

ALASKA LEGISLATURE COMMITTEE BILL FILES - 1987 - 1988 8879

SB 408

126

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SB

408

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 4/15/88 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER:

**FISCAL NOTE(S) ATTACHED **
IN ACCORDANCE WITH AS 24.08.035
(see below)

4/19/88

DATE TURNED INTO OFFICE

5/4/88

Mr. President:

Finance

Committee considered

SSSB 408

stabilization of the real estate market; authorizing the establishment of real property liquidating organizations; efd

and recommended:

replace with

CS

SS SB 408 (Fin)

same title

attached amendment(s) and

new title

do pass

do not pass

no recommendation

individual recommendations

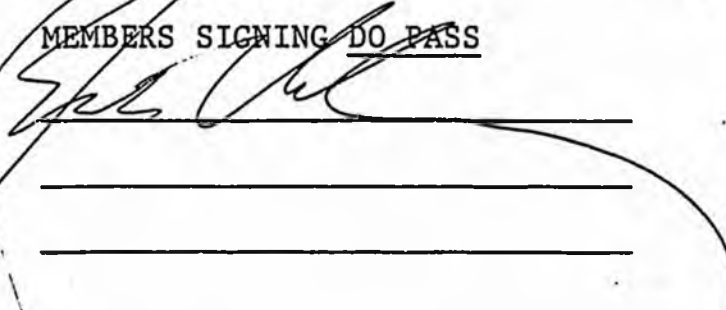
further referral to _____

letter of intent adopted and attached

** Committee attached or adopted fiscal note(s)
 zero fiscal impact \$15M

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS



Fred G. Harhoff No Rec
Dan Trick No Rec
Willie King No Rec

Rich Holford NO REC
Chairman signature and recommendation

Committee Backup Attached

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSSSSB 408 (FIN)
PUBLISH DATE: 5/2/88

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce
Title: Division of Banking Establishing BRU: _____
Real Property Liquidating Program...
Sponsor: Kelly Components: _____
Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						

CAPITAL		15,000.0	0	0	0	0
---------	--	----------	---	---	---	---

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER*		15,000.0				
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The funding source to support the state's equity investment in the real property liquidation program established in CSSSSB 408 (Finance) is from the revolving fund assets of the Alaska Housing Finance Corporation.

Prepared by: Rick Halford Phone: _____
Division: Senator Rick Halford, Co-Chairman Date: 5/2/88
Senate Finance Committee

Approved by Commissioner: _____ Date: _____
Agency: _____

Distribution (by preparer):

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

Original sponsors: Kelly and Sturgulewski

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 408 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the division of banking, secu-
7 rities, and corporations; establishing the real prop-
8 erty liquidating program within the division; au-
9 thorizing certain public corporations to participate
10 in the program; and providing for an effective date."

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

12 * Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature
13 finds that

14 (1) there have been in the state several failures of state and
15 federally chartered financial institutions and one bank consolidation by
16 the Federal Deposit Insurance Corporation under 12 U.S.C. 1823(c);

17 (2) these financial institutions as well as other businesses and
18 state and federal agencies currently hold large portfolios of distressed
19 real estate loans and real property;

20 (3) these businesses and government agencies need to be permit-
21 ted to cooperate in administering these loans and properties to avoid fur-
22 ther adverse effects on the state's real estate markets and to stabilize
23 the state's banking system; and

24 (4) the maintenance of stable and orderly markets for the pur-
25 chase and sale of commercial and residential real estate in the state is
26 essential to the economy of the state and the welfare of its citizens, as
27 is the stability of the state's banking system.

28 (b) The legislature intends to ensure the stability of the state's
29 banking system and real estate markets and prevent a precipitous decline in

1 real estate prices by displacing competition with government regulation in
2 matters relating to the administration, management, and disposition of real
3 property in the state and loans secured by the property held by financial
4 institutions, other businesses, and state and federal agencies. By au-
5 thORIZING the creation of real property liquidating organizations and
6 mandating active state supervision of these organizations, the legislature
7 intends that each real property liquidating organization and all persons
8 and entities who subscribe or grant assets to, contribute funds or services
9 to, obtain a beneficial interest in, or participate in the management of
10 the organization will be fully immunized against potential liability under
11 federal antitrust laws and state antitrust, competition, and trade prac-
12 tices laws arising from the operation of the organization or the activities
13 of any person or entity performed in connection with the organization.

14 * Sec. 2. AS 06 is amended by adding a new chapter to read:

15 CHAPTER 50. REAL PROPERTY LIQUIDATING PROGRAM.

16 Sec. 06.50.010. RESPONSIBILITY OF DIRECTOR. (a) The real
17 property liquidating program is established in the division of bank-
18 ing, securities, and corporations. The director of the division shall
19 administer this chapter.

20 (b) By February 1 of each year the director shall submit a
21 report to the legislature summarizing activities of the division under
22 this chapter during the previous year.

23 Sec. 06.50.020. FORMATION. (a) Three or more grantors may
24 create a real property liquidating organization by filing the orga-
25 nizational documents with the director. The director and the governor
26 shall review the documents and may approve them if they comply with
27 (c) of this section and are consistent with the purposes of this
28 chapter. Conveyance of assets to or disposition of assets by an
29 organization is not effective until the organizational documents have

1 been reviewed and approved by the director and the governor.

2 (b) At the time organizational documents are filed with the
3 director under (a) of this section, a copy shall be made available by
4 the grantors to the legislative auditor. The legislative auditor
5 shall review the documents and report to the Legislative Budget and
6 Audit Committee. The committee may recommend approval or disapproval
7 of the documents to the governor.

8 (c) The organizational documents may not provide for transfer by
9 a grantor to an organization of assets other than real property in the
10 state, loans secured by real property in the state, and cash. The
11 organizational documents must

12 (1) state the purpose of the organization;

13 (2) identify all grantors who have subscribed to the orga-
14 nization and all persons who will possess an interest in the orga-
15 nization upon its formation;

16 (3) describe the manner in which the organization will be
17 managed;

18 (4) prescribe the method under which distributions to the
19 grantors and other beneficiaries will be made;

20 (5) provide for the conveyance to the organization of all
21 or part of the grantors' portfolios of commercial and residential real
22 property in the state and real estate loans secured by real property
23 in the state;

24 (6) provide for the transfer to the organization of cash in
25 sufficient amounts to enable the organization to operate;

26 (7) ensure that each grantor contributes a reasonable
27 amount of cash to be used for operating expenses of the organization;

28 (8) ensure that all assets transferred to the organization
29 are appraised at fair market value at the time of the transfer;

1 (9) provide for the orderly disposition of the real prop-
2 erty and real estate loans of the organization at prices to be de-
3 termined by the organization under regulations adopted by the direc-
4 tor;

5 (10) provide for expenditures to manage organization assets,
6 including expenditures to preserve or enhance the value of the orga-
7 nization's properties;

8 (11) establish terms for the dissolution of an organization;
9 and

10 (12) provide for the establishment of other terms and con-
11 ditions relating to the sale or other disposition of assets that the
12 grantors consider necessary or appropriate to ensure that the orga-
13 nization will be operated in a manner that will provide for orderly
14 disposition of the organization's assets and promote stable real
15 estate markets and a stable banking system in the state.

16 Sec. 06.50.030. AUDITS AND REPORTS. (a) In addition to the
17 record keeping requirements specified in regulations adopted by the
18 director or in the organizational documents, the organization shall
19 retain a certified public accountant to annually prepare and submit to
20 the director on or before April 1 an audited balance sheet, income
21 statement, statement of principal, statement of changes in financial
22 position, schedule of all dispositions of real property, real estate
23 loans, and other assets made by the organization during the previous
24 calendar year, and letters

25 (1) certifying that all dispositions of real property, real
26 estate loans, and other assets, and all distributions during the year
27 were made in accordance with the provisions of the organizational
28 documents and this chapter, or identifying any variance; and

29 (2) with respect to the internal financial controls and

1 practices of the organization, providing recommendations the accoun-
2 tant considers appropriate.

3 (b) The organization shall prepare and file with the director
4 and the legislative auditor, on a quarterly basis, a report containing
5 the following:

6 (1) a schedule of all real property, real estate loans, and
7 other assets held by the organization;

8 (2) the sale price and all other significant terms of sale
9 for real property sold by the organization and amount of proceeds
10 received by the organization from real estate loans and other assets
11 since the date of the previous report; and

12 (3) a proposed operating plan for the next quarterly period
13 that conforms with regulations adopted under this chapter.

14 Sec. 06.50.040. REVIEW AND APPROVAL. (a) The director shall
15 review each report filed under AS 06.50.030(b) and approve or disap-
16 prove the proposed operating plan within 20 days after filing. In
17 reviewing each report and operating plan, the director shall consider
18 current market conditions. The director may approve an operating plan
19 if the director finds that the report and plan

20 (1) comply with the purposes of this chapter;

21 (2) ensure all provisions of trust agreements and agree-
22 ments between state entities and organizations are adhered to;

23 (3) provide policies that meet the requirements of law and
24 regulations, establish sound fiscal practices, and ensure proper
25 management;

26 (4) ensure state investments will not be adversely affected
27 by poor management or policies, including payment of excess compen-
28 sation or benefits to officers and employees of the organization; and

29 (5) ensure that the organization will have the amount of

1 cash necessary for operating expenses during the quarter.

2 (b) If a proposed operating plan is approved by the director, it
3 shall be submitted for approval or disapproval by the governor. The
4 legislative auditor shall review the operating plan and report to the
5 Legislative Budget and Audit Committee. The committee may recommend
6 approval or disapproval of the plan to the governor.

7 (c) Within five days after the director notifies an organization
8 of its intention to inspect business records, all business records
9 maintained by the organization shall be available for review and
10 examination by the division of banking, securities, and corporations
11 at the organization's principal place of business, during regular
12 business hours. The director shall examine the business records of an
13 organization on a regular basis at least twice each calendar year to
14 determine whether they demonstrate

15 (1) proper endorsements of loans and agreements;
16 (2) perfection of interests in collateral;
17 (3) proper appraisals and other determinations of value;
18 (4) proper assessment of the financial position of gran-
19 tors, investors, or borrowers; and

20 (5) other matters the director considers necessary.

21 (d) If the governor or director disapproves a proposed operating
22 plan or the director concludes, after an inspection of business re-
23 cords, that the organization is being administered materially contrary
24 to statute, regulation, or a previously approved operating plan, the
25 director shall notify the organization and all grantors in writing,
26 specifying all deficiencies and prescribing appropriate remedies. If
27 the organization fails to remedy deficiencies in accordance with the
28 director's prescriptions within 60 days after receipt of the notice,
29 the director may commence proceedings under AS 06.01.030. A revised

1 operating plan is also subject to approval by the director and the
2 governor and shall be made available for review by the legislative
3 auditor.

4 (e) The expenses of the division of banking, securities, and
5 corporations reasonably incurred in reviewing and approving a proposed
6 operating plan or inspecting business records under this section shall
7 be charged to and paid by the organization. Receipts shall be depos-
8 ited into the general fund and may be appropriated to the Department
9 of Commerce and Economic Development for costs of administering this
10 chapter.

11 Sec. 06.50.050. LEGISLATIVE AUDITS. (a) The legislative audi-
12 tor shall audit each organization at least once each year. The legis-
13 lative audit division has free access to all books and papers of an
14 organization that relate to its business and books and papers kept by
15 a director, officer, or employee relating to or upon which a record of
16 its business is kept, and may summon witnesses and administer oaths or
17 affirmations in the examination of the directors, officers, or employ-
18 ees of the organization or any person in relation to its affairs,
19 transactions, and conditions, and may require and compel the produc-
20 tion of records, books, papers, contracts, or other documents by court
21 order if not voluntarily produced.

22 (b) The legislative auditor and the auditor's employees may not
23 disclose information acquired by them in the course of an audit of an
24 organization concerning the particulars of the business or affairs of
25 a person unless the information is required to be disclosed by law or
26 under a court order. However, the legislative auditor shall prepare a
27 report summarizing findings of an audit conducted under this section
28 for the president of the senate, the speaker of the house of represen-
29 tatives, and the Legislative Budget and Audit Committee. Upon

1 approval of the Legislative Budget and Audit Committee, a report pre-
2 pared under this section shall be made public.

3 Sec. 06.50.060. EXEMPTION. (a) If the director determines that
4 the exemption is necessary to carry out the purposes of this chapter,
5 the Department of Commerce and Economic Development may by regulation
6 exempt transactions under this chapter by organizations from any fee,
7 authorization, permit, filing, or registration requirement of or
8 administered by the department.

9 (b) Each organization is exempt from AS 45.50.562 - 45.50.596.
10 Activities in connection with an organization of a person or entity
11 that subscribes, contributes real property, real estate loans, or cash
12 to, obtains a beneficial interest in, or participates in the manage-
13 ment of the organization are exempt from AS 45.50.562 - 45.50.596.

14 Sec. 06.50.100. DEFINITIONS. In this chapter

15 (1) "director" means the director of the division of bank-
16 ing, securities, and corporations;

17 (2) "grantor" means a federally or state chartered finan-
18 cial institution, federal or state agency, municipality, licensed
19 insurer, or financing company that conveys real property in the state,
20 loans secured by real property in the state, and cash to, and thereby
21 obtains a beneficial interest in and the right to participate in the
22 management of, a real property liquidating organization;

23 (3) "real property liquidating organization" or "organiza-
24 tion" means a corporation, trust, fund, partnership, joint venture, or
25 other entity created to acquire, maintain, manage, market, administer
26 and sell, liquidate, or otherwise dispose of real property in the
27 state or loans secured by real property in the state and to distribute
28 the proceeds to its beneficiaries, in accordance with organizational
29 its documents.

1 * Sec. 3. AS 18.56.090 is amended by adding a new paragraph to read:

2 (29) convey real property in the state, loans secured by
3 real property in the state, and cash in an amount not to exceed
4 \$15,000,000 to, acquire a beneficial interest in, and participate in
5 the management of, a real property liquidating organization estab-
6 lished under AS 06.50 if

7 (A) state corporations and agencies are granted pri-
8 ority to the assets of the organization over other grantors; and

9 (B) the corporation will realize a rate of return of
10 at least five percent in its total investment in the organiza-
11 tion.

12 * Sec. 4. AS 44.33 is amended by adding a new section to read:

13 Sec. 44.33.027. DIVISION OF BANKING, SECURITIES, AND CORPORA-
14 TIONS. The division of banking, securities, and corporations is
15 established in the department. The director of the division of bank-
16 ing, securities, and corporations shall be appointed by the governor
17 and serve a four-year term or until a successor is appointed. The
18 director serves at the pleasure of the governor. The director

19 (1) must be a United States citizen;

20 (2) must, within 15 years before appointment to office,
21 have had a minimum of five years management experience with a finan-
22 cial institution or as an employee of a state or federal agency that
23 supervises financial institutions;

24 (3) may not, within five years before appointment to of-
25 fice, have served as an officer or director of a financial institution
26 that was subject to a disciplinary order issued by the division of
27 banking, securities, and corporations, or a federal agency or agency
28 of another state that supervises financial institutions, during the
29 five-year period.

