LEG. FINANCE - BILLS 1985 - 1986 2381

HB 231 - HB 232

2381

COMMITTEE REPORT

SENATE

FURTHER:

5/7/85

Date 5/7/85

Mr. President

The Committee on FINANCE considered HB 231

amount of general and temporary relief assistance

and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass

[ ] do pass with attached amendment(s)

[ ] replace with/or adopt CS for

[ ] new title

[✓] same title and recommends Do Pass

[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to ______ Committee

MEMBERS SIGNING DO PASS

Pick Hallford

[signatures]

MEMBERS HAVING OTHER RECOMMENDATIONS

Chairman

Chairman recommendation

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 231

Title: Act relating to amount of Gen. and Temp.Relief Assist.

Sponsor: Clocksin & Gruenberg

Requestor: Senate Finance

Date of Request: 5/11/85

FISCAL DETAIL

Agency Affected: DH&SS/Div.Pub.Assistance

Program Category Affected: Social & Economic Assist. Prog. for Gen. Population

BRU, Program or Subprogram(s) Affected: Assistance Payments BRU-General Relief Assistance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS		80.0				
800 MISCELLANEOUS						
TOTAL OPERATING		80.0				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		80.0				
FEDERAL FUNDS						
OTHER						
TOTAL		80.0				

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Monthly benefits reduced from $200 to $120.

Prepared By: Jan Faiks, Co-chairman Senate Finance Committee

Phone: 465-4523

Division:

Date: 5/11/85

Approved by Commissioner:

Date:

Agency:

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

Before the Senate Finance Committee

A M E N D M E N T

Proposed by

SENATOR FAIKS

TO: HOUSE BILL 231

PAGE 1, LINES 16 and 25

Delete "$200" and insert instead "$120."

Introduced: 2/25/85
Referred: Health, Education &
Social Services and Finance

IN THE HOUSE BY ~~GLOCKSIN AND GRUENBERG~~

SOS HOUSE BILL NO. 231 (Finance

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to amount of general and temporary relief assistance."

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

* Section 1. AS 47.25.130 is amended to read:

Sec. 47.25.130. AMOUNT OF ASSISTANCE. The amount of assistance for a needy person shall be determined by the department with regard to the resources and needs of the person and the conditions existing in each case. Where possible, assistance shall be sufficient to provide the applicant with reasonable subsistence according to standards of assistance established by the department. However, the amount of assistance for subsistence needs may not exceed $200 [$80] a person a calendar month.

* Sec. 2. AS 47.25.250 is amended to read:

Sec. 47.25.250. TEMPORARY RELIEF. When a needy person is not entitled to assistance under AS 47.25.120 - 47.25.300 and has no relatives in the state liable for support under AS 47.25.230 and 47.25.240, the needy person may receive temporary assistance in the form and amount which the department considers necessary. Temporary assistance for needs other than transportation and medical care may not exceed $200 [$80] per person per month.

SECTIONAL ANALYSIS FOR HB 231

An Act relating to amount of general and temporary relief assistance

Section 1

Under current law, the amount of assistance for subsistence needs may not exceed $80. This bill increases that amount to $200.

Section 2

Under current law, the amount of temporary assistance for needs other than transportation and medical care may not exceed $80 per person per month. This bill increases that amount to $200.

REPRESENTATIVE DON CLOCKSIN

Alaska House of Representatives

MAJORITY LEADER

1024 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 274-4031

WHILE IN JUNEAU:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3704

M E M O R A N D U M

TO: Senator Jan Faiks
Co-Chair
Finance Committee

DATE: May 8, 1985

FROM: Representative Don Clocksin
Majority Leader

SUBJECT: HB 231

I am requesting that you schedule HB 231, entitled "An Act relating to amount of general and temporary relief assistance", for a hearing in the Senate Finance Committee. This program was established during territorial days to provide a safety net for Alaskans in emergency situations.

I introduce this bill because the maximum monthly payment of $80 has not been raised since the 1950's. This bill would raise the $80 limit to $200.

General Relief serves approximately 375 needy Alaskans each month. The assistance payments are paid in the form of vendor payments directly to landlords, utility companies and others.

In order to be eligible, a single adult's monthly income may not exceed $300, and the person must have no other personal, private or public resource available to meet their needs.

Attached are the fiscal note and other back-up information.

Thank you for the attention to this bill.

DC:NG:blg

Attachments

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 231
Title: An Act Relating to Amount of General and Temp. Relief Assistance.
Sponsor: Reps. Clocksin & Gruenberg
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: DHSS/Div. of Public Assistanc
Program Category Affected: Social and Economic Assistance Programs for General Population
BRU, Program or Subprogram(s) Affected: Assistance Payments BRU - General Relief Assistance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES			34.3	35.7	37.1	38.6
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT			2.0			
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS	0	399.2	439.1	461.1	479.5	498.7
800 MISCELLANEOUS						
TOTAL OPERATING		399.2	475.4	496.8	516.6	537.3
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	399.2	475.4	496.8	516.6	537.3
FEDERAL FUNDS						
OTHER						
TOTAL	0	399.2	475.4	496.8	516.6	537.3

POSITIONS:

FULL-TIME			1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

See Attached Analysis

Prepared By: John R. Taber, Director
Phone: 465-3347
Division: Public Assistance
Date: March 6, 1985

Approved by Commissioner: John R. Cox
Date: 4-2-85
Agency: Health & Social Services

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor

FISCAL NOTE ANALYSIS - HB 231

GRA Caseload Characteristics (Burial Assistance Not Included)

Service Category	Percent of GRA Expenditures
Rental Assistance	87.6 %
Utility Assistance	4.7 %
Miscellaneous Assistance (18 yr. olds in High School, Food, and Clothing)	7.7 %

Household Size	Percentage of GRA Caseload
1	55.0
2	18.5
3	11.6
4	7.3
5	5.5
6 or more	2.1

FY 1986 GRA caseload was derived by increasing projected current year caseload (excluding burial assistance) by 8.8 percent. This projected caseload increase is based on the anticipated response to an increased benefit level. Benefits will not always equal the $200 per person limit. Vendor payments are made for specific needs of eligible households, and will often be less than the allowable limit. (See projected payment amount by household size below).

Household Size	Annual Cases/Payment Amount	Total
1	1100 X 195	$214,500
2	370 X 385	142,450
3	232 X 560	129,920
4	146 X 680	99,280
5	110 X 750	82,500
6	42 X 775	32,550
	1998	$701,200

FY 1986 Need With New Payment Standard	701.2
Less FY 86 Governor's Request (Rental and Misc. Assistance Only)	302.0
FY 86 Increment Increase to Fund New Standard	399.2

FY 1987 caseload was derived by increasing FY 1986 by 10 percent. This projected caseload growth is due to increased benefit amounts attracting more clientele, and the spreading knowledge of higher payments through agency outreach efforts. The caseload should expand considerably during the first two years as the new benefit level becomes known. At this point, one Eligibility Technician (R/S 12B Anchorage) would be needed to accomodate the larger caseload. One-time funding of 2.0 is budgeted for purchase of office equipment for 1.0 PFT new position.

FY 1988 expenditures are calculated at a 5 percent rate of growth.
FY 1989-1990 are calculated at a 4 percent rate of growth.

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
ANCHORAGE REGIONAL OFFICE
880 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-9431

May 1, 1985

Representative Don Clocksin
Pouch V
Juneau AK 99811

Don,

I am responding to your request to our Juneau office for information about the kinds of persons we would be referring to DPA for General Relief Assistance.

There are several classes of cases.

Many families are in emergency situations and are not eligible for categorical assistance such as families with both parents present. The emergencies are loss of housing or utilities. I'll give you a frequently recurring example: as trailer parks are converting, families are losing housing. GR might be the only way to obtain some emergency housing money. There are no other short-term family housing options available.

Another frequent GR situation is that faced by battered women. They and their children have emergency cash needs that may not be met, even assuming an expedited application process for AFDC.

We are seeing many single adults, who have been disabled, have used the last of their resources and are facing an emergency, while they are waiting for either a Social Security determination or state adult public assistance. Again, GR is the only option.

The amount of GR, $80, which is made by the Department as a vendor payment, is often not enough to even meet the emergency needs. Limited as GR is, many times our clients are forced to literally beg for more time from landlords or to ask local churches for food or clothes.

An adequate GR amount would go a long way in these kinds of cases towards stemming more serious problems that often come when there are no emergency resources available.

Thank you for the opportunity to present this information.

Sincerely,

ALASKA LEGAL SERVICES CORPORATION

JOHN GANT
Supervising Attorney

JG/tc

ALASKA CHAPTER
NATIONAL ASSOCIATION OF SOCIAL WORKERS, INC.

Box 10430
Fairbanks, Alaska 99710

ISSUE: GENERAL RELIEF PAYMENTS

The maximum payment for a destitute person under Alaska's General Relief Statutes is only $80 per month! THAT AMOUNT HAS REMAINED UNCHANGED SINCE 1957!!! Further, Alaska Department of Health and Social Services regulations provide that payments must go to a vendor on-behalf of the person and not to the person themselves. Such regulations also provide that General Relief payments cannot be paid on a regular basis, but rather are mostly restricted to a one-time payment. The result of such law and regulation is that people who are extremely poor receive virtually no assistance from a State which is so wealthy it can afford to subsidize home mortages.

ACTION REQUESTED

The Alaska Chapter, National Association of Social Workers recommends legislation amending A.S.47.25 to double the General Relief maximum payment from $80 to $160 per month with corresponding increase in appropriation to the Division of Public Assistance to enable them to make such payments.

In addition, it is recommended that the Legislative Regulation Review Committee review the General Relief regulations to determine how they could better serve people who are poor.

Further it is recommended that the Department of Health & Social Services be directed by the Legislature to conduct a study of the distribution and adequacy of payments and make a report to the Legislature by January, 1986.

SOME FACTS ABOUT ALASKA'S GENERAL RELIEF PROGRAM

General Relief Appropriations

FY '82	$530,000
FY '83	$451,000
FY '84	$650,000
FY '85	$537,000

General Relief Utilization *

Average of 351 clients per month	Shelter & Utilities
Average of 21 burials per month	Funeral costs

Average payment

$80 per client	Shelter & Utilities
$806 per client	Burial

Per-cent of Appropriation for Different Services

Utilization for burial	48%
Utilization for shelter & utilities	52%

If GR appropriation were doubled, at least double the number of persons now served could be expected to apply, and more landlords would accept GR payment since it would be nearer to the actual amount of rent owed them.

*State-wide figures, but the majority is utilized in Anchorage.
Burial numbers have increased since BIA no longer provides burial payments

*Figures provided by the Anchorage Office of the Division of Public Assistance
November, 1984

Program Purpose

Alaska's General Relief Program provides assistance for obtaining the necessities of life for people who temporarily have absolutely no other personal, private, or public resources available to meet their needs.

Eligibility Criteria:

Recipients of GR must meet the following criteria:

1. They must be in financial need;*
2. They must have inadequate resources to meet their basic needs;
3. They must be 18 years old or be eligible minors;
4. They must have proof of a specific unmet need for a subsistence item such as an eviction notice for overdue rent, or a utility shut-off notice;
5. They must be physically present in Alaska at the time of application;
6. They must register for work unless otherwise exempted.

*NEED STANDARDS (Monthly allowances) Note: Financial eligibility for GR-GRH exists only if need exceeds net income (need standard minus net income equals unmet need, which equals vendor or direct cash payment).

Need Standards

Adult-only households:

Number of Adults	Maximum Need Standard
1	$300
2	400
3	500
4	600
5	700

$100 shall be added for each additional adult.

Households with children and adults:

Number of Persons	Maximum Need Standard
Adult plus 1 child	$300
Adult plus 2 children	350
Adult plus 3 children	400
Adult plus 4 children	450
Adult plus 5 children	500
Adult plus 6 children	550
Adult plus 7 children	600

$100 shall be added for each additional adult and $50 for each additional child.

If income is larger than the need standard, even by $1, the applicant is not eligible. Need standards above were in effect June, 1983.

Exception: In open APA and AFDC cases with no prior resource to provide drugs needed for medical treatment, GRH eligibility will exist.

Coverage: GR can pay up to $80 per month, per eligible person, to vendors on behalf of needy clients, and can provide cash payments of up to $80 per month per person for certain needy high school students and older persons who have no other resources and who have applied for regular cash assistance from other programs.

Normally, GR provides assistance for such needs as rent, heating fuel, or electrical bills in amounts not to exceed the maximum of $80 per eligible person.

Also, under certain very limited circumstances, indigents who are recent arrivals in Alaska can be provided one-way tickets to their last place of residence.

Certain burial costs can be paid through GR for burial of indigent deceased persons who were eligible by virtue of having no resources available to meet their needs. Relatives who are unable to provide for the costs of the burial may apply for assistance.

GR applications are available at all Division of Public Assistance offices. Office addresses are listed on page 3 of this booklet.

Applications are also available from fee agents in most smaller towns.

From: CASH, FOOD and MEDICAL ASSISTANCE, Alaska Department of Health and Social Services, Division of Public Assistance, 1983

opinion

re: HB 231

Anchorage Daily News

Winner, 1976 Pulitzer Prize Gold Medal for Public Service

Gerald E. Grilly
Publisher

Howard Weaver
Managing Editor

Steve Lindbeck
Editorial Page Editor

Katherine Fanning, Editor and Publisher 1971 to 1983
Lawrence Fanning, Editor and Publisher 1967 to 1971

Alaska's Only Morning Newspaper • Founded in 1946 by Norman C. Brown

Simple call to aid the not-so-wealthy

Alaska's oil wealth has brought comfort and opportunity to thousands of Alaskans, but it has not purged the Last Frontier of poverty. In fact, the maximum payment a person may receive under Alaska's general relief statutes — $80 a month — has remained unchanged since 1957. That's why two Anchorage Democrats, Reps. Don Clocksin and Max Gruenberg, have sponsored a bill that would raise general relief to $200 a month.

About 350 people get state emergency general relief for shelter, utilities, food, transportation and clothing each month. Another several hundred people a year receive a pauper's burial at state expense.

State regulations say general relief payments must go directly to utilities, landlords or other vendors, not the needy individuals themselves. These regulations also restrict most general relief to one time payments, which means those destitute will be on their own again after they have received general relief emergency money.

The state appropriated $537,000 for general relief this fiscal year. If the Clocksin-Gruenberg proposal is adopted, the legislature would add another $400,000 to the program next year. That's less than two-thirds the dollars the state has spent to find out what impact the Susitna dam might have on moose.

