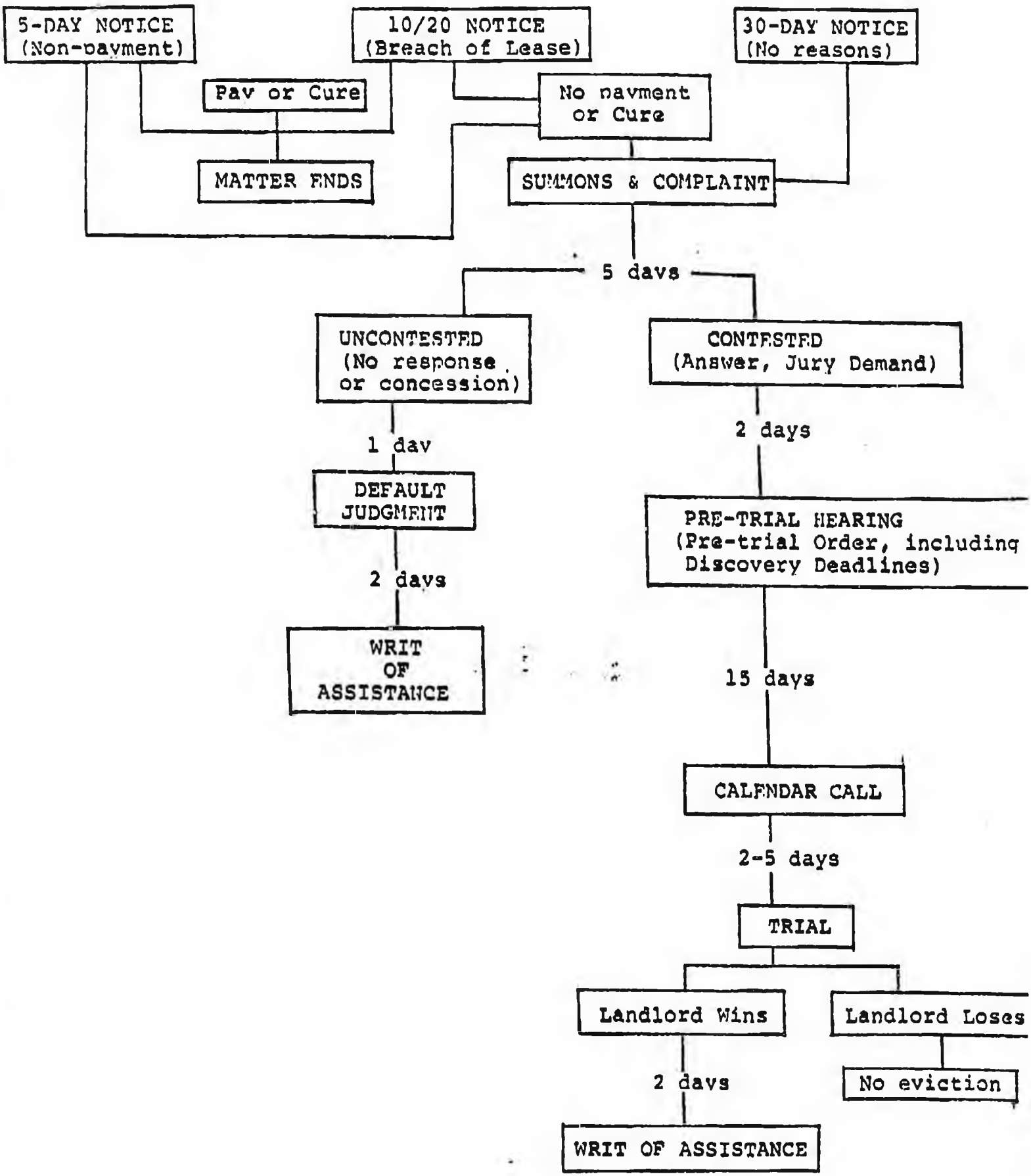
Sec. 1. AS 09.45.120 is deleted and replaced by adding new sections to read:

AS 09.45.120. SUMMONS AND DEFAULT. Summons in actions for forcible entry and detainer shall be served not less than five days from the date notice of eviction is given pursuant to AS 09.45.110 or AS 34.03.220. The tenant or person in possession shall have five days from the date of service of the summons to file an answer with the court. If no answer is filed, a default judgment of evicion may be entered on the sixth day following service of the summons. A writ of assistance to take effect in 48 hours may be issued with the default judgment, authorizing law enforcement officials to assist in the removal of the tenant or person in possession.

AS 09.45.121. ANSWER, DISCOVERY AND TRIAL. If a tenant answers the summons and complaint as set forth in AS 09.45.120, a pre-trial hearing shall be set no later than two days from the date of the answer, at which the court shall consider any preliminary motions by the parties and establish pre-trial procedures for discovery and other matters. Both parties shall be entitled to a minimum of fifteen days to exchange discovery, and normal discovery deadlines are reduced from 30 days to 15 days. At the close of the 15-day period, the matter shall be scheduled for calendar call to establish a date of trial. No continuance of the trial date shall be permitted beyond two days unless the party seeking the continuance shall post with the court a bond to cover rent that will accrue during the period of the continuance.

PLEASE NOTE: Implementation of these procedures will require a change in the present court rule governing forcible entry and detainer actions, which is Civil Rule 85.

FLOW CHART
PROPOSED AS 09.45.120, .121



ALASKA STATE LEGISLATURE

SENATE FINANCE COMMITTEE,
CO-CHAIR

Senator Pat Pourchot

ANCHORAGE
P.O. BOX 104836
ANCHORAGE, AK 99510
(W) (907) 561-7623
(H) (907) 338-2425

JUNEAU
P.O. BOX V
STATE CAPITOL
JUNEAU, AK 99811
(907) 465-3712

MEMORANDUM

TO: Rep. Dave Donley, Chair
House Judiciary Committee

DATE: February 12, 1992

FR: Senator Pat Pourchot

RE: SB 35

As you know, the Code Revision Commission was requested, and in their April 4 letter to me, agreed to prepare for introduction at the beginning of this session draft legislation revising the URLLT and FED statutes to eliminate ambiguities and inconsistencies. Unfortunately, they have taken no action to date.

Alternatively, I have spoken with Tam Cook, Director, Division of Legal Services, who has agreed to undertake this project during the 1992 interim and to have draft legislation ready for introduction in January 1993. A copy of her response will be forwarded to you tomorrow.

Because of this different approach, I have drafted a new Letter of Intent for the Committee's consideration. In addition, I suggest that we amend the bill to add a July 1, 1993 effective date. Both the new Letter of Intent and proposed amendment are attached for your consideration.

Please let me know if you foresee any problems or if I can provide you with additional information.

ALASKA STATE LEGISLATURE

SENATE FINANCE COMMITTEE,
CO-CHAIR

ANCHORAGE
P.O. BOX 104836
ANCHORAGE, AK 99510
(W) (907) 561-7623
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JUNEAU
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STATE CAPITOL
JUNEAU, AK 99811
(907) 465-3712

Senator Pat Pourchot

MEMORANDUM

DATE: January 22, 1991

TO: Senator Steve Frank, Chair
Senate Community and Regional Affairs Committee

FROM: Senator Pat Pourchot

RE: Scheduling of SB 35, an Act amending the Uniform Residential Landlord-Tenant Act

Attached is a copy of SB 35 which 1) shortens the notice period for tenants who have not paid rent from 10 to 5 days (tenant's rights in the judicial Forcible Entry and Detainer process are not impinged), and 2) allows landlords to use an immediate eviction process against tenants arrested for certain drug- or alcohol-related crimes. A provision is also included that would require law enforcement officials to notify property owners when they arrest renters for these types of offenses.

This bill would still allow well-intentioned tenants sufficient time to work out their financial difficulties but would accelerate the eviction process for tenants unwilling to pay or those engaged in drug-related or bootlegging activity.

I would be most appreciative if you would schedule SB 35 for a hearing before the Senate Community and Regional Affairs Committee at your earliest convenience.

ALASKA STATE LEGISLATURE

SENATE FINANCE COMMITTEE,
CO-CHAIR

ANCHORAGE
P.O. BOX 104836
ANCHORAGE, AK 99510
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P.O. BOX V
STATE CAPITOL
JUNEAU, AK 99811
(907) 465-3712

Senator Pat Pourchot

MEMORANDUM

TO: House Labor & Commerce Comm. **DATE:** May 14, 1991
Rep. David Finkelstein, Chair
Rep. Pat Parnell, Vice-Chair
Rep. Betty Bruckman
Rep. Dave Donley
Rep. Ivan Ivan
Rep. Robin Taylor
Rep. Jim Zawacki

FR: Senator Pat Pourchot Pat

RE: CS SB 35 (JUD) - Use of Rented Properties/Drug Violations

The goal of the proposed legislation is to shorten the length of time it takes to evict a tenant:

1) For nonpayment of rent;

2) For engaging in felony alcohol or drug activities related to manufacture and delivery; and

3) To assist neighborhoods in halting drug trafficking.

The bill has passed the Senate by a vote of 17 - 0, and carries a zero fiscal note.

DRAFT

LETTER OF INTENT

HCS CSSB 35 (JUD)
An Act relating to termination of tenancies and recovery of rental premises for nonpayment of rent and certain illegal activities, to tenant responsibilities, to the civil remedies of forcible entry and detainer and nuisance abatement, and to the duties of peace officers to notify landlords of arrests involving certain illegal activity on rental premises.

It is the intent of the legislature that the Department of Law delay revising or publishing the information pamphlet on landlord and tenant rights required under AS 44.23.020(b)(8) until the Code Revision Commission has completed its rewrite of AS 09.45.060 - AS 09.45.160 (Forcible Entry and Detainer) and AS 34.03 (Uniform Residential Landlord and Tenant Act).

LETTER OF INTENT

HCS CSSB 35 (JUD)
An Act relating to termination of tenancies and recovery of rental premises for nonpayment of rent and certain illegal activities, to tenant responsibilities, to the civil remedies of forcible entry and detainer and nuisance abatement, and to the duties of peace officers to notify landlords of arrests involving certain illegal activity on rental premises.

It is the intent of the legislature that the Department of Law delay revising or publishing the information pamphlet on landlord and tenant rights required under AS 44.23.020(b)(8) until the Division of Legal Services has completed its rewrite of AS 09.45.060 - AS O9.45.160 (Forcible Entry and Detainer) and AS 34.03 (Uniform Residential Landlord and Tenant Act).

POURCHOT

AMENDMENT

OFFERED IN THE HOUSE
TO: HCS CSSB 35 (JUDICIARY)

Page 12, following line 20:

Add:

Sec. 31. This Act takes effect July 1, 1993.

ALASKA STATE LEGISLATURE

SENATE FINANCE COMMITTEE,
CO-CHAIR

ANCHORAGE
P.O. BOX 104836
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(907) 465-3712

Senator Pat Pourchot

MEMORANDUM

TO: Tam Cook, Director
Division of Legal Services

DATE: February 12, 1992

FR: Senator Pat Pourchot Pat

RE: Revision of URLLT and FED statutes

Per our conversation, this letter is to request the Division of Legal Services to review the Uniform Residential Landlord-Tenant (URLLT) and the Forcible Entry and Detainer (FED) statutes during the 1992 interim and to prepare for introduction in January 1993 draft legislation to eliminate ambiguities and inconsistencies that currently exist in these statutes.

These statutes have been in disarray for a number of years (see attached report). Of primary concern is the resolution of existing contradictions between the FED statutes and the Uniform Residential Landlord-Tenant Act. Another concern is the confusion that results because it is unclear whether superior or district court has jurisdiction in the FED process. The current ambiguities impede both the landlord's and tenant's ability to assert their rights.

As you know, a similar request was made to the Code Revision Commission in March of last year. In their April 4th reply they agreed to undertake the project and have draft legislation ready for introduction at the beginning of this session. Unfortunately, they have taken no action to date and I am by copy of this letter withdrawing my request.

Please don't hesitate to contact me if you have questions regarding this request.

ALASKA CODE REVISION COMMISSION

ALASKA STATE LEGISLATURE
P.O. BOX Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-2450

April 4, 1991

The Honorable Pat Pourchot
State Senator
Alaska State Legislature
P.O. Box V
State Capitol
Juneau, AK 99811

Re: FED statutes, Uniform Residential Landlord-Tenant Act.

Dear Senator Pourchot:

I received your letters under date of March 13, 1991, concerning the above-referenced Alaska statutes. The Commission agrees with you that there exists a great deal of confusion concerning which court has jurisdiction and which act governs in actions involving the forceable removal of a tenant, notice requirements, *etc.*. The Alaska Supreme Court has (depending upon your point of view) either ameliorated or exaserbated the jurisdiction problem by use of temporary Superior Court "appointments" of District Court Judges. As you may not be aware, the Court is now appointing District Court Judges to hear matters traditionally and under Title 22 been considered only by Superior Court judges. I expect this practice to continue.

FED actions have, since statehood, been heard in the District Court. However, since the passage of the Uniform Residential Landlord-Tenant Act, many such actions are now being heard in Superior Court. It would be well to have a statutory determination as to

which court is the appropriate court to hear FED matters.

Concerning other aspects of the Uniform Residentaial/Landlord-Tenant Act, it is, in fact, a uniform act subject to all of the disabilities of such an act. It requires careful review and consideration by the Legislature insofar as there are many "hard" policy decisions to be made. The Commission has, in the past, been reluctant to consider reform of these provisions precisely because they were controversial. However, since you have made a request, we will gladly and enthusiastically consider and provide draft legislation for consideration by you or your committee. As we have done in the past when dealing with a proposed bill fraught with political and controversial provisions, we will provide the Senate with a bill that provides alternative approaches to resolution of matters coming within the scope of the acts. You will then be able to choose from among competing provisions and make the hard policy decisions.

I will be placing your request on the agenda for our next Commission meeting. I do not have a date at the present time as the Commission has exhausted all of its fiscal 1991 funds. Unfortunately, our budget was allocated in a new manner which provided for specific funding of positions within the Legislative Affairs Agency, Legal Division. Our monthly budget reports regretably did not disclose that certain funds were encumbered, thus leading us to believe we had sufficient funding to complete our yearly meeting schedule. When we discovered that we had no further funds, we shut down the operation of the Commission. We are at this time awaiting a decision by the Legislature on a supplemental appropriation in the amount of $10,000 (the amount requested). If such funding is forthcoming, we will have one or two further meetings during fiscal year 1991. In any event, we will be able to take up this project during fiscal year 1992 and will attempt to have a draft bill for consideration during the next legislative session.

The Commission will keep you appraised of progress on this project. And, I want to express our thanks for the legislative interest in the work done by the Commission. We are always happy to respond to a request from legislators.

Very truly yours,

John W. Abbott

JOHN W. ABBOTT
Chair

cc: Senator Bettye Fahrenkamp,
Chair, Legislative Council

Terry Banister
Division of Legal Services

ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS, CHAIR

ETHICS COMMITTEE, CHAIR

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Senator Pat Pourchot

MEMORANDUM

TO: Rep. Dave Donley, Chair
House Judiciary Committee

DATE: Dec. 10, 1991

FR: Senator Pat Pourchot

RE: CS SB 35 (JUD) - Use of Rented Properties/Drug Violations

As you know, the goal of the proposed legislation is to shorten the length of time it takes to evict a tenant (a summary is attached):

1) For nonpayment of rent;

2) For engaging in felony alcohol or drug activities related to manufacture and delivery; and

3) To assist neighborhoods in halting drug trafficking.

It is my understanding that the House Judiciary Committee is planning to restore the 5-day notice provision as specified in the bill that passed the Senate and to delete the provision added in House Labor and Ccommerce requiring a "notice to quit" to be delivered by certified mail. I strongly support these proposed Judiciary Committee revisions.

Additionally, as I mentioned in my October 4 memo to you, the Code Revision Commission's proposed legislation to harmonize the FED and URL-TA statutes will necessitate that the Department of Law revise and republish its pamphlet on landlord/tenant rights. As the provisions in SB 35 will also be subject to this revision, it appears a fiscal note for republishing the pamphlet would more appropriately accompany the Commission's proposed legislation. Therefore, I respectfully request the House Judiciary Committee to delete the fiscal note accompanying HCS CSSB 35 (L&C).

I would greatly appreciate your scheduling this bill for a hearing at your earliest convenience.

L.C. Put in file

ALASKA STATE LEGISLATURE

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CHAIR

ETHICS COMMITTEE,
CHAIR

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Senator Pat Pourchot

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I would greatly appreciate your scheduling this bill for a hearing at your earliest convenience.

Dave, let's get together & chat this week!!

ALASKA STATE LEGISLATURE

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CO-CHAIR

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Senator Pat Pourchot

MEMORANDUM

TO: Representative Dave Donley, Chair DATE: Oct. 4, 1991
House Judiciary Committee

FR: Senator Pat Pourchot

RE: Fiscal Note Accompanying HCS CSSB 35 (L&C)

In working on SB 35 last session, the lack of harmony between the FED and URL-TA statutes became painfully obvious. As a result, I requested the Code Revision Commission to review these statutes and prepare draft legislation to eliminate ambiguities and inconsistencies. The Commission agreed to undertake this project during the interim. To confirm that this project was underway, I spoke with John Abbott, Chair of the Commission, last week and he assured me that Legal Services is currently working on draft legislation for introduction next January.

Notwithstanding SB 35, this revision of the FED and URL-TA statutes will necessitate that the Department of Law revise and republish its pamphlet on landlord and tenant rights as required by AS 44.23.020(b)(8). As the provisions of SB 35 will also be subject to this revision, it appears a fiscal note for republishing the pamphlet would more appropriately accompany the Commission's proposed legislation. Therefore, I respectfully request the House Judiciary Committee to delete the fiscal note accompanying HCS CSSB 35 (L&C).

Thank you for your consideration of this matter.

7-LS0160\V.1
Chenoweth
05/14/91

AMENDMENT

OFFERED IN THE HOUSE

TO: CSSB 35 (JUDICIARY)

Page 3, line 27:

Delete "a new section"

Insert "new sections"

Page 4, following line 1:

Insert a new section to read:

"Sec. 09.45.137. COMPUTATION OF TIME. In computing any period of days for which notice must be given under AS 09.45.060 - 09.45.160,

(1) the day on which notice is given is not to be included;

(2) the last day of the period is to be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday; and

(3) intermediate Saturdays, Sundays, and legal holidays are excluded from the computation."

Page 6 ıe 29, after "days":

Insert "**, as determined under AS 09.45.137,**"

Pat

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO

☑ *CRIMINAL DIVISION CENTRAL OFFICE*
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

☐ *OFFICE OF SPECIAL PROSECUTIONS AND APPEALS*
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

March 5, 1991

The Honorable Pat Pourchot
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: SB 35

Dear Senator Pourchot:

You have inquired through staff whether the Department of Law uses the nuisance abatement procedures set out in AS 09.50.170 and, thus, whether our practices would be affected by an amendment to this statute. AS 09.50.170 et seq. authorize the attorney general to initiate legal proceedings to abate the nuisances created by "places used for immoral acts."

Any such abatement procedures would be undertaken by the civil division of the Department of Law, rather than by the criminal division. I have conferred with Assistant Attorney General Jeff Bush on behalf of the civil division and he advises me that the department currently does not utilize these procedures. Accordingly, the department would not be affected by any amendment to the statutes.

Thank you for inquiring. If you have any further questions that we may be able to answer, please do not hesitate to contact us.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: Margot C. Knuth
Margot C. Knuth
Assistant Attorney General

MOK:ma

03-C31LH

DIVISION OF LEGAL SERVICES

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Juneau, Alaska 99801-2101

MEMORANDUM February 13, 1992

SUBJECT: Landlord-Tenant and Forcible Entry and Detainer Statutes (Work Order No. 7-LS2028)

TO: Senator Pat Pourchot

FROM: Tamara Brandt Cook
Director TBC

You have asked whether the Legal Services Division can prepare a draft over the interim to eliminate inconsistencies that exist in the Uniform Residential Landlord-Tenant and Forcible Entry and Detainer statutes for introduction at the beginning of the next regular session. It is my understanding that you would be shooting for a July l, 1993 effective date.

This should present no major problem for the division to handle as an interim project. The bill has, therefore, been assigned a work order number. It has also been assigned to me, but that is only for our tracking purposes. At the end of the session, once staffing levels and general topic assignments can be reviewed, the bill will be assigned as a special project to a drafting attorney. That person will need guidance from your office with respect to policy choices that must be made to reconcile these statutes.

TBC:pl
92-101.plm

Enclosure

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MEMORANDUM May 13, 1991

SUBJECT: CSSB 35 (Judiciary)

TO: Representative David Finkelstein, Chair
House Labor and Commerce Committee
ATTN: Cliff Groh

FROM: Jack Chenoweth
Legislative Counsel

You have asked me to respond to criticism that has been voiced of this Senate-passed measure.

In the context of amendment of the forcible entry and detainer remedy, the reduction of the ten-day notice to five days in the case of non-payment of rent and, as provided in the Judiciary Committee Substitute, in the event the tenant's breach of the duty not to illegally engage in use of alcohol or drugs in rented premises, is a policy decision for the legislature. As has been noted in the course of the bill's consideration, among western states, Alaska alone provides for 10 days' notice. The statutes of all of the rest authorize commencement of FED or similar proceedings for the nonpayment of rent on as little as three or five days' notice.

The initial bill authorized use of the forcible entry and detainer remedy upon a tenant's arrest for violation of one or more of three sets of statutes involving the sale or possession with intent to sell controlled substances or imitation controlled substances, or for certain illicit sales of alcoholic beverages. The Senate-passed bill abandons the "arrest" requirement and substitutes a more general statement of the tenant's "violation" of one those provisions. I assume that, in the absence of a definitive statement in the measure as to at what point tenant's conduct constitutes a "violation," the courts will eventually have to step in and define that circumstance. And, probably for all the reasons noted in the objection to the earlier version of the bill, that definition may require evidence of tenant's guilt--a plea of guilty or nolo contendere, or a conviction by court or jury. In at least one other jurisdiction with which I am familiar that has a substantially comparable measure, the state prosecutor interceded to impose an interpretation that the statute might only be invoked after a tenant's conviction.

Objection is made that the measure authorizes eviction because of illegal conduct of others not under the tenant's control. The standard in fact is one that looks to evidence of the tenant's "knowingly permit[ting] others in the premises to engage in one more of [the] activities . . . " AS 34.03.120(b). I suggest that the tenant's control of the rented premises is not compromised by that provision.

good idea

To the objection that the bill may be applied to impair existing contracts, to cut off any possibility of that, the House may want to add a provision making the measure's provisions applicable to rental agreements entered into on and after the measure's effective date.

JC:pl
91-360.plm

Bill section 10 recasts existing law under which a court may issue a nuisance abatement order. The principal substantive change adds the underlined material in (a)(1) and directs the termination of the lease or rental agreement on premises subject to the abatement order if the tenant has been given notice of the nuisance abatement proceedings.

The substantive change made by bill section 11 is set out at p. 5, line 15: It adds flexibility in the abatement remedy by giving the court latitude to determine the amount of bond with sureties necessary when premises under abatement are to be returned to the owner rather than maintaining the requirement that the value of that bond reflect the full value of the property. The provision also adds, as a new subsection (c), a statement to clarify that, if an abatement order is subsequently cancelled because of compliance with (a) of that section, the related lease or rental agreement--terminated with the issuance of the abatement order under the authority of AS 09.50.210(a)(1) [bill section 10]--is not automatically revived.

Bill section 16 directs that, under the Uniform Residential Landlord and Tenant Act, an order of abatement entered by the court terminates the related rental agreement.

Bill section 17 identifies the particular activities involving alcoholic beverages, controlled substances, and imitation controlled substances that warrant relief under the expanded nuisance abatement provisions. Generally, these statutes identify sales and possession with intent to sell in violation of law. The Senate-passed measure abandons the "arrest" standard of the original bill and substitutes reference to "a violation" of one of the criminal statutes cited.

FORCIBLE ENTRY AND DETAINER REMEDY AS ALTERNATIVE OR SUPPLEMENT TO NUISANCE ABATEMENT:

Proposed bill section 2 amends AS 09.45.090 in part as follows:

-- The amendment made to (1)(B) sets five days as the period in which a landlord must wait after giving notice to quit and making written demands for possession of rented premises to commence a forcible entry and detainer proceeding in the event the tenant has violated provisions of the Uniform Residential Landlord and Tenant Act against knowing engagement in certain illegal activities involving alcohol or drugs on premises or for violation of a similar provision in rented premises not covered by that Act.

-- The amendment made to (3) authorizes the landlord to use the forcible entry and detainer remedy to enforce an order of abatement. Under the provision, the landlord may, after obtaining the abatement order under AS 09.50.210(a), seek immediate relief.

A related provision, bill section 6, a new section, authorizes the use of an abatement order, obtained at the end of a trial under the nuisance abatement statute, to serve as prima facie evidence of unlawful holding of premises by force for purpose of the hearing required by the forcible entry and detainer process.

OTHER RELATED CHANGES:

Bill sections 1 and 12, adding AS 04.21.075 and AS 17.30.160, respectively, impose on peace officers the requirement to notify a landlord when a tenant has been arrested for violation of one of the identified criminal offenses involving alcohol or drugs.

Proposed bill section 2 amends AS 09.45.090 in part as follows: The addition of material in (2)(B) is included in order to authorize a landlord to recover premises after a notice to quit is given for the tenant's breach of a condition or covenant other than nonpayment of rent or engaging in identified criminal activity involving alcohol or drugs. (Under AS 09.45.110, not amended by this measure, ten days minimum notice must be given--90 days in the event of a farm- or agriculture-related tenancy.)

Bill section 13 adds as a tenant's duty the obligation of the tenant not to engage in illegal activities on rented premises or to knowingly allow others in the premises to do so.

Bill section 14 makes a technical change. Under current law, in order to secure relief under AS 34.03.220(a), a provision detailing the tenant's responsibilities under a rental agreement with respect to rented premises as those are enumerated in AS 34.03.120, the tenant's noncompliance must "materially [affect] health and safety." As noted immediately above, bill section 13 adds to the tenant's responsibilities "not knowingly [to] engage at the premises in [the specified] illegal [activities] . . . or knowingly permit others in the premises to [do so] . . . . " The change made by this bill section confines the "noncompliance materially affecting health and safety" standard to the tenant responsibilities set out in current law and serves not to impose that limiting standard to the added tenant responsibility not to engage on the premises in dealing in alcohol and drugs in violation of law.

The measure's bill section 18 adds a codified section, proposed AS 34.05.100, extending to tenancies not covered by the Uniform Residential Landlord and Tenant Act the provisions establishing the duty on the tenant not to use the rented premises for illegal activities. Under this new section, noncompliance with the provision is a basis for seeking relief through the nuisance abatement process and, as with bill section 16 above, an order of abatement covering a premises that falls within this section terminates the rental agreement.

JBC:lmb
91-185.lmb

ALASKA STATE LEGISLATURE

SENATE FINANCE COMMITTEE,
CO-CHAIR

L&C

Senator Pat Pourchot

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MEMORANDUM

TO: All Senators DATE: April 18, 1991

FR: Senator Pat Pourchot Pat

RE: Response to April 4 Clocksin letter objecting to SB 35 (Landlord/Tenant legislation)

For your information, I've attached a copy of a response from Legal Services to Don Clocksin's April 4 letter which he sent to you regarding his concerns with provisions contained in SB 35 relating to eviction of tenants for nonpayment of rent and for certain alcohol and drug activities.

Recognizing the need to revise the referenced statutes to clarify and remove existing ambiguities, I have requested the Code Revision Commission to undertake this project during the interim.

DIVISION OF LEGAL SERVICES

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Mail Stop 3101

MEMORANDUM April 13, 1991

SUBJECT: Don Clocksin's April 4 letter objecting to Senate Bill 35

TO: Senator Pat Pourchot

FROM: Jack Chenoweth
Legislative Counsel

Your staff provided me a copy of Don Clocksin's recent letter and solicited my comments.

The reduction of the ten-day notice to five days in the event of non-payment of rent is a policy decision of the Alaska legislature. As was noted in the course of the bill's consideration, among western states, Alaska alone provides for 10 days' notice. The statutes of all of the : est authorize commencement of FED or similar proceedings for nonpayment of rent on as little as three or five days' notice. Moreover, Doug Baily, responding to an objection that five days' notice may not be sufficient in cases involving tenancies in rural Alaska where mail service can often be sporadic, pointed out that the tenant's actual receipt of notice would not seem to be required: the statute (set out as AS 09.45.100(3) in CSSB 35 (Jud)) only makes a reference to the landlord's sending notice by mail; it doesn't depend on the notice's receipt. The current notice provisions are not without fault, but reducing the amount of notice required to five days in the event of non-payment of rent would not seem to be out of line with what is commonly being done elsewhere.

At the bottom of page 2, Don voices objection to a tenant's suffering possible eviction because of the illegal conduct of others "not under their control," and questions the use of the summary proceeding authorized by the FED action to secure eviction in those situations before the underlying criminal action is resolved. In response to the first objection, let me point out that CSSB 35 (Judiciary) provides for eviction of a tenant engaged in illegal activity involving alcoholic beverages or controlled substances, or the tenant's "knowingly permit[ting] others in the premises to engage in one or more of those activities . . . " (AS 34.03.120(b), p. 6, lines 12, 13). The tenant's control of the premises is not compromised by that provision. If the tenant has knowledge of the activity, AS 34.03.120 may serve as the basis for an FED

action under AS 09.45.090(1)(B). On the second point, Don is correct in the conclusion he reaches: unless the tenant pleads guilty at arraignment, the FED action, a civil remedy, would likely precede any significant activity taken on disposing of the criminal charge in the criminal process and it is, as he concludes, likely that an order of eviction may be entered before the criminal charge is finally resolved. But my recollection is that the objection was earlier considered, in the context of substituting "conviction" for "arrest" and the committee adopted instead the language now set out in bill section 17 of the current CS: the tenant's being engaged in "a violation of [a specific statute]." You and your colleagues should understand that the court may be asked to pin down just exactly when "a violation" of the statute occurs. If the court concludes that there is no violation short of a conviction, then the conviction--on a guilty plea or on entry of judgment following a trial before a jury or a judge--will always precede eviction. If the court concludes otherwise, the FED action will almost surely occur first. (The handing of this topic by the City of Seattle is summarily discussed in the footnote at the last page of my February 5 memo.)

The nuisance "twist"--the changes made to AS 09.50--is hardly original with us. It is, as you well know, derived from a California precedent that was in turn based on a civil action of the same kind--nuisances in red light districts--as the Alaska statute that is amended and extended in this bill. Jeannie Larson of your staff provided me with a report summarizing one California community's successful use of the statute to clean out a known crack house when other attempts and initiatives to eliminate drug activities had failed.

Don's assertion concerning use of reputation evidence would seem to be undercut by our reliance on a court rule, Evidence Rule 405, that permits admission of reputation evidence under certain conditions and authorizes cross-examination of parties offering that testimony or evidence. Our mention of reputation evidence in this bill follows that precedent and, while it does set aside the 1928 trial court decision, the court will apply the standard otherwise applicable to introduction and use of reputation evidence.

On the issue of court rule changes Don's letter doesn't identify specific rules affected by the changes, so I'm not prepared to respond on point. Still, the legislature has latitude to make substantive changes that affect court rules that may not require court rule change treatment under article IV, section 15.

I can't speak to matters of fiscal impact and necessity.

*

Finally, since my fingerprints are on the documents, I am somewhat sympathetic to Don's conclusion about the difficulty in understanding the draft ("The Bill is Incomprehensible."). The forcible entry and detainer provisions and the nuisance law date from territorial days and, from a drafting perspective, are terrible products to

have to amend in a piecemeal fashion as has been proposed here. The Uniform Residential Landlord-Tenant Act, the more recent addition to the body of Alaska law, is a significant improvement, but amending that Act is not without its share of problems. The changes made to all--the need to try to tie them all together into one cohesive package--was not easy. The evidence of that, I think, is the labors that your staff and I performed in trying to provide information as to how this all would fit together. With all the time and attention given, there were still some unanswered questions.

In the course of the committee proceedings on the bill, I made reference to a fifteen-year old law review article that Don authored in which he cites the continuing inconsistencies between the FED proceedings and the URL-T Act, and suggests that they need to be better harmonized. I agree. Unfortunately, that was not the goal of this drafting assignment. Meshing the two is still a task that should be done.

Whether or not the bill drafting was done competently, I understand the objection but respectfully suggest that, until the FED and nuisance provisions are comprehensively revised and until the FED and URL-TA provisions are better harmonized, drafting amendments that interrelate these three areas of law will be difficult--difficult to fashion and especially difficult to explain to laymen not readily familiar with their provisions.

*

Thanks, I think, for the opportunity to read the critical reviews and to respond.

JBC:lmb
91-117.lmb

WAGSTAFF, POPE & CLOCKSIN
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(202) 783-5100

March 27, 1991

Senator Pat Pourchot
Room 504, Capitol Building
P.O. Box "V"
Juneau, Alaska 99811

Re: Senate Bill 35
Our File No. 3014.31

Dear Senator Pourchot:

I have been asked by the Board of Directors of the Alaska Civil Liberties Union to review and comment on your Senate Bill 35 relating to landlord and tenant law. After reviewing that Bill, I find that I must criticize it not only for its invasion of certain important constitutional principles, but also because it is unfair to tenants and unnecessarily tips the scales of justice in favor of landlords.

As background, I participated in the drafting of this legislation in 1973-74 as a lobbyist for the Alaska Legal Services Corporation. At the time of its passage, it constituted a careful balance between the rights and obligations of tenants and the countervailing rights and obligations of owners of rental property. Throughout the years following its enactment, including the six years I served in the Legislature, there were numerous attempts to amend this legislation, primarily by landlord advocates. Those efforts were almost universally opposed by legislators who had been involved in the original adoption of the legislation because they would destroy the careful balance that had been achieved. Chief among those who was reluctant to alter the balance was Senator Bob Ziegler, by no means a tenant advocate, but an aggressive believer in maintenance of a carefully crafted legislative compromise.

There are three portions of this legislation which are particularly offensive to constitutional principles. First, the legislation would grant the right to evict a tenant based solely on the individual determination of a police officer with regard to what crime has been committed. The right to evict in the bill is triggered by an arrest, not the filing of a charge nor the

conviction for that charge. This violates due process, one of the most fundamental rights in our constitution, because it authorizes the court to remove somebody from his or her home prior to any determination that the alleged conduct has actually occurred. A single police officer who finds a small amount of marijuana in a home has the power under this legislation to force the removal of the family from that home even though there is no conduct which ultimately results in a conviction for an offense listed under AS 34.03.360(20), which appears as Section 13 of this legislation. In no other situation does a civilized society leave that kind of power with the individual police officer.

Second, the reduction from ten to five days of the notice required prior to eviction will have the practical effect of evicting many people before they have an opportunity to respond. AS 09.45.100(2) allows this notice to quit to be left at the premises. My experience is that this is the common method of providing notice. If the tenant is absent for the five day period of this notice, he or she will have no opportunity to respond to the notice. Failure to respond will result in eviction, even if there had been a legitimate defense. Deprivation of property by providing inadequate notice violates due process of law.Furthermore, as noted above, this ten day notice provision was a compromise which provided the landlord an expedited procedure but assured a reasonable period of time for the tenant to respond. This ten day notice provision was comparable to the notice imposed upon a tenant under AS 34.03.170, as well as the ten day requirement in AS 34.03.160. The effect of this provision of your bill is to strengthen the powers of landlords without a concomitant strengthening of any right of the tenant.

Third, this law would alter many existing landlord-tenant contracts. Typically, those contracts do not contain a five day notice provision, and do not allow eviction upon arrest for a crime. If this legislation is interpreted to modify those contracts, then it impairs the obligation of contract in violation of Article I, Section 15 of the Alaska Constitution. As a practical matter, since there is no delayed effective date in this legislation, there will be great difficulty in determining which landlord-tenant relationships to which this legislation applies. It cannot alter existing contractual relationships. Since some of those relationships are month to month and some are for longer periods of time, it will be unclear which relationships are affected by the legislation and when.

Furthermore, it appears that you are trying to exclude so-called "possession" crimes from this legislation. While that is an admirable goal, the fact that the right to evict is triggered by an arrest, and not upon the filing of a charge or conviction, means

that this limitation is illusory. A police officer who enters a home and observes an amount of marijuana could believe that the marijuana was possessed with "intent to deliver" and arrest on that basis. However, upon review of the case by a prosecutor, or a judge and jury, the determination may be that there was no "intent to deliver." In such a case a person will have been evicted, in effect, for a possession crime - a result not intended by this legislation.

Finally, AS 34.03.120(8), added by Section 9 of this legislation, allows you to evict a tenant if he or she knowingly permits someone else to engage in these illegal activities. This allows a family to be evicted from their home even though the tenant has not engaged in any illegal activity. While you may feel that you are responsible for every person who visits your home, I doubt that you would consider it fair to have your family evicted because someone commits an illegal act in your home with your knowledge. This constitutes the rankest form of guilt by association - a principle that should not be reflected in any legislation adopted by the Alaska Legislature.

I encourage you to rethink the purpose behind this legislation and whether the legislation actual accomplishes that purpose. The legislation is not necessary, because landlords currently have the tools to deal with after-hours clubs and drug dealing in their rental units. Their inability to utilize those tools is a social problem, not one to be solved by the deprivation of the rights of a class of citizens who find it necessary to rent their premises and who may be innocent of any crime.

Thank you very much.

Sincerely,

Don Clocksin

DC:dkm\30143103.ltr

DIVISION OF LEGAL SERVICES

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MEMORANDUM February 26, 1991

SUBJECT: Questions concerning Senate Bill 35 and draft CSSB 35 ( )

TO: Senator Pat Pourchot
ATTN: Jeannie Larson

FROM: Jack Chenoweth
Legislative Counsel

1. Unless the landlord and tenant have provided in their rental agreement for a different remedy, the landlord must use the forcible entry and detainer process of AS 09.45.060-09.45.160 to secure termination of a tenant's forcible entry or unlawful detainer of rented premises.

2. In a residential tenancy, if the landlord seeks to remove a tenant from possession of rented premises based on the tenant's alleged illegal drug activities on the rented premises, under current law the landlord (1) must determine that the tenant has, under AS 34.03.220(a), failed to comply with a tenant's obligation under the rental agreement or under AS 34.03.120 (presumably § 120(a)(6), interference with quiet enjoyment of the premises by neighbors, the justification cited by the Alaska Legal Services Corporation in its February 5 letter in opposition to SB 35), (2) give the 20 day notice under AS 34.03.220(a) directing the tenant to rectify the breach, and (3) if the breach is not adequately remedied within the time allowed--and one wonders how a tenant who engages in illicit alcohol- or drug-activity will do that--move to terminate the rental agreement under the forcible entry and detainer process outlined, presumably under AS 09.45.090(2)(the tenant holds "contrary to a condition or covenant in the lease or agreement,"), in which case, AS 09.45.100 directs a minimum of 10 additional days' notice. Thus, the period under which the landlord would be obligated to wait would necessarily exceed 30 days: a minimum of 20 days under AS 34.03.220(a) and not less than 10 days under AS 09.45.100.

3. The proposed amendment to AS 09.45.130 set out in section 7 of SB 35 is intended to address the situation in which a tenant has prepaid rent and thereafter

the landlord, during the period of tenant's occupancy covered by the prepaid rent, seeks the tenant's removal for tenant's involvement in illegal drug- or alcohol-related activity. AS 09.45.130(a) appears to protect the tenant who has paid advance rent "until the expiration of the period for which that tenant or person may have paid rent for the premises in advance." In other words, there is the color of argument that a tenant may try to "protect" or insulate himself by paying, say, three-months or even one year in advance and go about using the premises for illegal activities without apparently worrying about removal under AS 09.45.060 - 09.45.160. The proposed subsection (b) is intended to eliminate that possibility. Nothing waives the forcible entry and detainer notice requirement, and the notice provisions of AS 09.45--taken in conjunction with those that may be required by AS 34.03--are otherwise applicable.

4. Section 7 of draft CSSB 35 ( ), M version, offered yesterday, authorizes introduction of reputation evidence to demonstrate nuisance. Rule 405 of the Evidence Rules authorizes introduction of evidence of the reputation of or opinion about a person. The circumstances under which that evidence may be offered, received, and considered are fairly well established in the Rules; this is not, then, a provision intended to change the evidence rule as it relates to persons. Taking "reputation" in its dictionary sense ("estimation in which a person or thing is commonly held"--Webster's New World Dictionary), there seemed to be a need for a provision by which neighbors or other residents of a community could describe to a court the opinion or judgment concerning the premises based on their collective opinion of it. Since premises may come to have a community or neighborhood reputation, there should be a clear statement of authority for a court to permit the use of that evidence, subject, of course, to the parameters otherwise applicable to reputation evidence. The provision is permissive. Thus, the bill section would cover evidence relating to personal reputation as well as the collective judgment or repute of a neighborhood or community concerning the premises, though it is only as to the latter that this provision would appear to have substantive effect.

JC:gc
91-102.glc

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM February 19, 1991

SUBJECT: G.2 and G.4 amendments to Senate Bill 35

TO: Senator Pat Pourchot
ATTN: Jeanne Larson

FROM: Jack Chenoweth
Legislative Counsel

Enclosed are two amendments introducing material amending the nuisance statutes in the context of expansion of landlord remedies for illegal drug and alcohol transactions in rented premises. Both versions take the approach we discussed: expansion of the statutory remedy authorizing abatement of lewd houses.

Let me briefly review the abatement provisions (AS 09.50.170-09.50.240) as they currently exist: These are, as I indicated, typically brought as "in rem" actions, in which the real estate is named the defendant (i.e. State of Alaska v. Property located at 900 East First Street in the City of Borough of Juneau) as well as the premises owner or occupant. Under the statute, the attorney general or a private citizen may seek relief. Injunctive relief is authorized "to perpetually enjoin the nuisance . . .", and contempt proceedings may be initiated for violation of the nuisance injunction. The court is also authorized to abate the nuisance--in essence, order its closure--with contempt authorized for violation of the abatement order. The abatement order may direct sale of the premises and its contents. However, short of a sale, the owner may seek to recover immediate possession. The owner may recover if he or she (1) has not committed contempt in conjunction with an injunction in the proceeding, (2) appears and pays all costs, and (3) files a bond with sureties "in the full value of the property as determined by the court."

Amendment G.2, the shorter of the two amendments submitted, essentially makes two changes: (1) it adds to the abatement statute circumstances in which the remedy may be used to include property used for illegal drug- and alcohol-related purposes, and (2), as we had discussed, it diminishes the severity of the surety bond requirement by eliminating the "in the full value of the property as determined by the court" and replacing it with "an amount to be determined by the court." In all other

respects, the relief authorized by the amendment follows the procedures of the current lewd house abatement statute.

Because it is tied, through the definition, to the "illegal activity . . ." definition of AS 34.03.360, amendment G.2 presupposes that the nuisance abatement provisions would be available to the attorney general or to private citizens only if the tenant suffers the act that triggers relief under the changes being made to the forcible entry and detainer statute and the Uniform Residential Landlord and Tenant law by the measure, i.e. that is, the tenant was "arrested" (as under current provisions of SB 35) for one of the enumerated drug- or alcohol-related violations. Consequently, objection may be raised to the first amendment for the reasons that objection is being raised to the provisions of the measure.

I prepared amendment G.4 to avoid that difficulty. The second amendment

(1) strips from SB 35 the provisions that tie drug- and alcohol-related penalties to arrests;

(2) authorizes relief, as in amendment G.4, through the revised nuisance mechanism; and

(3) expands, following the California model (California Health & Safety Code § 11575.5), the admissibility of testimony to prove the nuisance; admission of reputation evidence is authorized by Evidence Rule 405, so a court rule change would not seem to be necessary.

I retained, in both amendments, the provisions by which state and municipal peace officers are to contact the landlord when arrests are made on rented premises. Independently of the handling of nuisance abatements introduced by these two amendments, there seems to me good reason for a property owner to know what is occurring on the premises the landlord is renting. But retention of the provision, in light of these amendments, is a policy call, not one that must be changed or deleted by law.

I can make further changes to these two approaches as you may direct, but believe that these are the two basic approaches that you asked me to consider in preparing the nuisance amendment revision to this bill.

JBC:pl
91-092.plm

Enclosures

DIVISION OF LEGAL SERVICES

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MEMORANDUM February 4, 1991

SUBJECT: Re Senate Bill 35

TO: Senator Pat Pourchot
ATTN: Jeannie Larson

FROM: Jack Chenoweth
Legislative Counsel

You have asked for an overview of legislation in other states permitting a landlord to terminate a lease when the landlord determines that the tenant has used the premises for illegal purposes without having evidence of a conviction. The following examples, not intended as an exhaustive list, are suggestive of the authority provided by the various states. The statutes reported generally address the tenant's illegal activities in three areas--illegal sale of liquor, gambling, and prostitution.

1. Automatic termination of lease, or termination of the lease at the landlord's option, without specification that the landlord is entitled to possession:

Automatic termination:

Colorado Rev. Stat. Ann. §13-21-103 -- "unlawful sale or giving away of intoxicating liquors works a forfeiture of all rights of the lessee or tenant under any lease or contract of rent upon the premises."

Illinois Ann. Stat., ch. 43 §135 -- "unlawful sale or gift of alcoholic liquor works a forfeiture of all rights of the lessee or tenant under any lease or contract of rent upon the premises where the unlawful sale or gift takes place."

At landlord's option:

Alabama Code, §28-4-91 -- "unlawful manufacture, sale, . . . giving away or otherwise disposing of any prohibited liquors or beverages contrary to the law of the state . . . shall, at the option of the landlord or lessor, work a forfeiture of all the rights of any lessee or tenant under any lease or contract of rent of the premises where such unlawful act is performed . . . by the lessee or tenant or by any agent, servant, clerk, or employee of the lessee or tenant with the latter's knowledge or permission."

2. Automatic termination of lease, thereby entitling the landlord to recover possession but without specifying the procedure the landlord is to follow:

Ohio Rev. Code. Ann. §4399.06 -- "all contracts whereby any building or premises are rented, leased, used, or occupied shall become void when such building or premises are used, in whole or in part, for the sale of intoxicating liquors contrary to law, and the lessor, on and after the sale or gift of intoxicating liquors, shall be held to be in possession of such building or premises."

3. Automatic termination of lease, or termination of the lease at the landlord's option, entitling the landlord to recover possession without process of law:

Automatic termination:

Mississippi Code Ann. §95-3-23 -- "if a tenant or occupant of a building or tenement under lawful title uses such place as a nuisance . . . , such use shall annul and make void the lease or other title under which he holds and, without any act of the owner, shall cause the right of possession to revest and vest in the owner, and the owner may without process of law make immediate entry upon the premises."

New Hampshire Rev. Stat. Ann. §544.41 -- "if a tenant or occupant of a building or tenement, under a lawful title, uses such premises . . . for any of the unlawful purposes enumerated herein[,] such use shall annul and make void the lease or other title under which he holds and, without any act of the owner, shall cause the right of possession to revert to him, and he may, without process of law, make immediate entry upon the premises."

Rhode Island Gen. Laws Ann.

§11-19-23 -- "every lease of any house, shop, or place used as a gambling house or place where gaming is practiced or carried on . . . shall be void, and no notice to the occupant thereof other than a demand for the possession of the premises, shall be necessary to eject such occupant therefrom."

§11-30-6 -- "if any person, being a tenant or occupant under any lawful title of any building or tenement not owned by him, shall use said premises or any part thereof for [unlicensed manufacturing or distribution of intoxicating liquor], such use shall annul the lease or other title under which said occupant holds, and, without any act of the owner, shall cause the right of possession thereof to revert and vest in him, and said owner may make immediate entry thereon and repossess himself of the premises without process of law."

At landlord's option:

Ohio Rev. Code Ann. §3767.10 -- "if a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of lewdness,

assignation, or prostitution, such use makes void the lease or other title under which he holds, at the option of the owner, and, without any act of the owner, causes the right of possession to revert and vest in such owner, who may without process of law make immediate entry upon the premises."

4. Automatic termination of lease, allowing the landlord to enter on to the leased property or to use the remedy provided in the state's summary proceeding statute:

Kansas Stat. Ann. §41-805(1) -- "if a tenant of any building or premises uses the same, or any part thereof, in maintaining a common nuisance . . . , or knowingly permits such use by another, such use shall render void the lease under which he or she holds, and shall cause the right of possession to revert to the owner or lessor, who may make immediate entry upon the premises, or may avail himself or herself of the remedy provided for the forcible detention thereof."

Maine Rev. Stat. Ann., tit. 17 §2743 -- "if any tenant or occupant, under any lawful title, of any building or tenement not owned by him uses it or any part thereof for any purpose [involving illegal sale or keeping of intoxicating liquor or narcotics, lewdness, or gambling], he forfeits his right thereto, and the owner thereof may make immediate entry, without process of law, or may avail himself of the remedy provided [i.e. forcible entry and detainer]."

Oklahoma Stat. Ann., tit. 21, §958 -- "whenever any lessee of any house or building shall be convicted of suffering any of the said prohibited gambling devices or games of chance to be carried on in said house or building, the lease or contract or letting such house or building shall become void and the lessor may enter upon the premises and shall recover possession of said leased property as in the case of forcible detainer."

5. Automatic termination of lease, granting the landlord the same remedy as the landlord would have against a holdover tenant:

Automatic termination for a tenant's illegal use:

Missouri Rev. Stat. §441.020 -- "whenever any lessee of any house or building shall suffer any prohibited gaming table, bank, or device to be set up or be kept or used therein, for the purpose of gaming, or keeping in the same a bawdyhouse, brothel, or common gaming house, the lease or agreement for letting such house or building shall become void, and the lessor may enter on the premises so let, and shall have the same remedies for the recovery thereof as in the case of a tenant holding over his term."

