

ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 8672

2734 SLC HB 705 - HB 711

\$2000. A problem with a claimant going to small claims involves the realtors right to "check the box" which indicates the desire to go "to court" instead. This action would certainly discourage the claimant from proceeding further action

It was Jim's opinion that when attorney fees are awarded it is only 15-40% of the actual cost involved. So the consumer would have to fit the bill.

Jim's Suggestions

1) Set a filing fee of a minimum of \$50 ~~with~~ or 5% of claim which ever is greater to a maximum of \$250. This fee would be returned if the claimant wins.

2) Allow the csmn to establish a "summary dismissal procedure" so that obvious unfounded cases could be dismissed.

3) Explore possibility of a full-time

hearing officer with a volunteer
3 member jury panel. This system would
relieve the concern of the realtors
as far as being heard by only one
individual.

B 705 TITLE 3 SPONSOR SUMMARY 17:18 2/24/94 PAGE 1 OF 3

RENDED TITLE: SC60SHB 705 LACIAN 2
ACT RELATING TO THE REAL ESTATE SURETY FUND

LINE SPONSOR: HOUSE LABOR/LOCKER COMMITTEE

3-SPONSORS:

CURRENT STATUS: 5/31/94 (H) CONCURRD (S) AN

B 705 HOUSE ACTION 17:18 2/24/94 PAGE 2 OF 3

DATE	SEQ	PAGE	LEGISLATIVE ACTION
3/26/94	01	3057	FIRST READING -- COMMITTEE REPORTS
4/03/94	02	3103	LAC -- DP05
4/03/94	03	3100	LAC F/NOTE HSE SUPPL #122
4/12/94	04	3305	FIN -- CS02, HR06, OTHER01
4/12/94	05	3305	FIN F/NOTE HSE SUPPL #127
5/04/94	06	3653	SECOND READING
5/04/94	07	3653	FIN CS ADOPTED BY UNAN CONSENT
5/04/94	08	3657	AM01 WITHDRAWN
5/04/94	09	3659	ADVANCED TO 3RD READING BY UNAN CONSENT
5/04/94	10	3657	THIRD READING
5/04/94	11	3655	PASSED BY DIV 25-12-02
5/04/94	12	3656	NOTICE OF RECONSIDERATION GIVEN
5/05/94	13	3692	PASSED ON RECONSIDERATION BY DIV 27-12-01
5/31/94	24	4054	CONCURRD IN SENATE HRS BY DIV 32-02-00
***	**	**	*** **

B 705 SENATE ACTION 17:18 2/24/94 PAGE 3 OF 3

DATE	SEQ	PAGE	LEGISLATIVE ACTION
5/08/94	14	2969	FIRST READING -- COMMITTEE REPORTS
5/25/94	15	3271	LAC -- CS95
5/25/94	16	3271	DEPT COMMERCE F/NOTE SEN SUPPL #91
5/29/94	17	3325	LAC -- LAC CS95, OTHER05
			TAKEN UP IMMEDIATELY
5/28/94	18	3354	POSTPONED UNTIL 05/29/94 BY UNAN CONSENT
5/29/94	19	3351	SECOND READING
5/29/94	20	3317	LAC CS ADOPTED BY UNAN CONSENT
5/29/94	21	3352	AM01 ADOPTED BY UNAN CONSENT
5/29/94	22	3352	AM02 ADOPTED BY UNAN CONSENT
5/29/94	23	3352	ADVANCED TO 3RD READING BY UNAN CONSENT
5/29/94	24	3352	THIRD READING
5/29/94	25	3352	PASSED BY DIV 29-00-00
****	**	**	**** **

COMMITTEE REPORT
SENATE

FURTHER:

Date 4/21/79

Mr. President

The Committee on ARMED AND DANGEROUS WEAPONS considered CONFIDENTIAL

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 25 AS 925 (10)
- new title
- same title and recommends 10-1-150
- 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

Chairman

do pass
Chairman recommendation

MSG 84-00048432 PRTY 1 5/24/84 15:17:19 ORIG: 119 IN= 0008 OUT= 0010
FROM: ANCHORAGE TO: TOM/FINAL STATS
TARGET: LJVH SUBJ: (S) LABOR & COMMERCE, T/C, 5/24

