

SB

307

SENATE COMMITTEE REPORT

DATE: 3/31/06

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

SENATE BILL NO. 307

SB 307 LANDLORD REMEDIES; LATE FEE

"An Act relating to a fee provided for in the rental agreement for late payment of rent under the Uniform Residential Landlord and Tenant Act."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
SCS House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>[Signature]</i>			x	
<i>[Signature]</i>			x	
<i>[Signature]</i>			x	
CHAIR: <i>[Signature]</i>	✓			

24-LS1726V
Cook
4/27/06

CS FOR SENATE BILL NO. 307()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to notice by the landlord to the tenant of intention to terminate a rental**
2 **agreement for nonpayment of rent under the Uniform Residential Landlord and Tenant**
3 **Act."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 *** Section 1. AS 09.45.090(a) is amended to read:**

6 (a) For property to which the provisions of AS 34.03 (Uniform Residential
7 Landlord and Tenant Act) apply, unlawful holding by force includes each of the
8 following:

9 (1) when, for failure or refusal to pay rent due on the lease or
10 agreement under which the tenant or person holds, and after service, under
11 AS 09.45.100(b), of the written notice required by AS 34.03.220(b) by the landlord for
12 recovery of possession of the premises if the rent is not paid, the tenant or person in
13 possession fails or refuses to vacate or pay the rent within 10 [SEVEN] days;

14 (2) when,

1 (A) after a violation of a condition or covenant set out in
2 AS 34.03.120(a), other than a breach of AS 34.03.120(a)(5) due to the
3 deliberate infliction of substantial damage to the premises, or after a breach or
4 violation of a condition or covenant in a lease or rental agreement and
5 following service of written notice to quit, the tenant fails or refuses to remedy
6 the breach or to deliver up the possession of the premises within the number of
7 days provided for termination under AS 34.03.220(a)(2);

8 (B) after a violation of AS 34.03.120(a)(5) by deliberate
9 infliction of substantial damage to the premises, following service of written
10 notice to quit, the tenant fails or refuses to deliver up the possession of the
11 premises by the date set out in the written notice to quit under
12 AS 34.03.220(a)(1);

13 (C) after a violation of AS 34.03.220(e) following
14 discontinuance of a public utility service, following service of written notice to
15 quit, the tenant fails or refuses to deliver up the possession of the premises by
16 the date set out in the written notice to quit under AS 34.03.220(e);

17 (D) the landlord requires the tenant to vacate the premises for a
18 reason set out in AS 34.03.310(c)(2) or (c)(4) - (7), following service of
19 written notice to quit, the tenant fails or refuses to deliver up the possession of
20 the premises within the longer of 30 days or the period of notice for the
21 landlord's recovery of possession of the premises set out in the rental
22 agreement;

23 (E) in a mobile home park, there is to be a change in the use of
24 land for which termination of tenancy is authorized by AS 34.03.225(a)(4),
25 following service of written notice to quit, the mobile home dweller or tenant
26 fails or refuses to vacate within the number of days provided for termination
27 under AS 34.03.225(a)(4);

28 (F) after termination of a periodic tenancy as prescribed by
29 AS 34.03.290(a) or (b), following service of written notice to quit, the tenant
30 remains in possession without the landlord's consent after expiration of the
31 term of the rental agreement or after the date of its expiration;

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(G) after the tenant has violated AS 34.03.120(b) or the tenant has used the dwelling unit or allowed the dwelling unit to be used for an illegal purpose in violation of AS 34.03.310(c)(3) other than a breach of AS 34.03.120(b), following service of written notice to quit, the tenant fails or refuses to deliver up the possession of the premises within five days; or

(H) following service of written notice to quit, a person in possession continues in possession of the premises without a valid rental agreement, as that term is defined in AS 34.03.360, and without the consent of the landlord; or

(3) when, without a notice to quit, a tenant or person in possession continues in possession of the premises after the tenancy has been terminated by issuance of an order of abatement under AS 09.50.210(a).

* Sec. 2. AS 34.03.220(b) is amended to read:

(b) If rent is unpaid when due and the tenant fails to pay rent in full within 10 [SEVEN] 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. A landlord who has given written notice to the tenant under this subsection may accept a partial payment of the rent due under the rental agreement and extend the date for the eviction accordingly.

24-LS1726\G
Cook
4/24/06

CS FOR SENATE BILL NO. 307()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a fee provided for in the rental agreement for late payment of rent
2 under the Uniform Residential Landlord and Tenant Act."

