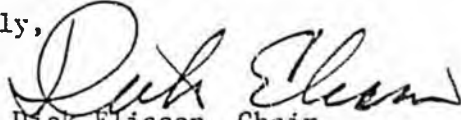


ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 86/2

2733 SLC HB 702 - HB 705

The Senate Labor and Commerce Committee has introduced legislation that would extend the Board of Examiners in Optometry another four years.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dick Eliason".

Senator Dick Eliason, Chair
Senate Labor and Commerce Committee

SOLDOTNA OPTOMETRY CLINIC
JOHN A. DEMSKE, O.D.
DOCTOR OF OPTOMETRY
WOODRUEF BLDG. - SUITE 202, 155 SMITH WAY
SOLDOTNA, AK 99669

TELEPHONE (907) 262-3168

April 11, 1984

Senate Labor and Commerce Committee
Senator Richard Eliason
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason,

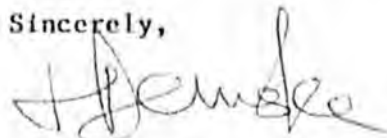
I'm writing in regard to HB 702, concerning the continuation of Board of Examiners in Optometry.

All board members feel that some method of identification should be required with the application to practice optometry in the State of Alaska. We feel that it is our duty to the state to ensure that the applicant who sits for the examination is the same individual who will practice optometry on the people of Alaska.

Since there does not appear to be a foolproof method to ensure identity we are in agreement with the recommendation of the Division of Occupational Licensing. They propose that the application require a photograph which is kept separate by the licensing examiner. After the applicant has finished the examination, the board has graded the exams and reviewed the applications, then the photographs are compared for positive identification. Thereafter, the photograph becomes a permanent part of the applicants record for future use.

I hope that this recommendation will resolve the issue. If you have any further questions, don't hesitate to contact me.

Sincerely,



John A. Demske, O.D.

JAD/bc

cc: Maynard Falconer, O.D., Chairman
Wanda Fleming, Licensing Examiner

SOLDOTNA OPTOMETRY CLINIC
JOHN A. DEMSKE, O.D.
DOCTOR OF OPTOMETRY
WOODRUEF BLDG. - SUITE 202, 155 SMITH WAY
SOLDOTNA, AK 99669

TELEPHONE (907) 262-3168

March 6, 1984

The Honorable Richard Eliason
Alaska State Senate
Pouch V
Juneau, Ak. 99811

Dear Senator Eliason,

Per our conversation during the hearing of last week concerning SB 437, Continuation of the Board of Examiners in Optometry, I have discussed the issue of the application photograph with the other members of the board.

Both board members expressed a desire to retain the applicants photograph for proof of identification. The photograph is our only method to ensure that the individual sitting for the exam is indeed the applicant who filed the required documents by mail. The only other alternative that we can think of is to have fingerprints.

If you have an alternative that is more agreeable with the FEO, we would appreciate your recommendations. Thank you for your time in this matter.

Sincerely,



cc: Maynard Falconer, O.D.
Chairman, Optometry Board

Wanda Fleming, Licensing Examiner



Member

American Optometric Association

HB

704

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CSHB 704 (L&C)
Title: Automobile clubs

Sponsor: Labor & Commerce
Requestor: Labor & Commerce
Date of Request: 4/9/84

FISCAL DETAIL

Agency Affected: Commerce & Economic Dev.
Program Category Affected: _____
Public Protection
BRU, Program or Subprogram(s) Affected: _____
Division of Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS: None

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Kenneth C. Moore, Director
Division: Insurance

Phone: 465-2515

Date: 4/9/84

Approved by Commissioner: Richard A. Lyon
Agency: Commerce & Economic Development

Date: 4/9/84

Distribution (by Agency preparing fiscal note):

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

12/1/83

9 704 TITLE & SPONSOR SUMMARY 17:48 6/04/84 PAGE 1 OF 3

ENDED TITLE: CSND 704(LAC)

ACT RELATING TO AUTOMOBILE SERVICE CORPORATIONS

LINE SPONSOR: HOUSE LABOR&COMM COMMITTEE.

-SPONSORS:

CURRENT STATUS: 4/27/84 IN (S) RULES

9 704 HOUSE ACTION 17:48 6/04/84 PAGE 2 OF 3

DATE SEQ PAGE LEGISLATIVE ACTION

3/23/84 01 3055 FIRST READING -- COMMITTEE REPORTS
4/10/84 02 3264 LAC -- CS04
4/10/84 03 3264 LAC F/NOTE EQUALS ZERO
4/23/84 04 3423 SECOND READING
4/23/84 05 3423 LAC CS ADOPTED BY UNAN CONSENT
4/23/84 06 3423 ADVANCED TO 3RD READING BY UNAN CONSENT
4/23/84 07 3423 THIRD READING
4/23/84 08 3424 PASSED BY DIV 33-00-04
4/23/84 09 3424 NOTICE OF RECONSIDERATION GIVEN
4/24/84 10 3440 RECONSIDERATION NOT TAKEN UP
*** **

9 704 SENATE ACTION 17:48 6/04/84 PAGE 3 OF 3

DATE SEQ PAGE LEGISLATIVE ACTION

3/23/84 11 2015 FIRST READING -- COMMITTEE REPORTS
4/27/84 12 2052 LAC -- DP04
RULES
*** **

This proposal is intended to permit automobile service corporations (auto clubs) to form and operate in Alaska. Since automobile service corporations do provide very limited forms of insurance, they are currently required to form as an insurer under Title 21. This is effectively a barrier since those requirements are aimed at a different kind of entity. The division recognizes that the requirements for an automobile service corporation do not need to be as stringent as for a normal insurer and support the concept encompassed in CSHB 704(L&C).

Sec. 21.59.010. Page 1, lines 10-18.

This section requires that an automobile service corporation is subject to the provisions of the new chapter. It excludes insurers with a certificate of authority issued under AS 21.09. It also provides that only provisions referred to or contained in AS 21.59 apply to an automobile service corporation.

Sec. 21.59.020. Page 1, lines 19-29 and page 2, lines 1-7.

This section requires that the automobile service corporation be a nonprofit corporation and hold a certificate of authority issued by the director. It also establishes some procedural requirements about order of filing certain documents if the automobile service corporation is a domestic.

Sec. 21.59.030. Page 2, lines 8-22.

This section establishes qualifications for a certificate of authority. The automobile service corporation must be financially sound and it must post a bond assuring that it will meet its contractual obligations.

Sec. 21.59.040. Page 2, lines 23-29 and page 3, lines 1-21.

This section lists the documents needed to obtain a certificate of authority. (4) provides an option of two ways to provide some evidence of financial soundness. The rest is almost boilerplate requirements for issuance of a certificate of authority.

Sec. 21.59.050. Page 3, lines 22-29 and page 4, lines 1-14.

Subsections (a) and (b) provide the reserves needed if the bond filed under Sec. 21.59.030(2) is for \$50,000. Subsection (c) makes no special reserve requirements if the bond filed under Sec. 21.59.030(2) is for \$250,000. Since the amounts for which the automobile service corporation will be at risk are very low for each subscriber, the bond is a good substitute.

Sec. 21.59.060. Page 4, lines 15-21.

This section requires that records be kept on a generally accepted accounting principles basis rather than that usual to an insurer, a statutory basis.

Sec. 21.59.070. Page 4, lines 22-29, all of page 5, and page 6, line 1. Since this is an exclusive statute, one to which provisions outside of the chapter do not apply, this section is needed to bring other appropriate sections of the insurance code to bear on automobile service corporations.

AS 21.03. This chapter deals with the scope of the insurance code.

AS 21.06. This chapter establishes the authority and powers of the director of insurance.

AS 21.09.050. This section bars misleading or duplication of insurer names.

AS 21.09.100. This section deals with management and affiliations of insurers.

AS 21.09.120-170. These sections deal with the certificate of authority, issuance, refusal to issue, ownership, continuance, expiration, reinstatement, amendment, revocation, suspension, and duration of suspension of a certificate of authority.

AS 21.09.180-190. These sections deal with service of process.

AS 21.09.200. This section deals with an annual statement.

AS 21.09.210. This section deals with taxation.

AS 21.12. This chapter defines the kinds of insurance.

AS 21.36. This chapter deals with unfair trade practices and frauds.

AS 21.69. This chapter deals with organization and corporate procedure for domestic corporations.

AS 21.78. This chapter deals with rehabilitation and liquidation of impaired or insolvent insurers.

AS 21.90. This chapter contains the general penalty section and general definitions for the insurance code.

Sec 21.59.900.

Definition section.

Summary

Automobile
Clubs
(applicability
of Insurance
Code to)

HOUSE BILL NO. 704, by the Labor & Commerce Committee.
Relates to the applicability of the Insurance Code (AS 21) to automobile clubs. Amends AS 21.03.021 (Insurance. Scope of Code. Applicability of Code) by adding a new subsection that reads: "(b) This title does not apply to an automobile club organized and operated without profit to any member for the purpose of providing service to travelers, including emergency road service, the providing of bail bonds for traffic offenses, reimbursement of legal fees for representation on traffic offenses, providing maps and trip planning services, or the arrangement of discounts, rebates or price reductions on travel-related goods and services. However, all policies and contracts issued by an automobile club shall provide for acceptance of service of process within the state. The director may require an automobile club to post with the department a bond in an amount not to exceed \$50,000, issued by a corporate surety qualified under the laws of the state to act as surety in furnishing bail, and conditioned upon the organization's faithful fulfillment of its contracts within the state." Does not provide for an effective date.

COMMITTEE REPORT

SENATE

FURTHER:

Date 9/21/49

Mr. President

The Committee on LABOR & COMMERCE considered HR 7021

Automobile Service Corporations.

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

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for _____
- new title _____
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

[Signature]

[Signature]
Chairman

[Signature]
Chairman recommendation

H B

705

Asper
5/24/84 ✓

Considered ~~to~~ later

Original sponsor: Labor and Commerce
Committee

amended in
cmte

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 705 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

8 * Section 1. AS 08.88.450 is amended to read:

9 Sec. 08.88.450. REAL ESTATE SURETY FUND. The real estate surety
10 fund is established [THERE IS CREATED A SPECIAL ACCOUNT] in the gener-
11 al fund [KNOWN AS THE REAL ESTATE SURETY FUND] to carry out the pur-
12 poses of AS 08.88.450 - 08.88.500. The fund is [SHALL BE] composed of
13 payments made by licensed real estate brokers and salesmen under
14 AS 08.88.455 and filing fees retained in accordance with AS 08.88.460.
15 The fund may not exceed \$500,000 and amounts in the fund in excess of
16 \$250,000 may be appropriated for real estate educational purposes as
17 provided in AS 08.88.091.

18 * Sec. 2. AS 08.88.455(a) is amended to read:

19 (a) A licensed real estate broker, [OR] associate broker, or
20 salesman when obtaining or renewing a real estate license, in lieu of
21 obtaining a corporate surety bond, shall pay to the commission in
22 addition to the license fee, a surety fund [BOND] fee not to exceed
23 \$125 [, AND A LICENSED SALESMAN, WHEN OBTAINING OR RENEWING A LICENSE,
24 IN LIEU OF OBTAINING A CORPORATE SURETY BOND, SHALL PAY TO THE COMMIS-
25 SION IN ADDITION TO THE LICENSE FEE, A BOND FEE NOT TO EXCEED \$40].
26 After the fund reaches \$250,000 the commission shall by regulation
27 adjust the surety fund [BOND] fees so that, taking into account anti-
28 cipated expenditures for claims against the fund and real estate
29 educational purposes, the fund is maintained at a level not less than

1 \$250,000.

2 * Sec. 3. AS 08.88.460 is amended by adding new subsections to read:

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

15 (d) A claimant under this section shall pay a filing fee of \$250
16 to the commission at the time the claim is filed. The filing fee
17 shall be refunded only if the commission makes an award to the claim-
18 ant from the real estate surety fund, or if the claim is dismissed
19 under (c) of this section.

