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February 5, 1991

Senator Lyman Hoffman
Community and Regional Affairs Committee
Alaska State Senate
Box B, State Capitol, Room 510
Juneau, Alaska 99811

Dear Senator Hoffman:

Thank you for your recent request for comments on Senate Bill 35, which proposes amendments to the Uniform Residential Landlord and Tenant Act (URLTA). Senator Pourcho, who introduced the bill, has also requested comments from the Board of Directors of Alaska Legal Services Corporation. These are not yet final because we are awaiting input from our outlying offices. While our comments at this time are not comprehensive, we appreciate the opportunity to relay our preliminary concerns.

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. ALSC opposes both of these changes for the reasons set forth below.

I. THE FIVE-DAY "CURE" PERIOD

Under current law, a ten-day notice of eviction must be given to a tenant before a landlord may evict the tenant based on non-payment of rent. AS 34.03.220(b). The notice specifies that a tenant must pay rent within ten days or the tenancy will terminate. The proposed change would reduce this "cure" period to five days.

In ALSC's 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. The five-day period would achieve only a minimal advantage to landlords, yet would seriously jeopardize the ability of many tenants, particularly those with low incomes, to remain in their homes.

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. Many of our clients rely on public assistance checks to pay their rent. Checks may be delayed for a variety of reasons--many beyond the tenant's control--and the extra time helps ensure that no hardship occurs as a result. Additionally, an indigent tenant may obtain rental assistance through the General Relief (GR) program only by presenting a current eviction notice, and processing a GR application typically takes longer than five days.

The need for the ten-day cure period is especially great in the difficult economic times that Alaska has experienced over the past several years. Many people who have lost their jobs and find themselves in times of financial crisis have sought our

assistance. 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. People living in poverty, or on the edge of poverty, must avail themselves of relief organizations and other sources of financial help that cannot consistently respond on an expedited basis. Again, the ten-day cure period--while not sufficient in all cases--creates a better chance that needed funds can be raised and tenancies preserved.

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 described the tightening rental market and grim outlook for low-income residential tenants. See Exhibits B - H, attached. 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 exacerbate the already significant risk of homelessness for our clientele.

In addition to our substantive concerns about the reduced cure period, we have significant procedural ones. Under current Alaska laws, a tenant is entitled to only a 48-hour notice of an eviction hearing. AS 09.45.120. 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. 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 their defenses to eviction. Some states have addressed these concerns by providing significantly longer time frames in judicial eviction proceedings. 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).

II. DRUG ARREST AS A GROUND FOR EVICTION

The bill's proposal to add a drug arrest as an automatic ground for eviction is both superfluous under current law and of questionable constitutionality.

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 who 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 are routinely involved in cases where noise and other attributes of drug-dealing are pivotal. 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 is a good tenant.

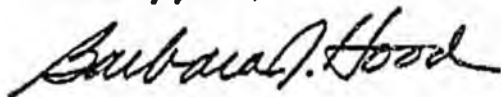
In summary, if drug activities are occurring, a landlord will likely have grounds for eviction under current law. The possibility that in rare instances a tenant might carry on a drug operation without noise, traffic, or disturbance does not justify the current legislation.

The need to avoid legislation that serves such a limited and speculative purpose is particularly apparent when one takes into account the criticism the proposed bill has already received from the civil rights perspective. See, "*ACLU Assails Tenant Evictions in Drug Arrests*," *Anchorage Times* (December 17, 1990), attached as Exhibit I. Regardless of whether one agrees with the view that the bill unfairly penalizes tenants before they have had an opportunity to prove their innocence, the legislature should consider that valid and potentially successful challenges to enforcement of the proposed bill would likely arise. ALSC suggests that the legislature fight the drug war with alternatives other than housing legislation that is controversial, potentially constitutionally infirm, and questionably necessary.

For the above reasons and others that will be presented in the near future in our comments to Senator Pourchot, 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 legislators to vote against its passage.

Thank you very much again for the opportunity to comment.

Sincerely yours,



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

Attachments

B2 Anchorage Daily News Sunday, December 2, 1990

Welfare rolls are up; normal seasonal decline not seen

By BRIAN S. AKRE
The Associated Press

JUNEAU — Alaska's welfare rolls are on the rise again after months of remaining stagnant or decreasing, and state officials are unsure why.

The number of households receiving Aid to Families with Dependent Children in September was 12.3 percent higher than in the same month of 1989, according to state statistics.

Demand began to rise significantly in August, a time of year when it normally is low because of the increase in jobs during the summer, said Randy Moore, an ad-

ministrative officer for the state Division of Public Assistance.

"I'm a bit baffled," Moore said. "What surprises me is that we didn't see the seasonal decline that we normally do."

The increased demand may be the result of more people moving to the state to find work. As the economy has slumped in the Lower 48, Alaska's oil-based economy has been boosted by the rise in oil prices.

"What you may be seeing is the front edge of people coming to Alaska who were put out of work elsewhere," John Boucher, an economist

with the state Labor Department, said Thursday.

Boucher said Alaska's economy is "fairly strong," though not as robust as it was in 1989 when the Exxon Valdez oil-spill cleanup pumped billions of dollars into the state and provided thousands of temporary jobs.

The cleanup probably helped keep the welfare rolls down in summer 1989, Moore said.

Alaska's unemployment rate edged up nearly 1 percentage point in September, but the rise was not abnormal for that month. Still, "When people come to Alas-

ka in August and September they have less chance of finding work because the economy is winding down," Boucher said.

According to the state, 7,772 households were receiving assistance through the AFDC program in September, the latest month for which statistics are available. That compares with 6,921 households during September 1989.

The amount spent on the program in Alaska increased from \$4.9 million in September 1989 to \$5.7 million last September.

Similar increases were seen in the food-stamp program. A total of 9,064 households received food stamps in September, compared with 8,091 households a year earlier. The program in Alaska cost the federal government \$2.1 million in Sep-

tember, compared with \$1.7 million a year earlier.

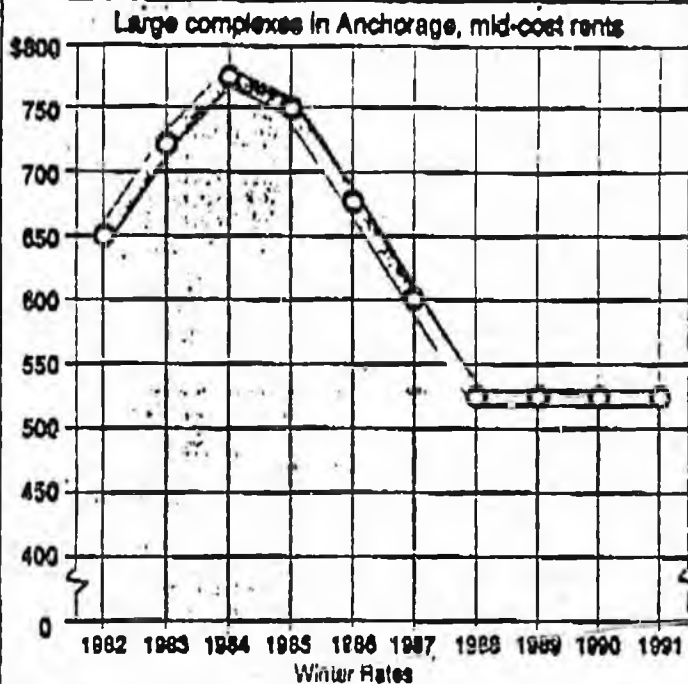
Moore said those figures are similar to what's normally seen in the winter months, when welfare demand is highest.

The demand for Medicaid services also is up, Moore said. Medicaid is a federal-state program that helps pay for health care for the needy, aged, blind, disabled and for low-income families.

SECTION E Feb. 5, 1991

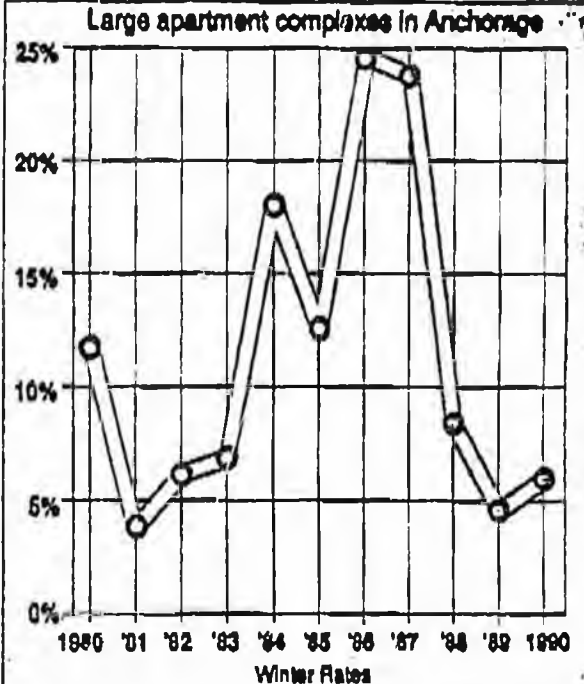
How Anchorage's rental property is doing

2 bedroom apartment rental rates



Source: Shorett & Riely

Apartment vacancy rates



Ron Engstrom / Anchorage Daily News

Low-cost apartments are filling up

By BRUCE MELZER
 Daily News reporter

A new housing survey shows the past six months have brought almost no change in Anchorage's rental market, as apartment hunters face the tightest housing market since 1982.

The overall vacancy rate for apartments has leveled off at 5.1 percent and the trend of rising rents has slowed, according to a survey by Ken Kincaid of the appraisal firm Shorett & Riely.