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

4 * Section 1. AS 09.45.090(a) is amended to read:

5 (a) For property to which the provisions of AS 34.03 (Uniform Residential
6 Landlord and Tenant Act) apply, unlawful holding by force includes each of the
7 following:

8 (1) when, for failure or refusal to pay rent due on the lease or
9 agreement under which the tenant or person holds, and after service, under
10 AS 09.45.100(b), of the written notice required by AS 34.03.220(b) by the landlord for
11 recovery of possession of the premises if the rent, and, if applicable, the late fee, is
12 not paid, the tenant or person in possession fails or refuses to vacate or pay the rent,
13 and, if applicable, the late fee, within seven days;

14 (2) when,

1 (A) after a violation of a condition or covenant set out in
2 AS 34.03.120(a), other than a breach of AS 34.03.120(a)(5) due to the
3 deliberate infliction of substantial damage to the premises, or after a breach or
4 violation of a condition or covenant in a lease or rental agreement and
5 following service of written notice to quit, the tenant fails or refuses to remedy
6 the breach or to deliver up the possession of the premises within the number of
7 days provided for termination under AS 34.03.220(a)(2);

8 (B) after a violation of AS 34.03.120(a)(5) by deliberate
9 infliction of substantial damage to the premises, following service of written
10 notice to quit, the tenant fails or refuses to deliver up the possession of the
11 premises by the date set out in the written notice to quit under
12 AS 34.03.220(a)(1);

13 (C) after a violation of AS 34.03.220(e) following
14 discontinuance of a public utility service, following service of written notice to
15 quit, the tenant fails or refuses to deliver up the possession of the premises by
16 the date set out in the written notice to quit under AS 34.03.220(e);

17 (D) the landlord requires the tenant to vacate the premises for a
18 reason set out in AS 34.03.310(c)(2) or (c)(4) - (7), following service of
19 written notice to quit, the tenant fails or refuses to deliver up the possession of
20 the premises within the longer of 30 days or the period of notice for the
21 landlord's recovery of possession of the premises set out in the rental
22 agreement;

23 (E) in a mobile home park, there is to be a change in the use of
24 land for which termination of tenancy is authorized by AS 34.03.225(a)(4),
25 following service of written notice to quit, the mobile home dweller or tenant
26 fails or refuses to vacate within the number of days provided for termination
27 under AS 34.03.225(a)(4);

28 (F) after termination of a periodic tenancy as prescribed by
29 AS 34.03.290(a) or (b), following service of written notice to quit, the tenant
30 remains in possession without the landlord's consent after expiration of the
31 term of the rental agreement or after the date of its expiration;

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(G) after the tenant has violated AS 34.03.120(b) or the tenant has used the dwelling unit or allowed the dwelling unit to be used for an illegal purpose in violation of AS 34.03.310(c)(3) other than a breach of AS 34.03.120(b), following service of written notice to quit, the tenant fails or refuses to deliver up the possession of the premises within five days; or

(H) following service of written notice to quit, a person in possession continues in possession of the premises without a valid rental agreement, as that term is defined in AS 34.03.360, and without the consent of the landlord; or

(3) when, without a notice to quit, a tenant or person in possession continues in possession of the premises after the tenancy has been terminated by issuance of an order of abatement under AS 09.50.210(a).

* Sec. 2. AS 34.03.040(a) is amended to read:

(a) A rental agreement may not provide that [THE TENANT OR LANDLORD]

(1) the tenant or landlord agrees to waive or to forego rights or remedies under this chapter;

(2) the tenant or landlord authorizes a person to confess judgment on a claim arising out of the rental agreement;

(3) the tenant or landlord agrees to the exculpation or limitation of any liability of the landlord or tenant arising under the law or to indemnify the landlord or tenant for that liability or the costs connected with it;

(4) the tenant agrees to pay the landlord's attorney fees;

(5) if rent is unpaid when due, the tenant agrees to pay a late fee that exceeds 10 percent of the amount that is due and unpaid.

* Sec. 3. AS 34.03.220(b) is amended to read:

(b) If rent is unpaid when due and the tenant fails to pay rent in full, together with any fee provided for in the rental agreement for late payment of rent, within seven days after written notice by the landlord of nonpayment and the intention to terminate the rental agreement if the rent, and, if applicable, the late fee is not paid within that period of time, the tenancy terminates unless the landlord agrees to allow

1 the tenant to remain in occupancy, and the landlord may terminate the rental
2 agreement and immediately recover possession of the rental unit. Only one written
3 notice of default need be given the tenant by the landlord as to any one default. A
4 landlord who has given written notice to the tenant under this subsection may accept a
5 partial payment of the rent due under the rental agreement, together with payment of
6 any fee provided for in the rental agreement for late payment of rent, and extend
7 the date for the eviction accordingly.