LEGISLATIVE TELECONFERENCE NETWORK SIGN-IN SHEET

DATE: MAY 24, 1984
SITE: ANCHORAGE
SPONSOR/SUBJECT: (S) LABOR & COMMERCE, HB 705, 716, 720

.. 4..TESTIFIED *****T/C STARTED: 1:30
..10..OBSERVED *****T/C ENDED: 3:00
..14..TOTAL

TESTIFIED

1. CHUCK RUSH/PHARMACY, 1345 W. 11TH AVE., 99501, 272-6431
2. BARB HILL/REAL ESTATE, 1343 C STREET, 276-7909
3. GRAYCE OAKLEY/REAL ESTATE, 2408 SPRUCEWOOD, 272-5151
4. JIM MAGOWAN/REAL ESTATE, 563-2169

OBSERVED

1. JOY DONELSON/PHARMACY, 903 R., 561-1964
2. BILL JANSON/PHARMACY, SRA BOX 562, 345-7606
3. BETTY LOU CIPRIN/REAL ESTATE, 2002 E. 37TH, 99508, 561-1171
4. JOHN BENSON/REAL ESTATE, KETCHIKAN, 225-9651
5. LAVERNE F. COLLINS, P.O. BOX 102751, 276-1299
6. KAREN MORRIS/REAL ESTATE, 2061 AIRPORT WAY, 452-1978 (FAIRBANKS?)
7. GIL SERRANO, 606 E. NORTHERN LIGHTS, 278-9607
8. JEAN A. MILLER/REAL ESTATE, 563-2169
9. DAVE RIBACCONI/REAL ESTATE, 2531 BANBURY, 99504, 337-7238
10. GEORGE OLIVER/REAL ESTATE, 8411 E. 12 COURT, 333-1247

MSG 84-00048490 PRTY 1 5/24/84 16:35:39 ORIG: L:20 IN= 0004 OUT= 0011
FROM: LYNDA/FBX TO: JNO T/C
TARGET: LJVH SUBJ: FINAL STATE - SEN L & C 5/18

LEGISLATIVE TELECONFERENCE NETWORK SIGN-IN SHEET

MAY 24, 1984 _____ : DATE
FAIRBANKS _____ : SITE/LOCATION
SENATE LABOR & COMMERCE _____ : SPONSOR/SUBJECT
HB'S 705, 716, 720

TESTIFIED/PARTICIPATED:

OBSERVED:

1. JEFF COOK, AK ASSOC. OF REALTORS, PO BOX 2134, FBX, AK 99707 #456-5670

-----STATS-----
-0-___TESTIFY/ED *****T/C STARTED: _____
-1-___OBSERVE/ED *****T/C ENDED: _____
-1-___TOTAL

=====EOM

MSG 94-00048568 PRTY 1 05/25/84 09:52:46 ORIG: LM01 IN= 0001 QUR= 0003
FROM: MARTIE/HATSU TO: TOM/JUNEAU TELECONFERENCE
TARGET: LHMV SUBJ: SEN. L&C

LEGISLATIVE TELECONFERENCE NETWORK SIGN-IN SHEET

-MAY 24- : DATE
-MATSU LIO- : SITE/LOCATION
-SEN. LABOR AND COMMERCE- : SPONSOR/SUBJECT
-02- TESTIFY/ED *****T/C STARTED ADT
-00- OBSERVE/ED *****T/C ENDED ADT
-02- TOTAL

NAME/REPRESENTING	ADDRESS/PHONE	TESTIFY	GENITIVE
1. KENNETH R. BROWN/PO BOX 870642/WASILLA	376-2226	TESTIFY	
2. ELEANOR O. MALAPANES/PO BOX 872040/WASILLA	376-5131	TESTIFY	



OFFICIAL BUSINESS

ALASKA STATE LEGISLATURE - SENATE
COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASON
CHAIRMAN

POUCH V • JUNEAU, ALASKA 99811
(907) 465-3844

MEMORANDUM

TO: Senator Don Bennett, Co-chair
Senator John Sackett, Co-chair
Senate Finance Committee

FROM: Senator Dick Eliason

DATE: May 23, 1984

RE: HB 561 - "An Act relating to the small claims jurisdictional
limitation"

The above - referenced legislation increases the maximum limit for small claims from \$2,000 to \$5,000. This raise will allow more Alaskans to use the small claims court to settle disputes which otherwise would have to be handled in a more complex and expensive manner. As the maximum limit has not changed since 1978, the \$5,000 ceiling seems appropriate considering the current value of money.