New Jersey Stat. Ann. §46.8-8 -- "if the lessee of any dwelling house or other premises situate in this state shall use the same for purposes of prostitution or assignation, the lease or agreement for letting the same shall enter thereupon become immediately void, and the landlord may enter thereon, and shall have the same remedies to recover possession as are given by law when a tenant holds over after the expiration of his lease."

Utah Code Ann. §32A-13-6(6) -- "if any tenant of any premises uses the same or any part thereof in maintaining a common nuisance . . . , or knowingly permits use by another, the lease is rendered void, and the right to possession reverts to the owner or lessor[,] who is entitled to the remedy provided by law for forcible detention of the premises."

Termination at landlord's option:

Oregon Rev. Stat. §91.240(3) -- "any person letting or renting any room, building, or place mentioned in [O.R.S.§ 91.240(1)] which is at any time used by the lessee or occupant thereof, or any other person with the knowledge or consent of the lessee or occupant, for gambling purposes, upon discovery thereof, may avoid and terminate such lease or contract of occupancy, and recover immediate possession of such building or other place by an action at law for that purpose . . . ."

Rev. Code of Washington §4.24.080 -- "it shall be lawful for any person letting or renting any house, room, shop, or other building whatsoever . . . which shall, at any time, be used by the lessee or occupant thereof, or any other person, with his knowledge or consent, for gambling purposes, upon discovery thereof, to avoid or terminate such lease, and to recover immediate possession of the premises by an action at law for that purpose."

6. Automatic termination of lease, or termination of the lease at the landlord's option, but mandating that the landlord serve a notice to quit on the tenant:

Automatic termination of the lease:

California Code of Civil Procedure §1161(4) -- "any tenant . . . assigning or subletting or committing waste upon the demised premises, contrary to the conditions or covenants of his lease, or maintaining, committing, or permitting the maintenance or commission of a nuisance upon the demised premises . . . thereby terminates the lease, and the landlord, or his successor in estate, shall upon service of three days' notice to quit upon the person or persons in possession, be entitled to restitution of possession in such demised premises . . . . "

Termination at landlord's option:

Nevada Rev. Stat. Ann. §40.2514 -- "a tenant of real property or a mobile home . . . is guilty of unlawful detainer when he:

. . .

(4) suffers[,] permits[,] or maintains on or about the premises any nuisance;

. . .

and remains in possession after service upon him of 3 days' notice to quit.

*

An amendment extending the authority of proposed AS 34.03.222 to tenancies other than tenancies in dwelling units covered by the Uniform Residential Landlord and Tenant Act is enclosed.

JBC:lmb
91-013.lmb

Enclosure

DIVISION OF LEGAL SERVICES

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MEMORANDUM December 28, 1990

SUBJECT: Landlord's remedies (Work order 7-0368A)

TO: Representative Ramona Barnes
ATTN: Mel Krogseng

FROM: Jack Chenoweth
Legislative Counsel

I

This is by way of response to your request for an overview of the operation of the state's forcible entry and detainer statutes as a remedy for landlords to regain possession of rental premises. Involving two sometimes inconsistent sets of statutes, this is a somewhat complicated area of law.. We agreed that, before drafting any amendments or changes to the forcible entry and detainer statutes, I would prepare a summary of the current law governing the landlord's removal of tenants from rental premises. Your request was apparently prompted in part by a request to make available to landlords a more expedient eviction remedy.

FORCIBLE ENTRY AND DETAINER DEFINED:

"Forcible entry and detainer" is a civil remedy that governs the eviction or removal of tenants from rental premises. The applicable statutes are to be found in AS 09.45.060 - 09.45.160. As a general rule, the remedy most commonly applies in those instances in which a tenant has failed to pay rent when due under the rental agreement, AS 09.45.090(1), or when the landlord has given the tenant notice to quit and the tenant fails to do so, AS 09.45.090(2).

LIMITATIONS ON USE OF FORCIBLE ENTRY AND DETAINER ACTION:

The forcible entry and detainer remedy does not apply in a vacuum. Alongside the forcible entry and detainer remedy, the state's Uniform Residential Landlord and Tenant Act, AS 34.03, sets out rights and remedies applicable to both residential landlords and tenants. In McCall v. Fickes, 556 P.2d 535 (Alaska 1976), the court determined that the statutory provisions of the forcible entry and detainer remedy

might be used "where they do not conflict with the Uniform [Residential Landlord and Tenant] Act," thereby setting the Uniform Act as a limitation on the civil remedy. Taking the Uniform Act and the civil remedy together, then, forcible entry and detainer is typically available to assert and establish the landlord's right to possession under circumstances giving rise to the right of possession under either AS 09.45.060 - 09.45.160 or AS 34.03. The remedy is available in the event the tenant fails to pay rent when due--particularly when, under a month-to-month tenancy, the tenant fails to pay rent in full in advance--but continues to hold over in possession of the rented premises.

TERMINATION OF TENANCY THROUGH FORCIBLE ENTRY AND DETAINER:

The forcible entry and detainer statute sets out time periods that, after notice has been given to the tenant by the landlord, determine when the tenancy ends.

Each of the two principal instances in which the forcible entry and detainer remedy is available to evict the tenant requires written notice given at least 10 days prior to initiating the forcible entry and detainer action. The first involves unpaid rent: If a tenant has failed to pay rent when due under the rental agreement and eviction is sought under AS 09.45.090(1), the paragraph allows use of the action to recover possession only upon 10 days' demand made in writing for the possession. [1] If, in different circumstances, the landlord gives the tenant notice to quit and the tenant fails to do so and eviction is sought under AS 09.45.090(2), then AS 09.45.100 and 09.45.110, setting out the requirements for a notice to quit, direct that the notice to quit be in writing and served at least 10 days before the action. [2]

---

[1] Ten days' notice is also required by applicable provisions of the Uniform Residential Landlord and Tenant Act when rent remains unpaid when due:

> If rent is unpaid when due and the tenant fails to pay rent within ten days after written notice by the landlord of nonpayment and the intention to terminate the rental agreement if the rent is not paid within that period of time, the tenancy terminates . . . , and the landlord may terminate the rental agreement and immediately recover possession of the rental unit; . . . .

AS 34.03.220(b) (Emphasis added.)

[2] Similarly, ten days' notice is also required in instances in which the landlord gives the tenant notice to quit under the Uniform Residential Landlord and Tenant Act. Under AS 34.03.290(c),

> If [a] tenant remains in possession [of rented premises]

(continued...)

When compared to the same or substantially similar notice requirements for termination of tenancy found in the forcible entry and detainer, unlawful detainer, or similar remedial statutes in other jurisdictions, the ten day notice requirement of Alaska law provides the tenant with a comparatively long notice period. Of the other 12 western states, for example, the notice requirements applicable to use of the detainer remedy in the event of tenant's failure to pay rent when due have been set at either three [3] or five [4] days.

JUDICIAL PROCEEDINGS UNDER THE FORCIBLE ENTRY AND DETAINER STATUTE:

Having received sufficient notice of termination of the tenancy, if the tenant thereafter refuses to leave the rented premises within the time allowed, the landlord may begin the process of obtaining the tenant's eviction by filing an action and

---

[2](...continued)

> without the landlord's consent after the expiration of the term of the rental agreement or after its termination, the landlord may bring an action for possession . . . .

and under AS 34.03.270,

> If [a] rental agreement is terminated, the landlord may have a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement.

In McCall v. Fickes, 556 P.2d 535 (Alaska 1976), the court concluded that the forcible entry and detainer remedy was available to a landlord as the "action for possession" identified in AS 34.03.290(c), thereby implying the application of the ten day notice period of the forcible entry and detainer statute for evictions of tenants in these circumstances.

[3] Three days' required notice by the landlord to the tenant is provided for under the laws of California (Cal. Code of Civ. Proc. § 1161(2) and (3)), Colorado (Colo. Rev. Stat. § 13-40-104(d)), Idaho (Idaho Code § 6-303(2)-(4)), Montana (Montana Code Ann. § 70-27-108(2)), New Mexico (N. Mex. Stat. Ann. § 47-8-33(A) and (B)(3 days' notice for failure to pay rent, but 7 days for other circumstances), Oregon (Ore. Rev. Stat. §§ 90.405(2) and 105.115(2)(a)), Utah (Utah Code Ann. § 78-36-3(1)(a)), Washington (Rev. Code Wash.¶ 59.12.030(3)), and Wyoming (Wyo. Stat.§§ 1-21-1002(a)(1) and 1003).

[4] Five days' required notice by the landlord to the tenant is provided for under the laws of Arizona (Arizona Rev. Stat. § 12-1173(2)-(4)), Hawaii (Hawaii Rev. Stat. § 521-68(a)(5 business days' notice), and Nevada (Nev. Rev. Stat. § 40.-253).

serving summons. Under AS 09.45.120, "[s]ummons . . . shall be served not less than two nor more than four days before the date of trial." The applicable court rule, Civil Rule 85, contains parallel provisions on time of service and, additionally, directs that "the date set for trial shall be not more than 15 days from the date of filing of the complaint unless otherwise ordered by the court." 5/

CONCLUSION:

My review suggests that, to provide a more expedient remedy, you may profitably consider reducing, from ten to, say, three or five days the period between the giving of written notice of termination of tenancy and the commencement of the forcible entry and detainer action. A reduction to a period of three to five days would bring Alaska law in this regard into line with the time allowed by other western states. Moreover, as with the Nevada statute cited, the period of the time reduction might vary from, for example, three days for notice of tenancy due to nonpayment of rent to five days for other circumstances.

I would not recommend a change in the minimal period between landlord's service

---

5/ Alaska's two-to-four day window period allowed for the landlord's service of summons on the tenant prior to trial compares favorably to like requirements of 11 other western states--Hawaii's service of summons requirement is set by court rule, not available in the Legal Services Division's library:

Arizona ("at least two days before the return date"), Ariz. Rev. Stat. § 12-1175(C);

California ("within five days, including Saturdays and Sundays but excluding all other judicial holidays"), Cal. Code of Civ. Proc. § 1167;

Colorado ("at least five days before the day for appearance"), Colo. Rev. Stat. § 13-40-112;

Idaho ("not less than five days before the day of trial appointed by the court"), Idaho Code § 6-311(5);

Montana ("at least four days before the return day designated [in the summons]"), Montana Code Ann. § 70-27-114(2);

Nevada (service requirements are generally set by court rule with a 20 day minimum, however, by law "[judicial officers] may shorten the time within which the defendant shall be required to appear and defend [an unlawful detainer] action"), Nev. Rev. Stat.§ 40.300(2);

New Mexico ("trial . . . shall be not less than seven nor more than ten days after the service of summons"), N. Mex. Stat. Ann. § 47-8-43;

Oregon (6 days minimum), Ore. Rev. Stat. § 105.135;

Utah ("[defendant's required appearance to be] not less than three or more than 20 days from date of service [of summons]"), Utah Code Ann. § 78-36-8;

Washington ("[trial to be] not less than six nor more than 12 days from date of service"), Rev. Code Wash. § 59.12.070;

Wyoming ("not less than three nor more than 12 days before the date of trial set by the [court]"), Wyo. Stat. § 1-21-1004.

of summons on the tenant and the date of trial on the complaint. Alaska's existing two-to-four day requirement is shorter than the similar time period provided in other jurisdictions.

II

When we spoke, you mentioned a "mediation" or "arbitration" option. Washington state law provides both. A copy of the applicable provisions are included. As you can see from the enclosed, use of mediation or arbitration is permissible, not mandatory, and arbitration is not available in "[a]ny situation where court action has been started by either landlord or tenant to enforce rights under [Rev. Code Wash. 58.18]," including "[a]ny unlawful detainer action." I also have to question whether mediation or arbitration would have any real applicability when the sole question is whether a tenant has timely paid rent in full when due. Still, if you want to explore this option, please advise.

Hope this helps.

JC:gc
90-104.glc

Enclosure

BILL NO: (Proposed) CSSB 35(JUD) DATE: 3/08/91

TITLE: An Act Relating to Termination of Tenancies

CONTACT: Gayle A. Horetski
Deputy Commissioner
465-4322

DEPARTMENT OF PUBLIC SAFETY

The proposed Judiciary Committee substitute for SB 35 amends existing landlord-tenant laws to allow property owners to terminate rental agreements for residential property with renters who have committed certain alcohol and drug violations. The bill creates a duty on the part of police officers who arrest persons for certain alcohol, drug, and imitation drug offenses committed in residential rental property to make a reasonable effort to discover the identity of the property owner and to notify the owner, in person, or in writing at the last address listed on tax records and at any other address known to police. The notice requirement applies to alcohol violation arrests for sales from unlicensed premises and for possession or sale of alcohol where prohibited by local option; to drug violations involving the manufacture or distribution of all drugs except small amounts of marijuana; and to imitation drug violations involving the manufacture or distribution of imitation drugs, or possession of certain precursor chemicals used in the manufacture of imitation drugs.

Based upon past arrests for these offenses, it is estimated that the Department of Public Safety will have to notify approximately three hundred property owners per year. The proposed CS allows the peace officer to notify the property owner in person, and we anticipate that that will occur in many (perhaps most) cases. If a written notice is necessary, we estimate that research required to identify the property owner, determine the last address listed on tax roles and any other addresses known to police, and to prepare the written notice, will take approximately one hour per occurrence. The requirement in this bill to provide written notice to "any other address known to the peace officer" will result in the preparation and delivery of the written notice to multiple addresses on file with the police for the owner. As an example, APSIN can retain up to four different addresses for a person. This will result in the sending of multiple notices to property owners, a wasteful duplication of effort.

The Department of Public Safety supports this bill, but suggests that the proposed committee substitute be amended to provide that only if no tax records are maintained for the property should notice to other addresses known to the police be required. This could be accomplished by amending Section 1, at page 2, lines 2 and 3, to read ". . .that levies and collects a property tax, of the arrest. If no tax records are available, notice may be sent to the owner at any other address known to the peace officer." A similar amendment would also have to be made in Section 12, page 6, at lines 6 and 7.

Although the provisions of this bill will create additional work for peace officers, the Department of Public Safety recognizes the problems created for property owners who find that they have rented to alcohol or drug violators. Allowing property owners to evict arrested drug and alcohol violators would help neighborhoods take an active role in fighting the war on drug and alcohol abuse. This law gives property owners a tool to help clean up their rental properties.

Richard L. Burton
Commissioner

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

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May 13, 1991

POSITION PAPER

RE: Committee Substitute for Senate Bill 35 (Jud)

Sponsor: Senators Pourchot & Halford

Program effects of Bill

This bill would have no direct effect on the Department of Community and Regional Affairs.

Comments

As an investor providing loans to borrowers for housing needs in the rural areas of the state, the department becomes an owner and landlord only after a foreclosure sale when the state takes title to a property. Since the Department of Community and Regional Affairs has the lowest foreclosure rate of any investor, our landlord activity is relatively low.

for Edgar Blatchford, Commissioner

Alaska Court System
State of Alaska
OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

February 4, 1991

The Honorable Pat Pourchot
Co-Chairman, Senate Finance Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator Pourchot:

Your office has inquired about the effect of Senate Bill 35, relating to the use of rental property and drug violations, on the Alaska Court System.

This bill has no direct impact on the administration of the court system, and its fiscal impact is zero.

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

Very truly yours,

C. S. Christensen III
Staff Counsel

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MEMORANDUM

TO: Representative Finkelstein, Chair,
Labor and Commerce Committee

FROM: Don Clocksin

DATE: May 15, 1991

SUBJECT: Senate Bill 35 -- Landlord/Tenant

Accompanying this FAX are (1) a memo to your committee members on this bill; (2) a copy of my April 4 memo to Senator Pourchot; and (3) a copy of a pamphlet written to assist landlords and tenants in understanding the Landlord-Tenant Law. Although this pamphlet is not current, it is an example of how we can educate landlords and tenants as to their rights and responsibilities.

Could you have your staff copy and distribute these to each committee member?

Thanks.

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To Rep. Finkelstein	From Don Clocksin
Co.	Co. Wagstaff, Pope & Clocksin
Dept. Labor & Commerce Committee	Phone # 277-8611
Fax # 465-4954	Fax # 274-8040

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MEMORANDUM

TO: House Labor and Commerce Committee Members

FROM: Don Clocksin

DATE: May 15, 1991

SUBJECT: Senate Bill 35 -- Relating to Landlords and Tenants (HEARING TODAY)

Because two of my children are sick, I will be unable to testify at tonight's hearing on SB 35 -- the landlord/tenant bill. I want to testify, and hope I will have an opportunity at a later date.

Attached is a letter I sent to Senator Pourchot criticizing his bill. The criticisms are still valid. In addition, in case I cannot testify in person, here are a few comments.

1. Reduced Notice Is Impractical: The bill reduces from 10 to 5 days the notice a landlord must give to a tenant who is behind in rent. This notice can either be sent by certified mail (3 days added) or left at the premises. That notice period is too short. Tenants who need money from the State or BIA to pay rent often cannot get it in five days. The Anchorage Public Assistance office indicates it would be difficult to provide rent checks in time it

the notice is reduced to five days. Furthermore, tenants who are absent when the notice is posted on their door may be terminated with no actual notice. Tenants in rural areas may not even receive a certified letter within the eight days allowed (time is measured from mailing, not receipt). Finally, the proof of receipt for certified mail ("green card") often will not be returned by the post office to the sender until well past the deadline for holding a trial (2-4 days). I checked with the Eastchester Post Office (Fairview Neighborhood) and was told it could take five days or more for a sender to get the green card back.

2. **Changing "Arrest" to "Violation" Is Not The Answer:**

The original bill was criticized because it allowed tenants to be evicted based upon an arrest for a drug or alcohol-related offense. The Senate changed it to allow eviction upon a "violation". No one knows if that means eviction prior to a criminal conviction or afterwards. Jack Chenoweth admits as much in his May 13 memorandum. The Senate amendment avoids the question. If it feels this bill should be passed, this committee should amend it to delete "violation" and insert "conviction".

3. **The Fiscal Impact Is Real:** AS 44.23.020(b)(8) requires the Attorney General to prepare a pamphlet on revisions of the landlord-tenant law. Such a pamphlet will be necessary if this bill passes, particularly in light of the bill's complexity. To my knowledge, the Department of Law has not submitted a fiscal note.

This bill must go to the Finance Committee, not because to do

so is a clever strategy by its opponents, but because the law requires it.

4. Reputation And Nuisance: This bill allows a tenant to be evicted based solely on rumor in the community as to his/her character. See Section 9. Jack Chenoweth says this is okay because it's already authorized by a court rule (Evidence Rule 405). However, that rule does not allow reputation evidence to prove commission of an act -- this bill does. The law should not allow community opinions as to someone's character to be "proof" the person sold drugs or after-hours liquor.

5. There Are Other Alternatives: No one wants a crack house or after-hours bar in his/her neighborhood. And no one wants to deny landlords the tools to regain their property from deadbeats. But the tools currently exist, and this bill's denial of the rights of non-deadbeats is not necessary.

I am willing to work with you to look for better remedies to clean up our neighborhoods. We can also educate landlords and tenants as to their rights and obligations, and how to proceed when there are problems.

This bill is not the answer.

DC:dkm\30142120.mmo

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April 4, 1991

Senator Pat Pourchot
Room 504, Capitol Building
P.O. Box "V"
Juneau, Alaska 99811

Re: Senate Bill 35
Our File No. 3014.31

Dear Senator Pourchot:

I recently sent you a letter criticizing your Senate Bill 35. For your convenience, a copy is attached to this letter. Since then I have had the opportunity to review the Judiciary Committee Substitute and to speak with your staff about the bill. The substitute alters several provisions, but is still very objectionable. In fact, for reasons I will discuss, the substitute is even worse than the original bill. The ACLU has chosen to submit separate testimony, and this letter is submitted by me on my own behalf and on behalf of the thousand of tenants who live in downtown Anchorage.

1. The Bill Violates Constitutional Principles.

I believe there are some important principles imbedded in our constitution, even if they may not appear in any court interpretation of that document. Those include the right to adequate, actual notice before the courts take away an important right, like housing. They also include the right not to be treated differently than others based upon one's race, sex or economic status, and the right not to be punished for something without proof the "something" actually occurred.

This bill violates all three principles.

First, it reduces the notice required before eviction to almost meaninglessness. Under current law a tenant who does not pay rent when due must received a ten-day notice to pay rent or vacate. If the rent is not paid in that ten-day period, and the tenant does not leave, the tenancy is terminated and another ten-

day notice to quit must be provided without the option of paying. If the tenant still doesn't leave, the landlord may file a lawsuit, and can get a trial within two to four days after the tenant gets notice of the suit. A tenant being evicted for a problem other than non-payment of rent must receive a notice to cure the problem in ten days or vacate in 20 days. For a second offense, the tenancy can be terminated with ten day's notice, giving the tenant no choice to cure the violation. The ten day notice to quit and the lawsuit procedures are the same.

These procedures would be changed by reducing the notice from 20 days to five or eight days. (In fact, through a drafting error, one could argue that no notice is required before suing a tenant for eviction for non-payment of rent.) Since the bill eliminates the obligation to give notice by registered or certified mail, there is no assurance that tenants will get actual notice that their rent is unpaid and they have to leave. Even if they do get actual notice, five days is simply not a reasonable period of time to respond. Please remember that there are many circumstances where the rent has actually been paid, or where a reasonable notice will result in payment without further action. These changes largely foreclose amicable resolution of these types of rent disputes.

Second, this bill treats tenants as second class citizens. Home-owners who don't make their payments have much more liberal time periods than these. The fact that much greater numbers of minorities, women, and low-income citizens rent than own their homes means the effect of these changes falls disproportionately on those groups. As I said in my March 27th letter, when this legislation was enacted in 1974 it was a careful compromise between the needs of landlords to protect their investment and the needs of tenants to avoid being precipitously and unfairly thrown out of their homes. These changes clearly favor the property-owner.

Third, tenants will suffer from government publication of their arrest for alcohol or drug crimes before there has been any determination the crime has been committed. Tenants will also suffer because they - and their families - will be evicted for the conduct of others not under their control. Finally, tenants will suffer because they will be evicted before they have the opportunity to defend themselves on the criminal charges. I note that in his Position Paper, Commissioner Burton says CSSB 35 allows property owners to evict arrested drug and alcohol violators. I agree, your staff's protestions to the contrary notwithstanding. This bill will require tenants to defend themselves from allegations that they violated the alcohol or drug laws with only a few days' notice. Within two to four days after receiving notice of an eviction lawsuit, the tenant will have to be prepared to go

to trial on those charges. The summary eviction procedure was not intended to provide a forum for such complicated issues. The result will be that an order of eviction will quite likely be issued before the criminal charges are finally resolved.

2. The Bill Is Incomprehensible.

I spent eight years as a legislative lobbyist and six years as a legislator. My ability to read and digest a bill is better than most, particularly a bill relating to landlord-tenant law. (I helped write the original law in 1973-74). After several hours of trying I do not understand portions of this bill. Since the subject is not particularly complicated, there can only two explanations. Either the bill drafting has not been done competently or there is a deliberate effort to write a bill which is not understandable by the general public.

A normal citizen can't understand this bill, and no bill should ever be passed that a normal citizen can't understand.

3. The Nuisance Statute.

In a clever twist, the proponents of this legislation have found a way landlords can ignore the procedural requirements of AS 34.03. and AS 09.45.060-.160. All they need to do is sue to abate the tenant's dwelling as a nuisance based upon its use as a "crack house" or a bootlegging operation. That way no one needs to prove the illegal conduct by evidence beyond a reasonable doubt, as would be necessary if a criminal charge were filed. The bill does not require a criminal conviction before winning a nuisance action. The attractiveness of this new remedy is increased by the fact the landlord doesn't even have to show the tenant was at fault. The conduct of any person in the dwelling can be enough to declare it a nuisance.

The bill makes this remedy even easier by providing that, the landlord can get the dwelling declared a nuisance based solely upon "evidence of reputation within a community." He or she doesn't even have to prove the tenant did anything wrong - only that the tenant's neighbors think so. This embellishment overturns the rule that has been in effect in Alaska since 1928 - that the neighbors' perception as to whether a dwelling is a nuisance is not enough to make it a nuisance. U.S. v. Rex Hotels, 8 Alaska 21 (1928).

Finally, this new remedy is particularly attractive to landlords since it might put a tenant in jail for up to six months if the tenant tries to stay in his home after a nuisance abatement order is issued. See AS 09.50.200-.210.

I cannot adequately express the disgust I feel over anyone who would attempt to use this archaic and draconian remedy in the landlord-tenant relationship.

4. Rule Changes.

Section 09.45.125 grants the court the authority to simultaneously enter an order to vacate and issue an order to a peace officer to forcibly remove the tenant. I believe this affects a matter of court procedure.

Section 09.45.100 also appears to alter current court procedure. Therefore, this Section of the legislation requires a two-thirds vote. See Alaska Constitution, Article IV, Section 15.

5. Fiscal Impact.

I have reviewed several position papers and fiscal notes on both versions of SB35. All the fiscal notes are zero. The Public Safety analysis indicates about 300 hours of increased work per year, plus supplies, postage, etc. This analysis admits that the bill will cause a fiscal impact. The Court System fiscal note is faulty because it does not recognize the increased number of eviction cases filed (when the notice period is shortened, the number of informally resolved cases will go down) nor does it realize the effect of a revitalized nuisance statute.

But most importantly, the agency which will suffer the most obvious fiscal impact has not even submitted a fiscal note. AS 44.23.020(b)(8) requires the Department of Law to prepare a handbook describing the landlord-tenant law. The passage of this bill will necessitate a new version of that handbook, particularly in light of the complicated provisions. Since the preparation of that handbook inevitably will cost money, a Finance Committee referral is required.

6. The Bill Is Not Necessary.

It must be emphasized that this bill is not necessary. Alaska law provides powerful remedies for landlords - abbreviated notice requirements and a speedy eviction procedure combined with a cooperative judicial system. Do not let landlords tell you the law does not allow them to evict "bad" tenants. The tools are there for the landlords and lawyers who know how to use them.

7. Conclusion.

This bill should not pass. It is technically defective. It constitutes a move away from enlightened landlord-tenant law, which recognized that the rights of both parties deserve respect and

protection. It will increase homelessness, since it will summarily remove families from their homes, often for events which are not their fault. It violates important principles which are the foundations of our system of justice - due process, equal treatment, and punishment only on proof of misconduct. Finally, it will destroy a carefully crafted legislative compromise that has lasted for seventeen years, and open old wounds and cause new legislative wars.

Thank you for the opportunity to communicate with you on this bill.

Sincerely,

Don Clocksin

DC:dkm\30143104.ltr

cc: All members of the Senate

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May 13, 1991

Rep. David Finkelstein
Alaska House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Rep. Finkelstein:

Enclosed please find a one-page statement entitled "Objections to SB 35", which I am sending in response to your office's request for the comments of Alaska Legal Services Corporation on proposed changes to the landlord-tenant act. Also enclosed please find a recent editorial from the Anchorage Daily News that addreses the current housing crisis in Anchorage.

Please contact me at the above number if you have questions about the enclosed, or desire further information.

Thank you very much for the opportunity to comment.

Very truly yours,

Barbara J. Hood

Barbara J. Hood
Staff Attorney

OBJECTIONS TO SB 35

THE REDUCED FIVE-DAY NOTICE PROVISION SHOULD FAIL:

1. **IT IS A LANDLORD'S BILL, WITH NOTHING FOR TENANTS.** The current 10-day notice provision has worked fairly and effectively for 17 years. There has been no change of circumstances that would warrant a cut-back of tenant protections. If changes to landlord-tenant law are to be made, they should take the interests of both landlords and tenants into account, which the current bill glaringly fails to do.

2. **IT WILL PREVENT MANY TENANTS FROM "CURING" NONPAYMENT.** The shortened notice will make it twice as difficult for tenants and their families to timely secure the funds needed to preserve their shelter. Governmental and private relief agencies cannot respond with assistance in the sharply curtailed time frame proposed. As a result, families will be displaced. Public policy should favor the prevention, not promotion, of displacement because of the serious toll (emotional, financial, educational, and otherwise) that it exacts on the families themselves and the agencies that try to assist them.

3. **IT WILL INCREASE HOMELESSNESS.** Communities throughout the state have experienced serious increases in homelessness within the past year. While private landlords are not responsible for solving this problem, the legislature must consider the social impact of its decision. Shorter notice periods *will* mean more evictions, and many tenants *will* have no place to go. The current 10-day notice places no great burden on landlords when viewed in light of this countervailing concern. The legislature must take a *comprehensive* approach to housing problems for *all* the residents of Alaska, not a piecemeal approach that benefits a few at great cost to many.

4. **IT IS UNNECESSARY.** It is currently quite simple for landlords to evict non-paying tenants. After a ten-day notice, a landlord can initiate summary procedures that permit a court eviction hearing to be held in 48 hours, and a 48-hour vacate order to be entered. These unique summary procedures allow landlords quicker resolution of their legal claims than is available to other litigants. Delays usually result when landlords either fail to meet their own obligations under landlord-tenant law or fail to timely avail themselves of existing remedies.

5. **IT IGNORES PROCEDURAL INEQUITIES THAT PLACE TENANTS AT SERIOUS DISADVANTAGE.** Current expedited eviction procedures are already woefully inadequate to protect the rights of tenants who raise defenses to eviction. Alaska has lagged behind other states in this area by failing to ensure that such tenants have adequate time to prepare their claims, obtain counsel, and conduct discovery, etc., before being forced to trial. The proposed changes make no effort to remedy this significant problem, and instead compound it.

6. **IT WILL HAVE A FISCAL IMPACT ON SOCIAL SERVICE AGENCIES, LEGAL SERVICES, AND THE COURT SYSTEM.** The shortened notice and resulting increase in evictions will likely result in an added fiscal burden to the Division of Public Assistance (DHSS), the emergency services offices of municipalities throughout the state, Alaska Legal Services, and the court system.

THE BOTTOM LINE: SB 35 IS SHORT-SIGHTED, ONE-SIDED, AND COUNTER TO SOUND PUBLIC POLICY OR FAIRNESS.

Submitted 5/13/91, by Barbara J. Hood, Alaska Legal Services Corporation

THE FOLLOWING PAGES
WERE TREATED AS A UNIT
IN THE ORIGINAL FILE

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February 25, 1991

Senator Pat Pourchot
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

Dear Senator Pourchot:

Thank you for your request to the Alaska Legal Services Corporation (ALSC) Board of Directors for comments on Senate Bill 35, which proposes amendments to the Uniform Residential Landlord and Tenant Act (URLTA). ALSC frequently represents clients in cases brought under the URLTA, and the Board asked that we respond to this opportunity to comment.

Senate Bill 35 proposes two significant changes to current landlord-tenant law: (1) a reduction from ten days to five in the period a tenant may pay rent after receiving a notice of non-payment, and (2) the addition of a drug-related arrest as a grounds for eviction. On behalf of our clients, ALSC opposes both of these changes for the reasons set forth below.

I. THE FIVE-DAY CURE PERIOD

A. SUBSTANTIVE CONCERNS

(1) Current Law

Under current law, a ten-day notice must be given to a tenant before a landlord may pursue eviction for non-payment of rent. AS 34.03.220(b). The notice specifies that the tenant must "cure" the non-payment within ten days or the tenancy will terminate. If a second non-payment occurs within six months, the 10-day notice does not have to include a cure period. As a result, landlords do not have to give tenants more than one chance to rectify late payment. In our view, the current ten-day cure period achieves the proper balance between a landlord's interest in the timely payment of rent and a tenant's interest in preserving his or her shelter.

(2) Ramifications of Proposed Change

The bill's proposed change would reduce the current cure period to five days. The five-day period may marginally benefit landlords, but would seriously jeopardize the ability of many tenants, particularly those with low incomes, to take steps to remain in their homes. The marginal benefit to landlords is, in our view, greatly outweighed by the harm to tenants.

While it may seem insignificant, the additional five days provided under current law is often critical to a tenant's ability to gather the funds necessary to meet his or her rental obligation. For example, many of our clients rely on public assistance checks to pay their rent. Checks are frequently delayed for a variety of reasons, including

agency back-logs, overwhelming caseloads, computer malfunctions, and other circumstances beyond a tenant's control. Absent a statutory exception to the cure period for late governmental checks, a landlord does not have to accept rent that is late for these reasons, and tenants can be evicted through no fault of their own. The extra time provided by the current 10-day period helps prevent this unfair hardship, which will fall most onerously on the single or unemployed parents, children, and disabled people who comprise the vast majority of welfare recipients.

Additionally, indigent tenants frequently seek rental assistance of $120.00 per household member through General Relief (GR) program or the Division of Public Assistance (DPA). They can initiate an application for this benefit only by presenting a current eviction notice to their DPA caseworker. According to DPA staff, it takes one to two weeks for a GR applicant to receive an appointment, and up to 30 days after the interview to process the check. Even under current law it is difficult for tenants to receive the benefits of this program within the statutory cure period; under a shortened five-day period, it may well be impossible.

People living in poverty, or on the edge of poverty, must also avail themselves of relief organizations and other sources of financial help that cannot consistently respond on an expedited basis. For example, the Municipality of Anchorage's Emergency Services office can provide emergency financial assistance to persons having difficulty paying their rent, but it takes an average of two to three weeks for the checks to be delivered to landlords. People who lose their jobs may find themselves in times of severe financial crisis as they wait for unemployment or assistance to be processed. A missed or late paycheck during periods of sporadic employment can mean the difference between shelter and homelessness for workers and their families.

The need for the ten-day cure period is especially great in these difficult economic times. The rise in Alaska's welfare rolls documented in late 1990 underscores the difficult times we are in. *See, "Welfare Rolls Are Up; Normal Seasonal Decline Not Seen,"* Anchorage Daily News (December 2, 1990), attached as Exhibit A. In the fall of 1990, Anchorage experienced a marked rise in rental rates, a sharp reduction in vacancy rates for residential units, and an alarming increase in homelessness. News articles have described the tightening rental market and grim outlook for low-income residential tenants. See Exhibits B - H, attached. The Municipality of Anchorage's Emergency Services office served over twice as many people in 1990 as in 1989, and more people in January 1991 alone than in all of 1989. Exhibit I; conversation with MOA staff. ALSC is very concerned that reducing the current ten-day cure period by half at a time when low-income tenants are faced with few residential options will increase the already significant risk of homelessness for our clientele.

Under the above circumstances, the ten-day cure period--while not always sufficient--creates a much better chance that needed funds can be raised and tenancies preserved. No one would expect private landlords to shoulder more than their share of the burden of tenants who cannot timely pay, but the legislature can implement procedures that fairly balance this burden. The legislature must recognize that many people who cannot pay their rent on time are not willfully flouting their rental obligation. They are struggling to manage under difficult circumstances, and the legislature should join the efforts to help them succeed.

The need for positive legislative action is now particularly acute. In response to the concerns of social services agencies, Anchorage Mayor Tom Fink convened a Task

Force on Emergency Shelter and the Homeless in November 1990. The task force issued a final report in December 1990 with a broad range of recommendations, including increased state funding for housing assistance programs and increased legislative attention to the problem. ALSC agrees with this assessment, and urges that any legislative action that makes it more difficult for tenants to preserve their shelter in private markets must be accompanied by a substantial commitment to increase the availability of public units for low-income people. Otherwise, the legislature remedies a minor problem (late rent to private landlords) by creating a major one (increased homelessness). We would strongly support steps to address the housing needs of the poor such as those proposed by Rep. Kay Brown in House Bills 152 and 153. *See* Exhibit J.

B. PROCEDURAL CONCERNS

In addition to the above substantive issues, ALSC has significant procedural concerns about the reduced cure period. A landlord may file a complaint for eviction at the close of the statutory cure period, which would be only five days under the bill's proposal. AS 34.03.290 (c); AS 09.45.100, .110. Under current Alaska laws, a tenant is entitled to only a 48-hour notice of an eviction hearing. AS 09.45.120. If the landlord prevails at the eviction hearing, courts typically give tenants only 48 hours to vacate.

These summary procedures raise concerns that tenants do not have adequate time to prepare and present possible defenses to eviction, such as rental offsets based on a landlord's failure to maintain a habitable premises or a landlord's unlawful conduct (utility shut-off, lock-out, etc.). Other states have addressed these concerns by providing significantly longer times frames in judicial eviction proceedings. For example, California provides for only a three-day notice of eviction for non-payment of rent, but imposes procedures that require from 16 to 22 days between the original notice and actual sheriff's eviction in uncontested cases, and from 32 to 60 days in contested cases. *See, e.g., "Unlawful Detainer Procedures and Time Chart"*, attached as Exhibit K. Alaska's current eviction procedures are decades-old and incompatible with the modern changes to landlord-tenant law enacted in the URLTA. If the legislature is to contemplate changes to the landlord-tenant act that narrow substantive tenant protections, it should give serious consideration to strengthening procedural protections that are currently inadequate. *See,* Clocksin, Donald E., *Alaska's Summary Eviction Law - A Confused Anachronism*, 4 UCLA-ALASKA LAW REVIEW 56 (1974).

Even under current eviction procedures, it is questionable whether the the proposed five-day notice will significantly impact the time between notice and actual eviction. Alaska courts have postponed eviction hearings when necessary to ensure a tenant's right to a full and fair trial on the eviction claim. Shortening the cure period as proposed will have only a minor impact on the time it takes to complete an eviction in these cases because court rules and court procedures, not notice provisions, will govern. It is also quite possible that courts will give tenants more time to vacate rental units once eviction is ordered as a result of the reduced notice period.

C. CONCLUSION: FIVE-DAY NOTICE

In summary, the ten-day notice provision under current law gives tenants a realistic one-time opportunity to pay rent late in times of hardship and achieves a fair balance between the rights of landlords and tenants. The proposed five-day notice period raises serious substantive and procedural concerns and would marginally

benefit the relatively small number of private landlords at the expense of far greater numbers of residential tenants.

I. DRUG ARREST AS A GROUNDS FOR EVICTION

ALSC shares your concern about the need to confront the drug problem. As respresentatives of low-income tenants, we are well aware of the dangers that drug-dealing and related crimes pose to the health and vitality of low-income neighborhoods. But we suggest that the drug war is better fought in other ways. The proposed legislation is of questionable necessity, is potentially constitutionally infirm, and will do little to improve the welfare of residential tenants in Alaska.

A. UNNECESSARY

First, it can be fairly assumed that the characteristics of drug-related activity most inimical to the welfare and peace of neighbors are noise, traffic, and disturbances. Under current law, a tenant already has an obligation to "not unreasonably disturb, *or permit others on the premises with the tenant's consent to unreasonably disturb*, a neighbor's peaceful enjoyment of the premises." AS 34.03.120(6).

A landlord who wishes to evict a tenant whom he or she believes is engaging in drug-dealing will doubtless have no trouble under the above provision. He or she must simply give the tenant a notice explaining that the noise, traffic, and disturbances must stop within ten days or the tenancy will terminate within twenty days. AS 34.03.220(a). If the problem is not corrected, an eviction may be brought.

Although ALSC is rarely involved in eviction cases where drug-dealing is specifically alleged, we have been involved in cases where allegations of noise and other attributes of drug-dealing have been made. If the landlord can demonstrate that the behavior occurred and continued despite notice, the tenant may be evicted. ALSC questions the propriety of short-circuiting this process by creating a category of tenant default (drug arrest) that bears no necessary relationship to whether or not a person poses a threat to the quiet enjoyment of his neighbors. In summary, if drug activities are occurring, a landlord will likely have grounds for eviction under current law. The possibility that in rare instances a tenant might carry on a drug operation without noise, traffic, or disturbance does not justify the current legislation.

B. UNCONSTITUTIONAL

At first blush, the prohibition against illegal drug activity in rental premises found in proposed section (8) of AS 34.03.120 appears compelling. The proposed language would appear to apply only to those who *knowingly* engage in illegal activity or *knowingly* permit others to do so. However, the bill proposes definitions of illegal drug-related activity that would base eviction on an *arrest* alone, which effectively eliminates the knowledge factor and creates strict liability for a drug-related arrest of anyone in a household. Parents and children could be evicted for the drug arrest of a juvenile or relative regardless of whether they knew of the alleged conduct or could control it. Whole families could be evicted for the activities of one member, or for an isolated incident that none could have foreseen. In this sense, the bill goes well beyond the scope indicated by the language of section (8).

The proposed bill raises serious questions of constitutionallty because of its reliance on a mere *arrest* as a basis for eviction. To prevail at an eviction hearing, a landlord

would have to prove only that an arrest was made. There is no requirement that the court permit a tenant to present defenses of any kind; it would be irrelevant whether the arrest was in fact valid or whether the alleged illegal conduct in fact occurred. An arrest can be made if a police officer has "probable cause" to believe a crime has occurred; "probable cause" is not proof of guilt under either the general civil standard (preponderance of the evidence) or the criminal standard (beyond a reasonable doubt). No court is involved in the arrest itself, and no judicial finding of any kind is made.

The proposed bill has already received severe criticism from the American Civil Liberties Union for penalizing tenants by assuming that they are guilty before they have an opportunity to prove their innocence. *See, "ACLU Assails Tenant Evictions in Drug Arrests,"* Anchorage Times (December 17, 1990), attached as Exhibit L. Regardless of whether one agrees with the ACLU's view, the legislature should consider that valid and potentially successful challenges to enforcement of the proposed bill would likely arise.

There are several potentially persuasive legal arguments against the provision. First, it raises concerns under the Fourth Amendment, which guarantees the right to be free from unreasonable governmental intrusion in one's own home, absent notice and an opportunity to be heard. A tenant who cannot present defenses to an arrest or allegations of drug activity has no meaningful opportunity to be heard. Second, the provision would jeopardize a tenant's right against self-incrimination guaranteed by the Fifth Amendment. A tenant would face the dilemma of waiving his Fifth Amendment right and testifying to preserve his shelter, or asserting the right and effectively losing the opportunity to defend the eviction. Third, the proposed law would improperly remove a court's decisionmaking on a person's guilt or innocence. This potentially violates a basic constitutional premise that only courts, not legislatures, have the power to adjudicate individual cases. Article I, Section 9, U.S. Constitution. Finally, a mandatory loss of shelter for a drug arrest may be viewed as excessive punishment in violation of the Eighth Amendment.

The above legal assessment is by no means exhaustive, and other issues would likely arise if litigation is brought. ALSC would agree with the assessment of Jack Chenoweth, legal consultant with the Legislative Affairs Agency, that the provision invites a court challenge.

C. COMPARISON TO PARALLEL WASHINGTON STATUTE

In your letter requesting comment, you indicate that the anti-drug provisions of SB 35 are inspired by the approach taken by the State of Washington and City of Seattle. ALSC thinks it is important to note that Washington law does not go so far as to permit eviction based on a drug *arrest* alone. To the contrary, the parallel provision of the Washington code provides:

> Each tenant shall...:
>
> Not engage in drug-related activity at the rental premises, or allow a subtenant, sublessee, resident, or anyone else to engage in drug-related activity at the rental premises with the knowledge or consent of the tenant. *"Drug-related activity" means that activity which*

constitutes a violation of chapter 69.41, 69.50, or 69.52 RCW

RCW 59.18.130. Exhibit M. (The cited provisions are criminal statutes pertaining to prescription drugs, controlled substances, and imitation controlled substances. Exhibit N.)

Because the Washington code makes the very important distinction between a drug *arrest* and drug *activity*, which must be proven, it is far less objectionable. Washington's approach may also alleviate some of the constitutional questions the proposed bill raises, because it would permit a tenant to contest the allegations of drug activity and would permit a court to make the ultimate decision on whether the allegations are substantiated.

For the above reasons. ALSC submits that current landlord-tenant laws are adequate to protect the interests of landlords, tenants, and the public with respect to both rent payment periods and drug-related activities of tenants. Accordingly, we urge you to reconsider your sponsorship of the bill, and recommend against its passage.

Thank you very much again for the opportunity to comment.

Sincerely yours,

ALASKA LEGAL SERVICES CORPORATION

Barbara J. Hood
Staff Attorney & Supervisor
Public Entitlements Unit, Anchorage

Robert K. Hickerson
Executive Director

Enclosures

PROPOSED MODIFICATIONS TO SB 35

I. SUMMARY:

PERMIT SHORTENING OF THE NOTICE PERIOD FOR NON-PAYMENT OF RENT, BUT IMPLEMENT PROCEDURAL PROTECTIONS FOR TENANTS WHO RAISE VALID DEFENSES TO EVICTION.

II. PURPOSE:

(1) To ensure that tenants with defenses to eviction have an adequate and fair opportunity to prepare and present their claims, and that the shortened notice does not unduly jeopardize their rights.

(2) To ensure that landlords are able to timely evict tenants who have not paid rent and raise no defenses to eviction.

III. DISCUSSION:

The notice provisions of SB 35 make the apparent assumption that tenants who don't pay rent on time are "dead-beats" who should be kicked out as quickly as possible. While there are certainly irresponsible tenants to whom this characterization might apply, many tenants have defenses to eviction based on their landlord's own irresponsible conduct. The bill should be modified to recognize that tenants who raise defenses are entitled to a fair opportunity to present them. This can be done without jeopardizing a landlord's ability to summarily evict the vast majority of tenants who don't raise defenses.

TWO EXAMPLES OF TENANT DEFENSES (based on actual cases in Anchorage, 1990-91):

(A) LANDLORD'S BREACH OF WARRANTY OF HABITABILITY.

Tenant's sliding door in his one-room apartment is jammed open nearly 12 inches in the middle of winter, and his carpet is sopping and mildewed because of a leak in the bathroom plumbing. Tenant makes numerous requests for repairs over a three month period, but landlord fails to make repairs. Tenant's efforts to fix the problems himself are unsuccessful, and he and his 2-year-old child endure near-freezing temperatures in a damp and smelly apartment. Tenant gives written notice that he will not pay rent until repairs are made. Landlord immediately shuts off tenant's electricity and locks tenant out. Tenant obtains a temporary restraining order reinstating him to the apartment. Landlord counterclaims for eviction. Tenant's defenses include (1) breach of covenant of good faith and fair dealing, (2) breach of the warranty of habitability, and (3) unlawful lock-out and termination of utilities. Landlord denies that the shut-off was intentional and refutes the habitability problems.

(B) LANDLORD'S ABUSE OF ACCESS.

Tenants complain to landlord of a number of serious problems requiring repair. Landlord responds by ripping off the apartment's door, peering through the windows at all hours, and verbally harassing tenants on a number

of occasions. Tenants withhold rent, and landlord sues for eviction. Tenants' defenses include abuse of access and harassment, which entitle them to a minimum one-month offset against rent allegedly due. Landlord claims that the door was taken off because the unit was abandoned (despite the presence of all of tenants' belongings).

In both of the above examples, tenants raise defenses to eviction that are seriously jeopardized by current eviction procedures. Tenants must prove a course of conduct by their landlords without time to seek discovery, subpoena witnesses, obtain counsel, or otherwise adequately prepare their defenses. The result is a greatly heightened risk of wrongful eviction.

IV. PROPOSED PROCEDURAL ADDITIONS TO SB 35

Current summary eviction laws are decades-old and predate the Uniform Residential Landlord and Tenant Act. Their procedures are no longer fully appropriate for the modern landlord-tenant relationship, and should be amended to better address the procedural concerns spelled out above.

Towards this end, we propose that the language set forth in the attached "Proposed Amendments to Eviction Statutes (AS 09.45.*et seq.*)" be added to SB 35. A flow chart of these procedures is also attached.

SUBMITTED BY:

Barbara J. Hood
Staff Attorney
Alaska Legal Services Corporation

5/13/91

Anchorage Daily News

Michael Carey, Editorial Page Editor
Patrick Dougherty, Managing Editor

Katherine Fanning, Editor and Publisher 1971 to 1983
Lawrence Fanning, Editor and Publisher 1967 to 1971
Founded in 1946 by Norman C. Brown

Apt. wanted

Housing squeeze needs state attention

During Alaska's recession, you heard a lot about the pain suffered by property owners. Homeowners lost jobs and lost their houses. Landlords watched rents plummet and tenants disappear. Many owners who managed to hold on saw their property values fall far below what they owed the bank.

Alaska needs to show more concern for people who can't take out 30-year mortgages or pay $10,000 a year for housing.

You didn't hear so much about the people who came out ahead. As housing prices tumbled out of the stratosphere, more people were able to afford decent housing. Those with steady but low-paying jobs took advantage of falling rents to move to better quarters. Some renters managed to buy places of their own.

As the economy recovers, what some people consider good times seem to be coming back. Property values and rents are up; housing of all types is selling briskly again.

But forgotten once more are those for whom higher housing prices are a curse, not a blessing. Decent housing is once again starting to be priced beyond the reach of those who don't enjoy a solidly middle-class existence.

About 30 percent of clients at Anchorage's main homeless shelter are people who cannot find housing they can afford. More than 2,100 people are on waiting lists for federal housing assistance in Alaska. Here in Anchorage, more than 170 of those who get housing aid cannot find landlords who will take what government aid lets them pay.

Alaska needs to show more concern for people who can't take out 30-year mortgages or pay $10,000 a year for housing. An approach state Rep. Kay Brown is proposing may help. She wants to consolidate the state's 13 housing programs, now scattered throughout various agencies, under a single commission. The commission would oversee a housing trust fund that would pay for projects serving low- and moderate-income Alaskans.

Money for the trust would come from surplus funds at Alaska Housing Finance Corporation. Those surpluses are created as people pay off loans AHFC made years ago.

Consolidating housing programs all in one place is one way to make good on the age-old promise to streamline government. It would also offer a better overall picture of what Alaska is doing with housing and where state efforts fall short.

As a nation, our indifference to making sure everyone has safe, affordable shelter is appalling. Federal housing programs were never adequate — and President Reagan allowed them to shrivel and become corrupted. President Bush has shown little inclination to rescue housing from his predecessor's neglect.

If Alaskans are going to get more help finding decent, affordable housing, the state will have to take the lead. Rep. Brown's proposals are a good place to start the discussion.