General relief is the last resort for Alaskans who have not shared in the wealth of recent years. The legislature, which has turned its back on the truly needy before, should not do so again whatever the talk of falling revenues. The Clocksin-Gruenberg bill is a simple call for the most fundamental kind of humanitarian aid — and legislators who told us at election time how much they care about Alaska should not ignore that call now.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 231

Title: An Act Relating to Amount of General and Temp. Relief Assistance.

Sponsor: Reps. Clocksin & Gruenberg

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: DHSS/Div. of Public Assistance

Program Category Affected: Social and Economic Assistance Programs for General Population

BRU, Program or Subprogram(s) Affected: Assistance Payments BRU - General Relief Assistance

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FULL-TIME			1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

See Attached Analysis

Prepared By: John R. Taber, Director — Phone: 465-3347

Division: Public Assistance — Date: March 6, 1985

Approved by Commissioner: — Date: 4-2-85

Agency: Health & Social Services

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor

fcc

GRA Caseload Characteristics (Burial Assistance Not Included)

Service Category	Percent of GRA Expenditures
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Household Size	Annual Cases/Payment Amount	Total
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FY 1987 caseload was derived by increasing FY 1986 b[illegible]0 percent. This projected caseload growth is due to increased benefit amounts attracting more clientele, and the spreading knowledge of higher payments through agency outreach efforts. The caseload should expand considerably during the first two years as the new benefit level becomes known. At this point, one Eligibility Technician (R/S 12B Anchorage) would be needed to accomodate the larger caseload. One-time funding of 2.0 is budgeted for purchase of office equipment for 1.0 PFT new position.

FY 1988 expenditures are calculated at a 5 percent rate of growth.
FY 1989-1990 are calculated at a 4 percent rate of growth.

POSITION PAPER/Department of Health & Social Services

4/8

POSITION PAPER
HOUSE BILL NO. 231

For "An Act relating to amount of general and temporary assistance."

Legislation is proposed to increase the maximum monthly benefit amount paid to eligible applicants under the Division of Public Assistance, General Relief Assistance program (GRA) from $80 to $200 per person. Alaska's GRA program dates back to when federal assistance programs were not as extensive as they are today. As the major assistance programs expanded in scope, GRA became more limited in terms of its eligibility requirements and the amount of financial aid available. The GRA program remains an important part of Alaska's welfare system, providing for the specific emergency needs of clients unable to meet those needs through other programs. Those basic needs include shelter, utilities, transportation, food, and clothing. In addition, limited funds for dignified burial of a needy person may be provided. Benefits are paid directly to the vendor providing for the eligible client's specific need. The program is 100 percent state funded, and is used only after the applicant has exhausted all other possible resources.

The Division of Public Assistance is currently serving 1800 cases annually with a budget of $537,000. A large percentage of these cases involve rental assistance payments. There are numerous local agencies providing support and shelter services for the needy. This public and private service agency network, along with the GRA program, does help provide for the basic needs of the indigent.

Enactment of HB 231 would have significant impact on the General Relief Assistance Program. The major effect would be the increase in the GRA caseload due to the attractiveness of the increased payment standard. It is estimated that the GRA caseload would increase by at least 20 percent in two years as a result of this Act. This caseload increase will result in the need for additional staff to meet the service demand. Clients must apply for assistance each month they experience a specific emergency need. GRA cases are therefore, very labor intensive compared to other assistance programs where client cases are merely maintained once opened. The division would have to dedicate more staff time to the intake and processing of these GRA applications. The fiscal note for this Act calls for the addition of one Eligibility Technician position in FY 1987. However, the true administrative impact of increased caseload would not be alleviated in the other large district offices, which would not receive any new positions. A significant caseload increase in a given area could have an adverse effect on the efficiency and eligibility decision time frames in the offices.

House Bill 231 does offer some improvement to the current GRA program. The $80 per person monthly maximum payment now in effect is widely considered to be too low. The fact that a majority of GRA payments are for the allowable maximum indicates that clients'

specific needs often exceed the available benefit. This does not necessarily mean a higher payment amount is needed, since there are other resources available to the needy (i.e., food stamps, energy assistance, homeless shelters, charitable organizations, etc.). GRA is, however, one of the few programs offering cash rental assistance to those facing eviction. This has become the largest service component of the program, and will doubtless expand with [illegible] implementation of a higher payment amount. A higher payment amount would draw more households to use GRA, and to use it repeatedly, because it would pay most or all of the overdue rent. This trend could represent a drift toward an income maintenance program, and away from the established philosophy of GRA as a program of last resort.

While increased payments for the existing program represents a beneficial change in the service delivered by the division and received by its GRA clientele, it is not viewed at this time as a priority use of additional state dollars. While this Act is consistent with the department's goals and objectives to provide all Alaskans with a reasonable level of subsistence, the department does not feel there is a serious unmet need requiring urgent change. [illegible] assistance payments. [illegible] There is not an obvious alternative to this Act which better meets the needs of the indigent. The concerted efforts of public and private agencies currently form a basic emergency service network for our most needy citizens. Increasing the State's GRA benefit amount would help strengthen this network, yet the responsibility to do so does not rest entirely upon the State. It is a good idea and a just cause, but its affordability in light of other pressing needs is the question. The language of the Act does give the Department discretion in setting the monthly benefit amount lower than $200. This could be a cost saving option which could help meet the need at a lesser cost, but public demand and advocacy groups would push vigorously to get and keep the benefit level at the maximum of $200.

DEPARTMENT RECOMMENDATION

House Bill 231 proposes an increase in the maximum monthly benefit amount available under the General Relief Assistance Program from $80 to $200 per person. The need for the increased benefit amount is a legitimate concern. It is consistent with the department's objectives and the program goals.

POSITION PAPER/Department of Health & Social Services

The Department of Health and Social Services supports this bill in concept only. Implementation of the bill would require the addition of funding to the Governor's budget request, and the Department does not urge funding of this increase at the expense of other worthwhile programs already in existence.

Recommended by: John R. Taber

John R. Taber, Director
Division of Public Assistance

Date: 3-28-85

Approved by: John R. Pugh

John R. Pugh, Commissioner
Department of Health &
Social Services

Date: 4-2-85

Introduced: 2/25/85
Referred: Health, Education &
Social Services and Finance

IN THE HOUSE BY CLOCKSIN AND GRUENBERG

HOUSE BILL NO. 231

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to amount of general and temporary relief assistance."

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

* Section 1. AS 47.25.130 is amended to read:

Sec. 47.25.130. AMOUNT OF ASSISTANCE. The amount of assistance for a needy person shall be determined by the department with regard to the resources and needs of the person and the conditions existing in each case. Where possible, assistance shall be sufficient to provide the applicant with reasonable subsistence according to standards of assistance established by the department. However, the amount of assistance for subsistence needs may not exceed $200 [$80] a person a calendar month.

* Sec. 2. AS 47.25.250 is amended to read:

Sec. 47.25.250. TEMPORARY RELIEF. When a needy person is not entitled to assistance under AS 47.25.120 - 47.25.300 and has no relatives in the state liable for support under AS 47.25.230 and 47.25.240, the needy person may receive temporary assistance in the form and amount which the department considers necessary. Temporary assistance for needs other than transportation and medical care may not exceed $200 [$80] per person per month.

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

5/1/85

Date 5-7-85

Mr. President

The Committee on HESS considered HB 231

relating to amount of general and temporary relief assistance.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

[X] do pass

[ ] do pass with attached amendment(s)

[ ] replace with/or adopt CS for _____
[ ] new title
[ ] same title and recommends _____

[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

1 Joe Joseph Mazurek

1 Willis Stergalas Sr.

MEMBERS HAVING
OTHER RECOMMENDATIONS

2 Edwin DeMars NO Rec

2 Paul Fritz - NO Rec

1 Dorothy Eck

Chairman

Do Pass

Chairman recommendation

COMMITTEE REPORT

HOUSE

(11)

4/29/85

FURTHER:

Date: _____

The Committee on FINANCE has had HB 232

"An Act relating to claims against the real estate surety fund."

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

4/29

COMMITTEE REPORT

HOUSE

(7)

FURTHER: FINANCE

3/15/85

Date: _____

The Committee on JUDICIARY has had HB 232

"An Act relating to claims against the real estate surety fund."

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for HB 232 (Jud) [ ] same title [✓] new title

and recommends it do pass

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

M.M.Miller

Taylor

Sund

Gruenberg

Pettyjohn

Phillips

MEMBERS HAVING
OTHER RECOMMENDATIONS:

DO PASS IF AMENDED

do not pass

CHAIRMAN

COMMITTEE REPORT

HOUSE

3/15

JUDICIARY

(7)

FURTHER: FINANCE

2/25/85

Date: _____

Mr. Speaker:

The Committee on LABOR & COMMERCE has had HB 232

"An Act relating to claims against the real estate surety fund."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [X] ~~New~~ Fiscal Note Sup 30

[ ] Zero Fiscal Note Attached

[X] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

DAVIS Mike Davis

KOPONEN Mike Koponen

MEMBERS HAVING
OTHER RECOMMENDATIONS:

HALEY Alyce Haley - No Rec

PEARCE Sue Pearce No Rec

BECCHETTI C.A. Becchetti No Rec

Mike Davis

NAVARRE Mike Navarre - No rec

Mike Navarre
CHAIRMAN

H 60

Offered: 4/29/85
Referred: Finance

Original sponsor: Clocksin

Cromer

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 232 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to real estate claims based on innocent misrepresentation; and claims against the real estate surety fund."

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

* Section 1. AS 08.88 is amended by adding a new section to read:

Sec. 08.88.395. INNOCENT MISREPRESENTATION. A person licensed under this chapter is not liable to another person for innocent misrepresentations of fact.

* Sec. 2. AS 08.88.460(a) is amended to read:

(a) A person seeking reimbursement for a loss suffered in a transaction as a result of fraud, <u>negligent or intentional</u> misrepresentation, deceit, or the conversion of trust funds on the part of a real estate broker, associate real estate broker, or real estate salesman licensed under this chapter shall make a claim to the commission for reimbursement on a form furnished by the commission. The form shall be executed under penalty of perjury, and information required to be supplied shall include the following:

(1) the name and address of the real estate broker, associate real estate broker, or real estate sal man;

(2) the amount of the alleged loss;

(3) the date or period of time during which the alleged loss occurred;

(4) the date upon which the alleged loss was discovered;

(5) the name and address of the claimant; or

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(6) the general statement of facts relative to the claimant.

* Sec. 3. AS 08.88.460(d) is amended to read:

(d) A claimant under this section shall pay a filing fee of $25 [$250] to the commission at the time the claim is filed. The filing fee shall be refunded only if

(1) the commission makes an award to the claimant from the real estate surety fund; or

(2) [THE CLAIM IS DISMISSED UNDER (c) OF THIS SECTION; OR

(3)] the claim is withdrawn by the claimant before the commission holds a hearing on the claim.

* Sec. 4. AS 08.88.465(d) is amended to read:

(d) The claimant bears the burden of proof of establishing that the claimant suffered losses in a transaction as a result of fraud, negligent or intentional misrepresentation, deceit, or the conversion of trust funds on the part of a real estate broker, associate real estate broker, or real estate salesman and the extent of those losses. All facts shall be established by a preponderance of the evidence.

* Sec. 5. AS 08.88.474 is amended to read:

Sec. 08.88.474. PAYMENT OF [SMALL CLAIMS] JUDGMENT. If a [CLAIM ORIGINALLY FILED WITH THE COMMISSION IS DISMISSED AND IS HEARD AS A SMALL CLAIMS ACTION UNDER AS 08.88.460(c) AND THE] claimant prevails in a court [THE SMALL CLAIMS] action against a [THE] real estate broker, associate real estate broker, or salesman, and the action was based on conduct substantially similar to that set out in AS 08.88.460(a), the commission shall make an award from the fund of any outstanding portion of the [SMALL CLAIMS] judgment. The commission shall make the award after [ON] receipt of a copy of the final judgment and an affidavit from the claimant stating that more than 30

days have elapsed since the judgment became final and that the broker, associate broker, or salesman has not satisfied the judgment during that time. After payment of a [SMALL CLAIMS] judgment the commission is subrogated to the claimant's rights in the judgment under AS 08.-88.490.

* Sec. 6. Section 1 of this Act applies to causes of action arising on or after the effective date of this Act.

* Sec. 7. Sections 2 - 5 of this Act do not apply to a claim that a real estate broker, associate real estate broker, or real estate salesman has elected to remove to small claims court under AS 08.88.460(c) before the effective date of this Act.

* Sec. 8. The commission shall refund $225 of the filing fee paid under AS 08.88.460(d) to a claimant whose case is pending on the effective date of this Act.

* Sec. 9. AS 08.88.460(c) and 08.88.465(f) are repealed.

Introduced: 2/25/85
Referred: Labor & Commerce,
Judiciary and Finance

crome
0543

IN THE HOUSE BY CLOCKSIN

HOUSE BILL NO. 232

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to claims against the real estate surety fund."

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

* Section 1. AS 08.88.460(a) is amended to read:

(a) A person seeking reimbursement for a loss suffered in a transaction as a result of fraud, innocent, negligent or intentional misrepresentation, deceit, or the conversion of trust funds on the part of a real estate broker, associate real estate broker, or real estate salesman licensed under this chapter shall make a claim to the commission for reimbursement on a form furnished by the commission. The form shall be executed under penalty of perjury, and information required to be supplied shall include the following:

(1) the name and address of the real estate broker, associate real estate broker, or real estate salesman;

(2) the amount of the alleged loss;

(3) the date or period of time during which the alleged loss occurred;

(4) the date upon which the alleged loss was discovered;

(5) the name and address of the claimant; or

(6) the general statement of facts relative to the claimant.

* Sec. 2. AS 08.88.460(d) is amended to read:

(d) A claimant under this section shall pay a filing fee of $25 [$250] to the commission at the time the claim is filed. The filing

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fee shall be refunded only if

(1) the commission makes an award to the claimant from the real estate surety fund; or

(2) [THE CLAIM IS DISMISSED UNDER (c) OF THIS SECTION; OR

(3)] the claim is withdrawn by the claimant before the commission holds a hearing on the claim.

* Sec. 3. AS 08.88.465(d) is amended to read:

(d) The claimant bears the burden of proof of establishing that the claimant suffered losses in a transaction as a result of fraud, innocent, negligent or intentional misrepresentation, deceit, or the conversion of trust funds on the part of a real estate broker, associate real estate broker, or real estate salesman and the extent of those losses. All facts shall be established by a preponderance of the evidence.