Alaska State Legislature



DURING SESSION
STATE CAPITOL
JUNEAU, AK 99801-1182
(907) 465-4843 (800) 892-4843
FAX: (907) 465-3871

WEB SITE
www.akrepublicans.org/Bunde

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716 W. FOURTH AVE.
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(907) 269-0181
FAX: (907) 269-0184

E-MAIL
Senator.Con.Bunde@legis.state.ak.us

SENATOR CON BUNDE

District P

VICE-CHAIR: SENATE FINANCE COMMITTEE
CHAIR: SENATE LABOR & COMMERCE COMMITTEE
MEMBER: LEGISLATIVE BUDGET & AUDIT COMMITTEE

MEMORANDUM

DATE: March 31, 2006
TO: Senator Ralph Seekins, Chair, Senate Judiciary Committee
FROM: Senator Con Bunde *CBunde*
RE: Hearing Request for SB 307 Landlord Remedies: Late Fees

I respectfully request a hearing before the Senate Judiciary Committee on SB 307, Landlord Remedies: Late Fees. at your earliest convenience.

SB 307 addresses a problem in the landlord/tenant relationship that has become more apparent since 2002 when a Superior Court decision was handed down that changed the status quo of collection of late rent and late fees. What SB 307 does is return that notification process back prior to that 2002 ruling.

Prior to 2002, including the late fee on the same 7-day notice to quit with the nonpayment of rent was an accepted practice. The 2002 Superior Court case ruled that this was illegal under current law, and required a 7-day notice to quit for non-payment of rent and a 10-day notice to quit for the non-payment of the late fee. In essence, the court ruled that two separate notices needed to be sent to the tenant.

Simple, clear language between landlord and tenant is essential. Replacing one notice with two notices, both with different due dates and amounts owed has caused problems that invariably have ended up in court.

SB 307 addresses the discrepancy in State law and allows landlords to return to the same 7-day notice requirement for non-payment of both rent and the late fee.

Please find SB 307, Sponsor Statement, sectional summary, letters of support, sample documents, comments from the Dept. of Law and fiscal note attached. Please contact Jane Alberts at 465-3844 if you have any questions.

SENATE BILL NO. 307

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Introduced: 2/23/06

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a fee provided for in the rental agreement for late payment of rent
2 under the Uniform Residential Landlord and Tenant Act."

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

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10 AS 09.45.100(b), of the written notice required by AS 34.03.220(b) by the landlord for
11 recovery of possession of the premises if the rent, and, if applicable, the late fee, is
12 not paid, the tenant or person in possession fails or refuses to vacate or pay the rent,
13 and, if applicable, the late fee, within seven days;

14 (2) when,

"reasonable" late fee?

1 (A) after a violation of a condition or covenant set out in
2 AS 34.03.120(a), other than a breach of AS 34.03.120(a)(5) due to the
3 deliberate infliction of substantial damage to the premises, or after a breach or
4 violation of a condition or covenant in a lease or rental agreement and
5 following service of written notice to quit, the tenant fails or refuses to remedy
6 the breach or to deliver up the possession of the premises within the number of
7 days provided for termination under AS 34.03.220(a)(2);

8 (B) after a violation of AS 34.03.120(a)(5) by deliberate
9 infliction of substantial damage to the premises following service of written
10 notice to quit, the tenant fails or refuses to deliver up the possession of the
11 premises by the date set out in the written notice to quit under
12 AS 34.03.220(a)(1);

13 (C) after a violation of AS 34.03.220(e) following
14 discontinuance of a public utility service, following service of written notice to
15 quit, the tenant fails or refuses to deliver up the possession of the premises by
16 the date set out in the written notice to quit under AS 34.03.220(e);

17 (D) the landlord requires the tenant to vacate the premises for a
18 reason set out in AS 34.03.310(c)(2) or (c)(4) - (7), following service of
19 written notice to quit, the tenant fails or refuses to deliver up the possession of
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23 (E) in a mobile home park, there is to be a change in the use of
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25 following service of written notice to quit, the mobile home dweller or tenant
26 fails or refuses to vacate within the number of days provided for termination
27 under AS 34.03.225(a)(4);

28 (F) after termination of a periodic tenancy as prescribed by
29 AS 34.03.290(a) or (b), following service of written notice to quit, the tenant
30 remains in possession without the landlord's consent after expiration of the
31 term of the rental agreement or after the date of its expiration;

1 (G) after the tenant has violated AS 34.03.120(b) or the tenant
2 has used the dwelling unit or allowed the dwelling unit to be used for an illegal
3 purpose in violation of AS 34.03.310(c)(3) other than a breach of
4 AS 34.03.120(b), following service of written notice to quit, the tenant fails or
5 refuses to deliver up the possession of the premises within five days; or

6 (H) following service of written notice to quit, a person in
7 possession continues in possession of the premises without a valid rental
8 agreement, as that term is defined in AS 34.03.360, and without the consent of
9 the landlord; or

10 (3) when, without a notice to quit, a tenant or person in possession
11 continues in possession of the premises after the tenancy has been terminated by
12 issuance of an order of abatement under AS 09.50.210(a).