Doctor's orders
UAA hockey player returns SPORTS C1

Fund-raising woes
Abuse counselors latest to close METRO B1

The Anchorage Times
Alaska's Best Newspaper

THURSDAY
December 20, 1990
25¢
VOLUME 76 NO. 354

High rents drive poor onto street

Municipal population surges; agents see worsening market

By JAY STANGE
TIMES BUSINESS WRITER

As rents have climbed in recent months, more low-income Anchorage residents are being squeezed out of the market.

Yet real estate experts say it will take 18 months to 2½ years for the city's rental market to improve, and conditions are expected to get a lot worse before they get better.

Emboldened by an improving Anchorage economy and a surge in the city's population, landlords and property managers have raised rents during the past year as much as 20 percent, especially in the city's low-to-come apartment complexes, local surveys show.

'The marketplace does not take care of the low-income people.'
- Cynthia Parker, housing service director

Ken Kincaid, a real estate appraiser with Shorett & Reilly in Anchorage, said the housing market tightens when vacancy rates fall below 5 percent.

Apartment vacancies in Anchorage had decreased to 5.2 percent on July 1, 1990, which is the most recent figure available, according to Sue Fison, director of the Anchorage planning office. That figure compared with vacancy rates of 20.1 percent in 1987, 17.1 percent in 1988, and 8.4 percent

EXHIBIT D
PAGE 1 OF 2

Housing

Continued from page A1

Kincaid said apartment vacancy rates in middle- and upper-income complexes of more than 20 units are now ranging from 2 percent to 3 percent.

As recently as 18 months ago, Kincaid reported at least 99 percent of the 90 apartment complexes he regularly surveys were paying for electricity. By comparison, his most recent survey showed 80 percent now ask tenants to pay their own electric bills.

"A majority of my complexes have gone away from losses," he said. "Seventy-five to 80 percent are now month to month because of the rental market's volatility."

Not everyone sees a housing shortage in the current market.

"I don't believe there is a housing crunch now," said James Kuntz of Marston Real Estate. "Occupancy is good right now, about 95 percent in apartment complexes. But there are columns and columns of condos and single family homes for rent in the paper."

Moreover, demand in December has slowed, Kuntz said. "Rents can only go up to a certain point before the renter will go into the condo rental market," he said. "I don't see a shortage of housing (as long as the condos are there to be absorbed)."

But Kuntz agreed the low end of the rental market will become more prohibitive for low-income families and increased social service assistance will be needed.

Construction of multifamily units and apartment complexes, which will ease the tight rental market for low-income families in town, is not expected to begin until rents for a two-bedroom apartment, now going for about $600 per month, climb into the range of $800 to $900, housing experts say.

That is 18 to 24 months away, said Connie Yoshimura, owner of Fortune Properties.

People who can afford to pay middle- and upper-range rents can afford to buy homes and condominiums.

"The marketplace does not take care of the low-income people," said Cynthia Parker, executive director of Anchorage Neighborhood Housing Service.

Anchorage homeless shelters are bulging with record numbers of people. A mayor's task force of industry and government housing experts met recently to look for solutions.

Source: Anchorage Alaska Housing Authority — Times chart by MAT TUTTELL

One problem they identified is Section 8 rent subsidies from the Alaska State Housing Authority were going unused because they were too low to keep pace with increasing rents.

Landlords who flocked to obtain those Fair Market Rent certificates during the recession are able to rent to non-subsidized tenants today, Parker said.

Landlords still are taking losses as they have since 1987, when rents dropped off drastically at the end of the oil boom, said Jack Vandenberg of the Jack White Co.

Vandenberg, who is also a landlord, raised rents $100 recently and still has 100 percent occupancy. Though appraisals on rental property have come up 40 percent to 60 percent, they are recovering slower than single family homes, realtors say.

Others say the housing crunch is most apparent among the poor.

Forced out of their homes by higher rents, homeless residents have grown in the city at an alarming rate in recent months, Parker said.

The service will open 110 units from the Village off Reka Drive for occupancy next spring. Many other condo complexes will be renovated and rented to low-income tenants who will make payments towards buying in Mutual Housing Program, said.

"The housing stock we h eliminated has been on the end," Kuntz said. "We are a ter community for it, but we need to step up social ser aid."

According to the Municipa of Anchorage's 1988 survey 5,300 families, Anchorage ha population of 220,185, or a 18,800 fewer people than the had at its peak of 248,283 in 19

Yet the city survey showed there are 89,207 hou units in Anchorage, or 480 n units than in 1985, when t were 89,804 housing units a able.

However, an influx of dreds of laid off workers f the Lower 48 and British Col bia — particularly in the tim industry — is absorbing rental stock rapidly.

A change in property ow ship also has contributed to problem, Kincaid said. M than 63 percent of Ancho residents owned their home 1983. That figure fell to 58 cent in 1988 and to 57 percent year.

With the economy impro over the past year, people been able to upgrade their li arrangements, Kincaid

EXHIBIT D
PAGE 2 OF 2

AUTO DEATHS: Seven people die / B-2 ■ **FAIRBANKS:** Controversial books sta

METRO

TUESDAY

SECTION B Dec. 11, 1990

Homeless population increases

Solutions elude task force

by LARRY CAMPBELL
Daily News reporter

The Anchorage mayor's task force on the homeless has decided that local social service groups are right — the homeless problem in Anchorage is worse this year than last. Still, the report it released Monday raised more questions than it answered.

The group's biggest recommendation is to gather more information. With just a month to do its work, the task force couldn't find answers to such questions as how large particular groups of homeless people are or exactly what kinds of services they will need.

"The problem is worse, but it's much more complicated than that," said task force member Wayne Mabry, operations manager for Alaska Telecom Inc. "That's the reason we suggested getting more information."

Mayor Tom Fink formed the task force last month to delve into complaints from social service agencies that the numbers of homeless in Anchorage had reached crisis proportions.

The evidence it found was heavy with anecdotal examples and much lighter in hard numbers. Still, the group's report claims 4,200 people are or will be homeless this year. Families with children seem to be the fastest-growing group of homeless, judging by increases in the number of women and children who stayed at the Clare House shelter, operated by Catholic Social Services.

Please see Page B-3, TASK FORCE

EXHIBIT E
PAGE 1 OF 1

Continued from Page B-1

Some agencies show decreases in the number of homeless served, but claim they've been forced to cut back on services either because of state funding cuts or because they couldn't handle the demand to begin with.

While specific numbers of homeless and their needs are lacking, the task force nonetheless also recommended new efforts. Volunteer programs should be expanded. More state and federal dollars should be pried loose. Private developers could be encouraged to build more low-income housing, primarily through offering federal or local tax breaks as incentives. The group suggested the city take lead roles in coordinating many of these efforts, but didn't recommend spending any more local revenue.

Also unclear was why Anchorage has more homeless now. Part of the problem lies in rising rents and federal rent subsidies that haven't kept up. Alaska Housing Authority, which manages federal low-income housing programs, has asked for a rent credit for a rent increase from the Department of Housing and Urban Development, but that may not come until next spring, said ASHA executive director Ray Price.

Currently, 1,872 families are on the rent subsidy waiting list for Anchorage, Price said. In January, 1,290 families were on the waiting list. Statewide, 2,328 families are waiting for federal rent assistance.

Whether anything actually gets done remains to be seen. But Jim Caldarola, Catholic Social Services executive director, is glad that at least some of the prominent conservative local businessmen who served on the task force became convinced of the problem.

"In the non-profit world we're seeing these kinds of problems and talking about them all the time," Caldarola said. "Once in a while it's kind of jokingly say, 'We've got to pull in a suit.' So one of prominence in the community to get the public's attention. This lends the seal of approval."

TASK FORCE: Anchorage homeless population increases

Low-income renters fall out bottom of rising housing market

By TODD BENSMAN
Times Writer

Landlords hoping to cash in on Anchorage's recuperating housing market always found a way to avoid renting to Jewell Farris.

For nearly four months, the 85-year-old grandmother scoured the Anchorage Bowl for a place big enough for herself, her unemployed daughter and her granddaughter. She gets by on a $550 social security check and a $684 state housing subsidy.

"Don't call us, we'll call you," was the response Farris usually got from potential landlords when she inquired. Several simply hung up when they learned she had only the $684 subsidy to pay for a place large enough for three adults.

"If you tell me a place you can crawl into for that amount of money, I'll eat it," Farris said. She finally did find an affordable home with help from Anchorage social workers.

But with property values on the rise again after a three-year hiatus, record numbers of low-income renters like Farris are being pushed into homeless shelters as Anchorage property owners realize they can charge more.

That was the conclusion of a special task force Mayor Tom Fink appointed last month to find out why Anchorage's homeless shelters are overflowing.

A report quickly compiled over the last month by Fink's 12-member task force and released Monday concluded, "The societal causes of homelessness are complex, ranging from the disintegration of the traditional family structure to failures in this country's care of the mentally ill. ... It is the loss of affordable housing, though, that immediately precipitates homelessness."

The report noted Anchorage's emergency homeless facilities — like Brother Francis Shelter, McKinnell House and Clare House — have experienced alarming increases in clientele over the last year.

Families and single mothers who a year ago could afford low-income housing now are the groups whose numbers at shel-

See Housing, back page

Housing

Continued from page A-1

ters have increased the most, the report said. Blacks and Alaska Natives make up the remainder, the report said. Many were plagued by unemployment, mental illness, alcoholism and drug abuse.

The Brother Francis Shelter, with a 15 percent increase in clients this year over last year, next week will move 30 homeless women onto the floor of the neighboring Bean's Cafe, an eatery, to make more room.

So swiftly has the influx of homeless families grown that McKinnell House was forced to convert two nine-bed dormitories into three family rooms, the report said.

Clare House, an emergency shelter for women and children, this year saw a 29.2 percent increase in the numbers of people needing shelter over the same time last year.

"I knew people who worked as day labor used to be able to get an apartment for $300 with their rental assistance. Now, you won't find one for less than $550," said Bob Eaton, director of Brother Francis Shelter. "People are coming back to the shelter now."

Eaton and the report blame Anchorage's rebounding economy and greedy landlords, who just one year ago were grateful to rent to someone with a marginal income.

"It is estimated that about 30 percent of the homeless population seen at the Brother Francis Shelter could afford to pay for low-cost housing if it were available," the report said.

In 1987, Alaska's economy and real estate market collapsed when world oil prices took a sharp dive. About 30,000 people left the state over the next two years and vacancies soared.

But according to a quarterly demographics survey done by the Anchorage Economic Development and Planning Department, Anchorage had grown from 221,870 in December 1989 to 230,185 by July 1990.

During the same time, apartment vacancies fell from 8.4 percent to 5.2 percent, and vacant housing units dropped from 14.6 percent to 9.7 percent, the survey said.

"They were once willing to take them, and now they don't have to," said Joyce Lee, emergency services coordinator for the city Health and Human Services Department, referring to landlords.

"It takes a long time to get (accepted into the state rental subsidy program) and once you do it takes a long time to find a place to live."

Mark Korting, owner of RE/MAX Properties Inc., a major real estate brokerage in Anchorage, said the recent recovery has emboldened landlords to demand more money and to screen more carefully.

"I don't think that anyone is not renting to disadvantaged people just because they are disadvantaged. It's probably just a monetary situation," Korting said.

The recent demolition or boarding up of hundreds of low-cost housing units, such as Willow Park and Hollywood Vista, also has exacerbated the current crisis, the report said.

The task force's report, presented to Fink and the media Monday, recommended solutions that will be presented to the Anchorage Assembly next week.

The task force recommended the city take the following course of action over the next 60 days:

- Waive some fire and safety standards so emergency housing can be provided in older buildings when needed.
- Encourage top federal Housing and Urban Development officials in Washington, D.C., to raise the ceiling on individual housing subsidies.
- Set up a 24-hour hotline where homeless people can get information about available housing.

Times photo by MICHAEL DINNEEN

Jewell Farris, 85, takes a momentary rest from moving into a new apartment. It took four months of searching in Anchorage's newly tightening rental market to find a spot to match her fixed income.

EXHIBIT F
PAGE 1 OF 1

Anchorage Daily News Thursday, November 8, 1990

Rents rise, vacancies vanish as city's population surges

Apartment hunters face tightest market since boom days

APARTMENT VACANCIES
Mid-year rates — large apartment complexes

Year	Overall	Mid-cost apartments*
1981	8.2%	3.6%
1982	3.2%	1.1%
1983	6.5%	9.9%
1984	12.3%	13.3%
1985	14.5%	11.0%
1986	22.0%	19.3%
1987	26.1%	22.4%
1988	17.1%	13.0%
1989	9.7%	7.3%
1990	5.2%	2.7%

Source: Shorett & Petty
* Mid-cost defined as $325-$460/mo. for 1 bedroom, $425-$550/mo for 2 bedroom and $500-$600/mo for 3 bedroom apartments. June 1990 prices

By BRUCE MELZER
Daily News reporter

A population surge in Anchorage, where there is little new construction to house the arrivals, has been pushing up rents and shrinking the number of empty apartments.

City officials estimate Anchorage has grown by 8,000 people in the last year. Anchorage's housing stock is filling up. Vacancy rates for all types of housing have dropped to just under 10 percent this year, the lowest level since the mid-1980s, according to the city's annual housing survey.

Apartment hunters are having a tough time finding a place to live. Vacancy rates for medium- and high-cost apartments dwindled to 2.5 percent by June, according to surveys of larger apartment buildings pub-

Please see Back Page, RENTERS

EXHIBIT 6
PAGE 1 OF 2

ERIK HILL / Anchorage Daily News

Christine Pyle and her daughter, Sara: Finding an affordable apartment wasn't easy.

RENTERS: It's a landlord's market out there

Continued from Page A-1

lished by Ken Kincaid of the real estate appraisal firm Shorett & Riely.

That's the tightest market for those units since the early 1980s, when the state was flush with oil money and Anchorage was starting to boom.

The vacancy rates for lower-priced apartments hovered around 11 percent in June. But that number is smaller now, said James Kuntz, manager of Marston Properties.

Christine Pyle found that out when she went shopping for a three-bedroom apartment. As a university student and single parent with a son and daughter, she could afford no more than $690 a month, including utilities.

She spent two weeks in August with newspaper want ads and the telephone.

"It seemed like the affordable places were gone before the ink was dry on the paper," she said.

Her advice to apartment seekers: "Get on the phone the first thing when the paper comes out. If you wait 'til the end of the day, they'll be gone."

Pyle finally found an apartment to match her needs and budget.

The first week of the month is the best time to look for a rental, suggested Jody Hoffmann, whose Hoffmann Management Co. handles some of Anchorage's larger apartment complexes. Renters wanting to move out usually give their 30-day notice at the start of a month.

Renters are paying more, too.

"I think it would be safe to say that rents have increased on the order of 15 percent in the last year," Kincaid said. On top of that, many landlords who once paid the utilities are now shifting the cost of gas and electricity to renters, he said.

Although some firms and many individual landlords are slow to raise rents, some large property management firms are constantly probing the marketplace, seeking to push up rents.

Hoffmann said her company, which manages more than 1,000 units, has raised rents by as much as 25 percent over the past year. Rents rose $25 to $50 every three months, she said.

Her firm tries to keep the vacancy rate at 5 percent. If apartments aren't turning over, rents may be too low, Hoffmann said. And just because empty units are filling up quickly, doesn't mean it is time to stop advertising.

"If we advertise and we get a lot of calls, then we know we have an opportunity to raise rents," she said.

Despite this year's increases, rents still aren't up to the peak reached in the mid-1980s. And they certainly aren't to the point where developers can justify building new multifamily housing, property managers agree.

Permits for 375 new single-family homes have been issued since January — more than double the number of permits last year — but not enough to have a big impact on the rental market, Fison said.

The real estate crash of the late 1980s took thousands of homes, condos and mobile homes temporarily off the market while they were locked up in foreclosure proceedings.

More than 2,000 housing units are gone for good, said Sue Fison of Anchorage's Planning and Economic Development Department. Hundreds of mobile homes were shipped out of town. Bulldozers leveled hundreds more along with some low-quality homes and apartments during the Alaska recession.

From 1985 to 1988, an estimated 30,000 people left Anchorage, according to Fison's department. Since then, as the economy began to improve, the population has rebounded by about 11,000, to 230,000 residents.

Not all management companies are pushing the edge of the market right now. Kuntz of Marston Properties said prices that have risen over the year have stabilized, and his firm won't start looking again at rent hikes until spring.

Mel Main of Nova Property Management agrees.

"We raised a few of them this summer. We're not raising them in the winter. In the winter we just try to keep them filled."

EXHIBIT G
PAGE 2 OF 2

ANCH. TIMES 8/20/90

Housing Authority has long waiting list

Woman applied nearly a year ago for unit

Photo for The Times by STEVEN C. NELSON

Jasmine Witcher, 5, and her mother, Jackie, have been waiting nearly a year for financial assistance from the Alaska State Housing Authority so they can move into a larger apartment.

By JEFF HOUCK
Times Writer

Jackie Witcher knows all about patience.

When she applied in September for financial assistance from the Alaska State Housing Authority, she was told it would take no less than six months before they could help her and her daughter move to a larger apartment.

Nearly a year later, Witcher still lives in the same small one-bedroom apartment on Muldoon Circle. Boxes full with her belongings are ready to move to her new place near Landmark Street and Huffman Road but instead stay scattered through the living room and bedroom.

She was approved for assistance in June but has waited for an inspector to say her new two-bedroom apartment is in suitable condition.

"I've got all those damn boxes packed up. They better tell me it's suitable," she said. "We're cramped up in the other place like we're in a bird-hole. It's like being in a can. You can't even breathe in there."

Witcher is not alone in waiting for a place to call home. Authority supervisor Reggie Ward said his agency has almost 2,000 people on their waiting lists for two separate assistance programs. ASHA is funded by the Department of Housing and Urban Development.

The first program, called the Low Rent Program, offers housing in ASHA-owned properties. The tenant then pays the authority a security deposit and the first month's rent. The amount of

See Housing, back page

Housing

Continued from page A-1

subsequent rent payments varies according to family income. At the end of July, 575 applicants were on the waiting list for the Low Rent Program.

The Section 8 Program allows applicants to choose the housing they want to live in by giving them certificates or vouchers that say the authority will pay half the rent. More than 1,400 applicants are waiting for Section 8 assistance.

Despite having 687 Low Rent Program units and almost 1,400 people using certificates in Anchorage, the demand for housing assistance is still greater than the supply, Ward said.

"When someone comes in to apply, we tell them there is a six to 12 month wait, depending on the availability of the certificates and vouchers HUD sends us," he said. "The people get what HUD gives us."

When the waiting list gets out of hand — like two years ago when the waiting period took one full year — the list is closed until the number of applicants drops, Ward said.

"Two years ago we got down in the 500 range before we opened the list up again," he said.

The application process can be lengthy, he said. A person first must file an application at the ASHA's client service center at 620 E. 10th Ave. The application is reviewed to see if the person qualifies for assistance.

For a one-bedroom apartment, an applicant's total family income must not exceed $17,450. For a two-bedroom, the limit is $18,850. The three-bedroom limit is $22,450 and the four-bedroom ceiling is $24,950.

"That may sound high enough for anyone to qualify, but statistics show that the average family in Anchorage makes at least $0,000," authority spokeswoman Sherrie Simmonds said.

If an applicant meets qualifications, they choose either the Low Rent or Section 8 program. If they choose Low Rent, they are then put on a waiting list depending on how many bedrooms they need for their housing. Applicants wait on a first-come, first-served basis.

If the applicant chooses Section 8, they seek out their own apartment and ask their potential landlords if they will accept the ASHA certificates in addition to their own rent payments.

That is not an easy task. Witcher said it took her almost two months to find a landlord who would accept her certificate.

"There was one in Mountain View that accepted the certificates but I didn't want to live there. That's a drug area," she said.

Nick Ontiszaloff, a 65-year-old disabled veteran, said it also took him a long time to find someone who would lease him an apartment with a certificate when he first sought assistance in 1990.

"I used to live in the Brother Francis shelter so I wasn't that upset about the waiting," he said. "I live OK now on Richardson

> ### Anchorage area low-rent housing
>
> Here is a list of some of the low-rent and low-income housing in Anchorage.
>
> Ptarmigan Park, 1122 E. 18th Ave., 272-8857.
>
> Park View Manor, 808 Karluk St., 274-1166.
>
> Loussac Manor, 135 Hett-leman Drive, 274-3881.
>
> Chugach View, (elderly/handicapped housing), 1300 E. 17th Ave., 279-3327.
>
> Chugach Manor, (elderly/handicapped housing), 1301 E. 18th Ave., 274-7720.
>
> #### Private low-income housing
>
> Cook Inlet Housing Authority, 276-8822.
>
> Jewel Lake Villa, 243-0718.
>
> KBL Apartments, 274-0797.
>
> Mary Conrad Center, 338-5840.
>
> Robert Rude Center, 338-2211.
>
> Tyee Apartments, 337-1911.
>
> #### Emergency housing
>
> Anchorage Care Center, 276-5343.
>
> AWAIC Shelter, 274-4381.
>
> Brother Francis Shelter, 277-1731.
>
> Catholic Social Services, 277-2564.
>
> City Emergency, 264-4746.
>
> Clare House, 563-4545.
>
> McKinnel Residence, 276-1509 or 272-5841.
>
> Senior Citizens, 264-6720.
>
> Rescue Mission, 277-3602.

praised to hear applicants were having difficulty locating available housing.

"Our limits aren't really comparable to rents landlords are charging in this area," he said.

HUD has fair market price lists in each city that limit how expensive an applicant's rent can be, Ward said.

For a one-bedroom apartment, the fair market price is $465. For two bedrooms, the limit is $547. Three bedrooms stop at $684 and four bedroom apartments can be no higher than $766, he said.

Juxtapose that with the average price of Anchorage housing and HUD's fair market price limits appear unfair.

One bedroom apartments usually run between $500 and $550. Two bedrooms usually cost around $640. Three bedrooms go for between $775 and $800 and four-bedroom places cost an average of $800.

"We've been trying to get HUD to raise their fair market limits and it looks like they may be changing them soon but I wouldn't know when," he said.

Regardless of how high the difference in prices are, thousands of people still wait for housing assistance, Witcher said.

"I was lucky. I could afford to stay in the apartment I'm in now until the other place is available," she said. "I'm just anxious to move, but others need emer-

EXHIBIT H

PAGE 1 OF 1

EMERGENCY SERVICES PROGRAM

	TOTAL DIRECT SERVICE	ANCHORAGE RESIDENCE	RURAL ALASKANS	OUT OF STATE	BUS TOKENS	MEN	WOMEN	CHILD
JUL 89	67	43	5	19	27	15	28	24
JUL 90	320	268	19	33	65	59	96	165
AUG 89	85	69	8	8	2	24	32	29
AUG 90	268	217	14	37	126	53	69	146
SEP 89	281	189	40	52	152	63	108	110
SEP 90	500	335	90	75	130	100	132	268

TOTAL CLIENTS FOR 1989: 443 TOTAL MEN 1989: 102 TOTAL WOMEN 1989: 168 TOTAL CHILD 1989: 163

1990: 1088 1990: 212 1990: 297 1990: 579

We have 462 requests for food through the Interfaith Clearinghouse in the three month period, for 1989.

We have 49 requests for clothing during the same time period.

We have not kept accurate stats on the request for food and clothing since the Clearinghouse closed, however, between the three of us we figured we were getting approximately 25 calls a day. This would total 1500 for the three month period, a total of 1,038 more than last years for the same period.

EXHIBIT I PAGE 1 OF 1

Housing needs of poor addressed

JUNEAU — A trust fund to meet housing needs of the poor would be created through surplus money from the Alaska Housing Finance Corp. under a measure introduced in the House. House Bill 152, sponsored by Rep. Kay Brown, D-Anchorage, also would consolidate the boards of the Alaska Housing Finance Corp. and the Alaska State Housing Authority into a new Alaska Housing Commission. "Housing programs in Alaska are spread among 13 different state agencies, offices and divisions. They are designed with little quantitative information regarding real needs," Brown said in a news release. A companion bill, HB153, would allocate $100 million from corporation revenues to the trust fund, whose earnings would be used to finance low- and middle-income housing projects.

EXHIBIT F
PAGE 1 OF 1

1989			1990		
Bus Tokens July-Dec:	$351.00	Clients Served	Bus Tokens July-Dec:	$450.00	Clients Served
July:	$1,517.90	67	July:	$2,609.64	393
Aug:	$ 913.24	85	Aug.:	$2,353.63	411
Sept.:	$5,253.46	281	Sept:	$1,564.75	463
Oct.:	$3,287.00	0	Oct.:	$2,891.59	372
Nov.:	$ 679.43	233	Nov.:	$3,178.58	250
Dec.:	$1,774.78	154	Dec.:	$2,003.36	311
1-90	$2,363.11	163	1-91	~~$2,355.95 (1 month)~~ 3212.15	~~207~~ 478
	$15,805.92	983		~~$16,957.50~~ # 17,813.70	~~2,407~~ 2,678

(Difference: ~~$1151.58~~ # 2007.78)

people: ~~1,424~~ 1695

~~over~~ two and ~~one half~~ 2/3 times as many people ~~is the~~ increase.

Overall Increase = 1

Different Money Amount = 2007.78

(Difference and of people = 1695 selected)

1/31/91 Budget Balance # 9,466.56

Divided by (2 months left in fy) = # 1,893.31 Available per month

We really should have an increase in our budget. ~~With the~~ increase of applicants and ~~the amount of~~ no change in money, many people are not being helped.

AWFUL DETAINER PROCEDURES [illegible]D TIME CHART

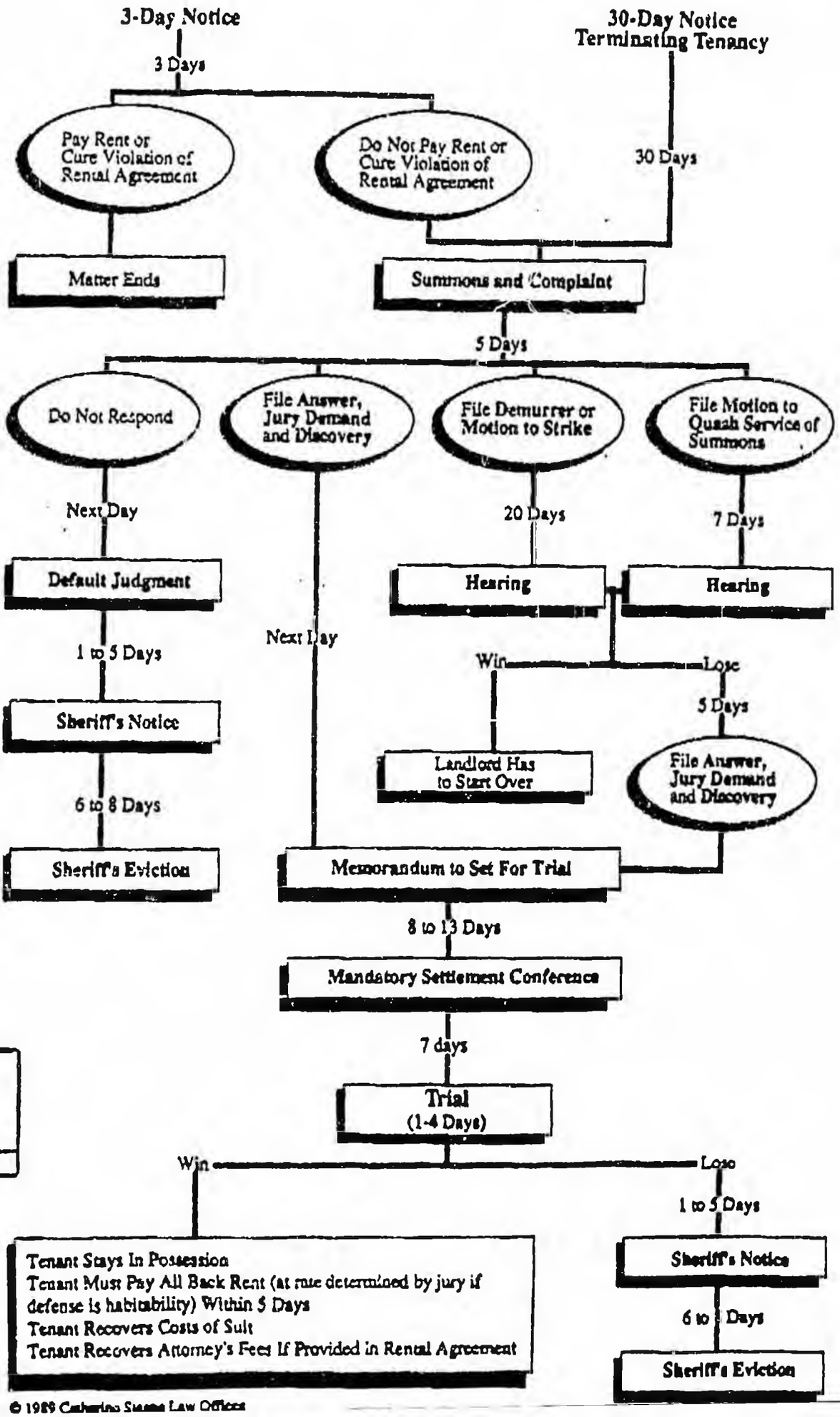

EXHIBIT K
PAGE 1 OF 1

METRO
The Anchorage Times
MONDAY
December 17, 1990

ACLU assails tenant evictions in drug arrests

By PAMELA STOCK
TIMES WRITER

A local civil rights attorney said a proposed bill that would allow landlords the right to evict arrested drug dealers penalizes the innocent before they are proven guilty.

"It's a politically easy thing to do, to say 'let's go after the drug dealers.' I think it's a fallacy," said Jamie Bollenbach, director of the American Civil Liberties Union's Anchorage office.

> "We're penalizing people before they're found guilty."
> —Jamie Bollenbach, Alaska ACLU

Bollenbach said he questions the propriety of evicting tenants based on arrests, instead of convictions, though he said the bill did not necessarily interfere with constitutional rights. Sen. Pat Pourchot, D-Anchorage, is drafting the bill to help give landlords more authority.

"We're penalizing people before they're found guilty," Bollenbach said. He also said the proposed bill may encourage landlords to evict, and may contribute to an al-

See Eviction, back page

Eviction

Continued from page B1

ready acute homelessness problem in Anchorage.

But some apartment owners said they have no legal recourse to control tenants in their buildings who deal drugs and attract crime.

Rex Plunkett, a local landlord, said changes in the current bill might benefit tenants with a troubled past. Apartment owners may be more likely to rent if they know they will have an easier time evicting.

Current laws say landlords cannot evict a tenant arrested for or suspected of trafficking drugs or illegally selling alcohol unless the tenant breaks a lease. If the tenant continues to pay rent on time, maintains a lease agreement and is not arrested on felony charges, the landlord cannot evict.

"I'm far more likely to take a risk and rent when I know all I stand to lose is two week's rent, and not several months," Plunkett said.

Plunkett said he lost at least four months' rent due to a tenant who he said was selling drugs from a Russian Jack apartment.

Pourchot's proposed bill gives the landlord the option to immediately evict a tenant who has been arrested for illegally selling drugs or alcohol, even if the tenant is a timely rent payer.

"The cases where you would use it in reality is if there is serious drug trafficking, and these cases aren't built lightly," Pourchot said.

"We're talking about communities where there are 40 people coming to the door every day," he said.

But most leases already have provisions prohibiting tenants said Barbara Hood, supervisor for public entitlements at Alaska Legal Services. Revisions to current laws may not be necessary, she said.

Hood also questioned the need to shorten eviction notice periods at a time when the real estate market is tightening and more tenants are seeking help from the legal service agency.

Pourchot proposes changing the notice period from 10 days to five.

"The five-day notice would make it much more difficult for people using the programs that are established to help them, but can't act that quickly," Hood said.

Pourchot looked to the laws of Washington state, thought to be tough on drug dealers, to inspire his own legislation.

For example, Washington landlords may evict tenants involved in "unlawful activities based on the landlord's own observation," said Lorraine Lewis, Administrator for the Washington Attorney General's Office.

When asked if there were complaints of tenants who felt they were unreasonably accused and evicted, Lewis said there is no regulatory agency to keep track of complaints.

Pourchot, who is a landlord himself, said the Alaska bill stipulates an arrest because he did not want landlords to be acting as police officers.

"We don't want to substitute good police work for landlord's observations," Pourchot said.

Pourchot said since he started working on the bill he has talked to many Anchorage landlords — many who own only one or two buildings and are concerned about their communities, as well as their rights.

EXHIBIT 2
PAGE 1 OF 1

Wash.
REVISED
CODE OF WASHINGTON
ANNOTATED

Titles 58 to 61

EXHIBIT M
PAGE 1 OF 3

RCW 59.18.070, and that the tenant should not remain in the dwelling unit in its defective condition, the court or arbitrator may authorize the termination of the tenancy: *Provided*, That the court or arbitrator shall set a reasonable time for the tenant to vacate the premises.

Enacted by Laws 1973, 1st Ex.Sess., ch. 207, § 12.

Library References

Landlord and Tenant ⇐106.
WESTLAW Topic No. 233.

C.J.S. Landlord and Tenant §§ 107, 116, 118.

59.18.130. Duties of tenant

Each tenant shall pay the rental amount at such times and in such amounts as provided for in the rental agreement or as otherwise provided by law and comply with all obligations imposed upon tenants by applicable provisions of all municipal, county, and state codes, statutes, ordinances, and regulations, and in addition shall:

(1) Keep that part of the premises which he occupies and uses as clean and sanitary as the conditions of the premises permit;

(2) Properly dispose from his dwelling unit all rubbish, garbage, and other organic or flammable waste, in a clean and sanitary manner at reasonable and regular intervals, and assume all costs of extermination and fumigation for infestation caused by the tenant;

(3) Properly use and operate all electrical, gas, heating, plumbing and other fixtures and appliances supplied by the landlord;

(4) Not intentionally or negligently destroy, deface, damage, impair, or remove any part of the structure or dwelling, with the appurtenances thereto, including the facilities, equipment, furniture, furnishings, and appliances, or permit any member of his family, invitee, licensee, or any person acting under his control to do so. Violations may be prosecuted under chapter 9A.48 RCW if the destruction is intentional and malicious;

(5) Not permit a nuisance or common waste;

(6) Not engage in drug-related activity at the rental premises, or allow a subtenant, sublessee, resident, or anyone else to engage in drug-related activity at the rental premises with the knowledge or consent of the tenant. "Drug-related activity" means that activity which constitutes a violation of chapter 69.41, 69.50, or 69.52 RCW; and

(7) Upon termination and vacation, restore the premises to their initial condition except for reasonable wear and tear or conditions caused by failure of the landlord to comply ~~with his obligations~~

EXHIBIT M
PAGE 2 OF 3

under this chapter: *Provided*, That the tenant shall not be charged for normal cleaning if he has paid a nonrefundable cleaning fee. Enacted by Laws 1973, 1st Ex.Sess., ch. 207, § 13. Amended by Laws 1983, ch. 264, § 3; Laws 1988, ch. 150, § 2.

Historical and Statutory Notes

Laws 1983, ch. 264, § 3, in subsec. (4), inserted the provision relating to prosecution of violations under chapter 9A.98.

Laws 1988, ch. 150, § 2, inserted subsec. (5), and renumbered former subsec. (6) as subd. (7).

Legislative findings—Laws 1988, ch. 150: "The legislature finds that the illegal use, sale, and manufacture of drugs and other drug-related activities is a state-wide problem. Innocent persons, especially children, who come into contact with illegal drug-related activity within their own neighborhoods are seriously and adversely affected. Rental property is damaged and devalued by drug activities. The legislature further finds that a rapid and efficient response is necessary to: (1) Lessen the occurrence of drug-related enterprises; (2) reduce the drug use and trafficking problems within this state; and (3) reduce the damage caused to persons and property by drug activity. The legislature finds that it is beneficial to rental property owners and to the public to permit landlords to quickly and efficiently evict persons who engage in drug-related activities at rented premises." [Laws 1988, ch. 150, § 1.]

Severability—Laws 1988, ch. 150: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [Laws 1988, ch. 150, § 15.]

Law Review Commentaries

Landlord-tenant; maintenance and repairs required by legislative acts. 49 Wash.L.Rev. 363 (1974).

Statutory redefinition of rights and duties of landlords and tenants; tenant duties. 9 Gonzaga L.Rev. 302.

Tenants' mode of use; waste. 49 Wash.L.Rev. 335 (1974).

Library References

Landlord and Tenant ⇐134, 144, 181 to 193.
WESTLAW Topic No. 233.

C.J.S. Landlord and Tenant §§ 316, 326 et seq., 462 to 470.

Notes of Decisions

Carpeting 1

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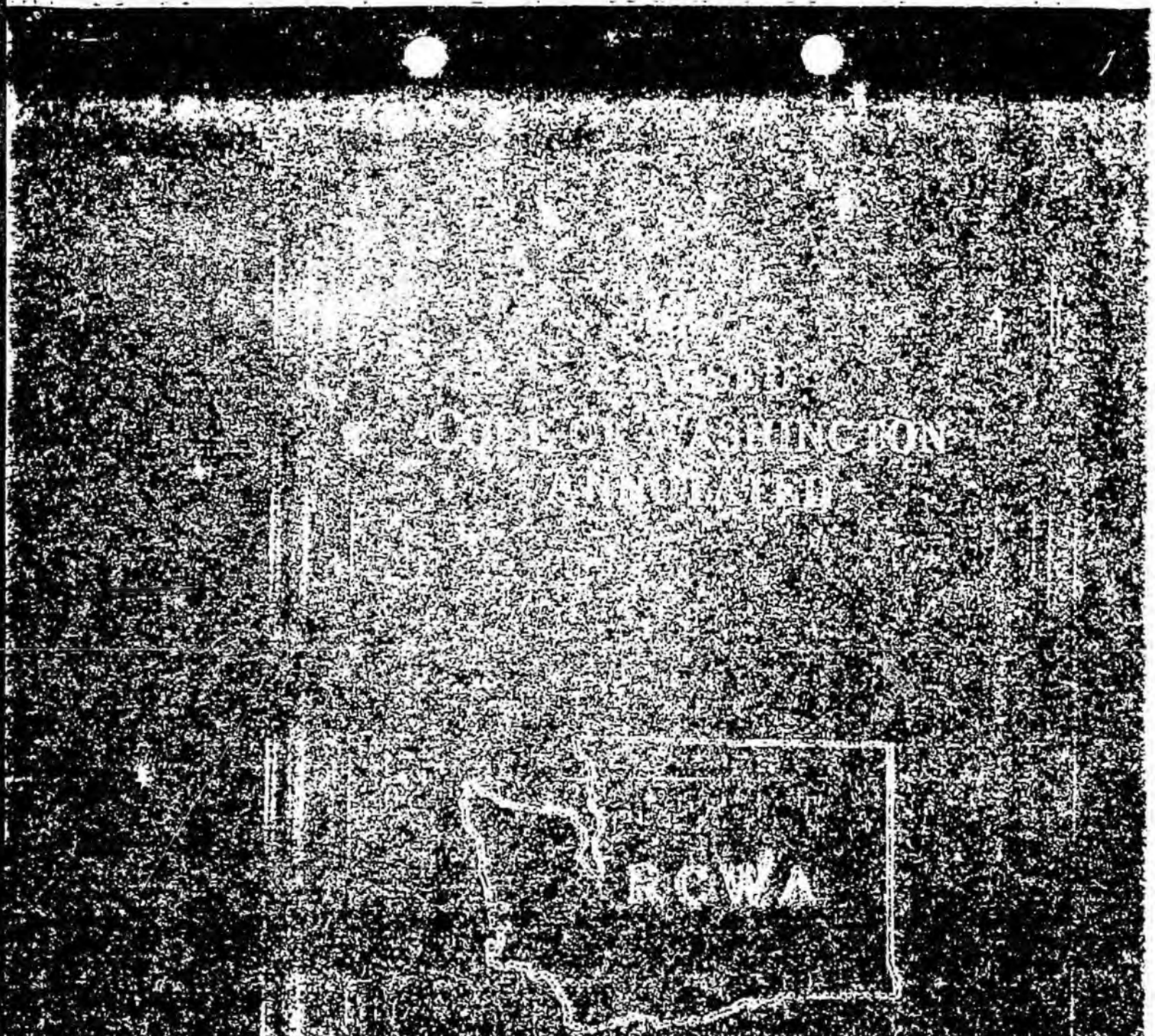
1. Carpeting

Finding that carpet in apartment was substantially destroyed and that it was reasonable and proper to replace it was not error in action by landlord against former tenant, particularly where depreciation factor was considered in determining damages awarded to landlord. James S. Black & Co. v. Charron (1978) 22 Wash.App. 11, 587 P.2d 196.

59.18.140. Reasonable obligations or restrictions—Tenant's duty to conform

The tenant shall conform to all reasonable obligations or restrictions, whether denominated by the landlord as rules, rental agree-

EXHIBIT M
PAGE 3 OF 5



Titles 68 to 69

EXHIBIT N
PAGE 1 OF 4

CHAPTER 69.41

LEGEND DRUGS—PRESCRIPTION DRUGS

Section

69.41.010. Definitions.
69.41.020. Prohibited acts—Information not privileged communication.
69.41.030. Sale, delivery or possession of legend drug without prescription or order prohibited—Exceptions.
69.41.040. Prescription requirements.
69.41.050. Labeling requirements.
69.41.060. Search and seizure.
69.41.070. Penalties.
69.41.075. Rules—Availability of lists of drugs.

SUBSTITUTION OF PRESCRIPTION DRUGS

69.41.100. Legislative recognition and declaration.
69.41.110. Definitions.
69.41.120. Prescriptions to contain instruction as to whether or not a therapeutically equivalent generic drug may be substituted—Form—Contents—Procedure.
69.41.130. Savings in price to be passed on to purchaser.
69.41.140. Minimum manufacturing standards and practices.
69.41.150. Liability of practitioner, pharmacist.
69.41.160. Pharmacy signs as to substitution for prescribed drugs.
69.41.170. Coercion of pharmacist prohibited—Penalty.
69.41.180. Rules.

IDENTIFICATION OF LEGEND DRUGS—MARKING

69.41.200. Requirements for identification of legend drugs—Marking.
69.41.210. Definitions.
69.41.220. Published lists of drug imprints—Requirements for.
69.41.230. Drugs in violation are contraband.
69.41.240. Rules—Labeling and marking.
69.41.250. Exemptions.
69.41.260. Effective date.
69.41.900. Severability—1979 c 110.

Cross References

Police powers to enforce this chapter, see § 18.64.009.

Public and private schools, administration of oral medication and safeguarding of legend drugs, see § 28A.31.150.

Unprofessional conduct, possession, distribution, use, or prescription for use of legend drugs in any way other than for therapeutic purposes, see § 18.57.170.

EXHIBIT N

PAGE 2 OF 4

CHAPTER 69.50

UNIFORM CONTROLLED SUBSTANCES ACT

ARTICLE I—DEFINITIONS

Section

69.50.101. Definitions.
69.50.102. Drug paraphernalia—Definitions.

ARTICLE II—STANDARDS AND SCHEDULES

69.50.201. Authority to control.
69.50.202. Nomenclature.
69.50.203. Schedule I tests.
69.50.204. Schedule I.
69.50.205. Schedule II tests.
69.50.206. Schedule II.
69.50.207. Schedule III tests.
69.50.208 Schedule III.
69.50.209. Schedule IV tests.
69.50.210. Schedule IV.
69.50.211. Schedule V tests.
69.50.212. Schedule V.
69.50.213. Republishing of schedules.

ARTICLE III—REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES

69.50.301. Rules.
69.50.302. Registration requirements.
69.50.303. Registration.
69.50.304. Revocation and suspension of registration.
69.50.305. Procedure for denial, suspension or revocation of registration.
69.50.306. Records of registrants.
69.50.307. Order forms.
69.50.308. Prescriptions.
69.50.309. Containers.
69.50.310. Sodium pentobarbital—Registration of humane societies and animal control agencies for use in animal control.
69.50.311. Triplicate prescription form program—Compliance by health care practitioners.

ARTICLE IV—OFFENSES AND PENALTIES

69.50.401. Prohibited acts: A—Penalties.
69.50.402. Prohibited acts: B—Penalties.
69.50.403. Prohibited acts: C—Penalties.

EXHIBIT N
PAGE 30

CHAPTER 69.52

IMITATION CONTROLLED SUBST...CES

Section

69.52.010. Legislative findings.
69.52.020. Definitions
69.52.030. Violations—Exceptions.
69.52.040. Seizure of contraband.
69.52.050. Injunctive action by attorney general authorized.
69.52.060. Injunctive or other legal action by manufacturer of controlled substances authorized.
69.52.900. Severability—1982 c 171
69.52.901. Effective date—1982 c 171.

69.52.010. Legislative findings

The legislature finds that imitation controlled substances are being manufactured to imitate the appearance of the dosage units of controlled substances for sale to school age youths and others to facilitate the fraudulent sale of controlled substances. The legislature further finds that manufacturers are endeavoring to profit from the manufacture of these imitation controlled substances while avoiding liability by accurately labeling the containers or packaging which contain these imitation controlled substances. The close similarity of appearance between dosage units of imitation controlled substances and controlled substances is indicative of a deliberate and wilful attempt to profit by deception without regard to the tragic human consequences. The use of imitation controlled substances is responsible for a growing number of injuries and deaths, and the legislature hereby declares that this chapter is necessary for the protection and preservation of the public health and safety.

Added by Laws 1982, ch. 171, § 2, eff. July 1, 1982.

69.52.020. Definitions

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Controlled substance" means a substance as that term is defined in chapter 69.50 RCW.

(2) "Distribute" means the actual or constructive transfer (or attempted transfer) or delivery or dispensing to another of an imitation controlled substance.

EXHIBIT N
PAGE 4 OF 4

THE PRECEDING PAGES
WERE TREATED AS A UNIT
IN THE ORIGINAL FILE

To: Cliff Groh

From: Richard Illgen

Date: May 15, 1991

Re: Comments on Report to Representative Ramona Barnes on SB 35

I have reviewed some of the information on eviction time frames in other states contained in the Chenoweth Report to Representative Ramona Barnes dated December 28, 1990. I note that there are inaccuracies in the eviction time periods for California which were included in footnotes 3 and 5.

Footnote 5 shows California has having a five day period between service of the summons and the eviction trial. This is not correct. **An eviction trial in California is by statute set within 20 days <u>after</u> the tenant has filed an answer to the summons and complaint and the landlord has filed a request to set the trial date.** It is that answer by the tenant which is filed within 5 days after service of the summons. Therefore, by statue there can be 25 days before the trial is held (in actual practice, trials are rarely if ever scheduled within this time period due to court backlogs).

Footnote 3 shows the period in California for the tenant to pay rent or quit as 3 days. This is not entirely correct; it frequently is 8 days. When service of a notice to quit has been made by posting it on the premises, it must also be mailed. Courts have applied a rule that extends the time by an additional 5 days because the notice was mailed. Therefore, unless the notice was personally served, the tenant may have 8 days to pay rent or quit.

I am not familiar with the specific timetables for evictions in other states. However, because of these significant discrepancies in the representation of California law, it is possible there are similar problems with the representations regarding the time frames for other states.

I would also like to not that in the timetable presented on Alaska eviction procedures, it is largely based on the landlord giving the tenant a 6 day grace period to pay rent. Such a grace period is entirely discretionary on the part of landlord. There is nothing to prevent a landlord from serving a notice to quit on the day after the rent is due. The landlord makes the decision to allow a grace period based on his or her business judgment. Even when a landlord does include a grace period in a rental agreement, it does not prevent a landlord from serving a ten day notice within the grace period. Many grace periods only give the tenant a period of time before the landlord imposes a late fee and do not affect the landlord's ability to serve a 10 day notice the day after the rent is due.

Richard F. Illgen
420 L Street, Suite 400
Anchorage, Alaska 99501

May 7, 1991

Cliff Groh
House, Labor & Commerce Committee
Room 17
P.O. Box V
Juneau, Alaska 99811

Re: Analysis and Comment on SB 35

Dear Mr. Groh:

SB 35 is a step backwards in efforts to address homelessness in Alaska. The provision in the bill reducing the notice to quit period from 10 days to only 5 days adds to the serious deprivation of due process rights which tenants already face under Alaska's existing Forcible Entry and Detainer (FED) procedures. Inevitably, more Alaskan tenants will be forced onto the streets because of unjustified and possibly wrongful evictions resulting because tenants do not have sufficient opportunity to defend against wrongful evictions.

The legislature must keep in mind that landlords are in a business, while tenants seek the most basic of human needs, shelter. If my side should be disadvantaged, it is the landlord who has volitionally chosen to make the investment purely for reasons of profit. A tenant must interact with a landlord for survival.

It is not an understatement to say that tenants have less procedural due process than criminal defendants. Yet it may be the landlord's illegal activity that causes the tenant to face eviction.

Rather than taking precipitous action to further restrict what limited procedural rights tenants now have (and presently in Alaska they have nearly none), the legislature should take a broader look at the FED procedures with an eye towards addressing the need for smaller landlords to evict non-rent paying tenants while improving a tenant's ability to defend against landlords who bring unjustified and wrongful actions.

The notice to quit period in AS 9.45.090 is the period during which a tenant must pay rent or quit the premises. However, the notice to quit period cannot be viewed in isolation; it must be

looked at in combination with the remainder of the FED procedures. Under SB 35, a tenant can receive a notice to quit on the 2nd of the month, be served with an FED summons on the 8th, have a trial by the 10th, and be out on the streets by the 12th of that month. All of this occurs in less time than a litigant in any other case is required to file an answer to a complaint (20 days) let alone conduct discovery. The five days taken away from the notice to quit period by SB 35 is more time than a tenant has to prepare for trial after service of the complaint (2-4 days (AS 09.45.120)). How is a tenant supposed to find an attorney, obtain documents for a defense, subpoena witnesses and conduct a deposition? A tenant who has actually paid rent does not even have time to obtain a cancelled check to prove rent payment.