* Sec. 4. AS 08.88.474 is amended to read:

Sec. 08.88.474. PAYMENT OF [SMALL CLAIMS] JUDGMENT. If a [CLAIM ORIGINALLY FILED WITH THE COMMISSION IS DISMISSED AND IS HEARD AS A SMALL CLAIMS ACTION UNDER AS 08.88.460(c) AND THE] claimant prevails in a court [THE SMALL CLAIMS] action against a [THE] real estate broker, associate real estate broker, or salesman, and the action was based on conduct substantially similar to that set out in AS 08.88.460(a), the commission shall make an award from the fund of any outstanding portion of the [SMALL CLAIMS] judgment. The commission shall make the award after [ON] receipt of a copy of the final judgment and an affidavit from the claimant stating that more than 30 days have elapsed since the judgment became final and that the broker, associate broker, or salesman has not satisfied the judgment during that time. After payment of a [SMALL CLAIMS] judgment the commission is subrogated to the claimant's rights in the judgment

under AS 08.88.490.

* Sec. 5. This Act does not apply to a claim that a real estate broker, associate real estate broker, or real estate salesman has elected to remove to small claims court under AS 08.88.460(c) before the effective date of this Act.

* Sec. 6. The commission shall refund $225 of the filing fee paid under AS 08.88.460(d) to a claimant whose case is pending on the effective date of this Act.

* Sec. 7. AS 08.88.460(c) and 08.88.465(f) are repealed.

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HB 232

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 232

Title: An Act relating to claims against the real estate surety fund

Sponsor: Clocksin

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Commerce & Economic Dev.

Program Category Affected: Consumer Protection

BRU, Program or Subprogram(s) Affected: Real Estate Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		77.0	80.0	85.0	125.0	131.0
200 TRAVEL		8.0	10.0	12.0	18.0	20.0
300 CONTRACTUAL		15.0	16.0	18.0	25.0	29.0
400 SUPPLIES		3.0	3.5	4.0	5.0	5.5
500 EQUIPMENT		12.0	.5	1.5	3.5	.5
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS		250.0	300.0	300.0	375.0	425.0
800 MISCELLANEOUS						
TOTAL OPERATING		365.0	410.0	419.0	551.5	611.0
CAPITAL		0	0	0	0	0
REVENUE		5.0	6.9	8.5	10.0	11.9

FUNDING: (Thousands of Dollars)

GENERAL FUND		115.0	110.0	119.0	176.5	186.0
FEDERAL FUNDS		0	0	0	0	0
OTHER		250.0	300.0	300.0	375.0	425.0
TOTAL		365	410.0	419.0	551.5	611.0

POSITIONS:

FULL-TIME		2	2	2	2	2
PART-TIME		0	0	0	1	0
TEMPORARY		0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

Prepared By: James I. Magowan Phone: 563-2169

Division: Real Estate Commission Date: 03/04/85

Approved by Commissioner: James Magowan Date: 3/14/85

Agency: Alaska Real Estate Commission

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

The two main effects of this bill are:

1. To eliminate the filing fee as a deterrant to the filing of a surety claim regardless of the merits of the claim.

2. To broaden the grounds for payment of a surety claim to include losses due to innocent and negligent acts by a licensee.

Prior to the May 1984 Loken-Johnson v. AREC decision, there was no filing fee and claims for innocent and negligent misrepresentation were being paid. Prior to October 1984, there was no filing fee and the commission was receiving about 200 claims per year and that number was probably on the increase. Of the claims received, about 30% were being awarded, 70% were being denied.

Since October 2, 1984, the commission has received six claims, one of which was submitted with an NSF check for the filing fee. None of these has been heard yet, due to the backlog created when 200 claims per year were being filed, therefore there is no data on the percentage paid, however, it is expected to be very high.

The decrease in the filing fee would probably result in 150-200 or more additional claims per year being filed. It would be better to evaluate filing fees for public injury claims in general and make them all the same rather than the current system with no uniformity or conceptual basis for fees.

The change in grounds for payment would result in an additional 20-50% of these being eligible for payment. This would add up to between 40 and 100 consumers per year recovering an estimated average of $2,500 - 3,000 for innocent/negligent misrepresentations. Most of these could probably recover, even now, through a small claims action. The commission would have to hold three additional hearings for every additional claim paid for innocent/misrepresentation.

The commission would require additional clerical staff (two full-time positions) as well as the potential of an additional full time hearing examiner to carry out the above.

The high rate of dismissed claims in the past stems, in part, from the public not evaluating its cases before filing them. Why expend the effort when the State will do it?

The interaction between grounds for payment of a claim and the fee for filing a fee has generated some confusion.

The amount of the fee helps determine the degree of scrutiny a claimant will engage in prior to filing a claim. This translates into the ratio of claims paid to claims denied. The ideal fee should discourage all invalid claims but no valid claims.

If the willingness and ability of the consumer to file a claim is to be virtually unchecked by the fee there should be one or more additional checks and balances incorporated into the process.

1. If the fee is reduced to $25.00, there should be provision for initial administrative review and dismissal of claims with no discernable merit. Currently, all claims must be granted a hearing. Without the review it could add thousands of dollars of cost with little or no added public benefit.

2. There should be a provision for the claimant to be charged back the cost of a hearing in which the claim is found to be fraudulently filed.

If innocent or negligent misrepresentations are included as grounds for payment of a claim the provision of automatic suspension of a license without further hearing should be modified. and not applicable in cases of innocent misrepresentation. There is great concern by licensees that their licenses might be jeopardized by innocent errors. This is definitely an area that needs to be safeguarded against.

As the Supreme Court pointed out in its decision, the impact of Bevins v. Ballard on the surety fund if it is to pay on innocent misrepresentations could be enormous. The nature of Alaska soils, climate and building conditions makes it very difficult to know and predict everything that can happen to a property. For this reason, innocent misrepresentations may occur at a higher rate than in other parts of the country.

This bill gives the licensee great exposure for damages resulting from acts by others, acts of which the licensee has no knowledge and over which, no control. This, in effect, makes the licensee the preferred "target" when a contractor or other seller is at fault. The surety fund provides protection when a seller is gone and the fund is the only place to turn. The inexpensive access to the fund, however, also makes it the preferred action to take even when the "guilty" party is available and not a licensee. Making it easier to "go after" a licensee for an innocent act than it is to go after, say, a contractor who knowingly created the problem is manifestly unfair to the licensees.

0730E

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ALASKA STATE LEGISLATURE

14th Legislature FIRST Session

HOUSE BILL NO. 232

By CLOCKSIN

"An Act relating to claims against the real estate surety fund."

Real Estate Surety fund

Introduced in the House 2/25, 19.85

HISTORY IN THE HOUSE

19	
85	Read first time and referred to Committee on
Feb. 25	L&C, JUDICIARY AND FINANCE
	Reported back with recommendation that
	Read second time and
	Read third time and

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reconsideration

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reported correctly engrossed
Signed by Speaker
Sent to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19	
	Read first time and referred to Committee on
	Reported back with recommendation that
	Read second time and
	Read third time and

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reconsideration

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reported correctly engrossed
Signed by President
Returned to House

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19	
	Received from Senate
	Concurred in Senate amendment thus adopting: VOTE
	Failed to concur in Senate amendment; asked Senate to recede VOTE
	Senate receded from amendment VOTE
	Senate failed to recede from amendment VOTE
	CC appointed by House
	CC appointed by Senate
	CC adopted by House VOTE
	CC adopted by Senate VOTE
	To enrolling Reported correctly enrolled Sent to Governor
	..... by Governor
	Filed with Lt. Governor
	Chapter No. .....

31-002

COMMITTEE COPY

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No: CSHB 232 (JUD)

Title: An Act relating to claims against the real estate surety fund

Sponsor: Clocksin

Requester: _____

Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.

BRU: Real Estate Commission

Components: Consumer Protection

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	23.0	25.0	27.0	27.0	29.0	29.0
TRAVEL	10.0	10.0	10.0	10.0	10.0	10.0
CONTRACTUAL	10.0	10.0	10.0	10.0	10.0	10.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	6.0	0.0	0.0	0.0	2.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	250.0	250.0	250.0	250.0	250.0	250.0
TOTAL OPERATING	300.0	296.0	298.0	298.0	302.0	300.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	5.0	5.0	5.0	5.0	5.0	5.0

FUNDING: (Thousands of dollars)

GENERAL FUND	50.0	46.0	48.0	48.0	52.0	50.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	250.0	250.0	250.0	250.0	250.0	250.0
TOTAL	300.0	296.0	298.0	298.0	302.0	300.0

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary.

Prepared by: James L. Magowan
Phone: 563-2169
Division: Real Estate Commission
Date: February 25, 1986

Approved by Commissioner: _____
Date: February 25, 1986
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

3602W22586a

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 232

ANALYSIS

The two effects of this bill as amended last April are:

1. It largely eliminates the deterrent effect of the filing fee to the filing of a claim. This increases the number of claims filed that have no merit. It may also increase slightly (one or two per year) the number of claims with merit that are filed.

2. It broadens the grounds upon which a claim can be paid to include negligent misrepresentations by licensees.

It is estimated that the number of claims filed would increase from 34 in 1985 to 234 per year. Of the additional 200 claims filed, an estimated 50 would be paid (estimated average amount $5,000). This would result in approximately $250,000 additional being paid from the fund. This would require increasing the surety payments to the maximum permitted by the statute ($125) and eliminating most or all of the educational program funded by surety payments.

Our experience with 1985 claims is not yet complete enough to give firm data due to the fact that many of the claims are awaiting court decisions. In spite of this, there is a strong indication that over 50 percent of the claims will be paid. There is also evidence indicating that the denial and withdrawal rate will be between 24 and 40 percent. These figures support the position that the filing fee is deterring mostly nonpayable claims and also that it is not discouraging all but the most obviously payable claims.

Our experience indicates that the additional claims might be within the capability of the current hearing examiners to handle because many of them would be more simple than the ones now being filed. This would only be possible with adequate clerical support. The hearing examiners have registered complaints about the lack of clerical support currently available (see resignation letter and hearing decision in regard to George Barth from examiner Gazaway).

The revised fiscal note reflects our experience during the past year with hearings and staff examiners. The staff examiners have greatly reduced the time and cost of hearings but have exacerbated the critical need for clerical support if the commission is to handle the current, let alone an increased, workload.

3602W22586a

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Clerk Typist III	1	8	GU			

Time Status	Staff Months	RP Number	Location	Election District	Leg.		
PFT	12		EBA				

Type of Expenditure		Amount
1	2	3
Salary	19.6	
Benefits	3.4	
Premium Pay		
Other		
Total Personal Services		23.0
Travel		10.0
Contractual		10.0
Commodities		1.0
Equipment		6.0
Other		
Total Cost		50.0

Receipt Code	Funding Source		Amount
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	50.0
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number ___ ___ - ___ ___ - ___ ___ - ___ ___ - ___ ___

Justification

This position will be necessary to do the work associated with 200 additional surety claims and the hearings that they will generate. This includes maintaining data files on the cases, typing decisions and when there are appeals, transcripts. It additionally includes sending out certified notices to licensees involved in the claims (400 to 600) and sending out prehearing and hearing notices. The paperwork generated by claims is great and it must be done properly in order to comply with the due process provisions of the statutes. The current clerical staff cannot absorb additional work (the 1985 LBA report states that the current staff needs immediate assistance of an additional position) therefore without the position, it would not be possible to properly process additional claims.

Request For New Position

Agency: Commerce and Economic Development
BRU: ~~Real Estate Commission~~
Component:

FY 87

3602W22586a

MEMORANDUM

TO: Representative Don Clocksin

DATE: February 22, 1985

FROM: J. Ellis

SUBJECT: Answers to your questions regarding the Real Estate Surety Fund

I spoke with Jim McGowan, Executive Director of the Real Estate Commission and he answered the following questions:

1. Why was salesman fee ($40) repealed last year? It wasn't. Salesmen paid $40 while brokers paid $125. The Commission saw no actuarial basis for different fees. They look at annual expenses and divided them by the number of licenses issued to determine and set a standard fee of $80 for everyone. Fees were equalized. They believe this will greatly reduce administrative overhead.

2. How many surety fund complaints have been filed since October 1, 1984? Four.

3. Is the fund sound? "Yes, incredibly sound".

   How much is in it? $630,000 as of October '84, $130,000 over the Caps.

   What is the revenue each year? Approximately $240,00, with approximately 1,000 new licensees per year.

   What claims are pending against the fund and what is the backlog? Nov. 1: 200-300 case backlog. The Commission hired 2 half-time hearing officers to work on the backlog.

   Approximately 1000 claims remain and are affected by the Supreme Court decision.

   $100 - 150,000 in claims to be paid.

4. What is time taken to process claims?

   - the average time widely varies.
   - in the past; 1 to 2 years.
   - currently, 6-7 months - as quickly as they can get people together and process the paper.
   - their goal is 4 months from receipt to hearing.

JE:blg

HB232

Article 3. Miscellaneous Provisions.

Section
263. License by endorsement

Sec. 08.88.263. License by endorsement. A person who holds a valid active real estate license issued by another state shall be granted an equivalent Alaska real estate license if that person

(1) passes the portion of the real estate examination which examines on Alaska law; and

(2) meets the requirements of AS 08.88.171. (§ 25 ch 167 SLA 1980; am § 34 ch 6 SLA 1984)

Effect of amendments. — The 1984 amendment deleted "and 08.88.211" at the end of paragraph (2).

Sec. 08.88.361. When commission is earned.

NOTES TO DECISIONS

Quoted in Hazell v. Richards, Sup. Ct. Op. No. 2627 (File No. 6683), 659 P.2d 575 (1983).

Article 5. Real Estate Surety Fund.

Section
450. Real estate surety fund
455. Payments by real estate brokers and salesmen
460. Claim for payment
465. Consideration of application
474. Payment of small claims judgment

Sec. 08.88.450. Real estate surety fund. The real estate surety fund is established in the general fund to carry out the purposes of AS 08.88.450 — 08.88.500. The fund is composed of payments made by licensed real estate brokers and salesmen under AS 08.88.455 and filing fees retained in accordance with AS 08.88.460. The fund may not exceed $500,000 and amounts in the fund in excess of $250,000 may be appropriated for real estate educational purposes as provided in AS 08.88.091. (§ 1 ch 143 SLA 1974; am § 34 ch 167 SLA 1980; am § 2 ch 150 SLA 1984)

Effect of amendments. — The 1984 amendment substituted "The real estate surety fund is established in the general fund" for "There is created a special account in the general fund known as the real estate surety fund" in the first sentence and "is" for "shall be" in the second sentence and added "and filing fees retained in accordance with AS 08.88.460" at the end of the second sentence.

Sec. 08.88.455. Payments by real estate brokers and salesmen. (a) A licensed real estate broker, associate broker, or salesman when obtaining or renewing a real estate license, in lieu of obtaining a corporate surety bond, shall pay to the commission in addition to the license fee, a surety fund fee not to exceed $125. After the fund reaches $250,000 the commission shall by regulation adjust the surety fund fees so that, taking into account anticipated expenditures for claims against the fund and real estate educational purposes, the fund is maintained at a level not less than $250,000.