Kincaid surveys large apartment complexes only. His is the only survey of its type and is considered a key barometer of the rental housing industry's health.

Within the last six months, vacancy rates for various types of apartments have

shifted around.

"What surprised me is the low-cost (apartments) filled up, and the high-cost emptied out," Kincaid said.

Still, it's the leanest rental market since the early 1980s, when the state was flush with oil money and Anchorage was booming.

Rent hikes during 1990 caused some people to relocate to cheaper apartments, Kincaid said. In June, the vacancy rate for low-cost units — up to \$450 a month for two bedrooms — hovered around 11 percent. By the end of year, the number of low-cost vacancies dipped to nearly half that.

High-cost apartments — costing more than \$550 per month for two bedrooms —

were in short supply in June but are now opening up. Part of that shift is due to rent hikes and part to Exxon Co. USA, which moved out at least 100 employees who came to Alaska to work on the 1989 Prince William Sound oil spill, Kincaid said.

Those empty units, combined with the shift toward low-price housing, have slowed the rent hikes that started last year, Kincaid said.

"I think this will quell the attitude we're stepping back into good times again," he said.

People seeking mid-cost and higher-cost apartments had an easier time of it this

Please see Page B-6. RENTALS

RENTALS: Vacancy rates shift, but market's still tight

Continued from Page B-1

fall. In June 1990, the vacancy rate for mid-cost apartments was 2.7 percent. By the end of the year that rose slightly — to nearly 4 percent — the survey showed.

The 1,200 people expected

to arrive in Anchorage by fall with Elmendorf Air Force Base's new F-15E jet fighter squadron will have a major impact on the rental market, Kincaid said.

Air Force officials expect at least 800 of the new arrivals will rent homes or apartments. Kincaid's survey of

major apartment complexes turned up 331 vacancies.

"Clearly it would fill up every vacancy in my survey and still leave 500 more. I think it (the new squadron) will be significant. Eight hundred tenants in a town this size something you will notice," Kincaid said.

EXHIBIT B

PAGE 1 OF 1



The homeless

More and more people need help

The winter of 1990-91 has been a hard one for many in Anchorage. Record numbers of people have found themselves without homes, exposed to November's bitter cold and December's steady storms. Social service agencies estimate the number of people homeless at some point during 1990 was 4,200.



So far, Anchorage has been able to keep the homeless from dying — but that's about the best that can be said. The local safety net is straining to house and feed all of them. More people than ever need help, just as agencies are scrambling to recover from last summer's surprise cuts in state social-service aid.

The city's response has been admirable, but it's just a start. Though Mayor Fink doesn't have a reputation as a champion of the homeless, he's taken the crisis seriously. He appointed a fast-track task force, which has produced a valuable call to action. His administration seems committed to follow through.

As the report makes clear, the problem of homelessness is actually many problems. Falling-down drunks are the most visible, but they're just one among many groups who need help. Escalating rents have driven out many people who work at poverty-level jobs. Many have fled the national recession and found that Alaska's rebounding economy doesn't have a job for them, either. The homeless also include mentally ill people, women escaping violence, rebellious and abused kids, and the economically unlucky. Some are patients who came here for medical care and can't get home.

Such complex problems don't have a single solution. Help requires scores of initiatives from dozens of groups and agencies. Some are simple ideas the city can push on its own. Some require state action. Some require help from Washington, D.C.

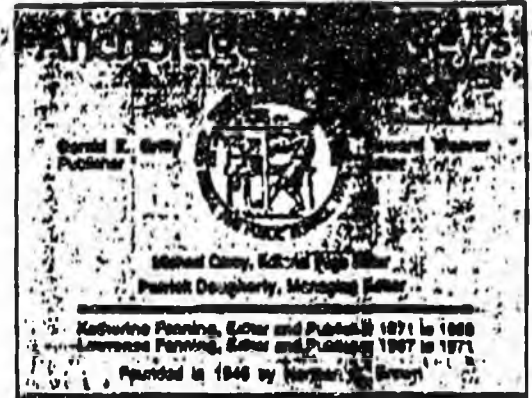
As a community, we have to do more, far more, for the homeless. A nation as prosperous as ours, a state as affluent as ours, a city as wealthy as ours, should be able to ensure that everyone who needs help with housing can get it.

Tomorrow measures the city and state can take to get started.

EXHIBIT C

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Anchor Daily News



Getting started

What the city and state can do soon

Priority No. 1 for helping the homeless is restoring full funding of the state social services block grant. The block grant is a critical source of support for charities that provide Anchorage's homeless with food and shelter.



Vetoing this year's block grant money was one of then-Gov. Steve Cowper's biggest blunders. At first, he said the state had no responsibility to help Anchorage fund its social needs. Later he said his main objection was that lawmakers banded out the aid as pork, without structured guidelines.

A deluge of criticism led Cowper to restore half the money. That still left the city and charities scrambling to fill the gap — even before larger numbers of homeless started asking for help.

To their credit, Mayor Fink and the assembly came up with enough money to replace lost aid through March 31. When legislators reconvene this month, they should act quickly to restore the balance of this year's money. For next year, they can deal with Gov. Cowper's objection by formally writing the block grant into state law.

While waiting for action on the block grant, the city can pursue several strategies for stretching existing resources. The city's homeless task force identified several promising ideas, all of which the city is now considering:

- Building code waivers. Existing shelters don't have enough space. If codes can be temporarily waived without compromising safety, more space could be made available temporarily to handle the overflow.

- A 24-hour hotline. A hotline would offer a one-stop shopping point for anyone needing help finding shelter.

- Bed tax waivers. Some hotels and motels take homeless people in temporarily for free or at lower rates. The city ought to find a way to reduce or eliminate the bed tax on rooms offered to the homeless.

- Encouraging volunteers. People who want to help may not know what they can do or where to turn. A high-profile volunteer recruiting campaign, preferably with a one-stop clearinghouse, is needed.

Most important of all is for the city to take the lead and keep pushing proposals with local agencies, the state and the feds. It will take time, staff and money, but without them, promising initiatives may die for lack of support.

Tomorrow: The need for more housing aid and

Rent squeeze

Working poor get pinched

Alaska's economic recovery brings with it a paradox. The better the economy gets, the more people who can't afford a place to live.

The reason? A rapid rebound in the housing market has driven rents beyond the reach of many working poor. At Brother Francis shelter, an estimated 30 percent of clients could afford low-cost housing if it were available.

In part, today's tight market is just another wave in Anchorage's highly cyclical housing economy. But in part, the rental squeeze is the product of a deliberate policy that favored middle-class property owners over the poor.

That policy was to shrink the city's housing surplus by demolishing substandard repossessed housing. From 1987 to 1989, total housing stock in Anchorage shrank by 1,500 units. The demolitions helped shore up property values and rents. But when the overall economy began its rapid recovery, a squeeze was inevitable.

Today's housing pinch even hits people who have managed to qualify for scarce government housing aid. In the federal Section 8 certificate program, the rents clients are allowed to pay fall far below what landlords are charging. Some 140 clients can't make use of their federal aid.

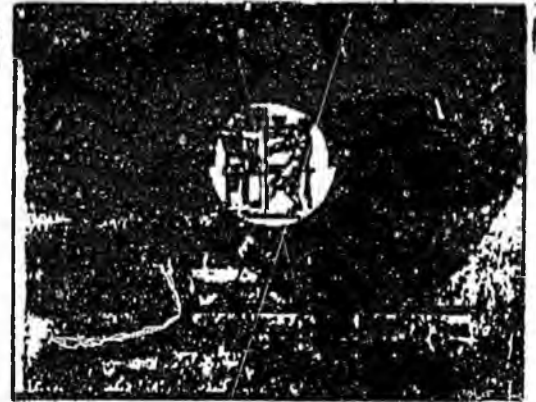
Local housing officials plan to ask Washington D.C. for an increase in the Section 8 rent ceiling. Necessary as that change is, it's at best a stopgap. Rent limits in federal aid programs should be lifted, and funding should be increased to serve more people. The waiting list for public housing aid in Anchorage is now 1500.

Another important housing strategy is building more low-cost units. The mayor's task force wants a review of zoning laws, building codes, and low-cost financing sources, to see if the cost of constructing new units can be reduced. Short of another bout of overbuilding, though, new housing will probably still cost more than those who need it can afford to pay without help.

Today's housing squeeze illustrates a fundamental reality of the nation's housing policy. That policy is more concerned with propping up property values to those who have it, rather than making it affordable for those who don't. This nation has eventually eliminated hunger and malnutrition through government assistance. A similar initiative could make housing affordable to all — if only the nation decided it wants to do so.

Tomorrow: The homeless mentally ill

EXHIBIT C
PAGE 2 OF 3



Mentally Ill

Land trust settlement would help

Mentally ill people are a large and highly visible component of the homeless — and one of the hardest to help. Here in Anchorage, the mentally ill are an estimated 10 to 33 percent of the homeless population.

The first challenge is to persuade homeless street people to accept treatment. As long as they are not dangerous to themselves or others, they are free to live on the streets if they choose. Their illness often impairs their judgment, so persuading them to get help takes tremendous time and effort.



HELPING THE HOMELESS

A pilot program here, Crossover House, is having some success. Rather than expanding it, though, the state wants to start similar programs elsewhere.

The second challenge is to give mentally ill people enough support to keep them from ending up on the street. To do that, the

state supports a range of housing services from crisis centers to foster care to halfway houses and supervised apartments. The state says those programs have room for about 400 mentally ill statewide. Fully meeting the need, the state estimates, would take another 2,000 slots.