Believe it or not, many tenants do have defenses to evictions. Defenses to non-payment of rent include retaliation (where the landlord has unlawfully increased the rent after a tenant has complained of lack of repairs) (AS 34.03.310); violation of the warranty of habitability (the tenant may not owe the rent); waiver (the landlord has accepted partial rent); bad-faith of the landlord; or written or oral agreements regarding the rent (for example the tenant performs repairs in lieu of rent).

The limited provisions for continuances in FED statutes are useless for many tenants, because they must post a surety with the court in order to obtain a meaningful continuance beyond two days. Many tenants live on the edge, barely covering expenses as money comes in. Habitability violations can be particularly insidious, causing a tenant to have to pay for repairs and absorb additional expenses due to a landlord's failure to maintain the premises. A tenant may not be able to post rent for a continuance because of such extraordinary expenditures.

Many tenants evicted for non-payment of rent will wind up in shelters or on the streets. If they have difficulty making rent payments, they will have more difficulty raising the additional money for the advance rent and security deposit required to relocate.

There are ways of reforming FED procedures which would allow landlords to readily evict for non-payment of rent while protecting tenant's rights. For example, allowing a tenant to answer an FED complaint would enable the court to determine if the tenant has defense's which require a trial. It would also allow a landlord to take a default without a court appearance when a tenant fails to answer, thus saving the landlord legal costs.

I urge the Legislature to reject those portions of SB 35 which give tenants only five days to respond to a notice to quit.

Instead, the Legislature should establish a committee to review FED procedures and recommend a process which comports with more reasonable standards of justice.

As the housing market in Alaska tightens, the problems tenants face will increase. Rents will rise, landlords will have less incentive to keep housing in repair, and landlords will have a greater incentive to evict because of the greater pool of potential tenants. The Legislature must not exacerbate Alaska's housing and homeless problems.

Please read this or duplicate this letter and hand out to the committee members of the House, Labor & Commerce Committee.

Sincerely,

Richard F. Illgen

Richard F. Illgen

RFI/ljm

Contact Persons: Jamie Bollenbach (276-2258), Paul Grant (586-2701)
Address: POB 201844, Anchorage AK 99520-1844

Position Paper on CSSB 35 MAY 1991

The Legislative Committee of the Alaska Civil Liberties Union has reviewed CSSB 35. We were disheartened to learn that it has passed the Senate in its present form, and unless it is substantially changed we must continue to oppose it.

The are several positions which raise grave constitutional concerns. The first are the provisions which require the government to publicize the arrest of certain people for alleged alcohol or drug offenses. Theses provisions single out renters of real property and subject them to public opprobrium without proof of guilt. The bill also is discriminatory since it protects landowners from such public exposure. As a general matter, tenants have lower incomes and are more likely to be women and minorities than property owners. Discrimination against those categories of citizens is unfair and inconsisten with the concept of equal protection of the laws.

Second, notice provisions of the bill raise due process issues. This bill reduces the notice required to terminate the tenancy and quit the premises from 20 days to five or 10 days. Sections 3 and 4 of the bill eliminate the requirement to serve notice by registered or certified mail, thereby making it more likely a tenant will not receive actual notice of an eviction. Taken together, these changes increase the likelyhood that a tenent will be removed from his or her dwelling with little or no advance notice or opportunity to protest, and this results from the mere accusation of an offense

Finally, the bill allows a tenant to be summarily evicted for soliciting orders for alcohol in violation of a local option election, or violating certain drug laws or laws prohibiting the sale of imitation drugs. Because the eviction procedure works faster that the criminal justice system, and because notice is given to the landlord at the time of arrest, tenants will be evicted <u>before</u> conviction of a crime and based on evidence which falls far short of that necessary for proof beyond a reasonable doubt. It seems axiomatic that punishment should not precede conviction; to pass this legislation in its present form offends important due process principles

There are other important difficulties with this bill that this paper does not fully address. The burden of eviction will fall hard on spouses and children of people merely accused of certain crimes.

Although the AkCLU Legislative Committee understands the intent behind this bill, we do not believe that its purpose can be properly achieved by punishing citizens still presumed innocent.

ALPMA

RECEIVED 1-23-92

ALASKA LANDLORD & PROPERTY MANAGERS ASSOCIATION

Rep. Dave Donley, Chairman
House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

January 18,1992

Dear Rep. Donley and Members of the Judiciary Committee:

We urge passage of draft HCS CSSB 35 (JUD).

We reviewed the synopsis of the draft at our Jan. 9 meeting. We were greatly encouraged that the 8 day notice for termination of tenancy for non-payment of rent added in the House Labor and Commerce Committee was changed back to 5 days as was in the original Senate Bill. Research has shown that 5 days is much more common practice in the western states than 10 days, the present Alaska Law.

We were also gratified to see the requirement for certified mail in delivering the above notice (L & C) dropped. The problem, as many testified to, is that tenants may not accept certified mail and the return receipt is slow in coming back. Certified mail should remain an option, not a requirement.

Many from our group testified on these two points at the October hearing and we are pleased the Judiciary Committee has remedied the L & C bill in this regard.

Some of the other provisions added by your committee have been needed for a long time and we are pleased to see them addressed.

Yours truly,

Alice Brewer

Alice Brewer, Executive Secy.
1201 W. 45th Ave.
Anchorage, Alaska 99503
Phone 563-6734

P.O. Box 103628
Anchorage, AK 99510
3 February 1992

Representative Dave Donley
Judiciary Committee Chairman
3111 "C" Street. Suite 450
Anchorage, AK 99510

Dear Representative Donley:

subject: SB 35, revision to landlord-tenant law

Please support and pass SB 35. I own and manage 10 apartments in three buildings. The main effect of SB 35 is to shorten the time for notice-to-quit from ten to five days for the non-payment of rent. I support this and I want you to support it also.

There is no reason for people not to pay the rent on time. If a tenant cannot pay on time and refuses to move it should not be the responsibility of an individual landlord to provide free housing. There is a government agency which provides prompt emergency relief if a tenant faces potential eviction for non-payment. The office is at 5th and Gamble, phone number 274-6524. A nonpaying tenant needs to move or take his ten-day notice (hopefully five-day notice) to the above address. Five-days notice is enough time before seeking a court remedy. The court remedy is a lengthy process in itself.

Representative Donley, please support and pass SB 35.

Sincerely,

Jerry Lee Gottbe

Alaska State Legislature

House of Representatives

House Judiciary Committee

Representative Dave Donley
Chairman

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

November 25, 1991

Willie Devine
Sandra Arnold
8300 E. 20th Avenue
Anchorage, Alaska 99504-2913

Dear Mr. Devine and Ms. Arnold:

Thank you for your recent letter on SB 35. As you probably know, I strongly support this legislation. I also strongly support returning to the version of the bill that passed the Senate. In fact, I have prepared a Judiciary Committee Substitute for SB 35 that corrects the problems created by HCS CSSB 35 (L&C). Your letter will be a part of the Judiciary Committee record, and will help explain why HCS CSSB 35 (L&C) is unworkable.

Once again, thanks for writing.

Very truly yours,

Dave Donley

Chairman Dave Donley

DD:lc

```
************************************************************
*                                                          *
* DELIVER TO: LIOCACB                                      *
*                                                          *
*                                                          *
* ORIGINAL                                                 *
* SENT:          05/14/91  TIME: 13:36                     *
* FROM:          LIOCMIL                                   *
* SUBJECT:       91-05-048;PL#2;(H)L&C;5/14                *
* PRINT DATE:    05/14/91  TIME: 13:36                     *
*                                                          *
************************************************************
```

SUBJECT LINE TO READ: TC NO.; PL FS;SHORT SUBJECT;DATE

T/C NO:	91-05-048
DATE:	05-14-91
SPONSOR:	H L&C
SUBJECT:	SB 35, SB 188, SB 258, HB 295
MODERATOR:	JUDY
SITE:	ANCHORAGE

PARTICIPANT LIST

****

TO TESTIFY

When rescheduled

NAMES/REPRESENTING	ADDRESS	PHONE	BILL NO.	
1. GLENDA STRAUBE	1318 N ST 99501	274-2010	SB 35	
2. DON CLOKSIN	1527 H ST 99501	277-8611	SB 35	278-4688
3. RICHARD ILLGEN	420 L ST 99501	276-1969	SB 35	278-7704
~~4. DON MITCHELL~~	~~1335 F ST 99501~~	~~276-1681~~	~~SB 35~~	
5. ALICE BREWER	1201 W 45 99503	563-6734	SB 35	
~~6. JOE GRAHAM~~	~~4107 MINNESOTA 99503~~	~~562-4955~~ 562-4915	~~SB 35~~	Bad #
7. BARBARA JITTOOD/AK LEG. SVS	1016 W 6	272-9431	SB 35	
8. KATHLEEN PLUNKET	4828 E 5 99508	337-2451	SB 35	

****

TO OBSERVE:

586-4154

NAME/ REPRESENTING	ADDRESS	PHONE	BILL NO.
1.			
2. Ellen Northup		789-3473	
3. John Egan		463-3303	
4.			
5. Janice Bollenbach			

****

BACK UP NUMBER: 561-1199
EMAIL ADDRESS: LIOCMIL

Nancy Grozek

witness

Chenoweth 245

Grozek - 279-2541(w) 258-9336 (h)

Pounchot - 3879

Teleconf.

4648

~~Dept. of Law - 3600~~
~~Rich Regnier - 3672~~

Alaska State Legislature

Senate Judiciary Committee

March 13, 1991

LETTER OF INTENT

CSSB 35 (JUD)
An Act relating to termination of tenancies and recovery of rental premises for nonpayment of rent and certain illegal activities, to tenant responsibilities, to the civil remedies of forcible entry and detainer and nuisance abatement, and to the duties of peace officers to notify landlords of arrests involving certain illegal activity on rental premises.

Omission of other criminal behavior or activities not addressed in this bill should not be construed as acceptable behavior by tenants.

Senator Rick Halford, Chair
Senate Judiciary Committee

Adopted by the Senate: 5/3/91

Post Office Box V • Juneau, Alaska 99811

SUMMARY

HCS CSSB 35 (L&C) would expedite eviction of tenants in the following situations:

1) For nonpayment of rent - Currently, a landlord must give the tenant a 10-day written notice of intent to evict for nonpayment of rent. The House Labor and Commerce CS would reduce the notification period to 8 days as opposed to the 5-day notification required in the Senate version. Alaska has the longest notification period of the other 12 western states: three states require a five day notice; nine states require only a three day notice.

2) For engaging in felony alcohol or drug activities - There is no specific provision in statute allowing a landlord to evict for illegal alcohol or drug activities. As proposed in this bill, a commercial or residential tenant who engages in these activities could be noticed and evicted under the same procedures as for nonpayment of rent.

3) To assist neighborhoods in halting drug trafficking - The nuisance statutes are amended to include felony alcohol and drug activities related to manufacture and delivery. This would allow a landlord or neighbors to petition the court to abate the nuisance. The order of abatement would terminate a rental agreement. Under the nuisance statutes, evidence of reputation would be admissible by the court in proving the existence of a nuisance.

In all cases where a tenant refuses to pay rent or move after having received notice, the landlord must seek eviction under the forcible entry and detainer (FED) statutes which provide due process protection. To eliminate statutory ambiguity and in accordance with court practice, a provision is included to allow the notice required under the landlord-tenant statutes to serve as the notice required under the FED statutes.

Finally, a provision is included requiring a police officer to make a reasonable effort to notify the owner in person or in writing when a tenant is arrested for violation of felonies relating to manufacture or delivery of drugs or alcohol.

The House Labor and Commerce CS carries a $10,000 fiscal note.

Senator Pat Pourchot
May 17, 1991

SUMMARY

CS SB 35 (JUD) would expedite eviction of tenants in the following situations:

1) For nonpayment of rent - Currently, a landlord must give the tenant a 10-day written notice of intent to evict for nonpayment of rent. SB 35 would reduce the notification period to 5 days. Alaska has the longest notification period of the other 12 western states: three states require a five day notice; nine states require only a three day notice.

2) For engaging in felony alcohol or drug activities - There is no specific provision in statute allowing a landlord to evict for illegal alcohol or drug activities. As proposed in this bill, a commercial or residential tenant who engages in these activities could be noticed and evicted under the same procedures as for nonpayment of rent.

3) To assist neighborhoods in halting drug trafficking - The nuisance statutes are amended to include felony alcohol and drug activities related to manufacture and delivery. This would allow a landlord or neighbors to petition the court to abate the nuisance. The order of abatement would terminate a rental agreement. Under the nuisance statutes, evidence of reputation would be admissible by the court in proving the existence of a nuisance.

In all cases where a tenant refuses to pay rent or move after having received notice, the landlord must seek eviction under the forcible entry and detainer (FED) statutes which provide due process protection. To eliminate statutory ambiguity and in accordance with court practice, a provision is included to allow the notice required under the landlord-tenant statutes to serve as the notice required under the FED statutes.

Finally, a provision is included requiring a police officer to make a reasonable effort to notify the owner in person or in writing when a tenant is arrested for violation of felonies relating to manufacture or delivery of drugs or alcohol.

The bill carries a zero fiscal note.

SUMMARY

EVICTION FOR NONPAYMENT OF RENT

[Amends both the Forcible Entry and Detainer (FED) statutes and the Landlord-Tenant (LLT) Act]

The proposed CS for SB 35 retains the provision in the original bill that reduces the length of time a landlord must wait after giving written notice to vacate from 10 to 5 days before instituting FED proceedings.

EVICTION FOR CERTAIN ILLEGAL ALCOHOL/DRUG ACTIVITIES

Originally, SB 35 focused on making it easier for the landlord to evict a tenant under LLT statutes by allowing "arrest" to trigger eviction through the FED process.

Because of constitutional problems, this provision was dropped. Instead, two separate options are proposed which would:
1) shorten the notification period for eviction for certain illegal activities under current LLT/FED statutes, and 2) amend the nuisance statutes to allow landlords or **neighbors** to get the nuisance abated.

Current Statutes

Under current LLT/FED statutes, to get rid of a tenant who is in noncompliance with a rental agreement takes approximately 34 days (20 day notice required under the LLT statutes plus 10 days for the FED proceedings).

Option 1

Using the same remedy (LLT/FED), Option 1 under the proposed CS would take approximately 20-23 days. To accomplish this the LLT and FED statutes are amended to reduce the notice period to 5-days for specified illegal activities - treated with the same severity as nonpayment of rent.

Option 2

Option 2 would amend the Nuisance statutes to allow abatement of property being used for certain illegal alcohol or drug activities. This procedure involves filing a complaint, the court issuing an

injunction or restraining order, a 20-day period for the defendant to respond, followed by a short trial at which an **order of abatement would be issued terminating the rental agreement.** Evidence of reputation would be admissible by the court to prove the existence of a nuisance. From time of filing complaint to issuance of abatement order would be approximately 24 days. Although it is highly unlikely the tenant would not voluntarily move from the premises before the order of abatement were issued (to protect his/her personal property), if such were the case, the landlord would be able to resort to the FED remedy.

Although the eviction process under Option 1 (and probably Option 2) is shorter than under current law, Option 2 has the advantage of giving the landlord an additional tool for getting rid of a recalcitrant tenant, as well as providing a means, not now available, for neighbors to halt specified illegal drug activities.

Other Considerations:

Violation of an injunction or restraining order is **criminal contempt.**

To remove an occupant who refuses to leave - regardless of the reason - requires going through the FED process; i.e., a landlord can't physically move a tenant out.

To eliminate confusion, a provision is included to **allow the FED notification period to run concurrently with the notification period required under the LLT and nuisance statutes.**

A provision is included to allow the court to enter an order to vacate and a writ of assistance at the same time (although the tenant still has two days to vacate) to save the landlord another court visit.

OPTION 1 — OPTION 2

[Time frames represent best possible scenario. If day court assistance is needed falls on Saturday, Sunday or holiday, time will be extended. If tenant cannot be served, court has to set new hearing date. If tenant fights eviction, Judge may grant continuance.]

Landlord/Tenant Approach		Nuisance Approach
5-day notice given to tenant	**DAY 1**	File complaint/Summons/ temporary restraining order or injunction (may run into day 2). Tenant has 20 days to respond as to why order of abatement should not be issued. During this time, tenant is liable for criminal contempt if injunction is violated.
Institute FED Process Complaint filed in Court Hearing date set. (usually takes 7-10 days)	**DAY 7**	
Court Hearing date/obtain Order to Vacate	**DAY 15**	
Tenant remains/Writ of Assistance	**DAY 18**	
House back in Landlord's Possession	**DAY 20**	
	DAY 22	
	DAY 23	Half-day trial/Order of abatement issued/rental agreement terminated. **Institute FED process.** File complaint in court, get hearing date (usually 7-10 days)
	DAY 31	Court Hearing date/ Order to Vacate and Writ of Assistance issued.
	DAY 33	House back in landlord's possession.

Senator Pat Pourchot
February 5, 1991

SUMMARY

SB 35 would make two major changes to the Alaska Uniform Residential Landlord-Tenant Act.

The first proposal would expedite eviction of tenants who fail to pay their rent when due by shortening the notification period from ten to five days prior to eviction. Currently, landlords who are trying to evict tenants for nonpayment of rent must give a ten-day notice of intent to evict prior to filing a complaint. The earliest the eviction process can be completed is approximately three weeks (see attached Flow Chart); the more likely eviction scenario is a month to six weeks. This places an undue hardship on landlords, many of whom rely on rental income for their livelihood.

Compared to 12 other western states, Alaska provides a long notice period. For example, only three days' notice by the landlord to the tenant is required in California, Colorado, Idaho, Montana, New Mexico, Oregon, Utah, Washington, and Wyoming. Five days required notice is required in Arizona, Hawaii and Nevada.

I believe the five-day notification period would still allow well-intentioned tenants to work out their difficulties but accelerate the eviction process for tenants unwilling to pay. This proposal in no way interferes with the tenant's rights in the judicial Forcible Entry and Detainer (FED) process.

The second proposal would assist landlords trying to evict tenants who are engaged in specified drug-related or bootlegging activities (related to manufacture and distribution). SB 35 would allow landlords to immediately start the eviction process if the tenant was arrested for one of the specified violations. Law enforcement officials would also be required to make a concerted effort to notify a property owner(s) when making an arrest for these types of offenses. The tenant's rights in court under the FED process are unaffected.

FLOW CHART FOR EVICTION FOR NONPAYMENT OF RENT
(AVERAGE TIME SCENARIO UNDER CURRENT STATUTE)

DAY

1 **Rent due (rent due on 1st and deliquent on 6th in most rental agreements)**
2
3
4
5
6 **10-day notice given tenant** **[SB35 would reduce notification**
7 **period from 10 to 5 days]**
8
9 (If landlord accepts full or partial payment of rent,
10 the process is voided; must start over by giving
11 another 10-day notice.)
12
13
14
15
16
17 **Complaint filed in Court - Court sets Hearing date**
18
19 (Law states that tenant must be served by Process
20 Server at least 2 days prior to Hearing date which
21 is usually set 7-10 days following filing of Complaint.
22 If tenant cannot be served in time, landlord must go
23 back to Court for a new Hearing date.)
24
25 **Court Hearing date - obtain Order to Vacate**
26 (Tenant has minimum of 2 days to vacate; Judge may
27 grant additional time.)
28 **Tenant remains: obtain Writ of Assistance - deliver to Troopers**
29 (Troopers usually remove tenant within 24 hours)
30 **House back in landlord's possession**

NOTE:

1) TIME MAY BE EXTENDED
- if, the day Court assistance is needed (filing Complaint, Hearing, etc.) falls on a Saturday, Sunday or holiday - extend days accordingly;
- if tenant fights eviction, Judge may grant Continuance;
- if tenant cannot be served, landlord has to go back to Court for new hearing date;
- if 10-day notice not immediately given - time extended accordingly.

2) TIME MAY BE SHORTENED
- if there is no 5-day "grace" period in rental agreement;
- if tenant can be served immediately; Hearing date can legally be set for 3rd day after filing of Complaint if Court calendar permits.

3) The eviction process does not recover any cost other than for filing fees, service and process fees and postage under Court Rule 79 and attorney fees under Court Rule 82; motion to recover costs must be filed within 10 days of Clerk entering FED Order; treated as a judgement. Getting back rent is another more lengthy process.

4) If process is not completed within the 1st month, landlord will be out rent for additional time tenant remains on premises.

FLOW CHART FOR EVICTION FOR ILLEGAL ALCOHOL OR DRUG ACTIVITIES AS PROPOSED IN SB 35

[Time frames represent best possible scenario. If day court assistance is needed falls on Saturday, Sunday or holiday, time will be extended. If tenant cannot be served, court has to set new hearing date. If tenant fights eviction, Judge may grant continuance.]

Landlord/Tenant/FED Approach		Nuisance Approach
5-day notice given to tenant	**DAY 1**	File complaint/Summons/ temporary restraining order or injunction (may exceed one day). Tenant has 20 days to respond as to why order of abatement should not be issued. During this time, tenant is liable for criminal contempt if injunction is violated.
Institute FED Process if tenant refuses to move. Complaint filed in Court Hearing date set. (usually takes 7-10 days)	**DAY 7**	
Court Hearing date/obtain Order to Vacate	**DAY 15**	
Tenant remains/Writ of Assistance	**DAY 18**	
House back in Landlord's Possession	**DAY 20**	
	DAY 22	
	DAY 23	Half-day trial/Order of abatement issued/rental agreement terminated. **Institute FED process if tenant refuses to move.** File complaint in court, get hearing date (usually 7-10 days)
	DAY 31	Court Hearing date/ Order to Vacate and Writ of Assistance issued.
	DAY 33	House back in landlord's possession.

PROPOSED AMENDMENTS TO EVICTION STATUTES (AS 09.45 ET SEQ.)

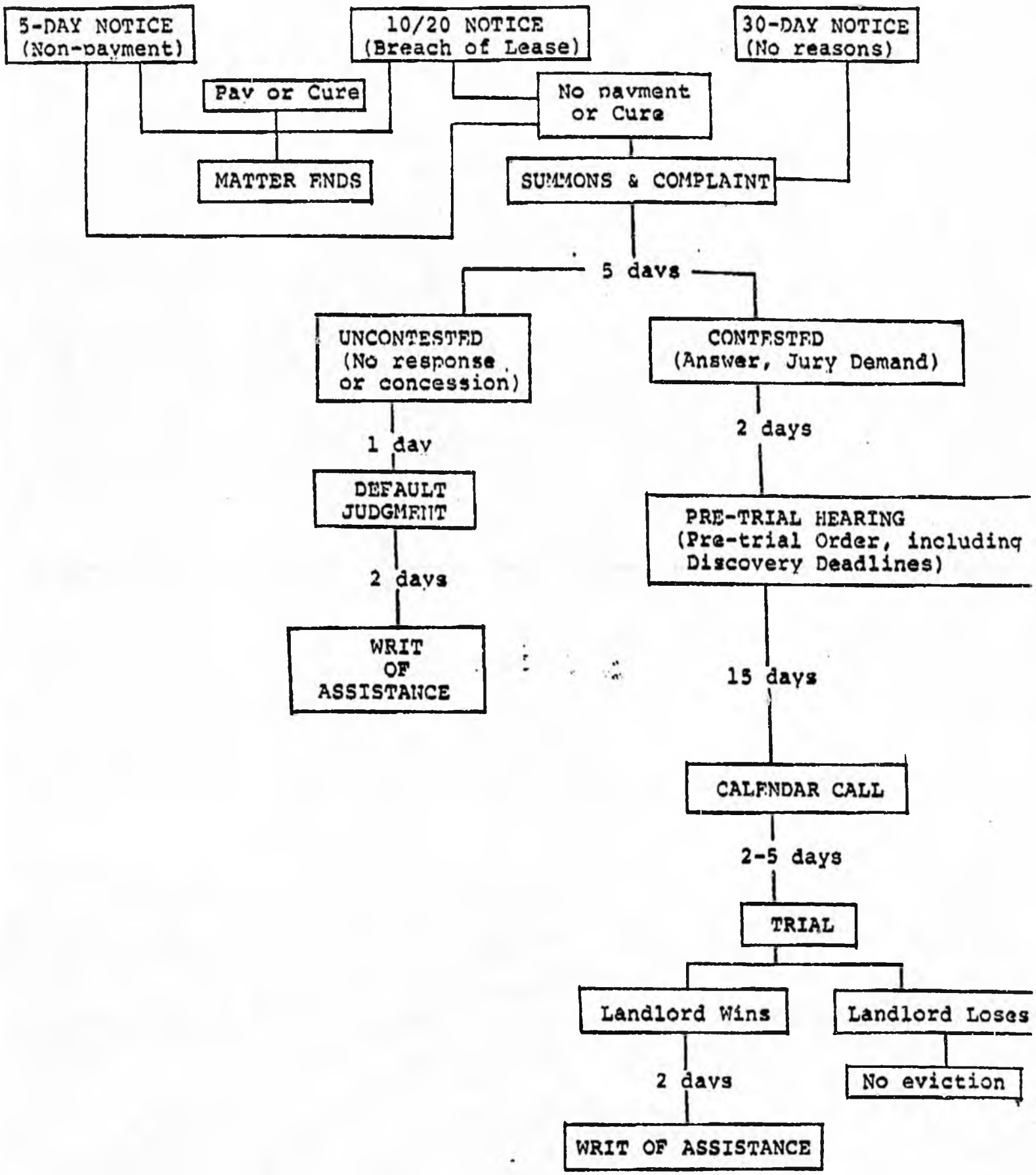
Sec. 1. AS 09.45.120 is deleted and replaced by adding new sections to read:

AS 09.45.120. SUMMONS AND DEFAULT. Summons in actions for forcible entry and detainer shall be served not less than five days from the date notice of eviction is given pursuant to AS 09.45.110 or AS 34.03.220. The tenant or person in possession shall have five days from the date of service of the summons to file an answer with the court. If no answer is filed, a default judgment of evicion may be entered on the sixth day following service of the summons. A writ of assistance to take effect in 48 hours may be issued with the default judgment, authorizing law enforcement officials to assist in the removal of the tenant or person in possession.

AS 09.45.121. ANSWER, DISCOVERY AND TRIAL. If a tenant answers the summons and complaint as set forth in AS 09.45.120, a pre-trial hearing shall be set no later than two days from the date of the answer, at which the court shall consider any preliminary motions by the parties and establish pre-trial procedures for discovery and other matters. Both parties shall be entitled to a minimum of fifteen days to exchange discovery, and normal discovery deadlines are reduced from 30 days to 15 days. At the close of the 15-day period, the matter shall be scheduled for calendar call to establish a date of trial. No continuance of the trial date shall be permitted beyond two days unless the party seeking the continuance shall post with the court a bond to cover rent that will accrue during the period of the continuance.

PLEASE NOTE: Implementation of these procedures will require a change in the present court rule governing forcible entry and detainer actions, which is Civil Rule 85.

FLOW CHART
PROPOSED AS 09.45.120, .121



ALASKA STATE LEGISLATURE

SENATE FINANCE COMMITTEE,
CO-CHAIR

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STATE CAPITOL
JUNEAU, AK 99811
(907) 465-3712

Senator Pat Pourchot

MEMORANDUM

TO: Rep. Dave Donley, Chair
House Judiciary Committee

DATE: February 12, 1992

FR: Senator Pat Pourchot

RE: SB 35

As you know, the Code Revision Commission was requested, and in their April 4 letter to me, agreed to prepare for introduction at the beginning of this session draft legislation revising the URLLT and FED statutes to eliminate ambiguities and inconsistencies. Unfortunately, they have taken no action to date.

Alternatively, I have spoken with Tam Cook, Director, Division of Legal Services, who has agreed to undertake this project during the 1992 interim and to have draft legislation ready for introduction in January 1993. A copy of her response will be forwarded to you tomorrow.

Because of this different approach, I have drafted a new Letter of Intent for the Committee's consideration. In addition, I suggest that we amend the bill to add a July 1, 1993 effective date. Both the new Letter of Intent and proposed amendment are attached for your consideration.

Please let me know if you foresee any problems or if I can provide you with additional information.

ALASKA STATE LEGISLATURE

SENATE FINANCE COMMITTEE,
CO-CHAIR

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(907) 465-3712

Senator Pat Pourchot

MEMORANDUM

DATE: January 22, 1991

TO: Senator Steve Frank, Chair
Senate Community and Regional Affairs Committee

FROM: Senator Pat Pourchot

RE: Scheduling of SB 35, an Act amending the Uniform Residential Landlord-Tenant Act

Attached is a copy of SB 35 which 1) shortens the notice period for tenants who have not paid rent from 10 to 5 days (tenant's rights in the judicial Forcible Entry and Detainer process are not impinged), and 2) allows landlords to use an immediate eviction process against tenants arrested for certain drug- or alcohol-related crimes. A provision is also included that would require law enforcement officials to notify property owners when they arrest renters for these types of offenses.

This bill would still allow well-intentioned tenants sufficient time to work out their financial difficulties but would accelerate the eviction process for tenants unwilling to pay or those engaged in drug-related or bootlegging activity.

I would be most appreciative if you would schedule SB 35 for a hearing before the Senate Community and Regional Affairs Committee at your earliest convenience.

ALASKA STATE LEGISLATURE

...ATE STATE AFFAIRS,
CHAIR
SENATE FINANCE COMMITTEE,
CO-CHAIR
ETHICS COMMITTEE,
CHAIR

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Senator Pat Pourchot

MEMORANDUM

TO: House Labor & Commerce Comm. **DATE:** May 14, 1991
Rep. David Finkelstein, Chair
Rep. Pat Parnell, Vice-Chair
Rep. Betty Bruckman
Rep. Dave Donley
Rep. Ivan Ivan
Rep. Robin Taylor
Rep. Jim Zawacki

FR: Senator Pat Pourchot Pat

RE: CS SB 35 (JUD) - Use of Rented Properties/Drug Violations

The goal of the proposed legislation is to shorten the length of time it takes to evict a tenant:

1) For nonpayment of rent;

2) For engaging in felony alcohol or drug activities related to manufacture and delivery; and

3) To assist neighborhoods in halting drug trafficking.

The bill has passed the Senate by a vote of 17 - 0, and carries a zero fiscal note.

DRAFT

LETTER OF INTENT

HCS CSSB 35 (JUD)
An Act relating to termination of tenancies and recovery of rental premises for nonpayment of rent and certain illegal activities, to tenant responsibilities, to the civil remedies of forcible entry and detainer and nuisance abatement, and to the duties of peace officers to notify landlords of arrests involving certain illegal activity on rental premises.

It is the intent of the legislature that the Department of Law delay revising or publishing the information pamphlet on landlord and tenant rights required under AS 44.23.020(b)(8) until the Code Revision Commission has completed its rewrite of AS 09.45.060 - AS O9.45.160 (Forcible Entry and Detainer) and AS 34.03 (Uniform Residential Landlord and Tenant Act).

LETTER OF INTENT

HCS CSSB 35 (JUD)
An Act relating to termination of tenancies and recovery of rental premises for nonpayment of rent and certain illegal activities, to tenant responsibilities, to the civil remedies of forcible entry and detainer and nuisance abatement, and to the duties of peace officers to notify landlords of arrests involving certain illegal activity on rental premises.

It is the intent of the legislature that the Department of Law delay revising or publishing the information pamphlet on landlord and tenant rights required under AS 44.23.020(b)(8) until the Division of Legal Services has completed its rewrite of AS 09.45.060 - AS O9.45.160 (Forcible Entry and Detainer) and AS 34.03 (Uniform Residential Landlord and Tenant Act).

POURCHOT

AMENDMENT

OFFERED IN THE HOUSE
TO: HCS CSSB 35 (JUDICIARY)

Page 12, following line 20:

Add:

Sec. 31. This Act takes effect July 1, 1993.

ALASKA STATE LEGISLATURE

SENATE FINANCE COMMITTEE,
CO-CHAIR

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Senator Pat Pourchot

MEMORANDUM

TO: Tam Cook, Director
Division of Legal Services

DATE: February 12, 1992

FR: Senator Pat Pourchot Pat

RE: Revision of URLLT and FED statutes

Per our conversation, this letter is to request the Division of Legal Services to review the Uniform Residential Landlord-Tenant (URLLT) and the Forcible Entry and Detainer (FED) statutes during the 1992 interim and to prepare for introduction in January 1993 draft legislation to eliminate ambiguities and inconsistencies that currently exist in these statutes.

These statutes have been in disarray for a number of years (see attached report). Of primary concern is the resolution of existing contradictions between the FED statutes and the Uniform Residential Landlord-Tenant Act. Another concern is the confusion that results because it is unclear whether superior or district court has jurisdiction in the FED process. The current ambiguities impede both the landlord's and tenant's ability to assert their rights.

As you know, a similar request was made to the Code Revision Commission in March of last year. In their April 4th reply they agreed to undertake the project and have draft legislation ready for introduction at the beginning of this session. Unfortunately, they have taken no action to date and I am by copy of this letter withdrawing my request.

Please don't hesitate to contact me if you have questions regarding this request.

ALASKA CODE REVISION COMMISSION

ALASKA STATE LEGISLATURE
P.O. BOX Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-2450

April 4, 1991

The Honorable Pat Pourchot
State Senator
Alaska State Legislature
P.O. Box V
State Capitol
Juneau, AK 99811

Re: FED statutes, Uniform Residential Landlord-Tenant Act.

Dear Senator Pourchot:

I received your letters under date of March 13, 1991, concerning the above-referenced Alaska statutes. The Commission agrees with you that there exists a great deal of confusion concerning which court has jurisdiction and which act governs in actions involving the forceable removal of a tenant, notice requirements, *etc.*. The Alaska Supreme Court has (depending upon your point of view) either ameliorated or exaserbated the jurisdiction problem by use of temporary Superior Court "appointments" of District Court Judges. As you may not be aware, the Court is now appointing District Court Judges to hear matters traditionally and under Title 22 been considered only by Superior Court judges. I expect this practice to continue.

FED actions have, since statehood, been heard in the District Court. However, since the passage of the Uniform Residential Landlord-Tenant Act, many such actions are now being heard in Superior Court. It would be well to have a statutory determination as to

which court is the appropriate court to hear FED matters.

Concerning other aspects of the Uniform Residential/Landlord-Tenant Act, it is, in fact, a uniform act subject to all of the disabilities of such an act. It requires careful review and consideration by the Legislature insofar as there are many "hard" policy decisions to be made. The Commission has, in the past, been reluctant to consider reform of these provisions precisely because they were controversial. However, since you have made a request, we will gladly and enthusiastically consider and provide draft legislation for consideration by you or your committee. As we have done in the past when dealing with a proposed bill fraught with political and controversial provisions, we will provide the Senate with a bill that provides alternative approaches to resolution of matters coming within the scope of the acts. You will then be able to choose from among competing provisions and make the hard policy decisions.

I will be placing your request on the agenda for our next Commission meeting. I do not have a date at the present time as the Commission has exhausted all of its fiscal 1991 funds. Unfortunately, our budget was allocated in a new manner which provided for specific funding of positions within the Legislative Affairs Agency, Legal Division. Our monthly budget reports regretably did not disclose that certain funds were encumbered, thus leading us to believe we had sufficient funding to complete our yearly meeting schedule. When we discovered that we had no further funds, we shut down the operation of the Commission. We are at this time awaiting a decision by the Legislature on a supplemental appropriation in the amount of $10,000 (the amount requested). If such funding is forthcoming, we will have one or two further meetings during fiscal year 1991. In any event, we will be able to take up this project during fiscal year 1992 and will attempt to have a draft bill for consideration during the next legislative session.

The Commission will keep you appraised of progress on this project. And, I want to express our thanks for the legislative interest in the work done by the Commission. We are always happy to respond to a request from legislators.

Very truly yours,

John W. Abbott

JOHN W. ABBOTT
Chair

cc: Senator Bettye Fahrenkamp,
Chair, Legislative Council

Terry Banister
Division of Legal Services

ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS,
CHAIR

ETHICS COMMITTEE,
CHAIR

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Senator Pat Pourchot
MEMORANDUM

TO: Rep. Dave Donley, Chair
House Judiciary Committee

DATE: Dec. 10, 1991

FR: Senator Pat Pourchot

RE: CS SB 35 (JUD) - Use of Rented Properties/Drug Violations

As you know, the goal of the proposed legislation is to shorten the length of time it takes to evict a tenant (a summary is attached):

1) For nonpayment of rent;

2) For engaging in felony alcohol or drug activities related to manufacture and delivery; and

3) To assist neighborhoods in halting drug trafficking.

It is my understanding that the House Judiciary Committee is planning to restore the 5-day notice provision as specified in the bill that passed the Senate and to delete the provision added in House Labor and Ccommerce requiring a "notice to quit" to be delivered by certified mail. I strongly support these proposed Judiciary Committee revisions.

Additionally, as I mentioned in my October 4 memo to you, the Code Revision Commission's proposed legislation to harmonize the FED and URL-TA statutes will necessitate that the Department of Law revise and republish its pamphlet on landlord/tenant rights. As the provisions in SB 35 will also be subject to this revision, it appears a fiscal note for republishing the pamphlet would more appropriately accompany the Commission's proposed legislation. Therefore, I respectfully request the House Judiciary Committee to delete the fiscal note accompanying HCS CSSB 35 (L&C).

I would greatly appreciate your scheduling this bill for a hearing at your earliest convenience.

L.O. Put in file

ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS, CHAIR

ETHICS COMMITTEE, CHAIR

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9:30 AM Friday

Senator Pat Pourchot

MEMORANDUM

TO: Rep. Dave Donley, Chair
House Judiciary Committee

DATE: Dec. 10, 1991

FR: Senator Pat Pourchot

RE: CS SB 35 (JUD) - Use of Rented Properties/Drug Violations

As you know, the goal of the proposed legislation is to shorten the length of time it takes to evict a tenant (a summary is attached):

1) For nonpayment of rent;

2) For engaging in felony alcohol or drug activities related to manufacture and delivery; and

3) To assist neighborhoods in halting drug trafficking.

It is my understanding that the House Judiciary Committee is planning to restore the 5-day notice provision as specified in the bill that passed the Senate and to delete the provision added in House Labor and Ccommerce requiring a "notice to quit" to be delivered by certified mail. I strongly support these proposed Judiciary Committee revisions.

Additionally, as I mentioned in my October 4 memo to you, the Code Revision Commission's proposed legislation to harmonize the FED and URL-TA statutes will necessitate that the Department of Law revise and republish its pamphlet on landlord/tenant rights. As the provisions in SB 35 will also be subject to this revision, it appears a fiscal note for republishing the pamphlet would more appropriately accompany the Commission's proposed legislation. Therefore, I respectfully request the House Judiciary Committee to delete the fiscal note accompanying HCS CSSB 35 (L&C).

I would greatly appreciate your scheduling this bill for a hearing at your earliest convenience.

Dave, let's get together & chat this week!!

ALASKA STATE LEGISLATURE

SENATE FINANCE COMMITTEE,
CO-CHAIR

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Senator Pat Pourchot

MEMORANDUM

TO: Representative Dave Donley, Chair DATE: Oct. 4, 1991
House Judiciary Committee

FR: Senator Pat Pourchot

RE: Fiscal Note Accompanying HCS CSSB 35 (L&C)

In working on SB 35 last session, the lack of harmony between the FED and URL-TA statutes became painfully obvious. As a result, I requested the Code Revision Commission to review these statutes and prepare draft legislation to eliminate ambiguities and inconsistencies. The Commission agreed to undertake this project during the interim. To confirm that this project was underway, I spoke with John Abbott, Chair of the Commission, last week and he assured me that Legal Services is currently working on draft legislation for introduction next January.

Notwithstanding SB 35, this revision of the FED and URL-TA statutes will necessitate that the Department of Law revise and republish its pamphlet on landlord and tenant rights as required by AS 44.23.020(b)(8). As the provisions of SB 35 will also be subject to this revision, it appears a fiscal note for republishing the pamphlet would more appropriately accompany the Commission's proposed legislation. Therefore, I respectfully request the House Judiciary Committee to delete the fiscal note accompanying HCS CSSB 35 (L&C).

Thank you for your consideration of this matter.

7-LS0160\V.1
Chenoweth
05/14/91

AMENDMENT

OFFERED IN THE HOUSE

TO: CSSB 35 (JUDICIARY)

Page 3, line 27:

Delete "a new section"

Insert "new sections"

Page 4, following line 1:

Insert a new section to read:

"Sec. 09.45.137. COMPUTATION OF TIME. In computing any period of days for which notice must be given under AS 09.45.060 - 09.45.160,

(1) the day on which notice is given is not to be included;

(2) the last day of the period is to be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday; and

(3) intermediate Saturdays, Sundays, and legal holidays are excluded from the computation."

Page 6, line 29, after "days":

Insert "**, as determined under AS 09.45.137,**"

Pat

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO:

☑ *CRIMINAL DIVISION CENTRAL OFFICE*
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

☐ *OFFICE OF SPECIAL PROSECUTIONS AND APPEALS*
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

March 5, 1991

The Honorable Pat Pourchot
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: SB 35

Dear Senator Pourchot:

You have inquired through staff whether the Department of Law uses the nuisance abatement procedures set out in AS 09.50.170 and, thus, whether our practices would be affected by an amendment to this statute. AS 09.50.170 et seq. authorize the attorney general to initiate legal proceedings to abate the nuisances created by "places used for immoral acts."

Any such abatement procedures would be undertaken by the civil division of the Department of Law, rather than by the criminal division. I have conferred with Assistant Attorney General Jeff Bush on behalf of the civil division and he advises me that the department currently does not utilize these procedures. Accordingly, the department would not be affected by any amendment to the statutes.

Thank you for inquiring. If you have any further questions that we may be able to answer, please do not hesitate to contact us.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: Margot O. Knuth
Margot O. Knuth
Assistant Attorney General

MOK:ma

03-C31LH

DIVISION OF LEGAL SERVICES

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240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM February 13, 1992

SUBJECT: Landlord-Tenant and Forcible Entry and Detainer Statutes (Work Order No. 7-LS2028)

TO: Senator Pat Pourchot

FROM: Tamara Brandt Cook
Director TBC

You have asked whether the Legal Services Division can prepare a draft over the interim to eliminate inconsistencies that exist in the Uniform Residential Landlord-Tenant and Forcible Entry and Detainer statutes for introduction at the beginning of the next regular session. It is my understanding that you would be shooting for a July 1, 1993 effective date.

This should present no major problem for the division to handle as an interim project. The bill has, therefore, been assigned a work order number. It has also been assigned to me, but that is only for our tracking purposes. At the end of the session, once staffing levels and general topic assignments can be reviewed, the bill will be assigned as a special project to a drafting attorney. That person will need guidance from your office with respect to policy choices that must be made to reconcile these statutes.

TBC:pl
92-101.plm

Enclosure

DIVISION OF LEGAL SERVICES

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MEMORANDUM May 13, 1991

SUBJECT: CSSB 35 (Judiciary)

TO: Representative David Finkelstein, Chair
House Labor and Commerce Committee
ATTN: Cliff Groh

FROM: Jack Chenoweth
Legislative Counsel

You have asked me to respond to criticism that has been voiced of this Senate-passed measure.

In the context of amendment of the forcible entry and detainer remedy, the reduction of the ten-day notice to five days in the event of non-payment of rent and, as provided in the Judiciary Committee Substitute, in the event the tenant's breach of the duty not to illegally engage in use of alcohol or drugs in rented premises, is a policy decision for the legislature. As has been noted in the course of the bill's consideration, among western states, Alaska alone provides for 10 days' notice. The statutes of all of the rest authorize commencement of FED or similar proceedings for the nonpayment of rent on as little as three or five days' notice.

The initial bill authorized use of the forcible entry and detainer remedy upon a tenant's arrest for violation of one or more of three sets of statutes involving the sale or possession with intent to sell controlled substances or imitation controlled substances, or for certain illicit sales of alcoholic beverages. The Senate-passed bill abandons the "arrest" requirement and substitutes a more general statement of the tenant's "violation" of one those provisions. I assume that, in the absence of a definitive statement in the measure as to at what point tenant's conduct constitutes a "violation," the courts will eventually have to step in and define that circumstance. And, probably for all the reasons noted in the objection to the earlier version of the bill, that definition may require evidence of tenant's guilt--a plea of guilty or nolo contendere, or a conviction by court or jury. In at least one other jurisdiction with which I am familiar that has a substantially comparable measure, the state prosecutor interceded to impose an interpretation that the statute might only be invoked after a tenant's conviction.

Objection is made that the measure authorizes eviction because of illegal conduct of others not under the tenant's control. The standard in fact is one that looks to evidence of the tenant's "knowingly permit[ting] others in the premises to engage in one more of [the] activities . . . " AS 34.03.120(b). I suggest that the tenant's control of the rented premises is not compromised by that provision.

good idea

To the objection that the bill may be applied to impair existing contracts, to cut off any possibility of that, the House may want to add a provision making the measure's provisions applicable to rental agreements entered into on and after the measure's effective date.

JC:pl
91-360.plm

Bill section 10 recasts existing law under which a court may issue a nuisance abatement order. The principal substantive change adds the underlined material in (a)(1) and directs the termination of the lease or rental agreement on premises subject to the abatement order if the tenant has been given notice of the nuisance abatement proceedings.

The substantive change made by bill section 11 is set out at p. 5, line 15: It adds flexibility in the abatement remedy by giving the court latitude to determine the amount of bond with sureties necessary when premises under abatement are to be returned to the owner rather than maintaining the requirement that the value of that bond reflect the full value of the property. The provision also adds, as a new subsection (c), a statement to clarify that, if an abatement order is subsequently cancelled because of compliance with (a) of that section, the related lease or rental agreement--terminated with the issuance of the abatement order under the authority of AS 09.50.210(a)(1) [bill section 10]--is not automatically revived.

Bill section 16 directs that, under the Uniform Residential Landlord and Tenant Act, an order of abatement entered by the court terminates the related rental agreement.

Bill section 17 identifies the particular activities involving alcoholic beverages, controlled substances, and imitation controlled substances that warrant relief under the expanded nuisance abatement provisions. Generally, these statutes identify sales and possession with intent to sell in violation of law. The Senate-passed measure abandons the "arrest" standard of the original bill and substitutes reference to "a violation" of one of the criminal statutes cited.

FORCIBLE ENTRY AND DETAINER REMEDY AS ALTERNATIVE OR SUPPLEMENT TO NUISANCE ABATEMENT:

Proposed bill section 2 amends AS 09.45.090 in part as follows:

-- The amendment made to (1)(B) sets five days as the period in which a landlord must wait after giving notice to quit and making written demands for possession of rented premises to commence a forcible entry and detainer proceeding in the event the tenant has violated provisions of the Uniform Residential Landlord and Tenant Act against knowing engagement in certain illegal activities involving alcohol or drugs on premises or for violation of a similar provision in rented premises not covered by that Act.

-- The amendment made to (3) authorizes the landlord to use the forcible entry and detainer remedy to enforce an order of abatement. Under the provision, the landlord may, after obtaining the abatement order under AS 09.50.210(a), seek immediate relief.

A related provision, bill section 6, a new section, authorizes the use of an abatement order, obtained at the end of a trial under the nuisance abatement statute, to serve as prima facie evidence of unlawful holding of premises by force for purpose of the hearing required by the forcible entry and detainer process.

OTHER RELATED CHANGES:

Bill sections 1 and 12, adding AS 04.21.075 and AS 17.30.160, respectively, impose on peace officers the requirement to notify a landlord when a tenant has been arrested for violation of one of the identified criminal offenses involving alcohol or drugs.

Proposed bill section 2 amends AS 09.45.090 in part as follows: The addition of material in (2)(B) is included in order to authorize a landlord to recover premises after a notice to quit is given for the tenant's breach of a condition or covenant other than nonpayment of rent or engaging in identified criminal activity involving alcohol or drugs. (Under AS 09.45.110, not amended by this measure, ten days minimum notice must be given--90 days in the event of a farm- or agriculture-related tenancy.)

Bill section 13 adds as a tenant's duty the obligation of the tenant not to engage in illegal activities on rented premises or to knowingly allow others in the premises to do so.

Bill section 14 makes a technical change. Under current law, in order to secure relief under AS 34.03.220(a), a provision detailing the tenant's responsibilities under a rental agreement with respect to rented premises as those are enumerated in AS 34.03.120, the tenant's noncompliance must "materially [affect] health and safety." As noted immediately above, bill section 13 adds to the tenant's responsibilities "not knowingly [to] engage at the premises in [the specified] illegal [activities] . . . or knowingly permit others in the premises to [do so] . . . . " The change made by this bill section confines the "noncompliance materially affecting health and safety" standard to the tenant responsibilities set out in current law and serves not to impose that limiting standard to the added tenant responsibility not to engage on the premises in dealing in alcohol and drugs in violation of law.

The measure's bill section 18 adds a codified section, proposed AS 34.05.100, extending to tenancies not covered by the Uniform Residential Landlord and Tenant Act the provisions establishing the duty on the tenant not to use the rented premises for illegal activities. Under this new section, noncompliance with the provision is a basis for seeking relief through the nuisance abatement process and, as with bill section 16 above, an order of abatement covering a premises that falls within this section terminates the rental agreement.

JBC:lmb
91-185.lmb

ALASKA STATE LEGISLATURE

SENATE FINANCE COMMITTEE,
CO-CHAIR

L&C

Senator Pat Pourchot

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MEMORANDUM

TO: All Senators DATE: April 18, 1991

FR: Senator Pat Pourchot Pat

RE: Response to April 4 Clocksin letter objecting to SB 35 (Landlord/Tenant legislation)

For your information, I've attached a copy of a response from Legal Services to Don Clocksin's April 4 letter which he sent to you regarding his concerns with provisions contained in SB 35 relating to eviction of tenants for nonpayment of rent and for certain alcohol and drug activities.

Recognizing the need to revise the referenced statutes to clarify and remove existing ambiguities, I have requested the Code Revision Commission to undertake this project during the interim.

