1668 SJ SB 77 - SB 78 (file 1)

Alaska's version of the definition might include an official comment paraphrased from that given above as follows:

> This section also defines a "clearing corporation" in a manner which permits not only national securities exchanges, banks, insurance companies and similar organizations, but also individuals to participate in the control and management of such a corporation through ownership of shares.

The next point of departure between the Alaska statutes and the UCC is the absence in the Alaska statutes of any section which corresponds to UCC sec. 8-107, which provides:

> (1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to deliver securities may deliver any security of the specified issue in bearer form or registered in the name of the transferee or indorsed to him or in blank.
>
> (2) When the buyer fails to pay the price as it comes due under a contract of sale the seller may recover the price
>
> > (a) of securities accepted by the buyer; and
> >
> > (b) of other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale.

This sections reflects the treatment of securities of a particular issue as "fungibles," that is, goods of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Thus, a person obligated to deliver securities need not deliver any specific instrument but may select any security of the proper issue, in bearer form or appropriately registered or indorsed. While the Alaska statutes do not contain the specific section quoted above, the treatment of securities as fungible goods may be supported with similar effect by reference to other Alaska statutes. AS 45.05.020(17) defines "fungible" as follows:

> (17) "fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit.

And AS 45.05.028(c) allows for usage of trade by providing:

> (c) a course of dealing between parties and a usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

Since usage of trade in investment securities most likely would include the treatment of securities as fungibles, it would probably be permissible for a person in Alaska obligated to deliver securities to deliver any security of the specified issue. This conclusion is reinforced by the inclusion of the term "or securities" in the definition of "fungible."

However, the second subsection of 8-107, while basically restating a common law rule of recovery of damages, is not susceptible to the same type of reasoning which allows the first subsection to be read into Alaska law, and there are two reasons why this is so. First, there is no Alaska statute of general applicability which contains substantially similar terms, and, second, the verbatim adoption by the state of almost every other section of this article of the UCC, combined with the total exclusion in the Alaska statutes of this section, leads to a strong inference that the terms of this section were not intended to apply in Alaska.

UCC sec. 8-107 was intended to follow the common law rule enunciated, but not followed, in Agar v. Orda, 190 N.E. 479 (1934). In Agar, the court ruled that the adoption in New York of the Sales Act preempted the common law action for the price. The Sales Act provided a recovery of damages remedy. Alaska's Sales Act, AS 45.05.036 - 45.05.242, provides for an action to recover the contract price of goods sold but refused by the buyer; however, under the express terms of AS 45.05.038, that section is applicable only to the sections of the Sales Act.

It might be argued that AS 01.10.010 should allow the common law rule to apply. That section provides:

> So much of the common law not inconsistent with the Constitution of the State of Alaska or the Constitution of the United States or with any law passed by the legislature of the State of Alaska is the rule of decision in this state.

Nevertheless, the section must be considered in light of the recent federal district court decision of Aleut Corp. v. Arctic Slope Regional Corp., 424 F. Supp. 397, (D. Alaska 1976) in which the court considered the applicability in Alaska of sequestration, a provisional contract remedy available at common law. The court noted:

> Given the harsh nature of the remedy of sequestration and the fact that the Alaska legislature has spelled out in some detail the procedure for obtaining other similar remedies while it has not enacted a sequestration statute, the implication is clear that Alaska has decided that sequestration of the nature sought in an action to require a regional corporation organized under the Alaska Native Claims Settlement Act to place certain funds in secure and liquid investments pending litigation is not available and has preempted the common law with a complex statutory scheme. (at p. 400

In Hockley v. Hargett, 510 P.2d 1123 (1973), the Washington court, faced with an identical issue, reached the opposition conclusion, that sequestration was available despite legislative silence on the question. Legislative silence in Alaska, at least until our Supreme Court has an opportunity to address the issue, leaves the question of the availability of an action for the price unanswered.

AS 45.05.650(c) and (e) provide:

> (c) If a security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against the delivery, the intermediary by the delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery. A broker is not an intermediary within the meaning of this subsection.
>
> (e) A broker gives to his customers and to the issuer and a purchaser the warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition of applicable warranties given by and in favor of his customer.

The corresponding UCC section, 8-306, eliminates the last sentence of (c) above. The following paragraphs from the official comment explain the distinction:

> (3) Subsections (3) and (4) are designed to eliminate all substantive warranties in the case of deliveries by intermediaries and pledgees. Such parties deal primarily with the draft or other claim, and, having no access to direct knowledge about the security, they cannot be held to warrant its genuineness or validity.
>
> Further, following Appenzellar v. McCall, 150 Misc. 897, 270 N.Y.S. 748 (1934), although the so-called "stock-broker" normally functions as a broker (see definition of "broker", Section 8-303) (the identical definition is provided in AS 45.05.644) and on a few occasions another institution such as a bank may function as a broker, e.g for a standard broker's commission or similar compensation, nevertheless both the so-called "stock-broker" and the bank can qualify for the protection given by subsections (3) and (4) to an "intermediary" where in the particular transaction it does not function as a broker, e.g. delivering securities on a customer's instructions, either without charge or for a nominal handling charge.

Under Alaska's version of the section, the broker would not be qualified for the protection of (c) even if he were acting merely as an intermediary.

AS 45.05.654 and UCC sec. 8-308 list the people who may endorse a security for transfer. UCC sec. 8-308(3)(b) includes as an "appropriate person"

> where the person so specified [by the security or by special indorsement to be entitled to the security] is described as a fiduciary but is no longer serving in a described capacity, -- either that person or his successor.

AS 45.05.654(c)(2) contains the same language except that the phrase "either that person or" is deleted. The reason that the phrase is included in the UCC version was explained by the editorial board as follows:

> The amendment is recommended as clarification to avoid any risk that the general requirement of indorsement by "an appropriate person" in any way militates against the clear intention of subsection (3)(a) of Section 8-403 [also found at AS 45.05.682(c)(1)] to permit the issuer to rely on the continued power to act of a fiduciary named in a security until receipt of written notice to the contrary.

KEV:hjd

MEMORANDUM REGARDING UNIFORM AMENDMENTS TO
THE UNIFORM COMMERCIAL CODE (UCC--ARTICLE 9
ON SECURED TRANSACTIONS (Sections 15-71 in SB 77)

MARCH 1981

This memorandum will explain points of difference between Article 9 of the Uniform Commercial Code (UCC) and AS 45.09.101 - 45.09.507.

UCC Article 9 and AS 45.09.101 - 45.09.507 relate to secured transactions. Article 9 has been substantially revised in recent years; the Alaska law has not been revised to conform with changes in the UCC version. The result is a large number of discrepancies between the two versions; this discussion will follow the Alaska law in numerical sequence.

1. AS 45.09.102

AS 45.09.102 relates to the policy and scope of this article of AS 45.09. AS 45.09.102(a) provides:

> (a) Except as otherwise provided in sec. 103 of this chapter on multiple state transactions, secs. 101 - 507 of this chapter apply, as far as concerns personal property and fixtures in the jurisdiction of the state,
>
> (1) to a transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, accounts, or contract rights; and
>
> (2) to a sale of accounts, contract rights, or chattel paper.

UCC sec. 9-102 contains the same provisions, except that it:

> (1) deletes 'in sec. 103 of this chapter on multiple state transactions' following 'Except as otherwise provided';
>
> (2) deletes 'so far as concerns any personal property and fixtures in the jurisdiction of the state' following 'this chapter apply;'
>
> (3) deletes the references to 'contract rights' in paragraphs (1) and (2).

The reason for the first two deletions is the feeling on the part of the Commissioners on Uniform State Laws that this article of the UCC should be dedicated to secured transactions and that general questions of conflicts of laws should be left to Article 1 of the code.

The references to "contract rights" were deleted as unnecessary and confusing. This term has been deleted from all sections of UCC Article 9. Prior to 1972, the UCC distinguished a "contract right" from an "account" in terms of whether the right to payment had matured. If the right to payment under a contract had not yet been earned by performance by the creditor, then it was a "contract right." If the right to payment had matured, then it was an "account." Under the revised version, it is irrelevant whether the right to payment has been earned by performance. An account is defined in UCC sec. 9-106 as

> any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance.

2. AS 45.09.103

AS 45.09.103 establishes rules for the choice of law where accounts, contract rights, general intangibles, and equipment relate to another jurisdiction. The UCC counterpart, 9-103, has been completely revised in accord with the sentiment expressed by the first two deletions in 9-102. The section now concerns itself exclusively with perfection of security interests and the effect of perfection or non-perfection. It establishes the basic rule that the controlling law, as to perfection of the security interests and the effect of perfection, is the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected. There are certain exceptions to the rule which are listed.

3. AS 45.09.104

AS 45.09.104 excludes certain transactions from coverage under Article 9. Its counterpart, UCC sec. 9-104, contains similar provisions; however, there are noteworthy differences. Section 104(5) provides that the chapter does not apply to an equipment trust covering railway rolling stock. UCC sec. 9-104 deletes this provision with the following explanation:

> The whole thrust of Article 9 is to eliminate differences based on the form of a transaction, and the equipment trust serves the same function as other purchase money forms of financing. In fact, a form known as the 'New York

> equipment trust' comes closer to a conditional sales contract than it does to a Pennsylvania equipment trust, and thus the former exclusion left substantial uncertainty.

In place of this deleted paragraph, the UCC section inserts the following:

> (e) to a transfer by a government or governmental subdivision or agency.

The Alaska section had previously included a paragraph which is similar in nature to the new UCC paragraph. Alaska's paragraph provides:

> (12) to a security interest created by or on behalf of the state or any of its political subdivisions (including but not limited to the unorganized borough or any city or borough of any class, whether home rule or not) or any service area, public enterprise, public corporation, agency or instrumentality of the state or of any of its political subdivisions.

The UCC official comment explains its paragraph as follows:

> Certain governmental borrowings include collateral in the form of assignments of water, electricity or sewer charges, rents on dormitories or industrial buildings, tools, etc. Since these assignments are usually governed by special provisions of law, these governmental transfers are excluded from this Article.

AS 45.09.104(6) provides:

> to a sale of accounts, contract rights, or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts, contract rights, or chattel paper which is for the purpose of collection only, or a transfer of a contract right to an assignee who is also to do the performance under the contract.

UCC sec. 9-104(f) deletes references to "contract rights" in this paragraph and adds at the end of the phrase "or a transfer of a single account to an assignee in whole or in partial satisfaction of a pre-extisting indebtedness."

The latter amendment reflects the general scope of the article, which includes all commercial financing transactions.

The transfer of a single account in satisfaction of a pre-existing indebtedness is a personal transaction not encompassed by the article.

Both the UCC section and the Alaska statute exclude transfers of interests in insurance policies and in deposit accounts. However, the UCC section notes that these interests are nevertheless subject to 9-603 (proceeds; secured party's rights on disposition of collateral) and 9-132 (priorities among conflicting security interests in the same collateral). Both sections also exclude rights represented by a judgment, but the UCC section notes that this does not include a judgment taken on a right to payment which was collateral.

4. AS 45.09.105

AS 45.09.105 and UCC sec. 9-105 provide definitions and indices of definitions. The UCC section includes several definitions which are not in the Alaska section. The following list includes the definitions not included in the Alaska section with parenthetical notes containing the official reason, if any, for their inclusion:

> 'Deposit account' means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit (A definition of "deposit account" has been added to facilitate references to such accounts in the section on proceeds (Section 9-306));
>
> 'Encumbrance' includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests (Definitions of "encumbrance" and "mortgage" have been added as the basis for the use thereof in Section 9-313);
>
> 'Mortgage' means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;
>
> An advance is made 'pursuant to commitment' if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation (A definition of "pursuant to commitment" has been added as the basis for use of this concept in Sections 9-301, 9-307, and 9-132);

> 'Transmitting utility' means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service (A definition of "transmitting utility" has been added to identify a class of debtor with special filing problems on far-flung properties, for which special filing rules are stated in Part 4).

In addition to definitions which are not in the Alaska law, the UCC section includes references to definitions which are not referenced in the Alaska section. These references include

> "Attach"--Section 9-203
>
> "Construction mortgage"--Section 9-313(1)
>
> "Fixture"--Section 9-313(1)
>
> "Fixture filing"--Section 9-313(1)
>
> "United States"--Section 9-103

Other definitions which are included in the Alaska statute have been modified in the UCC section. AS 45.09.105(2) defines "chattel paper" as follows:

> A writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods [, but a charter or other contract involving the use or hire of a vessel is not chattel paper]; when a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitute a chattel paper.

The portion in brackets has been added in the UCC section. The UCC note on the reason for this portion follows:

> To make clear that no type of ship charter is to be considered chattel paper. Many types of ship financing based on assignment of a charter involve international transactions, and there are numerous executed copies of the charter. Under

> Section 9-308 an assignment of chattel paper perfected by delivery of the chattel paper prevails over an assignment perfected by filing. Application of this rule would require the parties to change traditional practices in order to control all executed copies. Moreover, it is desirable to treat all types of ship charters alike, and some cannot be deemed chattel paper.

The Alaska definition [with the UCC addition in brackets] of "document"

> document of title as defined in the general definitions of sec. 20 of this chapter [, and a receipt of the kind described in subsection (2) of Section 7-201].

The UCC addition includes the kind of receipt issued by a person who is not technically a warehouseman, as described in Section 7-201(2) and AS 45.07.201(b).

The UCC definition of "goods" includes two items which are not listed in the Alaska section. They are "minerals or the like (including oil and gas) before extraction" and "standing timber which is to be cut and removed under a conveyance or contract for sale." It deletes a reference in the Alaska version to "other things in action." The UCC explanation of the latter modification is:

> The exclusion of 'other things in action' from the definition of 'goods' has been deleted as unnecessary. 'General intangibles,' which under Section 9-106 includes 'things in action,' are themselves excluded from the definition of goods.

5. AS 45.09.106

AS 45.09.106 defines "account;" "contract right;" "general intangibles." The UCC section has been modified to delete references to "contract right."

6. No Corresponding Alaska Statute

The UCC article has adopted a section (9-114) which is not included in the Alaska law. The new section attempts to clarify the relationship between the filing rule for consignments under UCC sec. 2-326 (AS 45.02.326) and Article 9. The UCC comment explains as follows:

> An uncertainty has existed under the 1962 Code whether the filing rule in Section 2-326(3) applicable to true consignments requires only filing under Part 4 of Article 9 or also requires notice to prior inventory secured parties of the debtor under Section 9-312(3). The new Section 9-114 accepts the latter view and provides in substance that, in order to protect his ownership of the consigned goods, the consignor must give the same notice to an inventory secured party of the debtor that he would have to give if his transaction with the consignee was in the form of a security transaction instead of in the form of a consignment. This new section follows closely the language of Section 9-312(3) [AS 45.09.312(c)].

7. AS 45.09.203

AS 45.09.203 relates to the enforceability of security interests. AS 45.09.204 establishes when security interests attach. UCC sec. 9-203 has modified these sections by combining them into one. The purpose was to cure "the former anomaly that a security interest could attach and be perfected, and yet be unenforceable against anyone for lack of a written security agreement."

In addition, the requirement that a security agreement covering oil, gas or minerals to be extracted contain a description of the land concerned has been eliminated in the UCC section. The reason for this change is that the article does not recognize a security interest in such collateral until it has been extracted from the land.

Finally, the new UCC section adds a new subsection to make clear that claims to proceeds under section 9-306 (AS 45.09.306) do not require a statement in the security agreement, for it is assumed that the parties so intend unless otherwise agreed.

8. AS 45.09.204

The provisions of AS 45.09.204 which do not deal with the attachment of a security interest have been modified in the corresponding UCC section.

The provisions in AS 45.09.204(b) have been eliminated altogether in the UCC section. That subsection provides:

> (b) For the purposes of this section, the debtor has no rights

(1) in crops until they are planted or otherwise become growing crops; in the young of livestock until they are conceived;

(2) in fish until caught; in oil, gas, or minerals until they are extracted; in timber until it is cut;

(3) in a contract right until the contract has been made;

(4) in an account until it comes into existence.

