

SB

122

<TARGET><BILL>SB 122</BILL><SUBJECT>SB
122</SUBJECT><COMM>SCRA27</COMM></TARGET>

27-LS0789\B
Bailey
1/27/12

CS FOR SENATE BILL NO. 122(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to real estate transfer fees; and providing for an effective date."**

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

3 *** Section 1.** AS 34.15 is amended by adding a new section to read:

4 **Sec. 34.15.105. Transfer fee covenants prohibited.** (a) A document that
5 conveys real estate may not include a provision that requires a subsequent grantee or
6 grantor to pay a transfer fee to convey the real estate, except a document that conveys
7 real estate may include a provision that requires a transfer fee if the fee is

8 (1) payable on a one-time basis only on the next transfer of the interest
9 in real property;

10 (2) a loan assumption fee or similar fee charged by a person holding a
11 lien on the property; or

12 (3) a fee or commission paid to a licensed real estate broker for
13 brokerage services.

14 (b) In this section, "transfer fee" does not include

15 (1) a tax, assessment, fee, or charge imposed by a governmental

- 1 authority;
- 2 (2) a recording fee;
- 3 (3) a fee payable to a nonprofit, mandatory homeowners association,
- 4 condominium association, or cooperative under an applicable declaration or covenant;
- 5 or
- 6 (4) a fee payable to an organization described in 26 U.S.C. 501(c)(3)
- 7 or (c)(4) (Internal Revenue Code) used exclusively for cultural, educational,
- 8 charitable, recreational, environmental, conservation, or similar activities that benefit
- 9 the real estate conveyed.
- 10 (c) A provision that violates this section is void.
- 11 * **Sec. 2.** This Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature

State Capitol, Room 510

Juneau, Alaska 99801

Phone: (907) 465-4947

Fax: (907) 465-2108



Committee Members:

Senator Dennis Egan, Chair

Senator Joe Paskvan, V. Chair

Senator Bettye Davis

Senator Linda Menard

Senator Cathy Giessel

Senate Labor and Commerce Committee

SB 122 Real Estate Transfer Fees/Title Plants Sponsor Statement

Currently, Alaska law allows a deed to real estate to contain a covenant requiring that a fee be paid to the original seller for any subsequent transfer of title. While the practice is unquestionably a benefit to the original seller, who can depend upon a steady income from property the seller no longer owns long after performing any service that might merit such a payment. According to Harvard Law School's Joseph William Singer, courts in the state of New York outlawed the practice in 1852 as a vestige of feudalism. Lately, Idaho, Indiana, Mississippi, and Montana have come around and passed their own prohibitions. There appears to be no justification for allowing such practice to continue in Alaska.

Title plants maintained by title insurance companies are today only obligated to contain records going back 25 year. Alaskans participating in this industry believe that a more appropriate length of time would be 40 years. The current statute was passed in 1974, a short 16 years after statehood.

Your support for this bill is much appreciated.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version SB 122
 Fiscal Note Number _____
 () Publish Date _____

Identifier (file name) SB122-DCCED-INS-01-19-12 Dept. Affected DCCED
 Title Real Estate Transfer Fees/Title Plants Appropriation Insurance
 Allocation Insurance
 Sponsor Senate Labor & Commerce
 Requester Senate Community & Regional Affairs OMB Component Number 354

Expenditures/Revenues (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services	0.0		0.0	0.0	0.0	0.0	0.0
Travel	0.0		0.0	0.0	0.0	0.0	0.0
Services	0.0		0.0	0.0	0.0	0.0	0.0
Commodities	0.0		0.0	0.0	0.0	0.0	0.0
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							

Estimated SUPPLEMENTAL (FY12) operating costs 0.0 (separate supplemental appropriation required;
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs 0.0 (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial Version

Prepared by Linda S. Hall, Director
 Division Insurance
 Approved by Susan K. Bell, Commissioner
Commerce, Community, and Economic Development

Phone 907-465-2560
 Date/Time 1/20/12 6:30 PM
 Date 1/21/2012

FISCAL NOTE

**STATE OF ALASKA
2012 LEGISLATIVE SESSION**

BILL NO. SB 122 _____

Analysis

SB 122 requires that records be maintained for 50 years instead of the current limit of 25 years. It also provides that a document that conveys real estate may not include a provision that requires a subsequent transfer fee to convey the real estate.

There is no fiscal impact associated with this legislation.



January 23, 2012

Senator Donald Olson, Chairman
Senate Community & Regional Affairs Committee
120 4th Street, Room 508
State Capital
Juneau, AK 99801

Re: SB 122

Dear Chairman Olson,

Yukon Title Company, Inc. is the largest provider of title insurance and escrow services in northern Alaska. We serve the 10 northern recording districts in our great state. Yukon Title is Alaskan owned and operated and is proud to employ 26 Alaskan professionals.

Yukon Title Company, Inc. fully supports the amendments to SB 122 as provided by the Alaska Land Title Association; "An act relating to real estate transfer fees and increasing the length of time title records must be maintained by a title plant". This legislation assures a healthy industry and promotes the hiring of Alaska Residents.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Floerchinger', with a long horizontal line extending to the right.

Roger L Floerchinger
President

AlaskaUSA[®] Title Agency

January 24, 2012

Honorable Donald Olson, Chair
Senate Community & Regional Affairs Committee
P.O. Box 1630
Nome, AK 99762-1630

Dear Senator Olson:

Re: Senate Bill No.122 (Real Estate Transfer Fees/Title Plants)

This letter is written to express our concerns and opposition to Senate Bill 122 and specifically to the proposed amendment to AS 21.66.200 that would increase the length of time title plant records must be maintained. Our opposition is based on the belief that the amendment will limit and ultimately reduce competition in the title plant industry. It also ignores the technological advances made over the last decade by the State of Alaska and the industry.

Senate Bill 122 suggests that the length of time title records must be maintained by a title plant has a direct correlation to the time requirement of title search guidelines. In fact, there is no such correlation. The length of time required in a title search is dictated by the title insurance underwriters who are assuming the risk, and is totally unrelated to the number of years of records maintained by a title plant.