DIVISION OF LEGAL SERVICES

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MEMORANDUM April 13, 1991

SUBJECT: Don Clocksin's April 4 letter objecting to Senate Bill 35

TO: Senator Pat Pourchot

FROM: Jack Chenoweth
Legislative Counsel

Your staff provided me a copy of Don Clocksin's recent letter and solicited my comments.

The reduction of the ten-day notice to five days in the event of non-payment of rent is a policy decision of the Alaska legislature. As was noted in the course of the bill's consideration, among western states, Alaska alone provides for 10 days' notice. The statutes of all of the rest authorize commencement of FED or similar proceedings for nonpayment of rent on as little as three or five days' notice. Moreover, Doug Baily, responding to an objection that five days' notice may not be sufficient in cases involving tenancies in rural Alaska where mail service can often be sporadic, pointed out that the tenant's actual receipt of notice would not seem to be required: the statute (set out as AS 09.45.100(3) in CSSB 35 (Jud)) only makes a reference to the landlord's sending notice by mail; it doesn't depend on the notice's receipt. The current notice provisions are not without fault, but reducing the amount of notice required to five days in the event of non-payment of rent would not seem to be out of line with what is commonly being done elsewhere.

At the bottom of page 2, Don voices objection to a tenant's suffering possible eviction because of the illegal conduct of others "not under their control," and questions the use of the summary proceeding authorized by the FED action to secure eviction in those situations before the underlying criminal action is resolved. In response to the first objection, let me point out that CSSB 35 (Judiciary) provides for eviction of a tenant engaged in illegal activity involving alcoholic beverages or controlled substances, or the tenant's "knowingly permit[ting] others in the premises to engage in one or more of those activities . . . " (AS 34.03.120(b), p. 6, lines 12, 13). The tenant's control of the premises is not compromised by that provision. If the tenant has knowledge of the activity, AS 34.03.120 may serve as the basis for an FED

action under AS 09.45.090(1)(B). On the second point, Don is correct in the conclusion he reaches: unless the tenant pleads guilty at arraignment, the FED action, a civil remedy, would likely precede any significant activity taken on disposing of the criminal charge in the criminal process and it is, as he concludes, likely that an order of eviction may be entered before the criminal charge is finally resolved. But my recollection is that the objection was earlier considered, in the context of substituting "conviction" for "arrest" and the committee adopted instead the language now set out in bill section 17 of the current CS: the tenant's being engaged in "a violation of [a specific statute]." You and your colleagues should understand that the court may be asked to pin down just exactly when "a violation" of the statute occurs. If the court concludes that there is no violation short of a conviction, then the conviction--on a guilty plea or on entry of judgment following a trial before a jury or a judge--will always precede eviction. If the court concludes otherwise, the FED action will almost surely occur first. (The handing of this topic by the City of Seattle is summarily discussed in the footnote at the last page of my February 5 memo.)

The nuisance "twist"--the changes made to AS 09.50--is hardly original with us. It is, as you well know, derived from a California precedent that was in turn based on a civil action of the same kind--nuisances in red light districts--as the Alaska statute that is amended and extended in this bill. Jeannie Larson of your staff provided me with a report summarizing one California community's successful use of the statute to clean out a known crack house when other attempts and initiatives to eliminate drug activities had failed.

Don's assertion concerning use of reputation evidence would seem to be undercut by our reliance on a court rule, Evidence Rule 405, that permits admission of reputation evidence under certain conditions and authorizes cross-examination of parties offering that testimony or evidence. Our mention of reputation evidence in this bill follows that precedent and, while it does set aside the 1928 trial court decision, the court will apply the standard otherwise applicable to introduction and use of reputation evidence.

On the issue of court rule changes Don's letter doesn't identify specific rules affected by the changes, so I'm not prepared to respond on point. Still, the legislature has latitude to make substantive changes that affect court rules that may not require court rule change treatment under article IV, section 15.

I can't speak to matters of fiscal impact and necessity.

*

Finally, since my fingerprints are on the documents, I am somewhat sympathetic to Don's conclusion about the difficulty in understanding the draft ("The Bill is Incomprehensible."). The forcible entry and detainer provisions and the nuisance law date from territorial days and, from a drafting perspective, are terrible products to

have to amend in a piecemeal fashion as has been proposed here. The Uniform Residential Landlord-Tenant Act, the more recent addition to the body of Alaska law, is a significant improvement, but amending that Act is not without its share of problems. The changes made to all--the need to try to tie them all together into one cohesive package--was not easy. The evidence of that, I think, is the labors that your staff and I performed in trying to provide information as to how this all would fit together. With all the time and attention given, there were still some unanswered questions.

In the course of the committee proceedings on the bill, I made reference to a fifteen-year old law review article that Don authored in which he cites the continuing inconsistencies between the FED proceedings and the URL-T Act, and suggests that they need to be better harmonized. I agree. Unfortunately, that was not the goal of this drafting assignment. Meshing the two is still a task that should be done.

Whether or not the bill drafting was done competently, I understand the objection but respectfully suggest that, until the FED and nuisance provisions are comprehensively revised and until the FED and URL-TA provisions are better harmonized, drafting amendments that interrelate these three areas of law will be difficult--difficult to fashion and especially difficult to explain to laymen not readily familiar with their provisions.

*

Thanks, I think, for the opportunity to read the critical reviews and to respond.

JBC:lmb
91-117.lmb

WAGSTAFF, POPE & CLOCKSIN
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March 27, 1991

Senator Pat Pourchot
Room 504, Capitol Building
P.O. Box "V"
Juneau, Alaska 99811

Re: Senate Bill 35
Our File No. 3014.31

Dear Senator Pourchot:

I have been asked by the Board of Directors of the Alaska Civil Liberties Union to review and comment on your Senate Bill 35 relating to landlord and tenant law. After reviewing that Bill, I find that I must criticize it not only for its invasion of certain important constitutional principles, but also because it is unfair to tenants and unnecessarily tips the scales of justice in favor of landlords.

As background, I participated in the drafting of this legislation in 1973-74 as a lobbyist for the Alaska Legal Services Corporation. At the time of its passage, it constituted a careful balance between the rights and obligations of tenants and the countervailing rights and obligations of owners of rental property. Throughout the years following its enactment, including the six years I served in the Legislature, there were numerous attempts to amend this legislation, primarily by landlord advocates. Those efforts were almost universally opposed by legislators who had been involved in the original adoption of the legislation because they would destroy the careful balance that had been achieved. Chief among those who was reluctant to alter the balance was Senator Bob Ziegler, by no means a tenant advocate, but an aggressive believer in maintenance of a carefully crafted legislative compromise.

There are three portions of this legislation which are particularly offensive to constitutional principles. First, the legislation would grant the right to evict a tenant based solely on the individual determination of a police officer with regard to what crime has been committed. The right to evict in the bill is triggered by an arrest, not the filing of a charge nor the

conviction for that charge. This violates due process, one of the most fundamental rights in our constitution, because it authorizes the court to remove somebody from his or her home prior to any determination that the alleged conduct has actually occurred. A single police officer who finds a small amount of marijuana in a home has the power under this legislation to force the removal of the family from that home even though there is no conduct which ultimately results in a conviction for an offense listed under AS 34.03.360(20), which appears as Section 13 of this legislation. In no other situation does a civilized society leave that kind of power with the individual police officer.

Second, the reduction from ten to five days of the notice required prior to eviction will have the practical effect of evicting many people before they have an opportunity to respond. AS 09.45.100(2) allows this notice to quit to be left at the premises. My experience is that this is the common method of providing notice. If the tenant is absent for the five day period of this notice, he or she will have no opportunity to respond to the notice. Failure to respond will result in eviction, even if there had been a legitimate defense. Deprivation of property by providing inadequate notice violates due process of law.Furthermore, as noted above, this ten day notice provision was a compromise which provided the landlord an expedited procedure but assured a reasonable period of time for the tenant to respond. This ten day notice provision was comparable to the notice imposed upon a tenant under AS 34.03.170, as well as the ten day requirement in AS 34.03.160. The effect of this provision of your bill is to strengthen the powers of landlords without a concomitant strengthening of any right of the tenant.

Third, this law would alter many existing landlord-tenant contracts. Typically, those contracts do not contain a five day notice provision, and do not allow eviction upon arrest for a crime. If this legislation is interpreted to modify those contracts, then it impairs the obligation of contract in violation of Article I, Section 15 of the Alaska Constitution. As a practical matter, since there is no delayed effective date in this legislation, there will be great difficulty in determining which landlord-tenant relationships to which this legislation applies. It cannot alter existing contractual relationships. Since some of those relationships are month to month and some are for longer periods of time, it will be unclear which relationships are affected by the legislation and when.

Furthermore, it appears that you are trying to exclude so-called "possession" crimes from this legislation. While that is an admirable goal, the fact that the right to evict is triggered by an arrest, and not upon the filing of a charge or conviction, means

that this limitation is illusory. A police officer who enters a home and observes an amount of marijuana could believe that the marijuana was possessed with "intent to deliver" and arrest on that basis. However, upon review of the case by a prosecutor, or a judge and jury, the determination may be that there was no "intent to deliver." In such a case a person will have been evicted, in effect, for a possession crime - a result not intended by this legislation.

Finally, AS 34.03.120(8), added by Section 9 of this legislation, allows you to evict a tenant if he or she knowingly permits someone else to engage in these illegal activities. This allows a family to be evicted from their home even though the tenant has not engaged in any illegal activity. While you may feel that you are responsible for every person who visits your home, I doubt that you would consider it fair to have your family evicted because someone commits an illegal act in your home with your knowledge. This constitutes the rankest form of guilt by association - a principle that should not be reflected in any legislation adopted by the Alaska Legislature.

I encourage you to rethink the purpose behind this legislation and whether the legislation actual accomplishes that purpose. The legislation is not necessary, because landlords currently have the tools to deal with after-hours clubs and drug dealing in their rental units. Their inability to utilize those tools is a social problem, not one to be solved by the deprivation of the rights of a class of citizens who find it necessary to rent their premises and who may be innocent of any crime.

Thank you very much.

Sincerely,

Don Clocksin

DC:dlm\30143103.ltr

DIVISION OF LEGAL SERVICES

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MEMORANDUM February 26, 1991

SUBJECT: Questions concerning Senate Bill 35 and draft CSSB 35 ( )

TO: Senator Pat Pourchot
ATTN: Jeannie Larson

FROM: Jack Chenoweth
Legislative Counsel

1. Unless the landlord and tenant have provided in their rental agreement for a different remedy, the landlord must use the forcible entry and detainer process of AS 09.45.060-09.45.160 to secure termination of a tenant's forcible entry or unlawful detainer of rented premises.

2. In a residential tenancy, if the landlord seeks to remove a tenant from possession of rented premises based on the tenant's alleged illegal drug activities on the rented premises, under current law the landlord (1) must determine that the tenant has, under AS 34.03.220(a), failed to comply with a tenant's obligation under the rental agreement or under AS 34.03.120 (presumably § 120(a)(6), interference with quiet enjoyment of the premises by neighbors, the justification cited by the Alaska Legal Services Corporation in its February 5 letter in opposition to SB 35), (2) give the 20 day notice under AS 34.03.220(a) directing the tenant to rectify the breach, and (3) if the breach is not adequately remedied within the time allowed--and one wonders how a tenant who engages in illicit alcohol- or drug-activity will do that--move to terminate the rental agreement under the forcible entry and detainer process outlined, presumably under AS 09.45.090(2)(the tenant holds "contrary to a condition or covenant in the lease or agreement,"), in which case, AS 09.45.100 directs a minimum of 10 additional days' notice. Thus, the period under which the landlord would be obligated to wait would necessarily exceed 30 days: a minimum of 20 days under AS 34.03.220(a) and not less than 10 days under AS 09.45.100.

3. The proposed amendment to AS 09.45.130 set out in section 7 of SB 35 is intended to address the situation in which a tenant has prepaid rent and thereafter

the landlord, during the period of tenant's occupancy covered by the prepaid rent, seeks the tenant's removal for tenant's involvement in illegal drug- or alcohol-related activity. AS 09.45.130(a) appears to protect the tenant who has paid advance rent "until the expiration of the period for which that tenant or person may have paid rent for the premises in advance." In other words, there is the color of argument that a tenant may try to "protect" or insulate himself by paying, say, three-months or even one year in advance and go about using the premises for illegal activities without apparently worrying about removal under AS 09.45.060 - 09.45.160. The proposed subsection (b) is intended to eliminate that possibility. Nothing waives the forcible entry and detainer notice requirement, and the notice provisions of AS 09.45--taken in conjunction with those that may be required by AS 34.03--are otherwise applicable.

4. Section 7 of draft CSSB 35 ( ), M version, offered yesterday, authorizes introduction of reputation evidence to demonstrate nuisance. Rule 405 of the Evidence Rules authorizes introduction of evidence of the reputation of or opinion about a person. The circumstances under which that evidence may be offered, received, and considered are fairly well established in the Rules; this is not, then, a provision intended to change the evidence rule as it relates to persons. Taking "reputation" in its dictionary sense ("estimation in which a person or thing is commonly held"--Webster's New World Dictionary), there seemed to be a need for a provision by which neighbors or other residents of a community could describe to a court the opinion or judgment concerning the premises based on their collective opinion of it. Since premises may come to have a community or neighborhood reputation, there should be a clear statement of authority for a court to permit the use of that evidence, subject, of course, to the parameters otherwise applicable to reputation evidence. The provision is permissive. Thus, the bill section would cover evidence relating to personal reputation as well as the collective judgment or repute of a neighborhood or community concerning the premises, though it is only as to the latter that this provision would appear to have substantive effect.

JC:gc
91-102.glc

DIVISION OF LEGAL SERVICES

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MEMORANDUM February 19, 1991

SUBJECT: G.2 and G.4 amendments to Senate Bill 35

TO: Senator Pat Pourchot
ATTN: Jeanne Larson

FROM: Jack Chenoweth
Legislative Counsel

Enclosed are two amendments introducing material amending the nuisance statutes in the context of expansion of landlord remedies for illegal drug and alcohol transactions in rented premises. Both versions take the approach we discussed: expansion of the statutory remedy authorizing abatement of lewd houses.

Let me briefly review the abatement provisions (AS 09.50.170-09.50.240) as they currently exist: These are, as I indicated, typically brought as "in rem" actions, in which the real estate is named the defendant (i.e. State of Alaska v. Property located at 900 East First Street in the City of Borough of Juneau) as well as the premises owner or occupant. Under the statute, the attorney general or a private citizen may seek relief. Injunctive relief is authorized "to perpetually enjoin the nuisance . . .", and contempt proceedings may be initiated for violation of the nuisance injunction. The court is also authorized to abate the nuisance--in essence, order its closure--with contempt authorized for violation of the abatement order. The abatement order may direct sale of the premises and its contents. However, short of a sale, the owner may seek to recover immediate possession. The owner may recover if he or she (1) has not committed contempt in conjunction with an injunction in the proceeding, (2) appears and pays all costs, and (3) files a bond with sureties "in the full value of the property as determined by the court."

Amendment G.2, the shorter of the two amendments submitted, essentially makes two changes: (1) it adds to the abatement statute circumstances in which the remedy may be used to include property used for illegal drug- and alcohol-related purposes, and (2), as we had discussed, it diminishes the severity of the surety bond requirement by eliminating the "in the full value of the property as determined by the court" and replacing it with "an amount to be determined by the court." In all other

respects, the relief authorized by the amendment follows the procedures of the current lewd house abatement statute.

Because it is tied, through the definition, to the "illegal activity . . ." definition of AS 34.03.360, amendment G.2 presupposes that the nuisance abatement provisions would be available to the attorney general or to private citizens only if the tenant suffers the act that triggers relief under the changes being made to the forcible entry and detainer statute and the Uniform Residential Landlord and Tenant law by the measure, i.e. that is, the tenant was "arrested" (as under current provisions of SB 35) for one of the enumerated drug- or alcohol-related violations. Consequently, objection may be raised to the first amendment for the reasons that objection is being raised to the provisions of the measure.

I prepared amendment G to avoid that difficulty. The second amendment

(1) strips from SB 35 the provisions that tie drug- and alcohol-related penalties to arrests;

(2) authorizes relief, as in amendment G.4, through the revised nuisance mechanism; and

(3) expands, following the California model (California Health & Safety Code § 11575.5), the admissibility of testimony to prove the nuisance; admission of reputation evidence is authorized by Evidence Rule 405, so a court rule change would not seem to be necessary.

I retained, in both amendments, the provisions by which state and municipal peace officers are to contact the landlord when arrests are made on rented premises. Independently of the handling of nuisance abatements introduced by these two amendments, there seems to me good reason for a property owner to know what is occurring on the premises the landlord is renting. But retention of the provision, in light of these amendments, is a policy call, not one that must be changed or deleted by law.

I can make further changes to these two approaches as you may direct, but believe that these are the two basic approaches that you asked me to consider in preparing the nuisance amendment revision to this bill.

JBC:pl
91-092.plm

Enclosures

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM February 4, 1991

SUBJECT: Re Senate Bill 35

TO: Senator Pat Pourchot
ATTN: Jeannie Larson

FROM: Jack Chenoweth
Legislative Counsel

You have asked for an overview of legislation in other states permitting a landlord to terminate a lease when the landlord determines that the tenant has used the premises for illegal purposes without having evidence of a conviction. The following examples, not intended as an exhaustive list, are suggestive of the authority provided by the various states. The statutes reported generally address the tenant's illegal activities in three areas--illegal sale of liquor, gambling, and prostitution.

1. Automatic termination of lease, or termination of the lease at the landlord's option, without specification that the landlord is entitled to possession:

Automatic termination:

Colorado Rev. Stat. Ann. §13-21-103 -- "unlawful sale or giving away of intoxicating liquors works a forfeiture of all rights of the lessee or tenant under any lease or contract of rent upon the premises."

Illinois Ann. Stat., ch. 43 §135 -- "unlawful sale or gift of alcoholic liquor works a forfeiture of all rights of the lessee or tenant under any lease or contract of rent upon the premises where the unlawful sale or gift takes place."

At landlord's option:

Alabama Code, §28-4-91 -- "unlawful manufacture, sale, . . . giving away or otherwise disposing of any prohibited liquors or beverages contrary to the law of the state . . . shall, at the option of the landlord or lessor, work a forfeiture of all the rights of any lessee or tenant under any lease or contract of rent of the premises where such unlawful act is performed . . . by the lessee or tenant or by any agent, servant, clerk, or employee of the lessee or tenant with the latter's knowledge or permission."

2. Automatic termination of lease, thereby entitling the landlord to recover possession but without specifying the procedure the landlord is to follow:

Ohio Rev. Code. Ann. §4399.06 -- "all contracts whereby any building or premises are rented, leased, used, or occupied shall become void when such building or premises are used, in whole or in part, for the sale of intoxicating liquors contrary to law, and the lessor, on and after the sale or gift of intoxicating liquors, shall be held to be in possession of such building or premises."

3. Automatic termination of lease, or termination of the lease at the landlord's option, entitling the landlord to recover possession without process of law:

Automatic termination:

Mississippi Code Ann. §95-3-23 -- "if a tenant or occupant of a building or tenement under lawful title uses such place as a nuisance . . . , such use shall annul and make void the lease or other title under which he holds and, without any act of the owner, shall cause the right of possession to revest and vest in the owner, and the owner may without process of law make immediate entry upon the premises."

New Hampshire Rev. Stat. Ann. §544.41 -- "if a tenant or occupant of a building or tenement, under a lawful title, uses such premises . . . for any of the unlawful purposes enumerated herein[,] such use shall annul and make void the lease or other title under which he holds and, without any act of the owner, shall cause the right of possession to revert to him, and he may, without process of law, make immediate entry upon the premises."

Rhode Island Gen. Laws Ann.

§11-19-23 -- "every lease of any house, shop, or place used as a gambling house or place where gaming is practiced or carried on . . . shall be void, and no notice to the occupant thereof other than a demand for the possession of the premises, shall be necessary to eject such occupant therefrom."

§11-30-6 -- "if any person, being a tenant or occupant under any lawful title of any building or tenement not owned by him, shall use said premises or any part thereof for [unlicensed manufacturing or distribution of intoxicating liquor], such use shall annul the lease or other title under which said occupant holds, and, without any act of the owner, shall cause the right of possession thereof to revert and vest in him, and said owner may make immediate entry thereon and repossess himself of the premises without process of law."

At landlord's option:

Ohio Rev. Code Ann. §3767.10 -- "if a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of lewdness,

assignation, or prostitution, such use makes void the lease or other title under which he holds, at the option of the owner, and, without any act of the owner, causes the right of possession to revert and vest in such owner, who may without process of law make immediate entry upon the premises."

4. Automatic termination of lease, allowing the landlord to enter on to the leased property or to use the remedy provided in the state's summary proceeding statute:

Kansas Stat. Ann. §41-805(1) -- "if a tenant of any building or premises uses the same, or any part thereof, in maintaining a common nuisance . . . , or knowingly permits such use by another, such use shall render void the lease under which he or she holds, and shall cause the right of possession to revert to the owner or lessor, who may make immediate entry upon the premises, or may avail himself or herself of the remedy provided for the forcible detention thereof."

Maine Rev. Stat. Ann., tit. 17 §2743 -- "if any tenant or occupant, under any lawful title, of any building or tenement not owned by him uses it or any part thereof for any purpose [involving illegal sale or keeping of intoxicating liquor or narcotics, lewdness, or gambling], he forfeits his right thereto, and the owner thereof may make immediate entry, without process of law, or may avail himself of the remedy provided [i.e. forcible entry and detainer]."

Oklahoma Stat. Ann., tit. 21, §958 -- "whenever any lessee of any house or building shall be convicted of suffering any of the said prohibited gambling devices or games of chance to be carried on in said house or building, the lease or contract or letting such house or building shall become void and the lessor may enter upon the premises and shall recover possession of said leased property as in the case of forcible detainer."

5. Automatic termination of lease, granting the landlord the same remedy as the landlord would have against a holdover tenant:

Automatic termination for a tenant's illegal use:

Missouri Rev. Stat. §441.020 -- "whenever any lessee of any house or building shall suffer any prohibited gaming table, bank, or device to be set up or be kept or used therein, for the purpose of gaming, or keeping in the same a bawdyhouse, brothel, or common gaming house, the lease or agreement for letting such house or building shall become void, and the lessor may enter on the premises so let, and shall have the same remedies for the recovery thereof as in the case of a tenant holding over his term."

New Jersey Stat. Ann. §46.8-8 -- "if the lessee of any dwelling house or other premises situate in this state shall use the same for purposes of prostitution or assignation, the lease or agreement for letting the same shall enter thereupon become immediately void, and the landlord may enter thereon, and shall have the same remedies to recover possession as are given by law when a tenant holds over after the expiration of his lease."

Utah Code Ann. §32A-13-6(6) -- "if any tenant of any premises uses the same or any part thereof in maintaining a common nuisance . . . , or knowingly permits use by another, the lease is rendered void, and the right to possession reverts to the owner or lessor[,] who is entitled to the remedy provided by law for forcible detention of the premises."

Termination at landlord's option:

Oregon Rev. Stat. §91.240(3) -- "any person letting or renting any room, building, or place mentioned in [O.R.S.§ 91.240(1)] which is at any time used by the lessee or occupant thereof, or any other person with the knowledge or consent of the lessee or occupant, for gambling purposes, upon discovery thereof, may avoid and terminate such lease or contract of occupancy, and recover immediate possession of such building or other place by an action at law for that purpose . . . ."

Rev. Code of Washington §4.24.080 -- "it shall be lawful for any person letting or renting any house, room, shop, or other building whatsoever . . . which shall, at any time, be used by the lessee or occupant thereof, or any other person, with his knowledge or consent, for gambling purposes, upon discovery thereof, to avoid or terminate such lease, and to recover immediate possession of the premises by an action at law for that purpose."

6. Automatic termination of lease, or termination of the lease at the landlord's option, but mandating that the landlord serve a notice to quit on the tenant:

Automatic termination of the lease:

California Code of Civil Procedure §1161(4) -- "any tenant . . . assigning or subletting or committing waste upon the demised premises, contrary to the conditions or covenants of his lease, or maintaining, committing, or permitting the maintenance or commission of a nuisance upon the demised premises . . . thereby terminates the lease, and the landlord, or his successor in estate, shall upon service of three days' notice to quit upon the person or persons in possession, be entitled to restitution of possession in such demised premises . . . . "

Termination at landlord's option:

Nevada Rev. Stat. Ann. §40.2514 -- "a tenant of real property or a mobile home . . . is guilty of unlawful detainer when he:

. . .

(4) suffers[,] permits[,] or maintains on or about the premises any nuisance;

. . .

and remains in possession after service upon him of 3 days' notice to quit.

*

An amendment extending the authority of proposed AS 34.03.222 to tenancies other than tenancies in dwelling units covered by the Uniform Residential Landlord and Tenant Act is enclosed.

JBC:lmb
91-013.lmb

Enclosure

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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MEMORANDUM December 28, 1990

SUBJECT: Landlord's remedies (Work order 7-0368A)

TO: Representative Ramona Barnes
ATTN: Mel Krogseng

FROM: Jack Chenoweth
Legislative Counsel

I

This is by way of response to your request for an overview of the operation of the state's forcible entry and detainer statutes as a remedy for landlords to regain possession of rental premises. Involving two sometimes inconsistent sets of statutes, this is a somewhat complicated area of law.. We agreed that, before drafting any amendments or changes to the forcible entry and detainer statutes, I would prepare a summary of the current law governing the landlord's removal of tenants from rental premises. Your request was apparently prompted in part by a request to make available to landlords a more expedient eviction remedy.

FORCIBLE ENTRY AND DETAINER DEFINED:

"Forcible entry and detainer" is a civil remedy that governs the eviction or removal of tenants from rental premises. The applicable statutes are to be found in AS 09.45.060 - 09.45.160. As a general rule, the remedy most commonly applies in those instances in which a tenant has failed to pay rent when due under the rental agreement, AS 09.45.090(1), or when the landlord has given the tenant notice to quit and the tenant fails to do so, AS 09.45.090(2).

LIMITATIONS ON USE OF FORCIBLE ENTRY AND DETAINER ACTION:

The forcible entry and detainer remedy does not apply in a vacuum. Alongside the forcible entry and detainer remedy, the state's Uniform Residential Landlord and Tenant Act, AS 34.03, sets out rights and remedies applicable to both residential landlords and tenants. In McCall v. Fickes, 556 P.2d 535 (Alaska 1976), the court determined that the statutory provisions of the forcible entry and detainer remedy

might be used "where they do not conflict with the Uniform [Residential Landlord and Tenant] Act," thereby setting the Uniform Act as a limitation on the civil remedy. Taking the Uniform Act and the civil remedy together, then, forcible entry and detainer is typically available to assert and establish the landlord's right to possession under circumstances giving rise to the right of possession under either AS 09.45.060 - 09.45.160 or AS 34.03. The remedy is available in the event the tenant fails to pay rent when due--particularly when, under a month-to-month tenancy, the tenant fails to pay rent in full in advance--but continues to hold over in possession of the rented premises.

TERMINATION OF TENANCY THROUGH FORCIBLE ENTRY AND DETAINER:

The forcible entry and detainer statute sets out time periods that, after notice has been given to the tenant by the landlord, determine when the tenancy ends.

Each of the two principal instances in which the forcible entry and detainer remedy is available to evict the tenant requires written notice given at least 10 days prior to initiating the forcible entry and detainer action. The first involves unpaid rent: If a tenant has failed to pay rent when due under the rental agreement and eviction is sought under AS 09.45.090(1), the paragraph allows use of the action to recover possession only upon 10 days' demand made in writing for the possession. 1/ If, in different circumstances, the landlord gives the tenant notice to quit and the tenant fails to do so and eviction is sought under AS 09.45.090(2), then AS 09.45.100 and 09.45.110, setting out the requirements for a notice to quit, direct that the notice to quit be in writing and served at least 10 days before the action. 2/

1/ Ten days' notice is also required by applicable provisions of the Uniform Residential Landlord and Tenant Act when rent remains unpaid when due:

> If rent is unpaid when due and the tenant fails to pay rent within ten days after written notice by the landlord of nonpayment and the intention to terminate the rental agreement if the rent is not paid within that period of time, the tenancy terminates . . . , and the landlord may terminate the rental agreement and immediately recover possession of the rental unit; . . . .

AS 34.03.220(b) (Emphasis added.)

2/ Similarly, ten days' notice is also required in instances in which the landlord gives the tenant notice to quit under the Uniform Residential Landlord and Tenant Act. Under AS 34.03.290(c),

> If [a] tenant remains in possession [of rented premises]

(continued...)

When compared to the same or substantially similar notice requirements for termination of tenancy found in the forcible entry and detainer, unlawful detainer, or similar remedial statutes in other jurisdictions, the ten day notice requirement of Alaska law provides the tenant with a comparatively long notice period. Of the other 12 western states, for example, the notice requirements applicable to use of the detainer remedy in the event of tenant's failure to pay rent when due have been set at either three [3] or five [4] days.

JUDICIAL PROCEEDINGS UNDER THE FORCIBLE ENTRY AND DETAINER STATUTE:

Having received sufficient notice of termination of the tenancy, if the tenant thereafter refuses to leave the rented premises within the time allowed, the landlord may begin the process of obtaining the tenant's eviction by filing an action and

---

[2](...continued)

> without the landlord's consent after the expiration of the term of the rental agreement or after its termination, the landlord may bring an action for possession . . . .

and under AS 34.03.270,

> If [a] rental agreement is terminated, the landlord may have a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement.

In McCall v. Fickes, 556 P.2d 535 (Alaska 1976), the court concluded that the forcible entry and detainer remedy was available to a landlord as the "action for possession" identified in AS 34.03.290(c), thereby implying the application of the ten day notice period of the forcible entry and detainer statute for evictions of tenants in these circumstances.

[3] Three days' required notice by the landlord to the tenant is provided for under the laws of California (Cal. Code of Civ. Proc. § 1161(2) and (3)), Colorado (Colo. Rev. Stat. § 13-40-104(d)), Idaho (Idaho Code § 6-303(2)-(4)), Montana (Montana Code Ann. § 70-27-108(2)), New Mexico (N. Mex. Stat. Ann. § 47-8-33(A) and (B)(3 days' notice for failure to pay rent, but 7 days for other circumstances), Oregon (Ore. Rev. Stat. §§ 90.405(2) and 105.115(2)(a)), Utah (Utah Code Ann. § 78-36-3(1)(a)), Washington (Rev. Code Wash.¶ 59.12.030(3)), and Wyoming (Wyo. Stat.§§ 1-21-1002(a)(1) and 1003).

[4] Five days' required notice by the landlord to the tenant is provided for under the laws of Arizona (Arizona Rev. Stat. § 12-1173(2)-(4)), Hawaii (Hawaii Rev. Stat. § 521-68(a)(5 business days' notice), and Nevada (Nev. Rev. Stat. § 40.-253).

serving summons. Under AS 09.45.120, "[s]ummons . . . shall be served not less than two nor more than four days before the date of trial." The applicable court rule, Civil Rule 85, contains parallel provisions on time of service and, additionally, directs that "the date set for trial shall be not more than 15 days from the date of filing of the complaint unless otherwise ordered by the court." 5/

CONCLUSION:

My review suggests that, to provide a more expedient remedy, you may profitably consider reducing, from ten to, say, three or five days the period between the giving of written notice of termination of tenancy and the commencement of the forcible entry and detainer action. A reduction to a period of three to five days would bring Alaska law in this regard into line with the time allowed by other western states. Moreover, as with the Nevada statute cited, the period of the time reduction might vary from, for example, three days for notice of tenancy due to nonpayment of rent to five days for other circumstances.

I would not recommend a change in the minimal period between landlord's service

---

5/ Alaska's two-to-four day window period allowed for the landlord's service of summons on the tenant prior to trial compares favorably to like requirements of 11 other western states--Hawaii's service of summons requirement is set by court rule, not available in the Legal Services Division's library:

Arizona ("at least two days before the return date"), Ariz. Rev. Stat. § 12-1175(C);

California ("within five days, including Saturdays and Sundays but excluding all other judicial holidays"), Cal. Code of Civ. Proc. § 1167;

Colorado ("at least five days before the day for appearance"), Colo. Rev. Stat. § 13-40-112;

Idaho ("not less than five days before the day of trial appointed by the court"), Idaho Code § 6-311(5);

Montana ("at least four days before the return day designated [in the summons]"), Montana Code Ann. § 70-27-114(2);

Nevada (service requirements are generally set by court rule with a 20 day minimum, however, by law "[judicial officers] may shorten the time within which the defendant shall be required to appear and defend [an unlawful detainer] action"), Nev. Rev. Stat.§ 40.300(2);

New Mexico ("trial . . . shall be not less than seven nor more than ten days after the service of summons"), N. Mex. Stat. Ann. § 47-8-43;

Oregon (6 days minimum), Ore. Rev. Stat. § 105.135;

Utah ("[defendant's required appearance to be] not less than three or more than 20 days from date of service [of summons]"), Utah Code Ann. § 78-36-8;

Washington ("[trial to be] not less than six nor more than 12 days from date of service"), Rev. Code Wash. § 59.12.070;

Wyoming ("not less than three nor more than 12 days before the date of trial set by the [court]"), Wyo. Stat. § 1-21-1004.

of summons on the tenant and the date of trial on the complaint. Alaska's existing two-to-four day requirement is shorter than the similar time period provided in other jurisdictions.

II

When we spoke, you mentioned a "mediation" or "arbitration" option. Washington state law provides both. A copy of the applicable provisions are included. As you can see from the enclosed, use of mediation or arbitration is permissible, not mandatory, and arbitration is not available in "[a]ny situation where court action has been started by either landlord or tenant to enforce rights under [Rev. Code Wash. 58.18]," including "[a]ny unlawful detainer action." I also have to question whether mediation or arbitration would have any real applicability when the sole question is whether a tenant has timely paid rent in full when due. Still, if you want to explore this option, please advise.

Hope this helps.

JC:gc
90-104.glc

Enclosure

BILL NO: (Proposed) CSSB 35(JUD) **DATE:** 3/08/91

TITLE: An Act Relating to Termination of Tenancies

CONTACT: Gayle A. Horetski
Deputy Commissioner
465-4322

STATE OF ALASKA / DEPARTMENT OF PUBLIC SAFETY

The proposed Judiciary Committee substitute for SB 35 amends existing landlord-tenant laws to allow property owners to terminate rental agreements for residential property with renters who have committed certain alcohol and drug violations. The bill creates a duty on the part of police officers who arrest persons for certain alcohol, drug, and imitation drug offenses committed in residential rental property to make a reasonable effort to discover the identity of the property owner and to notify the owner, in person, or in writing at the last address listed on tax records and at any other address known to police. The notice requirement applies to alcohol violation arrests for sales from unlicensed premises and for possession or sale of alcohol where prohibited by local option; to drug violations involving the manufacture or distribution of all drugs except small amounts of marijuana; and to imitation drug violations involving the manufacture or distribution of imitation drugs, or possession of certain precursor chemicals used in the manufacture of imitation drugs.

Based upon past arrests for these offenses, it is estimated that the Department of Public Safety will have to notify approximately three hundred property owners per year. The proposed CS allows the peace officer to notify the property owner in person, and we anticipate that that will occur in many (perhaps most) cases. If a written notice is necessary, we estimate that research required to identify the property owner, determine the last address listed on tax roles and any other addresses known to police, and to prepare the written notice, will take approximately one hour per occurrence. The requirement in this bill to provide written notice to "any other address known to the peace officer" will result in the preparation and delivery of the written notice to multiple addresses on file with the police for the owner. As an example, APSIN can retain up to four different addresses for a person. This will result in the sending of multiple notices to property owners, a wasteful duplication of effort.

The Department of Public Safety supports this bill, but suggests that the proposed committee substitute be amended to provide that only if no tax records are maintained for the property should notice to other addresses known to the police be required. This could be accomplished by amending Section 1, at page 2, lines 2 and 3, to read ". . .that levies and collects a property tax, of the arrest. If no tax records are available, notice may be sent to the owner at any other address known to the peace officer." A similar amendment would also have to be made in Section 12, page 6, at lines 6 and 7.

Although the provisions of this bill will create additional work for peace officers, the Department of Public Safety recognizes the problems created for property owners who find that they have rented to alcohol or drug violators. Allowing property owners to evict arrested drug and alcohol violators would help neighborhoods take an active role in fighting the war on drug and alcohol abuse. This law gives property owners a tool to help clean up their rental properties.

Richard L. Burton
Commissioner

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

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May 13, 1991

POSITION PAPER

RE: Committee Substitute for Senate Bill 35 (Jud)

Sponsor: Senators Pourchot & Halford

Program effects of Bill

This bill would have no direct effect on the Department of Community and Regional Affairs.

Comments

As an investor providing loans to borrowers for housing needs in the rural areas of the state, the department becomes an owner and landlord only after a foreclosure sale when the state takes title to a property. Since the Department of Community and Regional Affairs has the lowest foreclosure rate of any investor, our landlord activity is relatively low.

Edgar Blatchford, Commissioner

Alaska Court System
State of Alaska
OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

February 4, 1991

The Honorable Pat Pourchot
Co-Chairman, Senate Finance Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator Pourchot:

Your office has inquired about the effect of Senate Bill 35, relating to the use of rental property and drug violations, on the Alaska Court System.

This bill has no direct impact on the administration of the court system, and its fiscal impact is zero.

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

Very truly yours,

C. S. Christensen III
Staff Counsel

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MEMORANDUM

TO: Representative Finkelstein, Chair,
Labor and Commerce Committee

FROM: Don Clocksin

DATE: May 15, 1991

SUBJECT: Senate Bill 35 -- Landlord/Tenant

Accompanying this FAX are (1) a memo to your committee members on this bill; (2) a copy of my April 4 memo to Senator Pourchot; and (3) a copy of a pamphlet written to assist landlords and tenants in understanding the Landlord-Tenant Law. Although this pamphlet is not current, it is an example of how we can educate landlords and tenants as to their rights and responsibilities.

Could you have your staff copy and distribute these to each committee member?

Thanks.

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To Rep. Finkelstein	From Don Clocksin
Co.	Co. Wagstaff Pope & Clocksin
Dept. Labor & Commerce Committe	Phone # 277-8611
Fax # 465-4954	Fax # 274-8040

DC:dkm\30143121.memo

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MEMORANDUM

TO: House Labor and Commerce Committee Members

FROM: Don Clocksin

DATE: May 15, 1991

SUBJECT: Senate Bill 35 -- Relating to Landlords and Tenants (HEARING TODAY)

Because two of my children are sick, I will be unable to testify at tonight's hearing on SB 35 -- the landlord/tenant bill. I want to testify, and nope I will have an opportunity at a later date.

Attached is a letter I sent to Senator Pourchot criticizing his bill. The criticisms are still valid. In addition, in case I cannot testify in person, here are a few comments.

1. **Reduced Notice Is Impractical**: The bill reduces from 10 to 5 days the notice a landlord must give to a tenant who is behind in rent. This notice can either be sent by certified mail (3 days added) or left at the premises. That notice period is too short. Tenants who need money from the State or BIA to pay rent often cannot get it in five days. The Anchorage Public Assistance office indicates it would be difficult to provide rent checks in time it

the notice is reduced to five days. Furthermore, tenants who are absent when the notice is posted on their door may be terminated with no actual notice. Tenants in rural areas may not even receive a certified letter within the eight days allowed (time is measured from mailing, not receipt). Finally, the proof of receipt for certified mail ("green card") often will not be returned by the post office to the sender until well past the deadline for holding a trial (2-4 days). I checked with the Eastchester Post Office (Fairview Neighborhood) and was told it could take five days or more for a sender to get the green card back.

2. **Changing "Arrest" to "Violation" Is Not The Answer:**

The original bill was criticized because it allowed tenants to be evicted based upon an arrest for a drug or alcohol-related offense. The Senate changed it to allow eviction upon a "violation". No one knows if that means eviction prior to a criminal conviction or afterwards. Jack Chenoweth admits as much in his May 13 memorandum. The Senate amendment avoids the question. If it feels this bill should be passed, this committee should amend it to delete "violation" and insert "conviction".

3. **The Fiscal Impact Is Real:** AS 44.23.020(b)(8) requires the Attorney General to prepare a pamphlet on revisions of the landlord-tenant law. Such a pamphlet will be necessary if this bill passes, particularly in light of the bill's complexity. To my knowledge, the Department of Law has not submitted a fiscal note.

This bill must go to the Finance Committee, not because to do

so is a clever strategy by its opponents, but because the law requires it.

4. **Reputation And Nuisance**: This bill allows a tenant to be evicted based solely on rumor in the community as to his/her character. See Section 9. Jack Chenoweth says this is okay because it's already authorized by a court rule (Evidence Rule 405). However, that rule does not allow reputation evidence to prove commission of an act -- this bill does. The law should not allow community opinions as to someone's character to be "proof" the person sold drugs or after-hours liquor.

5. **There Are Other Alternatives**: No one wants a crack house or after-hours bar in his/her neighborhood. And no one wants to deny landlords the tools to regain their property from deadbeats. But the tools currently exist, and this bill's denial of the rights of non-deadbeats is not necessary.

I am willing to work with you to look for better remedies to clean up our neighborhoods. We can also educate landlords and tenants as to their rights and obligations, and how to proceed when there are problems.

This bill is not the answer.

DC:dkm\30143120.mmo

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April 4, 1991

Senator Pat Pourchot
Room 504, Capitol Building
P.O. Box "V"
Juneau, Alaska 99811

Re: Senate Bill 35
Our File No. 3014.31

Dear Senator Pourchot:

I recently sent you a letter criticizing your Senate Bill 35. For your convenience, a copy is attached to this letter. Since then I have had the opportunity to review the Judiciary Committee Substitute and to speak with your staff about the bill. The substitute alters several provisions, but is still very objectionable. In fact, for reasons I will discuss, the substitute is even worse than the original bill. The ACLU has chosen to submit separate testimony, and this letter is submitted by me on my own behalf and on behalf of the thousand of tenants who live in downtown Anchorage.

1. The Bill Violates Constitutional Principles.

I believe there are some important principles imbedded in our constitution, even if they may not appear in any court interpretation of that document. Those include the right to adequate, actual notice before the courts take away an important right, like housing. They also include the right not to be treated differently than others based upon one's race, sex or economic status, and the right not to be punished for something without proof the "something" actually occurred.

This bill violates all three principles.

First, it reduces the notice required before eviction to almost meaninglessness. Under current law a tenant who does not pay rent when due must received a ten-day notice to pay rent or vacate. If the rent is not paid in that ten-day period, and the tenant does not leave, the tenancy is terminated and another ten-

day notice to quit must be provided without the option of paying. If the tenant still doesn't leave, the landlord may file a lawsuit, and can get a trial within two to four days after the tenant gets notice of the suit. A tenant being evicted for a problem other than non-payment of rent must receive a notice to cure the problem in ten days or vacate in 20 days. For a second offense, the tenancy can be terminated with ten day's notice, giving the tenant no choice to cure the violation. The ten day notice to quit and the lawsuit procedures are the same.

These procedures would be changed by reducing the notice from 20 days to five or eight days. (In fact, through a drafting error, one could argue that no notice is required before suing a tenant for eviction for non-payment of rent.) Since the bill eliminates the obligation to give notice by registered or certified mail, there is no assurance that tenants will get actual notice that their rent is unpaid and they have to leave. Even if they do get actual notice, five days is simply not a reasonable period of time to respond. Please remember that there are many circumstances where the rent has actually been paid, or where a reasonable notice will result in payment without further action. These changes largely foreclose amicable resolution of these types of rent disputes.

Second, this bill treats tenants as second class citizens. Home-owners who don't make their payments have much more liberal time periods than these. The fact that much greater numbers of minorities, women, and low-income citizens rent than own their homes means the effect of these changes falls disproportionately on those groups. As I said in my March 27th letter, when this legislation was enacted in 1974 it was a careful compromise between the needs of landlords to protect their investment and the needs of tenants to avoid being precipitously and unfairly thrown out of their homes. These changes clearly favor the property-owner.

Third, tenants will suffer from government publication of their arrest for alcohol or drug crimes before there has been any determination the crime has been committed. Tenants will also suffer because they - and their families - will be evicted for the conduct of others not under their control. Finally, tenants will suffer because they will be evicted before they have the opportunity to defend themselves on the criminal charges. I note that in his Position Paper, Commissioner Burton says CSSB 35 allows property owners to evict arrested drug and alcohol violators. I agree, your staff's protestions to the contrary notwithstanding. This bill will require tenants to defend themselves from allegations that they violated the alcohol or drug laws with only a few days' notice. Within two to four days after receiving notice of an eviction lawsuit, the tenant will have to be prepared to go

to trial on those charges. The summary eviction procedure was not intended to provide a forum for such complicated issues. The result will be that an order of eviction will quite likely be issued before the criminal charges are finally resolved.

2. The Bill Is Incomprehensible.

I spent eight years as a legislative lobbyist and six years as a legislator. My ability to read and digest a bill is better than most, particularly a bill relating to landlord-tenant law. (I helped write the original law in 1973-74). After several hours of trying I do not understand portions of this bill. Since the subject is not particularly complicated, there can only two explanations. Either the bill drafting has not been done competently or there is a deliberate effort to write a bill which is not understandable by the general public.

A normal citizen can't understand this bill, and no bill should ever be passed that a normal citizen can't understand.

3. The Nuisance Statute.

In a clever twist, the proponents of this legislation have found a way landlords can ignore the procedural requirements of AS 34.03. and AS 09.45.060-.160. All they need to do is sue to abate the tenant's dwelling as a nuisance based upon its use as a "crack house" or a bootlegging operation. That way no one needs to prove the illegal conduct by evidence beyond a reasonable doubt, as would be necessary if a criminal charge were filed. The bill does not require a criminal conviction before winning a nuisance action. The attractiveness of this new remedy is increased by the fact the landlord doesn't even have to show the tenant was at fault. The conduct of any person in the dwelling can be enough to declare it a nuisance.

The bill makes this remedy even easier by providing that, the landlord can get the dwelling declared a nuisance based solely upon "evidence of reputation within a community." He or she doesn't even have to prove the tenant did anything wrong - only that the tenant's neighbors think so. This embellishment overturns the rule that has been in effect in Alaska since 1928 - that the neighbors' perception as to whether a dwelling is a nuisance is not enough to make it a nuisance. U.S. v. Rex Hotels, 8 Alaska 21 (1928).

Finally, this new remedy is particularly attractive to landlords since it might put a tenant in jail for up to six months if the tenant tries to stay in his home after a nuisance abatement order is issued. See AS 09.50.200-.210.

I cannot adequately express the disgust I feel over anyone who would attempt to use this archaic and draconian remedy in the landlord-tenant relationship.

4. Rule Changes.

Section 09.45.125 grants the court the authority to simultaneously enter an order to vacate and issue an order to a peace officer to forcibly remove the tenant. I believe this affects a matter of court procedure.

Section 09.45.100 also appears to alter current court procedure. Therefore, this Section of the legislation requires a two-thirds vote. See Alaska Constitution, Article IV, Section 15.

5. Fiscal Impact.

I have reviewed several position papers and fiscal notes on both versions of SB35. All the fiscal notes are zero. The Public Safety analysis indicates about 300 hours of increased work per year, plus supplies, postage, etc. This analysis admits that the bill will cause a fiscal impact. The Court System fiscal note is faulty because it does not recognize the increased number of eviction cases filed (when the notice period is shortened, the number of informally resolved cases will go down) nor does it realize the effect of a revitalized nuisance statute.

But most importantly, the agency which will suffer the most obvious fiscal impact has not even submitted a fiscal note. AS 44.23.020(b)(8) requires the Department of Law to prepare a handbook describing the landlord-tenant law. The passage of this bill will necessitate a new version of that handbook, particularly in light of the complicated provisions. Since the preparation of that handbook inevitably will cost money, a Finance Committee referral is required.

6. The Bill Is Not Necessary.

It must be emphasized that this bill is not necessary. Alaska law provides powerful remedies for landlords - abbreviated notice requirements and a speedy eviction procedure combined with a cooperative judicial system. Do not let landlords tell you the law does not allow them to evict "bad" tenants. The tools are there for the landlords and lawyers who know how to use them.

7. Conclusion.

This bill should not pass. It is technically defective. It constitutes a move away from enlightened landlord-tenant law, which recognized that the rights of both parties deserve respect and

protection. It will increase homelessness, since it will summarily remove families from their homes, often for events which are not their fault. It violates important principles which are the foundations of our system of justice - due process, equal treatment, and punishment only on proof of misconduct. Finally, it will destroy a carefully crafted legislative compromise that has lasted for seventeen years, and open old wounds and cause new legislative wars.

Thank you for the opportunity to communicate with you on this bill.

Sincerely,

Don Clocksin

DC:dlcm\30143104.let

cc: All members of the Senate

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May 13, 1991

Rep. David Finkelstein
Alaska House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Rep. Finkelstein:

Enclosed please find a one-page statement entitled "Objections to SB 35", which I am sending in response to your office's request for the comments of Alaska Legal Services Corporation on proposed changes to the landlord-tenant act. Also enclosed please find a recent editorial from the Anchorage Daily News that addreses the current housing crisis in Anchorage.

Please contact me at the above number if you have questions about the enclosed, or desire further information.

Thank you very much for the opportunity to comment.

Very truly yours,

Barbara J. Hood

Barbara J. Hood
Staff Attorney

OBJECTIONS TO SB 35

THE REDUCED FIVE-DAY NOTICE PROVISION SHOULD FAIL:

1. **IT IS A LANDLORD'S BILL, WITH NOTHING FOR TENANTS.** The current 10-day notice provision has worked fairly and effectively for 17 years. There has been no change of circumstances that would warrant a cut-back of tenant protections. If changes to landlord-tenant law are to be made, they should take the interests of both landlords and tenants into account, which the current bill glaringly fails to do.