The reason for the deletion is that the subsection was unnecessary and in some cases confusing. Its operation appeared to be arbitrary, according to the UCC, and it was believed that the questions considered were best left to the courts.

The modified UCC version also eliminated the paragraph corresponding to AS 45.09.204(d)(1). That paragraph provided that no security interests in crops attaches under an after-acquired property clause to crops which become such more than one year after the security agreement, unless the agreement involved certain real estate transactions. The official comment states:

> The obvious purpose of this provision was to protect a necessitous farmer from encumbering his crops for many years in the future. The provision did not work because there was no corresponding limit on the scope of a financing statement covering crops and under the Code's notice-filing rules the priority position of a security arrangement covering successive crops would be as effectively protected by the filing of a first financing statement whether the granting clause as to successive crops was in one security agreement with an after-acquired property clause or in a succession of security agreements. On the other hand the clause did require an annual security agreement for crops even when the encumbrance on crops was agreed to as part of a long-term financing covering farm machinery and other assets. The provision thus appeared to be meaningless in operation except to cause unnecessary paperwork, but it did introduce some element of uncertainty as to its purpose.

9. AS 45.09.206

AS 45.09.206 provides that an agreement by a buyer not to assert against an assignee of the seller any claim or

defense he may have against the seller will be enforced if the assignee is an assignee for value, in good faith, and without notice of a claim or defense. The corresponding UCC section, 9-206, includes such agreements made by lessees. The UCC explanation is as follows:

> In view of the substantial growth in lease financing and the quite parallel application of problems dealt with by this section to both conditional sale contracts and leases, it is believed this section should be made applicable to leases as well as to more traditional purchase money security interests.

10 AS 45.09.301

AS 45.09.301 lists the class of people who take priority over unperfected security interests. It includes persons who become lien creditors without knowledge of the security interest and before it is perfected. The UCC section, 9-301, eliminates knowledge as a factor for these people. The official reason states:

> The former section denied the lien creditor priority even though he had knowledge when he got involved by extending credit, if he acquired knowledge while attempting to extricate himself. It was completely inconsistent in spirit with the rules of priority between security interests, where knowledge plays a very minor role.

AS 45.09.301 also defines "lien creditor." A lien creditor is a creditor who has acquired a lien on the property involved by attachment, levy, or the like. The UCC section adds a subsection which provides:

> A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within 45 days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

This new subsection provides an absolute priority for the security interest over a judgment lien for 45 days regardless of knowledge of the secured party concerning the judgment lien. If, however, the advance is made after the 45 days, the advance will not have priority unless it was made or committed without

knowledge of the lien obtained by legal proceedings. The importance of the rule is important in effectuating the intent of the Federal Tax Lien Act of 1966, although its importance may not be great as between secured parties making subsequent advances and judgment lien creditors.

11. AS 45.09.302

AS 45.09.302 delineates when filing is required to perfect a security interest and the security interests to which the filing provisions do not apply. Paragraph (a)(3) includes as a security interest to which the filing provisions do not apply a purchase money security interest in farm equipment having a purchase price not in excess of $2,500; but filing is required for a fixture under sec. 313 of the chapter or for a motor vehicle required to be licensed.

The UCC section, 9-302, deletes the reference to farm equipment in the belief that it was inappropriate; the effect of the rule was to make farmers' equipment unavailable to them as collateral for loans from some lenders. The UCC section inserts a new paragraph which

> exempts from filing rules security interests created by assignments of beneficial interests in trusts and estates, because these assignments are not ordinarily thought of as subject to this Article, and a filing rule might operate to defeat many assignments.

In addition, the UCC section replaces the language above relating to fixtures and motor vehicles with the following:

> but filing is required for a motor vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in Section 9-313 [AS 45.09.313].

This makes filing for fixtures applicable only for priority against real estate interests.

The UCC section also adds a new paragraph to this subsection which exempts from filing assignments for the benefit of creditors. Such transactions were not felt to be "financing transactions."

Subsection (c) of AS 45.09.302 also exempts from the filing requirements of the chapter security interests in property subject to a statute of the United States providing for national registration or subject to a statute of Alaska providing

for central filing. The UCC section replaces this subsection with two new subsections. One subsection exempts from the article transactions as to which an adequate system of filing, state or federal, has been set up outside the article, and the other subsection makes clear that when such a system exists perfection of a relevant security interest can be had only through compliance with that system (that is, filing under the article is not a permissible alternative).

Alaska's statute includes a subsection which is not in the UCC version. It exempts from the requirements of sections 401(a)(1) and (2), 403(b), (c), and (e) and 407 of the chapter security interests in personal property of any description created by a deed of trust or mortgage made by a corporation primarily engaged in the business of a common carrier by rail, the furnishing of telephone or telegraph service, the transmission of oil, gas or petroleum products by pipeline, or the production, transmission of distribution of electricity, steam, gas, or water. The sections from which these security interests are exempted relate, respectively, to the place of filing, duration of and fee for filing, and information from a filing officer. The subsection provides a separate filing system for these security interests. The House Judiciary Committee report on the bill which added this subsection states:

> Current law requires all chattel mortgages to be renewed every five years by a new filing. The purpose of the current law is to clean out the files of paid off mortgages that have not been formally released. Most chattel mortgages are for periods of less than five years.
>
> This bill relieves the mortgagee from refiling mortgages every five years if the mortgage is signed by specified public utilities. Most public utility financing is long term and includes real property as well as personal. This bill does not defeat the purpose of the present law. (House Journal, 1967, p. 310)

12. AS 45.09.304

AS 45.09.304(a) relates to perfection of security interests in chattel paper, instruments, and negotiable documents. It provides:

> A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in instruments (other than instruments which constitute part of chattel paper) can be perfected only by the

secured party's taking possession, except as provided in (d) and (e) of this section.

UCC sec. 9-304 adds "money or" after "A security interest in" in the second sentence. It also adds a reference to 9-306 on proceeds at the end of the sentence as a further exception to that section. The change corrects an inadvertent omission in the 1962 text and makes clear that a security interest in money cannot be perfected by filing.

AS 45.09.304(e) provides a 21-day period during which a security interest remains perfected without filing if a secured party has a perfected security interest in an instrument, a negotiable document, or goods in possession of a bailee other than one who has issued a negotiable document for the goods, and makes the goods or documents representing the goods available to the debtor for sale or exchange. The UCC section adds a phrase which makes it clear that this period deals only with perfection and that there must be compliance with the notice provisions of Section 9-312(3) in order to achieve priority over earlier inventory financiers. Corresponding clarifying changes have been made in Section 9-312(3).

13. AS 45.09.305

AS 45.09.305 provides for the perfection of security interests without filing. It lists the types of interests which may be so perfected. The UCC section, 9-305, adds to the Alaska list "money" to clarify the special position of money.

14. AS 45.09.306

AS 45.09.306(a) defines "proceeds." The UCC section, 9-306, adds a sentence to the definition which provides:

> Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement.

The intent of this sentence is to overrule various cases to the effect that proceeds of insurance on collateral are not proceeds of the collateral. The "except" clause is intended to preserve the integrity of an insurance contract which specifies the person to whom the insurance is payable.

AS 45.09.306 also delineates the secured party's rights on disposition of collateral. It includes a perfected right to proceeds if the party claims them in a financing statement. The revised UCC version eliminates this "financing statement" procedure in favor of treating the filed claim to the original collateral as constituting automatically a filing as to proceeds on the theory that this was the intent of the parties, unless

otherwise agreed. To this principle, the UCC version states a limitation: where the filing as to the original collateral is an inappropriate means of perfection as to proceeds of certain types, or is made at a place that is inappropriate as to such proceeds, the filed claim to the original collateral perfects the claim to proceeds for only 10 days.

AS 45.09.306 relates to perfected security interests in insolvency proceedings. The revised UCC version makes various changes to make clear that the claim to cash allowed in insolvency is exclusive of any other claim based on tracing.

14. AS 45.09.307

AS 45.09.307 establishes when a buyer of goods takes free of security interests. The section equates consumer goods with farm equipment having an original purchase price not in excess of $2,500. This equation is deleted in the revised UCC section (9-307) in accordance with the change made in 9-302(1)(c) [see "11" of this memo relating to AS 45.09.302].

The revised UCC section also adds a new subsection which provides:

> (3) A buyer other than a buyer in ordinary course of business (subsection (1) of this section) takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase, or more than 45 days after the purchase, whichever first occurs, unless made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the 45 day period.

This new subsection clarifies the extent to which future advances under a security interest may outrank an intervening right.

16. AS 45.09.308

AS 45.09.308 establishes the circumstances under which a purchaser of chattel paper of a nonnegotiable instrument will take priority over a security interest. The UCC section, 9-308, has rewritten this language for clarity and to include negotiable instruments as well as nonnegotiable.

17. AS 45.09.312

AS 45.09.312 relates to priorities among conflicting security interests in the same collateral. Subsection (a) of that section specifies several sections which contain rules for determining priorities between security interests and such other

claims in the situations covered in those sections. For cases not covered in those sections, section 312 states general rules of priority. The UCC section, 9-312, has rewritten this subsection and substantially simplified its coverage.

Subsection (c) states the circumstances which must exist for a purchase money security interest in inventory collateral to have priority over a conflicting security interest in the same collateral. This subsection has been substantially modified in the UCC version. The UCC version includes provisions which establish how often notice must be given under that subsection. The period of five years was chosen by analogy to the duration of a financing statement. It also addresses the question of the priority status of the security interest in inventory temporarily perfected for 21 days without filing or perfection in a situation which begins with release of a pledged document under section 9-304(5). [See "12" of this memo relating to AS 45.09.304(e).] The answer provided is the usual rule that the purchase-money claimant to preserve his priority resulting from the document must give the required notice before the debtor receives possession of the inventory. If the secured party fails to give timely notice, he loses his priority under this subsection. Finally, it provides guidelines for establishing the priority between a person claiming accounts as proceeds of inventory and a person claiming the accounts by direct filing with respect thereto. The general rule enunciated is that a prior right to inventory does not confer a prior right to any proceeds except identifiable cash proceeds received on or before the delivery of the inventory (i.e., without the intervention of an account).

The UCC section reaches a different result in the next subsection relating to purchase money security interests in collateral other than inventory. Here, where it is not ordinarily expected that the collateral will be sold and that proceeds will result, it seems appropriate to give the party having a purchase money security interest in the original collateral an equivalent priority in its proceeds. The Alaska section is unclear on this point.

Subsection (e) of section 312 contins two principal rules: a first-to-file rule where both competing security interests are perfected by filing, and a first-to-perfect rule when either of the security interests is or both of them are perfected otherwise than by filing. Subsection (f) provides:

> (f) For the purpose of the priority rules of (e) of this section, a continuously perfected security interest shall be treated at all times as if perfected by filing if it was originally so perfected, and it shall be

treated at all times as if perfected otherwise than by filing if it was originally perfected otherwise than by filing.

These subsections have led to considerable debate over questions of "proceeds." The revised UCC section answers the questions raised by these subsections by stating a single rule in subsection (5) which ranks conflicting perfected security interests by their priority in time, dating back to the respective times when without interruption the security interests were either perfected or were the subjects of appropriate filings, and by deleting the provisions of subsection (f) in the Alaska section and inserting in its place a provision which states that a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds for the purposes of subsection (5).

The UCC section adds a new subsection which states priority rules for an intervening pledge in reference to a subsequent advance by an earlier-filed secured party.

18. AS 45.09.313

AS 45.09.313 relates to security interests in fixtures. The rules established in that section for priority do not apply to goods incorporated into a structure; encumbrances upon fixtures or real estate may be created under the law applicable to real estate. Subsections (b) and (c) are subject to limitations stated in subsection (d). Subsection (b) provides for the priority of a security interest in goods before they become fixtures over the claims of all persons who have an interest in the real estate. Subsection (c) provides that a security interest which attaches to goods after they become fixtures is valid against all persons subsequently acquiring interests in the real estate but is invalid against a person with an interest in the real estate at the time the security interest attaches to the goods who has not consented in writing to the security interest or disclaimed an interest in the goods as fixtures. Subsection (d) lists certain occasions which will not lead to the result dictated by (b) and (c). Subsection (e) allows a secured party, on default, to remove his collateral from the property.

UCC sec. 9-313 has completely rewritten this section. It introduces and defines the term "fixture filing." When a filing is intended to give the priority advantages discussed in the section against real estate interests, the filing must be for record in the real estate records and indexed therein, so that it will be found in a real estate search. The general principle of priority announced in this section is set forth in paragraph (4)(b). It is basically that a fixture filing gives to the fixture security interest priority as against other real estate interests according to the usual priority rule of

conveyancing, that is, the first to file or record prevails. The section provides that no security interest exists in ordinary building materials incorporated into an improvement on land. Paragraph (4), which is the core provision of the section, provides:

> (4) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate where
>
> (a) the security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, the security interest is perfected by a fixture filing before the goods become fixtures or within ten days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate; or
>
> (b) the security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate or is in possession of the real estate; or
>
> (c) the fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances which are consumer goods, and before the goods become fixtures the security interest is perfected by any method permitted by this Article; or
>
> (d) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Article.

Further subsections provide that even a nonperfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner if the latter has consented in writing to the security interest or the debtor has a right to remove the goods as against the encumbrancer or owner (if the debtor's right terminates, the priority of the security

interest continues for a reasonable time); that a security interest in fixtures is generally subordinate to a construction mortgage recorded before the goods become fixtures; and that the secured party may, on default, remove his collateral from the property.

19. AS 45.09.318

The variation between this section of the Alaska statutes and the UCC version relate to elimination of the term "contract right" in UCC sec. 9-106.

20. AS 45.09.401

AS 45.09.401(a) lists the proper place to file in order to perfect a security interest in various types of collateral. This subsection is in conformance with "second alternative" for subsection (1) under the pre-1972 UCC sec. 9-401. The Alaska subsection requires filing for goods which are or are to become fixtures in the office where a mortgage on the real estate concerned would be filed or recorded. The revised UCC subsection also requires filing in the same place for security interests in collateral which is timber or minerals.

AS 45.09.401(d) provides:

> If collateral is brought into the state from another jurisdiction, the rules stated in sec. 103 of this chapter determine whether filing is necessary in this state.

The revised UCC section deletes "If collateral is brought into the state from another jurisdiction,".

The revised UCC section also adds two new subsections. The first new subsection provides a special rule for filing of a security interest in collateral, including fixtures, of a transmitting utility. The filing would be in a state office (presumably the Department of Administration in Alaska) rather than a local office in order to avoid the necessity of multiple filings for fixtures located in many areas of the state. The second new subsection establishes the residence of an organization for the purposes of the section. It is the place of business if the organization has one or its chief executive office if it has more than one place of business.

21. AS 45.09.402

AS 45.09.402 relates to amendments to and formal requisites of a financing statement. Several changes in UCC sec. 9-402 are conforming changes to new requirements in 9-401 that certain financing statements covering such collateral as timber

and minerals be filed in the real estate records. The UCC section also responds to objections that the name of the debtor might not be in the real estate chain of title. Since 9-313(4)(a) and (b) permit fixture filing against persons in possession of the real estate who do not have interests of record, 9-402 requires the naming of an owner of record of the real estate in such cases, and 9-403(7) requires indexing the fixture filing against the name.

A new subsection in the UCC section makes it possible for a real estate mortgage to serve as a financing statement, and a related change in 9-403(6) makes it unnecessary to file continuation statements for such a financing statement.

Further changes in the UCC section provide that only the debtor need sign the statement rather than both the debtor and the secured party; that a secured party instead of the debtor may sign a statement to perfect a security interest in collateral as to which the filing has lapsed or collateral acquired after a change of name, identity or corporate structure of the debtor; and that a financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or names of partners.

22. AS 45.09.403

AS 45.09.403 relates to the duration of filing, the effect of lapsed filing, the duties of the filing officer, and what constitutes a filing. UCC sec. 9-403 differs from the Alaska section in that it makes every financing statement (except those in which the debtor is a transmitting utility and those which are real estate mortgages effective as fixture filings under 9-402) effective for a full five years. It also provides for the continued effectiveness of a statement during an insolvency proceeding until the end of the proceeding and for 60 days thereafter, or until the expiration of the five year period, whichever is later. Upon lapse, under the UCC section, the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser of lien creditor before lapse.