(b) All fees collected under this section shall be paid at least once a month by the commission into the general fund. These payments shall be credited to the real estate surety fund. (§ 1 ch 143 SLA 1974; am § 35 ch 167 SLA 1980; am § 3 ch 150 SLA 1984)

Effect of amendments. — The 1984 amendment, in subsection (a), substituted "associate broker, or salesman" for "or associate broker" in the first sentence and "surety fund" for "bond" in the first and second sentences and deleted "and a licensed salesman, when obtaining or renewing a license, in lieu of obtaining a corporate surety bond, shall pay to the commission in addition to the license fee, a bond fee not to exceed $40" at the end of the first sentence.

Sec. 08.88.460. Claim for payment. (a) A person seeking reimbursement for a loss suffered in a transaction as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of a real estate broker, associate real estate broker, or real estate salesman licensed under this chapter shall make a claim to the commission for reimbursement on a form furnished by the commission. The form shall be executed under penalty of perjury, and information required to be supplied shall include the following:

(1) the name and address of the real estate broker, associate real estate broker, or real estate salesman;

(2) the amount of the alleged loss;

(3) the date or period of time during which the alleged loss occurred;

(4) the date upon which the alleged loss was discovered;

(5) the name and address of the claimant; or

(6) the general statement of facts relative to the claimant.

(b) A copy of a claim filed with the commission under (a) of this section shall be sent to the real estate broker, associate real estate broker, or real estate salesman alleged to have committed the misconduct resulting in losses, as well as a real estate broker employing an associate real estate broker or real estate salesman alleged to have committed the conduct resulting in losses, at least 20 days before any hearing held on the claim by the commission.

(c) Within seven days after receipt of notice of a claim under (b) of this section the real estate broker, associate real estate broker, or real

estate salesman against whom the claim is made may elect to defend the claim as a small claims action in district court under District Court Civil Rules 8 — 22, if the claim does not exceed the small claims jurisdictional limit. An election to defend a claim in district court under the small claims rules may not be revoked by the broker, associate broker, or salesman without the consent of the claimant. Upon receipt of a valid written election under this subsection the commission shall dismiss the claim filed with the commission and notify the claimant that the claim must be brought as a small claims action in the appropriate state court.

(d) A claimant under this section shall pay a filing fee of $250 to the commission at the time the claim is filed. The filing fee shall be refunded only if

(1) the commission makes an award to the claimant from the real estate surety fund;

(2) the claim is dismissed under (c) of this section; or

(3) the claim is withdrawn by the claimant before the commission holds a hearing on the claim. (§ 36 ch 167 SLA 1980; am § 4 ch 150 SLA 1984)

Effect of amendments. — The 1984 amendment added subsections (c) and (d).

NOTES TO DECISIONS

Innocent misrepresentation not within section. — Innocent misrepresentations are not within the ambit of the term "misrepresentation" as that term is used in this section. State v. Johnston, Sup. Ct. Op. No. 2825 (File No. 7826), P.2d (1984).

Sec. 08.88.465. Consideration of application. (a) Upon receipt of a claim for reimbursement, the commission may, in considering whether a claim should be granted,

(1) take and hear evidence pertaining to the claim;

(2) administer oaths and affirmations;

(3) compel, by subpoena, the attendance of witnesses and the production of books, papers and documents pertaining to the claim;

(4) engage the services of an investigator, accountant, or other expert necessary to process the claim.

(b) A certified or authenticated copy of a record, including a transcript of testimony, of a hearing held under AS 08.88.071(a)(3) in which fraud, misrepresentation, deceit, or conversion of funds on the part of a licensed broker, associate broker, or real estate salesman is established may constitute sufficient evidence to support a finding.

(c) Before the commission finds that payment should be made from the real estate surety fund, the real estate broker, associate broker, or

real estate salesman shall be afforded an opportunity to file with the commission, within 10 days after receipt of notification of the claim under AS 08.88.460(b), either a written statement in opposition to the claim or an application for the presentation of additional evidence.

(d) The claimant bears the burden of proof of establishing that the claimant suffered losses in a transaction as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of a real estate broker, associate real estate broker, or real estate salesman and the extent of those losses. All facts shall be established by a preponderance of the evidence.

(e) The commission may postpone consideration of a claim until after a hearing under AS 08.88.071(a)(3) or until after a pending or contemplated court proceeding is completed.

(f) The provisions of this section do not apply to a claim that is dismissed under AS 08.88.460(c). (§ 36 ch 167 SLA 1980; am § 5 ch 150 SLA 1984)

Effect of amendments. — The 1984 amendment added subsection (f).

Sec. 08.88.474. Payment of small claims judgment. If a claim originally filed with the commission is dismissed and is heard as a small claims action under AS 08.88.460(c) and the claimant prevails in the small claims action against the real estate broker, associate real estate broker, or salesman, the commission shall make an award from the fund of any outstanding portion of the small claims judgment on receipt of a copy of the final judgment and an affidavit from the claimant stating that more than 30 days have elapsed since the judgment became final and that the broker, associate broker, or salesman has not satisfied the judgment during that time. After payment of a small claims judgment the commission is subrogated to the claimant's rights in the judgment under AS 08.88.490. (§ 6 ch 150 SLA 1984)

Chapter 92. Concert Promoters.

Section
10. Registration required
20. Fees

HB705: passed in 1984

Chapter 150

AN ACT

Relating to the real estate surety fund.

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* Section 1. AS 08.88.071(b) is repealed and reenacted to read:

(b) When an award is made from the real estate surety fund under this chapter in reimbursement of losses suffered by a claimant as a result of fraud, misrepresentation, deceit, or conversion of trust funds on the part of a licensed broker, associate broker, or salesman, the commission may consider the hearing on the claim to be a hearing on the suspension of the license of the broker, associate broker, or salesman, and may suspend the license of the broker, associate broker, or salesman. A suspension ordered under this subsection shall be lifted if the commission and the broker, associate broker, or salesman reach an agreement with the commission on terms and conditions for the repayment to the real estate surety fund of the money awarded to the claimant and the costs of hearing the claim under AS 08.88.465. The suspension shall be reimposed if the broker, associate broker, or salesman violates the terms of a repayment agreement entered into under this subsection.

* Sec. 2. AS 08.88.450 is amended to read:

Sec. 08.88.450. REAL ESTATE SURETY FUND. <u>The real estate surety fund is established</u> [THERE IS CREATED A SPECIAL ACCOUNT] in the general fund [KNOWN AS THE REAL ESTATE SURETY FUND] to carry out the purposes of AS 08.88.450 - 08.88.500. The fund <u>is</u> [SHALL BE] composed of payments made by licensed real estate brokers and salesmen under

AS 08.88.455 and filing fees retained in accordance with AS 08.88.4[illegible] The fund may not exceed $500,000 and amounts in the fund in excess of $250,000 may be appropriated for real estate educational purposes as provided in AS 08.88.09].

* Sec. 3. AS 08.88.455(a) is amended to read:

(a) A licensed real estate broker, [OR] associate broker, or salesman when obtaining or renewing a real estate license, in lieu of obtaining a corporate surety bond, shall pay to the commission in addition to the license fee, a surety fund [BOND] fee not to exceed $125 [, AND A LICENSED SALESMAN, WHEN OBTAINING OR RENEWING A LICENSE IN LIEU OF OBTAINING A CORPORATE SURETY BOND, SHALL PAY TO THE COMMISSION IN ADDITION TO THE LICENSE FEE, A BOND FEE NOT TO EXCEED $40]. After the fund reaches $250,000 the commission shall by regulation adjust the surety fund [BOND] fees so that, taking into account anticipated expenditures for claims against the fund and real estate educational purposes, the fund is maintained at a level not less than $250,000.

* Sec. 4. AS 08.88.460 is amended by adding new subsections to read:

(c) Within seven days after receipt of notice of a claim under (b) of this section the real estate broker, associate real estate broker, or real estate salesman against whom the claim is made may elect to defend the claim as a small claims action in district court under District Court Civil Rules 8 - 22, if the claim does not exceed the small claims jurisdictional limit. An election to defend a claim in district court under the small claims rules may not be revoked by the broker, associate broker, or salesman without the consent of the claimant. Upon receipt of a valid written election under this subsection the commission shall dismiss the claim filed with the commission and notify the claimant that the claim must be brought as a small claims action in the appropriate state court.

(d) A claimant under this section shall pay a filing fee to the commission at the time the claim is filed. The fee shall be refunded only if

(1) the commission makes an award to the claimant from the real estate surety fund;

(2) the claim is dismissed under (c) of this section;

(3) the claim is withdrawn by the claimant before the commission holds a hearing on the claim.

* Sec. 5. AS 08.88.465 is amended by adding a new subsection to read:

(f) The provisions of this section do not apply to a claim that is dismissed under AS 08.88.460(c).

* Sec. 6. AS 08.88 is amended by adding a new section to read:

Sec. 08.88.474. PAYMENT OF SMALL CLAIMS JUDGMENT. If a claim originally filed with the commission is dismissed and is filed as a small claims action under AS 08.88.460(c) and the claimant prevails in the small claims action against the real estate broker, associate real estate broker, or salesman, the commission shall make payment from the fund of any outstanding portion of the small claims judgment upon receipt of a copy of the final judgment and an affidavit of the claimant stating that more than 30 days have elapsed since the judgment became final and that the broker, associate broker, or salesman has not satisfied the judgment during that time. After payment of a small claims judgment the commission is subrogated to the claimant's rights in the judgment under AS 08.88.490.

the other elements of a fraudulent misrepresentation claim have been demonstrated.

One additional aspect of Bubbel's misrepresentation claim requires discussion: Bubbel contends that Wien misrepresented its legal capacity to hire him as a permanent employee.[10] Specifically, Bubbel argues that because Wien had the benefit of house counsel and outside attorneys, Wien knew that it had a unilateral right under the Railway Labor Act, and under federal cases, to renege on its promised "permanency" of employment. Bubbel reasons that in so far as Wien did not apprise him of that limitation on his permanent status, Wien misrepresented the permanency of his position.

Bubbel's argument on this theory is a narrow one: he does not dispute that when it hired him, Wien had the legal capacity to hire permanent replacement employees.[11] Bubbel concedes that Wien was not legally obliged to accept the settlement agreement proposed by the Presidential Emergency Board. Wien could have rejected the proposed settlement, defied the strikers, and continued to operate with its replacement pilots. Instead, Wien voluntarily chose to accept the settlement and furlough its replacement employees. This branch of Bubbel's misrepresentation theory, then, turns solely on Wien's failure to inform its "permanent" replacement employees that Wien could voluntarily settle the strike and thus use the collective bargaining agreement reached to override inconsistent individual employment contracts.

This court has not previously considered the question of whether a claim for relief may arise from a misrepresentation of law. Traditionally, courts have refused to recognize such representations as tortious, basing their conclusion upon the principle that "ignorance of the law is no excuse."[12] However, several recent decisions have held that this rule should be relaxed in appropriate circumstances, as for example, when,

> the person making the misrepresentation "has superior means of information, professes a knowledge of the law, and thereby obtains an unconscionable advantage of another who is ignorant and has not been in a situation to become informed."

Ford Motor Credit Co. v. Milburn, 615 F.2d 892, 895 (10th Cir.1980), *quoting White v. Harrigan*, 77 Okl. 123, 186 P. 224, syl. 1 (1919). *Accord, White v. Mutrania*, 576 S.W.2d 184, 192 (Mo.1978) (en banc); *Nesbitt v. Home Federal Savings & Loan Ass'n*, 440 P.2d 738, 743 (Okl.1968); *see also National Conversion Corp. v. Cedar Building Corp.*, 23 N.Y.2d 621, 298 N.Y.S.2d 499, 246 N.E.2d 351 (1969).

Recognizing the importance of the question, and the limited treatment it received in the briefing of this case, we decline to adopt a flat rule that misrepresentations of law are not actionable in this state. Instead, we hold, on the basis of this record, only that Wien did not misrepresent its hiring capacity.

[10, 11] Central to our decision on this point is the character of the alleged misrepresentation. Wien did not tell Bubbel anything false, it merely failed to inform him of the legal consequences of something which might happen (i.e.: that Wien could possibly settle the ALPA strike).[13] There is no evidence in the record suggesting that Wien anticipated such a settlement with the striking pilots at the time it hired Bubbel. On the contrary, the record reflects Wien's intention to keep the replacement pilots in their jobs even after the strike ended. Moreover, as the holding in *Belknap* reflects, Wien's right to voluntarily breach its individual employment contracts was not absolute: the subsequent collective bargaining agreement does not relieve Wien of liability for breach of inconsistent individual contracts. In such circumstances, the appropriate remedy for Wien's breach of its commitment to keep the replacements is a suit for breach of contract, rather than for misrepresentation of Wien's capacity to enter into such contracts.[14]

Thus, we affirm the superior court's grant of a directed verdict against Bubbel on his misrepresentation claims.

For the reasons set forth above, the judgment of the superior court is REVERSED and this case is REMANDED for further proceedings consistent with this opinion.

10. For example, Bubbel argues that

> There can be little doubt that if Wien had explained to Bubbel at the time of his employment hire that the employment was "permanent," but that Wien had the unilateral right at any time to settle the strike with ALPA; that the terms of the settlement may very well affect Bubbel's continued employment—Bubbel would not have believed the employment was "permanent." ... Wien had an obligation to advise and inform Mr. Bubbel that he was not a "permanent" employee....

11. Following an economic strike "the employer may hire permanent replacements whom it need not discharge even if the strikers offer to return to work unconditionally." *Belknap v. Hale*, — U.S. —, —, 103 S.Ct. 3172, 3174, 77 L.Ed.2d 798, 803 (1983).

In contrast, an employer hiring replacement employees during an unfair labor practice strike governed by the NLRA may lack the legal capacity to offer permanent employment to such replacements. *Id.*, — U.S. —, —, 103 S.Ct. 3172, 3174, 77 L.Ed.2d 798, 803; *NLRB v. International Van Lines*, 409 U.S. 48, 93 S.Ct. 74, 34 L.Ed.2d 201 (1972). In such circumstances, the employer's representation of its capacity to hire permanent replacements might well be false and thus actionable.

12. See, e.g., *Hamming v. Murphy*, 83 Ill.App.3d 1130, 39 Ill.Dec. 435, 404 N.E.2d 1026 (1980), where the court refused to impose liability for misrepresentation upon a defendant-vendor of real estate who affirmatively assured a plaintiff purchaser that a contemplated use of the property was permitted under the existing zoning ordinance. The *Hamming* court reasoned that

> [g]enerally, one is not entitled to rely upon a representation of law as both parties are presumed to be equally capable of knowing and interpreting the law.... We conclude plaintiff was charged with knowledge of the permitted uses of this property under applicable zoning ordinances ....