2. **IT WILL PREVENT MANY TENANTS FROM "CURING" NONPAYMENT.** The shortened notice will make it twice as difficult for tenants and their families to timely secure the funds needed to preserve their shelter. Governmental and private relief agencies cannot respond with assistance in the sharply curtailed time frame proposed. As a result, families will be displaced. Public policy should favor the prevention, not promotion, of displacement because of the serious toll (emotional, financial, educational, and otherwise) that it exacts on the families themselves and the agencies that try to assist them.

3. **IT WILL INCREASE HOMELESSNESS.** Communities throughout the state have experienced serious increases in homelessness within the past year. While private landlords are not responsible for solving this problem, the legislature must consider the social impact of its decision. Shorter notice periods *will* mean more evictions, and many tenants *will* have no place to go. The current 10-day notice places no great burden on landlords when viewed in light of this countervailing concern. The legislature must take a *comprehensive* approach to housing problems for *all* the residents of Alaska, not a piecemeal approach that benefits a few at great cost to many.

4. **IT IS UNNECESSARY.** It is currently quite simple for landlords to evict non-paying tenants. After a ten-day notice, a landlord can initiate summary procedures that permit a court eviction hearing to be held in 48 hours, and a 48-hour vacate order to be entered. These unique summary procedures allow landlords quicker resolution of their legal claims than is available to other litigants. Delays usually result when landlords either fail to meet their own obligations under landlord-tenant law or fail to timely avail themselves of existing remedies.

5. **IT IGNORES PROCEDURAL INEQUITIES THAT PLACE TENANTS AT SERIOUS DISADVANTAGE.** Current expedited eviction procedures are already woefully inadequate to protect the rights of tenants who raise defenses to eviction. Alaska has lagged behind other states in this area by failing to ensure that such tenants have adequate time to prepare their claims, obtain counsel, and conduct discovery, etc., before being forced to trial. The proposed changes make no effort to remedy this significant problem, and instead compound it.

6. **IT WILL HAVE A FISCAL IMPACT ON SOCIAL SERVICE AGENCIES, LEGAL SERVICES, AND THE COURT SYSTEM.** The shortened notice and resulting increase in evictions will likely result in an added fiscal burden to the Division of Public Assistance (DHSS), the emergency services offices of municipalities throughout the state, Alaska Legal Services, and the court system.

THE BOTTOM LINE: SB 35 IS SHORT-SIGHTED, ONE-SIDED, AND COUNTER TO SOUND PUBLIC POLICY OR FAIRNESS.

Submitted 5/13/91, by Barbara J. Hood, Alaska Legal Services Corporation

THE FOLLOWING PAGES
WERE TREATED AS A UNIT
IN THE ORIGINAL FILE

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February 25, 1991

Senator Pat Pourchot
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

Dear Senator Pourchot:

Thank you for your request to the Alaska Legal Services Corporation (ALSC) Board of Directors for comments on Senate Bill 35, which proposes amendments to the Uniform Residential Landlord and Tenant Act (URLTA). ALSC frequently represents clients in cases brought under the URLTA, and the Board asked that we respond to this opportunity to comment.

Senate Bill 35 proposes two significant changes to current landlord-tenant law: (1) a reduction from ten days to five in the period a tenant may pay rent after receiving a notice of non-payment, and (2) the addition of a drug-related arrest as a grounds for eviction. On behalf of our clients, ALSC opposes both of these changes for the reasons set forth below.

I. THE FIVE-DAY CURE PERIOD

A. SUBSTANTIVE CONCERNS

(1) Current Law

Under current law, a ten-day notice must be given to a tenant before a landlord may pursue eviction for non-payment of rent. AS 34.03.220(b). The notice specifies that the tenant must "cure" the non-payment within ten days or the tenancy will terminate. If a second non-payment occurs within six months, the 10-day notice does not have to include a cure period. As a result, landlords do not have to give tenants more than one chance to rectify late payment. In our view, the current ten-day cure period achieves the proper balance between a landlord's interest in the timely payment of rent and a tenant's interest in preserving his or her shelter.

(2) Ramifications of Proposed Change

The bill's proposed change would reduce the current cure period to five days. The five-day period may marginally benefit landlords, but would seriously jeopardize the ability of many tenants, particularly those with low incomes, to take steps to remain in their homes. The marginal benefit to landlords is, in our view, greatly outweighed by the harm to tenants.

While it may seem insignificant, the additional five days provided under current law is often critical to a tenant's ability to gather the funds necessary to meet his or her rental obligation. For example, many of our clients rely on public assistance checks to pay their rent. Checks are frequently delayed for a variety of reasons, including

agency back-logs, overwhelming caseloads, computer malfunctions, and other circumstances beyond a tenant's control. Absent a statutory exception to the cure period for late governmental checks, a landlord does not have to accept rent that is late for these reasons, and tenants can be evicted through no fault of their own. The extra time provided by the current 10-day period helps prevent this unfair hardship, which will fall most onerously on the single or unemployed parents, children, and disabled people who comprise the vast majority of welfare recipients.

Additionally, indigent tenants frequently seek rental assistance of $120.00 per household member through General Relief (GR) program or the Division of Public Assistance (DPA). They can initiate an application for this benefit only by presenting a current eviction notice to their DPA caseworker. According to DPA staff, it takes one to two weeks for a GR applicant to receive an appointment, and up to 30 days after the interview to process the check. Even under current law it is difficult for tenants to receive the benefits of this program within the statutory cure period; under a shortened five-day period, it may well be impossible.

People living in poverty, or on the edge of poverty, must also avail themselves of relief organizations and other sources of financial help that cannot consistently respond on an expedited basis. For example, the Municipality of Anchorage's Emergency Services office can provide emergency financial assistance to persons having difficulty paying their rent, but it takes an average of two to three weeks for the checks to be delivered to landlords. People who lose their jobs may find themselves in times of severe financial crisis as they wait for unemployment or assistance to be processed. A missed or late paycheck during periods of sporadic employment can mean the difference between shelter and homelessness for workers and their families.

The need for the ten-day cure period is especially great in these difficult economic times. The rise in Alaska's welfare rolls documented in late 1990 underscores the difficult times we are in. *See, "Welfare Rolls Are Up; Normal Seasonal Decline Not Seen,"* Anchorage Daily News (December 2, 1990), attached as Exhibit A. In the fall of 1990, Anchorage experienced a marked rise in rental rates, a sharp reduction in vacancy rates for residential units, and an alarming increase in homelessness. News articles have described the tightening rental market and grim outlook for low-income residential tenants. See Exhibits B - H, attached. The Municipality of Anchorage's Emergency Services office served over twice as many people in 1990 as in 1989, and more people in January 1991 alone than in all of 1989. Exhibit I; conversation with MOA staff. ALSC is very concerned that reducing the current ten-day cure period by half at a time when low-income tenants are faced with few residential options will increase the already significant risk of homelessness for our clientele.

Under the above circumstances, the ten-day cure period--while not always sufficient--creates a much better chance that needed funds can be raised and tenancies preserved. No one would expect private landlords to shoulder more than their share of the burden of tenants who cannot timely pay, but the legislature can implement procedures that fairly balance this burden. The legislature must recognize that many people who cannot pay their rent on time are not willfully flouting their rental obligation. They are struggling to manage under difficult circumstances, and the legislature should join the efforts to help them succeed.

The need for positive legislative action is now particularly acute. In response to the concerns of social services agencies, Anchorage Mayor Tom Fink convened a Task

Force on Emergency Shelter and the Homeless in November 1990. The task force issued a final report in December 1990 with a broad range of recommendations, including increased state funding for housing assistance programs and increased legislative attention to the problem. ALSC agrees with this assessment, and urges that any legislative action that makes it more difficult for tenants to preserve their shelter in private markets must be accompanied by a substantial commitment to increase the availability of public units for low-income people. Otherwise, the legislature remedies a minor problem (late rent to private landlords) by creating a major one (increased homelessness). We would strongly support steps to address the housing needs of the poor such as those proposed by Rep. Kay Brown in House Bills 152 and 153. *See* Exhibit J.

B. PROCEDURAL CONCERNS

In addition to the above substantive issues, ALSC has significant procedural concerns about the reduced cure period. A landlord may file a complaint for eviction at the close of the statutory cure period, which would be only five days under the bill's proposal. AS 34.03.290 (c); AS 09.45.100, .110. Under current Alaska laws, a tenant is entitled to only a 48-hour notice of an eviction hearing. AS 09.45.120. If the landlord prevails at the eviction hearing, courts typically give tenants only 48 hours to vacate.

These summary procedures raise concerns that tenants do not have adequate time to prepare and present possible defenses to eviction, such as rental offsets based on a landlord's failure to maintain a habitable premises or a landlord's unlawful conduct (utility shut-off, lock-out, etc.). Other states have addressed these concerns by providing significantly longer times frames in judicial eviction proceedings. For example, California provides for only a three-day notice of eviction for non-payment of rent, but imposes procedures that require from 16 to 22 days between the original notice and actual sheriff's eviction in uncontested cases, and from 32 to 66 days in contested cases. *See, e.g., "Unlawful Detainer Procedures and Time Chart"*, attached as Exhibit K. Alaska's current eviction procedures are decades-old and incompatible with the modern changes to landlord-tenant law enacted in the URLTA. If the legislature is to contemplate changes to the landlord-tenant act that narrow substantive tenant protections, it should give serious consideration to strengthening procedural protections that are currently inadequate. *See,* Clocksin, Donald E., *Alaska's Summary Eviction Law - A Confused Anachronism*, 4 UCLA-ALASKA LAW REVIEW 56 (1974).

Even under current eviction procedures, it is questionable whether the the proposed five-day notice will significantly impact the time between notice and actual eviction. Alaska courts have postponed eviction hearings when necessary to ensure a tenant's right to a full and fair trial on the eviction claim. Shortening the cure period as proposed will have only a minor impact on the time it takes to complete an eviction in these cases because court rules and court procedures, not notice provisions, will govern. It is also quite possible that courts will give tenants more time to vacate rental units once eviction is ordered as a result of the reduced notice period.

C. CONCLUSION: FIVE-DAY NOTICE

In summary, the ten-day notice provision under current law gives tenants a realistic one-time opportunity to pay rent late in times of hardship and achieves a fair balance between the rights of landlords and tenants. The proposed five-day notice period raises serious substantive and procedural concerns and would marginally

benefit the relatively small number of private landlords at the expense of far greater numbers of residential tenants.

I. DRUG ARREST AS A GROUNDS FOR EVICTION

ALSC shares your concern about the need to confront the drug problem. As respresentatives of low-income tenants, we are well aware of the dangers that drug-dealing and related crimes pose to the health and vitality of low-income neighborhoods. But we suggest that the drug war is better fought in other ways. The proposed legislation is of questionable necessity, is potentially constitutionally infirm, and will do little to improve the welfare of residential tenants in Alaska.

A. UNNECESSARY

First, it can be fairly assumed that the characteristics of drug-related activity most inimical to the welfare and peace of neighbors are noise, traffic, and disturbances. Under current law, a tenant already has an obligation to "not unreasonably disturb, *or permit others on the premises with the tenant's consent to unreasonably disturb*, a neighbor's peaceful enjoyment of the premises." AS 34.03.120(6).

A landlord who wishes to evict a tenant whom he or she believes is engaging in drug-dealing will doubtless have no trouble under the above provision. He or she must simply give the tenant a notice explaining that the noise, traffic, and disturbances must stop within ten days or the tenancy will terminate within twenty days. AS 34.03.220(a). If the problem is not corrected, an eviction may be brought.

Although ALSC is rarely involved in eviction cases where drug-dealing is specifically alleged, we have been involved in cases where allegations of noise and other attributes of drug-dealing have been made. If the landlord can demonstrate that the behavior occurred and continued despite notice, the tenant may be evicted. ALSC questions the propriety of short-circuiting this process by creating a category of tenant default (drug arrest) that bears no necessary relationship to whether or not a person poses a threat to the quiet enjoyment of his neighbors. In summary, if drug activities are occurring, a landlord will likely have grounds for eviction under current law. The possibility that in rare instances a tenant might carry on a drug operation without noise, traffic, or disturbance does not justify the current legislation.

B. UNCONSTITUTIONAL

At first blush, the prohibition against illegal drug activity in rental premises found in proposed section (8) of AS 34.03.120 appears compelling. The proposed language would appear to apply only to those who *knowingly* engage in illegal activity or *knowingly* permit others to do so. However, the bill proposes definitions of illegal drug-related activity that would base eviction on an *arrest* alone, which effectively eliminates the knowledge factor and creates strict liability for a drug-related arrest of anyone in a household. Parents and children could be evicted for the drug arrest of a juvenile or relative regardless of whether they knew of the alleged conduct or could control it. Whole families could be evicted for the activities of one member, or for an isolated incident that none could have foreseen. In this sense, the bill goes well beyond the scope indicated by the language of section (8).

The proposed bill raises serious questions of constitutionality because of its reliance on a mere *arrest* as a basis for eviction. To prevail at an eviction hearing, a landlord

would have to prove only that an arrest was made. There is no requirement that the court permit a tenant to present defenses of any kind; it would be irrelevant whether the arrest was in fact valid or whether the alleged illegal conduct in fact occurred. An arrest can be made if a police officer has "probable cause" to believe a crime has occurred; "probable cause" is not proof of guilt under either the general civil standard (preponderance of the evidence) or the criminal standard (beyond a reasonable doubt). No court is involved in the arrest itself, and no judicial finding of any kind is made.

The proposed bill has already received severe criticism from the American Civil Liberties Union for penalizing tenants by assuming that they are guilty before they have an opportunity to prove their innocence. *See, "ACLU Assails Tenant Evictions in Drug Arrests,"* Anchorage Times (December 17, 1990), attached as Exhibit L. Regardless of whether one agrees with the ACLU's view, the legislature should consider that valid and potentially successful challenges to enforcement of the proposed bill would likely arise.

There are several potentially persuasive legal arguments against the provision. First, it raises concerns under the Fourth Amendment, which guarantees the right to be free from unreasonable governmental intrusion in one's own home, absent notice and an opportunity to be heard. A tenant who cannot present defenses to an arrest or allegations of drug activity has no meaningful opportunity to be heard. Second, the provision would jeopardize a tenant's right against self-incrimination guaranteed by the Fifth Amendment. A tenant would face the dilemma of waiving his Fifth Amendment right and testifying to preserve his shelter, or asserting the right and effectively losing the opportunity to defend the eviction. Third, the proposed law would improperly remove a court's decisionmaking on a person's guilt or innocence. This potentially violates a basic constitutional premise that only courts, not legislatures, have the power to adjudicate individual cases. Article I, Section 9, U.S. Constitution. Finally, a mandatory loss of shelter for a drug arrest may be viewed as excessive punishment in violation of the Eighth Amendment.

The above legal assessment is by no means exhaustive, and other issues would likely arise if litigation is brought. ALSC would agree with the assessment of Jack Chenoweth, legal consultant with the Legislative Affairs Agency, that the provision invites a court challenge.

C. COMPARISON TO PARALLEL WASHINGTON STATUTE

In your letter requesting comment, you indicate that the anti-drug provisions of SB 35 are inspired by the approach taken by the State of Washington and City of Seattle. ALSC thinks it is important to note that Washington law does not go so far as to permit eviction based on a drug *arrest* alone. To the contrary, the parallel provision of the Washington code provides:

> Each tenant shall...:
>
> Not engage in drug-related activity at the rental premises, or allow a subtenant, sublessee, resident, or anyone else to engage in drug-related activity at the rental premises with the knowledge or consent of the tenant. *"Drug-related activity" means that activity which*

constitutes a violation of chapter 69.41, 69.50, or 69.52 RCW

RCW 59.18.130. Exhibit M. (The cited provisions are criminal statutes pertaining to prescription drugs, controlled substances, and imitation controlled substances. Exhibit N.)

Because the Washington code makes the very important distinction between a drug *arrest* and drug *activity*, which must be proven, it is far less objectionable. Washington's approach may also alleviate some of the constitutional questions the proposed bill raises, because it would permit a tenant to contest the allegations of drug activity and would permit a court to make the ultimate decision on whether the allegations are substantiated.

For the above reasons, ALSC submits that current landlord-tenant laws are adequate to protect the interests of landlords, tenants, and the public with respect to both rent payment periods and drug-related activities of tenants. Accordingly, we urge you to reconsider your sponsorship of the bill, and recommend against its passage.

Thank you very much again for the opportunity to comment.

Sincerely yours,

ALASKA LEGAL SERVICES CORPORATION

Barbara J. Hood
Staff Attorney & Supervisor
Public Entitlements Unit, Anchorage

Robert K. Hickerson
Executive Director

Enclosures

PROPOSED MODIFICATIONS TO SB 35

I. SUMMARY:

PERMIT SHORTENING OF THE NOTICE PERIOD FOR NON-PAYMENT OF RENT, BUT IMPLEMENT PROCEDURAL PROTECTIONS FOR TENANTS WHO RAISE VALID DEFENSES TO EVICTION.

II. PURPOSE:

(1) To ensure that tenants with defenses to eviction have an adequate and fair opportunity to prepare and present their claims, and that the shortened notice does not unduly jeopardize their rights.

(2) To ensure that landlords are able to timely evict tenants who have not paid rent and raise no defenses to eviction.

III. DISCUSSION:

The notice provisions of SB 35 make the apparent assumption that tenants who don't pay rent on time are "dead-beats" who should be kicked out as quickly as possible. While there are certainly irresponsible tenants to whom this characterization might apply, many tenants have defenses to eviction based on their landlord's own irresponsible conduct. The bill should be modified to recognize that tenants who raise defenses are entitled to a fair opportunity to present them. This can be done without jeopardizing a landlord's ability to summarily evict the vast majority of tenants who don't raise defenses.

TWO EXAMPLES OF TENANT DEFENSES (based on actual cases in Anchorage, 1990-91):

(A) LANDLORD'S BREACH OF WARRANTY OF HABITABILITY.

Tenant's sliding door in his one-room apartment is jammed open nea y 12 inches in the middle of winter, and his carpet is sopping and mildev because of a leak in the bathroom plumbing. Tenant makes numer requests for repairs over a three month period, but landlord fails to make repairs. Tenant's efforts to fix the problems himself are unsuccessful, and he and his 2-year-old child endure near-freezing temperatures in a damp and smelly apartment. Tenant gives written notice that he will not pay rent until repairs are made. Landlord immediately shuts off tenant's electricity and locks tenant out. Tenant obtains a temporary restraining order reinstating him to the apartment. Landlord counterclaims for eviction. Tenant's defenses include (1) breach of covenant of good faith and fair dealing, (2) breach of the warranty of habitability, and (3) unlawful lock-out and termination of utilities. Landlord denies that the shut-off was intentional and refutes the habitability problems.

(B) LANDLORD'S ABUSE OF ACCESS.

Tenants complain to landlord of a number of serious problems requiring repair. Landlord responds by ripping off the apartment's door, peering through the windows at all hours, and verbally harassing tenants on a number

of occasions. Tenants withhold rent, and landlord sues for eviction. Tenants' defenses include abuse of access and harassment, which entitle them to a minimum one-month offset against rent allegedly due. Landlord claims that the door was taken off because the unit was abandoned (despite the presence of all of tenants' belongings).

In both of the above examples, tenants raise defenses to eviction that are seriously jeopardized by current eviction procedures. Tenants must prove a course of conduct by their landlords without time to seek discovery, subpoena witnesses, obtain counsel, or otherwise adequately prepare their defenses. The result is a greatly heightened risk of wrongful eviction.

IV. PROPOSED PROCEDURAL ADDITIONS TO SB 35

Current summary eviction laws are decades-old and predate the Uniform Residential Landlord and Tenant Act. Their procedures are no longer fully appropriate for the modern landlord-tenant relationship, and should be amended to better address the procedural concerns spelled out above.

Towards this end, we propose that the language set forth in the attached "Proposed Amendments to Eviction Statutes (AS 09.45.*et seq.*)" be added to SB 35. A flow chart of these procedures is also attached.

SUBMITTED BY:

Barbara J. Hood
Staff Attorney
Alaska Legal Services Corporation

5/13/91

Anchorage Daily News

Michael Carey, Editorial Page Editor
Patrick Dougherty, Managing Editor

Katherine Fanning, Editor and Publisher 1971 to 1983
Lawrence Fanning, Editor and Publisher 1967 to 1971
Founded in 1946 by Norman C. Brown

Apt. wanted

Housing squeeze needs state attention

During Alaska's recession, you heard a lot about the pain suffered by property owners. Homeowners lost jobs and lost their houses. Landlords watched rents plummet and tenants disappear. Many owners who managed to hold on saw their property values fall far below what they owed the bank.

Alaska needs to show more concern for people who can't take out 30-year mortgages or pay $10,000 a year for housing.

You didn't hear so much about the people who came out ahead. As housing prices tumbled out of the stratosphere, more people were able to afford decent housing. Those with steady but low-paying jobs took advantage of falling rents to move to better quarters. Some renters managed to buy places of their own.

As the economy recovers, what some people consider good times seem to be coming back. Property values and rents are up; housing of all types is selling briskly again.

But forgotten once more are those for whom higher housing prices are a curse, not a blessing. Decent housing is once again starting to be priced beyond the reach of those who don't enjoy a solidly middle-class existence.

About 30 percent of clients at Anchorage's main homeless shelter are people who cannot find housing they can afford. More than 2,100 people are on waiting lists for federal housing assistance in Alaska. Here in Anchorage, more than 170 of those who get housing aid cannot find landlords who will take what government aid lets them pay.

Alaska needs to show more concern for people who can't take out 30-year mortgages or pay $10,000 a year for housing. An approach state Rep. Kay Brown is proposing may help. She wants to consolidate the state's 13 housing programs, now scattered throughout various agencies, under a single commission. The commission would oversee a housing trust fund that would pay for projects serving low- and moderate-income Alaskans.

Money for the trust would come from surplus funds at Alaska Housing Finance Corporation. Those surpluses are created as people pay off loans AHFC made years ago.

Consolidating housing programs all in one place is one way to make good on the age-old promise to streamline government. It would also offer a better overall picture of what Alaska is doing with housing and where state efforts fall short.

As a nation, our indifference to making sure everyone has safe, affordable shelter is appalling. Federal housing programs were never adequate — and President Reagan allowed them to shrivel and become corrupted. President Bush has shown little inclination to rescue housing from his predecessor's neglect.

If Alaskans are going to get more help finding decent, affordable housing, the state will have to take the lead. Rep. Brown's proposals are a good place to start the discussion.

Doctor's orders
UAA hockey player returns SPORTS C1

Fund-raising woes
Abuse counselors latest to close METRO B1

The Anchorage Times
Alaska's Best Newspaper

THURSDAY
December 20, 1990
25¢
VOLUME 76 NO. 354

High rents drive poor onto street

Municipal population surges; agents see worsening market

By JAY STANGE
TIMES BUSINESS WRITER

As rents have climbed in recent months, more low-income Anchorage residents are being squeezed out of the market.

Yet real estate experts say it will take 18 months to 2½ years for the city's rental market to improve, and conditions are expected to get a lot worse before they get better.

Emboldened by an improving Anchorage economy and a surge in the city's population, landlords and property managers have raised rents during the past year as much as 20 percent, especially in the city's low-income apartment complexes, local surveys show.

'The marketplace does not take care of the low-income people.'
- Cynthia Parker, housing service director

Ken Kincaid, a real estate appraiser with Sherrett & Reilly in Anchorage, said the housing market tightens when vacancy rates fall below 5 percent.

Apartment vacancies in Anchorage had decreased to 5.2 percent on July 1, 1990, which is the most recent figure available, according to Sue Fison, director of the Anchorage planning office. That figure compared with vacancy rates of 20.1 percent in 1987, 17.1 percent in 1988, and 8.4 percent

EXHIBIT D
PAGE 1 OF 2

Housing

Continued from page A1

Kincaid said apartment vacancy rates in middle- and upper-income complexes of more than 20 units are now ranging from 2 percent to 3 percent.

As recently as 18 months ago, Kincaid reported at least 99 percent of the 90 apartment complexes he regularly surveys were paying for electricity. By comparison, his most recent survey showed 90 percent now ask tenants to pay their own electric bills.

"A majority of my complexes have gone away from leases," he said. "Seventy-five to 80 percent are month to month because of the rental market's volatility."

Not everyone sees a housing shortage in the current market.

"I don't believe there is a housing crunch now," said James Kuntz of Marston Real Estate. "Occupancy is good right now, about 95 percent in apartment complexes. But there are columns and columns of condos and single family homes for rent in the paper."

Moreover, demand in December has slowed, Kuntz said. "Rents can only go up to a certain point before the renter will go into the condo rental market," he said. "I don't see a shortage of housing (as long as the condos are there to be absorbed)."

But Kuntz agreed the low end of the rental market will become more prohibitive for low-income families and increased social service assistance will be needed.

Construction of multifamily units and apartment complexes, which will ease the tight rental market for low-income families in time, is not expected to begin until rents for a two-bedroom apartment, now going for about $600 per month, climb into the range of $800 to $900, housing experts say.

That is 18 to 24 months away, said Connie Yoshimura, owner of Fortune Properties.

People who can afford to pay middle- and upper-range rents can afford to buy homes and condominiums.

"The marketplace does not take care of the low-income people," said Cynthia Parker, executive director of Anchorage Neighborhood Housing Service.

Anchorage homeless shelters are bulging with record numbers of people. A mayor's task force of industry and government housing experts met recently to look for solutions.

Source: Anchorage State Housing Authority — Times chart by WAT TUTTELL

One problem they identified is Section 8 rent subsidies from the Alaska State Housing Authority were going unused because they were too low to keep pace with increasing rents.

Landlords who flocked to obtain those Fair Market Rent certificates during the recession are able to rent to non-subsidized tenants today, Parker said.

Landlords still are taking losses as they have since 1987, when rents dropped off drastically at the end of the oil boom, said Jack Vandenberg of the Jack White Co.

Vandenberg, who is also a landlord, raised rents $100 recently and still has 100 percent occupancy. Though appraisals on rental property have come up 40 percent to 60 percent, they are recovering slower than single family homes, realtors say.

Others say the housing crunch is most apparent among the poor.

Forced out of their homes by higher rents, homeless residents have grown in the city at an alarming rate in recent months, Parker said.

The service will open 110 units from the Village off Reka Drive for occupancy next spring. Many other condo complexes will be renovated and rented to low-income tenants who will make payments towards buying in Mutual Housing Program, said.

"The housing stock we h eliminated has been on the end," Kuntz said. "We are a ter community for it, but we need to step up social ser said."

According to the Municipa of Anchorage's 1980 survey 5,300 families, Anchorage ha population of 220,185, or al 18,000 fewer people than the had at its peak of 248,283 in 19

Yet the city survey showed there are 89,207 hou units in Anchorage, or 480 m units than in 1985, when th were 88,804 housing units a able.

However, an influx of l dreds of laid off workers f the Lower 48 and British Col bia — particularly in the tim industry — is absorbing rental stock rapidly.

A change in property ow ship also has contributed to problem, Kincaid said. M than 63 percent of Ancho residents owned their home 1983. That figure fell to 58 cent in 1988 and to 57 percent year.

With the economy impro over the past year, people been able to upgrade their l arrangements, Kincaid

EXHIBIT D
PAGE 2 OF 2

AUTO DEATHS: Seven people die / B-2 ■ **FAIRBANKS:** Controversial books sta

METRO

TUESDAY

SECTION B Dec. 11, 1990

Homeless population increases

Solutions elude task force

by LARRY CAMPBELL
Daily News reporter

The Anchorage mayor's task force on the homeless has decided that local social service groups are right — the homeless problem in Anchorage is worse this year than last. Still, the report it released Monday raised more questions than it answered.

The group's biggest recommendation is to gather more information. With just a month to do its work, the task force couldn't find answers to such questions as how large particular groups of homeless people are or exactly what kinds of services they will need.

"The problem is worse, but it's much more complicated than that," said task force member Wayne Mabry, operations manager for Alaska Telecom Inc. "That's the reason we suggested getting more information."

Mayor Tom Fink formed the task force last month to delve into complaints from social service agencies that the numbers of homeless in Anchorage had reached crisis proportions.

The evidence it found was heavy with anecdotal examples and much lighter in hard numbers. Still, the group's report claims 4,200 people are or will be homeless this year. Families with children seem to be the fastest-growing group of homeless, judging by increases in the number of women and children who stayed at the Clare House shelter, operated by Catholic Social Services.

Please see Page B-3, TASK FORCE

EXHIBIT 4
PAGE 1 OF 1

TASK FORCE: Anchorage homeless population increase

Continued from Page B-1

Some agencies show decreases in the number of homeless served, but claim they've been forced to cut back on services either because of state funding cuts or because they couldn't handle the demand to begin with.

While specific numbers of homeless and their needs are lacking, the task force nonetheless also recommended new efforts. Volunteer programs should be expanded. More state and federal dollars should be pried loose. Private developers could be encouraged to build more low-income housing, primarily through offering federal or local tax breaks as incentives. The group suggested the city take lead roles in coordinating many of these efforts, but didn't recommend spending any more local revenue.

Also unclear was why Anchorage has more homeless now. Part of the problem lies in rising rents and federal rent subsidies that haven't kept up. Alaska State Housing Authority officials are waiting for federal which manages federal low-income housing programs, has asked for a rent credit. Nothing actually gets done remains to be seen. But Jim Caldarola, ment of Housing and Urban Development, but that may not come until next spring, said ASHA executive director Ray Price.

Currently, 1,872 families are on the rent subsidy waiting list for Anchorage, Price said. In January, 1,298 families were on the waiting list. Statewide, 2,328 families are waiting for federal rent assistance.

Whether anything actual- increase from the Depart-

Catholic Social Services rector, is glad that at some of the prominent conservative local busi men who served on the force became convince the problem.

"In the non-profit w we're seeing these kind problems and talking a them all the time," Cal is said. "Once in a whil kind of jokingly say 'W got to pull in a suit.' S one of prominence in community to get the lic's attention. This le seal of approval."

Low-income renters fall out bottom of rising housing market

By TODD BENSMAN
Times Writer

Landlords hoping to cash in on Anchorage's recuperating housing market always found a way to avoid renting to Jewell Farris.

For nearly four months, the 85-year-old grandmother scoured the Anchorage Bowl for a place big enough for herself, her unemployed daughter and her granddaughter. She gets by on a $560 social security check and a $684 state housing subsidy.

"Don't call us, we'll call you," was the response Farris usually got from potential landlords when she inquired. Several simply hung up when they learned she had only the $684 subsidy to pay for a place large enough for three adults.

"If you tell me a place you can crawl into for that amount of money, I'll eat it," Farris said. She finally did find an affordable home with help from Anchorage social workers.

But with property values on the rise again after a three-year hiatus, record numbers of low-income renters like Farris are being pushed into homeless shelters as Anchorage property owners realize they can charge more.

That was the conclusion of a special task force Mayor Tom Fink appointed last month to find out why Anchorage's homeless shelters are overflowing.

A report quickly compiled over the last month by Fink's 12-member task force and released Monday concluded, "The societal causes of homelessness are complex, ranging from the disintegration of the traditional family structure to failures in this country's care of the mentally ill. ... It is the loss of affordable housing, though, that immediately precipitates homelessness."

The report noted Anchorage's emergency homeless facilities — like Brother Francis Shelter, McKinnell House and Clare House — have experienced alarming increases in clientele over the last year.

Families and single mothers who a year ago could afford low-income housing now are the groups whose numbers at shel-

See Housing, back page

Housing

Continued from page A-1

ters have increased the most, the report said. Blacks and Alaska Natives make up the remainder, the report said. Many were plagued by unemployment, mental illness, alcoholism and drug abuse.

The Brother Francis Shelter, with a 15 percent increase in clients this year over last year, next week will move 30 homeless women onto the floor of the neighboring Bean's Cafe, an eatery, to make more room.

So swiftly has the influx of homeless families grown that McKinnell House was forced to convert two nine-bed dormitories into three family rooms, the report said.

Clare House, an emergency shelter for women and children, this year saw a 29.2 percent increase in the numbers of people needing shelter over the same time last year.

"I knew people who worked as day labor used to be able to get an apartment for $300 with their rental assistance. Now, you won't find one for less than $350," said Bob Eaton, director of Brother Francis Shelter. "People are coming back to the shelter now."

Eaton and the report blame Anchorage's rebounding economy and greedy landlords, who just one year ago were grateful to rent to someone with a marginal income.

Times photo by MICHAEL DINNEEN

Jewell Farris, 85, takes a momentary rest from moving into a new apartment. It took four months of searching in Anchorage's newly tightening rental market to find a spot to match her fixed income.

"It is estimated that about 30 percent of the homeless population seen at the Brother Francis Shelter could afford to pay for low-cost housing if it were available," the report said.

In 1987, Alaska's economy and real estate market collapsed when world oil prices took a sharp dive. About 30,000 people left the state over the next two years and vacancies soared.

But according to a quarterly demographics survey done by the Anchorage Economic Development and Planning Department, Anchorage had grown from 221,870 in December 1989 to 230,185 by July 1990.

During the same time, apartment vacancies fell from 8.4 percent to 5.2 percent, and vacant housing units dropped from 14.6 percent to 9.7 percent, the survey said.

"They were once willing to take them, and now they don't have to," said Joyce Lee, emergency services coordinator for the city Health and Human Services Department, referring to landlords.

"It takes a long time to get (accepted into the state rental subsidy program) and or[illegible] do it takes a long time t[illegible] a place to live."

Mark Korting, owner of RE-MAX Properties Inc., a major real estate brokerage in Anchorage, said the recent recovery has emboldened landlords to demand more money and to screen more carefully.

"I don't think that anyone is not renting to disadvantaged people just because they are disadvantaged. It's probably just a monetary situation," Korting said.

[illegible] recent demolition or b[illegible]ng up of hundreds of low-cos[illegible] ousing units, such as Willow Park and Hollywood Vista, also has exacerbated the current crisis, the report said.

The task force's report, presented to Fink and the media Monday, recommended solutions that will be presented to the Anchorage Assembly next week.

The task force recommended the city take the following course of action over the next 60 days:

- Waive some fire and safety standards so emergency housing can be provided in older buildings when needed.
- Encourage top federal Housing and Urban Development officials in Washington, D.C., to raise the ceiling on individual housing subsidies.
- Set up a 24-hour hotline where homeless people can get information about available housing.

EXHIBIT
CE / OF /

Anchorage Daily News Thursday, November 8, 1990

Rents rise, vacancies vanish as city's population surges

Apartment hunters face tightest market since boom days

APARTMENT VACANCIES
Mid-year rates — large apartment complexes

Year	Overall	Mid-cost apartments*
1981	8.2%	3.6%
1982	3.2%	1.1%
1983	6.5%	9.9%
1984	12.3%	13.3%
1985	14.5%	11.0%
1986	22.0%	19.3%
1987	26.1%	22.4%
1988	17.1%	13.0%
1989	8.7%	7.3%
1990	5.2%	2.7%

Source: Shorett & Riely
* Mid-cost defined as $325-$460/mo. for 1 bedroom; $425-$550/mo. for 2 bedroom; and $500-$600/mo. for 3 bedroom apartments. June 1990 prices

By BRUCE MELZER
Daily News reporter

A population surge in Anchorage, where there is little new construction to house the arrivals, has been pushing up rents and shrinking the number of empty apartments.

City officials estimate Anchorage has grown by 8,000 people in the last year. Anchorage's housing stock is filling up. Vacancy rates for all types of housing have dropped to just under 10 percent this year, the lowest level since the mid-1980s, according to the city's annual housing survey.

Apartment hunters are having a tough time finding a place to live. Vacancy rates for medium- and high-cost apartments dwindled to 2.5 percent by June, according to surveys of larger apartment buildings pub-

Please see Back Page, RENTERS

EXHIBIT 6
PAGE 1 OF 2

ERIK Hill / Anchorage Daily News

Christine Pyle and her daughter, Sara: Finding an affordable apartment wasn't easy.

RENTERS: It's a landlord's market out there

Continued from Page A-1

lished by Ken Kincaid of the real estate appraisal firm Shorett & Riely.

That's the tightest market for those units since the early 1980s, when the state was flush with oil money and Anchorage was starting to boom.

The vacancy rates for lower-priced apartments hovered around 11 percent in June. But that number is smaller now, said James Kuntz, manager of Marston Properties.

Christine Pyle found that out when she went shopping for a three-bedroom apartment. As a university student and single parent with a son and daughter, she could afford no more than $690 a month, including utilities.

She spent two weeks in August with newspaper want ads and the telephone.

"It seemed like the affordable places were gone before the ink was dry on the paper," she said.

Her advice to apartment seekers: "Get on the phone the first thing when the paper comes out. If you wait 'til the end of the day, they'll be gone."

Pyle finally found an apartment to match her needs and budget.

The first week of the month is the best time to look for a rental, suggested Jody Hoffmann, whose Hoffmann Management Co. handles some of Anchorage's larger apartment complexes. Renters wanting to move out usually give their 30-day notice at the start of a month.

Renters are paying more, too.

"I think it would be safe to say that rents have increased on the order of 15 percent in the last year," Kincaid said. On top of that, many landlords who once paid the utilities are now shifting the cost of gas and electricity to renters, he said.

Although some firms and many individual landlords are slow to raise rents, some large property management firms are constantly probing the marketplace, seeking to push up rents.

Hoffmann said her company, which manages more than 1,000 units, has raised rents by as much as 25 percent over the past year. Rents rose $25 to $50 every three months, she said.

Her firm tries to keep the vacancy rate at 5 percent. If apartments aren't turning over, rents may be too low, Hoffmann said. And just because empty units are filling up quickly, doesn't mean it is time to stop advertising.

"If we advertise and we get a lot of calls, then we know we have an opportunity to raise rents," she said.

Despite this year's increases, rents still aren't up to the peak reached in the mid-1980s. And they certainly aren't to the point where developers can justify building new multifamily housing, property managers agree.

Permits for 373 new single-family homes have been issued since January — more than double the number of permits last year — but not enough to have a big impact on the rental market, Fison said.

The real estate crash of the late 1980s took thousands of homes, condos and mobile homes temporarily off the market while they were locked up in foreclosure proceedings.

More than 2,000 housing units are gone for good, said Sue Fison of Anchorage's Planning and Economic Development Department. Hundreds of mobile homes were shipped out of town. Bulldozers leveled hundreds more along with some low-quality homes and apartments during the Alaska recession.

From 1985 to 1988, an estimated 30,000 people left Anchorage, according to Fison's department. Since then, as the economy began to improve, the population has rebounded by about 11,000, to 230,000 residents.

Not all management companies are pushing the edge of the market right now. Kuntz of Marston Properties said prices that have risen over the year have stabilized, and his firm won't start looking again at rent hikes until spring.

Mel Main of Nova Property Management agrees.

"We raised a few of them this summer. We're not raising them in the winter. In the winter we just try to keep them filled."

EXHIBIT G
PAGE 2 OF 2

ANCH. TIMES 8/20/90

Housing Authority has long waiting list

Woman applied nearly a year ago for unit

Photo for The Times by STEVEN L. NELSON

Jasmine Wilcher, 5, and her mother, Jackie, have been waiting nearly a year for financial assistance from the Alaska State Housing Authority so they can move into a larger apartment.

By JEFF HOUCK
Times Writer

Jackie Wilcher knows all about patience.

When she applied in September for financial assistance from the Alaska State Housing Authority, she was told it would take no less than six months before they could help her and her daughter move to a larger apartment.

Nearly a year later, Wilcher still lives in the same small one-bedroom apartment on Muldoon Circle. Boxes full with her belongings are ready to move to her new place near Landmark Street and Huffman Road but instead stay scattered through the living room and bedroom.

She was approved for assistance in June but has waited for an inspector to say her new two-bedroom apartment is in suitable condition.

"I've got all those damn boxes packed up. They better tell me it's suitable," she said. "We're cramped up in the other place like we're in a little hole. It's like being in a can. You can't even breathe in there."

Wilcher is not alone in waiting for a place to call home. Authority supervisor Reggie Ward said his agency has almost 2,000 people on their waiting lists for two separate assistance programs. ASHA is funded by the Department of Housing and Urban Development.

The first program, called the Low Rent Program, offers housing in ASHA-owned properties. The tenant then pays the authority a security deposit and the first month's rent. The amount of

See Housing, back page

Housing

Continued from page A-1

subsequent rent payments varies according to family income. At the end of July, 575 applicants were on the waiting list for the Low Rent Program.

The Section 8 Program allows applicants to choose the housing they want to live in by giving them certificates or vouchers that say the authority will pay half the rent. More than 1,400 applicants are waiting for Section 8 assistance.

Despite having 487 Low Rent Program units and almost 1,400 people using certificates in Anchorage, the demand for housing assistance is still greater than the supply, Ward said.

"When someone comes in to apply, we tell them there is a six to 12 month wait, depending on the availability of the certificates and vouchers HUD sends us," he said. "The people get what HUD gives us."

When the waiting list gets out of hand — like two years ago when the waiting period took one full year — the list is closed until the number of applicants drops, Ward said.

"Two years ago we got down in the 500 range before we opened the list up again," he said.

The application process can be lengthy, he said. A person first must file an application at the ASHA's client service center at 620 E. 10th Ave. The application is reviewed to see if the person qualifies for assistance.

For a one-bedroom apartment, an applicant's total family income must not exceed $17,450. For a two-bedroom, the limit is $18,950. The three-bedroom limit is $22,450 and the four-bedroom ceiling is $24,950.

"That may sound high enough for anyone to qualify, but statistics show that the average family in Anchorage makes at least $9,000," authority spokeswoman Sherrie Simmonds said.

If an applicant meets qualifications, they choose either the Low Rent or Section 8 program. If they choose Low Rent, they are then put on a waiting list depending on how many bedrooms they need for their housing. Applicants wait on a first-come, first-served basis.

If the applicant chooses Section 8, they seek out their own apartment and ask their potential landlords if they will accept the ASHA certificates in addition to their own rent payments.

That is not an easy task. Wilcher said it took her almost two months to find a landlord who would accept her certificate.

"There was one in Mountain View that accepted the certificates but I didn't want to live there. That's a drug area," she said.

Nick Ontisaloff, a 45-year-old disabled veteran, said it also took him a long time to find someone who would lease him an apartment with a certificate when he first sought assistance in 1990.

"I used to live in the Brother Francis shelter so I wasn't that upset about the waiting," he said. "I live OK now on Richardson Road."

Anchorage area low-rent housing

Here is a list of some of the low-rent and low-income housing in Anchorage.

Ptarmigan Park, 1122 E. 18th Ave., 272-6617.

Park View Manor, 808 Karluk St., 274-1144.

Loussac Manor, 121 Heitdeman Drive, 274-2681.

Chugach View, (elderly/handicapped housing), 1200 E. 17th Ave., 272-6617.

Chugach Manor, (elderly/handicapped housing), 1301 E. 18th Ave., 274-9716.

Private low-income housing

Cook Inlet Housing Authority, 276-8822.

Jewel Lake Villa, 243-0718.

KBL Apartments, 274-0797.

Mary Conrad Center, 338-3840.

Robert Rude Center, 338-2211.

Tyee Apartments, 337-1911.

Emergency housing

Anchorage Care Center, 276-5343.

AWAIC Shelter, 274-4561.

Brother Francis Shelter, 277-1731.

Catholic Social Services, 277-2584.

City Emergency, 264-6748.

Clare House, 563-4545.

McKinnel Residence, 276-1609 or 272-5941.

Senior Citizens, 264-6720.

Rescue Mission, 277-5002.

prised to hear applicants were having difficulty locating available housing.

"Our limits aren't really comparable to rents landlords are charging in this area," he said.

HUD has fair market price lists in each city that limit how expensive an applicant's rent can be, Ward said.

For a one-bedroom apartment, the fair market price is $465. For two bedrooms, the limit is $547. Three bedrooms stop at $684 and four bedroom apartments can be no higher than $766, he said.

Juxtapose that with the average price of Anchorage housing and HUD's fair market price limits appear unfair.

One bedroom apartments usually run between $500 and $550. Two bedrooms usually cost around $640. Three bedrooms go for between $775 and $900 and four-bedroom places cost an average of $900.

"We've been trying to get HUD to raise their fair market limits and it looks like they may be changing them soon but I wouldn't know when," he said.

Regardless of how high the difference in prices are, thousands of people still wait for housing assistance, Wilcher said.

"I was lucky. I could afford to stay in the apartment I'm in now until the other place is available," she said. "I'm just anxious to move, but others need emergency housing. God knows what

EXHIBIT H
PAGE 1 OF 1

EMERGENCY SERVICES PROGRAM

	TOTAL DIRECT SERVICE	ANCHORAGE RESIDENCE	RURAL ALASKANS	OUT OF STATE	BUS TOKENS	MEN	WOMEN	CHILD
JUL 89	67	43	5	19	27	15	28	24
JUL 90	320	268	19	33	65	59	96	165
AUG 89	85	69	8	8	2	24	32	29
AUG 90	268	217	14	37	126	53	69	146
SEP 89	281	189	40	52	152	63	108	110
SEP 90	500	335	90	75	130	100	132	268

TOTAL CLIENTS FOR 1989: 443 TOTAL MEN 1989: 102 TOTAL WOMEN 1989: 168 TOTAL CHILD 1989: 163

1990: 1088 1990: 212 1990: 297 1990: 579

We have 462 requests for food through the Interfaith Clearinghouse in the three month period, for 1989.

We have 49 requests for clothing during the same time period.

We have not kept accurate stats on the request for food and clothing since the Clearinghouse closed, however, between the three of us we figured we were getting approximately 25 calls a day. This would total 1500 for the three month period, a total of 1,038 more than last years for the same period.

EXHIBIT I

Anchorage Daily News Sunday, February 24, 1991

Housing needs of poor addressed

JUNEAU — A trust fund to meet housing needs of the poor would be created through surplus money from the Alaska Housing Finance Corp. under a measure introduced in the House. House Bill 152, sponsored by Rep. Kay Brown, D-Anchorage, also would consolidate the boards of the Alaska Housing Finance Corp. and the Alaska State Housing Authority into a new Alaska Housing Commission. "Housing programs in Alaska are spread among 13 different state agencies, offices and divisions. They are designed with little quantitative information regarding real needs," Brown said in a news release. A companion bill, HB153, would allocate $100 million from corporation revenues to the trust fund, whose earnings would be used to finance low- and middle-income housing projects.

EXHIBIT J
PAGE 1 OF 1

FB/ES

1989			1990		
Bus Tokens July-Dec:	$351.00	Clients Served	Bus Tokens July-Dec:	$450.00	Clients Served
July:	$1,517.90	67	July:	$2,609.64	393
Aug:	$ 913.24	85	Aug.:	$2,353.63	411
Sept:	$5,253.46	281	Sept:	$1,564.75	463
Oct.:	$3,287.00	0	Oct.:	$2,891.59	372
Nov.:	$ 679.43	233	Nov.:	$3,178.58	250
Dec.:	$1,774.78	154	Dec.:	$2,003.36	311
1-90	$2,363.11	163	1-91	~~$2,355.95~~ 3212.15 ~~(1 month)~~	~~207~~ 478
	$15,805.92	983		~~$16,957.50~~ $17,813.70	~~2,407~~ 2,678

(Difference: ~~$1151.58~~ $2007.78)
people: ~~1,424~~ 1695

~~Over~~ two and ~~one half~~ 2/3 times as many people ~~is the~~ increase.

overall Increase =
difference Money amount = 2007.78
(difference and of people served 1695

1/31/91 Budget Balance $9,466.50
divided by (38 % year)
5 months left in FY = $1,893.31 available per month

We really should have an increase in our budget. ~~[illegible]~~ with the increase of applicants and ~~the amount of~~ no change in money, many people are not being helped.

AWFUL DETAINER PROCEDURES AND TIME CHART

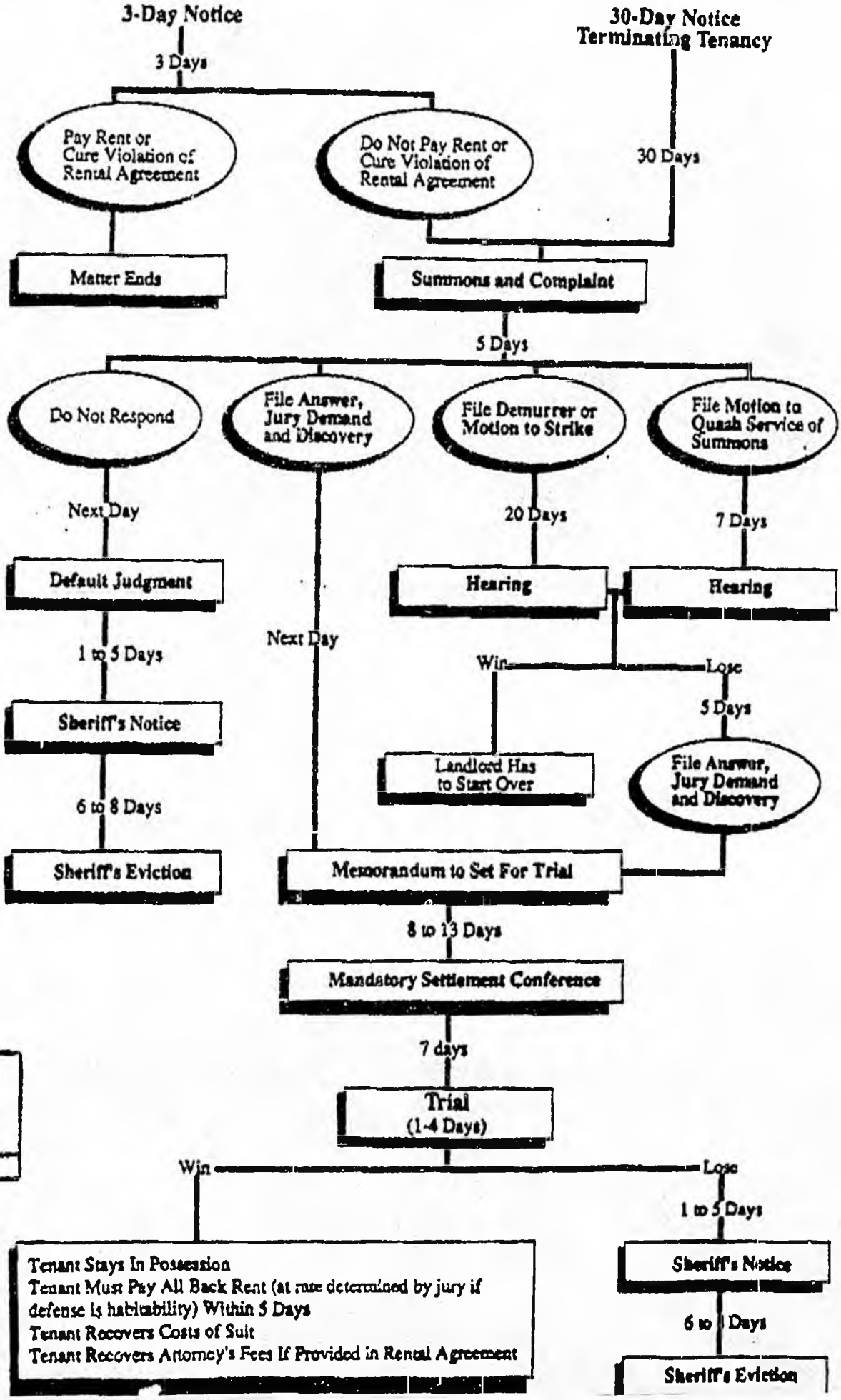

EXHIBIT K
PAGE 1 OF 1

METRO
The Anchorage Times
MONDAY
December 17, 1990

ACLU assails tenant evictions in drug arrests

By PAMELA STOCK
TIMES WRITER

A local civil rights attorney said a proposed bill that would allow landlords the right to evict arrested drug dealers penalizes the innocent before they are proven guilty.