Several years ago, Mike Price, owner of Fidelity Title Agency of Alaska (FTAA) wrote a paper entitled "The Illusory Benefit of the Privately Owned Title Plant" (copy enclosed) wherein the following facts were recited:

- One-half of all title companies throughout the United States do not maintain private title plants, but examine by abstract from the public records as does FTAA.
- Fidelity National Title, our underwriter, reports that there is statistically no distinction in the number of claims or errors occurring by abstracting from public records as opposed to private title plants."

Mr. Price concludes by saying, "I hope I have dispelled the illusion that a privately maintained title plant is the only, or even preferred, method of document storage and retrieval for the title examiner. Our method of document indexing and retrieval has been accepted by the State of Alaska, our underwriter, and thousands of abstractors across the country."

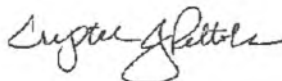
We concur with Mr. Price's statements. Title insurance underwriters have not experienced an increase in claims or losses through title searches of public records as opposed to private title plants.

Any increase to title plant record requirements, such as included in Senate Bill 122, would take a giant step backwards and will only benefit a few existing title plants. The current law has the private and public sector working together to improve access to title records, which translates into lower cost and quicker turnaround times in title processing. This is good for business and the consumer.

SB 122 would restrict competition and unnecessarily increase business operating costs, neither of which is in the consumers' best interests. Accordingly, we do not believe this is good public policy.

Thank you for the opportunity to provide Alaska USA Title Agency's concerns on the proposed title plant record requirement changes in Senate Bill 122.

Sincerely,



Crystal Peltola
Vice President/General Manager

Enclosure

cc: Linda Hall, Director, Alaska Division of Insurance
Curtis Thayer, Deputy Commissioner, Commerce, Community and Economic Development
Dan Foust, CEO/Executive Director, Alaska Housing Finance Corporation



Fidelity Title Agency of Alaska

The Illusory Benefit of the Privately Owned Title Plant By Michael W. Price, Owner, Fidelity Title Agency of Alaska

A myth has arisen that in order to be a superior title insurance agency, a privately owned title plant must be maintained. This assertion is only an illusion.

1. The Title Plant and The Title Abstractor

What is the purpose of a title plant and what does it consist of? The answer is that it is a compilation of all documents recorded in the official records of a given locale and its purpose is to provide all documents needed for a professional title examination.

Here is the illusion. The title examiner will retrieve the same exact documents from either the public records or a private title plant. Why? Because every title company uses the same data (recorded documents). FTAA maintains and retrieves those documents by use of the only official index recognized by the State, the grantor/grantee index. Three of the six Anchorage title companies use this method. The other three companies consort in one plant that actually "re-posts" to its own index. That index is not official and can lead to mis-posting errors. See below. Fidelity Title Agency of Alaska has access to every document officially recorded which imparts constructive notice to the general public. The "private title plant" has these same documents, no more, no less.

Facts

- The grantor/grantee index utilized by FTAA is the only official retrieval index statutorily authorized.
- Prior to licensing, the State Division of Insurance required us to examine and prepare a preliminary report on multiple parcels of property, one being a commercial building. When compared to preliminary commitments acquired by the State from other title agencies, our reports were found to be equal or better and thus we were licensed without qualification.
- One-half of all title companies throughout the United States do not maintain private title plants, but examine by abstract from the public records, as does FTAA.
- Essentially there are no title plants in New England and very few in the East (some of the most populated areas). Therefore, East Coast lenders will not find abstracting from the public records to be objectionable.
- Fidelity National Title, our underwriter, reports that there is statistically no distinction in the number of claims or errors occurring by abstracting from public records as opposed to private title plants. Considering that the abstracts on the East Coast have a 200-year-old title chain compared to Alaska's 50-year chain, this is a significant fact for your client's consideration.
- Privately maintained title plants generally have an additional chance for posting errors when indexing a second time and are self corrupting by heavy reliance of examination only from the last prior forward. In fact, the largest claim ever paid in Alaska (a multi-million dollars loss) arose from a mis-posting of a deed to a privately maintained title plant. The mis-posted deed was in the official grantor/grantee index had it been relied upon. See Bank of California vs. First American Title Insurance Company.



Fidelity Title Agency

of Alaska

- FTAA, on commercial transactions, will abstract the entire chain of title from patent forward.
- We are confident that our commercial title officers will review more, not fewer, documents affecting a parcel through our examination method.

2. Our Underwriter

FTAA is underwritten by Fidelity National Title Insurance, which is the nation's largest provider of title and escrow services. Its five national title brands, Fidelity National Title, Chicago Title, Ticor Title, Security Union Title, and Alamo Title generated more than \$4.5 billion in revenue for 2002.

Your commercial clients will know well the reputation and financial integrity of these companies. Fidelity National Title and Chicago Title both are capable of insuring transactions over 200 million dollars without the necessity of reinsurance. Small national or regional underwriters cannot approach this financial strength.

3. The Professional Escrow Closer: making or breaking your transaction

As you know, the professional escrow closer is the most important aspect of the transaction when it finally reaches the title company. FTAA believes they have the best commercial closers in the State with D.J. Webb and Kathy Kleinhenz. Both were past presidents of the Alaska Escrow Association and together they have over 40 years experience in the title industry.

If the entire process at a title agency could be represented by the numbers 1 through 10, the amount of work and contribution made by the escrow officer would surely be represented by the numbers 4 through 10. A title claim will arise statistically on a national average one out of every 2,000 examinations, but a less experienced closer can negatively impact each and every transaction.

4. Summary: Fidelity Title Agency of Alaska

Fidelity Title Agency of Alaska was created to specialize in commercial, multi-unit and high-end residential title and escrow services. Quality, not quantity, is our mission. Having practiced real estate law for more than 25 years, I had the opportunity to visit various parts of the country, and in doing so, learned that title agencies based upon public record abstracting were not only common but also the norm in many parts of the country. Further, there has successfully arisen in the last decade, niche title insurance agencies that focused on professionalism while not placing primary emphasis on market share. Of significance to the independent businessperson, FTAA is the only title agency in Anchorage completely owned by Alaskans, and not affiliated with other real estate or mortgage companies.