13 * Sec. 2. AS 34.03.220(b) is amended to read:

14 (b) If rent is unpaid when due and the tenant fails to pay rent in full, together
15 with any fee provided for in the rental agreement for late payment of rent, within
16 seven days after written notice by the landlord of nonpayment and the intention to
17 terminate the rental agreement if the rent, and, if applicable, the late fee, is not paid
18 within that period of time, the tenancy terminates unless the landlord agrees to allow
19 the tenant to remain in occupancy, and the landlord may terminate the rental
20 agreement and immediately recover possession of the rental unit. Only one written
21 notice of default need be given the tenant by the landlord as to any one default. A
22 landlord who has given written notice to the tenant under this subsection may accept a
23 partial payment of the rent due under the rental agreement, together with payment of
24 any fee provided for in the rental agreement for late payment of rent, and extend
25 the date for the eviction accordingly.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 307
 (S) Publish Date: 3/31/06

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title Landlord Remedies; Late Fees RDU Corp, Bus & Prof Licensing (117)
 Component Corp, Bus & Prof Licensing
 Sponsor Labor and Commerce
 Requester Labor and Commerce Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 Receipt Supported Services						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation allow landlords to include the late fees and rent due on the same 7-day "notice to quit" for non payment of rent under AS 34.03 (Uniform Residential Landlord and Tenant Act.) It does not impact the operations of the division.

Prepared by: Katherine Mason, Administrative Manager
 Division: Corporations, Business and Professional Licensing
 Approved by: William C. Noll, Commissioner
 Agency: Commerce, Community, and Economic Development

Phone 907.465.2572
 Date/Time 3/8/06 3:56 PM
 Date 3/8/2006

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 8, 2006

SUBJECT: Late fees; ~~Sectional summary~~ (SB 307)

TO: Senator Con Bunde
Chair of the Senate Labor and Commerce Committee
Attn: Jane Alberts

FROM: Tamara Brandt Cook
Director

TBC

Sec. 1. For property subject to the Uniform Residential Landlord and Tenant Act, makes failure to pay the late fee, if applicable, unlawful holding by force when, after service of a written notice, the tenant fails to pay rent due together with the late fee. The existing provision does not address a late fee.

Sec. 2. Provides that a tenancy terminates if the tenant fails to pay rent, together with any late fee provided for in the rental agreement, within seven days after notice of nonpayment and intention to terminate the rental agreement is provided by the landlord. A landlord may accept partial payment of rent, together with the payment of the late fee, and extend the date for eviction. The existing provision does not address a late fee.

TBC:ljw
06-118.ljw



Alaska State Legislature

Senator Con Bunde
Senate District P

Vice Chair: Senate Finance Committee
Chair: Senate Labor & Commerce Committee

Sponsor Statement

Senate Bill 307 Landlord Remedies: Late Fees

Historically in the State of Alaska the 'late fee' was allowed to be included along with the 'rent' on the same 'seven day notice to quit' for non-payment of rent under AS 34.03 (Uniform Residential Landlord and Tenant Act). In 2002 a Superior Court decision correctly ruled that under current law this was illegal. Hence what is now required is a seven-day notice to quit for non-payment of rent and a ten-day notice to quit for the non-payment of the late fee.

Simplistic language is essential for undisputed communication between landlord and tenant. Replacing one notice to quit with two, both with different 'due dates' and 'amounts of money owed' has caused unnecessary problems and confusion. What SB307 does is restore the situation to as it was prior to the courts ruling. Nothing else.

The entire Rental and Leasing Services Industry statewide will benefit from this change in State of Alaska statute. The Alaska State Chamber of Commerce has included the passage of this amongst their list of 2006 legislative priorities. The costs of this legislation to state and / or local governments will be zero with a cost savings to be realized by businesses and individuals due to the efficiencies generated by the enactment of this legislation.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FRANK MURKOWSKI, GOVERNOR

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE: (907) 269-5100
FAX: (907) 276-8554

March 14, 2006

The Honorable Con Bunde
Chair
Senate Labor and Commerce Committee
State Capitol (MS 3100)
Room 101
Juneau, AK 99801-1182

Re: SB 307 -- Landlord Remedies

Dear Senator Bunde:

The Department of Law ("Department") has reviewed SB 307 and offers the following comments for consideration by the committee. SB 307 will fundamentally change the rights of landlords under Alaska Landlord Tenant Act, AS 34.03. SB 307 will change the law so that late payment fees will be treated exactly like rent, allowing landlords to collect late payment fees in the same manner as overdue rent. To illustrate this change, a comparison between current law and the changes proposed by SB 307 are helpful.