"It's a politically easy thing to do, to say 'let's go after the drug dealers.' I think it's a fallacy," said Jamie Bollenbach, director of the American Civil Liberties Union's Anchorage office.

> "We're penalizing people before they're found guilty."
> —Jamie Bollenbach, Alaska ACLU

Bollenbach said he questions the propriety of evicting tenants based on arrests, instead of convictions, though he said the bill did not necessarily interfere with constitutional rights. Sen. Pat Pourchot, D-Anchorage, is drafting the bill to help give landlords more authority.

"We're penalizing people before they're found guilty," Bollenbach said. He also said the proposed bill may encourage landlords to evict, and may contribute to an al-

See Eviction, back page

Eviction

Continued from page B1

ready acute homelessness problem in Anchorage.

But some apartment owners said they have no legal recourse to control tenants in their buildings who deal drugs and attract crime.

Rex Plunkett, a local landlord, said changes in the current bill might benefit tenants with a troubled past. Apartment owners may be more likely to rent if they know they will have an easier time evicting.

Current laws say landlords cannot evict a tenant arrested for or suspected of trafficking drugs or illegally selling alcohol unless the tenant breaks a lease. If the tenant continues to pay rent on time, maintains a lease agreement and is not arrested on felony charges, the landlord cannot evict.

"I'm far more likely to take a risk and rent when I know all I stand to lose is two week's rent, and not several months," Plunkett said.

Plunkett said he lost at least four months' rent due to a tenant who he said was selling drugs from a Russian Jack apartment.

Pourchot's proposed bill gives the landlord the option to immediately evict a tenant who has been arrested for illegally selling drugs or alcohol, even if the tenant is a timely rent payer.

"The cases where you would use it in reality is if there is serious drug trafficking, and these cases aren't built lightly," Pourchot said.

"We're talking about communities where there are 40 people coming to the door every day," he said.

But most leases already have provisions prohibiting tenants

said Barbara Hood, supervisor for public entitlements at Alaska Legal Services. Revisions to current laws may not be necessary, she said.

Hood also questioned the need to shorten eviction notice periods at a time when the real estate market is tightening and more tenants are seeking help from the legal service agency.

Pourchot proposes changing the notice period from 10 days to five.

"The five-day notice would make it much more difficult for people using the programs that are established to help them, but can't act that quickly," Hood said.

Pourchot looked to the laws of Washington state, thought to be tough on drug dealers, to inspire his own legislation.

For example, Washington landlords may evict tenants involved in "unlawful activities based on the landlord's own observation," said Lorraine Lewis, Administrator for the Washington Attorney General's Office.

When asked if there were complaints of tenants who felt they were unreasonably accused and evicted, Lewis said there is no regulatory agency to keep track of complaints.

Pourchot, who is a landlord himself, said the Alaska bill stipulates an arrest because he did not want landlords to be acting as police officers.

"We don't want to substitute good police work for landlord's observations," Pourchot said.

Pourchot said since he started working on the bill he has talked to many Anchorage landlords — many who own only one or two buildings and are concerned about their communities, as well as their rights.

West's
REVISED CODE OF WASHINGTON ANNOTATED

Titles 58 to 61

EXHIBIT M
PAGE 1 OF 3

RCW 59.18.070, and that the tenant should not remain in the dwelling unit in its defective condition, the court or arbitrator may authorize the termination of the tenancy: *Provided*, That the court or arbitrator shall set a reasonable time for the tenant to vacate the premises.

Enacted by Laws 1973, 1st Ex.Sess., ch. 207, § 12.

Library References

Landlord and Tenant ⇐106. WESTLAW Topic No. 233.

C.J.S. Landlord and Tenant §§ 107, 116, 118.

59.18.130. Duties of tenant

Each tenant shall pay the rental amount at such times and in such amounts as provided for in the rental agreement or as otherwise provided by law and comply with all obligations imposed upon tenants by applicable provisions of all municipal, county, and state codes, statutes, ordinances, and regulations, and in addition shall:

(1) Keep that part of the premises which he occupies and uses as clean and sanitary as the conditions of the premises permit;

(2) Properly dispose from his dwelling unit all rubbish, garbage, and other organic or flammable waste, in a clean and sanitary manner at reasonable and regular intervals, and assume all costs of extermination and fumigation for infestation caused by the tenant;

(3) Properly use and operate all electrical, gas, heating, plumbing and other fixtures and appliances supplied by the landlord;

(4) Not intentionally or negligently destroy, deface, damage, impair, or remove any part of the structure or dwelling, with the appurtenances thereto, including the facilities, equipment, furniture, furnishings, and appliances, or permit any member of his family, invitee, licensee, or any person acting under his control to do so. Violations may be prosecuted under chapter 9A.48 RCW if the destruction is intentional and malicious;

(5) Not permit a nuisance or common waste;

(6) Not engage in drug-related activity at the rental premises, or allow a subtenant, sublessee, resident, or anyone else to engage in drug-related activity at the rental premises with the knowledge or consent of the tenant. "Drug-related activity" means that activity which constitutes a violation of chapter 69.41, 69.50, or 69.52 RCW; and

(7) Upon termination and vacation, restore the premises to their initial condition except for reasonable wear and tear or conditions caused by failure of the landlord to comply with his obligations

EXHIBIT M
PAGE 2 OF 3

under this chapter: *Provided*, That the tenant shall not be charged for normal cleaning if he has paid a nonrefundable cleaning fee. Enacted by Laws 1973, 1st Ex.Sess., ch. 207, § 13. Amended by Laws 1983, ch. 264, § 3; Laws 1988, ch. 150, § 2.

Historical and Statutory Notes

Laws 1983, ch. 264, § 3, in subsec. (3), inserted the provision relating to prosecution of violations under chapter 9A.48.

Laws 1988, ch. 150, § 2, inserted subsec. (5); and renumbered former subsec. (6) as subd. (7).

Legislative findings—Laws 1988, ch. 150: "The legislature finds that the illegal use, sale, and manufacture of drugs and other drug-related activities is a state-wide problem. Innocent persons, especially children, who come into contact with illegal drug-related activity within their own neighborhoods are seriously and adversely affected. Rental property is damaged and devalued by drug activities. The legislature further finds that a rapid and efficient response is necessary to: (1) Lessen the occurrence of drug-related enterprises; (2) reduce the drug use and trafficking problems within this state; and (3) reduce the damage caused to persons and property by drug activity. The legislature finds that it is beneficial to rental property owners and to the public to permit landlords to quickly and efficiently evict persons who engage in drug-related activities at rented premises." [Laws 1988, ch. 150, § 1.]

Severability—Laws 1988, ch. 150: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [Laws 1988, ch. 150, § 15.]

Law Review Commentaries

Landlord-tenant; maintenance and repairs required by legislative acts. 49 Wash.L.Rev. 363 (1974).

Statutory redefinition of rights and duties of landlords and tenants; tenant duties. 9 Gonzaga L.Rev. 302.

Tenants' mode of use; waste. 49 Wash.L.Rev. 335 (1974).

Library References

Landlord and Tenant ⇐134, 144, 181 to 183.
WESTLAW Topic No. 233.

C.J.S. Landlord and Tenant §§ 316, 326 et seq., 462 to 470.

Notes of Decisions

Carpeting 1

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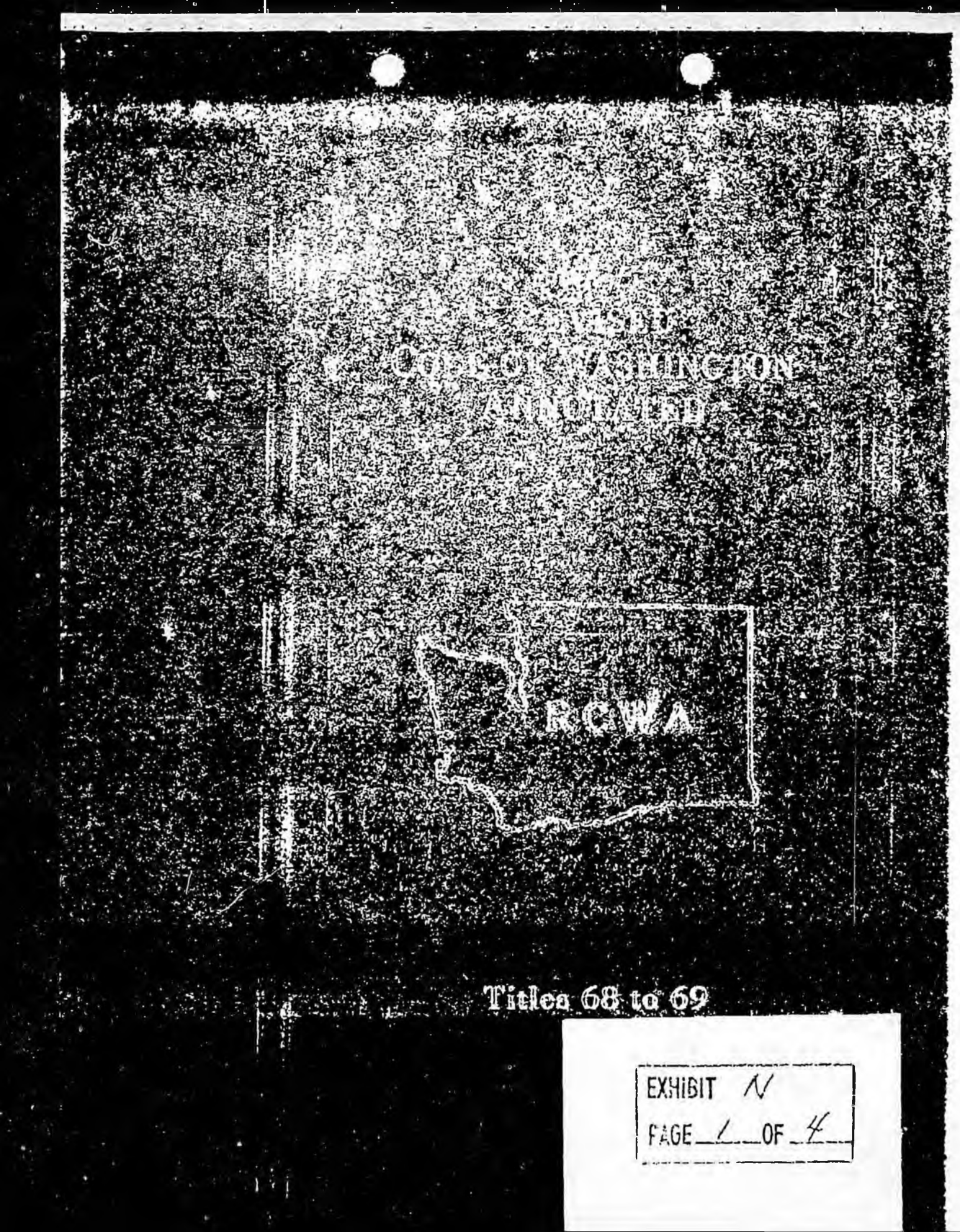
1. Carpeting

Finding that carpet in apartment was substantially destroyed and that it was reasonable and proper to replace it was not error in action by landlord against former tenant, particularly where depreciation factor was considered in determining damages awarded to landlord. James S. Black & Co. v. Charron (1978) 22 Wash.App. 11, 587 P.2d 196.

59.18.140. Reasonable obligations or restrictions—Tenant's duty to conform

The tenant shall conform to all reasonable obligations or restrictions, whether denominated by the landlord as rules, rental agree-

EXHIBIT M
PAGE 3 OF 3



Titles 68 to 69

EXHIBIT N
PAGE 1 OF 4

CHAPTER 69.41

LEGEND DRUGS—PRESCRIPTION DRUGS

Section

69.41.010. Definitions.
69.41.020. Prohibited acts—Information not privileged communication.
69.41.030. Sale, delivery or possession of legend drug without prescription or order prohibited—Exceptions.
69.41.040. Prescription requirements.
69.41.050. Labeling requirements
69.41.060. Search and seizure.
69.41.070. Penalties.
69.41.075. Rules—Availability of lists of drugs.

SUBSTITUTION OF PRESCRIPTION DRUGS

69.41.100. Legislative recognition and declaration.
69.41.110 Definitions.
69.41.120. Prescriptions to contain instruction as to whether or not a therapeutically equivalent generic drug may be substituted—Form—Contents—Procedure.
69.41.130. Savings in price to be passed on to purchaser.
69.41.140. Minimum manufacturing standards and practices.
69.41.150. Liability of practitioner, pharmacist.
69.41.160. Pharmacy signs as to substitution for prescribed drugs.
69.41.170. Coercion of pharmacist prohibited—Penalty.
69.41.180. Rules.

IDENTIFICATION OF LEGEND DRUGS—MARKING

69.41.200. Requirements for identification of legend drugs—Marking.
69.41.210. Definitions.
69.41.220. Published lists of drug imprints—Requirements for.
69.41.230. Drugs in violation are contraband.
69.41.240. Rules—Labeling and marking.
69.41.250. Exemptions.
69.41.260. Effective date
69.41.900. Severability—1979 c 110.

Cross References

Police powers to enforce this chapter, see § 18.64.009.
Public and private schools, administration of oral medication and safeguarding of legend drugs, see § 28A.31.180.
Unprofessional conduct, possession, distribution, use, or prescription for use of legend drugs in any way other than for therapeutic purposes, see § 18.57.170.

EXHIBIT N

PAGE 2 OF 4

CHAPTER 69.50

UNIFORM CONTROLLED SUBSTANCES ACT

ARTICLE I—DEFINITIONS

Section

69.50.101. Definitions.
69.50.102. Drug paraphernalia—Definitions.

ARTICLE II—STANDARDS AND SCHEDULES

69.50.201. Authority to control.
69.50.202. Nomenclature.
69.50.203. Schedule I tests.
69.50.204. Schedule I.
69.50.205. Schedule II tests.
69.50.206. Schedule II.
69.50.207. Schedule III tests.
69.50.208. Schedule III.
69.50.209. Schedule IV tests.
69.50.210. Schedule IV.
69.50.211. Schedule V tests.
69.50.212. Schedule V.
69.50.213. Republishing of schedules.

ARTICLE III—REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES

69.50.301. Rules.
69.50.302. Registration requirements.
69.50.303. Registration.
69.50.304. Revocation and suspension of registration.
69.50.305. Procedure for denial, suspension or revocation of registration.
69.50.306. Records of registrants.
69.50.307. Order forms.
69.50.308. Prescriptions.
69.50.309. Containers.
69.50.310. Sodium pentobarbital—Registration of humane societies and animal control agencies for use in animal control.
69.50.311. Triplicate prescription form program—Compliance by health care practitioners.

ARTICLE IV—OFFENSES AND PENALTIES

69.50.401. Prohibited acts: A—Penalties.
69.50.402. Prohibited acts: B—Penalties.
69.50.403. Prohibited acts: C—Penalties.

EXHIBIT N
PAGE 30

CHAPTER 69.52

IMITATION CONTROLLED SUBSTANCES

Section

69.52.010. Legislative findings.
69.52.020. Definitions.
69.52.030. Violations—Exceptions.
69.52.040. Seizure of contraband.
69.52.050. Injunctive action by attorney general authorized.
69.52.060. Injunctive or other legal action by manufacturer of controlled substances authorized.
69.52.900. Severability—1982 c 171
69.52.901. Effective date—1982 c 171.

69.52.010. Legislative findings

The legislature finds that imitation controlled substances are being manufactured to imitate the appearance of the dosage units of controlled substances for sale to school age youths and others to facilitate the fraudulent sale of controlled substances. The legislature further finds that manufacturers are endeavoring to profit from the manufacture of these imitation controlled substances while avoiding liability by accurately labeling the containers or packaging which contain these imitation controlled substances. The close similarity of appearance between dosage units of imitation controlled substances and controlled substances is indicative of a deliberate and wilful attempt to profit by deception without regard to the tragic human consequences. The use of imitation controlled substances is responsible for a growing number of injuries and deaths, and the legislature hereby declares that this chapter is necessary for the protection and preservation of the public health and safety.

Added by Laws 1982, ch. 171, § 2, eff. July 1, 1982.

69.52.020. Definitions

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Controlled substance" means a substance as that term is defined in chapter 69.50 RCW.

(2) "Distribute" means the actual or constructive transfer (or attempted transfer) or delivery or dispensing to another of an imitation controlled substance.

EXHIBIT N
PAGE 4 OF 4

THE PRECEDING PAGES
WERE TREATED AS A UNIT
IN THE ORIGINAL FILE

To: Cliff Groh

From: Richard Illgen

Date: May 15, 1991

Re: Comments on Report to Representative Ramona Barnes on SB 35

I have reviewed some of the information on eviction time frames in other states contained in the Chenoweth Report to Representative Ramona Barnes dated December 28, 1990. I note that there are inaccuracies in the eviction time periods for California which were included in footnotes 3 and 5.

Footnote 5 shows California has having a five day period between service of the summons and the eviction trial. This is not correct. **An eviction trial in California is by statute set within 20 days <u>after</u> the tenant has filed an answer to the summons and complaint and the landlord has filed a request to set the trial date.** It is that answer by the tenant which is filed within 5 days after service of the summons. Therefore, by statue there can be 25 days before the trial is held (in actual practice, trials are rarely if ever scheduled within this time period due to court backlogs).

Footnote 3 shows the period in California for the tenant to pay rent or quit as 3 days. This is not entirely correct; it frequently is 8 days. When service of a notice to quit has been made by posting it on the premises, it must also be mailed. Courts have applied a rule that extends the time by an additional 5 days because the notice was mailed. Therefore, unless the notice was personally served, the tenant may have 8 days to pay rent or quit.

I am not familiar with the specific timetables for evictions in other states. However, because of these significant discrepancies in the representation of California law, it is possible there are similar problems with the representations regarding the time frames for other states.

I would also like to not that in the timetable presented on Alaska eviction procedures, it is largely based on the landlord giving the tenant a 6 day grace period to pay rent. Such a grace period is entirely discretionary on the part of landlord. There is nothing to prevent a landlord from serving a notice to quit on the day after the rent is due. The landlord makes the decision to allow a grace period based on his or her business judgment. Even when a landlord does include a grace period in a rental agreement, it does not prevent a landlord from serving a ten day notice within the grace period. Many grace periods only give the tenant a period of time before the landlord imposes a late fee and do not affect the landlord's ability to serve a 10 day notice the day after the rent is due.

Richard F. Illgen
420 L Street, Suite 400
Anchorage, Alaska 99501

May 7, 1991

Cliff Groh
House, Labor & Commerce Committee
Room 17
P.O. Box V
Juneau, Alaska 99811

Re: Analysis and Comment on SB 35

Dear Mr. Groh:

SB 35 is a step backwards in efforts to address homelessness in Alaska. The provision in the bill reducing the notice to quit period from 10 days to only 5 days adds to the serious deprivation of due process rights which tenants already face under Alaska's existing Forcible Entry and Detainer (FED) procedures. Inevitably, more Alaskan tenants will be forced onto the streets because of unjustified and possibly wrongful evictions resulting because tenants do not have sufficient opportunity to defend against wrongful evictions.

The legislature must keep in mind that landlords are in a business, while tenants seek the most basic of human needs, shelter. If my side should be disadvantaged, it is the landlord who has volitionally chosen to make the investment purely for reasons of profit. A tenant must interact with a landlord for survival.

It is not an understatement to say that tenants have less procedural due process than criminal defendants. Yet it may be the landlord's illegal activity that causes the tenant to face eviction.

Rather than taking precipitous action to further restrict what limited procedural rights tenants now have (and presently in Alaska they have nearly none), the legislature should take a broader look at the FED procedures with an eye towards addressing the need for smaller landlords to evict non-rent paying tenants while improving a tenant's ability to defend against landlords who bring unjustified and wrongful actions.

The notice to quit period in AS 9.45.090 is the period during which a tenant must pay rent or quit the premises. However, the notice to quit period cannot be viewed in isolation; it must be

looked at in combination with the remainder of the FED procedures. Under SB 35, a tenant can receive a notice to quit on the 2nd of the month, be served with an FED summons on the 8th, have a trial by the 10th, and be out on the streets by the 12th of that month. All of this occurs in less time than a litigant in any other case is required to file an answer to a complaint (20 days) let alone conduct discovery. The five days taken away from the notice to quit period by SB 35 is more time than a tenant has to prepare for trial after service of the complaint (2-4 days (AS 09.45.120)). How is a tenant supposed to find an attorney, obtain documents for a defense, subpoena witnesses and conduct a deposition? A tenant who has actually paid rent does not even have time to obtain a cancelled check to prove rent payment.

Believe it or not, many tenants do have defenses to evictions. Defenses to non-payment of rent include retaliation (where the landlord has unlawfully increased the rent after a tenant has complained of lack of repairs) (AS 34.03.310); violation of the warranty of habitability (the tenant may not owe the rent); waiver (the landlord has accepted partial rent); bad-faith of the landlord; or written or oral agreements regarding the rent (for example the tenant performs repairs in lieu of rent).

The limited provisions for continuances in FED statutes are useless for many tenants, because they must post a surety with the court in order to obtain a meaningful continuance beyond two days. Many tenants live on the edge, barely covering expenses as money comes in. Habitability violations can be particularly insidious, causing a tenant to have to pay for repairs and absorb additional expenses due to a landlord's failure to maintain the premises. A tenant may not be able to post rent for a continuance because of such extraordinary expenditures.

Many tenants evicted for non-payment of rent will wind up in shelters or on the streets. If they have difficulty making rent payments, they will have more difficulty raising the additional money for the advance rent and security deposit required to relocate.

There are ways of reforming FED procedures which would allow landlords to readily evict for non-payment of rent while protecting tenant's rights. For example, allowing a tenant to answer an FED complaint would enable the court to determine if the tenant has defense's which require a trial. It would also allow a landlord to take a default without a court appearance when a tenant fails to answer, thus saving the landlord legal costs.

I urge the Legislature to reject those portions of SB 35 which give tenants only five days to respond to a notice to quit.

Instead, the Legislature should establish a committee to review FED procedures and recommend a process which comports with more reasonable standards of justice.

As the housing market in Alaska tightens, the problems tenants face will increase. Rents will rise, landlords will have less incentive to keep housing in repair, and landlords will have a greater incentive to evict because of the greater pool of potential tenants. The Legislature must not exacerbate Alaska's housing and homeless problems.

Please read this or duplicate this letter and hand out to the committee members of the House, Labor & Commerce Committee.

Sincerely,

Richard F. Illgen

Richard F. Illgen

RFI/ljm

AkCLU

Contact Persons: Jamie Bollenbach (276-2258), Paul Grant (586-2701)
Address: POB 201844, Anchorage AK 99520-1844

Position Paper on CSSB 35 MAY 1991

The Legislative Committee of the Alaska Civil Liberties Union has reviewed CSSB 35. We were disheartened to learn that it has passed the Senate in its present form, and unless it is substantially changed we must continue to oppose it.

The are several positions which raise grave constitutional concerns. The first are the provisions which require the government to publicize the arrest of certain people for alleged alcohol or drug offenses Theses provisions single out renters of real property and subject them to public opprobrium without proof of guilt The bill also is discriminatory since it protects landowners from such public exposure. As a general matter, tenants have lower incomes and are more likely to be women and minorities than property owners. Discrimination against those categories of citizens is unfair and inconsisten with the concept of equal protection of the laws.

Second, notice provisions of the bill raise due process issues. This bill reduces the notice required to terminate the tenancy and quit the premises from 20 days to five or 10 days. Sections 3 and 4 of the bill eliminate the requirement to serve notice by registered or certified mail, thereby making it more likely a tenant will not receive actual notice of an eviction. Taken together, these changes increase the likelyhood that a tenant will be removed from his or her dwelling with little or no advance notice or opportunity to protest, and this results from the mere accusation of an offense

Finally, the bill allows a tenant to be summarily evicted for soliciting orders for alcohol in violation of a local option election, or violating certain drug laws or laws prohibiting the sale of imitation drugs. Because the eviction procedure works faster that the criminal justice system, and because notice is given to the landlord at the time of arrest, tenants will be evicted <u>before</u> conviction of a crime and based on evidence which falls far short of that necessary for proof beyond a reasonable doubt. It seems axiomatic that punishment should not precede conviction; to pass this legislation in its present form offends important due process principles

There are other important difficulties with this bill that this paper does not fully address. The burden of eviction will fall hard on spouses and children of people merely accused of certain crimes.

Although the AkCLU Legislative Committee understands the intent behind this bill, we do not believe that its purpose can be properly achieved by punishing citizens still presumed innocent.

ALPMA

RECEIVED 1-23-92

ALASKA LANDLORD & PROPERTY MANAGERS ASSOCIATION

Rep. Dave Donley, Chairman
House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

January 18,1992

Dear Rep. Donley and Members of the Judiciary Committee:

We urge passage of draft HCS CSSB 35 (JUD).

We reviewed the synopsis of the draft at our Jan. 9 meeting. We were greatly encouraged that the 8 day notice for termination of tenancy for non-payment of rent added in the House Labor and Commerce Committee was changed back to 5 days as was in the original Senate Bill. Research has shown that 5 days is much more common practice in the western states than 10 days, the present Alaska Law.

We were also gratified to see the requirement for certified mail in delivering the above notice (L & C) dropped. The problem, as many testified to, is that tenants may not accept certified mail and the return receipt is slow in coming back. Certified mail should remain an option, not a requirement.

Many from our group testified on these two points at the October hearing and we are pleased the Judiciary Committee has remedied the L & C bill in this regard.

Some of the other provisions added by your committee have been needed for a long time and we are pleased to see them addressed.

Yours truly,

Alice Brewer

Alice Brewer, Executive Secy.
1201 W. 45th Ave.
Anchorage, Alaska 99503
Phone 563-6734

P.O. Box 103628
Anchorage, AK 99510
3 February 1992

Representative Dave Donley
Judiciary Committee Chairman
3111 "C" Street, Suite 450
Anchorage, AK 99510

Dear Representative Donley:

subject: SB 35, revision to landlord-tenant law

Please support and pass SB 35. I own and manage 10 apartments in three buildings. The main effect of SB 35 is to shorten the time for notice-to-quit from ten to five days for the non-payment of rent. I support this and I want you to support it also.

There is no reason for people not to pay the rent on time. If a tenant cannot pay on time and refuses to move it should not be the responsibility of an individual landlord to provide free housing. There is a government agency which provides prompt emergency relief if a tenant faces potential eviction for non-payment. The office is at 5th and Gamble, phone number 274-6524. A nonpaying tenant needs to move or take his ten-day notice (hopefully five-day notice) to the above address. Five-days notice is enough time before seeking a court remedy. The court remedy is a lengthy process in itself.

Representative Donley, please support and pass SB 35.

Sincerely,

Jerry Gotthe

Alaska State Legislature

House of Representatives

House Judiciary Committee

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

Representative Dave Donley
Chairman

November 25, 1991

Willie Devine
Sandra Arnold
8300 E. 20th Avenue
Anchorage, Alaska 99504-2913

Dear Mr. Devine and Ms. Arnold:

Thank you for your recent letter on SB 35. As you probably know, I strongly support this legislation. I also strongly support returning to the version of the bill that passed the Senate. In fact, I have prepared a Judiciary Committee Substitute for SB 35 that corrects the problems created by HCS CSSB 35 (L&C). Your letter will be a part of the Judiciary Committee record, and will help explain why HCS CSSB 35 (L&C) is unworkable.

Once again, thanks for writing.

Very truly yours,

Dave Donley

Chairman Dave Donley

DD:lc

NOT a certificate

Willie S. Devine & Sandra L. Arnold
8300 E 20th Ave
Anchorage, Alaska 99504-2913
(907) 333-9151

November 15, 1991

Dave Donley
3111 C Street, Suite 450
Anchorage, Alaska 99503

Dear Mr Donley,

Please support SB35. It is time for Alaska to update the notice time for evicting tenants who do not pay rent. The rest of the western states have notice times of 3 to 5 days. HCS CSSB 35 (L&C) is a step in the other direction. Instead of making it faster to evict the tenants who do not pay rents, this bill adds time to the processs.

Tenants who know how to work the current law can live rent free for at least 6 weeks. They just move from one place to another since it takes at least a month to get to court for a FED once they have been given the notice to quit.

Section 3. AS 09.45.100 indicates that notices to quit must be (1) delivered in person or (2) may be left at the premises **and** sent by certified mail with an additional 3 days added to the 10 days. Does the certified letter need to be accepted by the addressee or is it only necessary to send the notice to quit? It has been our experience that tenants usually do not accept certified mail sent to them. Section 4. AS 09.45.100 appears to add even more days for the landlord to regain possession of the rental premises. Is it now 16 days until court action can be started?

This bill will not cost tax payers and will only affect the few citizens that seem to feel they are entitled to free housing. Anything that helps landlords quickly evict the few people who are not willing to pay rent will benefit all tenants.

We ask that you support changing this bill in the Judiciary Committee back to what the Senate passed and to help get it through the House in this next session.

Sincerely,

Willie Devine Sandra Arnold

Willie S. Devine
Sandra L. Arnold

Alaska State Legislature

House of Representatives

House Judiciary Committee

Representative Dave Donley
Chairman

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

November 25, 1991

Nancy J. Todd
13320 Crestview Drive
Anchorage, Alaska 99516

Dear Ms. Todd:

Thank you for your very informative letter on SB 35 and the problems you have encountered as a landlord. The information you provided will be extremely helpful in my efforts to develop support for a Judiciary Committee substitute that corrects the problems created by HCS CSSB 35 (L&C). I plan on making your letter a part of the Judiciary Committee record to help explain why HCS CSSB 35 (L&C) is unworkable. If you know of other landlords who can provide this type of specific information, I would welcome hearing from them.

Once again, thanks for writing.

Very truly yours,

Dave Donley

Chairman Dave Donley

DD:lc

L.O. TFT add to FILE

not a constituent or in new district

13320 Crestview Drive
Anchorage, Alaska 99516
November 10, 1991

Representative David Donley
3111 C St. Suite 450
Anchorage, Alaska 99503

RECEIVED
NOV 13 1991

Dear Mr. Donley:

At the hearing regarding SB35 held on October 4, 1991, you stated it would be helpful if you knew the costs of a "few bad apples". I have researched our records for the past year and can give you some information.

By way of background my husband and I own and manage 27 units located throughout Anchorage. This includes 5 four-plexes, 3 duplexes, and a house. He does virtually all of the maintenance as well as the management. We do employee one other person who helps with the cleaning and repairs. Prior to renting to prospective tenants, we have them complete an application and run credit and reference checks; however, as you can see it is still possible to get bad tenants even if the credit check is good.

In the past year we have had five (5) tenants I would classify as "bad apples". The total cost to us to date has been $6,031. This includes court costs as we have pursued action in all cases in Small Claims Court. None of our time spent pursuing the claims can ever be recouped.

To give you a further idea of some of the types of problems encountered, I have broken each one out as to the problems.

One - owed two months rent. He kept promising to pay when his check arrived and moved when we filed and served a complaint for the rent in Small Claims Court. It will probably be at least January or February before we are able to get the judgement and pursue action to get the money.

One - Had a 6 month lease and moved with no notice after six weeks owing rent and doing some damage. We have obtained a judgement and are pursing collection of the money owed. It will take us about three years to collect all that is owed.

One - Had a 6 month lease and had done so much damage in 6 weeks plus would not pay second months rent that we gave them notice to move. It took an attorney notifying them that we would go for a FED if they did not move to get them out. It took almost a year to run them down to serve the Small Claims summons. We are now trying for a default judgement.

One - Gave a notice to move due to rent not being paid on January 3, 1991. It took us until January 30 to get the FED hearing. She moved February 1. We have a judgement for back rent (for part of November, all of December and January). We are now trying to get a judgement for cleaning and damage costs which deposit did not begin to cover.

One - Had a six month lease. Within 24 hours of moving in the police had been called by other tenants due to partying (including one broken window). She was warned that she would be evicted if this continued.

When she would not pay the next months rent, we gave her a notice on March 6 and the attorney gave her notice on March 7 threatening a FED as this will occasionally get them out. We were unable to schedule a FED hearing until April 4, and she was out April 6. We have obtained a judgement to get rent and damages.

As you can see getting to court for an FED hearing is a slow process.

As most of us testified, we need the shortest possible notice period when rent is in arrears. It appears the courts also need to react faster in these cases as our attorney tries to get in quickly.

We must also be able to post the notice on the door without trying to serve by certified mail if we cannot serve the notice in person. These people are very good at avoiding you and will never pick up certified mail if they see it is from the landlord.

A couple of other issues which you raised which were not further addressed while I was there included non-payment of utility bills. We have received numerous notices that tenants are behind in their utility bills. Chugach gives us the option of converting it back to our name or having it cut off. We usually call the tenant and remind them it is their responsibility. Only once has it been turned off. Municipal Light and Power states they will convert it to our name. This has never happened.

The only other area I can think of which was in the bill two years ago involved extending the notice period if they paid part of the rent owed when given a notice. Now if you accept any of the rent, the notice becomes void. This would be of benefit since the tenant would know they would still have to move if they did not pay the entire month's rent. As it now stands under the current law, the landlord is caught between getting a part of the money owed and still having the tenant until the next month or accepting nothing and trying to get a FED.
I would also like to see something that if people do not leave a forwarding address we are not obligated to try to notify them of the disposition of the deposit.

While there are probably many areas which could be improved in the current law, the most critical appears to be to shorten the notice period when rent is in arrears. It is also critical that the method of serving the notice be changed back to the Senate version (i.e. post on door if person not at home). It may be easier to get a small number of good changes than trying for too much at this time.

If I can provide any other information which might help you, please do not hesitate to contact me.

Sincerely,

Nancy J. Todd

Nancy J. Todd

Alaska State Legislature

House of Representatives

House Judiciary Committee

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

Representative Dave Donley
Chairman

December 12, 1991

Diana Rash, Property Manager
Polar Property Manager
1101 E. 76th Avenue, Suite B
Anchorage, Alaska 99518

Dear Ms. Rash:

Thank you for your recent letter on SB 35. As you probably know, I strongly support this legislation. I also strongly support returning to the version of the bill that passed the Senate. In fact, I have prepared a Judiciary Committee Substitute for SB 35 that corrects the problems created by HCS CSSB 35 (L&C). Your letter will be a part of the Judiciary Committee record, and will help explain why HCS CSSB 35 (L&C) is unworkable.

Once again, thanks for writing.

Very truly yours,

Dave Donley

Chairman Dave Donley

DD:lc

TFT add to file

RECEIVED
OCT 16 1991

POLAR REALTY

Polar Property Management • *A Division of Polar Realty, Inc.*

POLAR REALTY, INC.

Diana L. Rash
Property Manager
Leasing Agent

1101 E. 76th Ave., Suite B
ANCHORAGE, ALASKA 99518
OFFICE: (907) 349-7681
FAX: (907) 349-2032
RES: (907) 248-7787
Residential – Commercial – Land – Leasing – Investments

October 11, 1991

The Honorable Dave Donley
3111 "C" Street, Suite 450
Anchorage, Alaska 99503

Dear Represenative Donley:

I wish to thank you for your support and efforts for Senate bill 35.

I would like to see some changes, however, in the present bill. The first issue, in Section 2 AS 09.45.090 (A) failure to pay rent from the rental due date, a five day notice for demand made in writing for possession of the premises. The second issue, I would like to see changed is, Section 3 AS 09.45.100. This section on requisites of notice to quit. In most cases, the tenant does not accept certified mail, especially. if it is from the landlord. This section would give the tenants an extra day of possession. Instead of the current ten days for non-payment, according to SB 35, they would get eleven days. Eight days plus an extra three days for notice provided by mail. This needs to be changed to delivered in person or posted to the door with a witness.

Landlords have already had lost rent from these tenants. Otherwise, they wouldn't be serving the notice in the first place. Why add to the landlords loss by making them pay for certified mail. Currently this cost is $2.29 per letter. I manage 219 units through Polar Property Management. If I had to serve all my tenants for non-payment of rent, we would be looking at an additional $501.51 loss per month.

Another issue that needs to be addresses. If we would write a NSF check to Carrs, Lamonts, etc., we have a severe penalty, but tenants do not have any punishment from writing NSF checks to landlords. This should be changed. We need to put some harsh rules for the bad tenants. Tenants who constantly write bad checks and destroy property. Either stiff fines or jail terms for the repeat offenders.

Thank you for taking the time to listen. Good Luck in Juneau!

Sincerely,

Diana L Rash

Diana Rash
Property Manager
POLAR PROPERTY MANAGEMENT

Alaska State Legislature

Senate District L

Al Adams

WHILE IN SESSION
P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3707

OUT OF SESSION
P.O. Box 333
Kotzebue, Alaska 99752
(907) 442-3245

Official Business

November 1, 1991

Patrick J. Stephan, CRB
President/Broker
Polar Realty
1101 E. 78th Avenue, Suite B
Anchorage, Alaska 99518

Dear Mr. Stephan:

Thank you for your letter regarding Senate Bill 35. This legislation passed the Senate on May 3, 1991 with my support after lengthy work in committee. It is now in the House Judiciary Committee with a subsequent referral to the House Finance committee. As such, it is out of my hands so to speak as far as my ability to propose amends.

I will send a copy of your letter to those legislators who will be working on the bill this session. The first is Senator Pat Pourchot, the bill's sponsor, and second, the chair of the House Judiciary Committee, Representative Donley.

Thanks for your interest. I recommend you work with both of the above to accomplish your goals in this matter.

Sincerely,

Al Adams/ms

Senator Al Adams

-H JUD -
- FIN -

October 15, 1991

The Honorable Al Adams
Box V
Juneau, AK 99811

Dear Senator Adams,

I wish to thank you for your support and efforts for Senate Bill 35.

I would like to see some changes however, in the present bill. The first issue, in Section 2 AS 09.45.090 (A) failure to pay rent from the rental due date, a five day notice for demand made in writing for possession of the premises. The second issue, I would like to see changed is Section 3 AS 09.45.100 on requisites of notice to quit. In most cases, the tenant does not accept certified mail, especially if it is from the landlord. This section would give the tenants an extra day of possession. Instead of the current ten days for non-payment, according to SB 35; they would get eleven days. Eight days plus an extra three days for notice provided by mail. This needs to be changed to "delivered in person or posted to the door with a witness."

Landlords have already lost rent from these tenants; otherwise, they wouldn't be serving the notice in the first place. Why add to the landlords loss by making them pay for certified mail? Currently the cost is $2.29 per letter. I manage 219 units through Polar Property Management. If I had to serve all my tenants for non-payment of rent, we would be looking at an additional $501.51 loss per month.

One other issue that needs to be addressed is the fact that if I write an NSF check to Carrs or Lamonts, for example, I face a severe penalty. However, tenants do not have any punishment from writing NSF checks to landlords. This needs to be changed. We need to make some harsh rules for bad tenants. Tenants who constantly write bad checks and destroy property should be given either stiff fines or jail time for repeat offenders.

Thank you for taking the time to listen. Good luck in Juneau!!

Sincerely,

Patrick J Stephan, CRB
President/Broker
DR/scw

Alaska State Legislature

House of Representatives

House Judiciary Committee

Representative Dave Donley
Chairman

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

December 31, 1991

Mona Bryant
1539 Harriet Court
Anchorage, Alaska 99515

Dear Ms. Bryant:

Thank you for your recent letter on SB 35. As you probably know, I strongly support this legislation. I also strongly support returning to the version of the bill that passed the Senate. In fact, I have prepared a Judiciary Committee Substitute for SB 35 that corrects the problems created by HCS CSSB 35 (L&C). Your letter will be a part of the Judiciary Committee record, and will help explain why HCS CSSB 35 (L&C) is unworkable.

Once again, thanks for writing.

Very truly yours,

Dave Donley

Chairman Dave Donley

DD:lc

TFT I agree
save for file

Igloo Properties
Charley & Mona Bryant
1539 Harriet Ct.
Anchorage, AK 99515
(907) 345-4344

December 26, 1991

Representative Donley
Chairman, Judiciary Committee
3111 C Street Suite 450
Anchorage, AK 99503

Re: SB 35

Dear Chairman Donley:

I am writing to urge you to retain the original five day notice period for getting rid of non-paying tenants in SB 35. I am also opposed to requiring a notice sent to the tenant by certified mail. The tenant has been forewarned in the lease that he will be evicted for not paying his rent. We currently serve a 10 day notice in person or leave it at the tenant's residence. A notice through the mail would require an even longer time period and would defeat the whole purpose of SB 35.

We do extensive credit checks on prospective tenants but still have been forced to evict tenants for non-payment. After giving a 10 day notice to evict we're then forced to go through the time-consuming court process of getting them out (since in many cases they refuse to move), which can take up to a month. This causes us to lose at least two months of rent in addition to all of the court expenses.

Once the tenant is out, there is only a very slim chance we will ever collect any of that money from him. **ALL** of our judgements from previous small claims cases are still unpaid, some dating back over three years.

Many states only require a three day notice period (i.e. Oregon), which is very reasonable. The tenant, by this time is already 10-13 days late so is usually very aware of the impending implications of

eviction. If we were the owner of a hotel and did not get paid, we could call the police and have the person arrested for "Defraud of an Innkeeper". As landlords, we have to sit by and allow these persons to live in our apartment, rent free, and are unable to do anything. Some tenants are very aware of this opportunity and make the most of it. As far as we're concerned, these people are stealing income from us and, if not prosecuted for it, at least the time limit should be shortened so our loss isn't as great.

Thank you for your consideration.

Sincerely,

Mona Bryant

Mona Bryant
Owner

The Glory Hole
247 South Franklin Street • P.O. Box 21997 Juneau, Alaska 99802 (907) 586-4159

TO ALL REPRESENTITIVES:

We would like your attention to Sen. Bill #35(Judiciary). This bill has passed the Senate and is now in the House. Our objections to the bill are as follows:

1. Our Constitution states that a person is innocent until PROVEN guilty. This bill starts punishing a person (and, perhaps, a family) upon the ARREST of the person for drug and or alcohol related crimes. We think the proper word should be "CONVICTED". Question: what happend if there is a family, who had no knowledge of the crime and are subsequently put out on the street, due to one member's fault? They will probably end up at the local shelter.

2. The second thing we object to in this bill is:
The changing from 10 days to 5 days that a tenant can be late with thier rent. Many folks in this state are dependent upon the mail to bring thier checks. Social Security, ADFC, retirement checks are all affected by weather and other "beyond control" factors. Many single parent households in this state could be affected. And, when they get evicted, where do they go? To the local shelter.
We are trying with all our resourses to move people on and into the mainstream of society, and this bill would simply make our jobs double, over the state.

Please read this carefully and remember that ANYONE can get broke, and that not everyone who is late with a bill or rent is a deadbeat.

Thankyou,

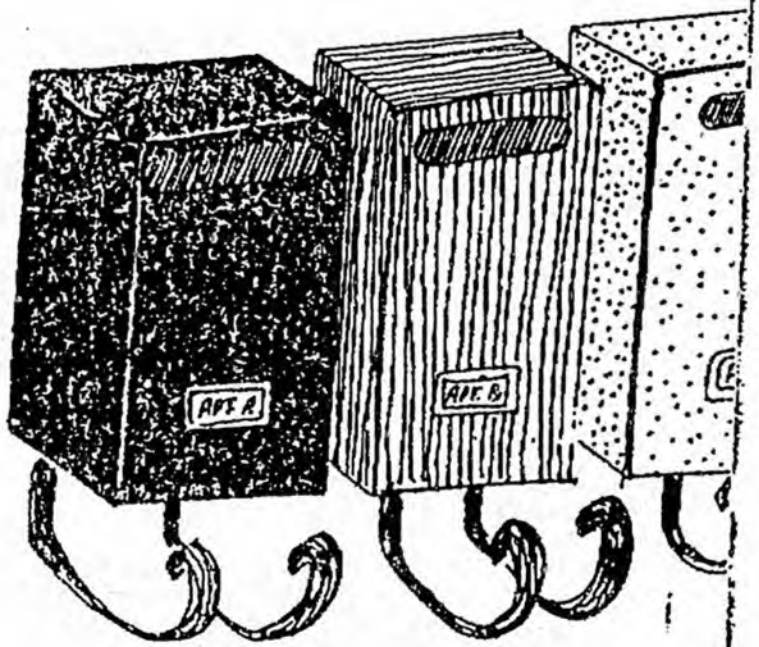
Ellen Northup

Ellen Northup, executive director

ADDENDUM: This bill will be heard in the Labor/Commerce committee, on Tuesday, May'4, at 1. pm, room 17.

SAVE for Copies

ALASKA LANDLORD-TENANT LAW



Acknowledgements

The following agencies have participated in the preparation of this booklet.

Alaska Legal Services
Text and graphics — Stephanie Scowcroft
Editing — Donald E. Clocksin

Cooperative Extension Service
Technical Assistance — Jim Smith, Jane Windsor

Consumer and Homemaking Section
Division of Vocational and Adult Education
Alaska Department of Education

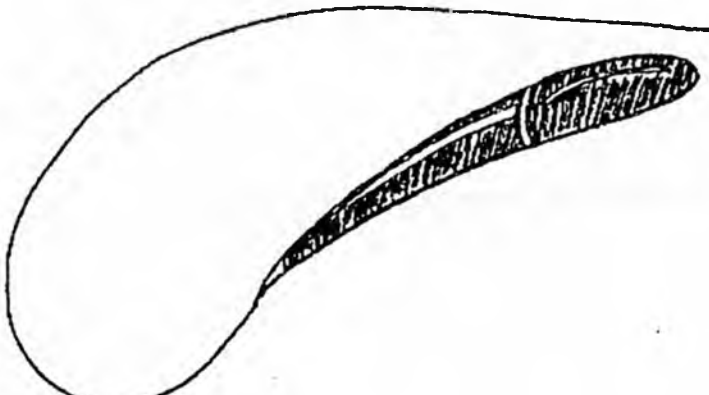


table of contents

INTRODUCTION (1)
- when? (1)
- who? (1)

MOVING IN (1)
- change your mind? (1)
- illegal discrimination (2)
- disclosure (3)

WHILE RENTING (4)
- paying rent (4)
- deposits and prepaid rent (4)
- rental agreements (5)
- rules and regulations (6)
- subleasing (6)
- privacy! (7)
- written notices (8)
- absence and abandonment (9)
- fire/casualty damage (10)
- housing and fire codes (10)
- condemned! (11)
- retaliation (11)
- . . . and eviction (11)
- . . . and rent increases (11)
- landlord duties (12)
- handyman agreements (14)
- tenant duties (14)

MOVING OUT (15)
- your notice (15)
- eviction (16)
- deposit return (17)

INTRODUCTION

On March 18, 1974, the Governor signed an important new law which affects landlords and tenants. If you are in public housing or rent a house, apartment, mobile home, or mobile home space for residential purposes, this law applies to *you*! Become familiar with your new rights and responsibilities. You will be better able to *avoid* or *solve* your landlord-tenant problems.

when?

You are covered by the new law from the day you next paid rent after March 19, 1974 (usually April 1) *and* if you rent monthly or weekly. If you signed a lease before March 19, 1974, in which you promise to stay for more than a month, you will not be covered by the new law until that lease expires or is renegotiated.

NOT COVERED

1. Residency in an institution (school dorm, jail, hospital, nursing home, etc.)
2. Hotels, motels and transient housing
3. Condominiums
4. Live-in employment
5. Agricultural tenancies
6. Occupancy under a contract of sale
7. Fraternal or Social organizations

Some terms are used rather loosely in this booklet. "Landlord," for instance, generally means the owner *or* his manager *or* rental agent. "Your place," "dwelling," "unit," "property," and "premises" generally refer to your rental, whether it is a house, apartment, mobile home, or mobile home space.

MOVING IN

change your mind?

Once you've agreed to rent a place, have given the landlord all or part of the deposit and rent money, then don't move in, you may not be able to have all your money returned. If this happens on a month to month agreement (written *or* oral) you may have to pay for one month's rent or rent on a day to day basis until someone else rents the place, whichever is less. IF you signed a lease, you may owe rent until the landlord re-rents the place or the lease period ends, whichever is less.