I hope I have dispelled the illusion that a privately maintained title plant is the only, or even preferred, method of document storage and retrieval for the title examiner. Our method of document indexing and retrieval has been accepted by the State of Alaska, our underwriter, and thousands of abstractors across the country.



Fidelity Title Agency

of Alaska

January 23, 2012

The Honorable Senator Donald Olson
Chairman, Senate Community & Regional Affairs Committee
120 4th Street, Rm. 508
State Capital
Juneau, AK 99801

Fidelity Title Agency of Alaska has operated as a Title Insurance Limited Producer within the State of Alaska for 8 years. Currently we conduct business with 1 direct operation while also supporting a network of Agents that employ Alaskans throughout the state. We provide Title Insurance products and service as well as Escrow Services to Alaskans in every city, village and borough within the State of Alaska.

Fidelity Title Agency of Alaska fully supports the changes proposed by the Alaska Land Title Association to SB122 "An Act relating to real estate transfer fees and increasing the length of time title records must be maintained by a title plant" which are contained in the pending committee Substitute.

We urge passage and stand ready to respond to any questions.

Respectfully Submitted,

Leslie Plikat
Vice President/Title & Escrow Operations Manager



MAT-SU TITLE INSURANCE AGENCY, INC.
"The Valley's Only Locally Owned and Operated Title Company"

January 23, 2012

The Honorable Senator Donald Olson
Chairman, Senate Community & Regional Affairs Committee
120 4th Street, Room 508
State Capital
Juneau, AK 99801

Matsu Title Insurance Agency has operated as a Title Insurance Limited Producer within the State of Alaska for 33 years. Currently we conduct business with 1 direct operation while also supporting a network of Agents that employ Alaskans throughout the state. We provide Title Insurance products and services as well as Escrow Services to Alaskans in every city, village and borough within the State of Alaska.

Matsu Title Insurance Agency fully supports the changes proposed by the Alaska Land Title Association to SB122 "An Act relating to real estate transfer fees increasing the length of time title records must be maintained by a title plant " which are contained in the pending committee Substitute.

We urge passage and stand ready to respond to any questions

Respectfully Submitted,

Terri Wesley
Manager



First American Title

TERRY E. BRYAN
VICE PRESIDENT
ALASKA STATE MANAGER

January 21, 2012


The Honorable Senator Donald Olson
Chairman, Senate Community & Regional Affairs Committee
120 4th Street, Rm. 508
State Capital
Juneau, AK 99801

First American Title Insurance Company has operated as a Title Insurance Company and as a Title Insurance Limited Producer within the State of Alaska for more than 35 years. Currently we conduct business with 11 direct operations while simultaneously supporting a network of Agents that employ Alaskans throughout the state. We provide Title Insurance product and service as well as escrow services to Alaskans in every city, village and borough within our great state.

First American Title fully supports the changes proposed by the Alaska Land Title Association to SB122 "An Act relating to real estate transfer fees and increasing the length of time title records must be maintained by a title plant" which are contained in the pending Committee Substitute.

We urge passage and stand ready to respond to any questions.

Respectfully Submitted,



Terry E. Bryan
Vice President – Alaska State Manager

Five Frequently Asked Questions about Title Insurance

1. What is Title Insurance?

Most kinds of insurance are self-explanatory. Fire insurance protects against losses from fire. Collision insurance guards against the cost of a dented, damaged car. But what does it mean to insure your title to real estate?

Real estate has always been considered a valuable possession. It is so basic a form of wealth that many special laws have been enacted to protect ownership of land and the buildings which stand on the and; You should realize whenever you buy property that the owner who is selling it to you has extremely strong rights, as do his family and heirs.

Also, there may be others - in addition to the owner - who have "rights" in the property you are going to buy. These may be overnmental bodies, or contractors who performed work on the property, or other individuals who have perfectly proper unpaid claims against the property.

Anyone who has such a claim is, in a sense, a part-owner. The property may be sold - to you - without the party who has a claim knowing about the sale. And you may know nothing about such a claim at the time you buy. It doesn't matter. Such claims may remain attached to the real estate you have purchased.

2. Why do I need Title Insurance?

Title Insurance protects the equity in your home. For a low one-time premium your home will be protected against hidden risks or undiscovered interests, such as liens, claims or encumbrances.

Owning real estate is one of the most precious values of freedom. When you buy a home, you want to be sure the property is properly conveyed and free from unexpected adverse interests.

Once purchased, title insurance remains in effect for as long as you own your home, adding security and peace of mind to home ownership.

3. Will you get a clear title?

It is of the greatest importance that you do. But this means that you must be informed about any of these claims against the property so that you can make certain they are cleared up before you buy.

And it means that you must be protected against any undiscovered claims that may arise in the future to threaten your title and the possession of your property. Title insurance provides this two-fold protection.

4. How do you learn what claims there are against the property?

By a search of the public records. This is the first step a title insurance company takes in order to insure your title. Title insurance companies maintain "plants"; that is, giant databases of title records, in many cases dating back over a hundred years.

Each day, recorded documents affecting real property and property owners are posted to these title plants. In this way, title insurance companies keep track of every entry on public record which might affect every parcel of land.

One of the first tasks that will be performed is a title search. Some of the things a title search uncovers are any unpaid taxes or mortgages, judgments against previous owners, easements, and many other court actions or recorded documents which affect title to real estate.

The title insurance company will perform the search and report their findings in the preliminary title report.

The seller, and real estate agent can then work together with the title insurance company in resolving any title claims showing in the preliminary report.

5. But what if there is a defect in the title which doesn't show up in the public records?

This can happen. Title insurance companies call them "hidden risks" - the undiscovered claims which may arise long after you have purchased your home.

While the goal of every title insurance company is to conduct such a thorough search and evaluation of public records that no claim will ever arise, protection against loss from claims on real estate which cannot be discovered by examination of the public records is the second part of the twofold protection that title insurance provides.