20 * Sec. 4. AS 08.88.465 is amended by adding a new subsection to read:

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

23 * Sec. 5. AS 08.88 is amended by adding a new section to read:

24 Sec. 08.88.474. PAYMENT OF SMALL CLAIMS JUDGMENT. If a claim
25 originally filed with the commission is dismissed and is heard as a
26 small claims action under AS 08.88.460(c) and the claimant prevails in
27 the small claims action against the real estate broker, associate real
28 estate broker, or salesman, the commission shall make an award from
29 the fund of any outstanding portion of the small claims judgment on

1 receipt of a copy of the final judgment and an affidavit from the
2 claimant stating that more than 30 days have elapsed since the judg-
3 ment became final and that the broker, associate broker, or salesman
4 has not satisfied the judgment during that time. After payment of a
5 small claims judgment the commission is subrogated to the claimant's
6 rights in the judgment under AS 08.88.490.
7

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9 When an award is made
10 under —
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STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No. SCSCSHB 705 (L&C)
Title: Real Estate Surety Fund

Sponsor: Senate L & C
Requestor: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.

Program Category Affected: _____
Consumer Protection

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES			(20.0)	(20.0)	(22.0)	(24.0)
200 TRAVEL			(1.0)	(1.0)	(1.5)	(1.5)
300 CONTRACTUAL			(.2)	(.2)	(.3)	(.3)
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING			(21.2)	(21.2)	(23.8)	(25.8)

CAPITAL						
---------	--	--	--	--	--	--

REVENUE		10.0	10.0	10.0	10.0	10.0
---------	--	------	------	------	------	------

To Surety Fund

FUNDING: (Thousands of Dollars)

GENERAL FUND			(21.2)	(21.2)	(23.8)	(25.8)
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: James L. Magowan
Division: Real Estate Commission

Phone: 563-2169

Date: _____

Approved by Commissioner: Richard A. Lyon
Agency: Department of Commerce and Economic Development

Date: 5-24-84

Distribution (by Agency preparing fiscal note):

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

12/1/83

HOUSE JOURNAL SUPPLEMENT

April 25, 1984

No. 134

FISCAL NOTE

Revision Date:

Page 1 of 4

REQUEST
 Bill/Resolution No CSHB 716 (L&C)
 Title: An Act relating to the
Board of Pharmacy; & providing for
 Sponsor: Labor & Commerce Committee
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL
 Agency Affected: Commerce & Economic Dev.
 Program Category Affected: Public Protection
 an effective date _____
 BRU, Program or Subprogram(s) Affected: _____
Division of Occupational Licensing

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		46.5	49.8	53.3	57.0	61.0
200 TRAVEL		51.6	55.2	59.0	63.2	67.6
300 CONTRACTUAL		28.0	30.0	32.0	34.3	36.7
400 SUPPLIES		1.2	1.3	1.4	1.5	1.6
500 EQUIPMENT		4.2				
600 LAND & STRUCTURES		2.6	3.9	4.1	4.4	4.7
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		135.1	110.2	149.8	160.4	171.6
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		135.1	110.2	149.8	160.4	171.5
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Jennifer Strickler, Management Analyst Phone: 465-2144
 Division: Occupational Licensing Date: 4/17/84

Approved by Commissioner: Richard A. Lyon Date: 4/23/84
 Agency: Commerce & Economic Development

HB
716

CSHB 716 (L&C)

Page 2 of 4

(NOTE: 7% inflation factor projected for FY '86 through
FY '89 for operating costs)100 PERSONAL SERVICES:

1 Executive Secretary, Range 18A PX, 12 months to be located in Anchorage	46,519.88
--	-----------

200 TRAVEL:

Executive Secretary	3 board meetings (2 days ea. @ \$80 per day/ per diem = \$160 x 3)	\$480.00
	Transportation - 3 board mtgs @ \$400 ea.	1,200.00

Note: There are 119 licensed pharmacies which require inspections. Assuming the Executive Secretary will be located in the Anchorage area, the following does not include the 41 pharmacies in the Anchorage area. These consist of 32 Retail, 2 Wholesale, 6 Hospital Pharmacies, and 1 Nursing Home Drug Room pharmacy.

Transportation for Inspections not in the Anchorage area, at \$400 ea. x 78	31,200.00
--	-----------

Per Diem for Inspections not in the Anchorage area, at \$80 per day x 3 days ea. x 78	<u>18,720.00</u>
	\$51,600.00

300 CONTRACTUAL:

Postage, telephone, printing, publication and operating costs:	\$2,000.00
---	------------

(With the authority to investigate violations, the
following will apply:)

Legal fees: Estimated 2 investigations annually will result in disciplinary proceedings: Fees cover all costs including hearing officer fees, court costs, court recorder costs, appeals cost, witness fees, and all other related costs; (Estimated each hearing process cost is \$10,000.00 x 2)	20,000.00
--	-----------

Executive Secretary leased vehicle, dry w/maintenance:

Anchorage: 1 vehicle @ \$410.00 per month x 12 months	4,920.00
---	----------

Fuel: 1 leased vehicle @ est. \$87.50 per month x 12 months	<u>1,050.00</u>
	\$27,970.00

HB
716

400 COMMODITIES: CSHB 716 (L&C)

Stationery, typewriter ribbons, pens, pencils,
tablets, and other miscellaneous desk top supplies 1,200.00

500 EQUIPMENT: (one time costs only)

1 desk, double pedestal, 60" x 30" @ 568.22 ea.	568.22
1 chair, executive swivel, with arms @ \$313.30	313.30
1 typewriter, IBM correcting Selectric with dual pitch, 15.5 inch paper capacity @ \$1,369.36 ea.	1,369.36
1 typewriter table @ \$135.65 ea.	135.65
1 chair, side without arms, contour style @ \$114.60 ea.	114.60
1 recording machine, portable, Lanier @ \$775.87 ea.	775.87
1 bookcase with 3 adjustable shelves @ \$164.69 ea.	164.69
1 file cabinet, 5 drawer, legal w/lock @ \$406.91 ea.	406.91
1 calculators, desk, printing and display, 12-digit, @ \$364.66 ea.	<u>364.66</u>
	\$4,213.26

600 LAND & STRUCTURES:

150 sq. ft. @ \$2.00 per ft. per mo. x 12 mos. \$3,600.00

TOTAL OPERATING COSTS: \$135,103.14

1.	POSITION TITLE Executive Secretary			RANGE/STEP 10A	DEPT. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PX	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	HRN PRIORITY	LOCATION EBA	ELECTION DISTRICT ALL	LEG.	
3.	CONTINUATION LEVEL			ADDITION	JUSTIFICATION				
4.	TYPE OF EXPENDITURE			AMOUNT	As requested by the House Labor & Commerce Committee in House Bill 716.				
	1	2	3						
	PERSONAL SERVICES								
5.	Salary	35.8							
6.	Benefits	5.8							
7.	Supplemental Benefits	2.2							
8.	Fixed Benefits	2.7							
9.	TOTAL PERSONAL SERVICES	01	46.5						
10.	Travel	02	51.6						
11.	Contractual	03	28.0						
12.	Commodities	04	1.2						
13.	Equipment	05	4.2						
14.	Other		3.6						
15.	TOTAL COST		135.1						
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts	1002						
17.		G.F. Match	1003						
18.		General Funds	1004	135.1					
19.		I-A Receipts	1005						
20.		Program Receipts	1020						
21.		Other							
FOR B&M USE ONLY 4A KEY NUMBER _____									

-4-

13 REQUEST FOR
NEW POSITION

AGENCY Department of Commerce and Economic Development
 PROGRAM Public Protection
 GRU Occupational Licensing
 COMPONENT _____

CSHB 716 (L&C)
 Page 4 of 4
 Revised Date _____

FY 85

Draft SCS CSHB 705 (L&C): "An Act relating to the real estate surety fund."

The Real Estate Commission and the Department of Commerce and Economic Development support the proposed changes to HB 705. Additional comments on the filing fee and the small claims procedure follow.

1. Filing fee:

The commission has advocated and requested that a filing fee be charged to file a claim against the surety fund. The commission, therefore, strongly supports this amendment.

2. Small Claims Procedure Option:

The commission urges that the bill make one further provision. Whether a claim is paid upon a small claim judgment or a hearing officer decision, the award should also be against the licensee or licensees and not just the fund. In the case of a claim paid on a hearing officer's decision, the bill should read: "If the respondent licensee does not pay the claim within _____ days, the claimant will be paid from the surety fund."

In cases in which a claim is paid by the fund, suggested language is as follows:

"When a claim is paid by the fund and the licensee does not appeal the claim within the allowable time, upon application by the commission, the Superior/District Court shall order summary judgment against the licensee for the amount paid by the fund. If the amount of the judgment is not paid within _____ days, the court shall, upon request by the commission, issue a Writ of Execution against the judgment debtor licensee."

Without something of this nature, the commission is in the position of having to spend a great deal of additional resources going through a lawsuit to recover awards paid out. The commission does not have the funding to do this and the licensee may avoid repayment.

In any case, since there is a right of appeal of a decision, if a licensee does not appeal or loses an appeal, it is costly and redundant to require another "trial" in order for the fund to recover from the licensee.

The idea that some licensees might be getting a "free ride" on the fund because the commission is unable to recover amounts paid out was one of the major items with which licensees expressed dissatisfaction at the hearing on HB 705 held by the commission. This would correct the problem.

The commission also strongly supports retaining the surety fee limit change which is in HB 705.

← This is included in CS

What this is intended to do is make the limit on both salesperson and broker surety fees the same. This will enable the commission to charge the same fee for all licensees. The reasons for this are:

1. Experience has demonstrated no actual justification for differential fees. To be fair, the fees should be equal.
2. Charging and collecting different fees is more costly in administrative work involved and leads to more errors and delays in issuing licenses. The change would lessen the administrative cost per licensee of collecting fees and issuing licenses.
3. This is not a measure to increase revenue. Current revenues are quite adequate. The fund now stands at over \$600,000. The commission will establish a fee that will bring in about the same amount as is currently being collected. The actual fee for 1986-87 is estimated to be about \$80 per licensee if the change in limit is passed.

It appears that there was a widespread misunderstanding that this change was needed to fund excessive draws on the fund. It is purely an administrative cost cutting measure.



Richard A. Lyon, Commissioner

Date: 5-24-84

RAL/wfs0008W
52484a

MEMORANDUM

State of Alaska

TO: Dick Monkman
Assistant Attorney General
Dept. of Law

DATE: March 9, 1984

FILE NO:

TELEPHONE NO:

FROM: James L. Magowan
Executive Director
Alaska Real Estate Commission

SUBJECT: Re: Attached White Paper
from Alaska Association
of Realtors

The attached "White Paper" has been presented to the Commission. The Alaska Association of Realtors favors immediate action to implement the recommendations of this paper and it has asked the Commission to join the Association in supporting inclusion of these provisions.

The Commission did not act to do this because it wanted to get more information before acting. The first action by the Commission is to request your comment and input on the recommendations of the Association.

JLM/cw/0702C9

RECEIVED
Department of Law

MAR 12 1984

Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

White Paper

To: Alaska Real Estate Commission
From: Alaska Association of REALTORS
Date: March 5, 1984

This is Part 1 of the industry response to the request from the Commission at their January 1984 meeting for recommendation of needed changes in the relevant statutes, regulations and operating procedures. It addresses only the Surety Fund, and is drafted so that pages 1-11 may be lifted for use by the Commission and Association in approaching the legislature. Pages 12 & 13 are recommended as a briefing and instruction sheet for hearing officers of surety fund claims under the existing statute and regulations.

The remainder of the real estate statute and corresponding regulations will be reviewed and subsequent parts of this white paper will detail to the Commission

- 1) the content recommendations
- 2) the rationale for the recommendations
- 3) the suggested action to accomplish, i.e. propose a statute change, amend the regulations, or adopt an operating procedure.

History

From its creation in 1964, as reflected in AS 08.88, the Real Estate Commission's primary purpose has been the protection of the public through the examining and licensing of real estate practitioners. Through 1975, the public's guarantee of monetary relief was a required bond in the amount of \$1000/Salesman and \$5000/broker.

Through the early '70's there were few claims against the bonds; however, the industry realized that the bonding level was not adequately protecting the public's interests. Following the example of twelve other states, (Footnote: 1974 NARELLO Report, page 25) the industry together with the Real Estate Commission actively lobbied for the 1974 legislation (Attachment A: 45.85.010-110 & 08.38.281, .071, & .401) to create a surety fund with a two-fold purpose:

- 1) to provide indemnification up to \$10,000/transaction for judgments awarded by the courts to persons who suffered financial loss because of a licensee's actions that involved fraud, deceit, misrepresentation, or conversion of trust funds, and

- 2) to provide funding for real estate education of both the public and the licensees from funds collected in excess of the specified \$250,000 minimum balance in the fund.