Current Landlord Remedies under AS 34.03.220. AS 34.03.220 provides several remedies to landlords when a tenant fails to comply with the terms of a rental agreement. Two of these remedies are important for this discussion. The statute makes a distinction between "rent" and all other fees and charges owed as follows:

All fees and charges other than rent. AS 34.03.220(a)(2) provides that if there is a material noncompliance by the tenant with the rental agreement, the landlord can issue a "notice to quit" under AS 09.45.100 -- .110 indicating that the agreement will terminate in 10 days if the breach is not remedied. This is called a "10 day notice to quit." If the breach is not cured within this 10 day period, the landlord can request a hearing. At the hearing, the court must find that there is a **material breach of the rental agreement** before eviction can continue.

Failure to pay rent. Rent is treated differently from all other fees and charges owed by a tenant. AS 34.03.220(b) provides that if a tenant fails to pay rent when due, the landlord can issue a "seven day notice to quit." If rent is not paid within this time, the landlord can proceed to a hearing. At the hearing, the court must consider whether rent

was actually due considering offsets for diminution of services and other potential defenses by the tenant. If the court finds the tenant has not paid rent in accordance with the rental agreement, eviction can proceed. There is no analysis by the court regarding whether a material breach of the rental agreement occurred. Failure to pay rent is "automatically" considered a material breach of the agreement.

The effects of SB 307 on the current law. SB 307 attempts to merge the process for paying late fees and rent into one category for purpose of eviction. Proponents of the change argue this will "streamline" the process and allow landlords to issue one notice to quit instead of two, and have one hearing to consider both rent and late fees. SB 307 has another significant consequence. Tenants could be evicted for failing to pay a late fee, even though failure to pay a late fee by itself would not constitute a "material noncompliance" of the rental agreement. Here is an example of how this might affect tenants if SB 307 passes:

Assume tenant fails to pay rent of \$1,000 when due. Landlord charges a late fee of \$250 for every five days rent is late. Landlord issues a single seven day notice to quit, noting that tenant owes \$1,250 or will be evicted. Tenant offers to pay \$1,000 which is rejected by the landlord. A hearing is held and the landlord establishes the tenant failed to pay \$1,250 within the seven day period. The court is not required to consider whether the late fee is reasonable. The court also cannot consider whether failure to pay the late fee would constitute a material noncompliance with the rental agreement. It is now considered past due "rent" for all practical purposes.

Under this scenario, the court is authorized to approve eviction even though the tenant offered to pay rent. The tenant had no opportunity to challenge the late fee as either unreasonable, or as not constituting a material noncompliance with the rental agreement. In effect, the late fee is treated just like rent.

Under current law, rent is treated differently than late fees for a reason. Late fees and other surcharges can be extremely unreasonable and unenforceable. Some fees can also be de minimus, and not rise to the level of becoming a "material noncompliance" of the agreement. Landlords also have other remedies available to deal with problem tenants. A landlord can terminate a rental agreement for any reason with a 30 day notice. If a tenant commits the same breach within six months, the landlord can give a five day notice to quit. One reasonable interpretation of the law is that landlords can simply provide a single 10 day notice to quite for both rent and late fees, allowing the court to decide if failure to pay or the other constitutes grounds for eviction.

Senator Con Bunde

March 14, 2006

Page 3

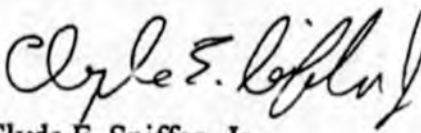
Any amendment to AS 34.03.220 should consider the different judicial analysis required for failure to pay rent and failure to pay late fees. Tenants will be deprived of significant rights if both are treated the same.

The department is available to answer any question you have about these comments.

Sincerely,

DAVID W. MÁRQUEZ
ATTORNEY GENERAL

By:



Clyde E. Sniffen, Jr.
Assistant Attorney General

cc: Kevin Jardell, Legislative Director
Office of the Governor

Randy Ruaro, AAG
Deborah Behr, AAG
Department of Law

CES/sjm

ALASKA MANUFACTURED HOUSING ASSOCIATION

Post Office Box 100254 Anchorage, Alaska 99510-0254

March 22, 2006

Senator Con Bunde
Senate Labor and Commerce Committee
State Capitol; Room 506
Juneau, Alaska 99801

Dear Senator Bunde,

Having reviewed the letter dated March 14, 2006 from the Attorney General's office concerning Senate Bill 307 I would like to make the following comments.

The letter centers on the belief that 'late fees' will now be considered 'rent' if SB307 passes. The facts are that under current law this is already practice. Please consider the following example.

Before the Superior Court decision, a Landlord and Tenant enter into a rental agreement for an apartment. The 'rent' is \$500.00 per month due on the first of the month with a \$50.00 late fee to be added on if the 'rent' is not received by the fifth of the month. Since the Superior Court decision all the Landlord need now state is that the 'rent' is \$550.00 per month and if paid before the fifth of the month the Tenant will receive a \$50.00 discount. Amazingly no 'late fee' even enters into the picture.