A new subsection would give the filing officer authority to charge extra fees if the financing statement does not conform to a uniform prescribed size and content.

23. AS 45.09.404

AS 45.09.404 relates to termination statements. The UCC section, 9-404, requires the filing of termination statements

in the case of consumer goods even without a demand by the consumer. This is not provided in the Alaska section. Other than in the case of consumer goods, the termination statement is required only upon written demand by the debtor.

24. AS 45.09.405

AS 45.09.405 relates to the assignment of security interests, the duties of filing officers, and fees. The Alaska section leaves the determination of fees to the administrative director of courts; the UCC section, 9-405, would establish the fees statutorily. Various changes have been made in the UCC section to conform with changes in other sections of Part 4 of the UCC article.

25. AS 45.09.406

AS 45.09.406 relates to releases of collateral, the duties of the filing officer, and fees. The comments under "24" are applicable to changes made in the UCC section, 9-406.

26. AS 45.09.407

AS 45.09.407 relates to information from the filing officer. The comments under "24" are applicable to changes made in the UCC section, 9-407.

27. No Corresponding Alaska Statute

A new UCC section, 9-408, provides as follows:

> A consignor or lessor of goods may file a financing statement using the terms 'consignor,' 'consignee,' 'lessor,' 'lessee' or the like instead of the terms specified in Section 9-402. The provisions of the Part shall apply as appropriate to such a financing statement but its filing shall not of itself be a factor in determining whether or not the consignment or lease is intended as security (Section 1-201 (37)). However, if it is determined for other reasons that the consignment or lease is so intended, a security interest of the consignor or lessor which attaches to the consigned or leased goods is perfected by such filing.

This new section adopts the filing system of the article to consignments and leases. Filing of consignments is required under certain conditions (sections 2-326(3), 9-114). Filing of true leases which are not security interests is not required; but because the question whether a lease is a true lease may be a close one, filing is permitted for leases.

28. AS 45.09.501

AS 45.09.501(c) prohibits the waiver or variance of certain rules in the chapter relating to default to the extent that they give rights to the debtor and impose duties on the secured party. An exception is allowed as provided with respect to compulsory disposition of collateral in section 505(a). The revised UCC section, 9-501, makes a "purely technical" change by referring to the UCC section corresponding to AS 45.09.504 as well as to that corresponding to section 505(a). The change clears up an ambiguity as to whether a debtor could after default agree on the time within which a sale might be held or the time after which a secured party might keep the goods in lieu of a sale.

29. AS 45.09.504

AS 45.09.504 relates to the allowable means of disposing of collateral after default. It requires reasonable notice of the disposition to be given by the secured party to the debtor and "except in the case of consumer goods, to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in the state or who is known by the secured party to have a security interest in the collateral." The UCC section, 9-504, replaces the quoted language with "if he has not signed after default a statement renouncing or modifying his right to notification of sale."

The reason for the change is provided in the official reasons as follows:

> Under the 1962 Code the secured party giving notice of sale had to notify (except in the case of consumer goods) not only every other person who had duly filed a financing statement indexed in the name of the debtor in the state and who still had a security interest in the collateral, but also any other person known by the secured party to have an interest in the collateral. This meant that the secured party had to search the records in every case of notice of sale, to ascertain whether there were any other secured parties with financing statements that might be deemed to cover the collateral in question. Moreover, he ran the risk that some informal communication by letter, or even orally, might be deemed to have given him knowledge of the interest of that other party. These burdens of searching the record and of checking the secured party's files

were greater than the circumstances called for because as a practical matter there would seldom be a junior secured party who really had an interest needing protection in the case of a foreclosure sale. Therefore, a change is made requiring notice to persons other than the debtor only if such persons had notified the secured party in writing of their claim of an interest in the collateral before he sent his notification to the debtor or before the debtor's renunciation of his rights.

30. AS 45.09.505

AS 45.09.505 allows a secured party in possession, after default, to retain the collateral in satisfaction of the obligation and requires notification similar to that required in section 504. The UCC section, 9-505, contains a modification similar to that made in the previous section.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH V · STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

MEMORANDUM

August 3, 1978

SUBJECT: Uniform Commercial Code - Article 9

TO: Alaska Code Revision Commission

FROM: Kenneth E. Vassar
Legislative Counsel

This memorandum will explain points of difference between Article 9 of the Uniform Commercial Code (UCC) and AS 45.05.690 - 45.05.794.

UCC Article 9 and AS 45.05.690 - 45.05.794 relate to secured transactions. Article 9 has been substantially revised in recent years; the Alaska law has not been revised to conform with changes in the UCC version. The result is a large number of discrepancies between the two versions; this discussion will follow the Alaska law in numerical sequence.

1. AS 45.05.692

AS 45.05.692 relates to the policy and scope of this article of AS 45.05. AS 45.05.692(a) provides:

> (a) Except as otherwise provided in sec. 694 of this chapter on multiple state transactions and in sec. 696 of this chapter on excluded transactions, secs. 690 - 794 of this chapter apply, as far as concerns personal property and fixtures in the jurisdiction of the state,
>
> > (1) to a transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, accounts or contract rights; and
> >
> > (2) to a sale of accounts, contract rights, or chattel paper.

UCC sec. 9-102 contains the same provisions, except that it:

(1) deletes "in sec. 694 of this chapter on multiple state transactions" following "Except as otherwise provided";

(2) deletes "so far as concerns any personal property and fixtures in the jurisdiction of the state" following "this chapter apply;"

(3) deletes the reference to "contract rights" in paragraphs (1) and (2).

The reason for the first two deletions is the feeling on the part of the Commissioners on Uniform State Laws that this article of the UCC should be dedicated to secured transactions and that general questions of conflicts of laws should be left to Article 1 of the code.

The references to "contract rights" were deleted as unnecessary and confusing. This term has been deleted from all sections of UCC Article 9. Prior to 1972, the UCC distinguished a "contract right" from an "account" in terms of whether the right to payment had matured. If the right to payment under a contract had not yet been earned by performance by the creditor, then it was a "contract right." If the right to payment had matured, then it was an "account." Under the revised version, it is irrelevant whether the right to payment has been earned by performance. An account is defined in UCC sec. 9-106 as

> any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance.

2. AS 45.05.694

As 45.05.694 establishes rules for the choice of law where accounts, contract rights, general intangibles, and equipment relate to another jurisdiction. The UCC counterpart, 9-103, has been completely revised in accord with the sentiment expressed by the first two deletions in 9-102. The section now concerns itself exclusively with perfection of security interests and the effect of perfection or non-perfection. It establishes the basic rule that the controlling law, as to perfection of the security interests and the effect of perfection, is the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected. There are certain exceptions to the rule which are listed.

3. AS 45.05.696

AS 45.05.696 excludes certain transactions from coverage under Article 9. Its counterpart, UCC sec. 9-104, contains similar provisions; however,

there are noteworthy differences. Section 696(5) provides that the chapter does not apply to an equipment trust covering railway rolling stock. UCC sec. 9-104 deletes this provision with the following explanation:

> The whole thrust of Article 9 is to eliminate differences based on the form of a transaction, and the equipment trust serves the same function as other purchase money forms of financing. In fact, a form known as the "New York equipment trust" comes closer to a conditional sale contract than it does to a Pennsylvania equipment trust, and thus the former exclusion left substantial uncertainty.

In place of this deleted paragraph, the UCC section inserts the following:

> (e) to a transfer by a government or governmental subdivision or agency.

The Alaska section had previously included a paragraph which is similar in nature to the new UCC paragraph. Alaska's paragraph provides:

> (12) to a security interest created by or on behalf of the state or any of its political subdivisions (including but not limited to the unorganized borough or any city or borough of any class, whether home rule or not) or any service area, public enterprise, public corporation, agency or instrumentality of the state or of any of its political subdivisions.

The UCC official comment explains its paragraph as follows:

> Certain governmental borrowings include collateral in the form of assignments of water, electricity or sewer charges, rents on dormitories or industrial buildings, tools, etc. Since these assignments are usually governed by special provisions of law, these governmental transfers are excluded from this Article.

AS 45.05.696(6) provides:

> to a sale of accounts, contract rights, or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts, contract rights, or chattel paper which is for the purpose of collection only, or a transfer of a contract right to an assignee who is also to do the performance under the contract.

UCC sec. 9-104(f) deletes references to "contract rights" in this paragraph and adds at the end of the phrase "or a transfer of a single account to an assignee in whole or partial satisfaction of a pre-existing indebtedness."

The latter amendment reflects the general scope of the article, which includes all commercial financing transactions. The transfer of a single account in satisfaction of a pre-existing indebtedness is a personal transaction not encompassed by the article.

Both the UCC section and the Alaska statute exclude transfers of interests in insurance policies and in deposit accounts. However, the UCC section notes that these interests are nevertheless subject to 9-503 (proceeds; secured party's rights on disposition of collateral) and 9-312 (priorities among conflicting security interests in the same collateral). Both sections also exclude rights represented by a judgment, but the UCC section notes that this does not include a judgment taken on a right to payment which was collateral.

4. AS 45.05.698

AS 45.05.698 and UCC sec. 9-105 provide definitions and indices of definitions. The UCC section includes several definitions which are not in the Alaska section. The following list includes the definitions not included in the Alaska section with parenthetical notes containing the official reason, if any, for their inclusion:

> "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit (A definition of "deposit account" has been added to facilitate references to such accounts in the section on proceeds (Section 9-306));
>
> "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests (Definitions of "encumbrance and "mortgage" have been added as the basis for the use thereof in Section 9-313);
>
> "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;
>
> An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may

s from his obligation (A definition of "purusant to commit- been added as the basis for use of this concept in Sections 9- /, and 9-132);

nsmitting utility" means any person primarily engaged in the lroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service (A definition of "transmitting utility" has been added to identify a class of debtor with special filing problems on far-flung properties, for which special filing rules are stated in Part 4).

In addition to definitions which are not in the Alaska law, the UCC section includes references to definitions which are not referenced in the Alaska section. These references include

"Attach" Section 9-203

"Construction mortgage" Section 9-313(1)

"Fixture" Section 9-313(1)

"Fixture filing" Section 9-313(1)

"United States" Section 9-103

Other definitions which are included in the Alaska statute have been modified in the UCC section. AS 45.05.698(2) defines "chattel paper" as follows:

> A writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods [, but a charter or other contract involving the use or hire of a vessel is not chattel paper]; when a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes a chattel paper

The portion in brackets has been added in the UCC section. The UCC note on the reason for this portion follows:

> To make clear that no type of ship charter is to be considered chattel paper. Many types of ship financing based on assignment of a charter involve international transactions, and there are numerous executed copies of the charter. Under Section 9-308 an assignment of chattel paper perfected by delivery of the chattel paper prevails over an assignment perfected by filing. Application of this rule would require the parties to change traditional practices in order to control all executed copies. Moreover, it is desirable to treat all types of ship charters alike, and some cannot be deemed chattel paper.

The Alaska definition [with the UCC addition in brackets] of "document"

> document of title as defined in the general definitions of sec. 20 of this chapter [, and a receipt of the kind described in subsection (2) of Section 7-201].

The UCC addition includes the kind of receipt issued by a person who is not technically a warehouseman, as described in Section 7-201(2) and AS 45.05.542(b).

The UCC definition of "goods" includes two items which are not listed in the Alaska section. They are "minerals or the like (including oil and gas) before extraction" and "standing timber which is to be cut and removed under a conveyance or contract for sale." It deletes a reference in the Alaska version to "other things in action." The UCC explanation of the latter modification is:

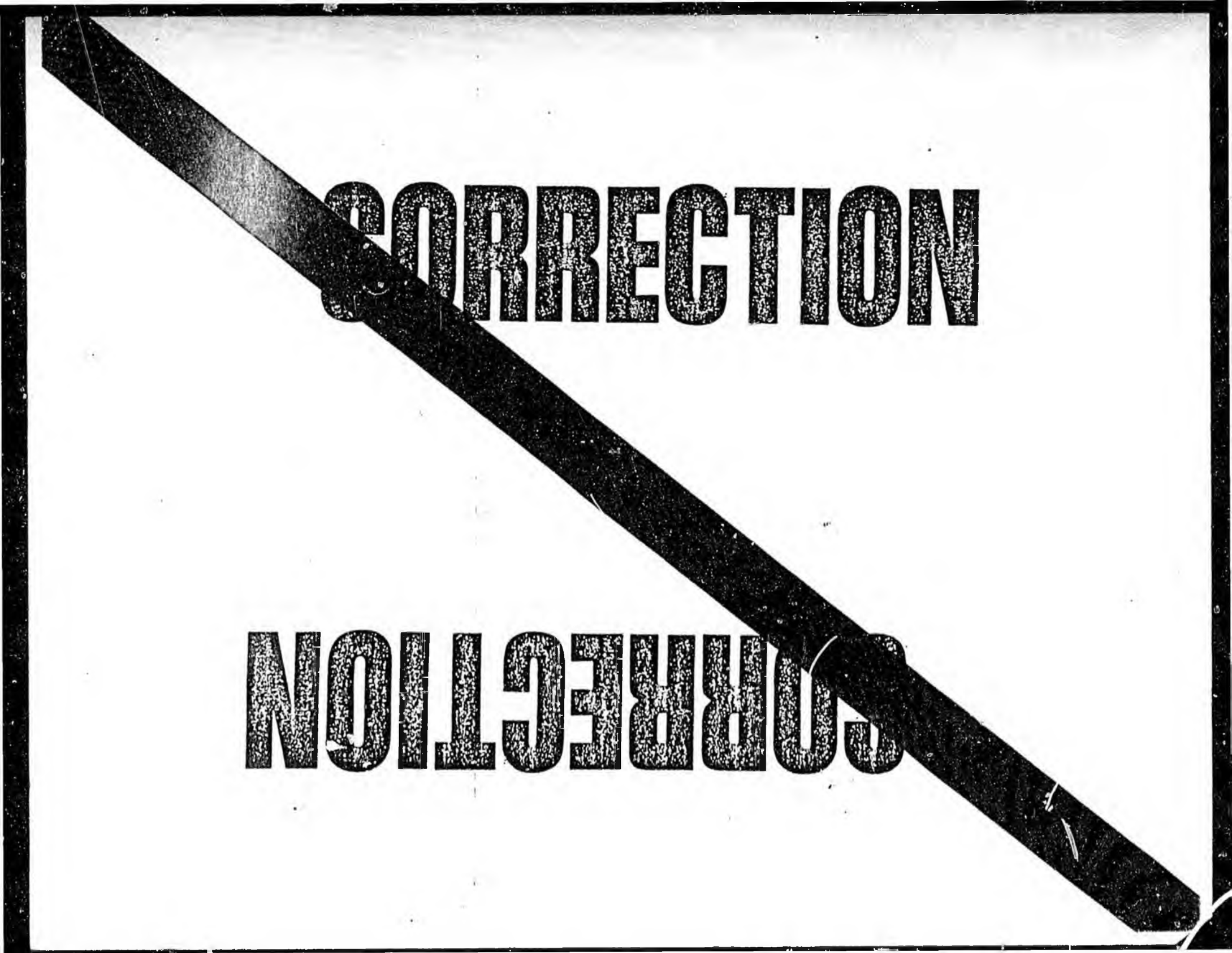
> The exclusion of "other things in action" from the definition of "goods" has been deleted as unnecessary. "General intangibles," which under Section 9-106 includes "things in action," are themselves excluded from the definition of goods.

5. AS 45.05.700

As 45.05.700 defines "account;" "contract right;" "general intangibles." The UCC section has been modified to delete references to "contract right."