404 N.E.2d 1026 at 1030.

13. If a failure to warn a party of the possibility of a voluntary breach constitutes an actionable misrepresentation, then all contracts would involve misrepresentations.

14. We recognize that the Supreme Court's opinion in *Belknap v. Hale*, *supra*, contains language suggesting that an action for misrepresentation might be appropriate in factual circumstances similar to those before this court. However, the Supreme Court in *Belknap* held only that federal labor law does not preclude "otherwise actionable" misrepresentation suits. — U.S. at —, 103 S.Ct. 3172 at 3178, 77 L.Ed.2d 808. The Court recognized that state law determines whether an action for misrepresentation will lie in any particular case. *Id.* We conclude that our decision on Bubbel's misrepresentation claim is consistent with the holding in *Belknap*.

STATE of Alaska, REAL ESTATE COMMISSION, Appellant,

v.

Myrna JOHNSTON and Eve Loken, Appellees.

No. 7826.

Supreme Court of Alaska

May 4, 1984.

Purchasers of real estate who rescinded earnest money agreement claim with Real Estate Commission reimbursement of earnest money from Estate Surety Fund, alleging that broker had misrepresented boundaries of property. The hearing officer concluded that broker's misrepresentation was innocent, but Fund provided recovery for such misrepresentations and recommended that Fund reimburse purchasers' deposit. Commission adopted decision and awarded reduced amount, and brokers appealed. The Superior Court, Third Judicial District, Anchorage, Milton Souter, J., reversed award and Commission appealed. The Supreme Court held that Real Estate Surety Fund did not provide reimbursement to claimants for innocent misrepresentations made by members of real estate profession.

Affirmed.

1. Brokers ⇐4

Real Estate Surety Fund does not provide reimbursement to claimants for

cent misrepresentations made by members of real estate profession. AS 08.88.460-08.88.500, 08.88.460.

2. Appeal and Error ⇐812(8)

Applicable standard of review of superior court's decision construing statute is one of independent judgment.

3. Statutes ⇐193

If legislative intent or general meaning of statute is not clear, meaning of doubtful words may be determined by reference to their association with other associated words and phrases.

4. Brokers ⇐1

"Misrepresentation" as employed in statute allowing recovery from Real Estate Surety Fund for losses suffered as result of fraud, misrepresentation, deceit, or conversion of trust funds on part of real estate broker does not include innocent misrepresentation. AS 08.88.460(a, b).

See publication Words and Phrases for other judicial constructions and definitions.

Richard D. Monkman, Asst. Atty. Gen., Anchorage, Norman C. Gorsuch, Atty. Gen., Juneau, for appellant.

W. Richard Fossey, Bankston & McCollum, Anchorage, and Peggy Alayne Roston, Anchorage, for appellees.

Lewis Gordon, Baily & Mason, Anchorage, for Alaska Ass'n of Realtors, amicus curiae.

Before BURKE, C.J., and RABINOWITZ, COMPTON and MOORE, JJ.

OPINION

PER CURIAM.

This appeal presents a first impression question as to the scope and applicability of Alaska's Real Estate Surety Fund.[1] The issue raised is one of statutory construction, namely, whether the Real Estate Surety Fund provides recovery to claimants who, in the context of real estate transactions, suffer losses due to innocent misrepresentations made by real estate brokers or agents.

I. FACTS

Newly arrived in Alaska the Mulhollands sought to purchase a home and contacted Eva Loken, a sales person with Area Realtors. In August of 1981, Loken showed the Mulhollands Larry Gross' home located near Eagle River. The following day the Mulhollands made an offer on the house to which the owner counter-offered. On August 10, 1981, the parties entered into an earnest money agreement and the Mulhollands tendered one thousand dollars in earnest money to Loken.

Subsequent to the initial earnest money agreement the Mulhollands contemplated rescinding on the purchase agreement and signing an earnest money agreement on another home; they were distraught over what they perceived as apparent misrepresentations made by Loken concerning midwinter sunlight and driveway accessibility. Eventually, after discussions with Loken and Myrna Johnston, an associate broker with Area Realtors, the Mulhollands decided to go through with the deal and they signed an extension to the earnest money agreement.

On October 14, 1981, the Mulhollands were asked to accept an "as-built" survey of the property; however, because the survey failed to depict the driveway the Mulhollands refused to sign or accept the survey. Johnston ordered an updated survey. The updated survey revealed that the driveway encroached upon neighboring land to the extent of ten feet by thirty feet.

Having contacted the seller, Larry Gross, to discuss alternative solutions to the encroachment problem, Johnston informed Loken, who in turn contacted the Mulhollands. During the phone conversation between Loken and the Mulhollands a meeting was arranged for October 23, 1981—the day the earnest money agreement expired.

1. AS 08.88.450-500.

At the October 23rd meeting between the Mulhollands and Johnston, the Mulhollands terminated the transaction and signed a recission agreement which provided that the earnest money would be returned. Johnston, however, on the advice of Area Realtors' attorney, never executed the recission agreement; the Area Realtors' attorney felt that the encroachment was a curable defect which did not render title to the property unmarketable.

In December 1981, the Mulhollands filed a claim with the Real Estate Commission for the reimbursement of their earnest money deposit. Thereafter, a Real Estate Commission hearing examiner conducted a hearing on the Mulhollands' reimbursement claim. The hearing examiner concluded that Loken and Johnston had innocently misrepresented the boundaries of the Gross property. The misrepresentation of fact, according to the hearing officer's finding, "consisted of the implied assertion that the driveway was included in the boundaries of the Gross property." Concluding that the Real Estate Surety Fund provided recovery for innocent misrepresentations of this nature the hearing officer recommended that the Fund reimburse the Mulhollands' earnest money deposit.

The Real Estate Commission adopted the recommended decision and awarded the Mulhollands the equivalent of their earnest money deposit. The Commission's decision was then appealed to the superior court. The superior court reversed the aw holding that the Surety Fund did not p vide recovery for innocent misrepresen tion. The State of Alaska Real Es Commission now brings this appeal.

II. THE REAL ESTATE SURETY FU DOES NOT PROVIDE REIMBUR MENT TO CLAIMANTS FOR IN CENT MISREPRESENTATIO MADE BY MEMBERS OF T REAL ESTATE PROFESSION.

[1] As indicated at the outset, the p cipal issue presented in this appeal whether the Real Estate Surety Fund obligated to reimburse claimants for i cent misrepresentations made by mem of the real estate profession. In relev part AS 08.88.460(a) provides as follo

Claim for payment. (a) A person s ing reimbursement for a loss suffere a transaction as a result of fraud, r representation, deceit, or the conver of trust funds on the part of a real es broker ... shall make a claim to commission for reimbursement....[2]

The superior court concluded that "m representation" as used in AS 08.88.46 was intended to encompass only intenti wrongdoing, not innocent or negli wrongdoing. More particularly the sup or court reasoned as follows:

I think the term misconduct as used Section (b) of the statute implies m

2. The full text of AS 08.88.460(a) and (b) reads as follows:

(a) A person seeking reimbursement for a loss suffered in a transaction as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of a real estate broker, associate real estate broker, or real estate salesman licensed under this chapter shall make a claim to the commission for reimbursement on a form furnished by the commission. The form shall be executed under penalty of perjury, and information required to be supplied shall include the following:

(1) the name and address of the real estate broker, associate real estate broker, or real estate salesman;

(2) the amount of the alleged loss;

(3) the date or period of time during which the alleged loss occurred;

(4) the date upon which the alleged was discovered;

(5) the name and address of the claim or [sic?]

(6) the general statement of facts relati the claimant.

(b) A copy of a claim filed with the c mission under (a) of this section shall be to the real estate broker, associate real es broker, or real estate salesman alleged to h committed the misconduct resulting in los as well as a real estate broker employing associate real estate broker or real es salesman alleged to have committed the c duct resulting in losses, at least 20 days b any hearing held on the claim by the com sion.

tional-type wrongdoing, not negligent or innocent wrongdoing. And I think the statute's use of the phrase fraud, deceit, misrepresentation nr conversion, particularly with the term misrepresentation coming sandwiched between fraud and deceit and coming as it does amidst a group of intentional-type wrongdoings, coupled with the presence of the word misconduct in subsection (b), all indicate that the proper construction of this statute lies in construing it as including among its terms only intentional-type wrongdoing, not innocent or negligent but nonreckless wrongdoing. And I think that that's squarely in line with the comments of the chairman of the commerce committee. Furthermore, it seems to me that with a real estate fund limited by law to only $500,000.00, if we're going to open the flood gates t- innocent and negligent misrepresentation claims being made against this fund, there very likely soon wouldn't be any fund to collect for dishonest-type actions on the part of the real estate profession. So I'm going to reverse the real estate commission and award judgment in this case in favor of the appellants.

[2] In our view, the superior court correctly analyzed the question, and thus we affirm the superior court's construction of AS 08.88.460.[3]

Prior to the establishment of the Real Estate Surety Fund in 1974, real estate brokers were required to obtain a real estate bond. This corporate bond was made payable to the state and was breached if the licensee injured another by a wrongful act or default in the conduct of the business for which the license was issued. In 1974 the legislature created the Real Estate Surety Fund. AS 45.85.010. [§ 1 Ch. 143 SLA 1974] As originally enacted the Real Estate Surety Fund functioned similarly to the surety bond requirement. In relevant part the Surety Fund Act provided that a licensed real estate broker when obtaining or receiving a real estate license, in lieu of obtaining a corporate surety bond, had to pay a bond fee to the commissioner. [AS 45.85.020(a)] Recovery from the newly established surety fund was conditioned upon the claimant first obtaining "a final judgment in a court against a real estate broker ...." If judgment was not satisfied within thirty days from the court order, the claimant could apply for a post-judgment order directing payment out of the Real Estate Surety Fund.

In 1980 the Real Estate Surety Fund Act was amended, providing for a simpler recovery process. [AS 08.88.450-.500] The 1980 amendment obviated the requirement that the claimant first obtain a civil judgment before filing a claim for reimbursement; instead, the Real Estate Commission was remolded to function in a quasi-judicial ...e, adjudicating the merits of Surety Fund claims in administrative hearings. [§§ 34-36 Ch. 167 SLA 1980] Procedures governing the Real Estate Commission's administration of Surety Fund claims are provided for in 12 AAC 64.280-.330.

[3] As the superior court correctly emphasized, nothing in the historical development of the Real Estate Surety Fund directly indicates legislative intent as to the scope of the Fund's coverage. Given this background, we think a textual analysis of AS 08.88.460 is controlling.[4] The apposition of the term "misrepresentation" to the terms "fraud," "deceit," and "conversion" persuades us that misrepresentation should be limited to only wrongful misrepresentations. A widely applied tenet of statutory interpretation is that if "the legislative intent or general meaning of a statute is not clear, the meaning of doubtful words may be determined by reference to their association with other associated words and phrases." 2A C. Sands, *Sutherland Statutory Construction*, § 47.16 at 101 (4th ed. 1973); *in accord: United States v. Raynor*, 302 U.S. 540, 58 S.Ct. 353, 82 L.Ed. 413 (1938); *State v. Taylor*, 49 Hawaii 624, 425 P.2d 1014, 1021 (1967); *Heathman v. Giles*, 13 Utah 2d 368, 374 P.2d 839, 840 (1962). Similarly: *Matter of Hutchinson's Estate*, 577 P.2d 1074, 1075 (Alaska 1977) (all sections are to be construed together so that all have meaning and no section conflicts with another); *City of Anchorage v. Scavenius*, 539 P.2d 1169, 1174 (Alaska 1975) (each part of a statute should be construed with every other part or section so as to produce a harmonious whole).

[4] In short, we hold that innocent misrepresentations are not within the ambit of

3. The applicable standard of review here is one of independent judgment. *Wien Air Alaska, Inc. v. Dept. of Revenue*, 647 P.2d 1087, 1090 (Alaska 1982).

4. In *State v. Alex*, 646 P.2d 203, 209 n. 4 (Alaska 1982), we held that the plainer the statute's language, the more convincing contrary legislative history must be. *See also City of Homer v. Gangl*, 650 P.2d 396, 400 n. 4 (Alaska 1982); *see gen. North Slope Borough v. Sohio Petroleum Corp.*, 585 P.2d 534, 540 (Alaska 1978) (where we first adopted this sliding scale approach).

the term "misrepresentation" as is employed in AS 08.88.460(a) ing this conclusion we have carsidered each of the state's argutaining to legislative history, perations, and textual analysis found none of them persuasive affirm the superior court's const AS 08.88.460(a) and (b).[6]

AFFIRMED.

MATTHEWS, J., not particip

5. We think it appropriate to further note that when the Surety Fund was first established in 1974 and amended in 1980, Alaska did not recognize a cause of action for innocent misrepresentation. In *Bevins v. Ballard*, 655 P.2d 757 (Alaska 1982), this court first recognized a cause of action against a real estate broker for innocent misrepresentation.

6. The amicus has attempted to rai...tion of whether on this record a... misrepresentation was made. In the ...context of this case this issue is n... before us and thus will not be addre...

an element of the relative nature of the work test. Thus, only if it is determined that Kroll acted as an employer in the course of his construction activities may Donald reasonably be said to have been engaged in work which was "a regular part of the employer's regular work." *Ostrem v. Alaska Workmen's Compensation Board*, 511 P.2d at 1063.[5]

[5] For purposes of the Act, an employer is defined as "a person employing one or more persons in connection with a business or industry coming within the scope of this chapter." AS 23.30.265(12). The Board stated in this regard:

> The definition of subsection (12) 'in connection with a business or industry coming within the scope of this chapter' is interpreted to mean *all business or industry is to be considered as covered by the Act* and that interpretation would follow Larson's which includes every person in the service of another under contract. [Emphasis added.]

The Board's broad construction of AS 23.30.265(12) fails to give proper weight to the statutory limitation to employment relationships "in connection with a business or industry." In Larson's terms,[6] the policy question is whether Kroll's construction activity, either by itself or as an element of his rental activities,[7] was a profit-making enterprise which ought to bear the costs of injuries incurred in the business, or was the construction activity simply a cost-cutting shortcut in what was basically a *consumptive* and not a *productive* roll played by Kroll.[8]

We conclude that the Board's statement with respect to the parameters of the statutory definition of an employer reflects an erroneous standard of law. As a result, the threshhold issue of whether Kroll's construction activity was sufficient to establish his status as an employer must also be remanded to the Board for further consideration.[9]

REVERSED and REMANDED.

Max BEVINS and Johnson-Bevins Inc., d/b/a Star Realty, Appellants,

v.