Programs that will work are not in short supply; money is. But it hasn't been that way before to meet Alaska's mental health needs. Under the trust, the state got 1 million acres of land. Income from the land was supposed to pay for "necessary" mental health programs. Only after those needs were met could leftover money be spent elsewhere.

But the state never took its trust duty seriously. It unilaterally abolished the land trust and replaced it with a hopelessly unenforceable pledge to spend certain sums on mental health. Lawmakers then proceeded to give mental health whatever paltry sums they pleased.

The Alaska Supreme Court told the state in 1985 to reconstitute the land trust. For five years, the state has ducked its duty. Last year, a court order froze all development on mental health lands.

It's time for the state to do what the Supreme Court ordered. Two elements are key. First is an objective process to decide what Alaska's mental health needs are. Second is an enforceable funding mechanism so lawmakers don't keep wailing on their promises.

With a functioning mental health trust in place, Alaska's mentally ill homeless people stand a much better chance of getting the help they need.

Tomorrow: The role of alcoholism treatment.

WHAT YOU CAN DO

Tell Gov. Hickel and your state legislators to settle the mental health land trust case promptly and equitably. The Legislative Information Office at 361-7607 can tell you who your legislators are and how to reach them. To send a free 25-word message to Gov. Hickel, call 361-4228.

Sobering up

Homeless inebriates aren't hopeless

At the two local emergency shelters for homeless individuals, the vast majority of people who show up are alcoholics or drug abusers. As long as they don't confront their addictions, they're unlikely to make it off the street and into more normal lives.

Anchorage does a good job of providing inebriates food and shelter and taking them to safety when they're incapacitated. But we can do more to increase the chances they'll overcome their addictions.

A top priority is a permanent, full-service sleep-off center. The temporary center is chronically full. Much of the overflow goes to the Sixth Avenue Jail, which last year took in more than 800 inebriates for protective custody. The jail simply isn't prepared to handle the medical and counseling needs of



HELPING THE HOMELESS

The proposal to create a full-service sleep-off center in north Fairview needs more work, but it's the right idea. Besides offering a place to sober up, a new center should offer medical care and encourage alcoholism treatment for those who want it.

For public inebriates who spurn voluntary treatment, there is a perfectly legal way to try to steer them toward sobriety. Public inebriates often commit petty crimes. When they do, they should be vigorously pursued and prosecuted. But instead of sending them to jail, a new law allows them to be sentenced to alcoholism treatment. Local experience suggests that mandatory treatment is just as effective as voluntary treatment.

Right now, though, the local treatment network has some gaps. The waiting list for in-patient programs ranges from one to four weeks. More space is especially needed for long-term treatment of hard-core inebriates and for women with children. If we really want people to get sober, we can't expect them to wait around until a treatment program can take them.

Even the best treatment won't work if newly sober clients are simply turned back onto the street. Anchorage also needs more transitional living arrangements for recovering alcoholics.

Some public inebriates will never sober up. The best we can do is make sure they don't starve or freeze to death. But many others can be encouraged to leave booze and the streets behind — if we give them the help they need.

Last in a series.

EXHIBIT C
PAGE 3 OF 3

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.

Ken Kincaid, a real estate appraiser with Shorrett & Rely 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 Floun, director of the Anchorage planning office. That figure compared with vacancy rates of 26.1 percent in 1987, 17.1 percent in 1988, and 8.4 percent



'The marketplace does not take care of the low-income people.'

- Cynthia Parker, housing service director

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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 90 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 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 Decem-



Source: Anchorage State Housing Authority

Times chart by WTT TUTTILL

ber 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.

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 these 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 pay-

ments towards buying in the Mutual Housing Program, at said.

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

According to the Municipality of Anchorage's 1990 survey of 5,300 families, Anchorage has population of 230,165, or about 18,000 fewer people than the city had at its peak of 248,263 in 1965.

Yet the city survey also showed there are 89,207 housing units in Anchorage, or 400 more units than in 1985, when there were 88,804 housing units available.

However, an influx of hundreds of laid off workers from the Lower 48 and British Columbia — particularly in the timber industry — is absorbing the rental stock rapidly.

A change in property ownership also has contributed to the problem, Kincaid said. More than 63 percent of Anchorage residents owned their homes in 1963. That figure fell to 59 percent in 1988 and to 57 percent last year.

With the economy improving over the past year, people have been able to upgrade their living arrangements, Kincaid said.

EXHIBIT D
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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.

TASK FORCE: Anchorage homeless population increases

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, which manages federal low-income housing programs, has asked for a rent credit 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, 1,298 families were on the waiting list. Statewide, 2,326 families are waiting for federal rent assistance. Whether anything actually gets done remains to be seen. But Jim Calderola,

Catholic Social Services director, is glad that at least some of the prominent and 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," Calderola said. "Once in a while, we kind of jokingly say, 'We've got to pull in a suit.' Some one of prominence in the community to get the public's attention. This lends a seal of approval."

EXHIBIT E
PAGE 1 OF 1

Please see Page B-3, TASK

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 grand-

daughter. She gets by on a \$500 social security check and a \$284 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 \$284 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 shel-

ters 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 social 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 20 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 \$500," 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



Times photo by MICHAEL D. JOHNSON

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 eat (she has fixed income).

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 per-

cent 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 Kortig, 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," Kortig 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 some 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 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%	13.9%
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: Shoren & Rely
 * Mid-cost defined as \$325-\$420/mo for 1 bedroom; \$425-\$560/mo for 2 bedrooms; and \$700-\$1000/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 3,000 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



BANK 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 & Riley.

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 6
PAGE 2 OF 2

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.

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

**'We're
penalizing people
before they're
found guilty.'**

**— Jamie Bollenbach,
Alaska ACLU**

See Eviction, back page

B6 Monday, December 17, 1990, The Anchorage Times

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 case 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 from disturbing their neighbors,

said Barbara Hood, superintendent for public entitlements at Al Legal Services. Revisions to rent laws may not be necessary, she said.

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

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

"The five-day notice make it much more difficult for people using the program established to help them act that quickly," she said.

Pourchot looked to the Washington state, though tough on drug dealers, his own legislation.

For example, landlords may evict a tenant involved in "unlawful based on the landlord's observation," said Lorrin Administrator for the State Attorney General.

When asked if the complaints of tenants they were unreasonable and evicted, Lewis said no regulatory agency track of complaints.

Pourchot, who himself, said the stipulates an arrest did not want landlording as police officer:

"We don't want good police work observations," Pourchot said.

Pourchot said he's working on the bill to many Anchorage many who own buildings and about their communities as their rights.

EXHIBIT I
PAGE 1 OF 1

MEETRO

The Anchorage Times

MONDAY
December 17, 1990

B6 Monday, December 17, 1990, The Anchorage Times

ACLU assails tenant evictions in drug arrests

By PAMELA STOCK
TIMES WRITER

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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.

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See Eviction, back page

Eviction

Continued from page B1

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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 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 I
PAGE / OF /

Housing

Continued from page A-1

subsequent rent payment varies according to family income. At the end of July, 375 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 97 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 630 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 \$18,600. The three-bedroom limit is \$22,450 and the four-bedroom ceiling is \$24,900.

"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 Simmons said.

If an applicant meets qualifications, they choose either the Low Rent or Section 8 program. If they choose Low Rent, they are then out 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 certificate but I didn't want to live there. That's a drug area," she said.

Nick Brittsauff, 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 wanted assistance in 1980.

"I want to live in the Broiner Francis shelter so I want that apartment but the waiting," he said. "I live OK now in Richardson Road."

Ward said HE was not sur-

Anchorage area low-rent housing

Here is a list of some of the low-rent and low-income housing in Anchorage.

- Patriotism Park, 1123 E. 19th Ave., 272-0817.
- Park View Manor, 608 Karfik St., 274-1144.
- Louise Measer, 138 Hellerman Drive, 274-2661.
- Chugach View, (elderly/handicapped housing), 1260 E. 17th Ave., 272-0817.
- Chugach Manor, (elderly/handicapped housing), 1261 E. 19th Ave., 274-9714.

Private low-income housing

- Cook Inlet Housing Authority, 274-6222.
- Jewel Lake Villa, 243-0718.
- KBL Apartments, 274-0797.
- Mary Conrad Center, 236-3940.
- Robert Rude Center, 236-2211.
- Tycoo Apartments, 327-1811.

Emergency housing

- Anchorage Care Center, 276-3336.
- AWAIC Shelter, 274-4381.
- Brother Francis Shelter, 277-1731.
- Catholic Social Services, 277-2354.
- City Emergency, 264-0714.
- Cure House, 500-4343.
- McKinnel Residence, 276-1609 or 272-5941.
- Senior Citizens, 264-6720.
- Rescue Mission, 277-5822.

prised to hear applicants were having difficulty locating available housing.

"Our limits aren't really comparable to rent 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 \$485. For two bedrooms, the limit is \$547. Three bedrooms stop at \$684 and four bedroom apartments can be no higher than \$768, he said.

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

One bedroom apartments usually run between \$300 and \$350. Two bedrooms usually cost around \$400. Three bedrooms go for between \$700 and \$800 and four-bedroom places cost an average of \$950.

"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," he said. "I'm willing to move, but others need emergency housing. God knows what are they supposed to do?"

ANCH.
TIMES
8/20/90



Jacqueline 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.

Housing Authority has long waiting list

Woman applied nearly a year ago for unit

By JEFF WOODCK
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 little 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

EXHIBIT A
PAGE 1 OF 1

ALASKA STATE LEGISLATURE



SENATE FINANCE COMMITTEE,
CO-CHAIR

ANCHORAGE
P O BOX 104836
ANCHORAGE, AK 99510
(W) (907) 561-7623
(H) (907) 354 2425

JUNEAU
P O BOX V
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 *JP*

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.