Under this scenario the 'late fee' is considered 'rent' and is legal under current law. There are also other mechanisms for the collection of late fees going on out there which have evolved since this Superior Court decision. All show the need for SB307. What SB307 does is unify and restore the process and the communication between Landlord and Tenant to historically it always has been.

The Attorney General's letter also refers to the 'fact' and please note that I quote directly "... that landlords can simply provide a single 10 day notice to quite (sic) for both rent and late fees ...". Doing this would swing the balance of the law between the Landlord and Tenant to far to the Landlord's side and would be a disaster for the Tenant. The rules for a 'ten day notice to quit' are different than they are for a 'seven day notice to quit'. When the violation listed on a 'ten day notice' is cured, the Tenant can stay. But under the rules if the Tenant reoffends within a six month period the Tenant is easily evicted. In other words if the Tenant fails to pay the 'late fee' only one other time within a six month period the 'presiding judge' can evict. Under a 'seven day notice to quit' this six month reoccurrence provision does not engage and the Tenant can reoffend each and every month.

Thank you for this opportunity to respond. Again, Senate Bill 307 will simplify the communication concerning 'late fees' between Landlord and Tenant and restore the written notification process to historically it always has been.

Wishing you and your staff the best,

Bob Maier
Executive Director
Alaska Manufactured Housing Association
Post Office Box 100254
Anchorage, Alaska 99510-0254
(1)-(907)-337-4961 – Phone / bobmaier@gci.net

SB 307 would allow usage of this one notice for rent and late fee.

**NOTICE TO RESIDENT OF TERMINATION OF RESIDENCY
FOR NON-PAYMENT OF RENT**

(7 DAY EVICTION NOTICE)

TO: _____

DATE: _____

You are notified that you owe RENT in the amount of \$_____ plus a LATE FEE of \$_____. If you do not pay the total amount due within SEVEN (7) DAYS of receipt of this notice, your residency is terminated and you **MUST MOVE**. You must pay your rent with a money order or cashier's check. No cash or checks will be accepted. **YOU MUST CONTACT THE OFFICE IMMEDIATELY.**

If you have not paid the rent or moved within SEVEN DAYS, a lawsuit will be filed to evict you. If you deliver your rent to me on or before the end of the SEVEN DAY period, you may stay. If your account is turned over to an ATTORNEY, you will have Attorney fees, court costs, and delinquent rent's due.

If you would like to pay all monies due before the SEVEN (7) DAYS expire, CONTACT THE MANAGER during regular business hours.

Signed,

Manager

THIS NOTICE WAS DELIVERED ON THE _____ DAY OF _____ 20____
AT _____ a.m./p.m.

These two forms are currently required to be sent. One is due in 7 days, the other is due in 10 days.

NOTICE TO QUIT

TERMINATION OF TENANCY FOR NON-PAYMENT OF RENT

To: _____

 Tenant

 Address of Rental Unit

 City/State/Zip Code

You are notified that you owe rent in the amount of \$_____. If you do not pay this rent within **SEVEN DAYS** after the day you receive this notice, your tenancy is terminated and you must move. You must pay your rent in money order or bank cashier's check.

A lawsuit will be filed to evict you if you have not paid your rent or moved out of the dwelling within **SEVEN DAYS** after you receive this notice.

If you pay your rent in full before the end of the **SEVEN DAY** period, you may stay.

Date: _____ Signature: _____

 Print Name: _____

 Print Title: _____

 (Owner/Property Manager)

LANDLORD'S RECORD OF SERVICE

Instructions: Serve a copy of this notice on the tenant. Immediately fill out the following to describe how service was accomplished. Complete all that apply. Keep the completed original for use in filing the Complaint.

- Tenant acknowledges receipt of this notice on _____ Tenant Signature
- This notice was personally served on _____ by the undersigned on the date of _____
- I attempted to make personal service on the tenants named above. I knocked on the door of the premises named above, but no one answered. I believe tenants were absent, so I securely affixed this Notice to the entry door of the above premises. This was done on the date of _____
- Tenants were served by registered or certified mail. (The return receipt will be retained for use in court.)

Date: _____ Signature: _____

 Print Name: _____
 I know that Tenants are aware of this Notice, because I discussed this Notice with _____
 on _____ Date Signature Print Name

ATTACH TO COMPLAINT IF SUIT IS FILED

10 DAY NOTICE TO QUIT
(VIOLATION OF LEASE)

To: _____ Date: _____
(Resident)

Address: _____

You are notified that you are in violation of your rental agreement or lease. If you do not correct the violations listed below within **TEN DAYS** of this notice, your tenancy is terminated and you must move. If you correct the violations listed below on or before the **TEN DAY** period is ended, you may stay. Please act immediately.