1 * Sec. 5. AS 44.88.080 is amended by adding a new paragraph to read:

2 (25) to convey real property in the state or loans secured
3 by real property in the state to, acquire a beneficial interest in,
4 and participate in the management of, a real property liquidating
5 organization established under AS 06.50 if

6 (A) state corporations and agencies are granted pri-
7 ority to the assets of the organization over other grantors; and

8 (B) the corporation will realize a rate of return of
9 at least five percent in its total investment in the organiza-
10 tion.

11 * Sec. 6. AS 06.50.010, 06.50.020, 06.50.030, 06.50.040, 06.50.050,
12 06.50.060, 06.50.100; AS 18.56.090(29); and AS 44.88.080(25) are repealed.

13 * Sec. 7. Sections 1 - 5 of this Act take effect June 1, 1988.

14 * Sec. 8. Section 6 of this Act takes effect June 1, 1993.

RH: 7/30/88
RU: v - y
FZ: Ob; B, S
XB&A Q y.
w/d

5/4/88



#1

ADOPTED
*Am 3, 8

Original sponsors: Kelly and Sturgulewski

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 408 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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17 (2) these financial institutions as well as other businesses and
18 state and federal agencies currently hold large portfolios of distressed
19 real estate loans and real property;

20 (3) these businesses and government agencies need to be permit-
21 ted to cooperate in administering these loans and properties to avoid fur-
22 ther adverse effects on the state's real estate markets and to stabilize
23 the state's banking system; and

24 (4) the maintenance of stable and orderly markets for the pur-
25 chase and sale of commercial and residential real estate in the state is
26 essential to the economy of the state and the welfare of its citizens, as
27 is the stability of the state's banking system.

28 (b) The legislature intends to ensure the stability of the state's
29 banking system and real estate markets and prevent a precipitous decline in

1 real estate prices by displacing competition with government regulation in
2 matters relating to the administration, management, and disposition of real
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19 administer this chapter.

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21 report to the legislature summarizing activities of the division under
22 this chapter during the previous year.

23 Sec. 06.50.020. FORMATION. (a) Three or more grantors may
24 create a real property liquidating organization by filing the orga-
25 nizational documents with the director. The director and the governor
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27 (c) of this section and are consistent with the purposes of this
28 chapter. Conveyance of assets to or disposition of real property or
29 other assets by an organization is not effective until the

1 organizational documents have been reviewed and approved by the direc-
2 tor and the governor.

3 (b) At the time organizational documents are filed with the
4 director under (a) of this section, a copy shall be made available by
5 the grantors to the legislative auditor. The legislative auditor
6 shall review the documents and report to the Legislative Budget and
7 Audit Committee. The committee may recommend approval or disapproval
8 of the documents to the governor.

9 (c) The organizational documents must

10 (1) state the purpose of the organization;

11 (2) identify all grantors who have subscribed to the orga-
12 nization and all persons who will possess an interest in the orga-
13 nization upon its formation;

14 (3) describe the manner in which the organization will be
15 managed;

16 (4) prescribe the method under which distributions to the
17 grantors and other beneficiaries will be made;

18 (5) provide for the conveyance to the organization of all
19 or part of the grantors' portfolios of commercial and residential real
20 property in the state and real estate loans secured by real property
21 in the state;

22 (6) provide for the transfer to the organization of other
23 assets of the grantors, including cash ^{PF: Adopted} ~~and consumer loans~~ ^{DELETE *}, to assist
24 the organization in fulfilling the purposes of this chapter;

25 (7) ensure that all assets transferred to the organization
26 are appraised at fair market value at the time of the transfer;

27 (8) provide for the orderly disposition of the property and
28 loans of the organization at prices to be determined by the orga-
29 nization under regulations adopted by the director;

1 (9) provide for expenditures to manage organization assets,
2 including expenditures to preserve or enhance the value of the orga-
3 nization's properties;

4 (10) establish terms for the dissolution of an organiza-
5 tion; and

6 (11) provide for the establishment of other terms and con-
7 ditions relating to the sale or other disposition of assets that the
8 grantors consider necessary or appropriate to ensure that the orga-
9 nization will be operated in a manner that will provide for orderly
10 disposition of the organization's assets and promote stable real
11 estate markets and a stable banking system in the state.

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16 the director on or before April 1 an audited balance sheet, income
17 statement, statement of principal, statement of changes in financial
18 position, schedule of all dispositions of real property, real estate
19 loans, and other assets made by the organization during the previous
20 calendar year, and letters

21 (1) certifying that all dispositions of real property, real
22 estate loans, and other assets, and all distributions during the year
23 were made in accordance with the provisions of the organizational
24 documents and this chapter, or identifying any variance; and

25 (2) with respect to the internal financial controls and
26 practices of the organization, providing recommendations the accoun-
27 tant considers appropriate.

28 (b) The organization shall prepare and file with the director
29 and the legislative auditor, on a quarterly basis, a report containing

1 the following:

2 (1) a schedule of all real property, real estate loans, and
3 other assets held by the organization;

4 (2) the sale price and all other significant terms of sale
5 for real property sold by the organization and amount of proceeds
6 received by the organization from real estate loans and other assets
7 since the date of the previous report; and

8 (3) a proposed operating plan for the next quarterly period
9 that conforms with regulations adopted under this chapter.

10 Sec. 06.50.040. REVIEW AND APPROVAL. (a) The director shall
11 review each report filed under AS 06.50.030(b) and approve or disap-
12 prove the proposed operating plan within 20 days after filing. In
13 reviewing each report and operating plan, the director shall consider
14 current market conditions. The director ^{may} approve an operating plan
15 if the director finds that the report and plan

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17 (2) ensure all provisions of trust agreements and agree-
18 ments between state entities and organizations are adhered to;

19 (3) provide policies that meet the requirements of law and
20 regulations, establish sound fiscal practices, and ensure proper
21 management; and

22 (4) ensure state investments will not be adversely affected
23 by poor management or policies, including payment of excess compen-
24 sation or benefits to officers and employees of the organization.

25 (b) If a proposed operating plan is approved by the director, it
26 shall be submitted for approval or disapproval by the governor. The
27 legislative auditor shall review the operating plan and report to the
28 Legislative Budget and Audit Committee. The committee may recommend
29 approval or disapproval of the plan to the governor.

1 (c) Within five days after the director notifies an organization
2 of its intention to inspect business records, all business records
3 maintained by the organization shall be available for review and
4 examination by the division of banking, securities, and corporations
5 at the organization's principal place of business, during regular
6 business hours. The director shall examine the business records of an
7 organization on a regular basis at least twice each calendar year to
8 determine whether they demonstrate

- 9 (1) proper endorsements of loans and agreements;
10 (2) perfection of interests in collateral;
11 (3) proper appraisals and other determinations of value;
12 (4) proper assessment of the financial position of gran-
13 tors, investors, or borrowers; and
14 (5) other matters the director considers necessary.

15 (d) If the governor or director disapproves a proposed operating
16 plan or the director concludes, after an inspection of business re-
17 cords, that the organization is being administered materially contrary
18 to statute, regulation, or a previously approved operating plan, the
19 director shall notify the organization and all grantors in writing,
20 specifying all deficiencies and prescribing appropriate remedies. If
21 the organization fails to remedy deficiencies in accordance with the
22 director's prescriptions within 60 days after receipt of the notice,
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24 operating plan is also subject to approval by the director and the
25 governor and shall be made available for review by the legislative
26 auditor.

27 (e) The expenses of the division of banking, securities, and
28 corporations reasonably incurred in reviewing and approving a proposed
29 operating plan or inspecting business records under this section shall

1 be charged to and paid by the organization. Receipts shall be depos-
2 ited into the general fund and may be appropriated to the Department
3 of Commerce and Economic Development for costs of administering this
4 chapter.

5 Sec. 06.50.050. LEGISLATIVE AUDITS. (a) The legislative audi-
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8 organization that relate to its business and books and papers kept by
9 a director, officer, or employee relating to or upon which a record of
10 its business is kept, and may summon witnesses and administer oaths or
11 affirmations in the examination of the directors, officers, or employ-
12 ees of the organization or any person in relation to its affairs,
13 transactions, and conditions, and may require and compel the produc-
14 tion of records, books, papers, contracts, or other documents by court
15 order if not voluntarily produced.

16 (b) The legislative auditor and the auditor's employees may not
17 disclose information acquired by them in the course of an audit of an
18 organization concerning the particulars of the business or affairs of
19 a person unless the information is required to be disclosed by law or
20 under a court order. However, the legislative auditor shall prepare a
21 report summarizing findings of an audit conducted under this section
22 for the president of the senate, the speaker of the house of represen-
23 tatives, and the Legislative Budget and Audit Committee. Upon ap-
24 proval of the Legislative Budget and Audit Committee, a report pre-
25 pared under this section shall be made public.

26 Sec. 06.50.060. EXEMPTION. (a) If the director determines that
27 the exemption is necessary to carry out the purposes of this chapter,
28 the Department of Commerce and Economic Development may by regulation
29 exempt transactions under this chapter by organizations from any fee,

1 authorization, permit, filing, or registration requirement of or
2 administered by the department.

3 (b) Each organization is exempt from AS 45.50.562 - 45.50.592.
4 Activities in connection with an organization of a person or entity
5 that subscribes or grants assets to, contributes funds or services to,
6 obtains a beneficial interest in, or participates in the management of
7 the organization are exempt from AS 45.50.562 - 45.50.592.

8 Sec. 06.50.100. DEFINITIONS. In this chapter

9 (1) "director" means the director of the division of bank-
10 ing, securities, and corporations;

11 (2) "grantor" means a federally or state chartered finan-
12 cial institution, federal or state agency, licensed insurer, or fi-
13 nancing company that conveys real property in the state, loans secured
14 by real property in the state, ^{DELETE} [or [other assets]*] to, and thereby obtains
15 a beneficial interest in and the right to participate in the manage-
16 ment of, a real property liquidating organization;

17 (3) "real property liquidating organization" or "organiza-
18 tion" means a corporation, trust, fund, partnership, joint venture, or
19 other entity created to acquire, maintain, manage, market, administer
20 and sell, liquidate, or otherwise dispose of real property in the
21 state or loans secured by real property in the state and to distribute
22 the proceeds to its beneficiaries, in accordance with organizational
23 its documents.

24 * Sec. 3. AS 18.50.090 is amended by adding a new paragraph to read:

25 (29) convey real property in the state, loans secured by
26 real property in the state, ^{INSERT: RA: up to \$15M in cash} and ^{Adopted} [other assets]* ^{DELETE} to, acquire a beneficial
27 interest in, and participate in the management of a real property
28 liquidating organization established under AS 06.50 if

29 ^{Deletion} (A) state corporations and agencies are granted

1 priority to the assets of the organization over other grantors;
2 and

3 (B) the corporation will realize a rate of return of
4 at least five percent in its total investment in the organiza-
5 tion.

6 * Sec. 4. AS 44.33 is amended by adding a new section to read:

7 Sec. 44.33.027. DIVISION OF BANKING, SECURITIES, AND CORPORA-
8 TIONS. The division of banking, securities, and corporations is
9 established in the department. The director of the division of bank-
10 ing, securities, and corporations shall be appointed by the governor
11 and serve a four-year term or until a successor is appointed. The
12 director serves at the pleasure of the governor. The director

13 (1) must be a United States citizen;

14 (2) must, within 15 years before appointment to office,
15 have had a minimum of five years management experience with a finan-
16 cial institution or as an employee of a state or federal agency that
17 supervises financial institutions;

18 (3) may not, within five years before appointment to of-
19 fice, have served as an officer or director of a financial institution
20 that was subject to a disciplinary order issued by the division of
21 banking, securities, and corporations, or a federal agency or agency
22 of another state that supervises financial institutions, during the
23 five-year period.

24 * Sec. 5. AS 44.88.080 is amended by adding a new paragraph to read:

25 (25) to convey real property in the state, loans secured by
26 real property in the state, ^{and} ~~and other assets~~*, to acquire a beneficial
27 interest in, and participate in the management of a real property
28 liquidating organization established under AS 06.50 if

29 (A) state corporations and agencies are granted

1 priority to the assets of the organization over other grantors;
2 and

3 (B) the corporation will realize ^{JB: an annual} rate of return of
4 at least five percent in its total investment in the organiza-
5 tion.

6 * Sec. 6. AS 06.50.010, 06.50.020, 06.50.030, 06.50.040, 06.50.050,
7 06.50.060, 06.50.100; AS 18.56.090(29); and AS 44.88.080(25) are repealed.

8 * Sec. 7. Sections 1 - 5 of this Act take effect June 1, 1988.

9 * Sec. 8. Section 6 of this Act takes effect June 1, 1993.

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Cook

Sec. 45.50.572. EXEMPTIONS.

(a) AS 45.50.562 - 45.50.596 do not forbid the existence or operation of labor, agricultural or horticultural organizations created for the purpose of mutual help, and not conducted for profit, or forbid or restrain members of those organizations from lawfully carrying out the legitimate objectives of them; nor are these organizations or members illegal combinations or conspiracies in restraint of trade under the provisions of AS 45.50.562 - 45.50.596.

(b) AS 45.50.562 - 45.50.596 do not forbid actions or arrangements authorized or regulated under the laws of the United States which exempt these actions or arrangements from application of the antitrust laws of the United States or under the following statutes of this state:

- (1) AS 06.05.235;
- (2) AS 10.15; and
- (3) AS 31.05.110.

(c) AS 45.50.562 - 45.50.596 do not forbid persons engaged in the fishing industry as fishermen, catching or collecting aquatic products, from acting together in associations for the purpose of catching, collecting, or preparing for market their product.

(d) AS 45.50.562 - 45.50.596 do not apply to public utilities which have been issued a certificate of public convenience and necessity under AS 42.05.

5/4/88
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(e) ~~Repealed, sec. 68 ch 21 SLA 1985.~~

(f) ~~Repealed, sec. 10 ch 75 SLA 1982.~~

(g) AS 45.50.562 - 45.50.596 do not forbid activities expressly required by a regulatory agency of the state. Activities permitted by a regulatory agency of the state are not forbidden by this chapter if the regulatory agency has given due consideration to the possible anticompetitive effects before permitting the activities, and enforcement of the provisions of AS 45.50.562 - 45.50.596 would be disruptive of the regulatory scheme.

(h) AS 45.50.562 - 45.50.596 do not forbid actions or arrangements necessary to carry out the provisions of the Alaska Native Claims Settlement Act.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

May 2, 1988

Honorable John Binkley
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: CSSSSB 408(Fin)

Dear Senator Binkley:

Your request to Assistant Attorney General Jeffrey W. Bush for a written comment on whether CSSSSB 408(Fin) would survive scrutiny under the federal antitrust laws has been referred to me for response.