These hidden risks might be forgery, confusion due to similar names, or an error in the records.

If a claim is made against your title as the insured, your title insurance company will protect you by defending your title, in court, if necessary; and your title insurance company will bear the cost of settling the claim, if it proves valid, in order to perfect your title and keep you in possession of your property.

From the Houston Business Journal:

<http://www.bizjournals.com/houston/stories/2003/09/29/story2.html>

New title plant shakes up industry

Houston Business Journal by Jennifer Dawson, Houston Business Journal

Date: Sunday, September 28, 2003, 11:00pm CDT

Jennifer Dawson

Houston Business Journal

The opening of a new title plant, the first in Harris County in the past 12 years, has stirred up a controversy that could change the way the title industry operates across Texas.

IntegrityTitleInformation.com began offering title plant services earlier this year. The first local title agency to use Integrity was licensed by the state on July 3.

On the same day, the only other title plant in Harris County contacted the Texas Department of Insurance for a clarification of the requirements for running a title plant.

Title Data Inc. has dominated the field since the early 1990s as the only title plant in the county. The 36-year-old business is owned by a consortium of title companies, including corporate giants Stewart Title Guaranty Co. and Chicago Title Insurance Co.

Title plants offer title companies access to the property records used in acquiring title insurance for customers. The Texas Department of Insurance requires title plants to maintain a geographically indexed set of records dating back 25 years to track a property's legal history. The information is typically stored as electronic images or microfilm.

Paul Cones, a principal with Integrity, began building a geographic index two years ago using Harris County's grantor/grantee index, which became the foundation for Integrity's title plant. Cones says Integrity began offering title plant services after underwriters agreed to issue title insurance through agencies that use Integrity's data as their title plant.

Integrity has signed three title agencies as clients. Two were licensed by the state to use Integrity's title plant two weeks ago and the first was approved in July. One of the clients is Integrity Title Co., a new firm established by Cones and Integrity President Stephen A. Hester Jr.

Market leader Title Data, which sells services to subscribers in six area counties, charges roughly \$15,000 a month for records information.

Integrity, which offers title plant services only in Harris County, charges roughly \$7,000 per month.

Cones says that by giving title agencies access to state-required data for half the cost, Integrity is giving more people a chance to get into the title industry.

"We're really going to change the title industry in Texas," Cones says. "The title industry, up until this point, has really been controlled by a very few number of people. We want to help people get in the title industry who have never been in the business before."

Cones says professionals such as home builders, mortgage lenders, bankers, real estate agents and title company closers can now afford to start their own title companies.

James Sibley, Title Data's president and CEO, says his firm's service costs more because employees examine all documents that affect each parcel of property before including it in its title plant.

"We spend an extraordinary amount of money each day to do that research," Sibley says.

Without having an employee look at each document, common errors in a property's "legal description," for example, would go unnoticed, Sibley says.

Cones says Integrity also examines documents closely for errors.

"We are physically looking at every legal description that's there," Cones says. "We look at every document related to real estate and confirm whether or not the descriptions are correct and that the parties names are correct."

An executive with a local title company that subscribes to Title Data predicts Integrity's title plant will endure, and be deemed satisfactory by the state.

"I think they'll be a viable alternative to Title Data," says the executive. "There's probably room for both of them."

License to expand

Title Data asked the Texas Department of Insurance for clarification on what type of title plant records are sufficient to meet the state's requirements.

Title Data CEO Sibley says his questions to TDI relate to the difference between a title plant that's compiled information on a document-by-document basis, compared to one assembled from publicly available electronic databases.

TDI does not license title plants, or abstract plants, as it calls them. But the department licenses the title agencies that use the title plant.

In a letter to Sibley dated Aug. 20, Robert Carter Jr., TDI's deputy commissioner for title insurance, said there has been no change in state requirements, and any new title plant would be evaluated after it had been in operation for several months.

"Our decision to license a particular title agent should not be interpreted as our blessing of the abstract plant," Carter wrote in his response. "Our auditors will test the plant when they

conduct their initial audit of the title agent, which is usually about six months after licensure."

If any title plant's documents are not accurate, the title agency that uses it could be subject to a warning, disciplinary action, fine or even revocation of license.

Once Integrity's title plant passes its indirect evaluation by the state, it could open a floodgate of new title plants and title companies in the state of Texas.

"We would take that as a signal from the Department of Insurance that we can proceed with our expansion plans," Sibley says.

For a long time, Title Data has wanted to offer title plant services in Dallas, Tarrant and Bexar counties. But Sibley says the cost of building 25 years worth of records has been cost-prohibitive.

"If there is a new standard for maintenance of a title plant, then that represents business opportunities for Title Data," says Sibley. "I think you're going to see many people coming into the marketplace."

Cones says it's time for this sort of change because the title industry needs to be reformed.

"By opening up the title industry, we believe it will drive down the cost of title insurance," Cones says. "And that would really have a benefit for consumers."

provisions of this section must be in compliance with AS 21.66.200. The application must contain

(1) a copy of the proposed articles of incorporation or association and the bylaws or agreement governing the operation of the entity;

(2) a list of the owners or participants;

(3) the names and addresses of the persons who will operate the entity, with a description of their experience and qualifications;

(4) the conditions under which ownership or participation in the entity may be sold or acquired;

(5) a statement of whether or not title information will be compiled and sold to persons other than owners of or participants in the entity;

(6) a pro forma balance sheet and other financial information to indicate the sufficiency of financing the entity.

(b) If the director finds that (1) the entity will be adequately financed, (2) the persons who will be operating the entity are qualified and (3) the rules of operation as expressed in the articles of incorporation or association and the bylaws will promote the efficiency of the operation of the subscribing owners or participants and will not unduly restrict competition, the director shall issue a certificate of authority to the entity and permit it to organize. Each application under this section shall be granted or denied in whole or in part by the director within 60 days from the date it is filed. A certificate of authority issued under this section remains in effect until suspended or revoked by the director. The fee for the certificate of authority is set under AS 21.06.250 . The certificate of authority is subject to annual continuation. The fee for continuation is set under AS 21.06.250 . A certificate of authority issued under this section may be suspended or revoked by the director after hearing upon notice if the entity ceases to operate as provided in the application or if the director determines that the operation has become a restraint on competition and is not in the interests of the public. Every entity issued a certificate of authority under this section shall notify the director promptly of every change occurring under this section.