The 1974 legislation, which was patterned after the California model, required court action and a judgment against a licensee prior to any disbursement of Surety Fund dollars. However, Alaska's enacted version did not require an attempt to collect money from or attach the assets of the named licensee, nor did it provide for any review by the Commission prior to payment from the fund.

-- Thus from the 1976 license renewal cycle when the first fees were paid into the surety fund, judges were able to order payment directly from the fund to satisfy a judgment.

These conditions were in effect until 1980 when the statute was amended, initiated by the Legislative Audit Committee during the Sunset Review, to charge the Real Estate Commission with the responsibility to both hear cases and award payments but without ensuring the full protection of due process and judicial precedent (Attachment B).

The use of hearing officers (as allowed by the Administrative Procedures Act) starting in January 1982 and the regulations adopted by the Commission in December 1982 (effective April 1983) have further attempted to work within the current statute (Attachment C).

- Attachments: A) 1974 Surety Fund Statute
B) 1980 Amended Surety Fund Statute
C) 1982 Surety Fund Regulations

Current Situation

The real estate industry in Alaska consists of some 4000 licensees who support sensible legislation to regulate the industry and to protect the public against illegal real estate practices. This sense of professional responsibility has not changed throughout the 20-year historical summary period outlined above.

Currently there are no filing fees or costs if a claim is denied, nor is the claimant required to exhaust other remedies before seeking satisfaction from the Surety Fund. Thus, the "no-risk" and "no-costs incurred" status of claimants simply encourages claims. Further, the state entity, either contracted or appointed, is in the position of being both judge and jury.

It is the consensus of the industry that a concentrated effort must be made immediately to restore the integrity of the surety fund, both in concept and in actual administration.

Points to Achieve

1. Ensure the rights of all parties to due process through the court system with the determination of a claim's validity and resultant damage assessment in the courts.

2. Maintain the Surety Fund as a resource to be drawn upon only when funds are not collectable from the judgment debtor by any other means.

3. Charge the Real Estate Commission with the responsibility of timely license action on the licensee whose action has resulted in a draw from the Fund.

4. Direct the Real Estate Commission to provide quality education programs to licensees and the public as to licensees' responsibilities under the real estate statutes and regulations.

Means to Achieve

The following is proposed to be introduced as an amendment to HB 389.

Add a Section 11: Article 5 (AS 08.88.450-500) is amended so that in its entirety it would read:

Sec. 08.88.450 Real estate surety fund. There is created a special account in the general fund known as the real estate surety fund to carry out the purposes of this chapter. The fund shall be composed of payments made by licensed real estate brokers and salesmen under AS 08.88.455. The fund may not exceed \$500,000 and amounts in the fund in excess of \$250,000 may be appropriated for real estate educational purposes as provided in AS 08.88.091. (1 ch 148 SLA 1974, am 34 ch 167 SLA 1980; AS 45.85.010)

NO CHANGE

AS 08.88.455 Payments by real estate brokers and salesmen.

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

Already in CSHB389 for equalization of fee structure.

(b) All fees collected under this section shall be paid at least once a month by the commission into the general fund. These payments shall be credited to the real estate surety fund. (1 ch 143 SLA 1974; am 35 ch 167 SLA 1980; AS 45.85.020)

AS 08.88.460 Claim for payment.

(a) When any aggrieved person obtains a final judgment in any court of competent jurisdiction against any person or persons licensed under AS 08.88, under grounds of fraud, deceit, intentional misrepresentation or conversion of trust funds, arising directly out of any transaction when the judgment debtor was licensed and performed acts for which a licensee is required under AS 08.88, the aggrieved person may, upon the judgment becoming final, file a verified application in the court in which the judgment was entered for an order directing payment out of the Real Estate Surety Fund of the amount of actual and direct loss in the transaction up to the sum of ten thousand dollars (\$10,000) of the amount unpaid upon the judgment.

In the case of a small claims court judgment, the aggrieved person shall file the verified application in the district court in which the judgment was entered in favor of the aggrieved person. The court shall then make a determination as to whether the small claims court judgment was based on facts constituting grounds for recovery under this section and may enter an order directing payment of the small claims court judgment out of the Real Estate Surety Fund.

A copy of the verified application shall be served upon the commission and the judgment debtor and a certificate or affidavit of that service filed with the court.

(b) Nothing in this section shall be interpreted to authorize payment from the Real Estate Surety Fund for transactions or events which solely involves innocent misrepresentation on the part of a real estate licensee.

(c) Application for payment from the fund shall be made within one year from the date that the judgment becomes final.

AS 08.88.465 Time for action by court on application for payment: required showing of person aggrieved.

NEW
(a) The court shall conduct a hearing upon such application 30 days after service of the application upon the commission. Upon petition by the commission and showing of good cause, the court may continue the hearing for such further period as it deems appropriate. At the hearing, the aggrieved person shall be required to show that:

- (1) he is not a spouse of the debtor, or the personal representative of such spouse.
- (2) he has complied with all requirements of this article.
- (3) he has obtained a judgment as set out in AS 08.88.460, stating the amount thereof and the amount owing thereon at the date of the application.

(4) he has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment.

(5) he has discovered no personal or real property or other assets liable to be sold or applied, or that he has discovered certain of them owned by the judgment debtor and liable to be so applied, and that he has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment.

(6) he has diligently pursued his remedies against all the judgment debtors and all other persons liable to him in the transaction for which he seeks recovery from the Real Estate Surety Fund.

(7) he is making said application no more than one year after the judgment becomes final.

AS 08.88.470 Order of Court; grounds; defense of actions; burden of proof; presumption; dismissals; compromise of claims.

(a) Whenever the court proceeds upon an application as set forth in AS 08.88.465 it shall order payment out of the Real Estate Surety Fund only upon a determination that the aggrieved party has a valid cause of action within the purview of AS 08.88.460 and has complied with the provisions of AS 08.88.465.

If the judgment in favor of the applicant was by default, stipulation, or consent, or if the action against the licensee was defended by a trustee in bankruptcy, the applicant shall have the burden of proving that the cause of action against the licensee was for fraud, intentional misrepresentation, deceit, or conversion of trust funds. Otherwise the judgment shall create a rebuttable presumption of the fraud, intentional misrepresentation, deceit, or conversion of trust funds by the licensee, which presumption shall affect the burden of producing evidence.

The commission may move the court at any time to dismiss the application when it appears there are no triable issues and the petition is without merit. The motion may be supported by affidavit of any person or persons having knowledge of the facts, and may be made on the basis that the petition, and the judgment referred to therein, does not form the basis for a meritorious recovery claim within the purview of AS 08.88.460; provided, however, that the commission shall give written notice at least 10 days before such motion.

AS 08.88.471 Defense of actions: conclusive adjudications of issues.

(a) If the judgment is found against more than one individual licensed under AS 08.88 for performance of acts for which a license is required under that chapter, it shall be the responsibility of the commission, in the absence of proration by the court, to prorate the award charges among the said judgment debtors.

NEW

AS 08.88.477 Order directing payment out of fund: limitation of liability.

NEW

If the court finds after the hearing that the claim should be levied against the Real Estate Surety Fund, the court shall enter an order directed to the commission requiring payment from the Real Estate Surety Fund of the amount payable upon the claim pursuant to the provisions of and in accordance with the limitations contained in this chapter.

Notwithstanding any other provisions of this chapter, the liability of the Real Estate Surety Fund for the purposes of this chapter shall not exceed ten thousand dollars (\$10,000) for any one transaction for which the cause of action occurred, regardless of the number of persons injured, the number of licensees involved, or the number of parcels of real estate involved in the transaction.

NO CHANGE

Sec. 08.99.475 Maximum liability. (a) The maximum liability of the real estate surety fund does not exceed \$50,000 for any one broker or salesman.

NO CHANGE

Sec. 08.88.480. Order of claim payment If the money deposited in the real estate surety fund is insufficient at a given time to satisfy a duly authorized claim against the fund, the commission shall, when sufficient money has been deposited in the fund and appropriated, satisfy unpaid claims in the order that the claims were originally filed, plus accumulated interest at the rate of eight percent a year. (1 ch 143 SLA 1974; am ch 167 SLA 1980; AS 45.85.070)

AS 08.88.490. Right to Subrogation.

Substantive
Change

When upon the order of the court, the commission has paid from the Real Estate Surety Fund any sum to the judgment creditor, the commission shall be subrogated to all of the right of the judgment creditor and the judgment creditor shall assign all his right, title and interest in the judgment to the commission. Any amount and interest recovered by the commission on the judgment shall be deposited in the Real Estate Surety Fund.

AS 08.88.495. Disciplinary action against brokers and salesmen.

Nothing contained herein shall limit the authority of the commission to take disciplinary action against any licensee for a violation of any of the provisions of AS 08.88 or the regulations promulgated by the commission. The repayment in full of all obligations to the Real Estate Surety Fund by any licensee does not nullify or modify the effect of disciplinary proceeding brought under the provisions of AS 08.88.

NO CHANGE

Sec. 08.88.500. Definition. In this chapter a commission means the Real Estate Commission established under this chapter. (40 ch 167 SLA 1980; AS 45.85.120)

NEW

(a) "final judgment" means a judgment not subject to further judicial review.

Observations of Julian Mason:

1. At such time as the first version of suggested changes may be enacted by the legislature, the commission as a matter of housekeeping should rescind the Surety Fund regulations which would no longer be relevant.
2. To my knowledge, no other regulatory body in the state can award damages to a third party without a jury trial. They can fine and/or assess losers to pay attorney fees.
3. Small claims court defendants can opt for district court in order to have a jury trial.

Recommended Hearing Officer Briefing and Instructions

The 1974 legislations which provided for the creation of a surety fund, starting with fees collected in the 1976 license renewal cycle, was the culmination of joint efforts of the commission and the industry to more adequately protect the public from illegal actions of licensees. Its intended purpose was two-fold:

(1) to provide indemnification up to \$10,000/transaction and \$50,000/Licensee for judgments awarded by the courts to persons who suffered financial loss because of a licensee's actions that involved fraud, deceit, misrepresentation, or conversion of trust funds, and

(2) to provide funding for real estate education of both the public and the licensees from funds collected in excess of the specified \$250,000 minimum balance in the fund.

When the 1980 amendments to the statute removed the necessity of a court judgment to access the fund, it shifted the responsibility for providing a fair and impartial hearing and a decision based on facts to our arena. It is this hearing, held in accordance with the Administrative Procedures Act, and a proposed decision with its accompanying rationale that we, the Alaska Real Estate Commission, require of you.

It is worthy of note that most states which have similar recovery funds provide some means of attempting to collect from the wrongdoer-licensee prior to considering a claim against their respective funds. Other provisions common to many states require proof of fraud, intentional misrepresentation, or intentional improper actions; most states do not support collection based on negligence, and this commission has reservations about awards based on reasons other than intentional misrepresentation.

It is the policy of this commission to stay proceedings pursuant to AS 08.88.465 (a) when a court action is pending.

When writing your findings on an assigned case, please use the following format for submitting the proposed decision to the commission.

1. Case file number
2. Identity of Claimant and Respondent
3. Summary paragraph which includes:
 - a) claimant's requested amount
 - b) respondent licensee's alleged violation, i.e. fraud, deceit, misrepresentation, or conversion of trust funds.
 - c) Dates--of the transaction, of the claim, and of the hearing
4. Any other pertinent introductory material should be in a second paragraph.
5. Findings of fact elicited in the hearing.
6. Conclusions of law with rationale and case precedent as needed.
7. Recommendation:
 - a) to pay in total
 - b) to pay in part
 - c) to deny payment
8. If more than one licensee is named as respondent and payment is recommended, specify which licensee(s) were actually guilty of the fraud, deceit, misrepresentation, or conversion of trust funds.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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April 24, 1984

James L. Magowan, Executive Director
Alaska Real Estate Commission
3601 C Street Suite 722
Frontier Building
Anchorage, AK 99503

Re: Alaska Association of Realtors
"White Paper" on the surety
fund

Dear Mr. Magowan:

At your request on behalf of the Real Estate Commission, we have reviewed the White Paper dated March 5, 1984, by the Alaska Association of Realtors pertaining to the real estate surety fund. Some of the comments and concepts advanced by the Alaska Association of Realtors in the White Paper are now embodied in proposals before the 13th Legislature, specifically HB 705 and SB 537.