David L. BALLARD and Linda K. Ballard, Appellees.

No. 4571.

Supreme Court of Alaska.

Nov. 19, 1982.

Purchasers brought action against vendors and real estate broker alleging, in part, intentional and negligent misrepresentation in describing condition of well on property. The Superior Court, Third Judicial District, Anchorage, Eben H. Lewis, J., rendered judgment in favor of purchasers, and broker appealed. The Supreme Court, Burke, J., held that: (1) trial court's dismissal of purchasers' negligence claim against real estate broker precluded broker's liability from resting on a negligent representation

5. The concept of "regular work" as used in *Ostrem* as part of the test for differentiating between employees and independent contractors is a subclass of "business" as used in AS 23.30.265(12). Whether a person engages in a "business" within the meaning of AS 23.30.265(12), is relevant for purposes of determining the "extent to which claimant's work is a regular part of the employer's regular work." *Ostrem*, 511 P.2d at 1063. The Board's first obligation is to ascertain the nature of the particular business enterprise in which the injury allegedly occurred, and then to determine whether the work being done by the claimant is a regular part of that business.

6. *See* 1C A. Larson, *supra* note 2, § 50.21.

7. *Id.* at § 50.24.

8. *Id.* at § 50.21, at 9-70 to 9-71 & nn. 4 and 5. *But see Donald v. Whatley*, 346 So.2d 898 (Miss.1977).

9. *Burgess Constr. Co. v. Smallwood*, 623 P.2d 312, 317 (Alaska 1981).

theory, even though postjudgment amendments are allowed to conform issues tried to evidence, where, subsequent to dismissal, neither party argued negligent misrepresentation in trial briefs, court and parties treated case as one involving innocent misrepresentations, and broker neither expressly nor impliedly consented to trying negligence claim, but (2) real estate broker who made material misrepresentation to purchasers as to condition of well on unimproved property was liable to purchasers, even though representation was innocently made.

Affirmed.

Connor, J., dissented in part and filed an opinion in which Rabinowitz, J., joined.

1. Negligence ⇐2

In determining whether duty exists to provide accurate information once speaker undertakes to speak, factors to consider are whether speaker had knowledge, or its equivalent, that information was desired for serious purpose and that listener intended to rely upon it, foreseeability of harm, degree of certainty that listener would suffer harm, directness of causation, and policy of preventing future harm.

2. Brokers ⇐102

In land sales context, duty to provide accurate information when real estate broker undertakes to speak can arise when broker becomes aware of suspicious facts regarding his or her representations, or when purchaser makes affirmative inquiry and broker fails to check accuracy of subsequent responding representation, or when court determines that public policy requires brokers to undertake certain functions.

3. Pretrial Procedure ⇐693

Trial court's dismissal of purchasers' negligence claim against real estate broker precluded broker's liability for misrepresentations from resting on a negligent representation theory, even though postjudgment amendments are allowed to conform issues tried to evidence, where, subsequent to dismissal, neither party argued negligent misrepresentation in trial briefs, court and parties treated case as one involving innocent misrepresentations, and broker neither expressly nor impliedly consented to trying negligence claim.

4. Vendor and Purchaser ⇐37(1)

Vendors guilty of even innocent misrepresentation cannot hide behind doctrine of caveat emptor because vendors are presumed to know character and attributes of land conveyed and purchasers are consequently entitled to rely on vendors' reasonable representations.

5. Fraud ⇐13(2)

Owner of land must be both truthful and informed in making any representations, for fraud includes pretense of knowledge where there is none.

6. Brokers ⇐102

Policy favoring liability of real estate brokers for innocent misrepresentation is founded on recognition that purchasers should be entitled to rely on a broker's representations.

7. Brokers ⇐106

Purchaser who relies on a material misrepresentation of real estate broker, even though innocently made, has a cause of action against broker.

8. Brokers ⇐102

Real estate broker who made material misrepresentation to purchasers as to condition of well on unimproved property was liable to purchasers, even though representation was innocently made.

Fredrick P. Pettyjohn, Anchorage, for appellants.

Saul R. Friedman, Hedland, Fleischer & Friedman, Anchorage, for appellees.

Before RABINOWITZ, C.J., CONNOR, BURKE, and MATTHEWS, JJ., and DIMOND, Senior Justice.*

* Dimond, Senior Justice, sitting by assignment made pursuant to article IV, section 11 of the Constitution of Alaska, and Alaska R.Admin.P. 23(a).

OPINION

BURKE, Justice.

This is an appeal from a judgment holding a real estate broker liable for certain misrepresentations made in the course of a real estate transaction.

A. Facts

On February 3, 1975, David and Linda Ballard purchased a lot with an unfinished dwelling from Josephine, Patricia, and William Ferris. Prior to their purchase, certain representations were allegedly made to the Ballards regarding the adequacy of a well on the property. The purchaser, David Ballard, who had previous experience as a general contractor, attempted to complete the existing well on the property. He installed a pump and piping from the well to the house. The well, however, failed to provide sufficient water. As a result, the Ballards were forced to haul water to their property. They subsequently incurred expenses of $6,935.00 in deepening the well to an adequate level.

Believing themselves the victims of fraudulent misrepresentations, the Ballards sued the sellers, the broker (Bevins), and an employee of the broker (Lucas). Their complaint alleged, in part, intentional and negligent misrepresentation.[1] In addition, it alleged that Bevins and Lucas had a duty to check the well's condition, that Lucas knew there was no functional well, that Bevins was vicariously liable for Lucas's acts, and that the Ferrises were vicariously liable for the actions of their agents, Bevins and Lucas. The complaint did not explicitly allege innocent misrepresentation.

After the close of plaintiffs' evidence, the trial court dismissed certain counts of the complaint. First, the court ruled that the broker did *not* have a general duty to inspect the premises. Second, it held that the broker was *not* vicariously liable for the acts of his employee, Lucas. In a subsequent written decision, the court further ruled that Lucas was not liable. It then held that Bevins and the sellers were jointly and severally liable, each with a right of contribution from the other for any payment in excess of a pro rata share. While both the sellers and the broker filed timely notice of appeal, only Bevins, the broker, pursues his appeal.

The basis of the broker's liability is not clear. The court found that the sellers were the source of the representation that the well was "good," i.e., capable of supplying the reasonable water needs of the residents. It ruled that the broker had a right to rely on the representations, and thus the sellers were liable (as principals) for the act of Bevins (their broker and thus their agent) who passed on the misrepresentation. The court also found that Lucas passed on the representation intending that

1. The complaint made the following factual allegations:

(a) Bevins personally inspected the property;
(b) sellers told Bevins that there was a well drilled on the property;
(c) sellers failed to disclose to Bevins the incomplete nature of the well, with the knowledge and intent that Bevins would tell potential buyers there was a well;
(d) sellers represented to the broker's employee that the well was finished, held 36 feet of standing water, and was capable of supporting the reasonable water needs of residents of the house;
(e) sellers made those representations with the intent that Lucas would tell the buyers;
(f) Lucas did so represent to the Ballards;
(g) the representations were false;
(h) Lucas made the representations with the knowledge they were false;
(i) sellers made the representations knowing they were false, for the purpose of deceiving plaintiffs and inducing them to buy;
(j) plaintiffs did rely and were induced; and,
(k) plaintiffs were unable to discover the defect until after purchase.

In addition, the following legal allegations were made:

(1) Bevins owed plaintiffs a duty to investigate the accuracy of the sellers' representations, and breached that duty (this count was dismissed at the close of plaintiffs' evidence);
(2) Lucas (broker's employee) owed plaintiffs a duty to investigate, and breached that duty;
(3) Bevins was vicariously liable for acts of his employee Lucas (this count was dismissed at the close of plaintiffs' evidence); and,
(4) sellers were vicariously liable for the acts of their agents, Bevins, the broker, and his employee, Lucas.

it be relied upon; Bevins admitted to the same intent. The court further found that the Ballards did so rely, and that their reliance was justified.

Although the court earlier concluded that Bevins had no general duty to inspect, it subsequently held that a duty of inquiry arose when Lucas asked Bevins, on behalf of the Ballards, about the adequacy of the well. The court concluded that Bevins acted unreasonably by simply assuring Lucas that it was a "good well" rather than by investigating. Thus Bevins' liability appears to rest on a negligence theory.

Certain facts are not contested:

1. The listing mentioned a 100 foot well.
2. The well proved to be incomplete, i.e., inadequate to support reasonable water needs.
3. Bevins, the broker, testified that the listing of a well would reasonably lead buyers to assume the well was "good," i.e., adequate.
4. The Ballards relied on the listing and representations that the well was "good."
5. Both Lucas and Bevins intended that the Ballards so rely.

As to the source of the misrepresentation, Bevins testified that he would not have written it on the listing unless it came from the sellers. The sellers, however, denied telling him about it; they testified that Bevins must have misunderstood. The court believed Bevins, concluding that the sellers were the original source of the representation.

B. The Broker's Liability

There are three types of misrepresentations: intentional, negligent, and innocent. While the Ballards did assert an intentional misrepresentation claim against the sellers, they did not do so against Bevins or Lucas. Thus, we need address only the negligent and innocent misrepresentation claims in this appeal. Bevins' liability to be sustained, must rest on one of these two theories.[2]

1. Negligent Misrepresentation

The Ballards' third claim for relief stated a cause of action for negligence against Bevins. That claim alleged that Bevins had a duty to "take reasonable steps to determine whether or not the well ... was a completed well" and had sufficient capacity to support a purchaser's reasonable water needs, that Bevins breached that duty, and that as a direct and proximate result of Bevins' breach the Ballards purchased the property believing the well was completed. As noted, the trial court subsequently dismissed that claim, and the Ballards did not appeal. In its final opinion, however, the trial court imposed liability on grounds that Bevins had a "duty to inquire of the sellers whether the well was, in fact, 'a good well.'" Bevins argues that the court thus held him negligent even though negligence was dismissed from the case and, further, that he was prejudiced thereby because dismissal of the third claim led him to forego a negligence defense.

[1, 2] We recognized the tort of negligent misrepresentation in *Transamerica Title Insurance Co. v. Ramsey*, 507 P.2d 492 (Alaska 1973), and *Howarth v. Pfeifer*, 443 P.2d 39 (Alaska 1968). Under this theory, Bevins could have been liable for breaching his duty to provide accurate information once he undertook to speak. In determining whether such a duty exists, one must consider: (a) whether the defendant had knowledge, or its equivalent, that the information was desired for a serious purpose and that the plaintiff intended to rely upon it; (b) the foreseeability of harm; (c) the degree of certainty that plaintiff would suf-

2. Bevins' liability could be based on a vicarious liability for the acts of his employee Lucas. As we noted in *Black v. Dahl*, 625 P.2d 876, 879 n. 3 (Alaska 1981), a real estate broker can be liable under the doctrine of respondeat superior for the acts of his or her sales-people. However, two of the rulings below preclude resting liability on such a basis. First, at the close of the Ballards' evidence, the trial court dismissed the eighth claim for relief, which had asserted that Bevins was vicariously liable. Second, in its written opinion, the trial court found in favor of Lucas, the salesman. Thus there is no underlying liability for which Bevins could be held vicariously responsible. The Ballards have not appealed these rulings.

fer harm; (d) the directness of causation; and (e) the policy of preventing future harm. *Howarth v. Pfeifer*, 443 P.2d at 42; *see Transamerica Title Insurance Co. v. Ramsey*, 507 P.2d at 494–95.[3] In the land sales context, such a duty can arise when a broker becomes aware of suspicious facts regarding his or her representations, or when a buyer makes an affirmative inquiry and the broker fails to check the accuracy of his subsequent responding representation, or when a court determines that public policy requires brokers to undertake certain functions. *See, e.g., First Church of the Open Bible v. Cline J. Dunton Realty, Inc.*, 19 Wash.App. 275, 574 P.2d 1211 (1978).

[3] We believe, however, that the trial court's dismissal of Ballards' third claim for relief, which was their only negligence claim against Bevins, precludes the broker's liability from resting on a negligent misrepresentation theory.[4] While Alaska Rule of Civil Procedure 15(b) allows post-judgment amendments to conform the issues tried to the evidence, and further provides that the failure to so amend "does not affect the result of the trial" on those issues, the rule sets as a threshold the requirement that such issues be "tried by express or implied consent of the parties." We do not believe that this condition was met in the case at bar. Subsequent to the dismissal neither party argued *negligent* misrepresentation in their trial briefs. The court and parties treated the case as one involving innocent misrepresentations. Bevins neither expressly nor impliedly consented to trying a negligence claim. Accordingly, Bevins' liability cannot rest on a negligent misrepresentation theory.

2. Innocent Misrepresentation

The case went forward against Bevins on an apparent theory of innocent misrepresentation, evidenced by the colloquy quoted in note 4 and the arguments advanced in the trial briefs.[5] The tort of innocent mis-

3. In *Transamerica Title*, we upheld submitting the negligence issue to the jury where a title insurance company failed to inform a client that a power of attorney, upon which she was relying in asserting her authority to sell the property, had been revoked. Although the title company was unaware of the revocation, that information was readily available to it. We concluded that the title insurer knew that the seller, its client, desired information about her legal capacity to sell the land, that she intended to rely on that information, and that there was foreseeable harm to her should she be poorly advised. We concluded that the jury could find that the title company had a "duty to speak carefully." We rejected any distinction between the nonfeasance of the title company and the misfeasance in the *Howarth* case. 507 P.2d at 494–95.

In *Howarth*, a vendor sought damages for the alleged negligent misrepresentation by the defendant insurer that a purchaser of vendor's property had obtained fire insurance on the property. We held that assuming the presence of the essential factors establishing a duty of care, those engaged in the insurance business are required to speak with reasonable care.

4. That the court intended to dismiss negligence claims from the case is further evidenced by the following colloquy:

THE COURT: ... I feel that it's the third claim for relief that you seek thereby to impose upon realtors a burden that does not exist except in extraordinary circumstances. That is when there's been—when there has been evidence adduced as to the duty of a realtor to inquire arising from some circumstances directing the attention of a reasonable prudent realtor to some—some—something unusual. In this case it seems to me that this was just an ordinary transaction. That it's rural property, most of which does require that it be serviced by a well. It is incomplete, and if I accept the evidence as it now stands, that it was represented that there was a good well, that that's the end of the matter, that there's no duty on the realtors to go further and inquire whether that is the actual fact. You know, there's nothing unusual about that well that would alert the ordinary prudent realtor of the need to do something about it. To check it out.

MR. FRIEDMAN: Well, if the court finds that there was no duty, then they can't obviously be negligent. But I still ask the court ....

THE COURT: They—well, they still can be—the defendants still could be—they made the representation, which is—facts show was not true.