(c) DELETE [The changes contained in this amendment shall not adversely affect or impact any existing joint plant license issued on or before January 1, 2012.] DELETE

INSERT NEW LANGUAGE - "The provisions of this section, as amended, shall not apply to any title insurance joint plant and its existing members which was licensed and operating prior to January 1, 2011. Members to any grandfathered joint plant added after January 1, 2011, however, must comply with the provisions of AS 21.66.200 as amended."

Sec. 21.66.200. Title plant requirements.

(a) A title insurance company or a title insurance limited producer shall own and maintain in the recording district in which its principal office in the state is located a title plant consisting of all surveys and plats filed of record together with all instruments of record that have been recorded in the recording district for a period of at least 40 years immediately before the date of examination which according to AS 40.17.080 gives constructive notice. The title insurance company or limited producer shall also maintain a comparable title plant for each additional recording district in which it maintains an office to transact a title insurance business.

(b) "Preliminary report" or "Preliminary commitment" are reports furnished in connection with an application for title insurance and are offers to issue a title policy subject to the stated exceptions set forth in the reports and such other matters as may be incorporated by reference therein. The reports are not abstracts of title, nor are any of the rights, duties or responsibilities applicable to the preparation and issuance of an abstract of title to be construed to the issuance of any preliminary report. Any such report shall not be construed as, nor constitute, a representation as to the condition of title to real property, but shall constitute a statement to the terms and conditions upon which the issuer is willing to issue its title policy, if such offer is accepted.

(c) Nothing in this section prohibits one title insurance limited producer or company from acquiring a preliminary commitment from another licensed entity in a recording district which it has a title plant and the referring entity using that commitment for a closing regardless of which company issues the title policy on the transaction. In these circumstances, the two entities may split the fees charged for the commitment and/or policies between them on basis of reasonable services rendered by both.

~~DELETE [(d) The changes contained in this amendment shall not adversely affect or impact any existing title company or limited producer license issued on or before the effective date of this amendment until ten years after the effective date hereof.] DELETE~~

Sec. 21.66.210. Joint plant companies.

(a) Two or more title insurance companies or two or more title insurance limited producers, or a combination of title insurance companies and title insurance limited producers, may apply to the director of insurance to form an association, corporation, or other legal entity, for the purpose of engaging in the business of preparing abstracts of title searches from records to be owned by the entity, upon the basis of which a title insurance limited producer or a title insurance company will issue title policies. The owners or participants to be considered to be in compliance with the

DELETION
480
(8)
21.27.150
(2)

LICENSING 21.27

21.27.150

A new section to AS 21.66. would be added to provide:

Section 1. Requirement for license.

(a) Only an appointed title insurance limited producer or a title insurance company licensed in and by this state under AS 21.66 et seq. shall issue title insurance policies, preliminary commitments, reports, or otherwise transact the business of title insurance involving property located within the State of Alaska.

(b) When the Director of Insurance believes, from evidence satisfactory to the director, that any insurer or other entity or person is violating or about to violate the provisions of this section or sections, the director shall cause a complaint to be filed in the Superior Court to enjoin and restrain such entity or person from continuing such violation. Any other aggrieved party may file a similar action independent of the Director. The court shall have jurisdiction of the proceedings and shall have the power to make and enter an order or judgment awarding such preliminary or final injunctive relief as in its judgment is proper.

(c) All title insurance policies, preliminary commitments or reports covering an insurable interest in title to real property located in this state shall be signed by a person:

- (1) Properly appointed by a title insurance limited producer or title company which is licensed in this state under AS 21.66. et.seq.; and
- (2) Who is currently employed and authorized in writing by such title insurance limited producer or title company to sign and issue such policies and
- (3) Is individually licensed in this state under AS 21.66. et. seq.

Section 2. Minimum search requirements.

(a) A title insurance preliminary commitment or report and all policies based upon such commitments or reports shall not be issued unless the title insurance limited producer or title insurance company is authorized to transact business in the state and holds all appropriate licenses and further has caused a search to be made of the title from a title plant where the property is located or if no office is maintained in the recording district the search can be conducted from the records of the recorder's office in that district in which the property is located in compliance with AS 21.66. 200 -210. or dt. PLANT

(b) The search shall include a review of all matters affecting the title to the property or interest to be insured for a continuous period of not less than the immediately preceding forty (40) years or from Patent, whichever is less.

(c) A title insurance policy shall not be issued until the title insurer or title insurance agent has caused to be made a determination of insurability of title in accordance with the title insurer's underwriting practices.

(LIMITED LICENSE) (LIMITED PRODUCER)



Fidelity Title Agency

of Alaska

The Illusory Benefit of the Privately Owned Title Plant By Michael W. Price, Owner, Fidelity Title Agency of Alaska

A myth has arisen that in order to be a superior title insurance agency, a privately owned title plant must be maintained. This assertion is only an illusion.

1. The Title Plant and The Title Abstractor

What is the purpose of a title plant and what does it consist of? The answer is that it is a compilation of all documents recorded in the official records of a given locale and its purpose is to provide all documents needed for a professional title examination.

Here is the illusion. The title examiner will retrieve the same exact documents from either the public records or a private title plant. Why? Because every title company uses the same data (recorded documents). FTA maintains and relies on those documents by use of the only official index recognized by the State, the grantor/grantee index. Three of the six Anchorage title companies use this method. The other three companies consort in one plant that actually "re-posts" to its own index. That index is not official and can lead to mis-posting errors. See below. Fidelity Title Agency of Alaska has access to every document officially recorded which imparts constructive notice to the general public. The "private title plant" has these same documents, no more, no less.