Generally speaking, active state supervision of an anticompetitive activity, when the activity is taken in furtherance of a clearly articulated state policy, will exempt those undertaking the activity from liability under the federal antitrust laws. Parker v. Brown, 317 U.S. 341 (1943).


The bill before your committee proposes to displace the free market system in Alaska real estate. The bill authorizes the creation of organizations of competitors which will be allowed to fix prices and manipulate the availability of real property on the market. This is clearly anticompetitive activity.

The bill is supported by legislative findings which articulate state policies in support of the proposed anticompetitive activity. Coupled with the proposed system of regulation by the state, the bill is probably adequate to exempt the participants in these organizations from federal antitrust liability.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:



Richard D. Monkman
Assistant Attorney General

RDM:nb

5/4/88

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

#2

5-1863M
Cook
5/2/88

Original sponsors: Kelly and Sturgulewski

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 408 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the division of banking, secu-
7 rities, and corporations; establishing the real prop-
8 erty liquidating program within the division; au-
9 thorizing certain public corporations to participate
10 in the program; and providing for an effective date."

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

12 * Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature
13 finds that

14 (1) there have been in the state several failures of state and
15 federally chartered financial institutions and one bank consolidation by
16 the Federal Deposit Insurance Corporation under 12 U.S.C. 1823(c);

17 (2) these financial institutions as well as other businesses and
18 state and federal agencies currently hold large portfolios of distressed
19 real estate loans and real property;

20 (3) these businesses and government agencies need to be permit-
21 ted to cooperate in administering these loans and properties to avoid fur-
22 ther adverse effects on the state's real estate markets and to stabilize
23 the state's banking system; and

24 (4) the maintenance of stable and orderly markets for the pur-
25 chase and sale of commercial and residential real estate in the state is
26 essential to the economy of the state and the welfare of its citizens, as
27 is the stability of the state's banking system.

28 (b) The legislature intends to ensure the stability of the state's
29 banking system and real estate markets and prevent a precipitous decline in

1 real estate prices by displacing competition with government regulation in
2 matters relating to the administration, management, and disposition of real
3 property in the state and loans secured by the property held by financial
4 institutions, other businesses, and state and federal agencies. By au-
5 thorizing the creation of real property liquidating organizations and
6 mandating active state supervision of these organizations, the legislature
7 intends that each real property liquidating organization and all persons
8 and entities who subscribe or grant assets to, contribute funds or services
9 to, obtain a beneficial interest in, or participate in the management of
10 the organization will be fully immunized against potential liability under
11 federal antitrust laws and state antitrust, competition, and trade prac-
12 tices laws arising from the operation of the organization or the activities
13 of any person or entity performed in connection with the organization.

14 * Sec. 2. AS 06 is amended by adding a new chapter to read:

15 CHAPTER 50. REAL PROPERTY LIQUIDATING PROGRAM.

16 Sec. 06.50.010. RESPONSIBILITY OF DIRECTOR. (a) The real
17 property liquidating program is established in the division of bank-
18 ing, securities, and corporations. The director of the division shall
19 administer this chapter.

20 (b) By February 1 of each year the director shall submit a
21 report to the legislature summarizing activities of the division under
22 this chapter during the previous year.

23 Sec. 06.50.020. FORMATION. (a) Three or more grantors may
24 create a real property liquidating organization by filing the orga-
25 nizational documents with the director. The director and the governor
26 shall review the documents and may approve them if they comply with
27 (c) of this section and are consistent with the purposes of this
28 chapter. Conveyance of assets to or disposition of real property or
29 other assets by an organization is not effective until the

1 organizational documents have been reviewed and approved by the direc-
2 tor and the governor.

3 (b) At the time organizational documents are filed with the
4 director under (a) of this section, a copy shall be made available by
5 the grantors to the legislative auditor. The legislative auditor
6 shall review the documents and report to the Legislative Budget and
7 Audit Committee. The committee may recommend approval or disapproval
8 of the documents to the governor.

9 (c) The organizational documents must

10 (1) state the purpose of the organization;

11 (2) identify all grantors who have subscribed to the orga-
12 nization and all persons who will possess an interest in the orga-
13 nization upon its formation;

14 (3) describe the manner in which the organization will be
15 managed;

16 (4) prescribe the method under which distributions to the
17 grantors and other beneficiaries will be made;

18 (5) provide for the conveyance to the organization of all
19 or part of the grantors' portfolios of commercial and residential real
20 property in the state and real estate loans secured by real property
21 in the state;

22 (6) provide for the transfer to the organization of other
23 assets of the grantors, including cash and consumer loans, to assist
24 the organization in fulfilling the purposes of this chapter;

25 (7) ensure that all assets transferred to the organization
26 are appraised at fair market value at the time of the transfer;

27 (8) provide for the orderly disposition of the property and
28 loans of the organization at prices to be determined by the orga-
29 nization under regulations adopted by the director;

1 (9) provide for expenditures to manage organization assets,
2 including expenditures to preserve or enhance the value of the orga-
3 nization's properties;

4 (10) establish terms for the dissolution of an organiza-
5 tion; and

6 (11) provide for the establishment of other terms and con-
7 ditions relating to the sale or other disposition of assets that the
8 grantors consider necessary or appropriate to ensure that the orga-
9 nization will be operated in a manner that will provide for orderly
10 disposition of the organization's assets and promote stable real
11 estate markets and a stable banking system in the state.

12 Sec. 06.50.030. AUDITS AND REPORTS. (a) In addition to the
13 record keeping requirements specified in regulations adopted by the
14 director or in the organizational documents, the organization shall
15 retain a certified public accountant to annually prepare and submit to
16 the director on or before April 1 an audited balance sheet, income
17 statement, statement of principal, statement of changes in financial
18 position, schedule of all dispositions of real property, real estate
19 loans, and other assets made by the organization during the previous
20 calendar year, and letters

21 (1) certifying that all dispositions of real property, real
22 estate loans, and other assets, and all distributions during the year
23 were made in accordance with the provisions of the organizational
24 documents and this chapter, or identifying any variance; and

25 (2) with respect to the internal financial controls and
26 practices of the organization, providing recommendations the accoun-
27 tant considers appropriate.

28 (b) The organization shall prepare and file with the director,
29 on a quarterly basis, a report containing the following:

1 (1) a schedule of all real property, real estate loans, and
2 other assets held by the organization;

3 (2) the sale price and all other significant terms of sale
4 for real property sold by the organization and amount of proceeds
5 received by the organization from real estate loans and other assets
6 since the date of the previous report; and

7 (3) a proposed operating plan for the next quarterly period
8 that conforms with regulations adopted under this chapter.

9 Sec. 06.50.040. REVIEW AND APPROVAL. (a) The director shall
10 review each report filed under AS 06.50.030(b) and approve or disap-
11 prove the proposed operating plan within 20 days after filing. In
12 reviewing each report and operating plan, the director shall consider
13 current market conditions. The director may approve an operating plan
14 if the director finds that the report and plan

15 (1) comply with the purposes of this chapter;

16 (2) ensure all provisions of trust agreements and agree-
17 ments between state entities and organizations are adhered to;

18 (3) provide policies that meet the requirements of law and
19 regulations, establish sound fiscal practices, and ensure proper
20 management; and

21 (4) ensure state investments will not be adversely affected
22 by poor management or policies, including payment of excess compen-
23 sation or benefits to officers and employees of the organization.

24 (b) If a proposed operating plan is approved by the director, it
25 shall be submitted for approval or disapproval by the governor.

26 (c) Within five days after the director notifies an organization
27 of its intention to inspect business records, all business records
28 maintained by the organization shall be available for review and
29 examination by the division of banking, securities, and corporations

1 at the organization's principal place of business, during regular
2 business hours. The director shall examine the business records of an
3 organization on a regular basis at least twice each calendar year to
4 determine whether they demonstrate

- 5 (1) proper endorsements of loans and agreements;
6 (2) perfection of interests in collateral;
7 (3) proper appraisals and other determinations of value;
8 (4) proper assessment of the financial position of gran-
9 tors, investors, or borrowers; and
10 (5) other matters the director considers necessary.

11 (d) If the governor or director disapproves a proposed operating
12 plan or the director concludes, after an inspection of business re-
13 cords, that the organization is being administered materially contrary
14 to statute, regulation, or a previously approved operating plan, the
15 director shall notify the organization and all grantors in writing,
16 specifying all deficiencies and prescribing appropriate remedies. If
17 the organization fails to remedy deficiencies in accordance with the
18 director's prescriptions within 60 days after receipt of the notice,
19 the director may commence proceedings under AS 06.01.030. A revised
20 operating plan is also subject to approval by the director and the
21 governor.

22 (e) The expenses of the division of banking, securities, and
23 corporations reasonably incurred in reviewing and approving a proposed
24 operating plan or inspecting business records under this section shall
25 be charged to and paid by the organization. Receipts shall be depos-
26 ited into the general fund and may be appropriated to the Department
27 of Commerce and Economic Development for costs of administering this
28 chapter.

29 Sec. 06.50.050. LEGISLATIVE AUDITS. (a) The legislative

1 auditor shall audit each organization at least once each year. The
2 legislative audit division has free access to all books and papers of
3 an organization that relate to its business and books and papers kept
4 by a director, officer, or employee relating to or upon which a record
5 of its business is kept, and may summon witnesses and administer oaths
6 or affirmations in the examination of the directors, officers, or
7 employees of the organization or any person in relation to its
8 affairs, transactions, and conditions, and may require and compel the
9 production of records, books, papers, contracts, or other documents by
10 court order if not voluntarily produced.

11 (b) The legislative auditor and the auditor's employees may not
12 disclose information acquired by them in the course of an audit of an
13 organization concerning the particulars of the business or affairs of
14 a person unless the information is required to be disclosed by law or
15 under a court order. However, the legislative auditor shall prepare a
16 report summarizing findings of an audit conducted under this section
17 for the president of the senate, the speaker of the house of represen-
18 tatives, and the Legislative Budget and Audit Committee. Upon ap-
19 proval of the Legislative Budget and Audit Committee, a report pre-
20 pared under this section shall be made public.

21 Sec. 06.50.060. EXEMPTION. (a) If the director determines that
22 the exemption is necessary to carry out the purposes of this chapter,
23 the Department of Commerce and Economic Development may by regulation
24 exempt transactions under this chapter by organizations from any fee,
25 authorization, permit, filing, or registration requirement of or
26 administered by the department.

27 (b) Each organization is exempt from AS 45.50.562 - 45.50.592.
28 Activities in connection with an organization of a person or entity
29 that subscribes or grants assets to, contributes funds or services to,

1 obtains a beneficial interest in, or participates in the management of
2 the organization are exempt from AS 45.50.562 - 45.50.592.

3 Sec. 06.50.100. DEFINITIONS. In this chapter

4 (1) "director" means the director of the division of bank-
5 ing, securities, and corporations;

6 (2) "grantor" means a federally or state chartered finan-
7 cial institution, federal or state agency, licensed insurer, or fi-
8 nancing company that conveys real property in the state, loans secured
9 by real property in the state, or other assets to, and thereby obtains
10 a beneficial interest in and the right to participate in the manage-
11 ment of, a real property liquidating organization;

12 (3) "real property liquidating organization" or "organiza-
13 tion" means a corporation, trust, fund, partnership, joint venture, or
14 other entity created to acquire, maintain, manage, market, administer
15 and sell, liquidate, or otherwise dispose of real property in the
16 state or loans secured by real property in the state and to distribute
17 the proceeds to its beneficiaries, in accordance with organizational
18 its documents.

19 * Sec. 3. AS 18.56.090 is amended by adding a new paragraph to read:

20 (29) convey real property in the state, loans secured by
21 real property in the state, and other assets to, acquire a beneficial
22 interest in, and participate in the management of a real property
23 liquidating organization established under AS 06.50 if

24 (A) state corporations and agencies are granted pri-
25 ority to the assets of the organization over other grantors; and

26 (B) the corporation will realize a rate of return of
27 at least five percent in its total investment in the organiza-
28 tion.

29 * Sec. 4. AS 44.33 is amended by adding a new section to read:

1 Sec. 44.33.027. DIVISION OF BANKING, SECURITIES, AND CORPORA-
2 TIONS. The division of banking, securities, and corporations is
3 established in the department. The director of the division of bank-
4 ing, securities, and corporations shall be appointed by the governor
5 and serve a four-year term or until a successor is appointed. The
6 director serves at the pleasure of the governor. The director

7 (1) must be a United States citizen;

8 (2) must, within 15 years before appointment to office,
9 have had a minimum of five years management experience with a finan-
10 cial institution or as an employee of a state or federal agency that
11 supervises financial institutions;

12 (3) may not, within five years before appointment to of-
13 fice, have served as an officer or director of a financial institution
14 that was subject to a disciplinary order issued by the division of
15 banking, securities, and corporations, or a federal agency or agency
16 of another state that supervises financial institutions, during the
17 five-year period.

18 * Sec. 5. AS 44.88.080 is amended by adding a new paragraph to read:

19 (25) to convey real property in the state, loans secured by
20 real property in the state, and other assets to, acquire a beneficial
21 interest in, and participate in the management of a real property
22 liquidating organization established under AS 06.50 if

23 (A) state corporations and agencies are granted pri-
24 ority to the assets of the organization over other grantors; and

25 (B) the corporation will realize a rate of return of
26 at least five percent in its total investment in the organiza-
27 tion.

28 * Sec. 6. AS 06.50.010, 06.50.020, 06.50.030, 06.50.040, 06.50.050,
29 06.50.060, 06.50.100; AS 18.56.090(29); and AS 44.88.080(25) are repealed.

- 1 * Sec. 7. Sections 1 - 5 of this Act take effect June 1, 1988.
- 2 * Sec. 8. Section 6 of this Act takes effect June 1, 1993.

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(#1 Draft + Amendments)

5-186.12

Cook
5/2/88

5/4/88

Sen. Helford

Original sponsors: Kelly and Sturgulewski

#3

1 IN THE SENATE BY THE FINANCE COMMITTEE
 2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 408 (Finance)
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA
 4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the division of banking, secu-
 7 rities, and corporations; establishing the real prop-
 8 erty liquidating program within the division; au-
 9 thorizing certain public corporations to participate
 10 in the program; and providing for an effective date."

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

12 * Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature
13 finds that

14 (1) there have been in the state several failures of state and
15 federally chartered financial institutions and one bank consolidation by
16 the Federal Deposit Insurance Corporation under 12 U.S.C. 1823(c);

17 (2) these financial institutions as well as other businesses and
18 state and federal agencies currently hold large portfolios of distressed
19 real estate loans and real property;

20 (3) these businesses and government agencies need to be permit-
21 ted to cooperate in administering these loans and properties to avoid fur-
22 ther adverse effects on the state's real estate markets and to stabilize
23 the state's banking system; and

24 (4) the maintenance of stable and orderly markets for the pur-
25 chase and sale of commercial and residential real estate in the state is
26 essential to the economy of the state and the welfare of its citizens, as
27 is the stability of the state's banking system.