The current real estate surety fund claims program as outlined in AS 08.88.450 et seq. has benefited hundreds of Alaskan consumers and real estate professionals since it was enacted in 1980. The program has provided a swift, inexpensive, and fair method of resolving many real estate sales disputes. It has allowed hundreds of consumers to bring their grievances before a qualified, impartial tribunal without the frustration, delay and high cost of going to court. In our view, the program has given a measure of protection to consumers while providing real estate professionals with a full and fair opportunity to contest the merits of any claim made against the surety fund. The existing surety fund has done much to enhance the public trust and confidence in the real estate profession in general, a goal we support and encourage.

To be sure, the surety program could be improved in some respects. I agree with the point made by the Alaska Association of Realtors that some means must be found to reduce frivolous claims against the surety fund. It is my belief that frivolous claims can be essentially halted by imposing a significant

James L. Magowan, Executive Director
Alaska Real Estate Commission

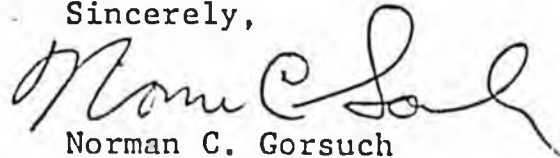
April 24, 1984
Page 2

filing fee, perhaps up to \$150, to be paid by each claimant prior to processing a claim against the surety fund. If the claimant does not prevail, then the filing fee would be lost. Such a filing fee would most likely chill frivolous claims without unnecessarily impeding valid claims made against the fund.

I recognize that this is a policy call rather than a legal determination. I would therefore simply urge the commission to carefully weigh the effects of the approach taken in the White Paper and by the two pending bills and carefully consider their effects on both the real estate consumers and on the real estate profession. As a general rule, I am not enamored with placing more disputes in our already overworked judicial system. Of course, any aggrieved party from a real estate surety fund proceeding does and ought to have the ability to appeal the findings and award to a superior court.

If we can be of additional assistance to the commission concerning any aspect of the surety fund, please contact us.

Sincerely,



Norman C. Gorsuch
Attorney General

NCG:eer

cc: The Honorable Dick Elaison ✓
Senator

The Honorable Jalmar Kerttula
President of the Senate

The Honorable Joe Hayes
Speaker of the House

Ray Gillespie
Special Staff Assistant
to the Governor

The Honorable Dick Lyon, Commissioner
Department of Commerce and Economic Development

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA, REAL ESTATE)	
COMMISSION,)	
)	
Appellant,)	File No. 7826
)	
v.)	<u>O P I N I O N</u>
)	
MYRNA JOHNSTON and EVA LOKEN,)	
)	
Appellees.)	[No. 2825 - May 4, 1984]
)	

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Milton Souter, Judge.

Appearances: Richard D. Monkman, Assistant Attorney General, Anchorage, Norman C. Gorsuch, Attorney General, Juneau, for Appellant. W. Richard Fossey, Bankston & McCollum, Anchorage, and Peggy Alayne Roston, Anchorage, for Appellees. Lewis Gordon, Baily & Mason, Anchorage, for Alaska Association of Realtors, Amicus Curiae.

Before: Burke, Chief Justice, Rabinowitz, Compton and Moore, Justices. [Matthews, Justice, not participating]

PER CURIAM.

Supreme Court decision re: surety fund

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

I. FACTS

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

Subsequent to the initial earnest money agreement the Mulhollands contemplated rescinding on the purchase agreement and signing an earnest money agreement on another home; they were distraught over what they perceived as

1. AS 08.88.450-500.

apparent misrepresentations made by Loken concerning mid-winter sunlight and driveway accessibility. Eventually, after discussions with Loken and Myrna Johnston, an associate broker with Area Realtors, the Mulhollands decided to go through with the deal and they signed an extension to the earnest money agreement.

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

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

At the October 23rd meeting between the Mulhollands and Johnston, the Mulhollands terminated the transaction and signed a rescission agreement which provided that the earnest money would be returned. Johnston, however, on the advice of Area Realtors' attorney, never executed the rescission agreement; the Area Realtors'

attorney felt that the encroachment was a curable defect which did not render title to the property unmarketable.

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

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

II. THE REAL ESTATE SURETY FUND DOES NOT PROVIDE REIMBURSEMENT TO CLAIMANTS FOR INNOCENT MISREPRESENTATIONS MADE BY MEMBERS OF THE REAL ESTATE PROFESSION.

As indicated at the outset, the principal issue presented in this appeal is whether the Real Estate Surety Fund is obligated to reimburse claimants for innocent misrepresentations made by members of the real estate profession. In relevant part AS 08.88.460(a) provides as follows:

Claim for payment. (a) A person seeking reimbursement for a loss suffered in a transaction as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of a real estate broker . . . shall make a claim to the commission for reimbursement. . . . 2/

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

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

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

(2) the amount of the alleged loss;

(footnote continued)

The superior court concluded that "misrepresentation" as used in AS 08.88.460(a) was intended to encompass only intentional wrongdoing, not innocent or negligent wrongdoing. More particularly the superior court reasoned as follows:

I think the term misconduct as used in Section (b) of the statute implies intentional-type wrongdoing, not negligent or innocent wrongdoing. And I think the statute's use of the phrase fraud, deceit, misrepresentation or conversion, particularly with the term misrepresentation coming sandwiched between fraud and deceit and coming as it does amidst a group of intentional-type wrongdoings, coupled with the presence of the word misconduct in subsection (b), all indicate that the proper construction of this statute lies in construing it as including among its terms only intentional-type wrongdoing, not innocent or negligent but

(footnote continued)

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

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

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

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

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

nonreckless wrongdoing. And I think that that's squarely in line with the comments of the chairman of the commerce committee. Furthermore, it seems to me that with a real estate fund limited by law to only \$500,000.00, if we're going to open the flood gates to innocent and negligent misrepresentation claims being made against this fund, there very likely soon wouldn't be any fund to collect for dishonest-type actions on the part of the real estate profession. So I'm going to reverse the real estate commission and award judgment in this case in favor of the appellants.

In our view, the superior court correctly analyzed the question, and thus we affirm the superior court's construction of AS 08.88.460.³

Prior to the establishment of the Real Estate Surety Fund in 1974, real estate brokers were required to obtain a real estate bond. This corporate bond was made payable to the state and was breached if the licensee injured another by a wrongful act or default in the conduct of the business for which the license was issued. In 1974 the legislature created the Real Estate Surety Fund. AS 45.85.010. [§ 1 Ch. 143 SLA 1974] As originally enacted the Real Estate Surety Fund functioned similarly to the surety bond requirement. In relevant part the Surety Fund

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

Act provided that a licensed real estate broker when obtaining or receiving a real estate license, in lieu of obtaining a corporate surety bond, had to pay a bond fee to the commissioner. [AS 45.85.020(a)] Recovery from the newly established surety fund was conditioned upon the claimant first obtaining "a final judgment in a court against a real estate broker" If judgment was not satisfied within thirty days from the court order, the claimant could apply for a post-judgment order directing payment out of the Real Estate Surety Fund.

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

As the superior court correctly emphasized, nothing in the historical development of the Real Estate Surety Fund directly indicates legislative intent as to the scope of the Fund's coverage. Given this background, we

think a textual analysis of AS 08.88.460 is controlling.⁴ The apposition of the term "misrepresentation" to the terms "fraud," "deceit," and "conversion" persuades us that misrepresentation should be limited to only wrongful misrepresentations. A widely applied tenet of statutory interpretation is that if "the legislative intent or general meaning of a statute is not clear, the meaning of doubtful words may be determined by reference to their association with other associated words and phrases." 2A C. Sands, Sutherland Statutory Construction, § 47.16 at 101 (4th ed. 1973); in accord: United States v. Raynor, 302 U.S. 540, 82 L.Ed. 413 (1938); State v. Taylor, 425 P.2d 1014, 1021 (Hawaii 1967); Heathman v. Giles, 374 P.2d 839, 840 (Utah 1962). Similarly: Matter of Hutchinson's Estate, 577 P.2d 1074, 1075 (Alaska 1977) (all sections are to be construed together so that all have meaning and no section conflicts with another); City of Anchorage v. Scavenius, 539 P.2d 1169, 1174 (Alaska 1975) (each part of a statute should be construed with every other part or section so as to produce a harmonious whole).

4. In State v. Alex, 646 P.2d 203, 209 n.4 (Alaska 1982), we held that the plainer the statute's language, the more convincing contrary legislative history must be. See also City of Homer v. Gangl, 650 P.2d 396, 400 n.4 (Alaska 1982); see gen. North Slope Borough v. Sohio (footnote continued)

In short, we hold that innocent misrepresentations are not within the ambit of the term "misrepresentation" as that term is employed in AS 08.88.460(a). In reaching this conclusion we have carefully considered each of the state's arguments pertaining to legislative history, policy considerations, and textual analysis and have found none of them persuasive.⁵ Thus we affirm the superior court's construction of AS 08.88.460(a) and (b).⁶

AFFIRMED.

(footnote continued)

Petroleum Corp., 585 P.2d 534, 540 (Alaska 1978) (where we first adopted this sliding scale approach).

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

6. The amicus has attempted to raise the question of whether on this record any innocent misrepresentation was made. In the procedural context of this case this issue is not properly before us and thus will not be addressed.

HB 705

SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL 705 (L & C) IS A COMPROMISE BILL WHICH ADDRESSES MANY CONCERNS EXPRESSED BY ALASKA REALTORS WHILE NOT JEOPARDIZING THE PUBLIC INTEREST. UNDER THIS LEGISLATION, IF A CLAIM IS FILED WITH THE ALASKA REAL ESTATE COMMISSION AGAINST A REALTOR , THE REAL ESTATE AGENT CAN ELECT TO DEFEND THE CLAIM AS A SMALL CLAIMS ACTION IF THE CLAIM DOES NOT EXCEED THE SMALL CLAIMS JURISDICTIONAL LIMIT. IF THE CLAIM EXCEEDS THE SMALL CLAIMS LIMIT, THE REAL ESTATE COMMISSION WILL EXECUTE THE SETTLEMENT THROUGH THE EXISTING HEARING OFFICER PROCEDURE.

UNDER THIS PROPOSED LEGISLATION, A CLAIMANT SHALL PAY A FILING FEE OF \$250.00 AT THE TIME THE CLAIM IS FILED WITH THE COMMISSION. THIS FEE SHALL BE REFUNDED ONLY IF THE CLAIMANT PREVAILS. SUCH A FILING FEE WILL DISCOURAGE FRIVOLOUS CLAIMS WITHOUT UNNECESSARILY IMPEDING VALID CLAIMS.

THIS COMMITTEE SUBSTITUTE SETS UP A MECHANISM TO INSURE THAT THE REAL ESTATE COMMISSION CAN EFFECTIVELY ENFORCE REPAYMENT TO THE SURETY FUND IF THIS FUND IS USED TO REIMBURSE A CLAIM BROUGHT FORTH BECAUSE OF A REALTOR'S ACTIONS.

THIS BILL HAS THE SUPPORT OF THE ALASKA REAL ESTATE COMMISSION, AND THE ALASKA ASSOCIATION OF REALTORS. I RECOMMEND PASSAGE OF SCS CSHB 705 (L & C).

ADDITIONAL INFORMATION

1) JUSTIFICATION FOR THE FILING FEE - SINCE THE AVERAGE COST OF EXECUTING A CLAIM, WHETHER IT IS A VALID CLAIM OR NOT, IS \$400 - \$600. THIS FEE DOES NOT SEEM EXCESSIVE.

2) SECTION 1 SETS UP THE MECHANISM FOR REPAYMENT. THE HEARING ON A CLAIM FILED AGAINST A REALTOR IS CONSIDERED A HEARING FOR SUSPENSION. THE SUSPENSION IS LIFTED WHEN A REPAYMENT SCHEDULE IS DETERMINED.

3) ALL REALTORS WILL PAY THE SAME AMOUNT TO THE SURETY FUND.

4) IF A REALTOR SELECTS THE SMALL CLAIMS COURT, DISTRICT COURT CIVIL RULES 8-22 MUST PREVAIL. THIS ASSURES THAT THE COMPLEX PROCEDURE WILL NOT BE ALLOWED.

A M E N D M E N T #1

Offered in the SENATE

By V. Fischer

TO: SCS CSHB 705(L&C)

Page 3, line 3: after "if" insert "(1)"

Page 3, line 4: after "fund", delete ", or if" and insert "; (2)"

Page 3, line 5: after "section", insert "; or (3) the claim is withdrawn by the claimant before the commission holds a hearing on the claim"

MEMORANDUM

State of Alaska

TO: Richard A. Lyon
Commissioner
Dept. of Commerce and
Economic Dev.