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERENCE

DATE: 1/21/91

FURTHER: Judiciary

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: _____

C&RA Committee considered SENATE BILL NO. 35

USE OF RENTED PROPERTY AND DRUG VIOLATIONS

and recommended:

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

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) _____

zero fiscal note(s) _____
Court System
Community + Regional Affairs

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Frank P. Thurgood

Curtis Swartz

Do Pass

Chair: Signature and Recommendation

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: _____

Sponsor: Senator Pourchot

Component: _____

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.)

Prepared By: Remond Henderson Phone: 465-4750

Division: Administrative Services Date: 1/31/91

Approved by Commissioner: E.L. Rukhi

Agency: Community & Regional Affairs Date: _____

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

No. 2

FISCAL NOTE

Bill Version: SB.35

(S) Publish Date: 2/6/91

**STATE OF ALASKA
1991 LEGISLATIVE SESSION**

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act amending ... civil remedy ... BRU: Trial Courts
Uniform Residential Landlord & Tenant Act Components: _____
 Sponsor: Pourchot
 Requestor: Pourchot 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 *[Signature]* Phone: 284-8228
 Division: Alaska Court System Date: 02/04/91

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

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

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)**

DAY

- 1 Rent due (rent due on 1st and delinquent on 6th in most rental agreements)
- 2
- 3
- 4
- 5
- 6 10-day notice given tenant
- 7
- 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 FDE 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 NONPAYMENT OF RENT
(AVERAGE TIME SCENARIO)**

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```

*****
*
* DELIVER TO: LIOCROG
*
* ORIGINAL
* SENT: 02/05/91 TIME: 15:45
* FROM: LIOCMIL
* SUBJECT: 91-02-003; FL; SB2, 35; 2/5
* PRINT DATE: 02/05/91 TIME: 15:45
*
*****

```

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

```

T/C NO: 91-02-003
DATE: 2/5
SPONSOR: S CRA
SUBJECT: SB2; SB35
MODERATOR: JUDY
SITE: ANCHORAGE

```

PARTICIPANT LIST

TO TESTIFY

NAMES/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. ALICE BREWER SB35			SB2
2. DONALD MAY			SB2
3. TOM BRENNAN AK LITTLE PREVENTION ALPAR			"

4. TOM TURNER	MARK BEGICH	Supports	"
5. ALICE BREWER	JAMES DUFF	Supports	SB35
6. HOWARD THEW	PETE HUTTON	Supports	SB35
7. PAT JOHNSON	ALICE FARMER	Supports	"
8. JOHN TODD	JOE CLAM	Supports	"
9. CHARLES LIPPITT			"
10. JERRY GOTTBEL			"

TO OBSERVE:

NAME/ REPRESENTING	ADDRESS	PHONE	BILL NO.
1.			
2.			
3.			
4.			
5.			