28 (b) The legislature intends to ensure the stability of the state's
29 banking system and real estate markets and prevent a precipitous decline in

1 real estate prices by displacing competition with government regulation in
2 matters relating to the administration, management, and disposition of real
3 property in the state and loans secured by the property held by financial
4 institutions, other businesses, and state and federal agencies. By au-
5 thORIZING the creation of real property liquidating organizations and
6 mandating active state supervision of these organizations, the legislature
7 intends that each real property liquidating organization and all persons
8 and entities who subscribe or grant assets to, contribute funds or services
9 to, obtain a beneficial interest in, or participate in the management of
10 the organization will be fully immunized against potential liability under
11 federal antitrust laws and state antitrust, competition, and trade prac-
12 tices laws arising from the operation of the organization or the activities
13 of any person or entity performed in connection with the organization.

14 * Sec. 2. AS 06 is amended by adding a new chapter to read:

15 CHAPTER 50. REAL PROPERTY LIQUIDATING PROGRAM.

16 Sec. 06.50.010. RESPONSIBILITY OF DIRECTOR. (a) The real
17 property liquidating program is established in the division of bank-
18 ing, securities, and corporations. The director of the division shall
19 administer this chapter.

20 (b) By February 1 of each year the director shall submit a
21 report to the legislature summarizing activities of the division under
22 this chapter during the previous year.

23 Sec. 06.50.020. FORMATION. (a) Three or more grantors may
24 create a real property liquidating organization by filing the orga-
25 nizational documents with the director. The director and the governor
26 shall review the documents and may approve them if they comply with
27 (c) of this section and are consistent with the purposes of this
28 chapter. Conveyance of assets to or disposition of ~~real property or~~
29 ~~other~~ assets by an organization is not effective until the

1 organizational documents have been reviewed and approved by the direc-
2 tor and the governor.

3 (b) At the time organizational documents are filed with the
4 director under (a) of this section, a copy shall be made available by
5 the grantors to the legislative auditor. The legislative auditor
6 shall review the documents and report to the Legislative Budget and
7 Audit Committee. The committee may recommend approval or disapproval
8 of the documents to the governor.

Adopted
WH: 4/1/06

9 (c) The organizational documents must

(by a grantor to all other than real property in the state, loans secured by real property in the state, or cash)

10 (1) state the purpose of the organization;

11 (2) identify all grantors who have subscribed to the orga-
12 nization and all persons who will possess an interest in the orga-
13 nization upon its formation;

14 (3) describe the manner in which the organization will be
15 managed;

16 (4) prescribe the method under which distributions to the
17 grantors and other beneficiaries will be made;

18 (5) provide for the conveyance to the organization of all
19 or part of the grantors' portfolios of commercial and residential real
20 property in the state and real estate loans secured by real property
21 in the state;

22 (6) provide for the transfer to the organization of ~~other~~
23 ~~assets of the grantors, including cash, and consumer loans, to assist~~
24 ~~the organization in fulfilling the purposes of this chapter;~~
in sufficient amounts to
enable the organization to operate;

Adopted
RU: 4/1/06

25 (7) ensure that all ~~assets~~
26 ~~are appraised at fair market value at the time of the transfer;~~
real property and real estate loans

Adopted
WH: 4/1/06

27 (8) provide for the orderly disposition of the ~~property and~~
28 ~~loans of the organization at prices to be determined by the orga-~~
29 ~~nization under regulations adopted by the director;~~
real

NEW (7) ensure that each grantor contributes a reasonable amount of cash to use for the operation of the organization;

1 ¹⁰
 2 (9) provide for expenditures to manage organization assets,
 3 including expenditures to preserve or enhance the value of the orga-
 4 nization's properties;

5 ¹¹
 6 (10) establish terms for the dissolution of an organiza-
 7 tion; and

8 ¹²
 9 (11) provide for the establishment of other terms and con-
 10 ditions relating to the sale or other disposition of assets that the
 11 grantors consider necessary or appropriate to ensure that the orga-
 12 nization will be operated in a manner that will provide for orderly
 13 disposition of the organization's assets and promote stable real
 14 estate markets and a stable banking system in the state.

15 Sec. 06.50.030. AUDITS AND REPORTS. (a) In addition to the
 16 record keeping requirements specified in regulations adopted by the
 17 director or in the organizational documents, the organization shall
 18 retain a certified public accountant to annually prepare and submit to
 19 the director on or before April 1 an audited balance sheet, income
 20 statement, statement of principal, statement of changes in financial
 21 position, schedule of all dispositions of real property, real estate
 22 loans, and other assets made by the organization during the previous
 23 calendar year, and letters

24 (1) certifying that all dispositions of real property, real
 25 estate loans, and other assets, and all distributions during the year
 26 were made in accordance with the provisions of the organizational
 27 documents and this chapter, or identifying any variance; and

28 (2) with respect to the internal financial controls and
 29 practices of the organization, providing recommendations the accoun-
 30 tant considers appropriate.

31 (b) The organization shall prepare and file with the director
 32 and the legislative auditor, on a quarterly basis, a report containing

1 the following:

- 2 (1) a schedule of all real property, real estate loans, and
3 other assets held by the organization;
4 (2) the sale price and all other significant terms of sale
5 for real property sold by the organization and amount of proceeds
6 received by the organization from real estate loans and other assets
7 since the date of the previous report; and
8 (3) a proposed operating plan for the next quarterly period
9 that conforms with regulations adopted under this chapter.

10 Sec. 06.50.040. REVIEW AND APPROVAL. (a) The director shall
11 review each report filed under AS 06.50.030(b) and approve or disap-
12 prove the proposed operating plan within 20 days after filing. In
13 reviewing each report and operating plan, the director shall consider
14 current market conditions. The director may approve an operating plan
15 if the director finds that the report and plan

- 16 (1) comply with the purposes of this chapter;
17 (2) ensure all provisions of trust agreements and agree-
18 ments between state entities and organizations are adhered to;
19 (3) provide policies that meet the requirements of law and
20 regulations, establish sound fiscal practices, and ensure proper
21 management; and
22 (4) ensure state investments will not be adversely affected
23 by poor management or policies, including payment of excess compen-
24 sation or benefits to officers and employees of the organization, and
25 (5) ensure that the organization will have the amount of cash
26 *RU: -y, -ob (b)* If a proposed operating plan is approved by the director, it
27 shall be submitted for approval or disapproval by the governor. The
28 legislative auditor shall review the operating plan and report to the
29 Legislative Budget and Audit Committee. The committee may recommend
approval or disapproval of the plan to the governor.

1 (c) Within five days after the director notifies an organization
2 of its intention to inspect business records, all business records
3 maintained by the organization shall be available for review and
4 examination by the division of banking, securities, and corporations
5 at the organization's principal place of business, during regular
6 business hours. The director shall examine the business records of an
7 organization on a regular basis at least twice each calendar year to
8 determine whether they demonstrate

- 9 (1) proper endorsements of loans and agreements;
10 (2) perfection of interests in collateral;
11 (3) proper appraisals and other determinations of value;
12 (4) proper assessment of the financial position of gran-
13 tors, investors, or borrowers; and
14 (5) other matters the director considers necessary.

15 (d) If the governor or director disapproves a proposed operating
16 plan or the director concludes, after an inspection of business re-
17 cords, that the organization is being administered materially contrary
18 to statute, regulation, or a previously approved operating plan, the
19 director shall notify the organization and all grantors in writing,
20 specifying all deficiencies and prescribing appropriate remedies. If
21 the organization fails to remedy deficiencies in accordance with the
22 director's prescriptions within 60 days after receipt of the notice,
23 the director may commence proceedings under AS 06.01.030. A revised
24 operating plan is also subject to approval by the director and the
25 governor and shall be made available for review by the legislative
26 auditor.

27 (e) The expenses of the division of banking, securities, and
28 corporations reasonably incurred in reviewing and approving a proposed
29 operating plan or inspecting business records under this section shall

1 be charged to and paid by the organization. Receipts shall be depos-
2 ited into the general fund and may be appropriated to the Department
3 of Commerce and Economic Development for costs of administering this
4 chapter.

5 Sec. 06.50.050. LEGISLATIVE AUDITS. (a) The legislative audi-
6 tor shall audit each organization at least once each year. The legis-
7 lative audit division has free access to all books and papers of an
8 organization that relate to its business and books and papers kept by
9 a director, officer, or employee relating to or upon which a record of
10 its business is kept, and may summon witnesses and administer oaths or
11 affirmations in the examination of the directors, officers, or employ-
12 ees of the organization or any person in relation to its affairs,
13 transactions, and conditions, and may require and compel the produc-
14 tion of records, books, papers, contracts, or other documents by court
15 order if not voluntarily produced.

16 (b) The legislative auditor and the auditor's employees may not
17 disclose information acquired by them in the course of an audit of an
18 organization concerning the particulars of the business or affairs of
19 a person unless the information is required to be disclosed by law or
20 under a court order. However, the legislative auditor shall prepare a
21 report summarizing findings of an audit conducted under this section
22 for the president of the senate, the speaker of the house of represen-
23 tatives, and the Legislative Budget and Audit Committee. Upon ap-
24 proval of the Legislative Budget and Audit Committee, a report pre-
25 pared under this section shall be made public.

26 Sec. 06.50.060. EXEMPTION. (a) If the director determines that
27 the exemption is necessary to carry out the purposes of this chapter,
28 the Department of Commerce and Economic Development may by regulation
29 exempt transactions under this chapter by organizations from any fee,

1 authorization, permit, filing, or registration requirement of or
2 administered by the department.

3 (b) Each organization is exempt from AS 45.50.562 - ⁵⁹⁶ 45.50.592.
4 Activities in connection with an organization of a person or entity
5 that subscribes or ~~grants assets~~ ^{real property, real estate loans or} to, contributes ~~fund~~ ⁵⁹⁶ or services to,
6 obtains a beneficial interest in, or participates in the management of
7 the organization are exempt from AS 45.50.562 - 45.50.592.

8 Sec. 06.50.100. DEFINITIONS. In this chapter

9 (1) "director" means the director of the division of bank-
10 ing, securities, and corporations;

11 (2) "grantor" means a federally or state chartered finan-
12 cial institution, federal or state agency, ^{municipality,} licensed insurer, or fi-
13 nancing company that conveys real property in the state, loans secured
14 by real property in the state, or ~~other assets~~ ^{cash} to, and thereby obtains
15 a beneficial interest in and the right to participate in the manage-
16 ment of, a real property liquidating organization;

17 (3) "real property liquidating organization" or "organiza-
18 tion" means a corporation, trust, fund, partnership, joint venture, or
19 other entity created to acquire, maintain, manage, market, administer
20 and sell, liquidate, or otherwise dispose of real property in the
21 state or loans secured by real property in the state and to distribute
22 the proceeds to its beneficiaries, in accordance with organizational
23 its documents.

24 * Sec. 3. AS 18.56.090 is amended by adding a new paragraph to read:

25 (29) convey real property in the state, loans secured by
26 real property in the state, and ^{cash in an amount not to exceed \$15,000,000} ~~other assets~~ to, acquire a beneficial
27 interest in, and participate in the management of a real property
28 liquidating organization established under AS 06.50 if

29 (A) state corporations and agencies are granted

1 priority to the assets of the organization over other grantors;
2 and

3 (B) the corporation will realize a rate of return of
4 at least five percent in its total investment in the organiza-
5 tion.

6 * Sec. 4. AS 44.33 is amended by adding a new section to read:

7 Sec. 44.33.027. DIVISION OF BANKING, SECURITIES, AND CORPORA-
8 TIONS. The division of banking, securities, and corporations is
9 established in the department. The director of the division of bank-
10 ing, securities, and corporations shall be appointed by the governor
11 and serve a four-year term or until a successor is appointed. The
12 director serves at the pleasure of the governor. The director

13 (1) must be a United States citizen;

14 (2) must, within 15 years before appointment to office,
15 have had a minimum of five years management experience with a finan-
16 cial institution or as an employee of a state or federal agency that
17 supervises financial institutions;

18 (3) may not, within five years before appointment to of-
19 fice, have served as an officer or director of a financial institution
20 that was subject to a disciplinary order issued by the division of
21 banking, securities, and corporations, or a federal agency or agency
22 of another state that supervises financial institutions, during the
23 five-year period.

24 * Sec. 5. AS 44.88.080 is amended by adding a new paragraph to read:

25 (25) to convey real property in the state^{or} loans secured by
26 real property in the state, ^{to} ~~and other assets to~~ acquire a beneficial
27 interest in, and participate in the management of a real property
28 liquidating organization established under AS 06.50 if

29 (A) state corporations and agencies are granted

1 priority to the assets of the organization over other grantors;
2 and

3 (B) the corporation, will realize a rate of return of
4 at least five percent in its total investment in the organiza-
5 tion.

6 * Sec. 6. AS 06.50.010, 06.50.020, 06.50.030, 06.50.040, 06.50.050,
7 06.50.060, 06.50.100; AS 18.56.090(29); and AS 44.88.080(25) are repealed.

8 * Sec. 7. Sections 1 - 5 of this Act take effect June 1, 1988.

9 * Sec. 8. Section 6 of this Act takes effect June 1, 1993.

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§ 45.50.460

§ 45.50.470

TRADE AND COMMERCE

§ 45.50.471

Sec. 45.50.470. [Repealed, § 1 ch 246 SLA 1970.]

Sec. 45.50.471. Unlawful acts and practices. (a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce are declared to be unlawful.