DATE: April 26, 1984

FILE NO:

TELEPHONE NO:

FROM: James L. Magowan
Executive Director
Alaska Real Estate Commission

SUBJECT: Real Estate Commission
Hearing on HB 705 &
SB 537

The commission held a public meeting on April 24 in Anchorage. The meeting was scheduled from 2 to 5 P.M. and from 7 to 10 P.M. There were 20 to 40 people in attendance most of the time. We estimate 50 to 70 members of the public, at least, attended the meeting.

Licenses were there in greater numbers than non-licenses, however, both licensed and unlicensed members of the public attended in significant numbers.

Public testimony ran until after 9:00 P.M.

After the testimony was heard, it was the definite opinion of the commission that important issues and questions have been raised by both licensees and non-licensees. Many of these are not adequately dealt with under the current statute and must be addressed.

The commission determined that these concerns are also not adequately resolved by the current bills (HB 705 - SB 537).

It was, therefore, the commission's decision that it does not support the passage of HB 705 or its companion, SB 537. The commission hopes that it will be given the chance to work with the industry and the public to come up with recommendations for legislation that it can support, legislation that will resolve the existing problems without introducing new problems of at least equal concern.

It is the commission's intention to have alternate legislative recommendations ready for the next session.

This is a high priority with the commission.

The commission has asked that copies of its minutes of the meeting and its decision be passed on to Chairman John G. Fuller, House Rules Committee, Chairman Richard A. Eliason, Senate Labor and Commerce Committee and Carol Derfner, Special Assistant, Boards and Commissions. These copies are attached.

Attachments

JLM/cw/0702C50

DRAFT/April 26, 1984

ALASKA REAL ESTATE COMMISSION

April 24, 1984

Anchorage, Alaska

Call to Order

By authority of AS 03.88.051, and in accordance with AS 44.62, the Alaska Real Estate Commission was called to order by Vice Chairman Ribacchi at 2:10 on 24th of April 1984. He welcomed the presence of visitors and called the meeting to order as a public hearing.

Vice Chairman Ribacchi acknowledged the absence of Chairman Hill due to the illness of her father, Earl Silberer, a former commissioner, and one of the originators of the real estate commission as well as a long time practitioner in the real estate industry. Vice Chairman Ribacchi stated that the purpose of the public hearing was to obtain a feel from the public as well as the industry regarding two bills that have been introduced into the Legislature, HB 705 and SB 537. These bills would significantly amend the current procedure in filing a claim against the surety fund. The following commissioners were in attendance:

Dave Ribacchi, Vice Chairman, Broker-At-Large
Karen Morris, Broker
John Benson, Broker
LaVerne Collins, Public Member
Gil Serrano, Broker

Absent:

Ed Anders, Public Member
Chairman Hill, Broker

Commission staff present:

James L. Magowan, Executive Director
Joseph P. Koss, Investigator/Auditor
Lois B. Waugh, License Examiner

Before proceeding, Commissioner Ribacchi asked each of the commissioners if they would like to make a comment. At this particular time, none of the commissioners wished to make a comment. Commissioner Ribacchi then asked for the public to present testimony regarding the bills.

S. B. Medford

Mr. Medford stated that he was opposed to SB 705 and HB 537. Mr. Medford stated that the general public do not have access to unlimited funds. These bills, if enacted, would require hiring an attorney and going through a court process which could take up to six years before the case would be settled. The practical effect would be to deprive the claimant of ready access to justice. Mr. Medford suggested that the commission, if they decided to approve the present legislation, increase the surety fund from \$10,000 to a \$100,000 limit and that the commission strengthen their position in order to obtain more evidence and that more funds be appropriated to the investigative staff.

Commissioner Morris read a letter for the record which is addressed to Commissioner Hill from Gary Wilken, former Chairman, Commissioner and Public Member. (Letter attached to the minutes.)

Commissioner Collins read a letter for the record which is from the Department of Law, Norman Gorsuch, Attorney General. (Letter attached to the minutes.)

Janet Mischler, Claimant

Ms. Mischler spoke against changing the surety fund procedures. She related to the commission her past history in which she was injured monetarily in a real estate transaction. Her first step was to go through the courts. She incurred \$8,000 in indebtedness to an attorney and has spent over \$20,000 on the problem, which is still not corrected. Her land is deemed unsellable. She stated that she would support a filing fee for the surety fund and that she believed that the surety fund and the commission were there to assist the public.

George Oliver, Associate Broker

Mr. Oliver, Associate Broker since 1974, asked the commission to support the two legislative bills before the house and the senate. He asked the commission to make a bold decision in favor of the legislation which would give a clear message to the Governor and the Administration that there should be a change in the surety fund procedures. He stated that the commission was not equipped to handle the number of surety claims before them and that it had become a burden. He said that the majority of the Realtors were in favor of the present legislation because it is necessary to change the present surety fund procedures before the surety fund is depleted due to an overabundance of claims having been made.

Vice Chairman Ribacchi asked that there be a distinction made between a real estate licensee and the professional organization, REALTORS. Not all licensees are Realtors. Commissioner Ribacchi also stated that five of the members have served for less than six months, and that the majority may not be familiar with the history of the surety fund, and asked that the public look upon the commission as a new body with their own ideas.

Cary Vlahovich, President, Anchorage Board of Realtors

Mr. Vlahovich, President of the Anchorage Board of Realtors which has a membership of 1400, stated that the Realtors have a very strict Code of Ethics and these ethics are served by an arbitration board, which is open to the Realtors and individuals who have dealt with the Realtors to arbitrate any problems they may have. Mr. Vlahovich stated that the majority of the membership of the Anchorage Board of Realtors are discontented with the present surety fund and the hearing officer process. He stated that due process is not provided by the present procedure. It is believed by many Realtors that they not only face a surety fund hearing but will also face civil proceedings simultaneously, before or after a surety fund hearing has concluded. The real estate licensees believe that the present system is not equitable. The state makes no effort in recovering the losses to the surety fund, therefore, the licensees have to bear the burden in fees to the surety fund to maintain its present state. The hearing officer's decisions are most dissatisfying. They do not provide a full check and balance system as well the participation of the commission, therefore, due process is not given to all involved in the surety fund process.

Maureen Kennedy, Alaska Public Interest Research Group (AKPIRG)

Ms. Kennedy spoke representing Alaska Public Interest Research Group (AKPIRG), which has a membership of 400. Ms. Kennedy is not in support of the present legislation. Ms. Kennedy stated the surety fund is effective self-policing of the industry. The present Common Law allows the consumer to argue for innocent representation. She believes that a \$50.00 filing fee is adequate, that any amount above that, could cause unnecessary hardship for the consumer. Not only the consumer, but the licensees, should be concerned about going through the courts, because it would increase the cost to the consumer as well as to the licensee. If the surety fund does not bear the burden of the hearing officer procedure, then the courts would bear the burden of the costs which would also increase the cost to the State.

Julian Mason, Attorney

Julian Mason, representing the Alaska Association of Realtors and the Anchorage Board of Realtors, spoke supporting the proposed legislation. One of his main concerns is the damage to the licensee's reputation through adverse publicity. Mr. Mason stated that if the present surety fund system is not changed, the following things could happen:

1. The Bevins/Ballard decision from the Supreme Court establishes that the Real Estate licensee may now be held liable for in "innocent misrepresentation". The Supreme Court, in its decision, invites the Real Estate licensees' to include in listing agreements provisions which require the seller to indemnify the agents if claims are made against them. This is on page sixteen of the advance opinion. The result would be that the licensee would tender his defense to the seller, the seller will then sue the buyer. The seller would then use one form to bring all parties of the transaction together. He suggested that this would not be an easier system but one that would be made more difficult and time consuming.

2. Mr. Mason stated that the present surety fund system is bogged down by surety claims and will continue to be so because of the easy access to the fund.
3. The claimant will eventually bear the cost of the administrative time of the hearing officer procedure. This is now a trend in the State government.

In conclusion, Mr. Mason stated that time is not a problem in the court system, that it takes less time and is less costly than the present surety fund proceedings. The main positive reason for supporting the legislation is that it will provide a neutral forum to handle cases. It is a form by which one is not judged by one's peers or by a hearing officer who is hired by the commission which gives the appearance of unfairness. It is important to have an independent system to judicate claims against Realtors and that system is the judiciary. It is not the function of the real estate commission to compensate without finding fault.

David LeBlond, Assistant Attorney General

David LeBlond, Assistant Attorney General for the Department of Law spoke, responding to Mr. Mason's comments.

Mr. LeBlond urged the commission to inquire from staff as to what has been the record of the surety fund, what the current status of the fund is and how many claims have been paid. He suggested this due to comments made by previous speakers that the fund is possibly being depleted by paying out claims.

Mr. LeBlond addressed the notion that there is something fundamentally unfair about the surety fund process, that it denies due process and that the adjudicating official is biased. The commission and the commission's hearing officer are judges, in essence, of the surety fund claims. The hearing officers are not part of the proceedings, they are not one of the parties. There is a claimant and a respondent. The hearing officers are all licensed attorneys with at least two years experience in the practice of law in the State of the Alaska. The commission reviews and adopts the hearing officer's findings of fact pursuant to the Administrative Procedures Act. The APA is well established. It is not considered an unfair procedure.

The last point Mr. LeBlond wished to make was in regard to the liability of the licensee. He said this has been well established through the Bevins/Ballard case. Under common law the licensee is liable for innocent misrepresentation.

Bob Arwezon

Bob Arwezon, Realtor, an Associate Broker since 1967, spoke in favor of the present legislation. Mr. Arwezon wanted to inform the commission of HB 561 which would increase small claim limits from \$2,000 to \$5,000. Mr. Arwezon feels this would be an avenue to adjudicate most real estate disputes in which the liability is \$5,000 or less. Mr. Arwezon submitted a copy of an article which appeared in the Anchorage Times and was written by Annette Taylor. The title of the article is "State Opt's Out of Trailer Owner Maker Suits". The essence of the article is that the proposed bill would allow

homeowners to bring suit in civil court on the bond itself whenever a dispute should arise in regards to a mobile home transaction.

Mr. Arwezon expressed concern about "double jeopardy" on the part of the real estate licensee. By "double jeopardy" he meant that a claim could be made against the surety fund and at the same time a civil law suit could be filed. He expressed concern that the licensee would be liable to pay a double amount. He said that there was dissatisfaction with the present surety system, that the original intent in 1974 had never been changed and that if the intent was to be changed, the legislature should readdress the fund as its intent for the fund. The surety fund was originally to act only in place of bonds to be an indemnity when a licensee was either bankrupt or out of state.

Julian Mason, Attorney

Julian Mason, representing the Alaska Association of Realtors and the Anchorage Board of Realtors again addressed the commission to clarify his statements in regard to the hearing officer's appearance of impropriety. He said that he was not saying the hearing officers showed unfairness but they appeared to the public as being unfair because they actually work with the real estate commission, of which five members are real estate licensees. Mr. Mason wanted to point out that the real estate commission is the only agency through which the Administrative Procedures Act actually awards damages. Mr. Mason also wanted to say that the hearing officer procedure through the APA does not meet the standards of the court system.

Joseph Dygess

Mr. Dygess, private citizen, spoke in opposition to the surety fund legislation. The purpose of the real estate commission is to perform a service for the public as well as for the licensee. Passage of the legislation would be de facto deregulation of the industry. The real estate commission must decide if it wants to regulate the industry and perform an adjudication service. If it does not wish to do so, then what is the merit of having a commission that is not performing a public service.

Frank Austin

Frank Austin, former Public Member of the Alaska Real Estate Commission, resident of the Anchorage area for twenty-five years, spoke in opposition to HB 705 and SB 537. Mr. Austin stated that he supported the written testimony by Elizabeth Johnson, Attorney-At-Law, submitted to the House Labor and Commerce Committee. Mr. Austin is not in support of the present legislation. He wished the commission to consider the following:

1. Is the surety fund serving the purpose for which it was originally intended?
2. What problems does the surety fund now have?

Mr. Austin said that less than 20% of the claimants claims are being paid. The present hearing officers do have the necessary experience. Their findings of fact are only recommendations to the commission. It is the commission that

makes the final decision. It is a process which can be appealed back to the commission and then on to the Superior Court if necessary. There has been a statement that the real estate commission does not have the experience and background to make a decision. These are the same peers that will judge a license action. The original intent of the fund was not for it to be an insurance policy. When a loss is due to the action on the part of the licensee, the fund is the proper form of redress. Mr. Austin proposed that the commission consider the establishment of a filing fee and also a method by which claims can be recovered and repaid to the fund. He suggested a \$50 fee or 10% of claim fee, whichever is greater with a maximum \$250 fee.