```

BACK UP NUMBER: 561-1199
EMAIL ADDRESS: LIOCMIL

```

evict5

NOTIFICATION LIST FOR HEARINGS

Name	Phone
David Cuddy, Senior VP First National Bank of Anchorage P.O. Box 100720, 99510	276-6300
✓ Jerry Lee Gottbe P.O. Box 103628, 99510	338-0627
+ ✓ Helen Foreman P.O. Box 91576, 99509	279-1736
+ ✓ Alice Brewer, Executive Secretary Anchorage Landlord & Property Managers Assoc. 1201 West 45th Ave., 99503	563-6734
William Bivin, President/CEO Bethel Native Corp. Box 719, 99559	543-2124
Ray Price, Executive Director ASHA P.O. Box 230329, 99523	562-2813
✓ James Kuntz, CPM c/o Marston Properties 4105 Turnagain Blvd., 99517	248-1717
+ ✓ Charles Lippitt 2203 McKinley Ave., 99517	248-4770
+ ✓ Lydia Morgan 8609 East 10th Ave., 99504	333-9040
+ ✓ Janet and <u>Kevin</u> Codell 419 East 15th Terrace, #4, 99501	272-7237
+ ✓ Edgar Preiss	243-2655

4722 Melven Ave., 99517

- ✓ Lori Pape 333-5635
206 Stewart, #2, 99508
- ✓ Toni Salmeier 333-7692
Box 141345, 99514
- ✓ Celeste Benson, President 277-9778
1530 Orca, 99501
- ✓ Pat Johnson, Wiley Brooks 333-5177
3307 Boniface #58, 99504
- ✓ Mark Begich
Box 201627, 99520

**FLOW CHART FOR EVICTION FOR NONPAYMENT OF RENT
(AVERAGE TIME SCENARIO)**

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DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

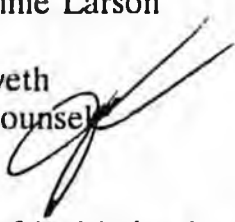
Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

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 revert 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,

assignment, 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"

Senator Pat Pourchot
February 4, 1991
Page 5

Termination at landlord's option:

Nevada Rev. Stat. Ann. §40.2.14 -- "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

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

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

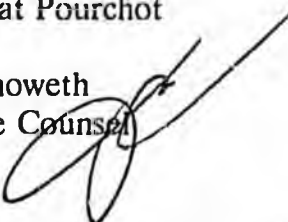
MEMORANDUM

December 17, 1990

SUBJECT: Landlord-tenant relationship (Work order 7-0160G)

TO: Senator Pat Pourchot

FROM: Jack Chenoweth
Legislative Counsel



This draft legislation has two principal purposes, both applicable to the landlord-tenant relationship. It substantially amends statutes applicable to the forcible entry and detainer remedy to expedite a landlord's eviction of a tenant for failure to pay rent when due. It also amends and adds to the body of law provisions under which a landlord may terminate a rental agreement and seek the ouster of a tenant who has been arrested for violating certain specified laws on the rented premises.

Let me address each in turn.

EXPEDITED EVICTION OF TENANT FOR FAILURE TO PAY RENT WHEN DUE:

Proposed bill section 3, amending AS 09.45.090(1), reduces from ten days to five days the period in which a landlord must wait after making written demand for possession of rented premises to commence forcible entry and detainer proceedings to secure a tenant's eviction in the event the tenant fails to pay rent when due.

Collateral changes are made in proposed bill sections 4 and 5. These sections, read together, merely carry forward the current requirement of allowing three days additional notice if, under the forcible entry and detainer remedy, notice to quit is provided by mail.

A related change is made in the Uniform Residential Landlord and Tenant Act by bill section 11. The change, made to AS 34.30.220(b), conforms the number of days in which the tenant must pay rent after receiving written notice of nonpayment.

TERMINATION OF TENANCY FOR CONDUCTING CERTAIN ILLEGAL ACTIVITIES ON THE RENTED PREMISES:

The principal provisions are set out in bill sections 9 and 12.

Bill section 9 adds a new paragraph to the statement of tenant's obligations under the Uniform Residential Landlord and Tenant Act. That additional obligation is one of "not knowingly [engaging] at the premises" in one of three illegal activities, and "knowingly [permitting] others in the premises to engage" in those activities.

Bill section 12, adding a new section, AS 34.03.222, outlines the remedies once the landlord learns of the tenant's breach of the obligation to keep the premises free of illegal activities. Under the section, the landlord (1) may terminate the rental agreement, (2) must, if the rental agreement is terminated, provide notice to the tenant of termination and of the act constituting the breach, and (3) may recover possession under the forcible entry and detainer remedy (under the provisions that require a 10 day delay in recovery, and not under the 5 day provisions for failure to pay rent when due that are amended elsewhere in the bill).

The specific "illegal activities" for which a landlord may invoke the forcible entry and detainer remedy are enumerated in bill section 13. Each requires that the tenant or other person shall have been arrested for the specific violation.

In related bill changes:

Bill section 2, revising AS 09.45.070 (by adding a new subsection (a)(3) and a new subsection (b)), explicitly permits landlords to use the forcible entry and detainer remedy if a tenant's illegal activities of the kind identified above are the basis for termination of the tenancy.

The amendment made by bill section 6 makes clear that action to recover premises for a reason specified in AS 09.45.070(a)(3) requires at least 10 days notice (or, alternatively, 90 days under the special provision for farming and agricultural tenancies).

Existing AS 09.45.130 provides a measure of protection to a tenant who has paid rent in advance of the period in which the tenant is due to occupy the premises. Bill section 7 makes clear that a forcible entry and detainer action may be brought against a tenant in possession who engages in one or more of the enumerated illegal activities even if the tenant has paid rent for the premises in advance.

Bill section 10 makes a technical change in an existing reference.

Finally, bill sections 1 and 8 add new provisions, AS 04.21.075 and AS 17.30.160,

Senator Pat Pourchot
December 17, 1990
Page 3

respectively, under which peace officers who arrest persons for illegal activities involving alcoholic beverages, controlled substances, or imitation controlled substances on residential premises not occupied by the record owner are to make a reasonable effort to identify and contact the owner of record of the premises and advise the owner of the arrest that has taken place on those premises.

JBG:lmb
90-036.lmb

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

- P.O. BOX B
JUNEAU, ALASKA 99811-2100
PHONE: (907) 465-4700
- 949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508-4302
PHONE: (907) 563-1073

January 31, 1991

POSITION PAPER

RE: Senate Bill 35

SPONSOR: Senator Pourchot

PROGRAM EFFECTS OF THE BILL

This bill appears to have little impact on DCRA/HAS. The Housing Assistance Section would not have responsibility of enforcement nor implementation of this bill.

The only apparent effect would be from the renting or leasing of our foreclosed homes to people who may become involved with illegal activities. This bill would allow us to remove them in a timely manner. Housing Assistance may see an increase in the legal fees in dealing with the eviction of tenants that are convicted of illegal activities.

COMMENTS

The department has no objections to the bill.

Edgar Blatchford

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,

A handwritten signature in cursive script, appearing to read "C. S. Christensen III".

C. S. Christensen III
Staff Counsel

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 35

Revision Date: _____ Department Affected: Community & Regional Affairs
 Title: "An Act..amending the Uniform Residential Landlord & Tenant Act.." BRU: _____
 Sponsor: Senator Pourchot Component: _____
 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.)

Prepared By: Remond Henderson Phone: 465-4750
 Division: Administrative Services Date: 1/31/91
 Approved by Commissioner: Ed. Rusk
 Agency: Community & Regional Affairs Date: _____

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

FISCAL NOTE

**STATE OF ALASKA
1991 LEGISLATIVE SESSION**

Bill No. SB 35

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act amending ... civil remedy ... BRU: Trial Courts
Uniform Residential Landlord & Tenant Act Components: _____
 Sponsor: Pourchot
 Requestor: Pourchot COMPONENT SERIAL NO.

000 000	000 768
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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

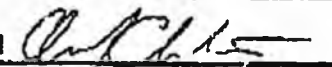
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

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Statutes relating to CIVIL PROCEDURE: ACTIONS RELATING TO REAL PROPERTY

§ 09.45.070

ALASKA STATUTES

§ 09.45.070

If without force. — An entry which has no other force than such as is implied in every trespass is not within this section. *Steil v. Dessmore*, 3 Alaska 392 (1907).

The word "force," when used in this section, means actual force, as contradistinguished from implied force. *Steil v. Dessmore*, 3 Alaska 392 (1907).

Such as acts or threats of violence. — To make an entry forcible, there must be such acts of violence used or threatened as give reason to apprehend personal danger in standing in defense of the possession. If there is no more force used than is implied in every trespass, with nothing to excite fear of personal violence, the case is not within the statute. *Steil v. Dessmore*, 3 Alaska 392 (1907).

Giving reasonable cause to fear bodily hurt. — To render an entry forcible under the statute of forcible entry and detainer, it must be accompanied with circumstances tending to excite terror in the owner, and to prevent him from maintaining his rights. There must be at least apparent violence, or some unusual weapons, or the parties attended with an unusual number of people; some menaces or other acts giving reasonable cause to fear that the party making the forcible entry will do some bodily hurt to those in possession if they do not give up the same. *Steil v. Dessmore*, 3 Alaska 392 (1907).

Construction with Uniform Residential Landlord and Tenant Act. — As

a matter of statutory construction, the Uniform Residential Landlord and Tenant Act should be harmonized with the forcible entry and detainer statutes. *McCall v. Fickes*, Sup. Ct. Op. No. 1335 (File No. 2611), 556 P.2d 535 (1976).

Because the Uniform Residential Landlord and Tenant Act does not explicitly set forth a procedure for bringing an "action for possession," forcible entry and detainer procedures may be used where they do not conflict with the uniform act. *McCall v. Fickes*, Sup. Ct. Op. No. 1335 (File No. 2611), 556 P.2d 535 (1976).

Defenses available under the Uniform Residential Landlord and Tenant Act may be asserted in forcible entry and detainer proceedings. *McCall v. Fickes*, Sup. Ct. Op. No. 1335 (File No. 2611), 556 P.2d 535 (1976).

Landlord not barred from instituting action under article. — Landlord's conduct, in accepting late rental payments with knowledge of the tenants' defaults, did not bar resort to the institution of a forcible entry and detainer action seeking restitution of trailer space from tenants. *McCall v. Fickes*, Sup. Ct. Op. No. 1335 (File No. 2611), 556 P.2d 535 (1976).

Applied in *Thrift Shop, Inc. v. Alaska Mut. Sav. Bank*, Sup. Ct. Op. No. 277 (File No. 509), 398 P.2d 657 (1965).

Cited in *Modrok v. Marshall*, Sup. Ct. Op. No. 1002 (File No. 1971), 523 P.2d 172 (1974).

Sec. 09.45.070. Action for forcible entry or detention. (a) 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, the person entitled to the premises may maintain an action to recover the possession.

(b) [*Repealed, § 1 ch 73 SLA 1966.*] § 17.02 ch 101 SLA 1962; am § 1 ch 73 SLA 1966)

Cross references. — For practice and procedure in F.E.D. actions, see Civ. R. 85.

NOTES TO DECISIONS

Section is construed strictly. — The statute conferring the primary right and prescribing the remedy in a forcible entry and detainer proceeding is to be strictly construed, and no intentions are to be made against the statute. *Miners' & Merchants' Bank v. Brice*, 5 Alaska 418 (1915).

The action of forcible entry and detainer is a special statutory proceeding, in derogation of the common law, and summary in its character. *Miners' & Merchants' Bank v. Brice*, 5 Alaska 418 (1915).