A work draft for SCS CSIB 705 (L & C) allows claims against the real estate surety fund to be settled in small claims if the claim falls within the appropriate limits. Passage of HB 561 will allow more claims to be settled in this fashion.

I recommend passage of this legislation. A zero fiscal note accompanies HB 561.

Enc.



OFFICIAL BUSINESS

ALASKA STATE LEGISLATURE - SENATE

COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASON
CHAIRMAN

POUCH V • JUNEAU, ALASKA 99811
(907) 465-3844

TO: Senator Jalmar Kerttula

FROM: Senator Dick Eliason, Chair
Senate Labor and Commerce Committee

RE: HB 705 - An Act relating to the real estate surety fund

DATE: May 12, 1984

The above-mentioned legislation would require a claim against the real estate surety fund to be processed through the court system instead of the current procedure involving a hearing officer under the jurisdiction of the Real Estate Commission. The Alaska Association of Realtors view the passage of this legislation as the answer to their concerns regarding the number of frivolous claims filed against the surety fund as well as the length of time required to settle the disputes. However, since the introduction of HB 705 the Alaska Supreme Court issued an opinion regarding the Alaska Real Estate Surety Fund. The Court ruled that this surety fund cannot be used for claims involving "innocent" misrepresentation. The fund can only cover payment to claims resulting from "willful" misrepresentation, fraud, or deceit on the part of the realtor. The immediate result of this decision will be to substantially reduce the number of claims filed by the public as well as the number of claims honored by payment from the surety fund. Jim Magowan, Executive Director of the Real Estate Commission, estimates that approximately half of the justifiable claims stem from innocent misrepresentation.

As a result of this Supreme Court decision, Jim estimates that the Commission will receive approximately 80-100 claims annually. These claims will be handled by a full-time hearing officer under the direction of the Commission. This new position has just recently been approved by both the Senate and the House. It is estimated that all claims should be finalized within a 3-4 month period of time.

The Supreme Court decision and the approval of the full-time hearing officer appears to have answered two main concerns expressed by the realtors. An additional disincentive to file frivolous claims would be to impose a significant filing fee 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. A filing fee could be set at a \$50.00 minimum or 5% of the claim whichever is greater to a maximum of

\$250.00. Such a filing fee would most likely chill frivolous claims without unnecessarily impeding valid claims made against the fund.

Individuals who voice opposition to HB 705 are concerned that court proceedings are time consuming and expensive. Jim Magowan has indicated that the average claim against the surety fund is \$4,000, with approximately 25% of claims being \$2,000 or less. If an individual had to turn to the court system to regress, the costs involved would be prohibitive for these relatively small claims. Unfortunately, the small claims court is not a guaranteed answer as each party involved in the suit has the right to require that the "formal rules of civil procedure" prevail which would necessitate involving the district court. This action could increase the costs and time involved in finalizing the claim. Karla Forsythe, General Counsel, Alaska Court System, estimates that a standard civil law suit in Anchorage could take a least one year to finalize.

The Alaska Real Estate Commission held a public hearing on April 24, 1984 in Anchorage. After five hours of public testimony, it was the opinion of the Commission that important issues and questions had been raised by licensees and non-licensees. However, it was felt that HB 705 did not adequately resolve the issues and further review and input was necessary to address all concerns. The Commission recognized the importance of recommending alternative legislation next session and stated that this area of need would be a high priority.

As the need for this legislation does not seem to be as great as at the time of introduction, possibly the legislature should consider postponing any action in this area until the Real Estate Commission formulates its position.



105 ADAK, FAIRBANKS, ALASKA 99701
Area Code (907) 452-5186

March 31, 1984

Senator Eliason
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason:

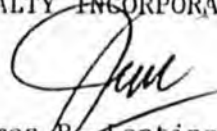
I am writing to express my approval of House Bill 705 and Senate Bill 537 regarding the Real Estate Surety Fund.

I feel that these bills would provide for a more equitable use of this fund than the system presently in effect.

For further comments, I can be reached at 452-5186.

Sincerely,

REALTY INCORPORATED


James R. Lentine
Vice President

JRL/kw

THE REALTY COMPANY OF ALASKA, INC.