MR. FRIEDMAN: Correct.

THE COURT: So that they can be—they can be held liable for having made the same. But not on—not on—(indiscernible) negligence—or negligence theory.

5. The *elements* of innocent misrepresentation were alleged to a sufficient degree. Paragraph 8 of the Ballards' first claim for relief makes

representation is defined by section 552C(1) of the Restatement (Second) of Torts (1977) as follows:

> One who, in a sale, rental or exchange transaction with another, makes a misrepresentation of a material fact for the purpose of inducing the other to act or to refrain from acting in reliance upon it, is subject to liability to the other for pecuniary loss caused to him by his justifiable reliance upon the misrepresentation, even though it is not made fraudulently or negligently.

Id. The Restatement leaves open the question of whether such a cause of action lies against real estate brokers. *Id.* § 552C, Comment g.

[4, 5] We have recognized a cause of action against the *owner* of realty who innocently misrepresents its condition to the purchaser. *Cousineau v. Walker*, 613 P.2d 608 (Alaska 1980). In *Cousineau*, we granted rescission and restitution to a purchaser where the seller made false statements concerning the highway frontage and gravel content of the purchased land. In so doing, we held that an owner guilty of even innocent misrepresentation could not hide behind the doctrine of caveat emptor. *Id.* at 614–16. This is so because owners are presumed to know the character and attributes of the land conveyed and buyers are consequently entitled to rely on the seller's reasonable representations. *See Sorenson v. Adams*, 98 Idaho 708, 571 P.2d 769, 776 (1977), *quoted in Cousineau v. Walker*, 613 P.2d 608, 615 n. 14 (Alaska 1980). The owner of land must therefore be both truthful and informed in making any representations, for fraud includes the pretense of knowledge where there is none. *Spargnapani v. Wright*, 110 A.2d 82, 84 (D.C.App. 1954).

The question presented in this case is whether or not liability for innocent misrepresentation should extend to the owner's agent, the real estate broker, where that party serves as a conduit for the owner's misinformation. Most courts addressing this issue recognize a cause of action by the purchasers of property against the broker for the latter's innocent misrepresentation.[6]

An illustrative case is *Spargnapani v. Wright*, 110 A.2d 82 (D.C.App.1954). There, both the seller and broker were held liable for representing that a house could be heated for a little more than $100.00 per year, when a defect in the boiler made it impossible to heat the house at all. *Id.* at 85. The broker had merely passed on the seller's information, and neither defendant had knowledge of a defect. Nevertheless, the court sustained liability:

> If the broker innocently represented that the heating plant was in workable condition and was mistaken in that representation, or made the representation without knowing whether it was true or false, the injured party may recover in an action for fraud.
>
> ... We may assume that the broker was guilty of no deliberate deception and had no actual knowledge of the concealed defect. But on defendants' own evidence their selling agent did not disclaim such knowledge .... The representation ... was flagrantly inaccurate, since the defect ... made it impossible to heat the house at all .... "Fraud includes the

the necessary allegation concerning Bevins' scienter. Paragraph 2 of the fifth claim for relief alleged that Bevins' agent passed on the representation with the intent to cause action in reliance thereon. Finally, paragraph 15 of the first claim for relief alleged actual reliance. In light of this, plus the court's and the parties' arguments concerning Section 552 of the Restatement, we conclude that Bevins was "adequately notified" that the Ballards were asserting a cause of action based on innocent misrepresentations. *See Clary Ins. Agency v. Doyle*, 620 P.2d 194, 201 (Alaska 1980).

6. *Sodal v. French*, 35 Colo.App. 16, 531 P.2d 972, 973 (1974); *Spargnapani v. Wright*, 110 A.2d 82, 85 (D.C.App.1954); *Pumphrey v. Quillen*, 165 Ohio St. 343, 135 N.E.2d 328, 331 (1956); *Berryman v. Riegert*, 286 Minn. 270, 175 N.W.2d 438, 442 (1970); *Lawlor v. Schepcr*, 232 S.C. 94, 101 S.E.2d 269, 271 (1957); *Polk Terrace, Inc. v. Harper*, 386 S.W.2d 588, 593 (Tex.App.1965). *Contra Lyons v. Christ Episcopal Church*, 71 Ill.App.3d 257, 27 Ill.Dec. 559, 389 N.E.2d 623, 625 (1979).

pretense of knowledge when knowledge there is none."

Id. at 83–84 (citations omitted).

[6] The policy favoring liability for innocent misrepresentation is found on a recognition that purchasers should be entitled to rely on a broker's representations. As one opinion notes:

> Real estate brokers and their agents hold themselves out to the public as having specialized knowledge with regard to housing, housing conditions and related matters. The public is entitled to and does rely on the expertise of real estate brokers in the purchase and sale of its homes. Therefore there is a duty on the part of real estate brokers to be accurate and knowledgeable concerning the product they are in the business of selling—that is, homes and other types of real estate. Courts have held in many cases that purchasers are entitled to rely on real estate brokers' statements.

Lyons v. Christ Episcopal Church, 71 Ill. App.3d 257, 27 Ill.Dec. 559, 389 N.E.2d 623, 628 (1979) (dissenting opinion).

[7] We find this reasoning persuasive. Parties to real estate transactions frequently do not deal on equal terms. Real estate brokers are licensed professionals, possessing superior knowledge of the realty they sell and the real estate market generally. Prospective purchasers recognize this expertise and tend to rely on a broker's representations. Just as purchasers are entitled to rely on an owner's representations, *Cousineau v. Walker,* 613 P.2d 608 (Alaska 1980), purchasers should be entitled to rely on the broker's representations. Any other rule would permit brokers to use misleading statements in selling the property, yet remain immune from liability by simply remaining ignorant of the property's true characteristics. Accordingly, we hold that a purchaser who relies on a material misrepresentation, even though innocently made, has a cause of action against the broker originating or communicating the misrepresentation. *See* Restatement (Second) of Torts § 552C(1) (1977).

In our view, the consequences of recognizing a cause of action in this situation are entirely beneficial. The presence of a cause of action against the broker would tend to lessen the likelihood of transactions tainted by misinformation and confusion. Additionally, recognizing a cause of action against the broker would provide another source of recovery to the purchaser of defective property. Frequently, the owners may move away, leaving the broker as the only reachable defendant. As between the broker who communicated the misrepresentation, and the purchaser whose only fault was to rely on the broker, we think it preferable that the broker bear any loss caused by misrepresentation. Brokers, in turn, can protect themselves from liability by investigating the owner's statements, or by disclaiming knowledge, by requiring the seller to sign at the time of listing a statement setting forth representations which will be made, certifying that they are true and providing for indemnification if they are not.[7] *See Goldman v. Hart,* 134 Ga. App. 422, 214 S.E.2d 670 (1975).

[8] Having determined that a cause of action in innocent misrepresentation exists, it is apparent that the judgment below must be affirmed. Bevins does not contest that the listing he prepared mentioned a 100 foot well, that this listing would reasonably lead buyers to assume the well was good, that the Ballards so relied, and that the well was, in actuality, inadequate. These facts establish liability under an innocent misrepresentation theory. *See* Restatement (Second) of Torts § 552C(1) (1977). The decision below is therefore AFFIRMED.[8]

COMPTON, J., not participating.

7. Some listing agreements contain indemnification provisions, entitling the broker to indemnity from the owner should the broker's communication of the owner's representations engender liability. *See, e.g., Barnes v. Lopez,* 25 Ariz.App. 477, 544 P.2d 694, 698–99 (1976).

8. This case is distinguishable from *Stepanov v. Gavrilovich,* 594 P.2d 30 (Alaska 1979), where-

CONNOR, Justice, with whom RABINOWITZ, Justice, joins, dissenting in part.

I dissent from the holding that an action for innocent misrepresentation should be permitted against the real estate broker.

When a realtor acts as a mere conduit for passing on information supplied by the seller, he should be under no duty independently to verify that information unless he has reason to believe the information to be false. See *Lyons v. Christ Episcopal Church*, 71 Ill.App.3d 257, 27 Ill.Dec. 559, 389 N.E.2d 623, 625 (1979). Allowing an innocent misrepresentation action against the broker in such circumstances is quite close to imposing strict liability. There is no reason to make the broker the "insurer" of the seller's representation.

Although we recognized a claim based on innocent misrepresentation in *Cousineau v. Walker*, 613 P.2d 608 (Alaska 1980), that case is distinguishable from a case between a buyer and a broker. Sellers who make representations about their property should be held to the accuracy of the representations, as they are normally in the best position to know the facts. But a broker often has little personal knowledge of the property which he offers for sale. I see no reason to make the broker the guarantor of representations emanating from the seller. I would hold that innocent misrepresentation is not available as a cause of action by the buyer against the broker. Thus, I would reverse the judgment of the superior court. I agree with the balance of the majority opinion.

in we affirmed a judgment in favor of a small "subdivider," in a damage action founded upon the subdivider's innocent failure to disclose undetected permafrost conditions in lots sold to the plaintiffs.

Subdividers are subject to, and protected by, the Alaska Land Sales Practices Act, AS 34.55. Under the act, a subdivider is liable for material misrepresentations or omissions affecting the land, "unless in the case of an untruth or omission it is proved that ... the person offering or disposing of subdivided land did not know and in the exercise of reasonable care could not have known of the untruth or omission." AS 34.55.030(a). Thus, a "subdivider" is not liable for innocent misrepresentations. Such liability is barred by the statute. This protection, however, is not available to the defendants in the case at bar, since they are not "subdividers."

Laureen BAILEY, Appellant and Cross-Appellee,

v.

Dennis J. HAAS, Appellee and Cross-Appellant.

Nos. 6177, 6688.

Supreme Court of Alaska.

Dec. 3, 1982.

Cross appeals were taken from a decision of the Superior Court, Third Judicial District, Kenai, James A. Hanson, J., which was entered in an action brought pursuant to the Uniform Reciprocal Enforcement of Support Act. The Supreme Court, Connor, J., held that: (1) failure of petition to include a prayer for arrearages did not justify dismissal of the claim where respondent had notice of the claim for arrearages at the very latest by time motion for an order of support was filed, and (2) request for arrearages in child support need not be reduced to judgment by petitioning state prior to recovering such arrearages in an Uniform Reciprocal Enforcement of Support Act action.

Reversed and remanded.

1. Parent and Child ⇐3.4(2)

Failure of petition to initiate support proceedings under Uniform Reciprocal Enforcement of Support Act to include a prayer for arrearages did not justify dismissal of the claim where respondent had notice of the claim for arrearages at the very latest by time motion for an order of support was filed. AS 25.25.010–25.25.270.

REALTOR®

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Ken Brown - 1986 president

April 9, 1985

Honorable M. Mike Miller
Chairman House Judiciary Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Miller,

The Alaska Association of REALTORS testified before the House Labor and Commerce Committee in opposition to H.B. 232.

Our position has not changed and we are not in favor of this Bill. This Bill would reverse compromise legislation which was passed last year. Last year's legislation only became effective October, 1984. This Bill would also reverse a May, 1984 Supreme Court decision regarding innocent misrepresentation. We do not feel that sufficient time has passed to evaluate the effect of those decisions.

As an Association, we feel strongly that the public is served by strict application of the Alaska Statutes regarding licensure and examination enforcement. We also believe that those licensees who are harming the public should be strictly, severely and promptly dealt with.

On the matter of the $250 Surety Fund filing fee, we have felt and still feel that this figure is perhaps too large.

As a part of an ongoing process, the industry, the Real Estate Commission and the Administration, are making legislative and regulatory changes which will be proposed this summer. Part of the suggested legislation will include the lowering of the $250 Surety Fund filing fee.

This proposed legislation will be before you in 1986 for consideration and refinement. For this reason, we feel passage of H.B. 232 is premature.

Sincerely,

Betty Lou Cipra
1985 President

BLC/dd

A PERFORMANCE REPORT ON THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT ALASKA REAL ESTATE COMMISSION

September 19, 1985

Audit Control Number

08-1224-86-R

Commissioner, Department of Commerce and Economic Development	Loren H. Lounsbury
Deputy Commissioners, Department of Commerce and Economic Development	Terry Elder Greg Baker

Members of the
Alaska Real Estate Commission

Chairman	Dave Ribacchi
Vice-Chairman	Barbara J. Hill
Member	LaVerne Collins
Member	Gilbert Serrano
Member	John E. Benson
Member	Barry L. Brown
Member	Iola Robinson

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811-3300

October 29, 1985

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and 44 of the Alaska Statutes (sunset legislation), the attached report is submitted for your review.

A PERFORMANCE REPORT ON THE
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
ALASKA REAL ESTATE COMMISSION

September 19, 1985

Audit Control Number

08-1224-86-R

Gerald L. Wilkerson

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

TABLE OF CONTENTS

	Page
Purpose and Scope of the Report	1
Organization and Function	3
Report Conclusion	5
Findings and Recommendations	7
Analysis of Public Need	13
Appendixes:	
A. Schedule of General Fund Revenues Compared with Operating Expenditures	19
B. Schedule of Examination Statistics	20
C. Summary of Responses to a Real Estate Licensee Questionnaire	21
D. Office of Management and Budget Report on the Alaska Real Estate Commission	25
Agency Response:	
Department of Commerce and Economic Development	59
Alaska Real Estate Commission	60

PURPOSE AND SCOPE OF THE REPORT

Purpose

In accordance with the provisions of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), an examination of the Alaska Real Estate Commission was conducted to determine if the Commission has been operating in an effective, efficient, and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the Alaska Real Estate Commission should be reestablished. The law currently specifies that this Commission will terminate on June 30, 1986, but will continue until June 30, 1987 for the purpose of concluding its affairs.

The policy and audit approach utilized by the Division of Legislative Audit for performance reports can best be described as "audit by exception." This methodology focuses audit effort on areas of an auditee's operations that have been identified by a preliminary survey as having a high degree of probability for needing improvements.

Therefore, by design, finite audit resources are used to identify where and how improvement can be made and little time is devoted to reviewing well-run operations or programs. Consequently, this report highlights those areas needing improvement and does not emphasize those operations and programs that are properly functioning.

Scope

The major areas of our examination were the licensing, examination, administration, complaint, and affirmative action functions of the Commission. We reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Tests of records and documents of the Commission.
3. Discussions with Commission members and staff of the Commission.
4. Complaints filed with the Commission and the Ombudsman's Office.
5. Questionnaires sent to Commission members and Alaska licensed real estate brokers, associate brokers, and salespersons.

ORGANIZATION AND F CTION

The Alaska Real Estate Commission (AREC) was established and operates under Title 8, Chapter 88 of the Alaska Statutes. It is a regulatory commission consisting of five real estate brokers or associate brokers and two public members.