The forcible entry and detainer action is

a creature of statute. *McDowell v. Lenarduzzi*, Sup. Ct. Op. No. 1242 (File No. 2413), 546 P.2d 1315 (1976).

The basic purpose of the forcible entry and detainer action is to preserve the peace by providing a speedy method for the resolution of disputes over the possession of real property. *McDowell v. Lenarduzzi*, Sup. Ct. Op. No. 1242 (File No. 2413), 546 P.2d 1315 (1976).

Section and AS 09.45.090 contain requirements. — Basic requirements for maintaining a forcible entry and detainer action are spelled out in this section and AS 09.45.090. *Schaible v. Fairbanks Medical & Surgical Clinic, Inc.*, Sup. Ct. Op. No. 1119 (File No. 2197), 531 P.2d 1252 (1975).

A suit for forcible detainer substitutes the authority of the courts for private force to compel a citizen wrongfully in possession of real property to surrender it to another with a superior claim. *Modrok v. Marshall*, Sup. Ct. Op. No. 1002 (File No. 1971), 523 P.2d 172 (1974); *McDowell v. Lenarduzzi*, Sup. Ct. Op. No. 1242 (File No. 2413), 546 P.2d 1315 (1976).

Proceeding not substitute for ejectment. — It was not intended by the legislature to substitute the summary proceeding of unlawful detainer for the action of ejectment. *Steil v. Dessmore*, 3 Alaska 392 (1907).

In absence of force, proper remedy is ejectment. — The proper remedy in a case where force is absent is ejectment, or something else than this drastic summary remedy of forcible entry and detainer. *Miners' & Merchants' Bank v. Brice*, 5 Alaska 418 (1915).

It is well-settled that where title to the property is in dispute, dispossession by the summary procedure of a suit for forcible detainer may not be ordered. Instead, the plaintiff must establish his paramount title in an action for ejectment. *Modrok v. Marshall*, Sup. Ct. Op. No. 1002 (File No. 1971), 523 P.2d 172 (1974).

But either ejectment or forcible entry or detainer lies to recover mining claim held by force. — A locator of a mining claim, who is entitled to the exclusive right of possession and enjoyment of all the land within the limits of his claim, can bring and maintain either the real action of the Code as provided for by AS 09.45.630, or the action of forcible entry and detainer under this section, where parties are simply intruding upon his property, and by force settling thereon and holding portions thereof adversely to him, or who peaceably entered, but insist upon

holding possession from him by force. *Tyee Consol. Mining Co. v. Langstedt*, 1 Alaska 439 (1902), rev'd on other grounds, 121 F. 709 (9th Cir. 1903).

The gist of the cause of action is that the defendant unlawfully withholds the possession by force, and, unless the possession is withheld by force, there is no action, because there is no cause of action. *Miners' & Merchants' Bank v. Brice*, 5 Alaska 418 (1915).

Before the plaintiff can recover for forcible and unlawful detainer under this article, he must show by his evidence (1) that the defendant retains the premises by force, (2) and unlawfully, and (3) that the plaintiff is entitled to the possession thereof. *Steil v. Dessmore*, 3 Alaska 392 (1907).

Subsection (a) recognizes a cause of action where, without entry by force, one in quiet possession withholds property from another entitled to possession after a demand to relinquish it. *Modrok v. Marshall*, Sup. Ct. Op. No. 1002 (File No. 1971), 523 P.2d 172 (1974).

It is not essential that the person alleging the detainer ever have been in possession of the premises. *Modrok v. Marshall*, Sup. Ct. Op. No. 1002 (File No. 1971), 523 P.2d 172 (1974).

Force may be either actual or constructive under this section. *Miners' & Merchants' Bank v. Brice*, 5 Alaska 418 (1915).

Possession need not be held by actual force or threat of force for AS 09.45.090 defines several instances of "constructive force" which satisfy the holding by force requirement of this section. *Schaible v. Fairbanks Medical & Surgical Clinic, Inc.*, Sup. Ct. Op. No. 1119 (File No. 2197), 531 P.2d 1252 (1975).

Constructive force is defined by AS 09.45.090. — Actual force is a term well understood, and so is not defined by statute; but constructive force is defined by AS 09.45.090, and that only is constructive force which that section declares to be such. *Miners' & Merchants' Bank v. Brice*, 5 Alaska 418 (1915).

The essence of the forcible entry and detainer action is a dispute over possession. *McDowell v. Lenarduzzi*, Sup. Ct. Op. No. 1242 (File No. 2413), 546 P.2d 1315 (1976).

A claim for rent is secondary and incidental to a determination of the right to possession. *McDowell v. Lenarduzzi*, Sup. Ct. Op. No. 1242 (File No. 2413), 546 P.2d 1315 (1976).

District court lacked jurisdiction in action for accrued rent. — Where the district court had no jurisdiction over actions for forcible entry and detainer in 1965, the court also lacked jurisdiction to enter a 1966 judgment on a second cause of

action for accrued rent under the special form of summons used in forcible entry and detainer actions. *McDowell v. Lenarduzzi*, Sup. Ct. Op. No. 1242 (File No. 2413), 546 P.2d 1315 (1976).

Collateral references. — Forcible entry and detainer as remedy for interference with right of way, 47 ALR 556.

Forcible entry and detainer as a remedy of tenant against stranger wrongfully interfering with his possession, 12 ALR2d 1199.

Right of landowner who has conveyed property to third person to maintain

forcible detainer or similar summary possessory action, 47 ALR2d 1170.

Right of landlord legally entitled to possession to dispossess tenant without legal process, 6 ALR3d 177.

Tenant dispossessed without legal process is entitled to maintain action for forcible entry and detainer, 6 ALR3d 199.

Sec. 09.45.080. Undertaking on appeal. [Repealed, § 4 ch 10 SLA 1974.]

Sec. 09.45.090. Unlawful holding by force. The following are cases of unlawful holding by force within the meaning of AS 09.45.060 — 09.45.160:

(1) when the tenant or person in possession of a premises fails or refuses to pay the rent due on the lease or agreement under which the tenant or person holds, or deliver up the possession of the premises for 10 days after demand made in writing for the possession;

(2) when, after a notice to quit as provided in AS 09.45.060 — 09.45.160, a person continues in the possession of the premises at the expiration of the time limited in the lease or agreement under which that person holds, or contrary to a condition or covenant in the lease or agreement, or without a written lease or agreement;

(3) when, after a notice to terminate the tenancy as provided in this title with reference to termination of estate at will or by sufferance, a person continues in possession of the premises after expiration of the time for determining the tenancy. (§ 17.04 ch 101 SLA 1962)

NOTES TO DECISIONS

Section and AS 09.45.070 contain requirements. — Basic requirements for maintaining a forcible entry and detainer action are spelled out in AS 09.45.070 and this section. *Schaible v. Fairbanks Medical & Surgical Clinic, Inc.*, Sup. Ct. Op. No. 1119 (File No. 2197), 531 P.2d 1252 (1975).

A suit for forcible detainer substitutes the authority of the courts for private force to compel a citizen wrongfully in possession of real property to surrender it to another with a superior

claim. *Modrok v. Marshall*, Sup. Ct. Op. No. 1002 (File No. 1971), 523 P.2d 172 (1974).

Section defines detainer article is designed to prevent. — This section of the forcible entry and detainer act suggests the character of the detainer which the statute was intended to prevent. *Steil v. Dessmore*, 3 Alaska 392 (1907).

And defines constructive force. — Actual force is a term well understood, and so is not defined by statute; but con-

structive force is defined by this section, and that only is constructive force which this section declares to be such. *Miners' & Merchants' Bank v. Brice*, 5 Alaska 418 (1915).

Possession need not be held by actual force or threat of force for this section defines several instances of "constructive force" which satisfy the holding by force requirement of AS 09.45.070. *Schaible v. Fairbanks Medical & Surgical Clinic, Inc.*, Sup. Ct. Op. No. 1119 (File No. 2197), 531 P.2d 1252 (1975).

Where entry was without force and under claim of title, article is inapplicable. — Where defendant entered peaceably and without force, with the consent and under the title of a prior claimant, the homestead entryman, and

entered under an adverse claim of title, and without admitting the title or possession of the plaintiff, under such facts he cannot be summarily removed by the forcible entry and detainer act, but is entitled to have his title tried at law. *Steil v. Dessmore*, 3 Alaska 392 (1907).

It is well-settled that where title to the property is in dispute, dispossession by the summary procedure of a suit for forcible detainer may not be ordered. Instead, the plaintiff must establish his paramount title in an action for ejectment. *Modrok v. Marshall*, Sup. Ct. Op. No. 1002 (File No. 1971), 523 P.2d 172 (1974).

Applied in *Wright v. Vickaryous*, Sup. Ct. Op. No. 1886 (File Nos. 4079, 4080), 598 P.2d 490 (1979).

Sec. 09.45.100. Requisites of notice to quit. A notice to quit shall be in writing and shall be served upon the tenant or person in possession by being delivered to the tenant or person or left at the premises in case of absence from the premises, or the notice may be sent by registered or certified mail, in which case an additional three days shall be added to the 10 days. (§ 17.05 ch 101 SLA 1962)

NOTES TO DECISIONS

Where notice does not specify time in which default may be cured. — While courts have generally required that notices to quit and vacate specify the time in which default may be cured, the omission of this information does not automatically make the notice ineffective. *Curry v. Tucker*, Sup. Ct. Op. No. 2157 (File No. 4249), 616 P.2d 8 (1980).

Where the forfeiture provision in the contract of sale of real property includes a statement of the time within which default may be cured, the requirement that the vendee be made aware of this alternative to forfeiture upon issuance of notice to quit is satisfied. *Curry v. Tucker*, Sup. Ct. Op. No. 2157 (File No. 4249), 616 P.2d 8 (1980).

Sec. 09.45.110. Period between service of notice and action brought. An action for the recovery of the possession of the premises may be maintained in the cases specified in AS 09.45.090(2) when the notice to quit has been served upon the tenant or person in possession for the period of 10 days before the commencement of the action unless the leasing or occupation is for the purpose of farming or agriculture, in which case the notice shall be served 90 days before commencement of the action. (§ 17.06 ch 101 SLA 1962)

NOTES TO DECISIONS

Cited in *Schaible v. Fairbanks Medical & Surgical Clinic, Inc.*, Sup. Ct. Op. No. 1119 (File No. 2197), 531 P.2d 1252 (1975).

Sec. 09.45.120. Summons and continuance. Summons in actions for forcible entry and detainer shall be served not less than two nor more than four days before the date of trial. No continuance shall be granted for a longer period than two days unless the defendant applying for the continuance gives an undertaking to the adverse party, with sureties approved by the court conditioned to the payment of the rent that may accrue if judgment is rendered against the defendant. (§ 17.07 ch 101 SLA 1962)

NOTES TO DECISIONS

This section specifically permits the granting of a two-day continuance. *Barrett v. Gagnon*, Sup. Ct. Op. No. 976 (File No. 1861), 516 P.2d 1202 (1973).

Provisions parallel to Civ. R. 85(a)(2) and (3) are found in this section. *Schaible v. Fairbanks Medical & Surgical Clinic, Inc.*, Sup. Ct. Op. No. 1119 (File No. 2197), 531 P.2d 1252 (1975).

Civil R. 85 contains language that is essentially identical to that of this section. *McDowell v. Lenarduzzi*, Sup. Ct. Op. No. 1242 (File No. 2413), 546 P.2d 1315 (1976).

As to similarity of practice and procedure in forcible entry and

detainer actions to that in other civil actions, see *Schaible v. Fairbanks Medical & Surgical Clinic, Inc.*, Sup. Ct. Op. No. 1119 (File No. 2197), 531 P.2d 1252 (1975).