Letter of Support (Received approx 30)



BAY REALTY INC.
RESIDENTIAL AND COMMERCIAL
P.O. BOX 3365
HOMER, ALASKA 99603
TELEPHONE 907-235-8386



May 15, 1984

Senator Dick Eliason, Chairman
Senate Labor & Commerce Committee
Pouch V
Juneau, AK 99811
465-4916

Dear Senator Eliason:

Every other profession in the State of Alaska gets their day in court when a claim is filed against them.

Why are realtors singled out in such an unfair fashion? We, as every other profession, rightfully deserve our day in a court of law. We should not be tried and hung in the kangaroo court fashion that is presently being used by the Alaska Real Estate Commission.

We, as every other licensed practicing professional in the State of Alaska, should be judged by the same legal system as the rest of the professionals.

I strongly support SB 537 and HB 705 (Real Estate Surety Funds).

Sincerely,

Jim Tice
Realtor

JT/js

CC Senator Don Gilman

Letters to the editor

Real estate sales legislation

Dear Editor:

As a former public member of the Alaska Real Estate Commission (1976-82), I am concerned about changes being proposed to the laws governing the Real Estate Surety Fund.

On April 3, the House Labor Committee held a teleconference hearing on HB-705, "an act relating to the real estate surety fund." This bill will make substantial changes to the process used to reimburse individuals who are damaged monetarily in a real estate sales transaction when a licensee is involved.

The bill will also change the law so that an individual will only be able to claim damages if the loss is due to intentional misrepresentation. At present the licensee is held responsible even if the misrepresentation is unintentional.

Also, an individual will have to get a judgment in court before a claim against the surety fund can be filed. At present an administrative hearing is required. These are major changes to the law that should have a great deal of public discussion before they are enacted.

I was surprised and then shocked by the action of the House Labor Committee on this bill. It was introduced by the committee on March 23. Eight days later the committee held a teleconference hearing and at the end of the hearing passed the bill from the committee. I understand that it was a unanimous do-pass by the members of the committee present.

Other than the testimony by Elizabeth Johnson, an attorney who has conducted many of the administrative hearings on surety fund claims, the most distinguishing feature of the hearing was what I would describe as the committee's lack of understanding of the bill. I think this will be supported by the report of the hearing if one is prepared.

During the hearing several of the committee members asked that those testifying provide them with written comments so that they could better under-

stand the relations between the comments and the bill. Their action in passing the bill out of the committee with a do-pass recommendation makes these requests ludicrous.

Why was the bill moved so fast? The following is my guess. The language in the bill was developed by the Alaska Association of Realtors. I understand that it was first presented to the state Real Estate Commission for consideration at its last meeting.

I was also told by a current public member on the commission that the commission decided to study the proposal and determine what action it would take on the proposal at the next meeting. This is not an unusual action for the commission.

The proposal next surfaced as HB-705 and a companion bill in the Senate. However before this happened the state Realtors association held its annual cocktail party for legislators in Juneau.

I have seen no problem with the Labor Committee's introduction of HB-705. I also see no problem with the legislators attending the Realtors' annual cocktail party. Realtors are constituents and deserve no less. However, I am shocked that a bill with such potential impact on the public would be moved from the committee with so little regard for public input.

The record will show that of the persons in attendance at the teleconference hearing (persons attended at Fairbanks, Homer and Anchorage), less than 10 per-

cent were not real estate licensees. The hearing was scheduled so fast that it was not even listed on the weekly list of hearings mailed out by the Legislative Affairs office.

Why is the association so interested in getting HB-705 passed? Testimony at the hearing indicated that they think that the surety fund is paying out too many claims under the present system. A comparison was made between the claims paid by the California fund and our fund to emphasize this. They feel that the hearing office is responsible for this.

This is also ludicrous since the hearing office presents findings to the commission (five real estate brokers and two public members) who can adopt, change or reject the findings. Also, so far less than 30 percent of the claims filed against the fund have been paid. The present process gets the job done in less than six months. If HB-705 passes the process will go back to the civil courts and have to compete with other matters on the court calendar.

These proposed changes have the potential of affecting every person who buys or sells real estate in Alaska. It should have much more public discussion. I would also suggest that it is important enough for the state real estate commission to hold a special meeting to hold a public hearing on the changes.