The Commission regulates persons licensed as real estate brokers, associate brokers, and salespersons by:

1. Examining and issuing licenses to qualified applicants.

2. Establishing or amending rules and regulations necessary to enforce State statutes.

3. Holding hearings to revoke or suspend the license of a person violating real estate statutes or regulations.

4. Prosecuting, through the Department of Law, violations of real estate statutes and regulations.

AREC is also authorized to conduct real estate clinics, meetings, or educational institutes for the purpose of raising the standards of the real estate business and the competency of licensees.

Real estate associate brokers and brokers must pass an examination and have had at least 24 months of active and continuous experience as a real estate salesperson. Additionally, an applicant for an associate broker or broker license may not be under indictment for any felony involving moral turpitude or five or seven years, respectively, have elapsed since completing a sentence for a felony involving moral turpitude. A broker differs from an associate broker in that a broker must be an owner of a real estate business or employed as a broker by a corporation or partnership. An associate broker has met the statutory requirements of a broker, but is employed by a real estate broker.

A real estate salesperson must pass an examination; be at least 19 years old; not be under indictment for, or completed the sentence imposed if convicted of, any felony involving moral turpitude; and be employed by a real estate broker.

Real estate licensees must pay a surety fund fee, in lieu of obtaining a corporate surety bond, when obtaining or renewing their licenses. These fees are deposited in the Real Estate Surety Fund and are to be used for reimbursement of losses suffered as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of a real estate licensee. Claims for reimbursement require a

$250 filing fee and payment is made by AREC after a hearing is held. The Surety Fund balance in excess of $250,000 may be appropriated for educational purposes.

Chapter 167, SLA 1980 gave the Commission the power to appoint an executive director, employ assistants, and approve the appointment of an investigator or auditor. Prior to enactment of this legislation, the Commission received staff support from the Division of Occupational Licensing.

REPORT CONCLUSION

Policy Issues

This report contains policy issues raised as a result of our evaluation of various Commission practices. The final policy decisions affecting these practices are not within the scope of the report but require legislative consideration. In debating these issues, the oversight committees should consider the findings and recommendations presented in this report so the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion, the Alaska Real Estate Commission (AREC) should continue to regulate and license real estate professionals. The regulation and licensing of the profession is necessary because of the potential for substantial economic loss resulting from the business practices of unqualified, incompetent, or dishonest real estate practitioners.

However, substantial improvement needs to take place in the operations of the Commission. The Office of Management and Budget (OMB) conducted a comprehensive management audit of AREC and issued its report, "Management Audit Report on the Alaska Real Estate Commission" dated December 1984. We support the recommendations made by OMB, but note little progress to date in implementation of those recommendations. Implementation of the recommendations contained in this report and the OMB report (see Appendix D) would enable AREC to perform more effectively and efficiently.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Alaska Real Estate Commission (AREC) should revise the procedures for processing and closing licensing complaints.

Currently AREC uses procedures for processing licensing complaints which are ineffective and inefficient. A copy of each complaint file is sent to an AREC commissioner. This "coordinating commissioner" is supposed to assist the Accountant III (REC investigator/auditor hereinafter referred to as investigator) in his investigation by offering real estate expertise. For each complaint recommended for closure, the commissioner is supposed to review the file and approve or disapprove the closure recommendation. During the next Commission meeting, those complaints approved for closure by individual commissioners are officially voted closed by the entire Commission.

The first sunset review of AREC by Legislative Audit dated May 7, 1979, found fault with commissioners being informed as to the facts and being involved in the investigations and recommended that investigation procedures be changed and revised to develop an accurate and proper system for handling complaints. A follow-up review dated June 4, 1981, recommended that a formal system of investigative procedures be developed, approved, and documented prior to the investigative responsibility being transferred from the Division of Occupational Licensing. An Ombudsman investigation completed on April 13, 1983, included recommendations addressing delays in the management and processing of licensing complaints. An Office of Management and Budget (OMB) management report dated December 1984 found that AREC lacked a formal, structured procedure for processing license complaints.

The executive director and investigator have established informal procedures in response to these recommendations that conflict with those in use by other regulatory licensing boards under Occupational Licensing. We recommend AREC take a proactive, rather than reactive approach and revise its procedures to include the following:

1. Case files should not be copied and sent to a commissioner. This is the single most compromising element of the present system.

2. The investigator should fully investigate every complaint. This may involve nothing more than reading the complaint form and supporting documents, but the case file should contain evidence of the investigation conducted.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

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3. The investigator should prepare a generic summary of the complaint, evidence, investigation, and conclusion reached. If that conclusion recommends closure due to no violation or no jurisdiction, the summary should be sent to each commissioner at least two weeks prior to the next meeting for action by the entire Commission. At the meeting, the complaint could either be referred back to the investigator for further action or closed.

4. If the investigator determines a violation has occurred, an accusation or statement of issues would be prepared as under the current procedures. If a hearing is requested, the commissioners would act on the hearing officer's proposed decision.

5. These procedures should be formalized and supported by time standards. Implementation of these procedures would allow the investigator to be more efficient. Cases recommended for closure would be acted on at the next meeting and the carrying over of cases to the next meeting due to the absence of one or more commissioners would not occur. The amount of copying and mailing costs, as well as time spent tracking complaints, would be reduced substantially.

Recommendation No. 2

AREC should actively pursue recovery of Surety Fund claims paid and the associated hearing costs from the involved licensees.

Alaska Statute 08.88.071(b) allows AREC to suspend the license of a broker, associate broker, or salesperson until an agreement is reached on terms and conditions for the repayment to the Real Estate Surety Fund of the money awarded to the claimant and the costs of hearing the claim. To date, repayment by the involved licensee has been more voluntary than required. Of the approximately $430,000 of claims and associated hearing costs paid from the Surety Fund, only fifteen percent or $65,000 has been recovered.

The Attorney General's (AG) Office must file suit to collect these payments. Several of the larger payouts have recently been turned over to an Assistant AG for action. The Commission has been trying to develop a process to recover through Small Claims Court, which has a $2,000 limit, those claims under $5,000 which the AG's Office will not prosecute. This process has not been implemented due to lack of time by the investigator to follow through.

We recommend that judgement, execution, and collection be undertaken on a test basis as soon as possible through the appropriate trial court in order to refine the procedures necessary for recovery of monies owed to the Surety Fund.

Initially, active licensees should be notified that their licenses will be suspended if an agreement on repayment is not reached. If these procedures reveal inadequate authority for recovery, statute changes may be necessary. However, lack of action because a problem may exist is not acceptable. These procedures must be formalized and written in order to facilitate recovery.

Recommendation No. 3

AREC should undertake a major revision of Alaska Statutes, Title 8, Chapter 88.

The Attorney General's Office as well as staff and commissioners of AREC pointed to statutes which needed revision. Some sections need clarification while others appeared to give inadequate authority to the Commission to carry out its duties. Some examples follow:

1. Duties of the Commission. AS 08.88.071.
   (a)(3) could be changed to a simple statement such as: "hold hearings and order disciplinary sanctions against a person who violates this chapter or the regulations of the commission." A separate section is needed delineating grounds for denial, suspension, and revocation of a license. A section on penalties or disciplinary sanctions is usually found in other chapters of Title 8.

   (b) should be relocated to Article 5, the Real Estate Surety Fund. Combined license and Surety Fund claim hearings are now being scheduled and suspension of a license until repayment of the claim should not be confused with suspension for a licensing violation. Qualifying language may be needed to distinguish between suspension for a violation and suspension for a repayment agreement in those combined hearings. Repayment of the Surety Fund claim does not "buy back" the license suspended for a violation.

2. Entitlement to license. AS 08.88.171.
   This section should be retitled "eligibility for license" or "qualifications for license." At this time, a broker or associate broker is still "entitled" to a salesperson license even though the Commission revokes the broker or associate broker license. If this is not the intent of the Legislature, a provision should be included that licensees lose their eligibility for all licenses upon license revocation and that license eligibility can only be reinstated by the Commission.

3. Reinstatement of lapsed license. AS 08.88.241.
   The Commission has taken the position that a broker, associate broker, or salesperson whose license has

lapsed for more than two years must be reexamined before reinstatement and must begin at the salesperson level. If the intent of the legislation is that the broker and associate broker licenses cannot be reinstated after examination, that language should be inserted in the statutes. The current policy is to reinstate any license lapsed less than two years without examination.

4. Out-of-state licenses. AS 08.88.261.
   This section should be repealed. The State of Alaska does not have reciprocity agreements with other states. License by endorsement is available to a person who holds a valid active real estate license issued by another state upon passing an examination in Alaska law and meeting the requirements of AS 08.88.171.

5. Education. AS 08.88.091.
   Authority to sell informational materials at a price designed to recover costs and deposit the money in the Real Estate Surety Fund should be added. The Commission should establish guidelines for charges for copies exceeding one per licensee.

Specific language should be added regarding the liability of the licensee to repay Surety Fund claims and hearing costs paid from the Surety Fund. Procedures should be developed in consultation with the Attorney General's Office to standardize and expedite recovery efforts. Other areas needing clarification are definitions of "real estate" and "employed" as used in Chapter 88.

This project should be prioritized. A reimbursable services agreement with the Department of Law, if necessary, or a contract with a private attorney would assure the time needed to accomplish this goal.

In addition, the Commission should revise the regulations, License Biennium and License Renewal, 12 AAC 64.070 and .071. A staggered renewal should be instituted to spread the workload more evenly throughout the biennium. An alternative to staggering license renewal within the biennium could be to seek statutory change to allow for a triennial renewal and staggering license renewal over three years. This change would also necessitate a change to the fee section of the statutes, AS 08.88.221.

Recommendation No. 4

AREC should analyze the need for an additional clerical position.

The staff of AREC consists of an executive director, an investigator, a licensing examiner, two half-time hearing officers, a secretary, and a clerk typist. Staff complains

of a workload such that they are unable to complete their assigned duties. The investigator and hearing officers were added to staff with no increase in clerical support. Each of these positions generate a large amount of clerical work. The investigator spends a great deal of time tracking complaint files and Surety Fund claims because no one else is available to do it. The license examiner must do most of the typing and filing of that position due to lack of support. The hearing officers currently have a backlog of proposed decisions awaiting typing. Additionally, AREC is now involved in a computer conversion which will require a substantial amount of time of the licensing examiner and investigator to develop programs to assist them in their duties. When the programs are developed all the information for the licensing history and complaint files must be entered in the system. Also, 1986 is the biennial renewal year which historically overwhelms the staffing available.

Thirty-one percent of the licensees responding to a questionnaire had complaints regarding the handling of applications, fees, or other administrative duties of the Commission. An accurate, up-to-date roster of licensees is still not available. The Commission has not published its quarterly newsletter since February 1985, which was a copy of the statutes and regulations. The executive director states he does not have time to manage the appropriation from the Surety Fund for education. However, a position has recently been authorized, funded by the Surety Fund, for an educational coordinator. This position may also require clerical support.

We believe the need for additional temporary clerical help is critical at this time. The license examiner and investigator must have time available to assist in development of computer programs. Existing staff must have assistance with the biennial renewal of licenses and data input. The Commission should try to make the funding available from the FY 86 budget, seek assistance from any departmental typing pool, or request supplemental funding. Implementation of the recommendations such as changing the license renewal date and computerizing operations may reduce the workload and streamline operations so that a permanent position is not necessary in the long-term. Further analysis will be needed after the changes are instituted. However, we believe temporary assistance is critically necessary at this time.

Recommendation No. 5

The investigator should develop a time accounting system which would document investigative actions.

During the course of our review, fifty license complaint files were examined from FY 84 and 85. Documentation

included the license complaint form and supporting documentation, a checklist, priority evaluation form, copies of the ten-day letters sent and the responses received, and the investigator's report/recommendation. Twenty-five of the fifty files had one or more errors noted such as lack of forms, incomplete forms, no commissioner signatures on closure recommendations, or missing files. It was extremely difficult to determine what, if any, investigation was done. Some files were referred back to the investigator marked "investigate" but no further action had been documented.

The investigator was unable to estimate how much time he spent on investigations, tracking Surety Fund claims, and other assigned duties. Implementation of a time accounting system, in conjunction with the computerized complaint tracking system, would analyze his workload as well as document investigative procedures.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analysis of Commission activities relate to the public need factors defined in the "sunset" law. This analysis is not intended to be all inclusive, but addresses those areas we were able to cover within the scope of our review.

I. The extent to which the board, commission, or program has operated in the public interest.

A. The Commission has held five meetings each year during the last three years.

B. The Commission has implemented regulations to administer Surety Fund claims.

C. The Commission has issued fifteen stop orders to prevent unlicensed activity from continuing.

D. The Commission has sponsored seminars and publications on real estate matters.

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

A. Procedures for processing licensing complaints are ineffective and inefficient (see Recommendation No. 1). Additionally, complaint files often lack documentation to determine if investigations are properly conducted (see Recommendation No. 5).

B. The statutes governing the Commission are not clear and concise and need revision (see Recommendation No. 3).

C. Existing staff needs temporary clerical assistance through completion of computer programming and the biennial license renewal (see Recommendation No. 4).

D. The Commission requires increasingly more legal assistance from the Department of Law, Attorney General's Office, which may not be available under the present budgetary program.

III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.

A. The Commission succeeded in having some obsolete or vague statutory requirements repealed or amended. Changes were also enacted to the Surety Fund claim process. A claimant is required to pay a $250 filing fee, which may not be in the public's best interest.

IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

A. Commission meetings are announced to the public. Time is scheduled to hear from interested persons.

B. Comments on regulation changes are solicited by announcement in public newspapers and notices to interested associations.

V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

A. The Commission announces proposed regulation changes or additions in newspapers in accordance with the Administrative Procedures Act.

B. The Commission formed a Project Action Committee composed of commission members, licensees, and the public. Task forces for statutes and regulations, education, and agency were established to make recommendations in those areas.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

A. We found no instances where the Commission did not respond to public inquiries.

B. During the last three years, forty-nine complaints have been closed by the Office of the Ombudsman. Ten of these were found to be justified or partially justified and most involved unreasonable delay or lack of action on licensing complaints and Surety Fund claims.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

A. The Commission gave the licensing examination each month in Anchorage and quarterly in Fairbanks, Kenai, and Juneau. Approximately 7,500 persons took the examination with 3,100 or 41 percent passing during the past three years. Licenses issued totalled 2,329.

B. The Commission revoked, suspended, or denied thirty licenses in the last three years. As of June 30, 1985, the Commission had 176 open license complaints.

VIII. The extent to which State personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

A. We found no evidence of problems in this area.

IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

A. Please refer to the previous section, Findings and Recommendations, and the December 1984 report by OMB included in its entirety as Appendix D of this report.

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