6. No Corresponding Alaska Statute

The UCC article has adopted a section (9-114) which is not included in the Alaska law. The new section attempts to clarify the relationship between the filing rule for consignments under UCC sec. 2-326 (AS 45.-05.120) and Article 9. The UCC comment explains it as follows:


CORRECTION
CORRECTION

relieve him from his obligation (A definition of "pursuant to commitment" has been added as the basis for use of this concept in Sections 9-301, 9-307, and 9-132);

> "Transmitting utility" means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service (A definition of "transmitting utility" has been added to identify a class of debtor with special filing problems on far-flung properties, for which special filing rules are stated in Part 4).

In addition to definitions which are not in the Alaska law, the UCC section includes references to definitions which are not referenced in the Alaska section. These references include

> "Attach" Section 9-203
>
> "Construction mortgage" Section 9-313(1)
>
> "Fixture" Section 9-313(1)
>
> "Fixture filing" Section 9-313(1)
>
> "United States" Section 9-103

Other definitions which are included in the Alaska statute have been modified in the UCC section. AS 45.05.698(2) defines "chattel paper" as follows:

> A writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods [, but a charter or other contract involving the use or hire of a vessel is not chattel paper]; when a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes a chattel paper.

The portion in brackets has been added in the UCC section. The UCC note on the reason for this portion follows:

> to make clear that no type of ship charter is to be considered chattel paper. Many types of ship financing based on assignment of a charter involve international transactions, and there are numerous executed copies of the charter. Under Section 9-308 an assignment of chattel paper perfected by delivery of the chattel paper prevails over an assignment perfected by filing. Application of this rule would require the parties to change traditional practices in order to control all executed copies. Moreover, it is desirable to treat all types of ship charters alike, and some cannot be deemed chattel paper.

The Alaska definition [with the UCC addition in brackets] of "document"

> document of title as defined in the general definitions of sec. 20 of this chapter [, and a receipt of the kind described in subsection (2) of Section 7-201].

The UCC addition includes the kind of receipt issued by a person who is not technically a warehouseman, as described in Section 7-201(2) and AS 45.05.542(b).

The UCC definition of "goods" includes two items which are not listed in the Alaska section. They are "minerals or the like (including oil and gas) before extraction" and "standing timber which is to be cut and removed under a conveyance or contract for sale." It deletes a reference in the Alaska version to "other things in action." The UCC explanation of the latter modification is:

> The exclusion of "other things in action" from the definition of "goods" has been deleted as unnecessary. "General intangibles," which under Section 9-106 includes "things in action," are themselves excluded from the definition of goods.

5. AS 45.05.700

As 45.05.700 defines "account;" "contract right;" "general intangibles." The UCC section has been modified to delete references to "contract right."

6. No Corresponding Alaska Statute

The UCC article has adopted a section (9-114) which is not included in the Alaska law. The new section attempts to clarify the relationship between the filing rule for consignments under UCC sec. 2-326 (AS 45.-05.120) and Article 9. The UCC comment explains it as follows:

An uncertainty has existed under the 1962 Code whether the filing rule in Section 2-326(3) applicable to true consignments requires only filing under Part 4 of Article 9 or also requires notice to prior inventory secured parties of the debtor under Section 9-312(3). The new Section 9-114 accepts the latter view and provides in substance that, in order to protect his ownership of the consigned goods, the consignor must give the same notice to an inventory secured party of the debtor that he would have to give if his transaction with the consignee was in the form of a security transaction instead of in the form of a consignment. This new section follows closely the language of Section 9-312(3) [AS 45.-05.754(c)].

7. AS 45.05.720

AS 45.05.720 relates to the enforceability of security interests. AS 45.05.722 establishes when security interests attache. UCC sec. 9-203 has modified these sections by combining them into one. The purpose was to cure "the former anomaly that a security interest could attach and be perfected, and yet be unenforceable against anyone for lack of a written security agreement."

In addition, the requirement that a security agreement covering oil, gas or minerals to be extracted contain a description of the land concerned has been eliminated in the UCC section. The reason for this change is that the article does not recognize a security interest in such collateral until it has been extracted from the land.

Finally, the new UCC section adds a new subsection to make clear that claims to proceeds under section 9-306 (AS 45.05.742) do not require a statement in the security agreement, for it is assumed that the parties so intend unless otherwise agreed.

8. AS 45.05.722

The provisions of AS 45.05.722 which do not deal with the attachment of a security interest have been modified in the corresponding UCC section.

The provisions in AS 45.05.722(b) have been eliminated altogether in the UCC section. That subsection provides:

> (b) For the purposes of this section, the debtor has no rights
>
> (1) in crops until they are planted or otherwise become growing crops; in the young of livestock until they are conceived;

(2) in fish until caught; in oil, gas, or minerals until they are extracted; in timber until it is cut;

(3) in a contract right until the contract has been made;

(4) in an account until it comes into existence.

The reason for the deletion is that the subsection was unnecessary and in some cases confusing. Its operation appeared to be arbitrary, according to the UCC, and it was believed that the questions considered were best left to the courts.

The modified UCC version also eliminated the paragraph corresponding to AS 45.05.722(d)(1). That paragraph provided that no security interest in crops attaches under an after-acquired property clause to crops which become such more than one year after the security agreement, unless the agreement involved certain real estate transactions. The official comment states:

> The obvious purpose of this provision was to protect a necessitous farmer from encumbering his crops for many years in the future. The provision did not work because there was no corresponding limit on the scope of a financing statement covering crops and under the Code's notice-filing rules the priority position of a security arrangement covering successive crops would be as effectively protected by the filing of a first financing statement whether the granting clause as to successive crops was in one security agreement with an after-acquired property clause or in a succession of security agreements. On the other hand the clause did require an annual security agreement for crops even when the encumbrance on crops was agreed to as part of a long-term financing covering farm machinery and other assets. The provision thus appeared to be meaningless in operation except to cause unnecessary paperwork, but it did introduce some element of uncertainty as to its purpose.

9. AS 45.05.726

AS 45.05.726 provides that an agreement by a buyer not to assert against an assignee of the seller any claim or defense he may have against the seller will be enforced if the assignee is an assignee for value, in good faith, and without notice of a claim or defense. The corresponding UCC section, 9-206, includes such agreements made by lessees. The UCC explanation is as follows:

> In view of the substantial growth in lease financing and the quite parallel application of problems dealt with by this section to both conditional sale contracts and leases, it is believed this section should be made applicable to leases as well as to more traditional purchase money security interests.

10. AS 45.05.732

AS 45.05.732 lists the class of people who take priority over unperfected security interests. It includes persons who become lien creditors without knowledge of the security interest and before it is perfected. The UCC section, 9-301, eliminates knowledge as a factor for these people. The official reason states:

> The former section denied the lien creditor priority even though he had knowledge when he got involved by extending credit, if he acquired knowledge while attempting to extricate himself. It was completely inconsistent in spirit with the rules of priority between security interests, where knowledge plays a very minor role.

AS 45.05.732 also defines "lien creditor". A lien creditor is a creditor who has acquired a lien on the property involved by attachment, levy, or the like. The UCC section adds a subsection which provides:

> A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within 45 days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

This new subsection provides an absolute priority for the security interest over a judgment lien for 45 days regardless of knowledge of the secured party concerning the judgment lien. If, however, the advance is made after the 45 days, the advance will not have priority unless it was made or committed without knowledge of the lien obtained by legal proceedings. The importance of the rule is important in effectuating the intent of the Federal Tax Lien Act of 1966, although its importance may not be great as between secured parties making subsequent advances and judgment lien creditors.

11. AS 45.05.734

AS 45.05.734 delineates when filing is required to perfect a security interest and the security interests to which the filing provisions do not apply. Paragraph (a)(3) includes as a security interest to which

the filing provisions do not apply a purchase money security interest in farm equipment having a purchase price not in excess of $2,500; but filing is required for a fixture under sec. 756 of the chapter or for a motor vehicle required to be licensed.

The UCC section, 9-302, deletes the reference to farm equipment in the belief that it was inappropriate; the effect of the rule was to make farmers' equipment unavailable to them as collateral for loans from some lenders. The UCC section inserts a new paragraph which

> exempts from filing rules security interests created by assignments of beneficial interests in trusts and estates, because these assignments are not ordinarily thought of as subject to this Article, and a filing rule might operate to defeat many assignments.

In addition, the UCC section replaces the language above relating to fixtures and motor vehicles with the following:

> "but filing is required for a motor vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in Section 9-313 [AS 45.05.756]."

This makes filing for fixtures applicable only for priority against real estate interests.

The UCC section also adds a new paragraph to this subsection which exempts from filing assignments for the benefit of creditors. Such transactions were not felt to be "financing transactions."

Subsection (c) of AS 45.05.734 also exempts from the filing requirements of the chapter security interests in property subject to a statute of the United States providing for national registration or subject to a statute of Alaska providing for central filing. The UCC section replaces this subsection with two new subsections. One subsection exempts from the article transactions as to which an adequate system of filing, state or federal, has been set up outside the article, and the other subsection makes clear that when such a system exists perfection of a relevant security interest can be had only through compliance with that system (that is, filing under the article is not a permissible alternative).

Alaska's statute includes a subsection which is not in the UCC version. It exempts from the requirements of sections 768(a)(1) and (2), 772(b), (c), and (e) and 780 of the chapter security interests in personal property of any description created by a deed of trust or mortgage made by a corporation primarily engaged in the business of a common carrier

by rail, the furnishing of telephone or telegraph service, the transmission of oil, gas or petroleum products by pipeline, or the production, transmission or distribution of electricity, steam, gas, or water. The sections from which these security interests are exempted relate, respectively, to the place of filing, duration of and fee for filing, and information from a filing officer. The subsection provides a separate filing system for these security interests. The House Judiciary Committee report on the bill which added this subsection states:

> Current law requires all chattel mortgages to be renewed every five years by a new filing. The purpose of the current law is to clean out the files of paid off mortgages that have not been formally released. Most chattel mortgages are for periods of less than five years.
>
> This bill relieves the mortgagee from refiling mortgages every five years if the mortgage is signed by specified public utilities. Most public utility financing is long term and includes real property as well as personal. This bill does not defeat the purpose of the present law. (House Journal, 1967, p. 310)

12. AS 45.05.738

AS 45.05.738(a) relates to perfection of security interests in chattel paper, instruments, and negotiable documents. It provides:

> A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in (d) and (e) of this section.

UCC sec. 9-304 adds "money or" after "A security interest in" in the second sentance. It also adds a reference to 9-306 on proceeds at the end of the sentence as a further exception to that section. The change corrects an inadvertent omission in the 1962 text and makes clear that a security interest in money cannot be perfected by filing.

AS 45.05.738(e) provides a 21-day period during which a security interest remains perfected without filing if a secured party has a perfected security interest in an instrument, a negotiable document, or goods in possession of a bailee other than one who has issued a negotiable document for the goods, and makes the goods or documents representing the goods available to the debtor for sale or exchange. The UCC section adds a phrase which makes it clear that this period deals only with

perfection and that there must be compliance with the notice provisions of Section 9-312(3) in order to achieve priority over earlier inventory financiers. Corresponding clarifying changes have been made in Section 9-312(3).

13. AS 45.05.740

AS 45.05.740 provides for the perfection of security interests without filing. It lists the types of interests which may be so perfected. The UCC section, 9-305, adds to the Alaska list "money" to clarify the special position of money.

14. AS 45.05.742

AS 45.05.742(a) defines "proceeds". The UCC section, 9-306, adds a sentence to the definition which provides:

> Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement.

The intent of this sentence is to overrule various cases to the effect that proceeds of insurance on collateral are not proceeds of the collateral. The "except" clause is intended to preserve the integrity of an insurance contract which specifies the person to whom the insurance is payable.

AS 45.05.742 also delineates the secured party's rights on disposition of collateral. It includes a perfected right to proceeds if the party claims them in a financing statement. The revised UCC version eliminates this "financing statement" procedure in favor of treating the filed claim to the original collateral as constituting automatically a filing as to proceeds on the theory that this was the intent of the parties, unless otherwise agreed. To this principle, the UCC version states a limitation: where the filing as to the original collateral is an inappropriate means of perfection as to proceeds of certain types, or is made at a place that is inappropriate as to such proceeds, the filed claim to the original collateral perfects the claim to proceeds for only 10 days.

AS 45.05.742 relates to perfected security interests in insolvency proceedings. The revised UCC version makes various changes to make clear that the claim to cash allowed in insolvency is exclusive of any other claim based on tracing.

15. AS 45.05.744

AS 45.05.744 establishes when a buyer of goods takes free of security interests. The section equates consumer goods with farm equipment having an original purchase price not in excess of $2,500.. This equation is deleted in the revised UCC section (9-307) in accordance with the change made in 9-302(1)(c) [see "11" of this memo relating to AS 45.05.-734].

The revised UCC section also adds a new subsection which provides:

> (3) A buyer other than a buyer in ordinary course of business (subsection (1) of this section) takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase, or more than 45 days after the purchase, whichever first occurs, unless made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the 45 day period.

This new subsection clarifies the extent to which future advances under a security interest may outrank an intervening right.

16. AS 45.05.746

AS 45.05.746 establishes the circumstances under which a purchaser of chattel paper of a nonnegotiable instrument will take priority over a security interest. The UCC section, 9-308, has rewritten this language for clarity and to include negotiable instruments as well as nonnegotiable.

17. AS 45.05.754

AS 45.05.754 relates to priorities among conflicting security interests in the same collateral. Subsection (a) of that section specifies several sections which contain rules for determining priorities between security interests and such other claims in the situations covered in those sections. For cases not covered in those sections, section 754 states general rules of priority. The UCC section, 9-312, has rewritten this subsection and substantially simplified its coverage.

Subsection (c) states the circumstances which must exist for a purchase money security interest in inventory collateral to have priority over a conflicting security interest in the same collateral. This subsection has been substantially modified in the UCC version. The UCC version includes provisions which establish how often notice must be given under that subsection. The period of five years was chosen by analogy to the duration of a financing statement. It also addresses the question of the priority status of the security interest in inventory temporarily

perfected for 21 days without filing or perfection in a situation which begins with release of a pledged document under section 9-304(5). [See "12" of this memo relating to AS 45.05.738(e).] The answer provided is the usual rule that the purchase-money claimant to preserve his priority resulting from the document must give the required notice before the debtor receives possession of the inventory. If the secured party fails to give timely notice, he loses his priority under this subsection. Finally, it provides guidelines for establishing the priority between a person claiming accounts as proceeds of inventory and a person claiming the accounts by direct filing with respect thereto. The general rule enunciated is that a prior right to inventory does not confer a prior right to any proceeds except identifiable cash proceeds received on or before the delivery of the inventory (i.e., without the intervention of an account).

The UCC section reaches a different result in the next subsection relating to purchase money security interests in collateral other than inventory. Here, where it is not ordinarily expected that the collateral will be sold and that proceeds will result, it seems appropriate to give the party having a purchase money security interest in the original collateral an equivalent priority in its proceeds. The Alaska section is unclear on this point.

Subsection (e) of section 754 contains two principal rules: a first-to-file rule where both competing security interests are perfected by filing, and a first-to-perfect rule when either of the security interests is or both of them are perfected otherwise than by filing. Subsection (f) provides:

> (f) For the purpose of the priority rules of (e) of this section, a continuously perfected security interest shall be treated at all times as if perfected by filing if it was originally so perfected, and it shall be treated at all times as if perfected otherwise than by filing if it was originally perfected otherwise than by filing.

These subsections have led to considerable debate over questions of "proceeds." The revised UCC section answers the questions raised by these subsections by stating a single rule in subsection (5) which ranks conflicting perfected security interests by their priority in time, dating back to the respective times when without interruption the security interests were either perfected or were the subjects of appropriate filings, and by deleting the provisions of subsection (f) in the Alaska section and inserting in its place a provision which states that a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds for the purposes of subsection (5).