District court lacked jurisdiction in action for accrued rent. — Since the district court had no jurisdiction over actions for forcible entry and detainer in 1965, the court also lacked jurisdiction to enter a 1966 judgment on a second cause of action for accrued rent under the special form of summons used in forcible entry and detainer actions. *McDowell v. Lenarduzzi*, Sup. Ct. Op. No. 1242 (File No. 2413), 546 P.2d 1315 (1976).

Sec. 09.45.130. Action against persons paying rent in advance. The service of a notice to quit upon a tenant or person in possession does not authorize an action to be maintained against the tenant or person for the possession of the premises until the expiration of the period for which that tenant or person may have paid rent for the premises in advance. To authorize an action against a tenant or person in possession who has paid rent in advance, a notice must 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. (§ 17.08 ch 101 SLA 1962)

Sec. 09.45.140. Agricultural tenant. When the leasing or occupation is for the purpose of farming or agriculture, the tenant or person in possession shall, after the termination of the lease or occupancy, have free access to the premises to cultivate and harvest or gather any crop or produce of the soil planted or sown by the tenant or person before the service of the notice to quit. (§ 17.09 ch 101 SLA 1962)

Collateral references. — Rent increase: validity of statute, ordinance, or regulation requiring compliance with housing standards before rent increase or possession by new tenant. 20 ALR4th 1246.

Strict liability of landlord for injury or death of tenant or third person caused by

defect in premises leased for residential use. 48 ALR4th 638.

Violation of statute or ordinance requiring landlord to furnish specified facilities or services as ground of liability for injury resulting from tenant's attempt to deal with deficiency. 63 ALR4th 883.

Sec. 34.03.110. Limitation of liability. (a) Unless otherwise agreed, a landlord who conveys premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser is relieved of liability under the rental agreement and this chapter as to events occurring subsequent to written notice to the tenant of the conveyance. However, the landlord remains liable to the tenant for the property and money to which the tenant is entitled under AS 34.03.070, unless the property and money are specifically assigned to and accepted by the purchaser.

(b) Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the termination of the person's management. (§ 1 ch 10 SLA 1974)

Sec. 34.03.115. [Renumbered as AS 34.05.025.]

Article 4. Tenant Obligations.

Section	Section
120. Tenant to maintain dwelling unit	140. Access
130. Rules and regulations	150. Tenant to use and occupy

Sec. 34.03.120. Tenant to maintain dwelling unit. The tenant shall

(1) keep that part of the premises occupied and used by the tenant as clean and safe as the condition of the premises permit;

(2) dispose all ashes, rubbish, garbage, and other waste from the dwelling unit in a clean and safe manner;

(3) keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(4) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, kitchen, and other facilities and appliances including elevators in the premises;

(5) not deliberately or negligently destroy, deface, damage, impair, or remove a part of the premises or knowingly permit any person to do so;

(6) 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; and

(7) maintain smoke detection devices as required under AS 18.70.095. (§ 1 ch 10 SLA 1974; am § 5 ch 129 SLA 1988)

Effect of amendments. — The 1988 amendment added paragraph (7) and made related word changes.

NOTES TO DECISIONS

Obligation to remove snow and ice in common areas on leased premises.

— The primary obligation to remove snow and ice in common areas falls upon the landlord; on leased premises, this duty is the tenant's. *Coburn v. Burton*, 790 P.2d 1355 (Alaska 1990).

Cleanup within 10 days of notice of noncompliance. — Where the tenants cleaned up the premises within 10 days from the date they were served with notice of noncompliance with the rental

agreement, the rental agreement could not be terminated for that reason. *Vozaar v. Francis*, 579 P.2d 1056 (Alaska 1978).

Superior court erred in not allowing landlord to adduce otherwise competent evidence, including a paragraph of the lease, tending to show that the area of concern was not a "common area" but rather an area "occupied and used" by the tenant. *Coburn v. Burton*, 790 P.2d 1355 (Alaska 1990).

Sec. 34.03.130. Rules and regulations. (a) A landlord may adopt rules and regulations, which shall be posted prominently on the premises, concerning the tenant's use and occupancy of the premises. A rule or regulation is enforceable against the tenant only if

(1) its purpose is to promote the convenience, safety, health, or welfare of the tenants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(2) it is reasonably related to the purpose for which it is adopted;

(3) it applies to all tenants in the premises in a fair manner;

(4) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what the tenant must or must not do to comply;

(5) it is not for the purpose of evading the obligations of the landlord; and

(6) the tenant has notice of it at the time the tenant enters into the rental agreement.

(b) A rule or regulation adopted after the tenant enters into the rental agreement is enforceable against the tenant if reasonable notice of its adoption is given to the tenant and it does not work a substantial modification of the rental agreement.

(c) A mobile home park operator may determine by rule or regulation the style or quality of the equipment, including but not limited to underskirting and tie-downs, to be purchased by the tenant from the vendor of the tenant's choice; however, the operator may not require that the equipment be purchased from the operator. (§ 1 ch 10 SLA 1974; am § 4 ch 138 SLA 1976)

deposits recoverable by the tenant under AS 34.03.070. (§ 1 ch 10 SLA 1974)

NOTES TO DECISIONS

Cited in Public Safety Employees Ass'n v. State, 658 P.2d 769 (Alaska 1983).

Article 6. Landlord Remedies.

Section	Section
220. Noncompliance with rental agreement: Failure to pay rent	250. Landlord liens; distraint for rent abolished
225. Limitations on mobile home park operator's right to terminate	260. Disposition of abandoned property
230. Remedies for absence, nonuse and abandonment	270. Remedy after termination
240. Waiver of landlord's right to terminate	280. Recovery of possession limited
	285. Service of process upon tenant

Sec. 34.03.220. Noncompliance with rental agreement: Failure to pay rent. (a) Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or noncompliance with AS 34.03.120 materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and specifying that the rental agreement will terminate upon a date not less than 20 days after receipt of the notice. If the breach is not remedied in 10 days, the rental agreement terminates as provided in the notice subject to the provisions of this section. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach before the date specified in the notice, the rental agreement will not terminate. In the absence of due care by the tenant, if substantially the same act or omission that constituted a prior noncompliance of which notice was given recurs within six months, the landlord may terminate the rental agreement upon at least 10 days written notice specifying the breach and the date of termination of the rental agreement.

(b) If rent is unpaid when due and the tenant fails to pay rent within 10 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 unless the landlord agrees to allow the tenant to remain in occupancy, and the landlord may terminate the rental agreement and immediately recover possession of the rental unit; only one written notice of default need be given the tenant by the landlord as to any one default.

(c) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by

the tenant with the rental agreement or AS 34.03.120. (§ 1 ch 10 SLA 1974)

NOTES TO DECISIONS

- I. General Consideration.
- II. Forfeiture.

I. GENERAL CONSIDERATION.

Conduct materially affecting health and safety of others. — Where instances of conduct which seriously threaten the health and safety of others, who must live in extremely close proximity to the offending party, have left their indelible imprint on the atmosphere of the neighborhood, such occurrences disturb the peace and harmony of a neighborhood to a degree and in a manner that is "material," and not "remediable" under the language of subsection (a) of this section. *Osness v. Dimond Estates, Inc.*, 615 P.2d 605 (Alaska 1980); *Taylor v. Gill St. Invs.*, 743 P.2d 345 (Alaska 1987).

Ten-day period dates from receipt of notice. — The period of 10 days in which to cure breaches in the rental agreement should be 10 days after receipt of the notice and not from the date of the notice. *Vozar v. Francis*, 579 P.2d 1056 (Alaska 1978).

Where the tenants cleaned up the premises within 10 days from the date they were served with notice of noncompliance with the rental agreement, the rental agreement could not be terminated for that reason. *Vozar v. Francis*, 579 P.2d 1056 (Alaska 1978).

Deficiency in notice of termination held immaterial where specified violations of rental agreement are of irreparable character. — See *Taylor v. Gill St. Invs.*, 743 P.2d 345 (Alaska 1987).

A purchaser of a building had

standing to enforce compliance with a preexisting lease when the seller had not reserved leasehold rights. *Hendrickson v. Freericks*, 620 P.2d 205 (Alaska 1980).

II. FORFEITURE.

Forfeitures for breach not favored. — Although forfeitures for breach by assignment have been approved if authorized by the language in the lease, forfeitures are not favored and never enforced in equity unless the right thereto is so clear as to permit no denial. *Hendrickson v. Freericks*, 620 P.2d 205 (Alaska 1980).

In determining whether forfeiture is required, the trial court is vested with broad discretion. *Hendrickson v. Freericks*, 620 P.2d 205 (Alaska 1980).

The factor which has often been of greatest importance to the court in determining whether a forfeiture should be ordered is the financial loss suffered by the parties. *Hendrickson v. Freericks*, 620 P.2d 205 (Alaska 1980).

Strict compliance not previously required. — It is a well-settled principle of law that where a landlord has led the tenant to believe that strict performance of a covenant will not be required, the landlord cannot thereafter demand forfeiture of the lease without first giving the tenant notice that strict compliance with the terms of the lease will be demanded in the future. *Hendrickson v. Freericks*, 620 P.2d 205 (Alaska 1980).

Collateral references. — Waiver of statutory demand-for-rent-due or of notice-to-quit prerequisite of summary evic-

tion of lessee for nonpayment of rent — modern cases. 31 ALR4th 1254.

• **Sec. 34.03.225. Limitations on mobile home park operator's right to terminate.** (a) A mobile home park operator may evict a mobile home or a mobile home park dweller or tenant only for one of the following reasons:

(1) the mobile home dweller or tenant has defaulted in the payment of rent owed;

(7) occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes. (§ 1 ch 10 SLA 1974)

Sec. 34.03.340. Service of process. If a landlord is not a resident of this state or is a corporation not authorized to do business in this state and engages in any conduct in this state governed by this chapter, or engages in a transaction subject to this chapter, the landlord may designate an agent upon whom service of process may be made in this state. The agent shall be a resident of this state or a corporation authorized to do business in this state. The agent shall be the same person designated under AS 34.03.080. The designation shall be in writing and filed with the commissioner of commerce and economic development. If no designation is made and filed or if process cannot be served in this state upon the designated agent, process may be served upon the commissioner of commerce and economic development, but the service upon the commissioner is not effective unless the plaintiff or petitioner immediately mails a copy of the process and pleadings by certified or registered mail to the defendant or respondent at the last ascertainable address of the defendant or respondent. An affidavit of compliance with this section shall be filed with the clerk of the court having jurisdiction on or before the return day for the process, if any, or within any further time allowed by the court. (§ 1 ch 10 SLA 1974)