Frank Austin
3839 Apollo Drive

Letter to Editor



Elizabeth I. Johnson
Counsellor and Attorney at Law

540 "L" Street Suite 304
Anchorage, Alaska 99501
(907) 277-3025

April 20, 1984

Senator Richard Eliason
Capitol Room 417
State Capitol
Pouch V
Juneau, Alaska 99811

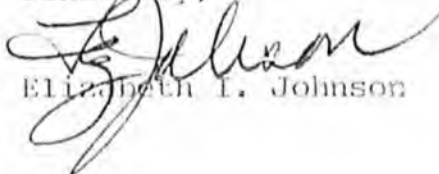
Re: House Bill 705, Senate Bill 537
Relating to the Real Estate Surety Fund

Dear Senator Eliason:

Enclosed please find a letter I wrote earlier to Representative Cowdery regarding Senate Bill 537. I ask that you consider this as written commentary on the bill pending in your committee. After having done approximately 100 Surety Fund Claims I feel that the present system is, by and large, effective. The few changes that need to be made can be easily done by amending the present statute.

Thank you for your attention to this matter.

Sincerely,



Elizabeth I. Johnson

Encl.

EIJ/pjm



Elizabeth I. Johnson
Counsellor and Attorney at Law

Gill

540 "L" Street Suite 304
Anchorage, Alaska 99501
(907) 277-3025

April 9, 1984

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

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
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.

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.

Page -3-
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.

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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.

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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 030383.	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 830718; 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	3	\$ 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	*	*	29,025.00	1.9%
PD-Approved	3	1.0%	18,012.00	1.2%
Denied	69	23.2%	317,898.97	20.5%
PD-Denied	1	0.3%	11,000.00	0.7%
Withdrawn	30	10.1%	134,878.25	8.5%
In process	<u>157</u>	<u>52.9%</u>	<u>901,657.39</u>	<u>58.2%</u>
Total filed	<u>297</u>	<u>100.0%</u>	<u>\$1,567,945.85</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	<u>30</u>	<u>21.4%</u>	<u>134,878.25</u>	<u>20.9%</u>
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.

MEMORANDUM

State of Alaska

TO: Richard D. Monkman
Assistant Attorney General
Anchorage AGO

DATE: April 25, 1984

FILE NO:

TELEPHONE NO: 276-3550

FROM:

SUBJECT: Surety Fund Public
Hearings

By:

Karen
Karen M. Procter
Paralegal Assistant
Commercial Section-Anchorage

I attended the afternoon session of the Real Estate Commission's public hearings on HB 705 and SB 537 held yesterday. Dave Ribacchi chaired the hearing. Commissioners present were John Benson, Gil Serrano, and Karen Morris, industry members, and LaVerne Collins, the public member. Jim Magowan and Joe Koss attended, and Dave LeBlond represented our office. The hearing room was at near capacity and was composed largely of licensees.

Norm Gorsuch's letter to Jim Magowan of April 24 was read into the record at Ribacchi's direction, and copies were distributed to the audience. A copy is attached.

The licensees had some serious misunderstandings about the Surety Fund and the changes their bill would effect. They simply do not understand the hearing officer system and feel that it is less than legal. They think the hearing officer is not as "experienced" (competent) as a judge and that a hearing officer decision does not carry any real weight because collection against the individual licensee requires a court judgment. The licensees think the Fund is running out of money because all claims are paid, no matter how frivolous. Their misuse of terms such as "double jeopardy" helps confuse them further.

The legitimate concerns of the licensees are pretty simple: that the number of frivolous claims be reduced, and that the State attempt to recover monies paid out by the Fund from the liable licensee. These concerns could better be resolved by the simple addition of a filing fee requirement, and recovery of fund monies could be handled by our office.

Testimony proceeded briefly as follows:

S. B. Mitford, public. Adamantly opposes the bill. Says that after buying their realty, most complainants to the

Fund are poor; the present system allows them a means of obtaining damages without the expense of an attorney, and takes far less time than a court action. He feels the purpose of the bills is to deny the public ready access to the Fund. His recommendations included increasing the licensees' indemnity to \$100,000; strengthening the inquiry procedure; and asking the legislature for more money to investigate complaints.