The UCC section adds a new subsection which states priority rules for an intervening pledge in reference to a subsequent advance by an earlier-filed secured party

18. AS 45.05.756

AS 45.05.756 relates to security interests in fixtures. The rules established in that section for priority do not apply to goods incorporated into a structure; encumbrances upon fixtures or real estate may be created under the law applicable to real estate. Subsections (b) and (c) are subject to limitations stated in subsection (d). Subsection (b) provides for the priority of a security interest in goods before they become fixtures over the claims of all persons who have an interest in the real estate. Subsection (c) provides that a security interest which attaches to goods after they become fixtures is valid against all persons subsequently acquiring interests in the real estate but is invalid against a person with an interest in the real estate at the time the security interest attaches to the goods who has not consented in writing to the security interest or disclaimed an interest in the goods as fixtures. Subsection (d) lists certain occasions which will not lead to the result dictated by (b) and (c). Subsection (e) allows a secured party, on default, to remove his collateral from the property.

UCC sec. 9-313 has completely rewritten this section. It introduces and defines the term "fixture filing." When a filing is intended to give the priority advantages discussed in the section against real estate interests, the filing must be for record in the real estate records and indexed therein, so that it will be found in a real estate search. The general principle of priority announced in this section is set forth in paragraph (4)(b). It is basically that a fixture filing gives to the fixture security interest priority as against other real estate interests according to the usual priority rule of conveyancing, that is, the first to file or record prevails. The section provides that no security interest exists in ordinary building materials incorporated into an improvement on land. Paragraph (4), which is the core provision of the section, provides:

> (4) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate where
>
> > (a) the security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, the security interest is

perfected by a fixture filing before the goods become fixtures or within ten days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

(b) the security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

(c) the fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances which are consumer goods, and before the goods become fixtures the security interest is perfected by any method permitted by this Article; or

(d) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Article.

Further subsections provide that even a nonperfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner if the latter has consented in writing to the security interest or the debtor has a right to remove the goods as against the encumbrancer or owner (if the debtor's right terminates, the priority of the security interest continues for a reasonable time); that a security interest in fixtures is generally subordinate to a construction mortgage recorded before the goods become fixtures; and that the secured party may, on default, remove his collateral from the property.

19. AS 45.05.766

The variation between this section of the Alaska statutes and the UCC version relate to elimination of the term "contract right" in UCC sec. 9-106.

20. AS 45.05.768

AS 45.05.768(a) lists the proper place to file in order to perfect a security interest in various types of collateral. This subsection is in conformance with "second alternative" for subsection (1) under the pre-1972 UCC sec. 9-401. The Alaska subsection requires filing for goods which are or are to become fixtures in the office where a mortgage on

the real estate concerned would be filed or recorded. The revised UCC subsection also requires filing in the same place for security interests in collateral which is timber or minerals.

AS 45.05.768(d) provides:

> If collateral is brought into the state from another jurisdiction, the rules stated in sec. 694 of this chapter determine whether filing is necessary in this state.

The revised UCC section deletes "If collateral is brought into the state from another jurisdiction,".

The revised UCC section also adds two new subsections. The first new subsection provides a special rule for filing of a security interest in collateral, including fixtures, of a transmitting utility. The filing would be in a state office (presumably the Department of Administration in Alaska) rather than a local office in order to avoid the necessity of multiple filings for fixtures located in many areas of the state. The second new subsection establishes the residence of an organization for the purposes of the section. It is the place of business if the organization has one or its chief executive office if it has more than one place of business.

21. AS 45.05.770

AS 45.05.770 relates to amendments to and formal requisites of a financing statement. Several changes in UCC sec. 9-402 are conforming changes to new requirements in 9-401 that certain financing statements covering such collateral as timber and minerals be filed in the real estate records. The UCC section also responds to objections that the name of the debtor might not be in the real estate chain of title. Since 9-313(4)(a) and (b) permit fixture filing against persons in possession of the real estate who do not have interests of record, 9-402 requires the naming of an owner of record of the real estate in such cases, and 9-403(7) requires indexing the fixture filing against the name.

A new subsection in the UCC section makes it possible for a real estate mortgage to serve as a financing statement, and a related change in 9-403(6) makes it unnecessary to file continuation statements for such a financing statement.

Further changes in the UCC section provide that only the debtor need sign the statement rather than both the debtor and the secured party, that a secured party instead of the debtor may sign a statement to perfect a security interest in collateral as to which the filing has lapsed or collateral acquired after a change of name, identity or

corporate structure of the debtor; and that a financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or names of partners.

22. AS 45.05.772

AS 45.05.772 relates to the duration of filing, the effect of lapsed filing, the duties of the filing officer, and what constitutes a filing. UCC sec. 9-403 differs from the Alaska section in that it makes every financing statement (except those in which the debtor is a transmitting utility and those which are real estate mortgages effective as fixture filings under 9-402) effective for a full five years. It also provides for the continued effectiveness of a statement during an insolvency proceeding until the end of the proceeding and for 60 days thereafter, or until the expiration of the five year period, whichever is later. Upon lapse, under the UCC section, the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

A new subsection would give the filing officer authority to charge extra fees if the financing statement does not conform to a uniform prescribed size and content.

23. AS 45.05.774

AS 45.05.774 relates to termination statements. The UCC section, 9-404, requires the filing of termination statements in the case of consumer goods even without a demand by the consumer. This is not provided in the Alaska section. Other than in the case of consumer goods, the termination statement is required only upon written demand by the debtor.

24. AS 45.05.776

AS 45.05.776 relates to the assignment of security interests, the duties of filing officers, and fees. The Alaska section leaves the determination of fees to the administrative director of courts; the UCC section, 9-405, would establish the fees statutorily. Various changes have been made in the UCC section to conform with changes in other sections of Part 4 of the UCC article.

25. AS 45.05.778

AS 45.05.778 relates to releases of collateral, the duties of the filing officer, and fees. The comments under "24" are applicable to changes made in the UCC section, 9-406.

26. AS 45.05.780

AS 45.05.780 relates to information from the filing officer. The comments under "24" are applicable to changes made in the UCC section, 9-407.

27. No Corresponding Alaska Statute

A new UCC section, 9-408, provides as follows:

> A consignor or lessor of goods may file a financing statement using the terms "consignor," "consignee," "lessor," "lessee" or the like instead of the terms specified in Section 9-402. The provisions of the Part shall apply as appropriate to such a financing statement but its filing shall not of itself be a factor in determining whether or not the consignment or lease is intended as security (Section 1-201(37)). However, if it is determined for other reasons that the consignment or lease is so intended, a security interest of the consignor or lessor which attaches to the consigned or leased goods is perfected by such filing.

This new section adapts the filing system of the article to consignments and leases. Filing of consignments is required under certain conditions (sections 2-326(3), 9-114). Filing of true leases which are not security interests is not required; but because the question whether a lease is a true lease may be a close one, filing is permitted for leases.

28. AS 45.05.782

AS 45.05.782(c) prohibits the waiver or variance of certain rules in the chapter relating to default to the extent that they give rights to the debtor and impose duties on the secured party. An exception is allowed as provided with respect to compulsory disposition of collateral in section 790(a). The revised UCC section, 9-501, makes a "purely technical" change by referring to the UCC section corresponding to AS 45.05.788 as well as to that corresponding to section 790(a). The change clears up an ambiguity as to whether a debtor could alter default agree on the time within which a sale might be held or the time after which a secured party might keep the goods in lieu of a sale.

29. AS 45.05.788

AS 45.05.788 relates to the allowable means of disposing of collateral after default. It requires reasonable notice of the disposition to be given by the secured party to the debtor and "except in the case of consumer goods, to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in the state or who is known by the secured party to have a security interest in the collateral." The UCC section, 9-504, replaces the quoted language with "if he has not signed after default a statement renouncing or modifying his right to notification of sale."

The reason for the change is provided in the official reasons as follows:

> Under the 1962 Code the secured party giving notice of sale had to notify (except in the case of consumer goods) not only every other person who had duly filed a financing statement indexed in the name of the debtor in the state and who still had a security interest in the collateral, but also any other person known by the secured party to have an interest in the collateral. This meant that the secured party had to search the records in every case of notice of sale, to ascertain whether there were any other secured parties with financing statements that might be deemed to cover the collateral in question. Moreover, he ran the risk that some informal communication by letter, or even orally, might be deemed to have given him knowledge of the interest of that other party. These burdens of searching the record and of checking the secured party's files were greater than the circumstances called for because as a practical matter there would seldom be a junior secured party who really had an interest needing protection in the case of a foreclosure sale. Therefore, a change is made requiring notice to persons other than the debtor only if such persons had notified the secured party in writing of their claim of an interest in the collateral before he sent his notification to the debtor or before the debtor's renunciation of his rights.

30. AS 45.05.790

AS 45.05.790 allows a secured party in possession, after default, to retain the collateral in satisfaction of the obligation and requires notification similar to that required in section 788. The UCC section, 9-505, contains a modification similar to that made in the previous section.

KEV:jdn

Com Code

Uniform Commercial Code
1960's Adopted

* Not adopted amendments (1971) Secured Transactions
(32 jurisdictions have passed)

Scheduled [illegible]

[illegible] — [illegible] [illegible] Committee [illegible]

[illegible]

[illegible] — [illegible]

Zimmer — [illegible]

[illegible]

* Contact Banking Ideas for
Comment — [illegible]ues

SB

78

#1

ALASKA CODE REVISION COMMISSION

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

MEMORANDUM

TO: Kevin Bruce, Committee Aide
Senate Judiciary Committee

FROM: Dickerson Regan, Consultant
Alaska Code Revision Commission

DATE: March 8, 1982

RE: CSSB 78--Recording and Recordable Documents

I have checked draft CSSB 78 (Jud) against my memorandum to you dated January 4, 1982, and the two appendices attached to my memorandum.

The intention of the Legislative Affairs Agency in typing the draft CS was to make no substantive changes. The changes are matters of style, mostly changing the word "which" to "that."

The only change I question is on page 1, line 17. In my suggested change I have marked a deletion [TO THE DISTRICT RECORDER]. In the draft CS it is not deleted.

I marked it for deletion mainly because there is no title of "district recorder," and because the Department of Natural Resources has general broad authority under AS 44.37.025(a) (see p. 23 of the bill) to adopt regulations that would cover the subject matter.

Linn Asper, the staff member who prepared the draft CS bill in the Legislative Affairs Agency, says the change was inadvertent.

I recommend [TO THE DISTRICT RECORDER] be deleted on page 1, line 18, as originally proposed.

The other difference I see from the form I proposed is on page 6, line 28. The form of the phrase on that line is an improvement over my proposed form.

DR:chw

ALASKA CODE REVISION COMMISSION

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

MEMORANDUM

TO: Kevin Bruce, Committee Aide
Senate Judiciary Committee

FROM: Dickerson Regan, Consultant
Alaska Code Revision Commission

DATE: March 8, 1982

RE: Draft CSSB 78 on Recording

Following are notes on the January 26, 1982 memorandum on recording of Javan Beitinger, State Recorder, that was passed on to me by DNR on February 16th.

1. Sections of the bill to and including page 6, line 16: Present technology and equipment permits recording of plats. It is desirable to get the plats into the recorded records now for the time when the remote access system is in place. It is up to the department whether to record a plat in one or several parts.

2. Page 4, lines 5 and 6: This change of "shall not" to "may not" has no meaning. Current state drafting style calls for the term "may not" to denote a prohibition. When a section is being otherwise amended in some substantive way stylistic changes such as this are also made.

3. Page 8, AS 40.17.030(c): There are documents like a master form that are nothing but standard wording that may be included by anybody in a later document and that will not then have to be rerecorded. Of itself such a form is not constructive notice. And of course recording of class B documents has no legal significance. No need for a blanket requirement of signing, sealing, etc. is apparent.

4. Page 9, AS 40.17.040(c): The idea of recording class B documents at a central place is, I think, not consistent with the wishes of the proponents of class B as a ready repository for safekeeping. When remote access is in place, recording in a central place would be consistent with ready storage and access for class B documents, but that equipment might be put into place only gradually over many years. Proponents of class B want a storage system that will be usable now.

The bill should not be held up for this concept of central filing for class B. It was proposed by a representative of DNR in a meeting with Senate Judiciary staff on November 25, 1981, and it was left to DNR to develop the concept if DNR wished to pursue it. I have seen no drafting proposed. Certainly, it was the concept of the Senate Judiciary staff that the drafting be provided to the committee and interested parties at a time when it could be given adequate review. That time has past if the bill is to be moved on through this legislature.

For that reason, but more importantly because the concept is inconsistent with an easy, ready storage system for public use, it should be rejected.

5. Page 12, line 9: The wording of the uniform act is that "a recorded signed document" creates the listed presumptions (Section 2-305, Uniform Simplification of Land Transfers Act). The commission narrowed the presumptions greatly by affording the presumptions only to documents that are acknowledged. The word order could be changed without changing the meaning--or it could be left as it is.

6. Page 14, line 4: Not all public officials have a seal of office. Relatively liberal use of presumptions is desirable. The word "or" should be retained. Perhaps there is confusion over what a presumption means. It does not change the burden of proof of a document.

7. Page 15, lines 15 & 16: Under (53) on page 19 a document that changes a recorded document is recorded. Under (5) on page 15 an evidenciary affidavit or certificate may be recorded. The two are different and each is needed.

8. Page 15, line 27: The old and new language are approximately the same regarding a lease or contract to purchase or option to purchase real property. "Conformed" means "exactly conformed."

9. Page 17, line 25: Reference the comment under No. 1 above.

10. Page 18, line 25: Thirty-six states now have adopted the uniform amendments to the Uniform Commercial Code. In the state of Washington the amendments go into effect July 1 of this year. I called a Washington recording official recently and was advised they will be recording financing statements and termination statements on fixtures and do not anticipate problems. Alaska should not experience problems either.

11. Page 21, line 11: These sections that provide

for recording of tax liens like other liens were cleared through the Department of Revenue and through IRS at the state and national level. The bill eliminates the requirement that the recorder hold tax liens in paper form. Savings should result.

12. Agreed.

13. Agreed. I appreciate the finding of these additional sections where the term "filed for record" should be changed.

14. Existing law on condominiums provides for recording the declaration that establishes condominium ownership and amendments to it and documents removing property from condominium ownership. Under existing law, survey maps and floor plans of a condominium are to be filed, but this bill would require that they be recorded, mainly so all documents will be in the remote access system. To accomplish this and the other like changes without greatly lengthening the bill, section 19 on pages 23 and 24 authorizes the revisor of statutes to make the change in the listed statutes. This suggested approach had been cleared with the revisors for whom I have made a collection of the listed sections marked up as required. If the committee thinks the condominium survey maps and floor plans should be filed as well as recorded there could be added to the bill a direction to the revisors of statutes to make the change by adding the words "and recorded" after the word "filed" in AS 34.07.020--34.07.050.

An error is caught in the memorandum: On page 24, line 7, delete "AS 34.20.080" and substitute "AS 34.20.090."

The other sections are right as listed in the bill. However, the suggestion made in the memorandum that the revisors conform all sections between AS 10.15.230 and AS 10.15.260 is acceptable and could be accomplished by this change:

Page 24, lines 3 and 4: Delete ", 10.15.235; 10.-15.260" and substitute "--10.15.260."

The commission thought AS 34.15.210--34.15.250 are now adequately covered by the Alaska Rules of Evidence adopted in 1979. The same is true of AS 34.15.300. As to AS 34.15.-330, there should be more flexibility in means for revoking a power of attorney than this section of existing law provides.

As you see there are three or four of the changes suggested in the DNR memorandum that I believe to be improvements or not detrimental to the bill, as listed above. On major issues, as you know, compromises were struck in the meeting with committee staff on November 25, 1981, notably

deleting the commission's proposal that acknowledgments no longer be required on conveyances, and providing for continued filing and retention of subdivision plats.

So I think the bill now should be acceptable to all concerned.

DR:chw

Official Business

Alaska State Legislature

Senate

Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

MARCH 8, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

SB 78 - "An Act relating to filing and recording and to recordable documents; and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:40 P.M. Committee members present were: Senators Bennett, Parr, Ray, Anderson, and Rodey. Senator Bennett was absent.

030 - Chairman Rodey called the Senate Judiciary Committee to order.

034 - Mark Wittow, representing the Department of Natural Resources, and Dickerson Regan, representing the Code Revision Commission, join the committee for discussion.