(b) The terms "unfair methods of competition" and "unfair or deceptive acts or practices" include, but are not limited to, the following acts:

(1) fraudulently conveying or transferring goods or services by representing them to be those of another;

(2) falsely representing or designating the geographic origin of goods or services;

(3) causing a likelihood of confusion or misunderstanding as to the source, sponsorship, or approval, or another person's affiliation, connection, or association with or certification of goods or services;

(4) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;

(5) representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, secondhand, or seconds;

(6) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(7) disparaging the goods, services, or business of another by false or misleading representation of fact;

(8) advertising goods or services with intent not to sell them as advertised;

(9) advertising goods or services with intent not to supply reasonable expectable public demand, unless the advertisement prominently discloses a limitation of quantity;

(10) making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(11) engaging in any other conduct creating a likelihood of confusion or of misunderstanding and which misleads, deceives or damages a buyer or a competitor in connection with the sale or advertisement of goods or services;

(12) using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged;

(13) failing to deliver to the customer at the time of an installment sale of goods or services, a written order, contract, or receipt setting

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out the name and address of the seller and the name and address of the organization that the seller represents, and all of the terms and conditions of the sale, including a description of the goods or services, which shall be stated in readable, clear, and unambiguous language;

(14) representing that an agreement confers or involves rights, remedies or obligations which it does not confer or involve, or which are prohibited by law;

(15) knowingly making false or misleading statements concerning the need for parts, replacement, or repair service;

(16) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;

(17) basing a charge for repair in whole or in part on a guaranty or warranty rather than on the actual value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the guaranty or warranty, if any;

(18) disconnecting, turning back or resetting the odometer of a vehicle to reduce the number of miles indicated;

(19) using a chain referral sales plan by inducing or attempting to induce a consumer to enter into a contract by offering a rebate, discount, commission, or other consideration, contingent upon the happening of a future event, on the condition that the consumer either sells, or gives information or assistance for the purpose of leading to a sale by the seller of the same or related goods;

(20) selling or offering to sell a right of participation in a chain distributor scheme;

(21) selling, falsely representing or advertising meat, fish or poultry which has been frozen as fresh food;

(22) failing to comply with AS 45.02.350;

(23) failing to comply with AS 45.45.130 — 45.45.240;

(24) counseling, consulting or arranging for future services relating to the disposition of a body upon death whereby certain personal property, not including cemetery lots and markers, will be furnished or the professional services of a funeral director or embalmer will be furnished, unless the person receiving money or property deposits the money or property, and money or property is received, within five days of its receipt, in a trust in a financial institution whose deposits are insured by an instrumentality of the federal government designating the institution as the trustee as a separate trust in the name only of the person on whose behalf the arrangements are made with a provision that the money or property may only be applied to the purchase of designated merchandise or services and should the money or property deposited and any accrued interest not be used for the purposes intended on the death of the person on whose behalf the arrangements are made, all money or property in the trust shall become part of that person's estate; upon demand by the person on whose

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§ 45.50.471

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§ 45.50.471

TRADE AND COMMERCE

§ 45.50.471

behalf the arrangements are made, all money or property in the trust including accrued interest, shall be paid to that person; this paragraph does not prohibit the charging of a separate fee for consultation, counseling or arrangement services if the fee is disclosed to the person making the arrangement; any arrangement under this paragraph which would constitute a contract of insurance under AS 21 is subject to the provisions of AS 21;

(25) failing to comply with the terms of the Alaska Gasoline Products Leasing Act (AS 45.50.800 — 45.50.850);

(26) failing to comply with AS 45.30 relating to mobile home warranties and mobile home parks;

(27) failing to comply with AS 14.48.060(b)(13);

(28) dealing in hearing aids and failing to comply with AS 08.55.

(c) The unlawful acts and practices listed in (b) of this section are in addition to and do not limit the types of unlawful acts and practices actionable at common law or under other state statutes.

(d) [Repealed, § 21 ch 166 SLA 1978.] (§ 2 ch 246 SLA 1970; am § 1 ch 53 SLA 1974; am § 1 ch 138 SLA 1974; am § 1 ch 183 SLA 1975; am § 2 ch 146 SLA 1976; am § 3 ch 197 SLA 1976; am § 3 ch 234 SLA 1976; am § 21 ch 166 SLA 1978; am § 5 ch 15 SLA 1986; am § 5 ch 64 SLA 1986; am § 12 ch 131 SLA 1986)

Revisor's notes. — Paragraph (b)(24) was enacted as (b)(23) and paragraph (b)(25) was enacted as (b)(22). Renumbered in 1976.

Paragraph (b)(28) was enacted as (b)(27). Renumbered in 1986.

Effect of amendments. — The first 1986 amendment added paragraph (26) of subsection (b).

The second 1986 amendment added paragraph (27) of subsection (b).

The third 1986 amendment added paragraph (28) of subsection (b).

Legislative history reports. — For report on ch. 246, SLA 1970 (FCCS 2d HCS CSSB 252), see 1970 House Journal Supplement 10, following p. 743 of the 1970 House Journal; for report of the conference committee, see either 1970 House Journal, p. 1546, or 1970 Senate Journal, p. 1296.

NOTES TO DECISIONS

This statute did not chill constitutionally protected speech, where the speech in question involved communications regarding alleged debts and thus fell within the rubric of commercial speech, which enjoys a lesser first amendment protection than noncommercial speech. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Subsection (a) not vague. — The words of subsection (a) of this section have a "well-defined" meaning in the area of trade regulation and are therefore not vague. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Two elements must be proved to establish a prima facie case of unfair or deceptive acts or practices under the act: (1) that the defendant is engaged in trade or commerce; and (2) that in the conduct of trade or commerce, an unfair act or practice has occurred. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

When act or practice is deceptive or unfair. — An act or practice is deceptive or unfair if it has the capacity or tendency to deceive. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Actual injury as a result of the deception is not required. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Intent to deceive need not be proved. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Testimony of consumers that they were misled is sufficient to sustain a prima facie case of unfair and deceptive practices. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Prima facie case. — In a consumer protection action, a prima facie case is presented when the plaintiff establishes that the defendant engaged in trade or commerce and in the course of that business committed an unfair act or practice. *State v. Grogan*, Sup. Ct. Op. No. 2356 (File No. 5199), 628 P.2d 570 (1981).

An act or practice need not be deceptive to be unfair. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Unfairness will be determined by a variety of factors, including: (1) whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise — whether, in other words, it is within at least the penumbra of some common law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers or competitors or other businessmen. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Similarity to federal law. — The prohibition in this section against "unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce" is substantially similar to that contained in section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1). *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Vandalizing a customer's property is an unfair trade act within the meaning of this section. *State v. Grogan*, Sup. Ct. Op. No. 2356 (File No. 5199), 628 P.2d 570 (1981).

Deceptive and unfair acts by collec-

tion agencies. — Threats by debt collection agencies of imminent legal action when no such action is actually contemplated is a deceptive act or practice. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Harassment of debtors by telephone calls to them, their relatives or their employers constitutes an unfair act or practice. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

A misrepresentation by a debt collection agency that failure to pay an alleged debt will result in impairment of one's credit rating has been held to be an unfair and deceptive act or practice. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

The use by collection agencies of simulated legal documents or collection forms labelled "Final Demand Before Legal Action" when no legal action is in fact taken constitutes a deceptive act. *State v. O'Neill Investigations, Inc.*, Sup. Ct. Op. No. 2053 (File Nos. 4109, 4165), 609 P.2d 520 (1980).

Article not applicable to sale of real property.

See note under this catchline following the article analysis. *State v. First Nat'l Bank*, Sup. Ct. Op. No. 2591 (File Nos. 5006, 5107), 660 P.2d 406 (1982).

Investigation of acts violating both this article and article 4 of chapter. — Although it does not necessarily follow that an act which violates the Unfair Trade Practices and Consumer Protection Act, AS 45.50.471 — 45.50.561 would also violate the Restraint of Trade Act, AS 45.50.562 — 45.50.596, if an act does violate both statutes, an investigation pursuant to AS 45.50.495 would be appropriate. *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Since the bidding and pricing activities under investigation could have conceivably lacked some essential element of an AS 45.50.562 violation, which is Alaska's equivalent of the Sherman Act, 15 U.S.C. § 1 et seq., it was appropriate for the state to investigate as well the possible violation of this section which is Alaska's equivalent of the Federal Trade Commission Act, 15 U.S.C. § 41 et seq. *Matanuska Maid, Inc. v. State*, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Quoted in *S. v. Vating, Inc. v. J. Ct. Op. No. 200 1113 (1980).*

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§ 45.50.472

TRADE AND COMMERCE

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Quoted in Swenson Trucking & Exca-
vating, Inc. v. Truckweld Equip. Co., Sup.
Ct. Op. No. 2008 (File No. 4288), 604 P.2d
1113 (1980).

Cited in O'Neill Investigations, Inc. v.
Illinois Employers Ins., Sup. Ct. Op. No.
2444 (File No. 4429), 636 P.2d 1170
(1981).

Collateral references. — 32 Am. Jur.
2d, False Pretenses, § 1 et seq.; 37 Am.
Jur. 2d, Fraud and Deceit, § 41 et seq. 35
C.J.S. False Pretenses § 14; 37 C.J.S.
Fraud § 154; 37 C.J.S. Fraudulent Con-
veyances § 469.

Validity, construction, and effect of
state legislation regulating or controlling
"bait-and-switch" or "disparagement" ad-

vertising or sales practices. 50 ALR3d
1008.

Scope and exemptions of state deceptive
trade practice and consumer protection
acts. 89 ALR3d 399.

Practices forbidden by state deceptive
trade practice and consumer protection
acts. 89 ALR3d 449.

Sec. 45.50.472. Junk telephone calls. (a) Making a junk tele-
phone call without the prior written consent of the person called is
unlawful.

(b) In this section "junk telephone call" means a telephone call
made for the purpose of advertising through the use of a recorded
advertisement.

(c) The provisions of AS 45.50.481 — 45.50.561 apply to this sec-
tion. (§ 1 ch 17 SLA 1978)

Sec. 45.50.480. [Repealed, § 1 ch 246 SLA 1970.]

Sec. 45.50.481. Exemptions. Nothing in AS 45.50.471 —
45.50.561 applies to

(1) an act or transaction regulated under laws administered by the
state, by a regulatory board or commission except as provided by AS
45.50.471(b)(27), or officer acting under statutory authority of the
state or of the United States, unless the law regulating the act or
transaction does not prohibit the practices declared unlawful in AS
45.50.471;

(2) an act done by the publisher, owner, agent, or employee of a
newspaper, periodical or radio or television station in the publication
or dissemination of an advertisement, when the owner, agent or em-
ployee did not have knowledge of the false, misleading or deceptive
character of the advertisement or did not have a direct financial inter-
est in the sale or distribution of the advertised product or service;

(3) an act or transaction regulated under AS 21.36 or AS 06.05 or a
regulation adopted under the authority of those chapters. (§ 2 ch 246
SLA 1970; am §§ 2, 3 ch 53 SLA 1974; am § 6 ch 64 SLA 1986)

Effect of amendments. — The 1986
amendment in paragraph (1) substituted
"a" for "any" preceding "regulatory board"
and inserted "except as provided by AS

45.50.471(b)(27)" and in paragraph (3)
substituted "a regulation adopted" for
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serted "the" preceding "authority."

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Original sponsors: Kelly and Sturgulewski

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 408 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the division of banking, secu-
7 rities, and corporations; establishing the real prop-
8 erty liquidating program within the division; au-
9 thorizing certain public corporations to participate
10 in the program; and providing for an effective date."

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

12 * Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature
13 finds that

14 (1) there have been in the state several failures of state and
15 federally chartered financial institutions and one bank consolidation by
16 the Federal Deposit Insurance Corporation under 12 U.S.C. 1823(c);

17 (2) these financial institutions as well as other businesses and
18 state and federal agencies currently hold large portfolios of distressed
19 real estate loans and real property;

20 (3) these businesses and government agencies need to be permit-
21 ted to cooperate in administering these loans and properties to avoid fur-
22 ther adverse effects on the state's real estate markets and to stabilize
23 the state's banking system; and

24 (4) the maintenance of stable and orderly markets for the pur-
25 chase and sale of commercial and residential real estate in the state is
26 essential to the economy of the state and the welfare of its citizens, as
27 is the stability of the state's banking system.

28 (b) The legislature intends to ensure the stability of the state's

1 real estate prices by displacing competition with government regulation in
2 matters relating to the administration, management, and disposition of real
3 property in the state and loans secured by the property held by financial
4 institutions, other businesses, and state and federal agencies. By au-
5 thorizing the creation of ²⁴ [real property liquidating] organizations and
6 mandating active state supervision of these organizations, the legislature
7 intends that each real property liquidating organization and all persons
8 and entities who subscribe or grant assets to, contribute funds or services
9 to, obtain a beneficial interest in, or participate in the management of
10 the organization will be fully immunized against potential liability under
11 federal antitrust laws and state antitrust, competition, and trade prac-
12 tices laws arising from the operation of the organization or the activities
13 of any person or entity performed in connection with the organization.

14 * Sec. 2. AS 06 is amended by adding a new chapter to read:

15 CHAPTER 50. REAL PROPERTY LIQUIDATING PROGRAM.

16 Sec. 06.50.010. RESPONSIBILITY OF DIRECTOR. (a) The real
17 property liquidating program is established in the division of bank-
18 ing, securities, and corporations. The director of the division shall
19 administer this chapter.

20 (b) By February 1 of each year the director shall submit a
21 report to the legislature summarizing activities of the division under
22 this chapter during the previous year.

23 Sec. 06.50.020. FORMATION. (a) Three or more grantors may
24 create a real property liquidating organization by filing the orga-
25 nizational documents with the director. The director and the governor
26 shall review the documents and approve them if they comply with (b) of
27 this section and are consistent with the purposes of this chapter.
28 Conveyance of assets to or disposition of real property or other

1 documents have been reviewed and approved by the director and the
2 governor.

3 (b) The organizational documents must

4 (1) state the purpose of the organization;

5 (2) identify all grantors who have subscribed to the orga-
6 nization and all persons who will possess an interest in the orga-
7 nization upon its formation;

8 (3) describe the manner in which the organization will be
9 managed;

10 (4) prescribe the method under which distributions to the
11 grantors and other beneficiaries will be made;

12 (5) provide for the conveyance to the organization of all
13 or part of the grantors' portfolios of commercial and residential real
14 property in the state and real estate loans secured by real property
15 in the state;

16 (6) provide for the transfer to the organization of other
17 assets of the grantors, including cash and consumer loans, to assist
18 the organization in fulfilling the purposes of this chapter;

19 (7) ensure that all assets transferred to the organization
20 are appraised at fair market value at the time of the transfer;

21 (8) provide for the orderly disposition of the property and
22 loans of the organization at prices to be determined by the orga-
23 nization under regulations adopted by the director;

24 (9) provide for expenditures to manage organization assets,
25 including expenditures to preserve or enhance the value of the orga-
26 nization's properties; and

27 (10) provide for the establishment of other terms and con-
28 ditions relating to the sale or other disposition of assets that the

1 organization will be operated in a manner that will provide for order-
2 ly disposition of the organization's assets and promote stable real
3 estate markets and a stable banking system in the state.

4 Sec. 06.50.030. AUDITS AND REPORTS. (a) In addition to the
5 record keeping requirements specified in regulations adopted by the
6 director or in the organizational documents, the organization shall
7 retain a certified public accountant to annually prepare and submit to
8 the director on or before April 1 an audited balance sheet, income
9 statement, statement of principal, statement of changes in financial
10 position, schedule of all dispositions of real property and real
11 estate loans made by the organization during the previous calendar
12 year, and letters

13 (1) certifying that all dispositions of real property and
14 real estate loans and all distributions during the year were made in
15 accordance with the provisions of the organizational documents and
16 this chapter, or identifying any variance; and

17 (2) with respect to the internal financial controls and
18 practices of the organization, providing recommendations the accoun-
19 tant considers appropriate.