Gary Wilkins, past public member and Commission chairman. (This was written testimony.) Feels that frivolous claims are a serious problem but do not necessitate complete obliteration of the Fund. He recommended a nonrefundable filing fee instead. Doesn't feel buyers should suffer economic hardship because of innocent misrepresentation, and that the buyers should be the last to suffer. He stated that a small claims action is turned into a district court case by a simple request for formal procedure, and that application for relief to the court instead of the Commission won't solve anything.

Janet Mischler, public. (Currently awaiting a hearing date on a claim.) She is against the bill and thinks the Fund should be maintained as it is because it resolves conflicts more rapidly than the court system can, and at a lower cost to the public.

George Oliver, real estate broker. Never thought the Fund would work in the first place. Says the Fund is running out of money; the system is being overused; it's too easy to file a claim; and the hearing officers are too lenient toward the claimants. He wants the claims to proceed through the court system.

Cary Vlahovich, President, Anchorage Board of Realtors. Thinks the licensees are denied due process by the hearing officer system, and that the "quality of justice" provided by a hearing officer is not equal to that provided by the courts. Says the hearing officer process is "intimidating," and that the legal opinion of the hearing officer can't be questioned. He feels that the burden of Fund payments is borne by 99.9% of the licensees who are not causing problems.

Maureen Kennedy, Director, Alaska Public Interest Research Group. Her group is opposed to the bill. Says the Surety Fund is a good example of self-policing by an industry. It avoids the cost and delay inherent in the court system, and betters the industry's image to the consumer. The changes proposed by the bill would increase the cost to the consumer and to the State. Her group feels that this bill has been "greased,"

that there has been inadequate notice to the public, and they are concerned about the way it is being handled.

Julian Mason, attorney representing Alaska Association of Realtors and the Anchorage Board of Realtors. Says the bill isn't perfect, but the Fund must be changed. He thinks the costs of the agency procedure is as high or higher than going into the courts. Says the Real Estate Commission is the only State agency that levies damages. Stated that the licensees are in effect becoming the guarantors. He supports the bill.

Joseph Digus, public. The purpose of the Commission is to protect the public, and this bill will remove the teeth from the Commission's ability to do so. Wants the Legislature to decide if it wants to serve the public in this way. If it wants to reduce State costs, it can simply do away with the Commission. If it wants to regulate the industry, protect the public, and adjudicate these claims, then the Fund should stand as it is. He feels the bill is against the public.

Frank Austin, past public member of the Commission. He supports Liz Johnson's written testimony. Feels the Fund serves the purpose it was intended to serve. He rebuts the industry's reasoning: they offer no facts to support their contention that the Fund pays out too much money; hearing officers have just as much and sometimes more experience than judges; a hearing officer's recommendations are only that, because the Commission makes the decisions; the Commission has the competency to resolve issues; and the Fund is the correct forum when fraud, deceit, or misrepresentation are involved. Feels the real problems are recovery and the institution of a filing fee. Says present process serves both the public and the licensee. Adamant that the public has not been given enough input on the bill.

Charles Bauer, public (a successful claimant to the Fund). When no satisfaction could otherwise be obtained from the licensee, he went to the Fund. The present system saved him \$2,000-\$3,000 to hire an attorney and go into the courts which, as a new homebuyer, he could not have afforded. Feels strongly that the Fund serves the public.

Marianne Kaemerer, public (a successful claimant). She went to an attorney, spent one and one-half years in court, was awarded a court judgment of \$31,000, and incurred about \$3,000 in attorney fees. She has been unable to collect. She went to the Fund on her own, and was awarded the maximum in damages. This took less than a year. Without the award, she feels she would have lost her home.

Mr. (?) Kennedy, public. The bill will add an extra layer of bureaucracy to the consumer's application for relief from the Fund. It would be like having to prove one's case twice. He is opposed to the changes.

LeBlond clarified the hearing officer process and defined legal terms being tossed around. He explained the Bevins ruling regarding innocent misrepresentation liability, and rebutted much of what Julian Mason had said. He explained that these are not civil damages actions before the Commission and that the State hasn't failed to meet "judicial standards" because the Commission's decision has to be turned into court judgment in order to execute.

I think the Commissioners present were not convinced to support the bill. Connie Sipe attended the evening session and had the same impression.