Facts

- The grantor/grantee index utilized by FTAA is the only official retrieval index statutorily authorized.
- Prior to licensing, the State Division of Insurance required us to examine and prepare a preliminary report on multiple parcels of property, one being a commercial building. When compared to preliminary commitments acquired by the State from other title agencies, our reports were found to be equal or better and thus we were licensed without qualification.
- One-half of all title companies throughout the United States do not maintain private title plants, but examine by abstract from the public records, as does FTAA.
- Essentially there are no title plants in New England and very few in the East (some of the most populated areas). Therefore, East Coast lenders will not find abstracting from the public records to be objectionable.
- Fidelity National Title, our underwriter, reports that there is statistically no distinction in the number of claims or errors occurring by abstracting from public records as opposed to private title plants. Considering that the abstracts on the East Coast have a 200-year-old title chain compared to Alaska's 50-year chain, this is a significant fact for your client's consideration.
- Privately maintained title plants generally have an additional chance for posting errors when indexing a second time and are self corrupting by heavy reliance of examination only from the last prior forward. In fact, the largest claim ever paid in Alaska (a multi-million dollars loss) arose from a mis-posting of a deed to a privately maintained title plant. The mis-posted deed was in the official grantor/grantee index had it been relied upon. See Bank of California vs. First American Title Insurance Company.



Fidelity Title Agency of Alaska

- FTAA, on commercial transactions, will abstract the entire chain of title from patent forward.
- We are confident that our commercial title officers will review more, not fewer, documents affecting a parcel through our examination method.

2. Our Underwriter

FTAA is underwritten by Fidelity National Title Insurance, which is the nation's largest provider of title and escrow services. Its five national title brands, Fidelity National Title, Chicago Title, Ticor Title, Security Union Title, and Alamo Title generated more than \$4.5 billion in revenue for 2002.

Your commercial clients will know well the reputation and financial integrity of these companies. Fidelity National Title and Chicago Title both are capable of insuring transactions over 200 million dollars without the necessity of reinsurance. Small national or regional underwriters cannot approach this financial strength.

3. The Professional Escrow Closer: making or breaking your transaction

As you know, the professional escrow closer is the most important aspect of the transaction when it finally reaches the title company. FTAA believes they have the best commercial closers in the State with D.J. Webb and Kathy Kleinhenz. Both were past presidents of the Alaska Escrow Association and together they have over 40 years experience in the title industry.

If the entire process of a title agency could be represented by the numbers 1 through 10, the amount of work and contribution made by the escrow closer would surely be represented by the numbers 4 through 10. A title claim will arise statistically on a national average one out of every 2,000 examinations, but a less experienced closer can negatively impact each and every transaction.

4. Summary: Fidelity Title Agency of Alaska

Fidelity Title Agency of Alaska was created to specialize in commercial, multi-unit and high-end residential title and escrow services. Quality, not quantity, is our mission. Having practiced real estate law for more than 25 years, I had the opportunity to visit various parts of the country, and in doing so, learned that title agencies based upon public record abstracting were not only common but also the norm in many parts of the country. Further, there has successfully arisen in the last decade, niche title insurance agencies that focused on professionalism while not placing primary emphasis on market share. Of significance to the independent businessperson, FTAA is the only title agency in Anchorage completely owned by Alaskans, and not affiliated with other real estate or mortgage companies.

I hope I have dispelled the illusion that a privately maintained title plant is the only, or even preferred, method of document storage and retrieval for the title examiner. Our method of document indexing and retrieval has been accepted by the State of Alaska, our underwriter, and thousands of abstractors across the country.

SUMMARY OF PROPOSED LEGISLATION

The legislation proposed by the Board of Directors of the Alaska Land Title Association is in three parts.

Amendment to the Plant requirements.

This first section has two distinct parts. First it would increase the existing 25-year plant law (AS 21.66.200) to 40 years. Alaska passed the current 25-year plant requirement in 1974. Probably not a coincidence, the state was 25 years old in 1974. Today with 30 and 40-year mortgages, together with the maturing of property titles in most instances to more than 50 years, the Board feels that a title plant law which requires only a partial, 25-year examination is imprudent to the public's best interest and that increasing the examination to 40 years is not burdensome on the industry.

The second part of the proposal legislation corrects an inconsistency created in 2002, when the legislature amended AS 21.66.210 to provide that a "joint plant" could be licensed without a title plant by using only the "public" records, while leaving unchanged AS 21.66.200 which required any other title company or limited producer (agent) which is not a joint entity to maintain an actual title plant. Resultantly, companies avoided the "plant" requirement of AS 21.66.200 by creating entities where nothing more than a fictional (as opposed to functional) joint plant was created to comply with Section 210 and avoid the more strenuous .200.

The Board believes this inconsistency should be corrected with a 10-year grace period for existing companies. The Board feels the public would be better served by requiring any joint plant to comply with the "plant" requirements of AS 21.66.200 as opposed to freeing all companies from the mandate of a title plant. The vast majority of western states have a plant law requirement intended to protect the public and assure the highest standards for title searches. Further, the State's own Recorder's Office admonishes the public and members of our own industry to not rely on the State's web page for complete accuracy.

Requirement for an Alaska-licensed title company and examiner

Similar to other states, the next section would require that all preliminary commitments and title policies insuring real property in Alaska be issued only by an insurance company or limited producer licensed in this state. By being licensed in this State, the company is thus subjecting itself to the State's regulations, statutes and administrative orders. It also assures any jurisdictional disputes would be adjudicated in Alaska where the property is located as opposed to where the insurance contract is issued. The consuming public does not understand the dangers and problems associated with title examines and policies issued by companies not licensed in this State, especially since outside lenders often choose the title company or agency without meaningful input by the consumer. Currently, no

(OR) Joint Plant

(B) SEARCH CAN INCLUDE CONTINUOUS YEARS OF TITLE

prohibition exists banning companies from other states or foreign nations (such as India) from examining and insuring title to real estate by use of the internet. Without forcing registration and licensing to examine and insure real property titles in Alaska, the Division of Insurance has no ability to regulate and/or monitor these activities.