20 (b) The organization shall prepare and file with the director,
21 on a quarterly basis, a report containing the following:

22 (1) a schedule of all real property and real estate loans
23 held by the organization;

24 (2) the sale price and all other significant terms of sale
25 for real property sold by the organization and amount of proceeds
26 received by the organization from real estate loans since the date of
27 the previous report; and

28 (3) a proposed operating plan, ^{RU and/or organizational plan} for the next quarterly period
29 that conforms with regulations adopted under this chapter.

1 Sec. 06.50.040. REVIEW AND APPROVAL. (a) The director shall
2 review each report filed under AS 06.50.030(b) and approve or disap-
3 prove the proposed operating plan within 20 days after filing. If the
4 proposed operating plan is approved by the director, it shall be
5 submitted for approval by the governor. In reviewing each report and
6 operating plan, the director shall consider current market conditions.
7 The director ^{pv f mmm} shall approve an operating plan if the director finds
8 that the report and plan comply with the purposes of this chapter and

9 (1) ensure all provisions of trust agreements and agree-
10 ments between state entities and organizations are adhered to;

11 (2) provide policies that meet the requirements of law and
12 regulations, establish sound fiscal practices, and ensure proper
13 management;

14 (3) assure state investments will not be adversely affected
15 by poor management or policies, including payment of excess compen-
16 sation or benefits to officers and employees of the organization.

17 (b) Within five days after the director notifies an organization
18 of its intention to inspect business records, all business records
19 maintained by the organization shall be available for review and
20 examination by the division of banking, securities, and corporations
21 at the organization's principal place of business, during regular
22 business hours. The director shall examine the business records of an
23 organization on a regular basis at least twice each calendar year to
24 determine whether they demonstrate

25 (1) proper endorsements of loans and agreements;

26 (2) perfection of interests in collateral;

27 (3) proper appraisals and other determinations of value;

28 (4) proper assessment of the financial position of
29 grantors, investors, or borrowers;

1 (5) other matters the director considers necessary.

2 (c) If the governor or director disapproves a proposed operating
3 plan or the director concludes, after an inspection of business re-
4 cords, that the organization is being administered materially contrary
5 to statute, regulation, or a previously approved operating plan, the
6 director shall notify the organization and all grantors in writing,
7 specifying all deficiencies and prescribing appropriate remedies. If
8 the organization fails to remedy deficiencies in accordance with the
9 director's prescriptions within 60 days after receipt of the notice,
10 the director may commence proceedings under AS 06.01.030. A revised
11 operating plan is also subject to approval by the director and the
12 governor.

13 (d) The expenses of the division of banking, securities, and
14 corporations reasonably incurred in reviewing and approving a proposed
15 operating plan or inspecting business records under this section shall
16 be charged to and paid by the organization. Receipts shall be depos-
17 ited into the general fund and may be appropriated to the Department
18 of Commerce and Economic Development for costs of administering this
19 chapter.

20 Sec. 06.50.050. LEGISLATIVE AUDITS. (a) The legislative audi-
21 tor shall audit each organization at least once each year. The legis-
22 lative audit division has free access to all books and papers of an
23 organization that relate to its business and books and papers kept by
24 a director, officer, or employee relating to or upon which a record of
25 its business is kept, and may summon witnesses and administer oaths or
26 affirmations in the examination of the directors, officers, or employ-
27 ees of the organization or any person in relation to its affairs,
28 transactions, and conditions, and may require and compel the produc-
29 tion of records, books, papers, contracts, or other documents by court

1 order if not voluntarily produced.

2 (b) The legislative auditor and the auditor's employees may not
3 disclose information acquired by them in the course of an audit of an
4 organization concerning the particulars of the business or affairs of
5 a person unless the information is required to be disclosed by law or
6 under a court order. However, the legislative auditor shall prepare a
7 report summarizing findings of an audit conducted under this section
8 for the president of the senate, the speaker of the house of represen-
9 tatives, and the Legislative Budget and Audit Committee. Upon ap-
10 proval of the Legislative Budget and Audit Committee, a report pre-
11 pared under this section shall be made public.

12 Sec. 06.50.060. EXEMPTION. Each organization is exempt from
13 AS 45.50.471 - 45.50.596. Activities in connection with an organi-
14 zation of a person or entity that subscribes or grants assets to,
15 contributes funds or services to, obtains a beneficial interest in, or
16 participates in the management of the organization are exempt from
17 AS 45.50.471 - 45.50.596.

18 Sec. 06.50.100. DEFINITIONS. In this chapter

19 (1) "director" means the director of the division of bank-
20 ing, securities, and corporations;

21 (2) "grantor" means a federally or state chartered finan-
22 cial institution, federal or state agency, licensed insurer, or fi-
23 nancing company that conveys real property in the state, loans secured
24 by real property in the state, or other assets to, and thereby obtains
25 a beneficial interest in and the right to participate in the manage-
26 ment of, a real property liquidating organization;

27 (3) "real property liquidating organization" or "organiza-
28 tion" means a corporation, trust, fund, partnership, joint venture, or
29 other entity created to acquire, maintain, manage, market, administer

1 and sell, liquidate, or otherwise dispose of real property in the
2 state or loans secured by real property in the state and to distribute
3 the proceeds to its beneficiaries, in accordance with organizational
4 its documents.

5 * Sec. 3. AS 18.56.090 is amended by adding a new paragraph to read:

6 (29) convey real property in the state, loans secured by
7 real property in the state, and other assets to, acquire a beneficial
8 interest in, and participate in the management of a real property
9 liquidating organization established under AS 06.50 if state corpo-
10 rations and agencies are granted priority to the assets of the orga-
11 nization over other grantors.

12 * Sec. 4. AS 44.33 is amended by adding a new section to read:

13 Sec. 44.33.027. DIVISION OF BANKING, SECURITIES, AND CORPORA-
14 TIONS. The division of banking, securities, and corporations is
15 established in the department. The director of the division of bank-
16 ing, securities, and corporations shall be appointed by the governor
17 and serve a four-year term or until a successor is appointed. The
18 director serves at the pleasure of the governor. The director

19 (1) must be a United States citizen;

20 (2) must, within 15 years before appointment to office,
21 have had a minimum of five years management experience with a finan-
22 cial institution or as an employee of a state or federal agency that
23 supervises financial institutions;

24 (3) may not, within five years before appointment to of-
25 fice, have served as an officer or director of a financial institution
26 that was subject to a disciplinary order issued by the division of
27 banking, securities, and corporations, or a federal agency or agency
28 of another state that supervises financial institutions, during the
29 five-year period.

1 * Sec. 5. AS 44.88.080 is amended by adding a new paragraph to read:

2 (25) to convey real property in the state, loans secured by
3 real property in the state, and other assets to, acquire a beneficial
4 interest in, and participate in the management of a real property
5 liquidating organization established under AS 06.50 if state corpo-
6 rations and agencies are granted priority to the assets of the orga-
7 nization over other grantors.

8 * Sec. 6. AS 06.50.010, 06.50.020, 06.50.030, 06.50.040, 06.50.050,
9 06.50.060, 06.50.100; AS 18.56.090(29); and AS 44.88.080(25) are repealed.

10 * Sec. 7. Sections 1 - 5 of this Act take effect June 1, 1988.

11 * Sec. 8. Section 6 of this Act takes effect June 1, 1993.

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5/2/88
Sackett

SENATE AMENDMENT

By _____

To: CSSS SENATE BILL No. 408 (Fin)

To: HOUSE BILL No.

PAGE: 7 LINE: 12

Insert the following after EXEMPTION.:
"(a) If the director determines that the exemption
is necessary to carry out the purposes of this chapter, the
director may by regulation exempt transactions under this
chapter by real property liquidating organizations from
any fee, authorization, permit, filing, or registration
requirement of or administered by the department.
(b) "

Renumber accordingly

SENATE AMENDMENT

By _____

To: CSSS SENATE BILL No. 400 (Fin)

To: _____ HOUSE BILL No. _____

PAGE: 7 LINE: 12

Insert the following after EXEMPTION.:

"(a) If the director determines that the exemption is necessary to carry out the purposes of this chapter, the director may by regulation exempt transactions under this chapter by real property liquidating organizations from any fee, authorization, permit, filing, or registration requirement of or administered by the department.

(b) "

Renumber accordingly

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

May 2, 1988

The Honorable Jan Faiks
President
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

Re: CSSSSB 408 (Fin)(bridge bank)

Dear Senator Faiks:

You have asked for our advice with respect to the exemption section of the proposed legislation to authorize the establishment of real estate liquidating organizations, commonly referred to as the bridge bank, CSSSSB 408 (Fin). This section was drafted by this office and the Legislative Affairs attorney, upon the advice of and after consultation with private attorneys who specialize in antitrust matters. This section is necessary to ensure that an organization formed under this chapter has the maximum possible insulation from federal and state antitrust laws.

The exemption section is broken down into two parts, each serving a different purpose. Proposed AS 06.50.050(a) ensures that the state does not have to engage in duplicative regulation of real estate liquidating organizations. The statutory framework contained in this bill is designed to require the Department of Commerce and Economic Development to comprehensively regulate these organizations under the express regulatory provisions of the chapter. This regulation is absolutely necessary to avoid antitrust problems, and includes departmental approval of quarterly operating plans, annual audits, and twice annual examinations. It is anticipated that this regulation will be done by the banking section of the Division of Banking, Securities and Corporations. However, without the exemption in subsection (a), these organizations would also be subject to regulation as issuers of securities, requiring them to file additional documents with the securities section of the same division. Such documents would be superfluous in terms of the information contained in them, and would only result in an added administrative burden and expense to both the division and the organization. In addition, without this exemption an organization that forms as a corporation would have to file its articles of incorporation with both the banking section, under this chapter, and the corporations section, under Alaska's corporations code (AS 10.05), of the same division. This exemption was drafted to prevent these examples of

RECEIVED MAY 0 2 1988

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

The Honorable Jan Faiks
President, Alaska State Senate

May 2, 1988
Page 2

duplicative regulation by the Department of Commerce and Economic Development.

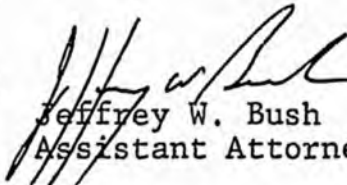
Proposed AS 06.50.050(b) is legally more important. This section expressly exempts these organizations from the state's antitrust and consumer protection laws. Without this exemption, we believe that an organization established under this chapter, designed as it would be to fix prices and control the real estate market, would be in clear violation of these laws. Since the express purpose of the bill is to avoid these antitrust problems, this subsection is necessary.

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

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:



Jeffrey W. Bush
Assistant Attorney General

JWB:nb

cc: Senators Halford & Binkley, Co-Chairs
Senate Finance Committee

Bob Evans
Legislative Liaison
Office of the Governor

Tony Smith
Commissioner
Department of Commerce and Economic Development

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 30, 1988

SUBJECT: Real property liquidating program
(CSSSSB 408)

TO: Senator Jan Faiks

FROM: Tamara Brandt Cook *TBC*
Director
Division of Legal Services

Here is the sectional analysis that you requested.

Section 1. This is a statement of legislative findings and intent. The legislature finds that there have been failures of state and federally chartered financial institutions, agencies currently hold portfolios of distressed real estate loans and property, financial institutions, businesses and agencies need to be permitted to cooperate in administering these properties, and maintenance of stable real estate markets and a stable banking system is essential to the economy. The legislature intends to ensure stability of the banking system and real estate markets by displacing competition with government regulation in matters relating to management and disposition of real property by authorizing creation of real property liquidating organizations under state supervision.

Section 2. This is a new chapter relating to the real property liquidating program.

Sec. 06.50.010 requires the director of banking, securities, and corporations to administer the chapter. He must report annually to the legislature.

Sec. 06.50.020 permits the formation by three or more grantors of a real property liquidating organization. Organizational documents must be reviewed and approved by the director and the governor and must meet certain itemized requirements.

5/2/88

Sec. 06.50.030 requires an organization to retain a certified public accountant to annually prepare and submit to the division an audited balance sheet containing specified information. The accountant must certify that all dispositions of real estate and loans during the year were made in accordance with the organization documents and this chapter, or identify variances, and provide recommendations with respect to internal financial controls. The organization is also required to file a report on its operations quarterly.

Sec. 06.50.040 requires the director and the governor to approve or disapprove a proposed operating plan of an organization. The director must also inspect business records of an organization on a regular basis at least twice each year. If the director concludes that the organization is being administered materially contrary to law, regulation or a previously approved operating plan, he may prescribe appropriate remedies. If the organization fails to remedy deficiencies, the director may begin proceedings to dissolve the organization. Expenses incurred in reviewing organization reports and conducting inspections shall be charged to the organization.

Sec. 06.50.050 requires the legislative auditor to audit each organization at least once a year. The auditor shall prepare a report summarizing findings for the president of the senate, speaker of the house, and Legislative Budget and Audit committee. The report is made public on approval of the committee.

Sec. 06.50.060 exempts an organization and persons involved with organizations from AS 45.50.471 - 45.50.596 (Unfair Trade Practices and Consumer Protection; Monopolies; Restraint of Trade).

Sec. 06.50.100 provides definitions of director, grantor and real property liquidating organization.

Section 3. The Alaska Housing Finance Corporation is granted broad authority to enter into agreements for cooperative management and disposal of real property and convey property to or acquire a beneficial interest in a real property liquidating organization, if state corporations and agencies are granted a priority to assets of the organization.

Section 4. The division of banking, securities, and corporations is established in the Department of Commerce

Senator Faiks
Page 3
April 30, 1988

and Economic Development. The director is appointed by the governor to a four year term. Qualifications for the director are set out.

Section 5. The Alaska Industrial Development and Export Authority is granted power to convey assets to and acquire a beneficial interest in a real property liquidating organization, if state corporations and agencies are granted a priority to assets of the organization.

Section 6. Except section 4 the foregoing substantive provisions of the bill are repealed.

Section 7. The substantive provisions take effect June 1, 1988.

Section 8. The repealer takes effect June 1, 1993, making this a five year program.

TBC:mkr
b5/079

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907.465.3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 28, 1988

SUBJECT: Stabilization of the real estate market
(CSSSSB 408(Fin))

TO: Senator Tim Kelly

FROM: Tamara Brandt Cook *TBC*
Director
Division of Legal Services

Here is the sectional analysis that you requested.

Section 1. This is a statement of legislative findings and intent. The legislature finds that there have been failures of state and federally chartered financial institutions, agencies currently hold portfolios of distressed real estate loans and property, financial institutions, businesses and agencies need to be permitted to cooperate in administering these properties, and maintenance of stable real estate markets and a stable banking system is essential to the economy. The legislature intends to ensure stability of the banking system and real estate markets by displacing competition with government regulation in matters relating to management and disposition of real property by authorizing creation of real property liquidating organizations under state supervision.