KMP:ihr

cc: Dave LeBlond
Pete Froehlich

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHFFIELD, GOVERNOR

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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

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

JWG: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

M E M O R A N D U M

April 10, 1984

To: Senate Labor and Commerce Committee
Senator Richard Eliason, Chairman

From: Karla L. Forsythe *Karla L. Forsythe*
General Counsel, Alaska Court System

Subject: HB 537, relating to the real estate surety fund

Although the court system takes no position regarding the merits of this legislation, two minor amendments will alleviate possible problems in bringing the surety fund application process back under the court.

Section three of the bill requires the court to conduct a hearing within 30 days after service of a payment application on the real estate commission. As you are aware, the court's calendar is quite crowded. Expeditious and flexible case scheduling can best be accomplished by leaving calendaring decisions in the purview of the court, as contemplated by Article IV, section 15 of the Alaska Constitution which gives the supreme court authority over matters of practice and procedures. Thus, the court system suggests deleting the last two words of line 20, page two, as well as lines 21 - 23, so that section three, paragraph (a) would read:

(a) The court shall conduct a hearing on an application filed under AS 08.88.460.

Additionally, section five of the bill establishes procedures for processing a motion to dismiss an application. Since the civil rules of court incorporate similar procedures, this section appears unnecessary, and should be deleted.

The impact of this legislation upon the court's workload appears negligible. In years prior to 1980, when fund applications were handled through the courts, very few applications were filed. However, the 1980 amendments which eliminated the necessity of obtaining a judgment have resulted in a substantial case-load for the real estate commission. Since a judgment is again required by this legislation, and since under this bill an applicant must make additional showings to the court before securing payment, it appears that the number of applications will reflect the court's experience under the pre-1980 version of the law. Although more litigants may be seeking relief against realtors since the supreme court's decision in Bevins v. Ballard, 655 P.2d 757 (1982) which held that a purchaser who relies on a innocent material misrepresentation has a cause of action against a broker, this increase should not be reflected in surety fund applications which are limited by this bill to intentional misrepresentation.

Thank you for your consideration of these comments.

an element of the relative nature of the work test. Thus, only if it is determined that Kroll acted as an employer in the course of his construction activities may Donald reasonably be said to have been engaged in work which was "a regular part of the employer's regular work." *Ostrem v. Alaska Workmen's Compensation Board*, 511 P.2d at 1063.⁵

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

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

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

We conclude that the Board's statement with respect to the parameters of the statu-

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

the definition of an employer reflects an erroneous standard of law. As a result, the threshold issue of whether Kroll's construction activity was sufficient to establish his status as an employer must be remanded to the Board for further consideration.⁹

REVERSED and REMANDED.



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

v.

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

No. 4571.

Supreme Court of Alaska.

Nov. 19, 1982.

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

or the work being done by the claimant is a regular part of that business.

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

7. *Id.* at § 50.24.

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

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

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

Affirmed.

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

1. Negligence \S 2

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

2. Brokers \S 102

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

3. Pretrial Procedure \S 693

Trial court's dismissal of purchasers' negligence claim against real estate broker precluded broker's liability for misrepresentations from resting on a negligent representation theory, even though postjudgment amendments are allowed to conform issues tried to evidence, where, subsequent

to dismissal, neither party argued negligent misrepresentation in trial briefs, court and parties treated case as one involving innocent misrepresentations, and broker neither expressly nor impliedly consented to trying negligence claim.

4. Vendor and Purchaser \S 37(1)

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

5. Fraud \S 13(2)

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

6. Brokers \S 102

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

7. Brokers \S 106

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

8. Brokers \S 102

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

Fredrick P. Pettyjohn, Anchorage, for appellants.

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

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

* Dimond, Senior Justice, sitting by assignment made pursuant to article IV, section 11 of the

Constitution of Alaska, and Alaska R Admin P. 23(a)

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OPINION

BURKE, Justice.

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

A. Facts

On February 3, 1975, David and Linda Ballard purchased a lot with an unfinished dwelling from Josephine, Patricia, and William Ferris. Prior to their purchase, certain representations were allegedly made to the Ballards regarding the adequacy of a well on the property. The purchaser, David Ballard, who had previous experience as a general contractor, attempted to complete the existing well on the property. He installed a pump and piping from the well to the house. The well, however, failed to provide sufficient water. As a result, the Ballards were forced to haul water to their property. They subsequently incurred expenses of \$6,350.00 in deepening the well to an adequate level.