Further, the law would be amended to require any preliminary commitment and every policy of title insurance be signed by a licensed individual examiner residing in the State of Alaska. The Board feels strongly that with the publication of recorded documents on the internet by the State's Recorder's Office, the instances of foreign and international companies attempting to insure real property titles and mortgages in Alaska has increased and will without this legislation undoubtedly increase in the future. Other state legislatures and this Board feel that it is critically important to the residents of this State that insurance products dependent upon the examination of the public records be conducted by a state-licensed entity and by a state-licensed title examiner compliant with AS 21.66.010 et.seq.

Prohibition on Transfer Fees

More than 25 states have passed legislation to prohibit transfer fees. Transfer fees are fees created generally by a developer (seller) of land, typically multiple lots such as a subdivision, that required a fee be paid to the developer every time the property sells in the future. The proposed legislation is a model act submitted by the American Land Title Association in close cooperation with many governmental agencies, both federal and State.



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January 10, 2012

Senator Donald Olson
Chair – Senate Community & Regional Affairs
Alaska State Legislature
State Capitol - Room 508
Juneau, AK 99801

Re: Senate Bill 122 (Real Estate Transfer Fees/Title Plants)
Sponsored by Labor & Commerce Committee
Referred to Community & Regional Affairs on April 8, 2011

Dear Senator Olson:

I am writing this letter on behalf of Alaska USA Title Agency (Alaska USA Title) and Old Republic National Title Insurance Company (Old Republic Title). Alaska USA Title is a wholly owned subsidiary of Alaska USA Federal Credit Union. It has branches in Anchorage, Fairbanks, Juneau, Kenai and Wasilla. It was licensed to do business in Alaska on May 27, 2008 by the Alaska Division of Insurance.

Old Republic Title has been licensed to issue title insurance policies in Alaska since 1976. It has no branch offices in Alaska. Instead, it operates exclusively through a network of independent Alaska based title agencies. Its primary agent is Alaska USA Title. Both Alaska USA Title and Old Republic Title are members of the Alaska Land Title Association.

We have serious reservations about Section 1 (Title Plants) of Senate Bill 122. We do not have any reservations about Section 2 (Real Estate Transfer Fees) which prohibits transfer fee covenants in Alaska. Many other states have passed similar prohibitions during the past 24 months. We support such legislation as beneficial to property owners in Alaska.

Section 1 is a “placeholder” bill and, as written, is fairly innocuous, although it does make it more difficult for new title companies to qualify to do business in Alaska. However, we believe the proponents of Section 1 will ask for substitute legislation that will substantially change the laws for the licensing of new *and current* title agencies and title insurers doing business in Alaska and will put Alaska USA Title’s license at risk.

Specifically, the proponents will seek to reverse a bill passed by the legislature in 2002 (SLA 2002, Ch. 38, Sec. 51) amending AS 21.66.210 to allow Alaska title agencies, such as Alaska USA Title, to examine and insure land titles by searching from the public records. The proponents would require all title agencies in Alaska to examine and insure land titles by searching only from *privately owned title plants* that are, not coincidentally, owned by the proponents. They seek to increase the value of their businesses by requiring all title insurance business to go through them, one way or the other.

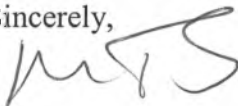
In 1996 the legislature amended AS 40.17.040 (SLA 1996, Ch. 119, Sec. 14) to require that the Alaska Department of Natural Resources (DNR) Recorder's Office begin the process of indexing recorded land title documents not just by name *but also by location*. Prior to 1996 those documents were only indexed by name in the public records, leaving it to privately-owned title plants to index them by location. The modernization of Alaska's public records began in 1996 and the process has continued for the past 16 years at considerable public expense. That process obviously threatens the value of the proponents' land title plants.

The public benefits from competition among businesses. Any proposal that unreasonably restricts competition is not good. Nor is any proposal that diminishes the advantages of automation or turns the clock backwards by favoring privately-owned land title records over DNR's public tract indexes that are available to all.

The proponents will argue that DNR's publicly available land title records are not as accurate as their privately-owned land title records and that anyone searching from DNR's records puts the consuming public at risk. That is a false argument for two reasons. First, there is no evidence that DNR's records or the proponents' records are more accurate than the other. Second, the consuming public is fully protected and covered by the title insurance policies that are issued by companies such as Old Republic Title regardless of which records are searched.

Because Section 1 of Senate Bill 122 is a "placeholder" bill it is difficult to respond with more detail because we do not know exactly what the substitute legislation will say. But we are confident that the above criticisms will apply. We appreciate your time and courtesy in this matter. Thank you.

Sincerely,



Raymond L. Davis
Vice President - Pacific Northwest Agency
rdavis@ortc.com

cc: Linda Hall – Director, Alaska Division of Insurance
Crystal Peltola – Alaska USA Title Agency

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January 31, 2012

The Honorable Senator Donald Olson
Chair – Senate Community & Regional Affairs Committee
Alaska State Legislature
State Capitol – Room 508
Juneau, AK 99801

Re: Senate Bill 122

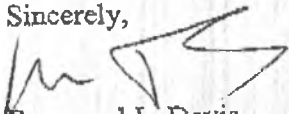
Dear Senator Olson:

I have personally provided support and underwriting services to title agents in Alaska since 1980. The title insurance policies issued in Alaska provide complete coverage to the insured for loss resulting from recorded matters, such as mortgages, regardless of date. Our agency agreements with companies such as Alaska USA Title Agency require that the agent conduct “a reasonable search and examination of the public records.” This requirement is codified in Alaska at AS 21.66.170(a). This means the title agent should find all instruments of record that encumber the property whether the instrument was recorded five, twenty, fifty or one-hundred years ago. However, if a recorded instrument is “missed” during that search, regardless of date, and regardless of whether a title plant was used or not used for that search, the insured is fully protected by the terms of the title insurance policy.