Sec. 34.03.350. Attorney fees. Attorney fees shall be allowed to the prevailing party in any proceeding arising out of this chapter or a rental agreement. (§ 1 ch 10 SLA 1974)

Sec. 34.03.360. Definitions. In this chapter

(1) "abandonment" means that the tenant has left the dwelling unit and the tenant's personal belongings in it and has been absent for a continuous period of seven days or longer without giving notice under AS 34.03.150 and has defaulted in the payment of rent;

(2) "building and housing codes" include any law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of a premise or dwelling unit;

(3) "dwelling unit" means a structure or a part of a structure that issued as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household, and includes mobile homes, and if located in a mobile home park, the lot or space upon which a mobile home is placed;

(4) "fair rental value" means the average rental rate in the community for available dwelling units of similar size and features;

(5) "good faith" means honesty in fact in the conduct of the transaction concerned;

(6) "landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by AS 34.03.080;

(7) "organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal entity;

(8) "owner" means one or more persons, jointly or severally, in whom is vested all or part of the legal title to property or all or part of the beneficial ownership of property and a right to present use of the premises; the term includes a mortgagee in possession;

(9) "person" includes an individual or organization;

(10) "premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances in it and grounds, areas, and facilities held out for the use of tenants generally or whose use is promised to the tenant;

(11) "prepaid rent" means that amount of money demanded by the landlord at the initiation of the tenancy for the purpose of ensuring that rent will be paid, but does not include the first month's rent or money received as security for damage;

(12) "rent" means the uniform periodic payment due the landlord, however denominated;

(13) "rental agreement" means all agreements, written or oral, and valid rules and regulations adopted under AS 34.03.130 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises;

(14) "sanitary facility" means a flush toilet and proper drainage for all toilets, sinks, basins, bathtubs, and showers;

(15) "single family residence" means a structure maintained and used as a single dwelling unit;

(16) "tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others;

(17) "undeveloped rural area" means an area where public sewer or water services are not available;

(18) "wear resulting from ordinary use" means deterioration of the premises that is the result of the tenant's normal nonabusive living and includes but is not limited to deterioration caused by the landlord's failure to prepare for expected conditions or by the landlord's failure to comply with the landlord's obligations. (§ 1 ch 10 SLA 1974)

NOTES TO DECISIONS

Term "rental agreement" not used in connection with month-to-month tenancies. — While "rental agreement" is defined in this section as "all agreements ... embodying the terms and conditions concerning the use and occupancy of a dwelling unit ...," the term "rental agreement" is not used in the uniform act in connection with month-to-month tenancies. *McCall v. Fickes*, 556 P.2d 535 (Alaska 1976).

Alaska Statutes 34.03.020(d) fixes a month-to-month tenancy, in absence of agreement by the parties to a different term in the rental agreement, if rent is paid on a monthly basis. *McCall v. Fickes*, 556 P.2d 535 (Alaska 1976).

Quoted in *Smith v. Great Am. Ins. Co.*, 629 P.2d 543 (Alaska 1981).

Sec. 34.03.370. Applicability. After March 19, 1974, this chapter applies to any rental agreement, lease, or tenancy entered into, extended, or renewed by the payment of rent on or subsequent to that date. (§ 1 ch 10 SLA 1974)

Sec. 34.03.380. Short title. This chapter may be cited as the "Uniform Residential Landlord and Tenant Act." (§ 1 ch 10 SLA 1974)

Chapter 05. Agricultural and Personal Property.

Article

1. Agricultural Property (§ 34.05.025)
2. Personal Property (§§ 34.05.040, 34.05.050)

Article 1. Agricultural Property.

Section

25. Agricultural tenants

Secs. 34.05.010 — 34.05.020. [Repealed.]

Sec. 34.05.025. Agricultural tenants. A tenant whose lease or occupancy is for agricultural purposes and who breaches the rental agreement, or continues in possession of the premises at the expiration of the time limited in or contrary to a condition or covenant in the lease or agreement under which the tenant holds, shall be provided with a written notice specifying the breach and demanding the tenant quit the premises at least 30 days before commencement of an action for the recovery of the property. The tenant shall have free access to the premises to cultivate and harvest crops or produce planted by the tenant before the service of the notice of the breach and demand to quit the premises. (§ 2 ch 10 SLA 1974)

Revisor's notes. — Formerly AS 34.03.115 in 1983. Renumbered again in 09.45.496(b). Renumbered as AS 1985.



First National Bank
of Anchorage

December 11, 1990

Senator Pat Pourchot
Alaska State Legislature
P. O. Box 104836
Anchorage, AK 99510

Dear Pat:

Thank you for your letter of December 4, 1990
addressed to Steve Shropshire regarding the
Landlord-Tenant Act. I think that you are on the right
track. Please keep up the good work.

Sincerely,

David W. Cuddy
Senior Vice President

DWC/als

JAN 22 1991



Institute of Real Estate Management
of the NATIONAL ASSOCIATION OF REALTORS®

JAMES KUNTZ, CPM
c/o MARSTON PROPERTIES
4105 TURNAGAIN BLVD.
ANCHORAGE AK 99517

248-1717

Alaska Chapter No. 97

January 21, 1991

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

RE: Proposed Changes To The Alaska
Uniform Residential Landlord - Tenant Act

Dear Senator Pourchot:

The Alaska Chapter of the Institute of Real Estate Management is an affiliate of the National Association of Realtors. Our executive board has reviewed and supports your proposed changes to the Alaska Uniform Residential Landlord - Tenant Act.

Shortening the notice period for non-payment of rent to five days would assist property owners in accelerating the timely FED process and would still allow well-intentioned tenants to pay or make other arrangements. The second proposal would benefit property owners by giving them the option to initiate the eviction process against tenants arrested for certain drug and alcohol related crimes.

Both proposals would result in reducing the losses rental property owners encounter due to unpaid rent and loosing good tenants because of disturbances or fear from certain neighboring tenants engaged in illegal drug activity.

The members of IREM support these proposed changes and are hopeful that they will be passed.

Very truly yours,
James Kuntz

James Kuntz, CPM, CRB
IREM Past President

cc: Dea Turner, Alaska Association of Realtors
Jim McCourt, Alaska Association of Realtors



CERTIFIED PROPERTY MANAGER®

ACCREDITED MANAGEMENT ORGANIZATION®



THE FOREMAN'S

1241 HILLCREST DRIVE
P.O. BOX 91576 ANCHORAGE, ALASKA 99509-1576
(907) 279-1736

December 31, 1990

Senator Pat Pourchot
P.O. Box 104836
Anchorage, Alaska 99510-4836

Sir:

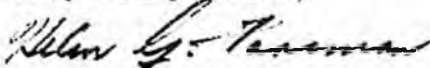
Thank you and your Mr. Abbott for the opportunity for input regarding the two changes you are proposing to the Alaska Uniform Residential and Landlord and Tenant Act.

The non-payment of rent notice period change from ten (10) to five (5) days is highly desirable.

Immediate eviction process against those arrested for drug- or alcohol-related crimes is highly desirable; however, it appears doubtful such legislation would "stand up in court" because "arrest" is not "conviction". And, a person is presumed innocent until proven guilty.

Please note we are sending copies of this letter to our legislators soliciting their support for your efforts.

Very truly yours,



Helen G. Foreman
Co-Owner

hgf/s

cc: Senator Drue Pearce, Suite 535, 3111 C Street
Senator Pat Rodey, 3111 C Street
Representative Dave Donley, Suite 450, 3111 C St.
Representative Max F. Gruenberg, Jr., 914 Clay Ct.



BOX 719
BETHEL, ALASKA 99559

543-2124

Senator Pat Pourchot
Alaska State Legislature
P.O. Box 104836
Anchorage, Ak. 99510

December 13, 1990

Dear Senator Pourchot:

This letter is to support your proposed changes in the Alaska Uniform Residential Landlord-Tenant Act.

We are a Native Village Corporation with major interest in rental property in our area. We are fully aware of the impact of drug-related and bootlegging problems in our area. We too would like the right to evict such persons from the premises as soon as possible.

As a landlord, we are also in favor of the 5 day in place of the 10 day eviction notice.

If we can be of further assistance in this matter, please contact us.

Sincerely,

William C. Bivin
President/CEO
543-2062 (H)

1201 West 45th Ave.
Anchorage, Alaska 99503
January 4, 1991

JAN - 7 1991

Dear Sen. Pourchot,

Thank you for your letter of December 4 expressing concerns for landlord's trying to evict non-paying tenants and those engaged in drug selling and bootlegging activity.

We have read the work draft of the proposed bill and find it carefully written.

At our December 13 meeting, the Landlord and Property Managers Ass'n. voted in favor of this draft as far as it goes. We will support it to the best of our ability.

We look forward to hearing that it has been filed.

Sincerely,

Alice Brewer

Alice Brewer
Executive Secy. ALPMA

563-6734

P. O. Box 103628
Anchorage, AK 99510
12 November 1990

Senator Pourchot
Alaska State Senate
3111 C Street, Suite 545
Anchorage, AK 99503

Dear Senator Pourchot:

Subject: Landlord-Tenant Law changes

You are interested in sponsoring a bill to amend the landlord-tenant law. You propose to shorten the notice-to-quit time in an FED procedure. I support this plan. I suggest five-days notice.

I own and manage 10 apartments in 3 buildings. I have had experience with the eviction process for non-payment of rent. Currently a ten-day notice is required before an FED lawsuit can be started. This is too long. It is a useless delay. Five days is a good time for a notice-to-quit period (three days would be best, but I will settle for five). Tenant groups will complain, but shortening the notice period will pose no problem. Whatever the non-paying tenant was going to do on the tenth day, they can do just as well on the fifth day. Also, I believe, other states have notice times that are shorter than ten days. Lets be in line here. Finally, remember that this is a legal minimum notice time and each situation can be increased above the minimum. This allows the landlord to give good tenants a break and to get rid of non-payers quickly.

Senator Pourchot, the ten-day notice-to-quit time is a major problem with the current law. Please submit and enact a bill to reduce this useless delay.

Sincerely,



Jerry Lee Gottbe (Inust)

338-0627

December 17, 1990

Senator Pat Parnoch
P.O. Box 104836
Anchorage, Alaska

Dear Senator,

Your proposed bill, "to reduce the time after giving written notice that a landlord must wait to terminate a tenancy for failure to pay rent when due", and "with respect to illegal activities involving alcoholic beverages, controlled substances," sounds good. If this will help control some of the illegal activities, by making those aware that they can be evicted early, then lets have it made part of the laws.

Landlords need help with the delinquent and destructive tenants.

Sincerely,

Charles Lippitt

2203 McKinley Ave.

Spencer, Alaska

248-4190