Ms. Johnson's letter, referred to by Mr. Austin, is to be attached to the minutes.

Charles Bauer

Mr. Bauer does not support the present legislation. Mr. Bauer had filed a claim, went through the surety fund hearing proceedings and was awarded \$10,000. He believes the procedure is fair and just. He stated that without the fund he would have been unable to afford to sue. He would have simply lost \$10,000.

Mary Anne Kaemerer

Ms. Kaemerer was a claimant. Ms. Kaemerer is not in support of the present legislation. Before filing a claim against the surety fund, Ms. Kaemerer went through the court system. She was awarded a judgement of \$38,400.00 but as of today, she has not received any of the awarded money. Her attorney fees were \$3,000 approximately. In December of 1981, she filed her claim to the surety fund and one year later, her claim was awarded in the amount of \$10,000.00. She feels the system is fair and just.

David LeBlonde, Assistant Attorney General

David LeBlond, Assistant Attorney General for the Department of Law spoke again. He said that the procedure is unlike the typical administrative procedure. It is a unique judicial proceeding in which private individuals are assembled and an award is made. The surety fund pays a claim based on findings of fact to which the law is applied by a hearing officer. He stated that because the hearing officer procedures are not identical to the court system doesn't mean that they are unfair in any aspect. In order to receive reimbursement from the licensees whose claims have been paid to a claimant, the commission must go to court for a judgement against the licensee. The court requires additional formality. The court will not just "rubber stamp" the commission's decision. That does not mean that the commission's decision was unfair and not equitable. The court will take into consideration all the facts and then make a decision as to a judgement being awarded back to the surety fund.

Jeff Kennedy

Mr. Kennedy, a resident of the State of Alaska, spoke stating he is not in favor of the present legislation. Mr. Kennedy believes the consumer

" will have more problems collecting from a real estate licensee, that it will require more procedures to go through, which would be more costly to the consumer.

The public hearing was recessed at 5 P.M. for dinner.

The public hearing was reconvened by Vice Chairman Ribacchi at 7:00 P.M. Vice Chairman Ribacchi asked the commission if they were going to consider specific action in regard to HB 705 and the SB 537. It was decided unanimously that the commission would take a position before the evening ended.

All commissioners with the exception of Chairman Hill and Commissioner Ed Anders were in attendance.

Jacqueline Stoll

Jacqueline Stoll, a real estate licensee, a real estate claimant to the surety fund, spoke against the present legislation. Ms. Stoll believes the real estate surety fund should remain as is and that it is a good avenue to settle disputes. She would have been unable to recover her money from a licensee who was convicted and jailed, if the fund had not been available.

Kenneth Brown

Kenneth Brown, a broker for nine years, spoke in favor of the present legislation. Mr. Brown said there are several vehicles for the claimant to use as opposed to the surety fund. He said that there is a Professional Standards Committee of the Board of Realtors, an individual make go to a Small Claims Court or an individual make actually take his claim through other judicial courts.

Ruth Edmondson

Ruth Edmondson, Broker spoke in favor of the present legislation. Ms. Edmondson believes that there are relatively few "black sheep" in the industry and that most of the licensees are having to pay into the surety fund for these few "black sheep". She spoke of "cronyism" by the hearing officers and stated that she believes that the hearings are held in "star chamber" conditions.

Ellen R. Malapanes

Ellen R. Malapanes, an Associate Broker, spoke in favor of HB 705 and SB 537. She believes that the present surety fund system does not give "due process" and that the court system would be more equitable.

Ted Kosack

Ted Kosack, Anchorage resident, spoke not in favor of the present legislation. Mr. Kosack is now having a personal experience in which he, as an injured party, in regards to a condominium associaton. He believes that the surety fund is both fair to the consumer and the licensee.

Glenda Straube

Glenda Straube, representing the Fairbanks Board of Realtors, spoke in support of HB 705 and SB 537. She stated two points:

1. The present surety fund system lacks due process.
2. She stated that there is a lack of concern on the part of the Attorney General's Office, Department of Law, to collect from the guilty party. She further stated it is the perception of many that the surety fund is an easy fund to collect from.

Mark Korting

Mark Korting, a Broker since 1976, spoke in support of HB 705/SB 537. Mr. Korting stated that the intent of HB 705/SB 537, is not to eliminate the Consumer Protection aspect but to put it back into the Court System, where it originally was. Mr. Korting stated that the real estate industry is concerned about the consumer and, in many instances, tries to settle out-of-court. Mr. Korting indicated that the Realtor State membership consists of 1,958 members. The commission is noted that there are over 4,000 licensees in Alaska.

DeeAnn Gleason

DeeAnn Gleason, a Broker since 1975, spoke in support of HB 705/SB 537. She believes the present claims filed against the surety fund would not hold up in court. Ms. Gleason also believes that the commission does not have the experience nor willingness to process the surety claims and that the hearing officer proceeding is unfair.

Gene Bates

Gene Bates, a licensed real estate agent since 1972, presently an Associate Broker, spoke in favor of HB 705/SB 537. Mr. Bates spoke in regard to the licensee being subjected to "double jeopardy" and not recently "due process" from their peers.

Connie Sipe, Assistant Attorney General

Connie Sipe, Assistant Attorney General, Consumer Protection Division, Department of Law spoke against HB 705/SB 537. Ms. Sipe believes the real estate commission, if they supported HB 705/SB 537 would be effectively retreating from the consumer's interest. The public has put trust in the commission and the public respects the commission's professionalism. The public believes the commission is a leader of the state. There is a trend in the industry for arbitration and the commission has gone one step beyond arbitrating to paying claims. The commission is in the forefront, one of the leaders.

Ms. Sipe suggested that there may be a problem. Many real estate licensees may take a "back lash" by the problems created by contractors. She asked the real estate industry to support legislation that would tighten the licensing requirements for contractors. Ms. Sipe also stated

that the present courts, through Common Law, recognize innocent misrepresentation. Ms. Sipe stated that there are a number of reasons why one would not want to go through the court judicial system. All lawsuits are reported to the credit bureau and would be part of one's credit rating. Also, it is not easy to go through Small Claims. She believes that the present legislation retreats beyond the original bonds and last, but not least, she believes the public would not be impressed by the real estate commission making the surety fund more remote.

She believes that the present surety fund system does provide due process and that one is allowed the opportunity to appeal the decision if they wish. In most instances, when taking a case through the court system, it is judge tried, not jury tried. Ms. Sipe explained the "double jeopardy" in the language of law means "tried for the same crime twice", it does not apply in instances of civil court action where an individual may be sued by other parties dealing with the same case. An individual may choose whatever entity is available to them to adjudicate a civil court action.

Grayce Oakley

Grayce Oakley, Broker, who has been licensed since 1971, spoke representing the Anchorage Board of Realtors in support of HB 705/SB 537. Ms. Oakley said that today that many licensees would not take listings from contractors unless they are bonded and licensed by the regulatory agency. Many licensees believe that they are in "double jeopardy" because they have to defend themselves multiple times through the surety system as well as the courts. The burden of proof, when going through the surety system, is on the claimant. Ms. Oakley does not believe the licensees are given "due process", in effect, the hearing officer is both a judge and a jury. In the court system, a jury hears evidence directly. The benefits from HB 705/SB 537 would be that a judgement would go against the offender or person who has to pay and after it is proven that the individual cannot pay or they are uncollectable, then the claimant may tap the surety fund. In the present surety fund system, the hearing officer makes a proposed decision, forwards it on to the commission and, in essence, the commission authorizes a check to be paid. This is the prevailing view of the Alaska Association of Realtors. It is the belief that the commission does not have before it all the findings of fact and therefore, at times, cannot make a proper decision.

Elizabeth Johnson

Elizabeth Johnson, Attorney-At-Law, Hearing Officer, for the Alaska Real Estate Commission spoke against HB 705/SB 537. Ms. Johnson stated that there are problems with the surety fund but they can be addressed by amending the present statutes as opposed to completely "revamping" the surety fund as suggested in HB 705/SB 537. Ms. Johnson stated that the licensee, as well as the claimants, are given "due process" and that there is another example, in which claims are paid, claims which are larger than the surety fund. This is the Worker's Compensation Board, under the Administrative Procedures Act and worker compensation claims are paid, awarded to claimants. She stated that there is a problem in the backlash in regards to contractors, who are

perhaps at fault. There must be some way in which to make the contractor responsible. At the present time, there does not seem to be an effective way. She realizes the unhappiness of the industry in regard to the court's decision surety fund legislation will not eliminate the liability of the licensee for innocent misrepresentation.

Commissioner Ribacchi closed the meeting to public testimony. The meeting was recessed for five minutes.

The session reconvened. Vice Chairman Ribacchi stated that the commission, through the day, had procedurally been run informally, but now would be back in formal session, operating under its own commission procedures.

A motion was made by Commissioner Collins, and seconded by Commissioner Serrano, not to support the proposed legislation of HB 705 and SB 537.

The commission voted not to support the present legislation with one dissenting vote.

Commissioner Ribacchi	Aye
Commissioner Collins	Aye
Commissioner Serrano	Aye
Commissioner Morris	Aye
Commissioner Benson	Nay

Commissioner Collins further stated that the commission has a new direction to address after hearing the public testimony but does not believe it is now the time to change the surety fund procedures.

Commissioner Serrano stated that he believes that the industry should look out for the consumer and that it is good public relations to do so. At the moment he is opposed to the present legislation since there are no other alternatives at this time, he would like to leave the surety fund proceedings "as is".

Commissioner Benson stated that he believes the bills are a step forward and there are benefits in it for the industry.

Commissioner Morris stated that it is the leaders of the industry that support and have promoted the present legislation, that they do not necessarily speak for all the licensees. She further stated that the surety fund needs some amendments but it is doing a good job in its present position.

Commissioner Ribacchi stated as an individual, that many things are "over regulated" and that more regulation is not always in the benefit of the industry or the public. He stated that there are some conflicts and discrepancies in the real estate statute and that it can be improved but at the present time the surety fund should remain in its present form.

After listening to testimony, Commissioner Ribacchi, feels that there are many misunderstandings of the commission's functions and that the commission should take into consideration how these misunderstandings can be reversed.

Vice Chairman Ribacchi asked that letters be sent to Commissioner Lyon and the Administration informing them of the commission's decision as well as to the Alaska Association of Realtors and soliciting suggestions for amendments and ways to revise the real estate surety fund.

It was decided by the commission that the next commission meeting would be held on May 24th and 25th instead of May 17th and 18th as previously announced.

Commissioner Collins asked the Realtors to prepare a supplement to the Phase I, White Paper and forward it to the commission for their review at the next commission meeting. She also asked if they would be willing to pursue other avenues of improvement of surety fund procedures.

It was moved by Commissioner Serrano, seconded and unanimously passed for the commission meeting to adjourn.

The meeting was ajourned.

STATE OF ALASKA

RECEIVED

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

APR 26 1984

AK. REAL ESTATE COMM.

April 24, 1984

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

James L. Magowan, Executive Director
Alaska Real Estate Commission
3601 C Street Suite 722
Frontier Building
Anchorage, AK 99503

Re: Alaska Association of Realtors
"White Paper" on the surety
fund

Dear Mr. Magowan:

At your request on behalf of the Real Estate Commission, we have reviewed the White Paper dated March 5, 1984, by the Alaska Association of Realtors pertaining to the real estate surety fund. Some of the comments and concepts advanced by the Alaska Association of Realtors in the White Paper are now embodied in proposals before the 13th Legislature, specifically HB 705 and SB 537.

The current real estate surety fund claims program as outlined in AS 08.88.450 et seq. has benefited hundreds of Alaskan consumers and real estate professionals since it was enacted in 1980. The program has provided a swift, inexpensive, and fair method of resolving many real estate sales disputes. It has allowed hundreds of consumers to bring their grievances before a qualified, impartial tribunal without the frustration, delay and high cost of going to court. In our view, the program has given a measure of protection to consumers while providing real estate professionals with a full and fair opportunity to contest the merits of any claim made against the surety fund. The existing surety fund has done much to enhance the public trust and confidence in the real estate profession in general, a goal we support and encourage.