Section 2. This is a new chapter relating to real property liquidating organizations.

Sec. 06.50.010 requires the Commissioner of Commerce and Economic Development to administer the chapter and adopt regulations. He must report annually to the legislature.

Sec. 06.50.020 permits the formation by three or more grantors of a real property liquidating organization. Organizational documents must be reviewed and approved by the commissioner and must meet certain itemized requirements.

Sec. 06.50.030 requires an organization to retain a certified public accountant to annually prepare and submit to the Department of Commerce and Economic Development an audited balance sheet containing specified information. The accountant must certify that all dispositions of real estate and loans during the year were made in accordance with the organization documents and this chapter, or identify variances, and provide recommendations with respect to internal financial controls. The organization is also required to file a report on its operations quarterly.

Sec. 06.50.040 requires the commissioner to approve or disapprove a proposed operating plan of an organization. He must also inspect business records of an organization on a regular basis at least twice each year. If the commissioner concludes that the organization is being administered materially contrary to law, regulation or a previously approved operating plan, he may prescribe appropriate remedies. If the organization fails to remedy deficiencies, the commissioner may begin proceedings to dissolve the organization. Expenses incurred in reviewing organization reports and conducting inspections shall be charged to the organization.

Sec. 06.50.050 permits the commissioner, by regulation, to exempt transactions of organizations from fees, authorizations, permits or registration requirements of the department if he determines the exemption is necessary to carry out the purposes of the chapter. An organization and persons involved with organizations are exempt from AS 45.50.471 - 45.50.396 (Unfair Trade Practices and Consumer Protection; Monopolies; Restraint of Trade).

Section 3. The Alaska Housing Finance Corporation is granted broad authority to take action to stabilize the market price of and demand for residential housing. The corporation may enter into agreements for cooperative management and disposal of real property and convey property to or acquire a beneficial interest in a real property liquidating organization.

Section 4. The Alaska Industrial Development and Export Authority is granted power to convey assets to and acquire a beneficial interest in a real property liquidating organization.

Section 5. The foregoing substantive provisions of the bill are repealed.

for Tim Kelly
3
April 28, 1988

Section 6. The substantive provisions take effect June 1, 1988.

Section 7. The repealer takes effect June 1, 1993, making this a five year program.

TBC:gc
WKG3:047

5-1863P
Cook
4/28/88

Original sponsors: Kelly and Sturgulewski

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 408 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to stabilization of the state's real
7 estate markets and banking system; authorizing the
8 establishment of real property liquidating organiza-
9 tions under active state supervision; and providing
10 for an effective date."

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

12 * Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature
13 finds that

14 (1) there have been in the state several failures of state and
15 federally chartered financial institutions and one bank consolidation by
16 the Federal Deposit Insurance Corporation under 12 U.S.C. 1823(c);

17 (2) these financial institutions as well as other businesses and
18 state and federal agencies currently hold large portfolios of distressed
19 real estate loans and real property;

20 (3) these businesses and government agencies need to be permit-
21 ted to cooperate in administering these loans and properties to avoid fur-
22 ther adverse effects on the state's real estate markets and to stabilize
23 the state's banking system; and

24 (4) the maintenance of stable and orderly markets for the pur-
25 chase and sale of commercial and residential real estate in the state is
26 essential to the economy of the state and the welfare of its citizens, as
27 is the stability of the state's banking system.

28 (b) The legislature intends to ensure the stability of the state's
29 banking system and real estate markets and prevent a precipitous decline in

1 real estate prices by displacing competition with government regulation in
2 matters relating to the administration, management, and disposition of real
3 property in the state and loans secured by the property held by financial
4 institutions, other businesses, and state and federal agencies. By au-
5 thORIZING the creation of real property liquidating organizations and
6 mandating active state supervision of these organizations, the legislature
7 intends that each real property liquidating organization and all persons
8 and entities who subscribe or grant assets to, contribute funds or services
9 to, obtain a beneficial interest in, or participate in the management of
10 the organization will be fully immunized against potential liability under
11 federal antitrust laws and state antitrust, competition, and trade prac-
12 tices laws arising from the operation of the organization or the activities
13 of any person or entity performed in connection with the organization.

14 * Sec. 2. AS 06 is amended by adding a new chapter to read:

15 CHAPTER 50. REAL PROPERTY LIQUIDATING ORGANIZATIONS.

16 Sec. 06.50.010. RESPONSIBILITY OF COMMISSIONER. (a) The com-
17 missioner shall administer this chapter and adopt regulations to carry
18 out the purposes of this chapter.

19 (b) By February 1 of each year the commissioner shall submit a
20 report to the legislature summarizing activities of the department
21 under this chapter during the previous year.

22 Sec. 06.50.020. FORMATION. (a) Three or more grantors may
23 create a real property liquidating organization by filing the orga-
24 nizational documents with the commissioner. The commissioner shall
25 review the documents and approve them if they comply with (b) of this
26 section and are consistent with the purposes of this chapter. Convey-
27 ance of assets to or disposition of real property or other assets by
28 an organization is not effective until the organizational documents
29 have been reviewed and approved by the commissioner.

1 (b) The organizational documents must

2 (1) state the purpose of the organization;

3 (2) identify all grantors who have subscribed to the orga-
4 nization and all persons who will possess an interest in the orga-
5 nization upon its formation;

6 (3) describe the manner in which the organization will be
7 managed;

8 (4) prescribe the method under which distributions to the
9 grantors and other beneficiaries will be made;

10 (5) provide for the conveyance to the organization of all
11 or part of the grantors' portfolios of commercial and residential real
12 property in the state and real estate loans secured by real property
13 in the state;

14 (6) provide for the transfer to the organization of other
15 assets of the grantors, including cash and consumer loans, to assist
16 the organization in fulfilling the purposes of this chapter;

17 (7) provide for the orderly disposition of the property and
18 loans of the organization at prices to be determined by the orga-
19 nization under regulations adopted by the commissioner;

20 (8) provide for expenditures to manage organization assets,
21 including expenditures to preserve or enhance the value of the orga-
22 nization's properties; and

23 (9) provide for the establishment of other terms and con-
24 ditions relating to the sale or other disposition of assets that the
25 grantors consider necessary or appropriate to ensure that the orga-
26 nization will be operated in a manner that will provide for orderly
27 disposition of the organization's assets and promote stable real
28 estate markets and a stable banking system in the state.

29 Sec. 06.50.030. AUDITS AND REPORTS. (a) In addition to the

1 record keeping requirements specified in regulations adopted by the
2 commissioner or in the organizational documents, the organization
3 shall retain a certified public accountant to annually prepare and
4 submit to the department on or before April 1 an audited balance
5 sheet, income statement, statement of principal, statement of changes
6 in financial position, schedule of all dispositions of real property
7 and real estate loans made by the organization during the previous
8 calendar year, and letters

9 (1) certifying that all dispositions of real property and
10 real estate loans and all distributions during the year were made in
11 accordance with the provisions of the organizational documents and
12 this chapter, or identifying any variance; and

13 (2) with respect to the internal financial controls and
14 practices of the organization, providing recommendations the accoun-
15 tant considers appropriate.

16 (b) The organization shall prepare and file with the commission-
17 er, on a quarterly basis, a report containing the following:

18 (1) a schedule of all real property and real estate loans
19 held by the organization;

20 (2) the sale price and all other significant terms of sale
21 for real property sold by the organization and amount of proceeds
22 received by the organization from real estate loans since the date of
23 the previous report; and

24 (3) a proposed operating plan for the next quarterly period
25 that conforms with regulations adopted by the commissioner.

26 Sec. 06.50.040. REVIEW AND APPROVAL BY COMMISSIONER. (a) The
27 commissioner shall review each report filed under AS 06.50.030(b) and
28 approve or disapprove the proposed operating plan within 20 days after
29 filing. In reviewing each report and operating plan, the commissioner

1 shall consider current market conditions. The commissioner shall
2 approve an operating plan if the commissioner finds that the report
3 and plan comply with the purposes of this chapter.

4 (b) Within five days after the department notifies an organiza-
5 tion of its intention to inspect business records, all business re-
6 cords maintained by the organization shall be available for review and
7 examination by the department at the organization's principal place of
8 business, during regular business hours. The commissioner shall
9 examine the business records of an organization on a regular basis at
10 least twice each calendar year.

11 (c) If the commissioner disapproves a proposed operating plan or
12 concludes, after examination, that the organization is being admin-
13 istered materially contrary to statute, regulation, or a previously
14 approved operating plan, the commissioner shall notify the organiza-
15 tion and all grantors in writing, specifying all deficiencies and
16 prescribing appropriate remedies. If the organization fails to remedy
17 deficiencies in accordance with the commissioner's prescriptions
18 within 60 days after receipt of the notice, the commissioner may
19 commence proceedings under AS 06.01.030.

20 (d) The expenses of the department reasonably incurred in re-
21 viewing and approving a proposed operating plan or conducting an
22 examination under this section shall be charged to and paid by the
23 organization.

24 Sec. 06.50.050. EXEMPTION. (a) If the commissioner determines
25 that the exemption is necessary to carry out the purposes of this
26 chapter, the commissioner may by regulation exempt transactions under
27 this chapter by real property liquidating organizations from any fee,
28 authorization, permit, filing, or registration requirement of or
29 administered by the department.

1 (b) Each organization is exempt from AS 45.50.471 - 45.50.396.
2 Activities in connection with an organization of a person or entity
3 that subscribes or grants assets to, contributes funds or services to,
4 obtains a beneficial interest in, or participates in the management of
5 the organization are exempt from AS 45.50.471 - 45.50.596.

6 Sec. 06.50.100. DEFINITIONS. In this chapter

7 (1) "commissioner" means the commissioner of commerce and
8 economic development;

9 (2) "department" means the Department of Commerce and
10 Economic Development;

11 (3) "grantor" means a federally or state chartered finan-
12 cial institution, federal or state agency, licensed insurer, or fi-
13 nancing company that conveys real property in the state, loans secured
14 by real property in the state, or other assets to, and thereby obtains
15 a beneficial interest in and the right to participate in the manage-
16 ment of, a real property liquidating organization;

17 (4) "real property liquidating organization" or "organiza-
18 tion" means a corporation, trust, fund, partnership, joint venture, or
19 other entity created to acquire, maintain, manage, market, administer
20 and sell, liquidate, or otherwise dispose of real property in the
21 state or loans secured by real property in the state and to distribute
22 the proceeds to its beneficiaries, in accordance with organizational
23 its documents.

24 * Sec. 3. AS 18.56 is amended by adding a new section to read:

25 Sec. 18.56.210. MARKET STABILIZATION POWERS. The corporation
26 may take appropriate action to stabilize the market price of, and the
27 supply and demand for, residential housing in the state. To accom-
28 plish the purposes of this section, the corporation may

29 (1) enter into agreements with state and federally

1 chartered financial institutions, state or federal agencies, insurers,
 2 and financing companies for the cooperative management, administra-
 3 tion, and disposition of their real property in the state and loans
 4 secured by their real property in the state; and

5 (2) convey real property in the state, loans secured by
 6 real property in the state, and other assets to, acquire a beneficial
 7 interest in, and participate in the management of a real property
 8 liquidating organization established under AS 06.50.

9 * Sec. 4. AS 44.88.080 is amended by adding a new paragraph to read:

10 (25) to convey real property in the state, loans secured by
 11 real property in the state, and other assets to, acquire a beneficial
 12 interest in, and participate in the management of a real property
 13 liquidating organization established under AS 06.50.

14 * Sec. 5. AS 06.50.010, 06.50.020, 06.50.030, 06.50.040, 06.50.050;
 15 AS 18.56.210; and AS 44.88.080(25) are repealed.

16 * Sec. 6. Sections 1 - 4 of this Act take effect June 1, 1988.

17 * Sec. 7. Section 5 of this Act takes effect June 1, 1993.

5-1863P
Cook
4/28/88

Original sponsors: Kelly and Sturgulewski

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 408 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to stabilization of the state's real
7 estate markets and banking system; authorizing the
8 establishment of real property liquidating organiza-
9 tions under active state supervision; and providing
10 for an effective date."

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

12 * Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature
13 finds that

14 (1) there have been in the state several failures of state and
15 federally chartered financial institutions and one bank consolidation by
16 the Federal Deposit Insurance Corporation under 12 U.S.C. 1823(c);

17 (2) these financial institutions as well as other businesses and
18 state and federal agencies currently hold large portfolios of distressed
19 real estate loans and real property;

20 (3) these businesses and government agencies need to be permit-
21 ted to cooperate in administering these loans and properties to avoid fur-
22 ther adverse effects on the state's real estate markets and to stabilize
23 the state's banking system; and

24 (4) the maintenance of stable and orderly markets for the pur-
25 chase and sale of commercial and residential real estate in the state is
26 essential to the economy of the state and the welfare of its citizens, as
27 is the stability of the state's banking system.

28 (b) The legislature intends to ensure the stability of the state's
29 banking system and real estate markets and prevent a precipitous decline in

1 real estate prices by displacing competition with government regulation in
2 matters relating to the administration, management, and disposition of real
3 property in the state and loans secured by the property held by financial
4 institutions, other businesses, and state and federal agencies. By au-
5 thorizing the creation of real property liquidating organizations and
6 mandating active state supervision of these organizations, the legislature
7 intends that each real property liquidating organization and all persons
8 and entities who subscribe or grant assets to, contribute funds or services
9 to, obtain a beneficial interest in, or participate in the management of
10 the organization will be fully immunized against potential liability under
11 federal antitrust laws and state antitrust, competition, and trade prac-
12 tices laws arising from the operation of the organization or the activities
13 of any person or entity performed in connection with the organization.

14 * Sec. 2. AS 06 is amended by adding a new chapter to read:

15 CHAPTER 50. REAL PROPERTY LIQUIDATING ORGANIZATIONS.

16 Sec. 06.50.010. RESPONSIBILITY OF COMMISSIONER. (a) The com-
17 missioner shall administer this chapter and adopt regulations to carry
18 out the purposes of this chapter.

19 (b) By February 1 of each year the commissioner shall submit a
20 report to the legislature summarizing activities of the department
21 under this chapter during the previous year.

22 Sec. 06.50.020. FORMATION. (a) Three or more grantors may
23 create a real property liquidating organization by filing the orga-
24 nizational documents with the commissioner. The commissioner shall
25 review the documents and approve them if they comply with (b) of this
26 section and are consistent with the purposes of this chapter. Convey-
27 ance of assets to or disposition of real property or other assets by
28 an organization is not effective until the organizational documents
29 have been reviewed and approved by the commissioner.