246 - Senator Ray made the motion for a language change on Page 7, Line 2, after the word "state" delete "and a person to operate the machine, device, or system;", and start a new sentence with "if". There was no objection.

302 - Senator Ray made the motion to insert the word "public" between "a" and "office" on Page 7, Line 4. There was no objection.

515 - Senator Ray made the motion to change "other" to "the most" on Page 7, Line 5, and change "means" to "manner" on Page 7, Line 6. There was no objection.

530 - Senator Ray moves to delete Sec. 6 on Page 7. There was no objection.

After brief discussion, Chairman Rodey suggests laying SB 78 on the table until more testimony could be heard. There was no objection and the meeting was adjourned at 2:25 P.M.

ALASKA STATE LEGISLATURE
FOUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

MEMORANDUM

TO: Chairman, Alaska Legislative Council

FROM: John W. Abbott, Chairman
Alaska Code Revision Commission

DATE: January 9, 1981

RE: Bill on recording and recorded documents

Pursuant to authority granted in AS 24.20.075(c), the Alaska Code Revision Commission has prepared the attached bill on recording and recorded documents and asks that it be introduced in the legislature.

The bill was transmitted previously near the end of the 1980 session. Although the review process was completed in the Legislative Affairs Agency, the bill was not introduced. Apparently it was not practical to introduce it in the last legislature, since there was not enough time remaining for committee work and passage. It is offered now for submission to the new legislature.

Although many provisions in the bill come from, or are based upon, the Uniform Simplification of Land Transfers Act, that Act has not been adopted in any state and is not suitable for adoption as a whole.

As noted in the attached commentary, the bill gathers together and clarifies provisions on recording that are scattered throughout Alaska Statutes, and lays a suitable framework for future use of technological advances in a centralized recording system.

The state recorder, title companies, banks and bar association representatives have participated in meetings with the commission while the bill was being drafted. Many of the suggestions of these participants have been incorporated in the draft bill.

JWA/dr/chw

Enclosures

cc: Hon. Jay S. Hammond, Governor
Hon. Jay A. Rabinowitz, Chief Justice
Myrton R. Charney, Executive Director
Legislative Affairs Agency

BILL ANALYSIS

Bill Number : SB 78 Sponser: Rules Committee
(for the Code Revision Commission)

Assigned to: Division of Technical
Services

Summary

1. Program effects of bill: The Division of Technical Services thinks that the bill simplifies some present recording requirements and incorporates some new concepts that make recording laws simplier for the public. However, this Division thinks that the overall impact will require a higher degree of judgement call on the part of the recording office that necessitates more employees and a higher class of employees in order to make the judgement calls required by this bill. Technically, we think that both filing and recording should remain two conditions within the recorders office. Technically, this Division believes filing of subdivision plats and surveys plats should remain as filed documents. (This should not be recorded and subject to fraud.)

2. Comments: With no acknowledgement required on recording documents and affidavits attached to copies this Division thinks the potential for fraud is increased over today's present system. Some form of acknowledgement and only original signature documents should be recorded as Class A documents. This is in line with court cases and present court administrative rules that were developed for the recording office in years past. Recording plats would place a land title document that belongs (in our estimation) to the general public back in the hands of private individuals and should remain in the hands of the public by being filed and not recorded. We believe filing also is applicable to state and federal tax leins. The language in the bill seems to purport that the recording offices would be required to perform searches of information rather than making information available to the public and other users as is presently the practice. We believe the bill should emphasis information availability only in order to decrease the liability to the state; rather than have the recording offices make the judgement calls on types of documents to be recorded and to which category (Class A or B) they are to be recorded in. The bill should be written to reflect that the individual filing the document should state the class or type it is to be recorded under and the recording office simply make a review that it does in fact meet the requirements under 47.17.030 and is a category described in 40.17.110.

3. Proposed amendments: On page 2, Section 40.17.020(b) delete "in the state division of Forest, Land and Water Management"; the Department of Natural Resources presently follows the requirements of any private citizen for recording or filing of plats. Page 3, Section 40.17.030(a)(4) delete the words "accompanied by". Section 40.17.030(a)(5) delete the entire statement. Page 3, Section 40.17.030(c) delete the entire statement. (We believe some type of acknowledgement should be attached to a document.) Page 6, Section 40.17.090(a) delete the entire statement. Page 10,

Section 40.17.110(b)(9), (10) delete in its entirety. Page 12, Section 40.17.110(b)(35) delete in its entirety, (this we believe should be a document that is filed in the recording office). Page 13, Section 40.17.110(b)(47),(48) delete in its entirety. Page 13, Section 40.17.110(b)(50) delete in its entirety, (this is covered under the Uniform Commercial Code filings and should not be a recording document under the recording office in this bill). Page 15, Chapter 19. Recording Federal Liens. Delete in its entirety. Page 17, Section 3 amending AS 34.15.010(a), delete in its entirety. Page 18, Section 5 amending AS 34.15.150, delete in its entirety. Page 19, Section 6 amending AS 44.37.025(c) delete in its entirety, (the Division of Technical Services presently is constrained utilizing judicial employees of the court system to perform services for recording). The Division of Technical Services is presently attempting to establish recording positions in the court served areas to resolve problems utilizing court employees who are not under the direct division control and to give full support to the recording functions in these offices.

4. Fiscal Impact

[redacted] Fiscal Note Attached

5. Other Departments Effected: N/A

6. Related Legislation: The Department of Natural Resources has submitted a FY 82 CIP budget request to upgrade the Departments land information and distribution system. A review of this proposed SB 78 legislation and relationship to the submitted FY 82 CIP will be forthcoming within two weeks.

Prepared by: Joseph C. Bunch

Director Approval _____

Commissioner's Approval _____

CODE REVISION COMMISSION

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4278

MEMORANDUM

TO: Kevin Bruce, Committee Aide
Senate Judiciary Committee
Alaska State Legislature

FROM: Dickerson Regan, Consultant
Alaska Code Revision Commission

DATE: January 29, 1981

RE: Notes on DNR's Bill Analysis of SB 78 on Recording and Recordable Documents

Following are the comments you requested on the Department of Natural Resources "Bill Analysis" for SB 78 on Recording and Recordable Documents. The numbers used in the comments tie to the numbers penciled on the DNR Bill Analysis and on a copy of the bill marked with the DNR proposed changes.

1. The main arguments for and against requiring acknowledgments are in the Alaska Code Revision Commission's (ACRC) comment on the bill at pages 17 and 18. See also on page 15 the Commissioners on Uniform State Laws' statement on the office of notary. For ready reference these sections of the comment are attached.

The ACRC took its position after a great deal of deliberation. However, realizing it would be controversial it also attached amendments to its draft bill that would remove the provision from the bill. If the legislature chooses not to follow the ACRC recommendation on acknowledgments in SB 77, it could refer to the form of amendments attached at the end of the ACRC commentary on the bill. They cover the same ground as the DNR's objections regarding pages 17-18 of SB 77.

2. Whenever the system begins to use electronic transmission of recorded documents, the person at a remote terminal should have access to the recorded official plat. If it is recorded, he will have that access even if a large plat is recorded in several smaller parts. Perhaps DNR's concern that the original plat should be retained as a public

document could be easily accommodated by an amendment to the bill requiring that plats be both filed (as at present) and recorded.

3. Retaining the paper document (filing) is no more necessary for tax liens than for other important documents (deeds, deeds of trust). The Alaska Department of Revenue and the IRS agreed when the bill was drafted, and I believe the state recorder and the then responsible department (Commerce and Economic Development) also agreed.

4. I believe DNR's concern has been addressed and that the comment refers to an earlier draft of the bill or to the Uniform Federal Lien Registration Act before changes in this bill.

5. It is my understanding that the main impetus for ACRC drafting a recording bill was to seek to clarify what documents are recordable. Much effort of the ACRC was directed to this purpose. At present (leaving aside the question of acknowledgment) the recorder records the documents referred to in the bill as "Class A" documents, and must make the same judgment calls as the bill would require. "Class B" includes all other documents. They are not recordable at present, but will be recordable for safekeeping under the bill. The unschooled person bringing a document for recording should not be required to know whether his document is recordable in Class A, any more than he is now required to know whether his document is recordable at all.

6. The proposal for amendment of the bill should be clarified. Indexing of Class A documents is left for regulation by the DNR. If information for complete tract indexing is to be required in some recording districts (as the ACRC supposed it would be) the phrase "accompanied by" would prevent some important problems. An example: Complete tract indexing would require that the complete tract description be in a document or it would be rejected for recording and could not provide constructive notice. Such documents now form important links in the chain of title. The phrase "accompanied by" would permit the document to be recorded even if the grantor were dead or could not be reached to sign a corrected document with a full "legal description" of the property.

7. The proposal for amendment of the bill should be clarified. It is not clear whether the objection is to two classes of documents, to admissibility in evidence of unacknowledged documents or whether the objection has to do with admissibility in evidence in a broader sense.

8. As to (9), since some liens, even now, are recorded, it is necessary that a release be recordable.

As to (10), the reason for the objection should be clarified.

9. Bar Association review brought the need for this subsection to the ACRC. Fixture filing is provided for in SB 77, a bill which would adopt 1972 uniform amendments to the UCC. Fixtures are part of real property and one searching title to real property should find a lien on fixtures when he searches the real property records. The permission to record will do no harm and will be necessary if the pertinent part of SB 77 is passed here as it has been in 32 other states. Reference, in SB 77 proposed sec. 45.09.313(a)(2):

> (1) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;
>
> (2) a "fixture filing" is the filing in the office where a mortgage on the real estate would be filed or recorded of a financing statement covering goods which are or are to become fixtures and conforming to the requirements of AS 45.09.402;

10. The section is necessary in connection with section one and other parts of the bill that lay the statutory framework for future "recording" by electronic communication with one central "place of recording." It also is broad enough to be consistent with present practice.

I noticce that I missed a couple of the DNR proposed changes. I've marked them 11 and 12 on the Bill Analysis.

11. At the time the bill was drafted, the records on state public lands were in a different department from state recording offices. Perhaps no problems are being experienced now with getting documents from state public land records into the recording system. Title companies may or may not see a continuing need for language similar to the questioned phrase. They may comment when they review the bill.

12. The term "accompanied by" is part of what makes this bill compatible with foreseeable technological advances in

recording. A "document" is defined in proposed AS 40.17.040(5) to include not only a paper document but an electronic signal or tape that can be converted to a paper document by the recorder's machine or device. The bill is designed to be workable now and in the future. I believe the recorder needs the information this section calls for and should be asked to clarify why the section should be removed from the bill.

13. I believe this section was favored by all those who reviewed drafts of the bill. The request to remove it should be clarified.

DR:chw

Attachments

ALASKA CODE REVISION COMMISSION

COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
JAMES L. BALDWIN - VICE CHAIRMAN
PATRICK M. RODEY
CHARLES G. ANDERSON
L. B. KURTZ, JR.
JUDGE (RET.) THOMAS B. STEWART

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

EXECUTIVE SECRETARY
BILLY G. BERRIER

MEMORANDUM

TO: Kevin Bruce, Committee Aide
Senate Judiciary Committee
Alaska State Legislature

FROM: Dickerson Regan, Consultant
Alaska Code Revision Commission

DATE: January 4, 1982

RE: SB 78--Recording and Recordable Documents

Since Legal Services in the Legislative Affairs Agency puts draft committee substitute bills behind all new pre-file bills in priority for staff time, I was informed the marked up SB 78 would not be typed until perhaps the first week of the session. However, Linn Asper, the legal staff person assigned to the bill, tells me he is in good shape now and should be getting to it. Attached is the way the bill went to him. Legislative Affairs has the mag cards for the bill so the retyping will be relatively uncomplicated.

I have made two changes from my notes at our meeting of November 23, 1981, in Anchorage. (1) In proposed AS 40.17.-020(b) I struck out ", or in the state division of forest, land and water management," and did not substitute ", in the Department of Natural Resources,". The reason for this change is that I thought in our recent meeting I was the voice against the simple deletion and I now conclude deletion is the better choice. For one thing, proposed AS 40.17.110(c) takes care of the matter adequately. (2) On page 3 I used "accompanied by or include" in proposed AS 40.17.030(a)(4), (a)(5), (a)(6) and (b) and added a (d) which provides that if the information required by (a)(4), (a)(6) or (b) is not included in the document it must be recorded with the document. I think that will meet Javan's objection. As I see it, the information will be marked on, or otherwise included in, the document in almost every instance. The terminology just adds some flexibility that the commission believed would be needed if (1) documents in forms other than paper are recorded, and (2) complete tract indexing is to be required in one or more recording districts by regulation, a possibility the commission wised to provide for

Since I do not know how you wish to handle communication at this point, I did not send copies of this memorandum to anybody in Natural Resources, leaving it to you whether you wished to continue dialogue at this point.

DR:chw

Enclosure: Marked up SB 78, as provided to Legislative Affairs

P.S. At our meeting in November, Joe Burch mentioned a concept just then occurring to him of meshing class B documents with the system of Uniform Commercial Code filings. The concept was neither accepted nor rejected, to the best of my recollection. I believe it was thought that it might be something to handle internally in Natural Resources and, in any case, that it would be left for Natural Resources to pursue should it seem practical and desirable when studied. The marked-up draft does not treat the concept. I believe it would require a major change in the UCC, so it probably will not be followed up.

TO: MARK WITTOW

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF TECHNICAL SERVICES

State of Alaska

TO: Jim Anderson, Director
Div. of Technical Services

DATE: January 26, 1982

FILE NO:

TELEPHONE NO: 274-0142

SUBJECT: SB 78 Revisions

FROM: Javan M. Beittinger
State Recorder

I still have problems with the bill, as cost, implementation and integrity of the system are factors.

Areas of concern and suggestions:

Put in bill, where appropriate, that where record/recorded/recording is used in reference to plats on pages 1 through 6 line 15, it means when technology permits.

Page 4, Lines 5 & 6, why was shall changed to may?

Page 8, AS 40.17.030(c) - As mentioned before, I hope this will not be a problem. It seems all documents should require something.

Page 9 AS 40.17.040(c) and all areas where B type documents are mentioned. B type documents will still remain expensive to implement in each recording office, in time, programming, additional employees, equipment and space, and clutter the records with docuemnts that do not provide constructive notice. From the P.S. in Dick Regan's memo to Kevin Bruce, dated 1-4-82, I do not believe he understood Joe Burch's proposal to have only one place within the recording system where B type documents could be recorded. This concept would cut down on the cost and problems.

Page 12, line 9, If I interpret the meaning correctly, should read A signed, acknowledged and recorded .....

Page 14, line 4, And should be used instead of or.

Page 15, lines 15 & 16 is covered in #53 on page 19 in a different manner.

Page 15, beginning with line 27 # (10) and continuing on page 16. Previous statute read, "An exactly conformed copy of a lease or contract or option to purchase real property when the party certifies under oath that the exactly conformed copy was received by him in the course of the transaction, that the original is not in his possession and that the instrument offered for recordation is an exact duplicate". If the law is to become so flexible as to include any class A document in this manner it should be at least as binding as the previous law. See recommended changes in draft.

Page 17, line 25 #(35), add filed and recorded when technology permits.

Page 18, line 25 #(50), I still have a problem with this, see attached memos from and to Dick Regan.

Page 21, beginning with line 11 - This will require changing the program and cost should be considered. Research and Development have problems adding abbreviations to present program, which should be a minor endeavor.

AS 09.40.050; AS 09.55.370; As 10.30.020; AS 13.26.265; AS 23.10.047; AS 23.20.200; AS 23.30.165; AS 27.10.020; 27.10.050; 27.10.060; 27.10.070 27.10.160; 27.10.190; AS 27.15.010; AS 32.10.010; 32.10.240; AS 34.35.065; 34.35.160; 34.35.185; 34.35.240; 34.35.250; 34.35.305; 34.35.330; 34.35.405; 34.35.440; 38.05.195; 38.05.200; 38.05.205; 38.05.210; 38.05.220; 38.05.245. are fine for changing filed to recording.