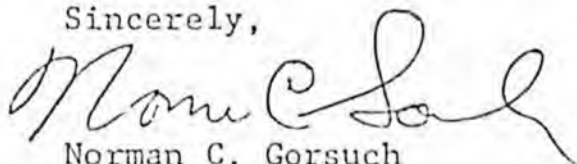
To be sure, the surety program could be improved in some respects. I agree with the point made by the Alaska Association of Realtors that some means must be found to reduce frivolous claims against the surety fund. It is my belief that frivolous claims can be essentially halted by imposing a significant

filing fee, perhaps up to \$150, to be paid by each claimant prior to processing a claim against the surety fund. If the claimant does not prevail, then the filing fee would be lost. Such a filing fee would most likely chill frivolous claims without unnecessarily impeding valid claims made against the fund.

I recognize that this is a policy call rather than a legal determination. I would therefore simply urge the commission to carefully weigh the effects of the approach taken in the White Paper and by the two pending bills and carefully consider their effects on both the real estate consumers and on the real estate profession. As a general rule, I am not enamoured with placing more disputes in our already overworked judicial system. Of course, any aggrieved party from a real estate surety fund proceeding does and ought to have the ability to appeal the findings and award to a superior court.

If we can be of additional assistance to the commission concerning any aspect of the surety fund, please contact us.

Sincerely,



Norman C. Gorsuch
Attorney General

NCG:eer

cc: The Honorable Dick Elaison
Senator

The Honorable Jalmar Kerttula
President of the Senate

The Honorable Joe Hayes
Speaker of the House

Ray Gillespie
Special Staff Assistant
to the Governor

The Honorable Dick Lyon, Commissioner
Department of Commerce and Economic Development

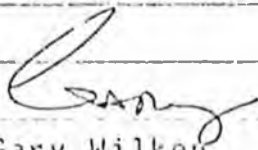
Mrs. Barb Hill

Please accept the attached letter
as my testimony for the public
hearing regarding HB 705.

I respectfully request that the
testimony be read into the record.

Thanks for the opportunity to
participate.

Sincerely yours,


Gary Wilken

April 24, 1984

TO: Alaska Real Estate Commission

RE: Testimony: HB 705 and SB 537

Rec'd
24 Apr 84
JDR

For Record

Regarding the existing surety fund structure, I have had the opportunity to read both the State Association's position paper and the corresponding pending legislation to which this testimony is addressed.

My first concern is the broad brush method by which the legislation would apply to the existing Surety Fund. One does not, when one's automobile requires a tune-up, replace the entire engine. Instead, one performs the required adjustments to continue on. The analogy appears to be very appropriate to HB 705 in regard to the Surety Fund. The legislation would replace the heart of the system when indeed only a tune-up is required.

I am sympathetic to the Association's concerns and claims of frivolous and/or vindictive claims being filed against licensed real estate agents. I believe this to be a legitimate concern and one that must be addressed. When the current Surety Fund system was formulated in 1979-1980, the experience of a significant number of less than valid claims was not fully anticipated.

The concept of a filing fee is a step in the right direction for remedy. The suggestion that it be \$50 to \$100 is good, however, in my opinion the amount is not sufficient. I am in favor of a filing fee of some greater amount, perhaps \$250-\$500, a portion of which is refundable if the plaintiff prevails in his argument. As we have seen, there must be some consideration on the part of the plaintiff as to their liability in filing a claim against the Surety Fund. If a plaintiff understands from the outset that a substantial fee is required to file, and that if unsuccessful, the fee is considered a cost of litigation, the vast majority of those people now filing frivolous or vindictive claims will be markedly reduced.

This concept embodies two factors. First, the plaintiff understands that there will be a filing fee that will not be refundable, let us say \$100 out of the deposit. Secondly, the plaintiff must consider the remaining amount to be a "gamble", if you will, that he will prevail. In brief, the large filing policy requires some serious economic forethought on the part of the complainant.

My second concern centers around the numerous references to innocent misrepresentation which appears to exclude such action from the protection of the Fund. I think back to the lady in Wasilla that, upon closing a deal for her new country residential acreage, discovered that when it came time to build, half of her property was over a cliff and she had purchased a wonderful set of mud flats. The agent had flagged the corners incorrectly. He did not mean to. He really believed he was selling her the correctly staked land and told her so. He did not do his job properly and consequently, the lady's property was worth one-half of what she paid for it.

I recall the family in Juneau that purchased a previously occupied house with the assurance from the selling agent that the foundation was high and dry. Reality surfaced when a high tide increased the water level to the point it flooded the basement and created a difficult problem with the potential rotting of the supporting members. The agent had represented the house to be free of flooding problems and he really believed it was because he did not do his job as well as he should have: he never inspected the crawl space and the supports for existing water damage and potential of same.

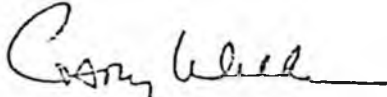
Should the lady in Wasilla or the family in Juneau suffer economic hardships on what could well be the biggest financial transaction of their lives because two agents did not do their job as completely as they should have? I do not believe so. The agent or the industry, must provide a vehicle to make these two people whole and a reasonable accessible Surety Fund is that vehicle. The buyers in these instances, are the last people that should suffer due to what would be termed innocent misrepresentation.

Thirdly, it has been suggested a small claims court action may be utilized to resolve a dispute. While this may appear on the surface to be viable, even with the existing \$2000 limit or with an increase thereof, one who has worked within the small claims system knows that a simple checkmark in the proper box on the defendants reply form turns a small claims proceeding into a full district court case. Thus the benefits of the small claims system are easily lost.

In summary, it is my opinion the proposed changes are a backward step in the protection of the public from damage incurred in a real estate transaction. The judgement method, used prior to the existing Surety Fund method has proven itself to be totally ineffective from both a time and money standpoint in dealing with alleged wrongs on the part of real estate agents. It is difficult to consider returning to that system as a means to remedy the current ills of the Surety fund.

I urge the Commission to propose other means to address the concerns of the Association and other licensees. I urge the Commission, when considering HB 705 and the Surety Fund system, not to throw out the baby with the bath water.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Gary Wilken", with a horizontal line extending from the end of the signature.

Gary Wilken

Past Member Alaska Real Estate Commission
1977-1983

cas words

Panel submits real estate bill to end simplified surety fund rule

by ALBETTE TAYLOR
Times Business Writer

The House Labor and Commerce Committee this week introduced a bill that would require *(victims of shoddy)* real estate transactions to win their case in court before tapping the surety fund for compensation.

The Alaska Association of Realtors proposed the legislation to rectify the current system in which members *(believe)* they are exposed to double jeopardy.

Under the current system, victims of fraud, deceit or misrepresentation by licensed agents can be awarded surety fund claims — for which the realty is billed — and then can sue the agents in court.

In surety fund claims, the procedure

involves both parties presenting their case before a hearings officer, who then makes a recommendation to the Alaska Real Estate Commission. The maximum award is \$10,000.

Real estate agents want the procedure changed back to the way it was before 1980, when people had to go to court before having access to the surety fund. The 1980 legislature simplified the procedure to save people the time and expense of going through the court system.

The proposed legislation also would require people who have won their court cases to exhaust all remedies for getting their money back from the guilty agents or brokers before being allowed to tap the fund.

Real estate agents said the current

system penalizes all licensed agents who pay into the fund rather than focusing on the wrong-doer. Although the real estate commission bills the *(guilty)* agents, there is no legal mechanism to ensure payments, agents said.

The surety fund is a special account set up by the legislature to reimburse people who have been defrauded or misled by licensed agents in real estate transactions.

Agents pay up to \$125 in to the fund in lieu of obtaining private bonds. The amount they pay is based on how much money is in the fund. The fund cannot exceed \$500,000, half of which is designated for education.

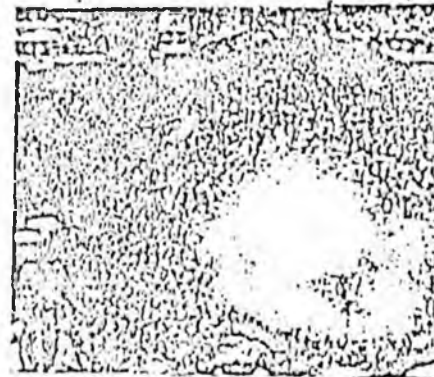
*Understand
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Campbell to switch from tin to plastic

Associated Press

Camden, N.J. — The Campbell Soup can will be replaced by a plastic container to consumer prefer-

own cans in 1984, has become the third largest manufacturer in the business, turning out about 4 billion tin cans in 1983 — behind American Can Co. and



~~star-chamber~~
star-chamber----adj[Star Chamber], a court existing in England from the 15th century until 1641 that exercised wide civil and criminal jurisdiction under rules of procedure well suited to the purposes of absolutist sovereigns; 1: of, relating to, constituting, or in the manner of a secret oppressive or irresponsible judicial body (it took centuries of bloody struggle to outlaw star-chamber sessions, and the principle which requires judicial proceedings to be conducted in public still must be vigorously defended---(San Francisco, Calif. News).) 2: of, relating to, constituting, or in the manner of a legislative or executive body that holds closed meetings (star-chamber sessions of city councils and school boards-- Fortnight)

WEBSTER'S Third New International Dictionary
Unabridged

Include in
Recover

24 APRIL 84
JSTZ-
AD&C

Include in Record

24 APRIL 84

State opts out of trailer owner, maker suits

by Annette Taylor
Times Business Writer

Owners of defective mobile homes may sue directly for the manufacturers' surety bond if a bill proposed by the attorney general's office is passed by the legislature.

Mobile home owners now must present their case at an administrative hearing before they can tap the bond to repair or replace defective trailers or faulty appliances covered by warranties.

But the state may choose not to conduct a hearing because of time or money required to investigate a sin-

gle complaint, said Brad Parker, an investigator with the consumer protection division.

The attorney general's proposed bill would eliminate the state's role and would allow homeowners to bring suit in civil court on the bond itself.

"This allows consumers to seek their own justice and takes the state out of the position of being judge and jury," Parker said.

State law requires manufacturers to maintain surety bonds on warranties for two years after their last mobile home is delivered to the state.

The state began requiring surety bonds in 1990 because of ongoing problems consumers have dealing with Outside firms. A consumer might win his case but cannot locate the firm or its assets to get his money back, Parker said.

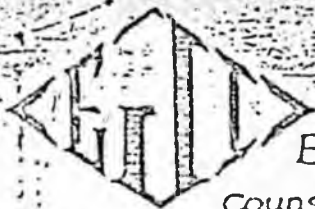
"If the manufacturer is in Tennessee, the consumer would have to get an attorney there to get another court judgment to get his money," Parker said. "That can get very costly and complicated. Many people just give up."

The proposed bill would give con-

sumers "something here to attack — the bond — rather than having to look for the assets of the manufacturer," he said.

If a mobile home owner is successful in court and is awarded the entire bond amount, the manufacturer must post another one before he can continue doing business in Alaska, Parker said.

Under current law and the proposed amendment, a mobile home owner has one year and 10 days from date of purchase to file a claim on the surety bond.



Elizabeth I. Johnson

Counsellor and Attorney at Law

540 L Street Suite 304
Anchorage, Alaska 99501
0077 277-3025

April 9, 1984

RECEIVED

APR 20 1984

Representative John Cowdery; Chairperson
House Labor and Commerce Committee
Alaska State Legislature
Pouch B
Juneau, Alaska 99811

AK REAL ESTATE COMM.

RE: House Bill 705, Senate Bill 537
Relating to the Real Estate Surety Fund

Dear Representative Cowdery:

Enclosed please find a summary of my oral testimony before the House Labor and Commerce Committee last Tuesday. I understand that the Bill was passed out of the Committee unanimously.

As you will recall I am adamantly opposed to not only the concept of House Bill 705 but to specific provisions. I am sending copies of this letter to other legislators in the hope that they will review the legislation more carefully.

I thank you for the opportunity to testify but believe there has been inadequate public comment on this bill and that it deserves more attention from both the House and Senate.

Sincerely,

Elizabeth I. Johnson

EIJ/kkr

WRITTEN COMMENTS
REGARDING HOUSE BILL 705 AND SENATE BILL 537
RELATING TO THE REAL ESTATE SURETY FUND

Since 1980 a fund created by the Alaska Real Estate Commission has allowed payment up to \$10,000.00 per transaction to consumers who have suffered financial loss because of a real estate licensee's action that involved fraud, deceit, misrepresentation, or conversion of trust funds. The fund is maintained by payment of a yearly surety fee not to exceed \$125.00 for each licensee. After the fund reaches \$250,000.00 the Real Estate Commission adjusts the fees so that the fund is maintained at a level not less than \$250,000.00.