VIOLATIONS:

Paragraph 2B
Resident agrees to pay a \$ 50.00 late rent fee charged in addition to the total monthly rent if the total monthly rent is not received by midnight of the 5th day of each calendar month.

Agent

Receipt:

I received this notice on the _____ day of _____ 200__ at _____ am/pm.

(Resident)

_____ Resident was not at home, this notice was served as follows:

_____ Taped securely to door.

Agent

Support

ALASKA MANUFACTURED HOUSING ASSOCIATION

Post Office Box 100254 Anchorage, Alaska 99510-0254

Senator Con Bunde
Senate Labor and Commerce Committee
State Capitol; Room 506
Juneau, Alaska 99801

Dear Senator Con Bunde,

The Alaska Manufactured Housing Association is a Statewide Association of Manufactured Home Community Owner's with members ranging from Bethel to Cordova to Juneau. Sometimes the issues we address are locally based and sometimes they are Statewide issues. Senate Bill 307 affects each of our members equally no matter the location of their Community in the State.

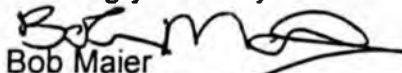
Rent falls due on the first of the month. Usually after a five or ten day grace period a late fee is assessed and a seven day notice is hung on the door demanding either payment or asking the resident to leave. As only one or two of these notices per hundred hung ever winds up in court, their main purpose is to be used as a collection device for the rent.

It is important that the dollar amount on the Notice be accurate. Including both the past due rent and the now owing late fee on the same piece of paper is necessary so that both tenant and landlord are speaking the same language.

Senate Bill 307 will assure that at this level of communication between landlord and tenant there will be no confusion. Senate Bill 307 is simple housekeeping legislation which just restores the situation to as historically it always was.

Thank you for your efforts to date. We will be available to testify at each Committee hearing as SB307 moves forward and look forward to answering any questions then.

Wishing you and your staff the best,


Bob Maier

Executive Director
Alaska Manufactured Housing Association
Post Office Box 100254
Anchorage, Alaska 99510-0254
337-4961 - Phone
632-3117 - Cell
bobmaier@gci.net



ALASKA ASSOCIATION OF REALTORS, INC.
4205 Minnesota Drive Anchorage, Alaska 99503
Telephone (907) 563-7133 Fax (907) 561-1779
www.alaskarealtors.com

March 7, 2006

The Honorable Con Bunde
Alaska State Senate
State Capitol Building
Juneau, Alaska 99801

RE: Senate Bill 307, relating to a fee provided in the rental agreement for late payment of rent under the Uniform Residential Landlord and Tenant Act

Dear Senator Bunde,

The Alaska Association of REALTORS® with over 1,600 members statewide supports Senate Bill 307, which addresses the late fee regarding the seven day notice to quit.

We favor this bill because it would simplify the process for the landlord by only having to give one seven day notice to quit for the rent and the late fee rather than two separate notices.

This bill would also clarify communication between the landlord and the tenant.

The Association encourages the passage of Senate Bill 307.

Sincerely,

Don McKenzie
AAR President



Jane Alberts

From: William M. Columbus [wcolumbus@mac.com]
Sent: Tuesday, March 07, 2006 11:43 AM
To: Jane Alberts
Cc: Bob Maier
Subject: SB 307

Hello,

I am writing to voice my support for the adoption of SB 307.

I am the owner and operator of Dimond Estates Mobile Home Park in Anchorage.

The park has been in operation since 1969 and provides unit space for 522 manufactured homes.

Passage of SB 307 would greatly simplify an often confusing process when late fees are due as well as past rents. Not only does SB 307 make it easier for the landlord to recoup outstanding monies owed, but at the same time, it places a lessor burden on our court system by streamlining the paperwork now required.

Thank you for your consideration.

William Columbus
President
Dimond Estates, Inc.
1200 West Dimond
Main Office
Anchorage Alaska 99515
907-344-6611

Headquarters:
217 2nd Street, Suite 201
Juneau, Alaska 99801
(907) 536-2323 FAX 463-5515
www.alaskachamber.com



Regional Office:
601 W. 5th Ave., Suite 700
Anchorage, Alaska 99501
(907) 278-2722 FAX 278-6643

★ STATE ★
CHAMBER
OF COMMERCE

March 02, 2006

Senator Con Bunde, Chair
Senate Labor and Commerce Committee
State Capital, Room 1506
Juneau, AK 99801-1182

The Honorable Chairman and Members of the Senate Labor and Commerce Committee

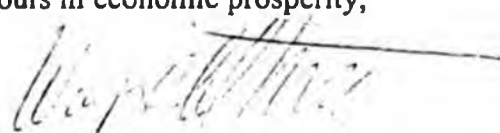
The Alaska State Chamber of Commerce supports the changes to the Uniform residential Landlord Tenant Act to allow for the collection of late fees as contained in SB 307.