27.10.170; 27.10.210; 27.10.230; 38.05.230 should be added to above list.

AS 34.07.020; 34.07.040; 34.07.050 should remain as is or revised to add when technology permits.

AS 34.07.070; AS 34.20.080; AS 46.15.160 need no change.

AS 10.15.230 - AS 10.15.260 should be reviewed and amended to fit recording procedures for processing and fees.

AS 34.15.210 - AS 34.15.250, Why is this being repealed. It is sometimes a useful tool where there is no notary and in court cases.

AS 34.15.300 and AS 34.15.330 seem to be useful statutes.

If the bill passes in the present form which will require new programming, equipment, space, employees etc., I cannot see how it would be possible to be ready for enactment by January 1, 1983.

MEMORANDUM

State of Alaska

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF TECHNICAL SERVICES

TO: Jim Anderson, Director
Division of Technical Services
Dept. of Natural Resources

DATE: October 12, 1981

FILE NO: 1290/1150

TELEPHONE NO: 274-0142

FROM: Javan M. Beitinger
State Recorder

SUBJECT: SB 78

1. Effects of Bill: SB 78 incorporates some new concepts that make recording laws simplier for the public. However, the overall impact will require a higher degree of judgement call on the part of the recording office, will require re-writing the data entry program at considerable cost, will require additional employees and equipment, and lower the integrity of the system.

2. Comments: With no acknowledgement required on documents and affidavits attached to copies, the potential for fraud is increased over today's present system. The system is now in line with court cases and present court administrative rules that were developed for the recording office in past years. By recording plats, instead of filing, would place a land title document in the hands of private individuals and would not provide the public with adequate information so vital to the land records system. Tax Liens could be recorded, but would require some changes in 40.19.040(b). Recording Class B documents would be a great expense to the state in time, programming, additional employees, equipment and space, and would clutter the records with documents that do not provide constructive notice for any purpose. This concept would only cause public indignation.

3. Proposed amendments: On page 2, Section 40.17.020(b) delete "in the state division of forest, land and water management" and insert " Department of Natural Resources" (this does not include plats). Page 3, Section 40.17.030(a)(4) delete the works "accompanied by or". Page 3, Section 40.17.030(a)(6) delete "accompanied by" and insert "include"; delete "grant or". Page 3, Section 40.17.030(c) delete the entire statement. (Some type of signature, acknowledgement or verification should be on each document). Page 6, Section 40.17.090(a) Insert " and acknowledged" after signed. Page 6, Section 40.17.090(b) Insert "and acknowledged" after signed. Page 8, Section 40.17.090(10)(d) delete first "or" and insert "and". Page 9, Section 40.17.110(a) insert "and acknowledged" after signed. Page 10, Section 40.17.110(b)(10) delete in its entirety(see present statute). Page 11, Section 40.17.110(b)(18) needs clarification. Page 12, Section 40.17.110 (b)(35) delete in its entirety, (this should be a document that is filed in the recording office). Page 13, Section 40.17.110(b)(47) delete in its entirety. (As there is no state tax and reference documents should be filed in present system). Page 13, Section 40.17.110(b)(48) could be recorded, but Section 40.19.040(b) would need to be revised. Page 13, Section 40.17.110 (b)(50) delete in its entirety, (this is covered under the Uniform Commercial Code filings and should not be a recording document under the recording office in this bill). Page 17, Section 40.19.040(b) add "which must be noted in the contents of the document".

Page 17, Section 3 amending AS 34.15.010(a), delete in its entirety.
Page 18, Section 5 amending AS 34.15.150, delete in its entirety.
Page 19, Section 6 amending AS 44.37.025(c), consideration should be given to the Division of Technical Services assuming the responsibilities now assumed by the courts. All the ramifications should be addressed prior to making changes. Besides Glennallen, Valdez, Seward, Kodiak and Sitka where recording is done by the court, records are kept and made available to the public in Haines, Skagway, Petersburg, Wrangell, Cold Bay, Aniak, Nenana, Cordova, Dillingham and Naknek.

*

Alternative to SB 78 is to contract with someone to revise present statutes and write regulations.

I have no idea what the fiscal impact would be but enclosed herewith is an analysis prepared by Joe Burch April 4, 1981.

*

Page 19, Section 7, the following statutes should be deleted from the proposed changes.
34.07.020, 34.07.030, 34.07.040, 34.07.050 (these reference the survey maps and floor plans under the Horizontal Property Regimes Act. These documents should be filed as plats as they have been in the past).
40.15.010, 40.15.020, 40.15.040, 40.15.050, 40.15.070 (these reference subdivision plats which should be filed).
34.07.070 and 34.20.080 appear to be correct as written.

Page 19, Section 8, if acknowledgements are required 34.15.210 - 34.15.350 should not be repealed. 43.10.090 - 43.10.150 (Federal Tax Liens should be reviewed before repealing these statutes).

Page 19, Section 9, If bill is passed in its present form effective date should be extended at least until 1983.

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF TECHNICAL SERVICES

TO: David Rogers
Special Assistant
Dept. of Natural Resources

DATE: April 4, [illegible]

FILE NO: 1150 (1981 Fisca' Notes)

TELEPHONE NO: 263-2213

FROM: Joseph C. Burch
Deputy Director
Division of Technical Services

SUBJECT: SB 78 Fiscal Analysis

1) Fiscal impact with no change in existing technology:

10-48-8-808	Recorder's Office
$20.0	Contractual funds to rewrite and publish amended and new recording procedures.
$10.0	RSA funds to Departement of Law to resolve change over problems.
$20.0	Adveritizing funds to inform the general public through newspapers and electronic media.
$50.0	TOTAL

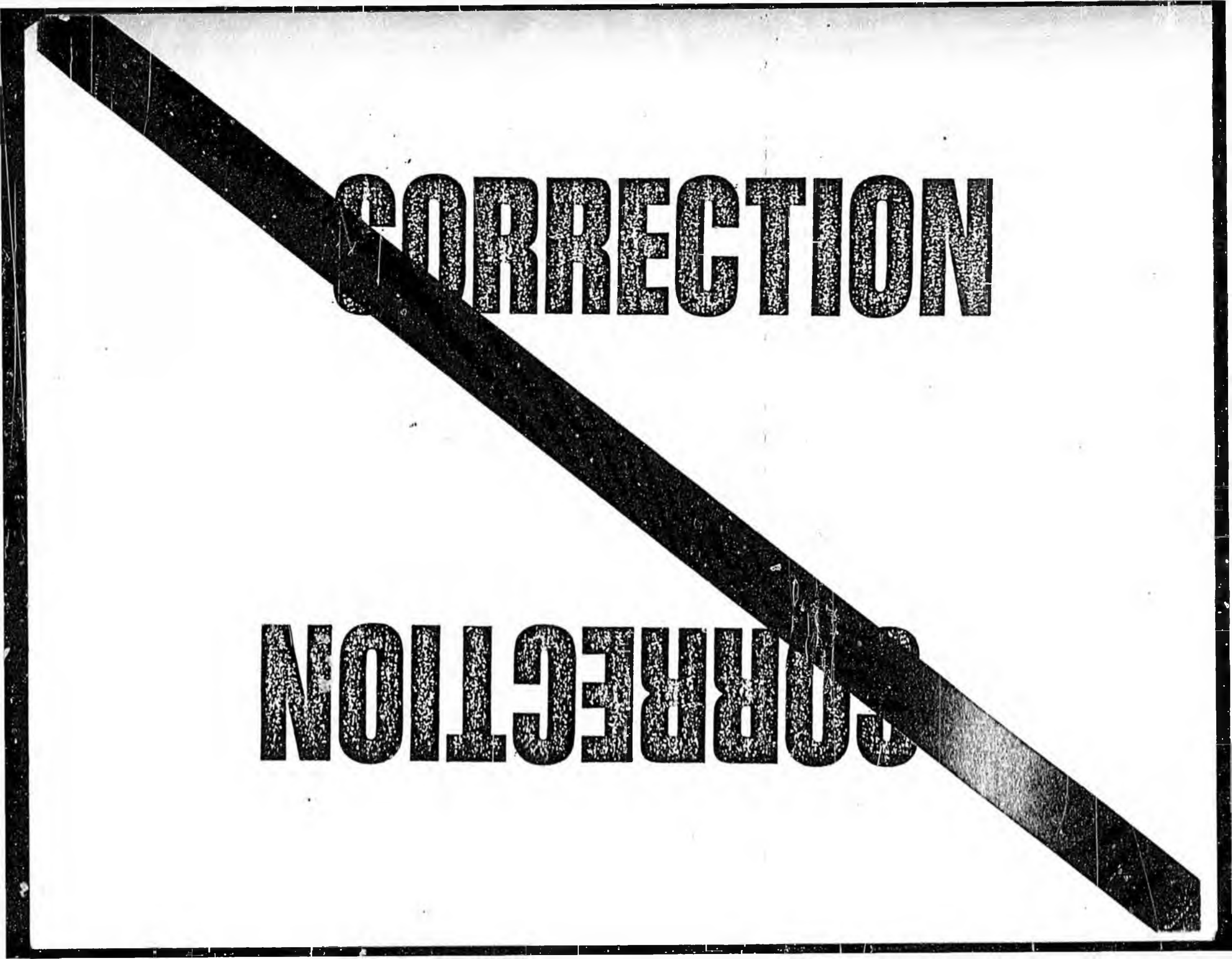
2) Fiscal impact with no change in exiting technolngy:

Assumption:

a) Replace Court System assistance in Glennallen, Valdez, Kodiak, Sitka and Seward with district recording office employees.

b) # 1 costs above are appropriate.

10-48-8-808	Recorder's Office
$ 50.0	# 1 above
108.3	5 positions - Recording Clerk I, range 8
5.0	travel
37.5	space, telephones, copier, etc.
60.0	general office supplies
9.0	equipment
$269.8	TOTAL


CORRECTION
CORRECTION

MEMORANDUM

State of Alaska

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF TECHNICAL SERVICES

TO: David Rogers
Special Assistant
Dept. of Natural Resources

DATE: April 4, 1981

FILE NO: 1150 (1981 Fiscal Notes)

TELEPHONE NO: 263-2213

FROM: Joseph C. Burch
Deputy Director
Division of Technical Services

SUBJECT: SB 78 Fiscal Analysis

1) Fiscal impact with no change in existing technology:

10-48-8-808	Recorder's Office
$20.0	Contractual funds to rewrite and publish amended and new recording procedures.
$10.0	RSA funds to Departement of Law to resolve change over problems.
$20.0	Adveritizing funds to inform the general public through newspapers and electronic media.
$50.0	TOTAL

2) Fiscal impact with no change in exiting technology:

Assumption:

a) Replace Court System assistance in Glennallen, Valdez, Kodiak, Sitka and Seward with district recording office employees.

b) # 1 costs above are appropriate.

10-48-8-808	Recorder's Office
$ 50.0	# 1 above
108.3	5 positions - Recording Clerk I, range 8
5.0	travel
37.5	space, telephones, copier, etc.
60.0	general office supplies
9.0	equipment
$269.8	TOTAL

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 78

Title An act relating to recording and recordable documents

Requested by Rules Committee (for Code Revision Commission) Date 5-11-81

II. FISCAL DETAIL

Agency Affected Department of Natural Resources

Program Category Affected Department of Natural Resources Management and Administration

BRU, Program, or Subprogram(s) Affected Management & Administration; Information/Records Mgmt

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 81	FY82	FY 83	FY 84	FY 85	FY 86
100	PERSONAL SERVICES	Ø	Ø				
200	TRAVEL	Ø	Ø				
300	CONTRACTUAL	50.0	Ø				
400	COMMODITIES	Ø	Ø				
500	EQUIPMENT	Ø	Ø				
600	LAND & STRUCTURES	Ø	Ø				
700	GRANTS, CLAIMS, ETC.	Ø	Ø				
	TOTAL	50.0	Ø				

FUNDING (Thousands of Dollars)

GENERAL FUND	50.0	Ø				
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME	Ø	Ø				
PART TIME						
TEMPORARY						

III. ANALYSIS. (See Fiscal Note Preparation Instructions, Section III)

The contractual funds request are to rewrite and publish amended procedures and new recording regulations for Class A and B documents. This includes funds for the Department of Law to resolve change over problems and review of new regulations to be promulgated.

Additionally are funds for advertising costs associated with adopting regulations, informing the public of new laws for recording, and publishing a handout summary of new recording procedures and requirements.

IV. DATE 5-11-81 PREPARED BY Claud M. Hoffman

AGENCY DNR, Division of Technical Services

PHONE 263-2200

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/79)

TITLE INSURANCE AND TRUST
PIONEER NATIONAL TITLE INSURANCE

February 8, 1980

Mr. Robert J. Whisman
Senior Vice President
Alaska Title Guaranty Company
500 Sixth Avenue
Anchorage, Alaska 99501

RE: Alaska Code Revisions

Dear Mr. Whisman:

The Alaska proposal to revise the recording laws appears to be one of many studies being made in the various states. The National Conference of Commissioners on uniform state laws in 1977 drafted a proposal to modernize and unify legislation in all states in regard to land titles. As of this date no state has adopted any of the provisions thereof.

The above proposal was closely followed in the background study in California prepared by James L. Blawie of Santa Clara Law School. The intention of his study was to chart out the specific matters that might be covered in the project and suggest the approach the California Code Revision Commission should take. They are proceeding slowly on this study and are considering a "marketable title act" as their first area of interest. On January 21, 1980, this proposal was forwarded to all title company counsel for their suggestions as to alternate approaches in dealing with the various matters discussed in the background study.

The proposals all seem to recommend the use of a system located in a central place with facilities for a tract index system with computer access points in each county recorder's office. It is assumed they will transmit the documents by means of a tele-copier or something similar thereto. At the present time our company is unaware of any system that would transfer documents satisfactorily and in volume and that could be relied upon to operate on a day-to-day basis without breakdowns. If a system is available at present or in the immediate future it might prove successful in Alaska because of the low volume of recordings and the remoteness of some recording districts. We are not totally convinced as to the reliability of such a system or the need for it at the present

time in Alaska. If, however, the documents can be recorded in the local recording office as is the practice now, the fact that they will be transferred by telecopier to a central office should have no damaging effect as long as the local recording office has a copy thereof.

This system does not seem too practical in a high volume county like Los Angeles as it would necessitate transmitting 1800 documents to the central office daily. This figure added to the recordings of other California counties would entail a lot of daily transmissions. It appears to be a duplication having all documents in one central place and these same documents stored in the various recording districts also.

Paragraph 5, Section 40.17.030 of the Alaska proposal requires the name of the person who presents the document for recording and the name of the person in whose behalf it is to be recorded. It would seem that the information "recorded at the request of" would be sufficient.

Section 40.17.030
Paragraph 6 requires the mailing addresses for all parties who require an interest under the conveyance document. This could prove cumbersome if there are a number of grantees and would necessitate the adding of an additional page to the document. It is assumed that paragraph (6) requires that the mailing addresses be recorded with and be part of the conveyance document. The statements printed on the document "after recording mail to" and "send tax statements to" would accomplish more.

No attempt has been made to determine if the list of Class "A" documents in Section 40.17.110 is complete but deeds of trust, mortgages, release of mortgages and reconveyance do not appear to be listed therein. The necessity of listing Class "A" documents should be re-evaluated.

Section 40.17.120 contains the information necessary for a memorandum of lease to be recorded but it did not mention the necessary operative words to create a lease. The following matters should be in the memorandum of lease:

1. The names of the lessor and the lessee and addresses

2. Operative words of lease from lessor to lessee

3. A description of the property leased

4. A recital indicating the transfer from lessor to lessee is made subject to the terms, covenants and conditions of:

    a. A lease of specified date existing between the parties

The other items listed therein relating to commencement, termination, right to extend, renew, right to purchase or right to purchase the property, would all appear in the unrecorded lease and would defeat the purpose of the memorandum. It would seem that the rental is as necessary a requisite as the term of the lease and that if the memorandum must contain one it must also include the other. The apparent intent of the lessee in a memorandum of lease is to disclose as little as possible of record to their competitor and is entirely logical.