As you know, state law may, or may not, impose a title plant requirement in order for new companies to become licensed. California statutes, for example, do not contain any title plant requirements. See enclosure. Idaho and Washington, on the other hand, require a title plant that goes back to the federal patent. Alaska is unique. It is the only state where the public recording system is run by a state agency -- DNR. All other states keep these records at the county level. Alaska has a centralized system. And, as I have previously pointed out, in 1996 your legislature instructed DNR to begin the process of indexing recorded land title documents not just by name, but also by location. We call this “tract indexing.” DNR’s website, available to all, has become a viable alternative to the expenses associated with maintaining a private title plant *and it is now back-dated with documents recorded from today through January 1, 1973.* See enclosure.

I hope I have been able to clarify these matters. Please contact me if you have any questions. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'RDavis', written over a horizontal line.

Raymond L. Davis
Vice President – Counsel/Pacific Northwest Agency
rdavis@ortc.com

its members or insurance supervisory officials loss and expense statistics or other statistical information and data relating to the business of title insurance and who otherwise acts in an advisory capacity; and

- (iv) Written procedures approved by the Commissioner that provide for the protection and control of escrow funds in a manner consistent with the purposes of the law.

Id. § 12389.6. The Commissioner must approve or deny any written procedures within 60 days of receiving the request. If the Commissioner takes no action within the 60-day period, the request is deemed approved. *Id.*

e. Policies and Rates

Underwritten title companies are subject to the same policy and rate filing requirements as title insurers. These requirements are set forth in detail above in Part II, § 17 (rates) and Part II, § 16 (policies).

2. Minimum Search Requirements (Marketable Title Act, etc.)

California's marketable record title provisions, which are also applicable to insurers, are codified in Sections 880.020 through 880.370 of California's Civil Code. In connection with codifying these sections, the legislature declared as public policy the following:

- (i) Real property is a basic resource of the people of California and should be made freely alienable and marketable to the extent practicable in order to enable and encourage full use and development of the real property, including both surface and subsurface interests;
- (ii) Interests in real property and defects in titles created at remote times, whether or not of record, often constitute unreasonable restraints on alienation and marketability of real property because the interests are no longer valid or have been abandoned or have otherwise become obsolete;
- (iii) Such interests and defects produce litigation to clear and quiet titles, cause delays in real property title transactions, and hinder marketability of real property; and
- (iv) Real property title transactions should be possible with economy and expediency. The status and security of recorded real property title should be determinable to the extent practicable from an examination of recent records only.

Cal. Civ. Code § 880.020.

The legislature's purpose in enacting the marketable record title provisions of the Civil Code was to simplify and facilitate real property title transactions in furtherance of the policies set forth above. The legislature hoped to enable persons to rely on record title to the extent provided for under the Marketable Record Title Act.

Several California courts have applied the Act in the context of the enforceability of due on sale clauses contained in deeds of trust. One such case is *Miller v. Provost*, 26 Cal. App. 4th 1703 (1994). This case is summarized in detail under the Foreclosure section, Part VII, § 2.

3. Title Plant Requirements

California statutes do not contain title plant requirements. A 1980 court defined the term to mean "essentially a duplicate of county land records, but reorganized to indicate relevant data on a geographic or parcel-by-parcel basis." *Coldwell Banker & Co. v. Dept. of Ins.*, 102 Cal. App. 3d 381 (1980). The court estimated, at that time, that most underwritten title companies (approximately 90 percent) either own their own title plant or pay a fixed share of the cost of maintaining a jointly owned title plant. The court further noted that the remaining underwritten title companies use county records, have access to a title plant, or have a search package" arrangement whereby the requisite information is secured by others. Finally, the court indicated that, particularly in densely populated areas, the task of creating, maintaining and using a title plant is costly and time-consuming. Since entry into the title insurance business is dependent upon such an expense, success depends upon the ability to attract a substantial volume of business in a reasonably short period of time.

4. Unauthorized Practice of Law Issues

Business and Professions Code Section 6125 states "No person shall practice law in California unless the person is an active member of the State Bar." The unauthorized practice of law is a misdemeanor. Cal. Bus. & Prof. § 6126. The statute does not define, however, precisely what constitutes the "unauthorized" practice of law.

In *Baron v. City of Los Angeles*, 2 Cal. 3d 535, 542 (1970), the practice of law was described as follows, "as the term is generally understood, the practice of law is the doing and performing services in a court of justice in any manner depending therein throughout its various stages and in conformity with the adopted rules of procedure. But a larger sense it includes legal advice and counsel and the preparation of legal instruments and contracts by which legal rights are secured although such matter may or may not be depending in court."



Notice:

Recorded and/or filed documents and ALL information contained within those instruments become the permanent public record and are available for public viewing and/or purchase.

Please be advised we are currently working on a film conversion project dating from December 31, 1972 backward. Images will be added to the database as available.

The following types of searches are available:

- Name Search
- Date Search
- Document Number Search
- Document Type Search
- Book and Page Search
- Historic Books Search
- Plat Search
- Survey Search
- MTRS Search
- Subdivision Name Search
- No Plat Subdivision Search
- Document Input & Unverified Status

See Search and Index Guidelines for helpful tips in searching index records. See Recording District History, and Miscellaneous District Facts.

Images of mining documents (Index Code M, Document Type - Mining) and deed documents (Index Code D, Document Type - Deeds) recorded from January 1, 1973 forward are now available on the Internet.

Images of UCC document files/recorded from July 1, 2008 forward are now available on the Internet.

Plat and Survey images are also available on the Internet as a courtesy research tool only. Official certified copies must be requested and paid for through the recording district office where the plat was recorded.

Documents are entered in nonsequential batches. Temporary document number gaps may exist in current data.

If you identify a possible indexing error (typo, reversed names, etc) or can not locate the record you are trying to find please Contact Us

All documents are provided as a public service for your convenience. Updates and corrections occur on a daily basis; however, the State of Alaska shall not incur any liability for errors or omissions with respect to the information provided on this web site.

[Recorder's Office Home Page](#) | [UCC Central Home Page](#) | [Dept. of Natural Resources Home Page](#)

Last updated on 01/31/2012.

Have a question about the Recorder's Office? Please contact your district office.

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260 W. 7th Ave, Suite 1280, Anchorage, AK 99501-3557
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