EXCEPTION: If the landlord lied to you about the place or deceived you by not telling you about important problems (for instance, no heat, the building is condemned, etc.) you should get all your money back. In addition, you could sue for fraud. If this situation comes up, see a lawyer.

illegal discrimination

It is illegal for landlords to refuse to rent to someone because of sex, race, religion, national origin or color. Local, state, and federal laws protect against this type of discrimination.

It is unlikely that a landlord will openly refuse to rent to someone because of sex, race, religion, national origin or color. There are some indications that a landlord is practicing discrimination in renting when:

- the apartment you called about is "suddenly" taken when the landlord sees you in person.
- a place you've been told was "rented" remains vacant.
- the rent or deposit is much higher than advertised or charged for similar units.
- rules will be different for you than others in the same apartment house or court (for example, others have pets, but you cannot. However, a landlord may decide to allow no more pets—but he must stick to the new rule as far as *all* new tenants are concerned).

Everyone should have a free choice about where they live, and there are ways of fighting discriminatory practices legally. If you feel you have been discriminated against, and want to do something about it,

In the *City of Anchorage* contact:
HUMAN RELATIONS COMMISSION
326 E. Third Street
phone: 272-2525, ext. 342

In the *Fairbanks* area contact:
STATE HUMAN RIGHTS COMMISSION
602 Barnette, Room 162
phone: 452-1561

for *anywhere in Alaska* contact:
STATE HUMAN RIGHTS COMMISSION
2457 Arctic Blvd. Anchorage
phone: 274-4692

Check your local listing in
Juneau and Ketchikan
for new office location and phone numbers.

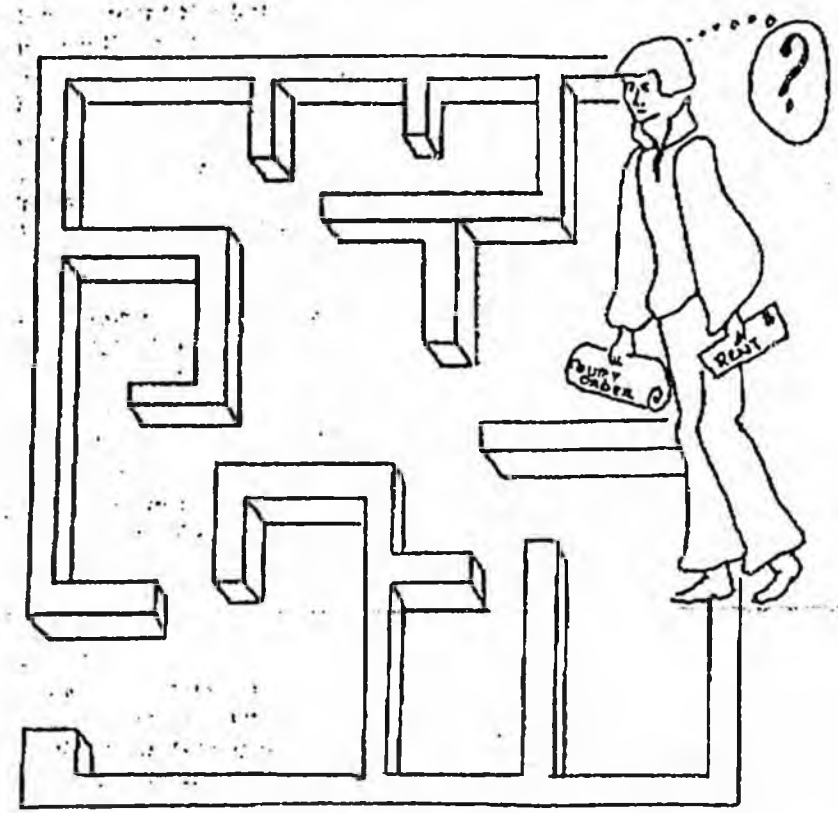
Another course you may wish to take is a lawsuit in State or Federal court. In this case you would probably want to find an attorney experienced in this area of the law. A good source of information is the American Civil Liberties Union (ACLU).

disclosure

The law says that someone must be responsible for such things as decisions about maintenance, repairs, collecting rent and receiving notices, from tenants or the court. It is now a requirement that when a tenant moves in, he/she must be told who the owner is (or who the owner wants his/her agent to be). This information must include a name and address, be in writing, and kept up-to-date.

If this information is *not* provided, whoever made the rental agreement with you or receives your rent becomes the legally responsible person. When you are required to give a written notice or want to sue:

1. contact the owner or his/her agent, or
2. if that information was never officially given to you, contact the person who made the original agreement or takes your rent.



WHILE RENTING

paying rent

When a tenant moves in, the time, place and method of rent collection is sometimes not mentioned. First, the landlord is *not* required to ask his/her tenants each month for their rent before they are "required" to pay it. A time and place should be agreed upon when you move in. (For example, at the apartment on the first of each month). If this matter was never discussed, then it is assumed by the new law that the rent will be collected at your dwelling. If you rent monthly, the rent is due every 30 days, unless otherwise agreed, so if you moved in on the 8th rent is due on the 8th of each month.

deposits, prepaid rent

When you move in, you will undoubtedly have to pay some kind of deposit, and often the last month's rent, as well as your first month's rent. Deposits are often collected for pets, cleaning, children or security. The new law requires that the total amount of money collected at the beginning of the tenancy for all deposits and the last month's rent cannot equal more than two times the monthly rental rate. This is in addition to the first month's rent. So, if you pay $200 a month rent, the maximum a landlord could require when you move in would be $600 ($200=first month's rent; $200=last month's rent; $200=security). The deposit and prepaid rent *must* be deposited in a trust account in a bank, savings and loan association, or licensed escrow agent. The only exception is where it is impractical to bank the money, as in areas without such facilities.

When the deposit is collected, it is a good idea to have the landlord write on your receipt what has to be done to get the deposit back. (*Always get and keep receipts* for any money you pay!) All or part of the deposit can be kept *only* if you cause damage, don't leave the place as clean as you found it, or owe rent. You cannot be charged for ordinary use of the dwelling. (See MOVING OUT.) A good way to make sure you and the landlord will remember what condition the place was in when you began living there is to make a list of what is broken, dirty or falling apart. Have the landlord sign a copy and keep a signed copy for your records.

When you move out, the landlord has *two weeks* to return your money to you. If he/she is keeping all or part of the deposit, a *written* statement telling you why he/she is not returning the deposit is REQUIRED! It is important to insist on receiving a written statement when the landlord keeps deposit money. If you feel it has been unfairly kept, you can sue for up to TWICE the amount wrongfully kept.

If you are renting some place and the building is sold, there is often confusion as to which person, the old or new landlord, is responsible for your deposit and prepaid rent money. The original landlord who accepted the money is the person responsible for returning the money to you — UNLESS the new owner receives the money from your old landlord and agrees to the responsibility of taking care of it.

rental agreements

Rent agreements may be written or oral. Leases are rental agreements which say you promise to stay a certain length of time (usually four, six or twelve months). If you have a lease, the landlord cannot raise the rent, or evict you unless you break promises in the lease. If you have a lease but must move, you are legally responsible for the rent for the rest of the term. (In order to be able to rent your apartment to someone else, see the requirements in the section called SUBLEASING.)

Rental agreements cannot:

1. force a tenant to waive any legal rights or remedies;
2. excuse the landlord from the responsibility for his/her negligence;
3. let the landlord sue the tenant without notice;
4. require the tenant to pay attorney fees; or
5. allow the landlord to take the tenant's personal belongings.

Some common things appearing in rental agreements that you can ask be removed before you sign are these:

1. agreeing to let the landlord come into your place whenever necessary (see section on PRIVACY!)
2. agreeing to immediate eviction for non-payment of rent (see section on EVICTION).
3. agreeing that you'll make all repairs (see sections on HANDYMAN AGREEMENTS and LANDLORD DUTIES).
4. excusing the landlord from all liability in case of accidents due to his/her neglect.
5. giving up your rights to the deposit (see section on DEPOSITS).
6. agreeing to pay the landlord's attorney fees.

Some things which *should* appear in your rental agreement are these:

1. name and address of the landlord (or his/her agent) and tenant.
2. what is included in the rent (heat, lights, water, phone, etc.) and what is provided (driveway, garage, parking space, snow removal, laundry facilities, portion of lawn, storage space, yard upkeep, etc. Also, a complete list of all furniture and its condition is very important).
3. total number of full-time occupants and pets allowed.
4. a list of equipment prohibited (such as snowmobiles, musical instruments, motorcycles, etc.)

5. the rental terms (the date the rental begins, whether it is a month-to-month agreement or term lease, when rent is considered overdue and a penalty or eviction will be considered, etc.)

6. the amount of deposit and what it is for (what do you have to do to get it back).

7. a list of the landlord and tenant repair and maintenance duties (see the section on their duties).

rules and regulations

Almost every landlord has rules and regulations. Often these are not mentioned until after a tenant moves in or until the rule has been broken. To avoid problems, the new law requires the landlord to show his/her rules and regulations to you before you commit yourself to a rental agreement (oral or written). You may discover that you do not agree with them and decide not to move in. The rules and regulations must be reasonable and specific. Ask the landlord to cross out those that are not because under the new law he will not be able to enforce them.

Remember that once you have seen the rules and move in, you are agreeing to live by those rules. A copy must be posted some place at the dwelling where it can be easily seen.

Rules must apply to all tenants equally and fairly. Rules and regulations cannot be changed without giving you reasonable notice first. New rules *cannot* be added *or* old rules changed if they change your original agreement a great deal. (Example, if you were allowed to have a pet when you moved in, a new rule *cannot* say that you *cannot* have a pet.)

subleasing

When you sign a lease, you are promising to stay for a certain length of time (usually four, six or twelve months). You are telling your landlord that each and every month, whether you still live in the apartment or not, you are responsible for paying the rent. Unless the landlord signs a paper saying it's okay with him for someone else to move in if you move out, you cannot just have someone "take over" your place.

There are usually only two ways you can get out of a lease.

1. If the landlord *breaks* his/her part of the bargain (what's written in the lease) you can terminate your tenancy (move).

2. Get the landlord to agree to let you sublease your place.

Under the new law the landlord has a right to ask for certain information about the tenants you want to move into your place. He/she can reject your choice *only* for certain reasons, and cannot unreasonably keep you from subleasing.

The information the landlord can ask for IN WRITING about the new tenant includes:

1. name, age, and present address,
2. occupation, present employment, and name and address of employer,
3. marital status,
4. how many people will live in the apartment,
5. two credit references, and
6. names and addresses of all landlords of this person for the last three years.

Once this information has been given to your landlord, he/she has 14 days to answer your request. No answer within 14 days is considered the same as consent, so go ahead and sublease. If the answer is "no," the landlord must give reasons for his decision. The only legal reasons he can give are:

1. bad credit record,
2. too many people,
3. too many children,
4. unwillingness of new tenant to accept rental agreement,
5. pets not acceptable,
6. proposed business activity, and
7. bad report from former landlord.

If the landlord says "no" to your suggested new tenant, but doesn't give reasons in the list of acceptable rejection reasons, the law says you can go ahead and sublease or legally break the lease (move).

privacy!

A common problem landlords and tenants have is that of the tenant's right to privacy. Many landlords feel they can come and go from their apartments whenever they please. Some tenants feel they *never* have to let a landlord come in. To clear up the confusion, the new law says a landlord must give you 24 hours notice that he/she plans to come for the purpose of making repairs, maintenance, an inspection or showing the place (at reasonable times).

TWO EXCEPTIONS: No such notice is required if it is not possible to contact you by ordinary means within 24 hours, or if there is an emergency (smoke, water, explosion, etc.).

Landlords *cannot* abuse their right to request entry, or harass you, and tenants *cannot* unreasonably keep a landlord from entering.

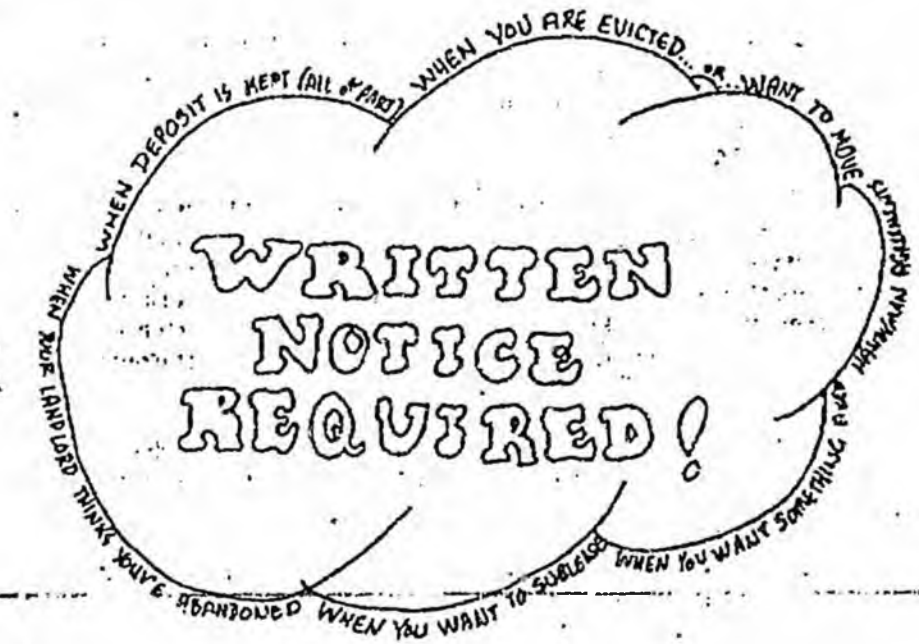
If you have a nosey landlord who believes he/she can come and go as he/she pleases, it might be a good idea to get a copy of the new law to show him/her the section called ACCESS (34.03.140). If your landlord comes in and will not leave, call the police.

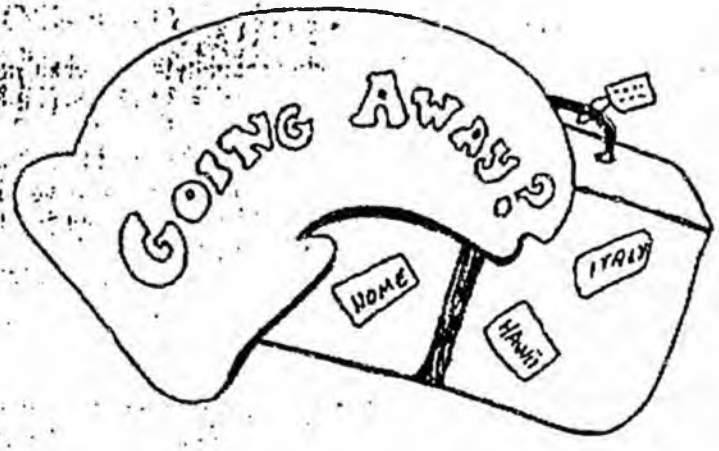
When a landlord *does* abuse his/her right to enter (by coming in without the tenant's permission, or when the tenant is gone, or repeatedly without need) the tenant can ask a court to demand that he/she *stop* (called an INJUNCTION). If the tenant unreasonably refuses to allow the landlord in, he/she can also get an injunction.

written notices

Most people are not used to giving written notices. Sometimes this is because a written notice doesn't seem necessary, you don't know what to say, or do not know a notice *in writing* is required. It cannot be emphasized strongly enough how important it is to get *all promises*, receipts for the payment of money, and notices **IN WRITING!** An *oral* agreement to change a *written* agreement is *not valid*! If a problem comes up later, you can't have better proof than something in writing. Also, many protections provided for you in the new law can **ONLY** be used when the proper written notice has been used.

Putting things in writing does not mean you and your landlord are enemies. It will *avoid* disagreements.





absence/abandonment

There is something completely new to the Alaska landlord-tenant law that you should know about. You must tell your landlord every time you go away for more than *seven* days. If you are not planning to be gone that long, then find that for whatever reason you will be gone more than a week, you must notify your landlord AS SOON AS POSSIBLE.

This part of the new law was written to protect the landlord's property during very cold weather when the pipes may freeze up. However, it applies year 'round. During your absence, your landlord can enter your place if he/she thinks there is an emergency (see section on PRIVACY!), or with 24 hours notice.

The landlord may assume you have *abandoned* the dwelling when:

1. You are behind in rent *and*,
2. You are gone for more than seven straight days *and*,
3. You did NOT give notice to your landlord that you would be gone.

The landlord may enter and store your belongings and re-rent the place. You will be liable for storage charges and up to one month's rent.

YOUR PROPERTY: If when you move you leave some of your property in the place you were renting, or the landlord believes you have abandoned the property (explained above under ABANDONMENT) he/she MUST attempt to send a notice to you that tells you to remove your property by a certain date (this must be at least 15 days after his notice is mailed or delivered). The notice to you must also tell you whether the landlord is going to have a public sale to get rid of the property or is going to throw or give it away. Your belongings cannot be thrown or given away unless they can be considered valueless (or are food).

fire/casualty damage

If the dwelling is damaged by a fire or other casualty (earthquake, flood, etc.), depending on the amount of damage, there are a couple of things you can do:

1. Partial Damage: When only a part of the dwelling is damaged and it is lawful for you to stay, (the place isn't condemned) move out of the damaged part. You can reduce your rent to an amount which shows the fair value of the undamaged part of the dwelling.

2. Total Destruction: If you can no longer live in the place, you can move out, notify your landlord, and stop paying rent. Your rental agreement and responsibility to pay rent ends when you move.

After you have moved, the landlord must return any deposits and/or prepaid rent to you. Rent you have coming back because you didn't live out the days you'd paid for that month (or week) must be returned (counted from the day of the casualty).

housing/fire codes

The primary objective of codes is the protection of the health and safety of the people who live in houses and apartments. A minimum standard of maintenance is set, making the landlord (*not* his tenants) responsible for keeping rental property in decent shape. (The section of this booklet called LANDLORD DUTIES explains what you can expect the landlord to repair and maintain.)

The new law protects tenants who use their right to report code violations. If you call to complain and ask for an inspection, your landlord cannot take revenge by evicting or harassing you. (see the section on RETALIATION).

Alaska has a statewide fire code but does not have a statewide housing code. The following places *do* have codes, though, and you can report substandard conditions.

Anchorage — City: Building Safety Section (274-2525, ext. 324)
Borough: EQC (274-4561)
(Environmental Quality Control)

Fairbanks — Fairbanks Building Official - 452-1881

Juneau — Juneau-Douglas Borough Housing Inspector (586-3300)

Ketchikan — City Building Inspector - 225-3111

Kodiak — City Building Inspector - 486-5731

condemned!

Buildings inspected and found to be *very* unsafe may be condemned. The housing inspector will tell your landlord that he/she *must* repair the problems or he/she will be taken to court. If the problems are so serious that the inspector feels the building is beyond repair, he will order that it be torn down. You may come home one day and find a sign posted on your building saying that the place is unsafe for anyone to live there. You should immediately find out when the inspector and landlord expect all the tenants to move. You should also see an attorney before paying any more rent.

retaliation

IF YOU:

1. complain to your landlord about his/her failure to repair or,
2. use the rights and remedies in the landlord-tenant laws of Alaska, or,
3. join a tenant union or organization or,
4. complain to a government agency about housing code violations or need for rent controls,

THEN YOUR LANDLORD CANNOT:

1. raise your rent or,
2. decrease services (for example, stop providing utilities), or,
3. evict you.

If this revenge against you occurs, you can move out *or* stay *and*, in either case, sue for an amount not more than 1½ times your actual damages.

...and eviction

The landlord is not considered to be evicting the tenant out of revenge if he/she evicts because:

1. the tenant is behind in rent,
2. the landlord must make repairs to meet code requirements,
3. the tenant is using the place for illegal purposes,
4. the landlord wants to use the place for personal purposes,
5. the landlord is going to make *big* repairs or changes that require a vacant dwelling,
6. the landlord is going to use your place for something other than a residence for at least six months, or,
7. the landlord is selling the property.

...and rent increases

The rent can be increased, and not be considered revenge if:

1. the landlord's taxes have gone up a great deal, or,
2. the ordinary costs of maintaining the property have gone up a great deal in the past four months. (The costs of a repair made because of a tenant's complaint cannot be passed on to the tenant as a rent increase), or,

3. the landlord makes *improvements* to the property and passes the costs on to his/her tenants in an equal and fair way.

4. the landlord can prove that the rent he wants to charge is equal to what is charged for similar dwellings, and that he/she has been undercharging.

landlord duties

MAINTENANCE:

These are the things tenants can expect their landlords to do:

1. make all repairs to keep the dwelling in a liveable condition,

2. keep all common areas (stairs, halls, yard, garbage area, etc.) clean and safe,

3. keep in safe and working condition all electrical, plumbing, toilet ventilating (fans, windows), air conditioning, kitchen and other appliances or facilities supplied by him/her,

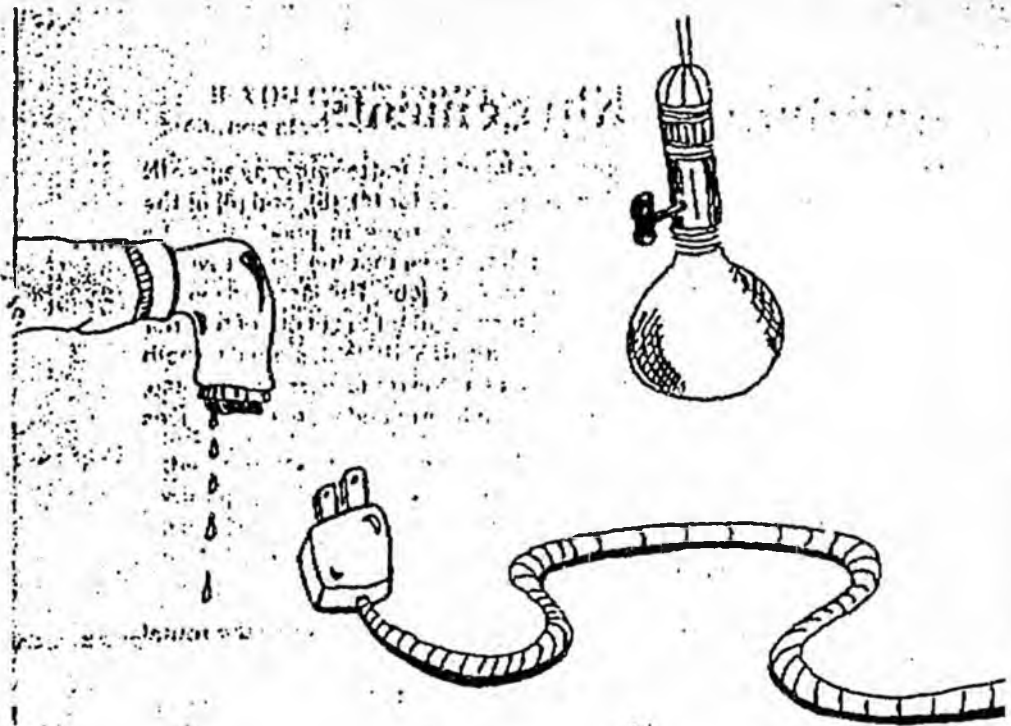
4. provide garbage cans and arrange for removal service,

5. supply running water and reasonable amounts of hot water and heat at all times, unless there is a severe energy shortage or the furnace or hot water heater is in the complete control of the tenant (as in a house),

6. *if* requested by the tenant, supply locks and keys. If the lock you have can be easily broken, it does not provide you with enough protection. You can demand that a *proper* lock be put on your door!

This is a check list of the main things your landlord should repair and maintain:

- doors, windows, roof, floors, walls, and ceilings that leak or have holes,
- plumbing fixtures (must work, not leak and provide a reasonable amount of running water, hot and cold water and at a reasonable water pressure level),
- a working and safe stove and oven,
- a reliable heating system which provides heat to all rooms in a reasonable amount,
- a safe electrical system (no loose or exposed wires, sockets that do not spark and enough power so the system does not blow fuses when used normally),
- windows (or fans) that provide fresh air when wanted,
- enough garbage cans to provide an adequate and safe trash removal service,
- extermination service if roaches, rats, mice or other pests infest the building, apartments or property,
- proper maintenance of vacuum cleaners, washing machines, dish washers, etc. supplied by the landlord (when not abused or broken by the tenant).



If you have a problem with something mentioned above and that problem results in a threat to your health or safety:

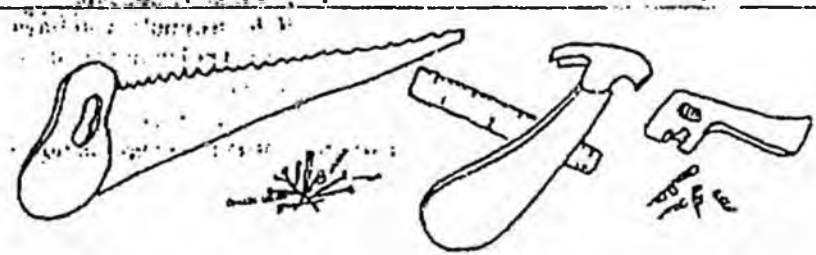
1. notify your landlord IN WRITING of what the problem is, and that he/she has 10 days to correct the situation or you will move in 20 days.

2. IF the landlord makes the repairs within 10 days you cannot move (unless you give a regular 30 day written notice).

3. IF you were the cause of the problem, you cannot use this solution.

4. IF the same problem comes up again within six months because the landlord did not do a good job of fixing it the first time, then you can give the landlord a 10-day written notice telling him/her what the problem is and that you are going to move out in 10 days.

EXCEPTION: If the place you are renting is in an isolated area where public sewer or water service has never existed or where running water, hot water, sewage or sanitary facilities were not provided by a private system (as by a septic tank) when you moved in, the landlord is *not* required to provide these services. Basically, if there are facilities, they must be maintained by the landlord.



handyman agreements

In the renting of a house or duplex, the landlord and tenant *may* agree IN WRITING that *the tenant* will be responsible for (4), (5), and (6) of the LANDLORD OBLIGATIONS. Also, if it is done in good faith, the landlord and tenant of any dwelling may agree that the tenant will do *specific* repairs, remodeling, or maintenance jobs. The landlord cannot force a tenant to agree to this kind of arrangement to get out of his/her obligations as a landlord. It must be made IN WRITING, signed by both parties and cannot be on the same paper as the rental agreement. Also, this agreement cannot be made if it will reduce or endanger the services to the other tenants.

tenant duties

These are the duties you must perform to keep your part of the rental bargain:

1. pay rent on time (see section PAYING RENT).
2. keep the place clean (take garbage out),
3. use the facilities (sinks, toilet, kitchen appliances, etc.) properly,
4. do not disturb the neighbors,
5. do what is required by the lease or rental agreement.
6. replace or fix anything you damage or break because of an accident or carelessness,
7. do not destroy, damage or deface any part of the property. You may be held responsible for the actions of others on the property with your permission.

This is what may happen if you do not complete your part of the bargain:

IF YOU DON'T PAY RENT: If rent is not paid when due, the landlord can evict you. He/she must give you a 10-day WRITTEN NOTICE saying that you will be evicted if you do not pay *within* 10 days. If you pay within 10 days, you can stay. If you try to pay *after* 10 days, the landlord does not have to accept the rent.

IF YOU DON'T KEEP THE PLACE CLEAN OR USE FACILITIES PROPERLY: If your failure to keep your place clean or use the facilities properly leads to problems which affect health and safety the landlord can give you a WRITTEN NOTICE to repair or remedy the situation within 10 days or leave in 20 days. The notice must be specific.

IF YOU DISTURB THE NEIGHBORS: If, for example, you have long, loud parties which disturb the neighbors' quiet enjoyment of their dwelling you may be evicted. When this happens, your landlord can give you a 20-day notice to correct the situation in 10 days or leave at the end of 20. This means that you are being strictly warned to keep the noise down or move.

IF YOU DON'T COMPLY WITH RENTAL AGREEMENT: If you break one of your lease or rental agreements you may face eviction. This does not apply to illegal parts of the agreement. (See RENTAL AGREEMENTS.) Disturbing your neighbors, discussed above, is an example. Other examples might include getting a pet where none is allowed, having extra people move in without notifying the landlord, making big changes to the place without asking the landlord, etc. The 20-day notice, with 10 days to comply, must be given.

IF YOU CAUSE DAMAGE: If you damage, break or destroy something by accident in the place you are renting, you will have to repair the damage. Your damage deposit can be kept by the landlord — but only the amount needed to make repairs. If you purposely destroy the property of your landlord, (for example, throw a rock through the window, write on the walls, smash furniture, etc.), you may be guilty of a misdemeanor and face not more than one year in prison or a fine of up to $500 or both. You may also be ordered to pay for the damage you caused.

MOVING OUT

The law requires WRITTEN NOTICES to cover the moving out process. This means that whether you are moving out for general reasons, using the remedies of the new law, *or* are being evicted, the only legal move is one discussed in writing.

YOUR NOTICE: When you are going to move, the law requires that you give your landlord a written notice telling him/her that you are going to leave. This must be delivered *30 days before your next rental due date.* Therefore, when you are planning a move, it is best to give notice when you pay your last rent and not after that time because you will be held responsible for the rent up to that 30 day period or until the place is re-rented, whichever is less. (Example: if you pay on the 8th of the month, on a month to month basis, and you decide on the 20th that you want to move, the soonest you can get out of the obligation will be 30 days *after your next rent due day*).

A 20-day notice IN WRITING is required when you are informing your landlord that an *important* part of the rental agreement has been broken by him/her and that you will move if the situation is not properly taken care of in 10 days. This kind of notice is required when the landlord is being requested to repair something that endangers your health and safety, also.

If your dwelling has been seriously damaged by fire or other casualty, and you have to move, you may leave without immediate written notice, but you must notify your landlord that you have moved as soon as you can.

SB 32 (cont'd)

a peace officer before they are appointed to retirement. When the member claims the retroactive service, an indebtedness to the system will be established. Any outstanding indebtedness that exists at the time of retirement will require an actuarial adjustment to the benefits payable based upon the juvenile correctional institution service.

If enacted, the bill becomes law the day after it is signed by the Governor.

Introduced January 21, 1991 and referred to State Affairs; Finance.

Permanent Fund Dividends
(eligibility for)

SENATE BILL NO. 33, by Senator UEHLING, Sturgulewski. A person will remain eligible to receive a Permanent Fund dividend if they are absent from the state "...to alleviate a medical condition if the individual is at least 65 years of age and is absent at the direction of a physician;..." If enacted, the bill becomes law January 1, 1992.

Introduced January 21, 1991 and referred to Judiciary; Finance.

Longevity Bonuses
(absences from state)

SENATE BILL NO. 34, by Senator POURCHOT, Collins. Relates to absences from the state for purposes of qualifying for longevity bonuses. A recipient who has not qualified to receive at least seven bonuses in the last 12 months due to absences that exceed 30 days, or who is absent for a continuous period that exceeds 165 days will not be allowed to receive bonuses for 12 months, and will be disqualified from the program, but can reapply at the end of the 12-month period. However, when the commissioner of administration determines that a period of absence is beyond the control of the recipient, the absence cannot be considered in determining whether the recipient is disqualified from the program and disqualified from receiving bonuses for the 12-month period.

Note: current law says that whenever the absence is for a continuous period that exceeds 90 days the recipient will be disqualified for the next 12 calendar months after returning to the state. When the commissioner of administration determines that a period of absence is beyond the control of a recipient, the recipient cannot be disqualified if the recipient still otherwise qualifies upon returning to the state.

If enacted, the bill becomes law 90 days after it is signed by the Governor.

Introduced January 21, 1991 and referred to State Affairs; Finance.

Landlord/Tenant
Responsibilities & Remedies

SENATE BILL NO. 35, by Senator POURCHOT. Makes miscellaneous amendments relating to responsibilities and remedies for landlords and tenants:

–Amends AS 04.21 (Alcoholic Beverages. General Provisions) and AS 17.30 (Food and Drugs. Controlled Substances) by adding new language that will require a peace officer who arrests a person for illegal activity involving alcoholic beverages or controlled substances on a residential premises the officer believes the person does not own, to make a reasonable attempt

SB 35 (cont'd)

to find out who owns the premises, and notify the owner in writing, at the last address listed on the municipal assessment role, and at any other address known to the peace officer, of the arrest.

–Rewrites AS 09.45.070 (Code of Civil Procedure. Action for Forcible Entry or Detention) to allow a person who owns a premises to maintain an action to recover the possession of the premises when a forcible entry has been made; when an entry is made in a peaceable manner and the possession is held by force; or if illegal activity involving alcoholic beverages, controlled substances, or imitation controlled substances is the basis for termination of the tenancy.

Note: the section currently provides that the person who is entitled to the premises can maintain an action to recover possession when a forcible entry is made upon a premises, or when an entry is made in a peaceable manner and the possession is held by force.

Changes the meaning of "unlawful holding by force" under AS 09.45.070 to mean "...when the tenant or person in possession of a premises fails or refuses to pay the rent due on the lease or agreement ... or deliver up the possession of the premises for more than five [10] days after demand made in writing for the possession;..." (underlined language added to current law, bracketed language deleted).

–Changes requirements for the notice to quit a premises under AS 09.45.100 (Requisites of Notice to Quit) so that the notice can be sent by registered or certified mail, and an additional three days will be added to the five days' notice if the tenant refuses to pay the rent, or to the required number of days notice if notice to quit is given for a reason other than those defined as "unlawful holding by force" (current law says the notice can be "...sent by registered or certified mail, in which case an additional three days shall be added to the 10 days.")

–Amends AS 09.45.130 (Action Against Persons Paying Rent in Advance) by adding a new subsection. AS 09.45.130 says that the notice to vacate a premises does not apply to a tenant until the period has expired for which the tenant has paid rent in advance. To authorize an action against a tenant who has paid in advance, notice has to be given at least 10 days before the date the rent is due again in case of a month-to-month tenancy, or at least three days before in the case of a week-to-week tenancy. The new subsection added by this bill says that the provisions of AS 09.45.130 outlined above do not apply to an action against a tenant when the tenant is arrested for illegal activity involving a controlled substance or for forcible entry.

–Amends the Uniform Residential Landlord and Tenant Act (AS 34.03) by adding a new subsection relating to tenant responsibilities (AS 34.03.120) to require the tenant not knowingly engage at the premises in an illegal activity involving alcoholic beverages, controlled substances, or imitation controlled substances, or knowingly permit others in the premises to engage in those illegal activities.

Amends section relating to noncompliance with a rental agreement by failure to pay rent (AS 34.03.220) by allowing the landlord to terminate the tenancy if the rent is not paid within five days after written notice is given by the landlord (currently the tenant has ten days after being given written notice).

Adds a new section to the Uniform Residential Landlord and Tenant Act (AS 34.03) that relates to illegal drug or alcohol activity on the premises that will allow the landlord to terminate the rental agreement for such action. The landlord will have to give the five day notice (as required in paragraph above), and must return all prepaid rent and security deposits.

SB 35 (cont'd)

If enacted, the bill becomes law 90 days after it is signed by the Governor.

Introduced January 21, 1991 and referred to Community and Regional Affairs; Judiciary.

Appropriation
(special)
(Permanent Fund)

SENATE BILL NO. 36, by Senator UEHLING, Pearce. Makes a special appropriation in the amount of $500,000,000 from the general fund to the principal of the Permanent Fund.

If enacted, the bill becomes law the day after it is signed by the Governor.

Introduced January 21, 1991 and referred to Finance.

Remote Construction Sites
(food and housing for
construction workers at)

SENATE BILL NO. 37. by Senator MENARD. Adds a new section to AS 36.90 (Public Contracts. Miscellaneous Provisions) to require an employer or contractor to provide food and housing to an employee working on a public construction project at a remote construction site. The housing must meet safety and health standards for housing set out in the Standards for Occupational and Industrial Structures. The employer or contractor cannot consider the cost of the food and housing in setting wages or in meeting wage requirements under AS 23.10.065 (Minimum Wages) and AS 36.05 (Public Contracts. Wages and Hours of Labor).

An employer or contractor will be exempt from the food and housing requirements if they provide transportation to and from the remote site on a daily basis that provides access to adequate commercially-available housing; takes no more than 30 minutes from the departure point to the worksite; and meets applicable transportation safety standards. These requirements will be considered a part of every contract for hire for a public construction project in the state.

Defines "remote" as "...a work site that is either more than 50 road miles or inaccessible by two-wheel-drive vehicles from a place that has adequate, commercially-available food and housing...."

If enacted, the bill becomes law the day after it is signed by the Governor.

Introduced January 21, 1991 and referred to Labor and Commerce; Transportation; Finance.

Lawful Hunting,
Fishing or Trapping
(obstruction or
hindrance of)

SENATE BILL NO. 38. by Senator FRANK, Sturgulewski, Pearce. Adds new sections to the Fish and Game Code (AS 16.05) to prohibit a person from obstructing or hindering another person's lawful hunting, fishing, or trapping by intentionally altering the feasibility of taking fish or game; creating a visual, aural, olfactory, or physical stimulus in order to alter the behavior of the fish or game; or tampering with the personal property of another intended for use in taking

SB 32 (cont'd)

The Senate State Affairs Substitute adds language to allow a nurse who was employed at a juvenile correctional institution in the Public Employees' Retirement System before the effective date of this Act to convert the credited service for that position to credited service as a peace officer by claiming the service before being appointed to retirement (the bill now covers youth counselors, unit leaders, superintendents, or nurses who worked in a juvenile correctional institution).

Longevity Bonus
(absences from state)

SENATE BILL NO. 34, (see page 21). Reported back to the Senate February 8, 1991 by State Affairs recommending SB 34 be replaced with a State Affairs Substitute, and as follows: Rodey (Chair) and Pourchot recommend it do pass; Duncan has no recommendation. To Finance.

As rewritten by the State Affairs Substitute, a recipient who has not qualified to receive at least eight bonuses in the last year due to absences from the state, or who is absent for a continuous period that exceeds 135 days, will not be allowed to receive bonuses for 12 months and will be disqualified from the program, but can reapply at the end of the 12-month period. The original bill said a person who was absent from the state for a continuous period exceeding 165 days could not receive bonuses for 12 months and would be disqualified from the program. Current law sets the time period a person may be gone at 90 days.

Landlord/Tenant
Responsibilities & Remedies

SENATE BILL NO. 35, (see page 21). Reported back to the Senate February 6, 1991 by Community and Regional Affairs recommending SB 35 do pass. Concurring: Frank (Chair), Zharoff, Sturgulewski. To Judiciary.

On February 8 Senator Halford added his name as a co-sponsor.

Appropriation
(supplemental)
(DOTPF/maintenance,
fuel costs/storm damage)

SPON. SUBSTITUTE FOR SENATE BILL NO. 41, (see page 26). Reported back to the Senate February 8, 1991 by Transportation recommending SS SB 41 be replaced with a Transportation Substitute, and that it do pass. Concurring: Menard (Chair), Jones and Pearce. To Finance.

The Transportation Substitute raises the total amount of the appropriation to $16,773,539 (was $7,608,000), and makes the following appropriations to the Department of Transportation and Public Facilities:

--$2,908,100 for maintenance of class 3 roads (unchanged);

--$2,800,000 for marine vessel operations and overhaul (was $2,500,000);

--$2,200,000 for maintenance of rural airports (unchanged);

--Adds a new section appropriating $4,160,139 to the Alaska Marine Highway System for fuel price increases ($1,918,275); per diem increases ($303,000); increase to employee benefits and

SB 7 (cont'd)

If enacted, the bill becomes law July 1, 1991.

Capital Punishment
(advisory vote on)

SENATE BILL NO. 13, (see pages 8;173). Reported back to the Senate March 13, 1991 by Judiciary recommending SB 13 do pass. Concurring: Halford (Chair); Frank and Rodey. Not concurring: Adams signed "do not pass." Collins has no recommendation. Senator Eliason stated that the bill will have an additional referral to the Finance Committee. To Finance.

Commercial Fishing Loans
(limited entry permits
pledged as collateral for)

SENATE BILL NO. 26, (see page 17). Reported back to the Senate March 14, 1991 by Labor and Commerce recommending SB 26 be replaced with a Labor and Commerce Substitute, and that it do pass. Concurring: Pearce (Chair), Eliason, Collins, and Halford. To Finance.

The Senate Labor and Commerce Committee Substitute removes section 2 of the original bill, which amended AS 16.10.335(d) (Fisheries and Fishing Regulations. Default and Foreclosure) to allow the commissioner of fish and game to waive any of the time limits placed on the debtor to respond to the notice of default, if requested by the debtor, and if the debtor showed good cause.

Landlord/Tenant
Responsibilities & Remedies

SENATE BILL NO. 35, (see pages 21; 170). Reported back to the Senate March 13, 1991 by Judiciary recommending SB 35 be replaced with a Senate Judiciary Committee Substitute, and that it do pass with a Letter of Intent. To Rules. The letter provides:

> Omission of other criminal behavior or activities not addressed in this bill should not be construed as acceptable behavior by tenants.

The Senate Judiciary Committee Substitute:

–Amends AS 04.21 (Alcoholic Beverages. General Provisions) and AS 17.30 (Food and Drugs. Controlled Substances) by adding new language that will require a peace officer who arrests a person for illegal activity involving alcoholic beverages or controlled substances on a premises the officer believes the person does not own, to make a reasonable attempt to find out who owns the premises, and notify the owner in person or in writing, at the last address listed on the municipal assessment role if the premises are located within a municipality that levies and collects a property tax. If an address is not available, notice of the arrest can be sent to the property owner at any other address known to the peace officer.

–Changes the meaning of "unlawful holding by force" under AS 09.45.090 to mean "...when the tenant or person in possession of a premises (A) fails or refuses to pay within five days the rent due on the lease or agreement ... or fails to deliver up the possession of the premises within five [for 10] days after demand made in writing for the possession;..." (underlined language added to current law, bracketed language deleted). For premises to which the Uniform Residential

SB 35 (cont'd)

Landlord and Tenant Act applies, it will be a case of unlawful holding by force when a tenant has not paid the rent, and fails to pay the rent within ten days after being notified in writing by the landlord. It will also be a case of unlawful holding by force if a tenant fails to dispose of garbage and waste from a dwelling unit in a clean and safe manner, or knowingly engages in an illegal activity involving alcoholic beverages or controlled substances, and after a notice to quit is served, the tenant fails or refuses to leave the premises within five days.

Adds further language to provide that it will be a case of unlawful holding by force if, after notice has been given to quit the premises, a person continues in the possession of the premises against a condition specified in the lease or rental agreement. It will also be a case of unlawful holding by force if the tenant continues in possession of the premises after receipt of an order of abatement under AS 09.50.210(a) (Civil Code. Actions Where State a Party. Abatement of Lewd Houses. Order of Abatement).

--Changes requirements for the notice to quit a premises under AS 09.45.100 (Civil Code. Actions Relating to Real Property. Requisites of Notice to Quit). Will require a notice to quit to be in writing, and be served upon the tenant or person in possession of the property by being delivered, left at the premises in the case of absence from the premises, or sent by registered or certified mail. Note: current law says the notice *can* be sent by registered or certified mail (it doesn't *have* to be sent by registered or certified mail, as it will under the amendment). If the notice is sent by mail, an additional three days will be added to the five days' notice if the tenant fails or refuses to pay the rent due. An additional three days will be added to the five days' notice if the tenant or person in possession of the premises fails or refuses deliver up the possession of the premises. If the notice is given by mail, an additional three days notice will be added, if notice to quit is given for a reason other than unlawful holding by force.

--Adds a new section to AS 09.45 (Civil Code. Actions Relating to Real Property) relating to a court order. If, after a trial, the court finds and enters judgment against a tenant or person in possession, the court will have to enter an order to vacate directed to the tenant and, at the request of the person recovering possession of the premises, at the same time or at a later date, can issue a writ of assistance to a peace officer to secure the officer's assistance in serving and enforcing the order to vacate.

Adds a new section relating to an action against a tenant who occupies a premises for which an order of abatement has been entered. In such an action, a certified copy of the order will be prima facie evidence of unlawful holding of the premises by force by a person who remains on the premises.

--Amends AS 09.50.170 (Actions Where State a Party. Abatement of Places Used for Immoral Act) by specifying which activities constitute a nuisance, and can be enjoined and abated (current law provides that lewdness, assignation, or prostitution or any other immoral act constitutes a nuisance). The bill states that prostitution, or an illegal activity involving alcoholic beverages, a controlled substance, or an imitation controlled substance constitutes a nuisance and can be enjoined and abated.

--Adds a new section to AS 09.50 to provide that in an action brought under AS 09.50.170(a) (Abatement of Places Used for Immoral Act), the court can consider evidence of reputation within a community to prove the existence of a nuisance.

--Amends AS 09.50.210 (Actions Where State a Party. Order of Abatement) to require the court, if it finds and enters judgment that a nuisance exists, to enter an order of abatement. The order of abatement shall direct termination of the lease or rental agreement; the removal from the

SB 35 (cont'd)

building or place of the fixtures, furniture, and movable property used in the nuisance and their sale; the closing of the building or place against its use for any purpose for one year unless sooner released.

Current law says upon judgment that a nuisance exists, an order of abatement shall be entered directing the removal from the building or place of the fixtures, furniture, and movable property used in the nuisance and their sale; the closing of the building or place against its use for any purpose for one year unless sooner released.

--Amends AS 09.50.230 (Actions Where State a Party. Release of Premises to Owner) to allow the court to order premises that were abated under AS 09.50.210 (outlined in paragraphs above) delivered to the owner, and can cancel the order of abatement if the owner of the premises has not been guilty of contempt in the proceedings; appears and pays all costs, fees, and allowances that are a lien on the premises; and files a bond with sureties approved by the court in an amount determined by the court to the effect that the owner will abate the nuisance that exists at the building or place and prevent the nuisance from being established within a period of one year thereafter. A cancellation of the order of abatement will not affect a termination of a lease or rental agreement under the order.

--Amends the Uniform Residential Landlord and Tenant Act (AS 34.03) by adding a new subsection relating to tenant responsibilities (AS 34.03.120) to prohibit the tenant from knowingly engaging in an illegal activity involving alcoholic beverages, controlled substances, or imitation controlled substances at the premises, or knowingly permitting others in the premises to engage in those illegal activities.

--Amends section relating to noncompliance with a rental agreement by failure to pay rent (AS 34.03.220) by allowing the landlord to terminate the tenancy if the rent is not paid within five days after written notice is given by the landlord (currently the tenant has ten days after being given written notice).

Adds a new subsection to AS 34.03.220 that says an order of abatement entered by a court terminates a rental agreement on the premises subject to the order of abatement.

--Adds a new section to AS 34.05 (Property. Agricultural and Personal Property) relating to illegal activities in nonresidential premises. In a rented premises other than those to which the provisions of the Uniform Residential Landlord and Tenant Act apply, the tenant cannot knowingly engage in an illegal activity involving alcoholic beverages, controlled substances, or imitation controlled substances, or knowingly permit others in the premises to do so. If such activities are taking place, a person can seek relief under AS 09.50.170 - 09.50.240 (Abatement of Lewd Houses). An order of abatement entered by a court terminates the rental agreement.

Appropriation (supplemental) (DOT/PF road maintenance, etc.)

SS SENATE BILL NO. 41, (see pages 26; 170). Reported back to the Senate March 13, 1991 by Finance recommending SS SB 41 be replaced with a Senate Finance Committee Substitute, and that it do pass. Concurring: Pourchot and Kerttula (Co-Chairs), Uehling, Hoffman, Adams, and Duncan. Not concurring: Shultz has no recommendation. To Rules.

The Senate Finance Substitute completely rewrites the bill. As rewritten, the bill appropriates

CSSB 7 (FIN) (cont'd)

bined elementary and secondary instructional units are determined under the following table:

ADM	No. Instructional Units
1 — 10	2
11 — 20	2 + ((ADM-10)/5)
21 — 60	4 + ((ADM-20)/8)
61 — 120	9 + ((ADM-60)/12)
121 — 525	14 + ((ADM-120)/15)

(b) For funding communities that are not included under (a) of this section,

(1) instructional units for elementary students are determined by the formula:

units = 15 + ((ADM-200)/17), where ADM is the number of students in average daily membership in grades kindergarten through 6;

(2) instructional units for secondary students are determined by the formula:

units = 18 + ((ADM-200)/13), where ADM is the number of students in average daily membership in grades 7 through 12.

The Senate Finance version also changes the effective date to July 1, 1992 (was 1991).

On May 1, 1991 the Senate Finance Substitute was adopted, and the bill passed the Senate, 18-1-1. Nay: Halford. Absent: Fahrenkamp. The effective date clause was adopted.

Landlord/Tenant Responsibilities & Remedies

CS SENATE BILL NO. 35 (JUD), (see pages 21; 170; 421). On May 3, 1991 the Senate Judiciary Committee Substitute was adopted (see page 421). The Judiciary Committee Letter of Intent was adopted (see page 421), and the bill passed the Senate, 17-0-3. Absent: Collins, Fahrenkamp and Kerttula.

State Aid for Health Facilities

CS SENATE BILL NO. 67 (FIN), (see pages 42; 173; 359). Reported back to the Senate May 1, 1991 by Finance recommending SB 67 be replaced with a Senate Finance Committee Substitute, and that it do pass. Concurring: Pourchot and Kerttula (Co-Chairs), Hoffman, Duncan and Adams. Not concurring: Shultz and Uehling have no recommendation. To Rules.

The Senate Finance Substitute relates to state aid for health facilities (the previous versions related to state aid for *nonprofit* health facilities). The Finance Substitute also makes the following changes:

–Changes language relating to the membership of the Health Facilities Review Board to include a representative of the office of management and budget in the Office of the Governor (instead of "a member of the general public"), and adds a new subsection to read: "(b) To the extent possible and except for the board members described under (a)(4) and (7) of this section, the board members must be representative of all areas of the state." Subsection (a)(4) is the Dept. of Health and Social Services representative, and (a)(7) is the OMB representative.

–Adds new language that says the primary criteria for establish priorities among the

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Mary Van Nimwegen

HJUD 1991-92

House Labor & Commerce 5/14/91
House Labor & Commerce 5/20/91