These are the only comments we wish to make at the present time and would only suggest that Alaska proceed slowly on such an encompassing change. As mentioned above, most of the states are considering change but not in such a drastic fashion.

Very truly yours,

John Weir

John Weir
Assistant Vice President
Underwriting Practices

JW/bhb

cc: JSW 3-12-80

PIONEER NATIONAL
TITLE INSURANCE

Richard C. Mohler
Senior Vice President
Manager Northwest Region

February 8, 1980

Mr. Dickerson Regan, Consultant
Code Revision Commission
Alaska State Legislature
Pouch Y - State Capitol
Juneau, Alaska 99811

Dear Mr. Regan:

We have previously conversed by phone, concerning the revision of the Alaska recording laws as proposed by the Alaska Code Revision Commission. As I indicated in that conversation, I have primarily two comments, the first relating to the deletion of the requirement that instruments or conveyances be acknowledged to be eligible for recording and second, the desirability of including a specific provision that no instruments or conveyances shall impart constructive notice with respect to land in Alaska, unless recorded as a Class A document, as provided by the new Chapter 17.

As to the elimination of the requirement that conveyances be acknowledged, I think that all title companies will be dismayed at the prospect of insuring titles through documents that are not acknowledged or proved in some manner. As you know, a title insurance policy covers numerous off record risks including forgery and impersonation. The notary's certificate of acknowledgment is about the only assurance we have that the signature or execution of any conveyance is authentic. We have no practical way of determining the authenticity of documents which have been recorded prior to our examination of title. Our policy also insures against incompetency of parties and while the notary's certificate and acknowledgment by the grantor are no proof of competency, they do provide some safeguard

against physical or mental disabilities which would prevent a grantor from appearing before the notary. Presumably, most notaries and other officers taking acknowledgments would be reluctant to certify the acknowledgment of a person who was obviously mentally incompetent.

The presumptions in 40.17.090 are valuable but will be of little assistance to any title insurer defending an insured title once evidence has been presented that execution of a conveyance is invalid or defective. As we read the statute, the presumptions cannot be relied upon by a bona fide purchaser.

The acknowledgment of the execution of a deed or other conveyance before a notary public or other official adds solemnity to a transaction that should not be entered into lightly or casually. A homeowner engaged in a poker game will find it difficult to execute a deed to his home and throw it into the pot if an acknowledgment of his signature is necessary. The requirement of an acknowledgment makes it much more difficult to procure signatures by fraud or coercion, especially where the party is sick, elderly, or under the influence of alchohol.

We concede that in many cases certificates of acknowledgment have not been the protection that they should be, and on occasion, notaries have been particularly careless about establishing the identity of the person acknowledging a signature. We have had many forgery losses where the acknowledgment was in proper form, but where the notary was negligent. There are, of course, a few cases where the notary's signature has been forged, as well as that of the party executing the document.

It is our opinion that the proper solution to the problem is to increase the responsibilities of the officers taking acknowledgments in order that third persons, as well as title insurance companies, may have some reasonable assurance that the execution of the document is authentic. In Alaska, especially in the remote areas, there are numerous transactions where a purchaser does not have the protection of title insurance. We therefore believe it desirable, as a

protection to the citizens of the state, that they be able to deal in real property with some assurance that documents of record are genuine. It seems to us that one of the best ways to accomplish this is to require a certificate of acknowledgment and make the notaries and other officers responsible for proper performance of their duties, either by bonding requirements, civil or criminal penalties, or otherwise. A number of states, including California, have in the past few years passed laws increasing the duties and responsibilities of officers taking acknowledgments. We therefore strongly recommend that the acknowledgment requirement be retained in the law and that the function and responsibility of the notary public be increased rather than eliminated.

It appears to me, from reading the statute, especially Sec. 40.17.080, that the underlying theory and purpose of the statute is to require all conveyances to be recorded in accordance with the statute, if they are to provide constructive notice as to third parties. I had previously suggested a provision to make it clear that no instrument would be constructive notice as to third parties, unless recorded in accordance with the provisions of the statute. At that time, I of course, had in mind the Federal Register problem where unrecorded public land orders and other documents published in the Federal Register apparently provide constructive notice as to Alaska real estate. For a number of reasons, which I will not go into here, I believe that such a result is neither logical nor desirable. It must be remembered that, while we are talking about the Federal Register, there might well be other publications, under state or federal law, which might be held to be constructive notice under the same reasoning as used in the Hahn case which held the Federal Register was a public record giving notice. We are therefore presented with a situation where no one in Alaska can be sure that he can identify all records or publications which impart constructive notice with respect to Alaska land. I therefore strongly recommend that the new Act contain a clearer definition and enumeration of all documents and conveyances which impart constructive notice and recommend that they be limited to those documents and instruments recorded pursuant to the new Act. It seems to me that the new Act with its very broad definition of the term "convenyance", is very close to that position, as presently written.

Again, let me point out the fact that many transactions in Alaska do not have the protection of title insurance. It seems inconceivable to me that a bona fide purchaser of land in Alaska can lose his title even though the records maintained by the State do not disclose the adverse interest. In my view this makes a mockery of Section 40.17.080.

We appreciate the opportunity to comment on the proposed legislation and hope our comments will be of assistance.

Very truly yours,

John S. Williamson

John S. Williamson
Vice President and
Senior Title Counsel

JSW/mm

cc: Bob Whisman, Anchorage

West's
ANNOTATED
CALIFORNIA CODES

GOVERNMENT CODE
Sections 27200 to 32199

Volume 34A

Cumulative Pocket Part

For Use In 1979

Replacing prior Pocket Part in back of volume

Includes laws through the 1978 portion of the 1977–1978 Regular Session and the First Extraordinary Session (1978)

See Section 27285

grantee evidenced by its resolution of acceptance attached to the deed or grant. A political corporation or governmental agency by a general resolution may authorize an officer or agent to consent to such deeds or grants. In that event the required consent of the grantee may be evidenced by the written acceptance of the officer or agent attached to the deed or grant, together with a certified copy of the resolution conferring authority upon the officer or agent."

The 1957 amendment rewrote the section.

The 1959 amendment in the first sentence inserted "or resolution," and in the second sentence inserted "if a" in lieu of "the," and inserted "is used, it."

The 1959 amendment also inserted the parenthetical material in the body of the proposed form, not that placed under blanks, and deleted the former concluding sentence which required a certified copy of a resolution authorizing appointment of an officer or agent to be recorded.

Validation: Section 2 of Stats.1959, c. 433, p. 2371, provided as follows: "Any deed or grant conveying any interest in or easement upon real estate to a political corporation or governmental agency for public purposes to which is attached a resolution of acceptance by the grantee and which has been accepted for recordation during the period from September 11, 1957 to the effective date hereof, is hereby validated as being a document entitled to recordation provided that any such deed or grant was in other respects acceptable for recordation. Any such deed or grant that has been so recorded during such period shall impart and shall be deemed to have imparted from the date of recordation, notice of its contents to subsequent purchasers and encumbrancers."

Derivation: Civ.C. § 1158, amended by Stats.1921, c. 143, p. 143.

Library References

Deeds ⇐83. C.J.S. Deeds § 75.

Notes of Decisions

1. In general

Parks in a subdivision were not dedicated to public use under Stats.1901, p. 288, requiring filing of map showing lands reserved for public purposes and providing for dedication of streets, roads, alleys, and highways after indorsement of acceptance by governing body, where map filed in office of county recorder failed to show supervisors' acceptance of land in tract for park or any other public purpose, or to show any land set aside for park purposes, and supervisors merely accepted map, which did not constitute acceptance of dedicated lands, since none was shown on face of map. People v. Rio Nido Co. (1939) 85 P.2d 461, 29 C.A.2d 486.

In suit to compel carrying out of trust under which city received tidelands, judgment requiring city to accept conveyance of groynes and strips of land was erroneous. Muchenberger v. City of Santa Monica (1929) 275 P. 803, 206 C. 635.

Where, under contract of sale of land, grantee was to pay 1922–1923 taxes, but before delivery of deed in escrow grantor paid first installment of taxes, and in escrow instructions directed escrow holder to hold $43.55 for "tax adjustments," and grantee did not comply therewith, but undertook to settle tax "outside of escrow," delivery of deed to grantee for acceptance required by Civ.C. § 1158 (repealed 1947. Now this section), was insufficient to pass title and, there being no other delivery, deed never took effect. Los Angeles City High School Dist. of Los Angeles County v. Quinn (1925) 234 P. 313, 195 C. 377.

§ 27282. Documents recordable without acknowledgment; constructive notice

(a) The following documents may be recorded without acknowledgment, certificate of acknowledgment, or further proof:

(1) A judgment affecting the title to or possession of real property, authenticated by the certificate of the clerk of the court in which the judgment was rendered.

(2) A notice of location of mining claim.

(3) Certificates of amounts of taxes, interest and penalties due and extensions thereof executed by the state, county, or city taxing agencies or officials pursuant to Sections 2191.3, 2191.4, 6757, 7872, 8996, 10099, 11495, 16063, 16064, 18881 through 18883, inclusive, 26161 and 30322 of the Revenue and Taxation Code, and Section 1703 of the Unemployment Insurance Code, and releases or subordinations executed pursuant to Sections 2191.4, 6758, 6759, 7873, 8997, 10100, 11496, 14307, 14308, 16066, 16067, 18884, 18885, 26162, 30323 and 30324 of the Revenue and Taxation Code, and Sections 1704 and 1705 of the Unemployment Insurance Code.

(b) Any document described in this section, from the time it is filed with the recorder for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees. (Added Stats.1947, c. 424, p. 1160 § 1, as amended Stats.1963, c. 1645, p. 3234, § 1; Stats. 1965, c. 413, p. 1728, § 1.)

Historical Note

As originally enacted, this section read: "A judgment affecting the title to or possession of real property, authenticated by the certificate of the clerk of the court in which the judgment was rendered, and a notice of location of mining claim may be recorded without acknowledgment, certificate of acknowledgment, or further proof."

The 1963 amendment rewrote the section.

In subd. (3), the words "or subordinations" and section numbers "14307, 14308" of the Unemployment Insurance Code were inserted by the 1965 amendment.

Derivation: Civ.C. § 1159, amended by Stats.1897, c. 94, p. 97, § 1.

Cross References

Acknowledgment of instruments, see Civil Code § 1180 et seq.
Certificate of acknowledgment, see Civil Code §§ 1188, 1189.
Judgment for possession of real property, see Civil Code § 3375.
Judgments generally, see Code of Civil Procedure § 674.
Judgments, manner of giving and entering, see Code of Civil Procedure § 664 et seq.
Mining claims,
Locating, generally, see Public Resources Code § 2301 et seq.
Recording of notice of location, see Public Resources Code § 2313.

Law Review Commentaries

1965 amendment. Rev. of 1965 Code Leg. (Cont.Educ. of Bar, 1965) page 136.

Library References

Mines and Minerals ⇐22

C.J.S. Mines and Minerals § 56.

Notes of Decisions

In general 1
Mining claims 2

1. In general

Wife, adjudged separate owner of realty in divorce decree, was estopped from disputing title of bona fide purchaser from husband as record owner, absent constructive notice of pending divorce suit. Stout v. Gill (1930) 294 P. 446, 110 C.A. 445.

Divorce decree adjudging certain realty separate property of wife, not recorded where land was situated, could not affect

rights of bona fide purchaser from husband as record owner. Id.

2. Mining claims

Where conditional sales contract for purchase of mining claims contained agreement that contracting purchaser should retain title to machinery and equipment subsequently installed as his own personalty with privilege of removal, instrument was duly acknowledged and recorded, and machinery and equipment were not on property when irrigation district's lien for assessments vested, district was charged with constructive notice of terms of reservation of title to machinery and equipment and was bound by the agreement. Oroville-Wyandotte Irr. Dist. v. Ford (1941) 118 P.2d 340, 47 C.A.2d 531.

Where plaintiff leased mining machinery to be attached to realty under written rental agreement to mining company, subsequently owners of realty on which machinery was placed took machinery from mining company and executed a deed of trust covering real property, together with "all mining machinery, equipment and fixtures, in or about said real property", and grantees in deed of trust had no knowledge of plaintiff's claim to machinery, by recorded notice or otherwise, plaintiff's title to machinery would be subject to lien created by the deed of trust. Western Machinery Co. v. Graetz (1941) 108 P.2d 711, 42 C.A.2d 256.

It being the duty of the county recorder, under Stats.1897, p. 484, § 120, to record writings "permitted" by law to be recorded, and the recording of notices of mining locations and proofs of labor thereon being authorized by Civ.C. § 1159, as amended by Stats.1897, p. 97 (repealed 1947. Now this section), the recorder must account for the fees therefor. Kern County v. Lee (1900) 61 P. 1124, 129 C. 361.

A county recorder is not liable to the county for fees earned in recording notices of location of mining claims, the work being outside his official duties, such records not being known to the statute, being regulated entirely by the mining districts; and a county recorder is not compelled to keep them. San Bernardino County v. Davidson (1896) 44 P. 659, 112 C. 503.

§ 27283. Effect of recording of notices of location of mining claims prior to March 9, 1897

The record of all notices of location of mining claims made prior to March 9, 1897 in the proper office without acknowledgment, or certificate of acknowledgment, or other proof, has the same force and effect for all purposes as if the notices had been duly acknowledged or proved and certified as required by law. (Added Stats.1947, c. 424, p. 1160, § 1.)

Derivation: Civ.C. § 1159, amended by Stats.1897, c. 94, p. 97.

Cross References

Mining claims,
Locating, generally, see Public Resources Code § 2301 et seq.
Recording of notice of location, see Public Resources Code § 2313.

§ 27284. Affidavits of work on mining claims

Affidavits showing work or posting of notices upon mining claims may be recorded in the recorder's office of the county where the mining claims are situated. (Added Stats.1947, c. 424, p. 1160, § 1.)

Derivation: Civ.C. § 1159, amended by Stats.1897, c. 94, p. 97.

Cross References

Affidavits of work performed, filing, see Public Resources Code § 2315.
Notice of location of mining claim, see Public Resources Code §§ 2301, 2303.

Notes of Decisions

1. In general

It being the duty of the county recorder, under Stats.1897, p. 484, § 120, to record writings "permitted" by law to be recorded, and the recording of notices of mining locations and proofs of labor thereon being authorized by Civ.C. § 1159 (repealed. See, now, §§ 27280-27284), the recorder must account for the fees therefor. Kern County v. Lee (1900) 61 P. 1124, 129 C. 301.

§ 27285. Enumeration of documents that may be recorded without acknowledgments; effect of record

The following documents may be recorded without acknowledgment or further proof:

(a) Letters patent from the United States or from the State, executed and authenticated pursuant to existing law.

(b) Leases for the development and extraction of minerals, including oil and gas, in which the United States is the lessor, executed on behalf of the United States by the Secretary of the Interior or by any other properly authorized officer or officers.

(c) Copies of interdepartmental letters or decisions of the Department of the Interior or of any duly authorized officer or employee thereof approving assignments or surrenders of such leases or incumbrances thereon or canceling any such leases, certified by the Director of the Bureau of Land Management of the Department of the Interior, or by any duly authorized officer or employee having the custody of such letters of decisions.

(d) Copies of documents filed with the General Land Office of the Department of the Interior or in any district land office executed and acknowleged in a manner which would entitle them to be recorded and by which any interest in such leases or in the production thereunder is conveyed, assigned, encumbered or quitclaimed, certified by the officer or employee of the Department of the Interior having the custody of such documents.

When a copy of any document so certified is recorded, the record has the same force and effect as though it were the record of the original document. (Added Stats.1947, c. 424, p. 1160, § 1, as amended Stats.1951, c. 511, p. 1659, § 1.)

Historical Note

The 1951 amendment changed subds. (c) and (d) which previously read:

"(c) Copies of interdepartmental letters of the Department of the Interior approving surrenders of or canceling such leases, certified by the Commissioner of the General Land Office of the Department of the Interior.

"(d) Copies of instruments filed with the Commissioner of the General Land Office, executed and acknowledged in a manner which would entitle them to be