A Superior Court decision issued in 2002, created confusion and disruption to the rental and leasing services industry in Alaska. The court found that the inclusion of late fees on the same seven-day notice to quit for non-payment of rent was illegal. This legislation will allow for the inclusion of late fees on the same seven day notice to quit for failure to pay rent.

Simple language is essential for undisputed communication between a landlord and tenant. Replacing one notice to quit with two, both with different due dates and amounts of money owed has caused unnecessary confusion and associated problems between tenants and owners. Senate Bill 307 corrects these flaws.

Thank for your consideration and support of this bill.

Yours in economic prosperity,


Wayne A. Stevens
President/CEO



March 06, 2006

Senator Con Bunde
Chairman
Senate Labor and Commerce Committee
Room 506
Alaska State Capitol
Juneau, Alaska 99801

Dear Senator Bunde,

First and foremost I would like to thank both you and the Senate Labor and Commerce Committee for introducing this legislation. As is true with many Industries quite often it is difficult for our voices to be heard.

Weidner Investment Services, first formed in 1977, has over 17,000 residential apartment homes in four states and Canada. Of that total 3,300 are in Anchorage alone. Out of the 3,300 units in Anchorage approximately 400 will be late payers each month for which we must issue two notices. The worst part of the current procedure is that it lengthens the time before which we can file with the courts for eviction. This delay has resulted in rent loss doubling from \$60,000 to over \$135,000 this past year. While only 10-15 evictions will be granted a month, most late payers take advantage of the lengthened period and simply "skip" at month end owing us for the entire month.

In the spirit of the efficiencies which Senate Bill 307 will create, I will keep this letter short.

I fully endorse Senate Bill 307 as defined in the Sponsor Statement.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Dean Weidner", written over a horizontal line.

W. Dean Weidner
Weidner Investment Services
Suite #300
9757 Juanita Drive / NE
Kirkland, Washington 98034
425-821-3844

Jane Alberts

From: Kate Herring
Sent: Monday, March 20, 2006 2:03 PM
To: Jane Alberts
Subject: FW: SB 307

Here's the email from Jim Davis. I will let you know when I hear back from them.

k

From: Jim Davis [mailto:jjdjr2001@yahoo.com]
Sent: Wednesday, March 15, 2006 2:46 PM
To: Kate Herring
Subject: SB 307

Kate:

Thank you so much for taking my call vis a vis the above. We litigated the case that this bill seeks to over-turn, Kegley v. Nakomoto. But that case is just one of many where Alaska courts have said it is unfair to evict tenants over late fees.

The principal behind these cases is simple. Tenants should not be subject to the very harsh remedy of eviction unless they have utterly breached the lease. Not paying rent is an utter breach. But, not paying late fees, parking fees, dog parking fees, etc., are "de minimis" issues and should not subject a tenant and her family to a summary eviction and homelessness. It is akin to using a sledge hammer on a mouse. Tenants already lose 90% of the time. Why make it even more unfair?

So, we oppose SB 307, it is overly harsh, it is at odds with the laws of many other states, and it will lead to a lot more tenants being evicted and/or charged excessive "late" fees by their landlords.

James J. Davis, Jr.
Statewide Litigation Attorney
Alaska Legal Services Corporation
1016 West Sixth Avenue, Suite 200
Anchorage, AK 99501
(907) 272-9431 (phone) (907) 279-7417 (fax)

NORENE REALTY, INC.

400 W. Benson. Suite 201 Anchorage. AK 99503 Bus. (907) 272-1227 Fax: (907) 277-9852 email norene@alaska.net

As the owner/president of Norene Realty, Inc. founded in 1944 I am also involved in residential and commercial rental property around Anchorage. I support SB307 and think that it should have never been changed as it has caused much confusion and misunderstanding for my tenants, it has even caused some evictions because the two separate dates on the notices. I strongly believe that SB307 is necessary and support the bill 100%.



Larry Norene
Norene Realty, Inc.



March 13, 2006

Senator Con Bunde
Room 506
Alaska State Capitol
Juneau, Alaska 99801

Dear Mr. Bunde:

This letter is simply to express our strong support for SB307. We have been in the residential rental business for approximately 40 years and this bill is long overdue. We do not believe it is fair to the Landlord or tenant to have two separate notices to quit for non-payment of rent and non-payment of late fees. Our experience is that it has caused confusion and problems that could easily be avoided by passing SB307. Thank you in advance for your careful consideration of this bill.

Sincerely,

A handwritten signature in cursive script that reads "Brent L. Williams".

Brent L. Williams

CC: Ray G. Debenham
CC: Shaun T. Debenham

Debenham Properties, LLC
2932 C Street, Suite C
Anchorage, AK 99503
907.562.9330
907.562.9331

A real estate development company.