Prior to 1980 persons making a claim against the fund had to first secure a court judgment against the licensee. In 1980 after Sunset review of the legislation, the requirement of a judgment was dropped and the Real Estate Commission set up a procedure whereby complainants could make a claim directly against the fund.

Once a complaint is received an administrative hearing is held. The hearing consists of presentations by the claimant and the licensee or licensees. The Administrative Hearing Officer has the power to subpoena evidence including documents and to require the attendance of witnesses. Both parties are allowed counsel if they so choose.

At the conclusion of the hearing, Findings of Fact and Conclusions of Law are entered with a recommendation to the Real Estate Commission on whether the claim should be paid.

It should be noted that once a Hearing Officer has made a recommended decision the Real Estate Commission reviews the case and decides whether the claim should be paid. After the final decision, the licensee still has the option to appeal to the Superior Court.

Attached is a summary of the claims paid since the inception of the administrative proceedings in 1980.

House Bill No. 705 and Senate Bill No. 537 substantially amend the current procedure to again require that members of the public obtain a judgment against the licensee prior to making a claim against the fund. The legislation then requires a second hearing by the court to determine that the judgment creditor has no other assets available and that payment from the fund is proper. The proposed legislation also restricts the type of claims which are paid from the fund.

Written Comments Regarding
House Bill 705 and Senate Bill
537 Relating to the Real
Estate Surety Fund

It is my opinion after having reviewed approximately 100 of these cases that the Surety Fund, with minor exceptions, works well in protecting the public interest. The present legislation will effectively preclude anyone with a small monetary claim (under \$5000.00) from pursuing an action against the licensee because it will simply be too expensive to prosecute the claim through District or Superior Court. The present tremendous backlog in the courts means that even if one files a case today, one could not reasonably expect a trial for two to three years.

The decided trend in judicial administration in Alaska and throughout the United States is to try to take claims out of the civil court system and to handle them through mediation, arbitration, or through an administrative process. The Surety Fund is a good example of the way in which certain claims are being screened from the court system. The administrative hearing process provides all of the due process protections with the exception of a jury trial that are afforded through the civil court system. The Rules of Evidence are somewhat relaxed although as a practical matter most of the evidence which is presented in administrative hearings would be allowed in a regular civil proceeding.

Objections to House Bill No. 705

Section 2 AS 08.88.460 repealed and reenacted -- object generally to requiring consumers to obtain a judgment prior to making a claim against fund.

(a) Page 1, lines 23 and 24 -- allow a claim against fund on fraud, deceit, intentional misrepresentation or conversion of trust funds. Differs from current interpretation of statute by Real Estate Commission and Administrative Hearing Officers that statute allows claims for innocent misrepresentation or negligent misrepresentation. The Alaska Supreme Court in interpreting common law theory of misrepresentation has allowed recovery against licensees on the theory of innocent or negligent representation. See Bevins v. Ballard, 655 P.2d 757 (Alaska 1982). Enactment of this bill would lead to the curious result that a consumer could sue the licensee in state court under the common law theory of negligent misrepresentation, recover a judgment on that basis, and not be able to obtain payment from the Surety Fund.

(b) Page 2, lines 1-8 -- court must hold a "mini trial" after a judgment has been entered on whether the judgment supports recovery against the Surety Fund. This imposes twice as much work on the court as a regular civil proceeding.

Written Comments Regarding
House Bill 705 and Senate Bill
537 Relating to the Real
Estate Surety Fund

(d) Page 2, lines 12-14 -- specifically prohibits payment on claims for innocent misrepresentation.

Section 3, page 2, AS 08.88.465 requires a second hearing after entry of a judgment and before amount is paid from Surety Fund.

(a) Page 2, lines 20 and 21 -- requirement of hearing within 30 days is virtually impossible to enforce administratively with the current backlog in the court system.

(b)(4) Page 3, lines 4-6 -- What is a "reasonable attempt"? Open to judicial interpretation and "mini trial" on attempt to find judgment creditor and determine assets.

(b)(5) Page 3 -- requires a separate court hearing on whether creditor has been able to locate assets and has taken the "necessary action" to apply the assets to the judgment. What is "necessary action"?

(b)(6) Page 3, lines 13-16 -- requires the court to make an independent determination that the claimant has "diligently pursued other remedies." What is meant by this phrase? Requires a separate showing that there is no other person that could be liable in the transaction -- in other words the claimant could obtain a judgment against licensee A and during the hearing under this section, a different judge could conclude that licensee B is responsible and deny payment from the fund. This is a peculiar provision which could result in contradictory findings by judges with regard to the same transaction, thereby allowing licensees to shift responsibility and avoid payment from the fund.

Section 4 AS 08.88.470 repealed and reenacted:

(a) Page 3, lines 17-21 -- requires a separate court hearing and in effect a "mini trial" on the validity of the claim.

(b) Page 3, lines 22-27 -- requires the claimant to prove his case twice. Note that if the action was defended by a Trustee in Bankruptcy there has to be an entirely new hearing, although many times there will have already been a complete trial in Bankruptcy Court.

Written Comments Regarding
House Bill 705 and Senate Bill
537 Relating to the Real
Estate Surety Fund

Section 7 AS 08.88.475(b):

(b) Page 4, lines 16-20 -- there is no definition of "transaction." This section appears to read that no matter how many people are involved nor how much money is lost, if the licensee can claim that there was only one "transaction" then the \$10,000.00 limit applies. For example, in the case of the sale of shares in a limited partnership, if the licensee makes fraudulent sales to 50 people, obtains \$5,000.00 from each, and takes the money, is this construed as "one transaction" where the \$10,000.00 limit would apply?

Comments:

Suggestion for changes in current statute and administrative proceedings.

Some of the primary complaints I've heard about the Surety Fund can be solved easily within the context of the present procedure administered by the Real Estate Commission by making changes to the current statute.

1. Elimination of "frivolous" claims. Some licensees have complained that they are burdened with responding to "frivolous" claims which are then denied. It has been my experience that there are very few "frivolous" claims. Many claims are settled or withdrawn prior to hearing or during the hearing process. If there is a problem with inadequate initial screening of complaints, I would suggest the following:

a. Establish a mandatory filing fee of perhaps \$50.00 to discourage those persons who feel the fund is a source of free money.

b. Allow the staff of the Real Estate Commission to do an initial screening of the complaint. If the complaint is not recommended for an administrative hearing and the claimant wishes to go forward, they must post a bond of \$250.00 to secure payment of hearing cost and partial attorney's fees to the licensee if the claim is denied.

2. Denial of Due Process -- there have been some feelings by claimants that because they are not entitled to a jury trial, the administrative proceeding denies them due process. No administrative proceeding provides for a jury trial and as a practical matter all the rights and privileges accorded in a court hearing are preserved in the administrative procedure process. The only exception is the relaxed standard for the rules of evidence. This has not been a significant problem in any case I have handled, in which either an attorney appeared or in which licensees represented themselves.

Written Comments Regarding
House Bill 705 and Senate Bill
537 Relating to the Real
Estate Surety Fund

If this is perceived as a problem, the current statute can be amended to provide for de novo review by the Superior Court as is done in school employment cases.

3. Allowance of claims based on innocent or negligent misrepresentation. Some of the most vociferous opposition to the Surety Fund has been to claims which have been allowed on the basis of innocent or negligent misrepresentation. This theory of recovery is consistent with the holdings of the Alaska Supreme Court. Thus, licensees are going to continue to be held responsible for mistakes which are innocently made regardless of the status of the Surety Fund.

In short, with the above-noted exceptions, the Surety Fund works well in protecting the public interest and insuring that licensees receive a fair hearing. In addition, the administration of the Surety Fund over the past three years has caused the industry to "self police" to a great degree. The problems with the fund can be more readily addressed by amending the current procedure than requiring consumers to prosecute claims through civil court.

9. Surety Claim Recovery:

Hoey, Thomas	Recovery complete.	1,000
Congdon, Renwick	Recovery complete 030381.	1,139
Lankford, Daniel	Billed 011883, no response.	
McCormick, Gail	Recovery complete 052683.	11,275
Motonaga, Gary	Recovery complete.	4,225
Calvo, Tony	Claim repaid; hearing costs unpaid.	10,000
Odell, Mina	Claimant paid, hearing costs unpaid.	1,000
McCourt, James	Billed 830713; no response.	
Jones, Jerry	Claimant paid, hearing costs unpaid.	800
Ruszkowski, Alvin	Claimant paid, hearing costs unpaid.	1,000
Rink, Robert	Claimant paid, hearing costs unpaid.	1,000
		<u>31,429</u>

10. Surety claims statistics:

	Fiscal Year		Calendar Year	
	Filed	Paid	Filed	Paid
1981	31	0	52	\$ 11,943
1982	70	13 \$ 41,853	93	18 62,612
1983	99	20 80,346	123	14 67,644
1984	97	3 30,000	29	1 10,000
Totals to date	<u>297</u>	<u>36</u> <u>\$152,199*</u>	<u>297</u>	<u>36</u> <u>\$152,199*</u>

* This amount includes paid claims that have since been recovered from the licencees, and therefore differs from the total that is stated on the Surety Claim Case summary and as shown below.

Surety claim totals:	Numbers of claims		Dollar amounts of claims	
Paid, unrecovered	37	12.5%	\$ 124,974.24	8.1%
Paid, recovered ¹	*	*	29,025.00	1.9%
PD-Approved	3	1.0%	18,012.00	1.2%
Denied	69	23.2%	317,898.97	20.5%
FD-Denied	1	0.3%	11,000.00	0.7%
Withdrawn	30	10.1%	134,878.25	8.5%
In process	157	52.9%	901,657.39	58.2%
Total filed	<u>297</u>	<u>100.0%</u>	<u>\$1,547,945.85</u>	<u>100.0%</u>

Decided claims:	Numbers of claims		Dollar amounts of claims	
Paid, unrecovered	37	26.4%	\$124,974.24	19.3%
Paid, recovered	*	*	29,025.00	4.5%
PD-Approved	3	2.1%	18,012.00	2.8%
Denied	69	49.4%	317,898.97	50.8%
PD-Denied	1	0.7%	11,000.00	1.7%
Withdrawn	30	21.4%	134,878.25	20.9%
Total decided claims	<u>140</u>	<u>100.0%</u>	<u>\$646,288.46</u>	<u>100.0%</u>

* These numbers are included in the paid, unrecovered, category because there is overlap where the hearing costs are outstanding after repayment of the claim.

NOTE REGARDING THE FOLLOWING FRAME(S) ON MICROFILM:
COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES.
TITLE PAGE ONLY HAS BEEN FILMED.

ALASKA
SMALL CLAIMS
HANDBOOK

Prepared by the
Forms Committee
Alaska Court System

Fifth Edition: Revised January 1982

NOTE REGARDING THE FOLLOWING FRAME(S) ON MICROFILM:
COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES.
TITLE PAGE ONLY HAS BEEN FILMED.

A PERFORMANCE REVIEW OF THE
REAL ESTATE COMMISSION

June 4, 1981

Audit Control Number
08-101-1037-R

Commissioner, Department of
Commerce and Economic Development

Charles R. Webber

Deputy Commissioner, Department of
Commerce and Economic Development

Pete Jeans

Deputy Commissioner, Department of
Commerce and Economic Development

Vacant

Members of the
Real Estate Commission

Chairperson
Member
Member
Member
Member
Member
Member

Lance Youngquist
Karen Morris
Barbara Hill
Frank Austin
Gary Wilken
Ken Calhoon
Gail Glad

5/11/84

To: Dick

Re: Surety Fund for realators

I talked to Jim Magowan, Ex Dir. of the Real Estate Csmn & he provided the following information:

The recent Supreme Court ruling states that innocent misrepresentations are not covered by the Surety fund. Willful misrepresentation, fraud, & deceit are covered by this fund. Currently 30% of the claims filed ~~will~~ receive payments i.e. the csmn decides in favor of the claimant.

With this new court decision, it is estimated that 80-100 claims a yr will be received by the csmn. A full time hearing officer has been budgeted for & Jim is looking to a period of 3-4 mths to finalize claims

~~The~~ average claim is for \$4,000 with approximately 25% of the claims under