- 1 (b) The organizational documents must
- 2 (1) state the purpose of the organization;
- 3 (2) identify all grantors who have subscribed to the orga-
- 4 nization and all persons who will possess an interest in the orga-
- 5 nization upon its formation;
- 6 (3) describe the manner in which the organization will be
- 7 managed;
- 8 (4) prescribe the method under which distributions to the
- 9 grantors and other beneficiaries will be made;
- 10 (5) provide for the conveyance to the organization of all
- 11 or part of the grantors' portfolios of commercial and residential real
- 12 property in the state and real estate loans secured by real property
- 13 in the state;
- 14 (6) provide for the transfer to the organization of other
- 15 assets of the grantors, including cash and consumer loans, to assist
- 16 the organization in fulfilling the purposes of this chapter;
- 17 (7) provide for the orderly disposition of the property and
- 18 loans of the organization at prices to be determined by the orga-
- 19 nization under regulations adopted by the commissioner;
- 20 (8) provide for expenditures to manage organization assets,
- 21 including expenditures to preserve or enhance the value of the orga-
- 22 nization's properties; and
- 23 (9) provide for the establishment of other terms and con-
- 24 ditions relating to the sale or other disposition of assets that the
- 25 grantors consider necessary or appropriate to ensure that the orga-
- 26 nization will be operated in a manner that will provide for orderly
- 27 disposition of the organization's assets and promote stable real
- 28 estate markets and a stable banking system in the state.

29 Sec. 06.50.030. AUDITS AND REPORTS. (a) In addition to the

1 record keeping requirements specified in regulations adopted by the
2 commissioner or in the organizational documents, the organization
3 shall retain a certified public accountant to annually prepare and
4 submit to the department on or before April 1 an audited balance
5 sheet, income statement, statement of principal, statement of changes
6 in financial position, schedule of all dispositions of real property
7 and real estate loans made by the organization during the previous
8 calendar year, and letters

9 (1) certifying that all dispositions of real property and
10 real estate loans and all distributions during the year were made in
11 accordance with the provisions of the organizational documents and
12 this chapter, or identifying any variance; and

13 (2) with respect to the internal financial controls and
14 practices of the organization, providing recommendations the accoun-
15 tant considers appropriate.

16 (b) The organization shall prepare and file with the commission-
17 er, on a quarterly basis, a report containing the following:

18 (1) a schedule of all real property and real estate loans
19 held by the organization;

20 (2) the sale price and all other significant terms of sale
21 for real property sold by the organization and amount of proceeds
22 received by the organization from real estate loans since the date of
23 the previous report; and

24 (3) a proposed operating plan for the next quarterly period
25 that conforms with regulations adopted by the commissioner.

26 Sec. 06.50.040. REVIEW AND APPROVAL BY COMMISSIONER. (a) The
27 commissioner shall review each report filed under AS 06.50.030(b) and
28 approve or disapprove the proposed operating plan within 20 days after
29 filing. In reviewing each report and operating plan, the commissioner

1 shall consider current market conditions. The commissioner shall
2 approve an operating plan if the commissioner finds that the report
3 and plan comply with the purposes of this chapter.

4 (b) Within five days after the department notifies an organiza-
5 tion of its intention to inspect business records, all business re-
6 cords maintained by the organization shall be available for review and
7 examination by the department at the organization's principal place of
8 business, during regular business hours. The commissioner shall
9 examine the business records of an organization on a regular basis at
10 least twice each calendar year.

11 (c) If the commissioner disapproves a proposed operating plan or
12 concludes, after examination, that the organization is being admin-
13 istered materially contrary to statute, regulation, or a previously
14 approved operating plan, the commissioner shall notify the organiza-
15 tion and all grantors in writing, specifying all deficiencies and
16 prescribing appropriate remedies. If the organization fails to remedy
17 deficiencies in accordance with the commissioner's prescriptions
18 within 60 days after receipt of the notice, the commissioner may
19 commence proceedings under AS 06.01.030.

20 (d) The expenses of the department reasonably incurred in re-
21 viewing and approving a proposed operating plan or conducting an
22 examination under this section shall be charged to and paid by the
23 organization.

24 Sec. 06.50.050. EXEMPTION. (a) If the commissioner determines
25 that the exemption is necessary to carry out the purposes of this
26 chapter, the commissioner may by regulation exempt transactions under
27 this chapter by real property liquidating organizations from any fee,
28 authorization, permit, filing, or registration requirement of or
29 administered by the department.

1 (b) Each organization is exempt from AS 45.50.471 - 45.50.396.
2 Activities in connection with an organization of a person or entity
3 that subscribes or grants assets to, contributes funds or services to,
4 obtains a beneficial interest in, or participates in the management of
5 the organization are exempt from AS 45.50.471 - 45.50.596.

6 Sec. 06.50.100. DEFINITIONS. In this chapter

7 (1) "commissioner" means the commissioner of commerce and
8 economic development;

9 (2) "department" means the Department of Commerce and
10 Economic Development;

11 (3) "grantor" means a federally or state chartered finan-
12 cial institution, federal or state agency, licensed insurer, or fi-
13 nancing company that conveys real property in the state, loans secured
14 by real property in the state, or other assets to, and thereby obtains
15 a beneficial interest in and the right to participate in the manage-
16 ment of, a real property liquidating organization;

17 (4) "real property liquidating organization" or "organiza-
18 tion" means a corporation, trust, fund, partnership, joint venture, or
19 other entity created to acquire, maintain, manage, market, administer
20 and sell, liquidate, or otherwise dispose of real property in the
21 state or loans secured by real property in the state and to distribute
22 the proceeds to its beneficiaries, in accordance with organizational
23 its documents.

24 * Sec. 3. AS 18.56 is amended by adding a new section to read:

25 Sec. 18.56.210. MARKET STABILIZATION POWERS. The corporation
26 may take appropriate action to stabilize the market price of, and the
27 supply and demand for, residential housing in the state. To accom-
28 plish the purposes of this section, the corporation may

29 (1) enter into agreements with state and federally

1 chartered financial institutions, state or federal agencies, insurers,
 2 and financing companies for the cooperative management, administra-
 3 tion, and disposition of their real property in the state and loans
 4 secured by their real property in the state; and

5 (2) convey real property in the state, loans secured by
 6 real property in the state, and other assets to, acquire a beneficial
 7 interest in, and participate in the management of a real property
 8 liquidating organization established under AS 06.50.

9 * Sec. 4. AS 44.88.080 is amended by adding a new paragraph to read:

10 (25) to convey real property in the state, loans secured by
 11 real property in the state, and other assets to, acquire a beneficial
 12 interest in, and participate in the management of a real property
 13 liquidating organization established under AS 06.50.

14 * Sec. 5. AS 06.50.010, 06.50.020, 06.50.030, 06.50.040, 06.50.050;
 15 AS 18.56.210; and AS 44.88.080(25) are repealed.

16 * Sec. 6. Sections 1 - 4 of this Act take effect June 1, 1988.

17 * Sec. 7. Section 5 of this Act takes effect June 1, 1993.

5-1863N ✓
Cook
4/21/88

Original sponsors: Kelly and Sturgulewski

1 IN THE SENATE BY THE FINANCE COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 408 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to stabilization of the real estate
7 market; authorizing the establishment of real prop-
8 erty liquidating organizations; and providing for an
9 effective date."

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

11 * Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature
12 finds that

13 (1) there have been in the state several failures of state and
14 federally chartered financial institutions and one bank consolidation by
15 the Federal Deposit Insurance Corporation under 12 U.S.C. 1823(c);

16 (2) state and federal agencies currently hold large portfolios
17 of distressed real estate loans and real property;

18 (3) these financial institutions and government agencies need to
19 be permitted to cooperate in administering these properties to avoid fur-
20 ther adverse effects on the state's real estate markets and to stabilize
21 the state's banking system; and

22 (4) the maintenance of stable and orderly markets for the pur-
23 chase and sale of commercial and residential real estate in the state is
24 essential to the economy of the state and the welfare of its citizens.

25 (b) The legislature intends to ensure the stability of the state's
26 real estate markets and prevent a precipitous decline in real estate prices
27 by displacing competition with government regulation in matters relating to
28 the sale and disposition of real property held by financial institutions
29 and state and federal agencies as a result of foreclosure actions. By

1 authorizing the creation of real property liquidating organizations under
2 state supervision, the legislature intends to grant authority to the com-
3 missioner of commerce and economic development to provide by regulation
4 that persons and entities who subscribe or grant assets to, contribute
5 funds or services to, obtain a beneficial interest in, or participate in
6 the management of a real property liquidating organization will be immu-
7 nized as necessary possible against potential liability under federal
8 antitrust laws and state antitrust, competition, and trade practices laws
9 arising from the operation of the organizations.

10 * Sec. 2. AS 06 is amended by adding a new chapter to read:

11 CHAPTER 50. REAL PROPERTY LIQUIDATING ORGANIZATIONS.

12 Sec. 06.50.010. RESPONSIBILITY OF COMMISSIONER. The commis-
13 sioner shall administer this chapter and adopt regulations to carry
14 out the purposes of this chapter.

15 Sec. 06.50.020. FORMATION. (a) Three or more grantors may
16 create a real property liquidating organization by filing the orga-
17 nizational documents with the commissioner. The commissioner shall
18 review the documents and approve them if they comply with (b) of this
19 section and are consistent with the purposes of this chapter. Convey-
20 ance of assets to or disposition of real property or other assets by
21 an organization is not valid until the organizational documents have
22 been reviewed and approved by the commissioner.

23 (b) The organizational documents must

24 (1) state the purpose of the organization;

25 (2) identify all grantors who will subscribe to the orga-
26 nization and all persons who will possess an interest in the orga-
27 nization;

28 (3) describe the manner in which the organization will be
29 managed;

1 (4) prescribe the method under which distributions to the
2 grantors and other beneficiaries will be made;

3 (5) provide for the conveyance to the organization of all
4 or part of the grantors' portfolios of commercial and residential real
5 properties in the state or other assets;

6 (6) provide for the orderly disposition of property of the
7 organization at prices to be established in accordance with the orga-
8 nizational documents;

9 (7) provide for the expenditure of assets to manage orga-
10 nization property, including expenditures to preserve or enhance the
11 value of properties; and

12 (8) provide for the establishment of other terms and con-
13 ditions relating to the sale or other disposition of assets that the
14 grantors consider necessary or appropriate to ensure that the orga-
15 nization will be operated in a manner that will provide for orderly
16 disposition of property and promote a stable real estate market and
17 economy.

18 Sec. 06.50.030. AUDITS AND REPORTS. (a) In addition to the
19 record keeping requirements specified in regulations adopted by the
20 commissioner or in the organizational documents, the organization
21 shall retain a certified public accountant to annually prepare and
22 submit to the department on or before April 1 of each calendar year an
23 audited balance sheet, income statement, statement of principal,
24 statement of changes in financial position, and schedule of all dispo-
25 sitions of real estate assets made by the organization during the
26 year. In connection with the preparation of the financial documents,
27 the accountant shall issue letters

28 (1) certifying that all sales of real estate assets and all
29 distributions during the year were made in accordance with the

1 provisions of the organization documents and this chapter, or identi-
2 fying any variance; and

3 (2) with respect to the internal financial controls and
4 practices of the organization, providing recommendations the accoun-
5 tant considers appropriate.

6 (b) The organization shall prepare and file with the commission-
7 er, on a quarterly basis, a report containing the following:

8 (1) a schedule of all real property held by the organiza-
9 tion;

10 (2) the sale price and all other significant terms of sale
11 for real property sold since the date of the previous report; and

12 (3) a proposed operating plan for the next quarterly period
13 that conforms with regulations adopted by the commissioner.

14 Sec. 06.50.040. REVIEW AND APPROVAL BY COMMISSIONER. (a) The
15 commissioner shall review each report filed under (b) of this section
16 and approve or disapprove the proposed operating plan within 20 days
17 after filing. In reviewing the operating plan, the commissioner shall
18 consider current market conditions. Before approving the plan, the
19 commissioner must find that the plan complies with the purpose of this
20 chapter.

21 (b) Within five days after the department notifies an organiza-
22 tion of its intention to inspect business records, all business re-
23 cords maintained by the organization shall be available for review and
24 examination by the department at the organization's principal place of
25 business, during regular business hours. The commissioner shall
26 examine the business records of an organization on a regular basis at
27 least twice each calendar year.

28 (c) If the commissioner disapproves the proposed operating plan
29 or concludes, after examination, that the organization is being

1 administered contrary to statute or regulation, the commissioner shall
2 notify the organization and all grantors in writing, specifying all
3 deficiencies and prescribing appropriate remedies. If the organiza-
4 tion fails to remedy deficiencies in accordance with the commission-
5 er's prescriptions within 60 days after receipt of the notice, the
6 commissioner may commence proceedings under AS 06.01.030.

7 (d) The expenses of the department reasonably incurred in re-
8 viewing and approving a proposed operating plan or conducting an
9 examination under this section shall be charged to and paid by the
10 organization in accordance with AS 06.01.010.

11 Sec. 06.50.050. PREEMPTION. If the commissioner determines that
12 the exemption is necessary to carry out the purposes of this chapter,
13 the commissioner may by regulation exempt transactions under this
14 chapter by real property liquidating organizations from any fee,
15 authorization, permit, filing, or registration requirement of or
16 administered by the department.

17 Sec. 06.50.100. DEFINITIONS. In this chapter

18 (1) "commissioner" means the commissioner of commerce and
19 economic development;

20 (2) "department" means the Department of Commerce and
21 Economic Development;

22 (3) "grantor" means a federally or state chartered finan-
23 cial institution, federal or state agency, licensed insurer, or fi-
24 nancing company that conveys assets to, and thereby obtains a benefi-
25 cial interest in and the right to participate in the management of, a
26 real property liquidating organization;

27 (4) "real property liquidating organization" or "organiza-
28 tion" means a corporation, trust, fund, partnership, joint venture, or
29 other legal entity created to acquire, maintain, manage, market, sell,

1 or otherwise dispose of real property in the state and to distribute
 2 to the beneficiaries, in accordance with the provisions of the orga-
 3 nization documents, the proceeds derived from the sale or disposition
 4 of the property.

5 * Sec. 3. AS 18.56 is amended by adding a new section to read:

6 Sec. 18.56.210. MARKET STABILIZATION POWERS. The corporation
 7 may take appropriate action to stabilize the market price of and
 8 demand for residential housing in the state. To accomplish the pur-
 9 poses of this section, the corporation may

10 (1) enter into agreements with state and federally char-
 11 tered financial institutions, state or federal agencies, insurers, and
 12 financing companies for the cooperative management and disposal of
 13 real property owned by the corporation, financial institutions, agen-
 14 cies, or other contracting parties; and

15 (2) convey real property and other assets to, and acquire a
 16 beneficial interest in, a real property liquidating organization
 17 established under AS 06.50.

18 * Sec. 4. AS 44.88.080 is amended by adding a new paragraph to read:

19 (25) to convey real property and other assets to, and ac-
 20 quire a beneficial interest in, a real property liquidating orga-
 21 nization established under AS 06.50.

22 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).
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