Believing themselves the victims of fraudulent misrepresentations, the Ballards sued the sellers, the broker (Bevins), and an employee of the broker (Lucas). Their complaint alleged, in part, intentional and negligent misrepresentation.¹ In addition, it alleged that Bevins and Lucas had a duty to check the well's condition, that Lucas knew there was no functional well, that Bevins

was vicariously liable for Lucas's acts, and that the Ferrises were vicariously liable for the actions of their agents, Bevins and Lucas. The complaint did not explicitly allege innocent misrepresentation.

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

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

1. The complaint made the following factual allegations:

- (a) Bevins personally inspected the property;
- (b) sellers told Bevins that there was a well drilled on the property;
- (c) sellers failed to disclose to Bevins the incomplete nature of the well, with the knowledge and intent that Bevins would tell potential buyers there was a well;
- (d) sellers represented to the broker's employee that the well was finished, held 36 feet of standing water, and was capable of supporting the reasonable water needs of residents of the house;
- (e) sellers made those representations with the intent that Lucas would tell the buyers;
- (f) Lucas did so represent to the Ballards;
- (g) the representations were false;
- (h) Lucas made the representations with the knowledge they were false;

(i) sellers made the representations knowing they were false, for the purpose of deceiving plaintiffs and inducing them to buy;

(j) plaintiffs did rely and were induced; and,

(k) plaintiffs were unable to discover the defect until after purchase.

In addition, the following legal allegations were made:

(1) Bevins owed plaintiffs a duty to investigate the accuracy of the sellers' representations, and breached that duty (this count was dismissed at the close of plaintiffs' evidence);

(2) Lucas (broker's employee) owed plaintiffs a duty to investigate, and breached that duty;

(3) Bevins was vicariously liable for acts of his employee Lucas (this count was dismissed at the close of plaintiffs' evidence); and,

(4) sellers were vicariously liable for the acts of their agents, Bevins, the broker, and his employee, Lucas.

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

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

Certain facts are not contested:

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

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

B. The Broker's Liability

There are three types of misrepresentations: intentional, negligent and innocent. While the Ballards did assert an intentional misrepresentation claim against the sellers, they did not do so against Bevins or Lucas.

2. Bevins' liability could be based on a vicarious liability for the acts of his employee Lucas. As we noted in *Black v. Dahl*, 625 P.2d 876, 879 n. 3 (Alaska 1981), a real estate broker can be liable under the doctrine of respondeat superior for the acts of his or her sales-people. However, two of the rulings below preclude resting liability on such a basis. First, at the close of

Thus, we need address only the negligent and innocent misrepresentation claims in this appeal. Bevins' liability to be sustained, must rest on one of these two theories.²

1. Negligent Misrepresentation

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

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

the Ballards' evidence, the trial court dismissed the eighth claim for relief, which had asserted that Bevins was vicariously liable. Second, in its written opinion, the trial court found in favor of Lucas, the salesman. Thus there is no underlying liability for which Bevins could be held vicariously responsible. The Ballards have not appealed these rulings.

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for harm; (d) the directness of causation; and (e) the policy of preventing future harm. *Howarth v. Pfeifer*, 443 P.2d at 42; see *Transamerica Title Insurance Co. v. Dunney*, 507 P.2d at 494-95.³ In the land sales context, such a duty can arise when a broker becomes aware of suspicious facts regarding his or her representations, or when a buyer makes an affirmative inquiry and the broker fails to check the accuracy of his subsequent responding representations, or when a court determines that public policy requires brokers to undertake certain functions. See, e.g., *First Church of the Open Bible v. Cline J. Dunton Realty, Inc.*, 53 Wash.App. 275, 574 P.2d 1211 (1978).

[3] We believe, however, that the trial court's dismissal of Ballards' third claim for relief, which was their only negligence claim against Bevins, precludes the broker's liability from resting on a negligent misrepresentation theory.⁴ While Alaska Rule of Civil Procedure 15(b) allows post-judgment amendments to conform the issues tried to

the evidence, and further provides that the failure to so amend "does not affect the result of the trial" on those issues, the rule sets as a threshold the requirement that such issues be "tried by express or implied consent of the parties." We do not believe that this condition was met in the case at bar. Subsequent to the dismissal neither party argued negligent misrepresentation in their trial briefs. The court and parties treated the case as one involving innocent misrepresentations. Bevins neither expressly nor impliedly consented to trying a negligence claim. Accordingly, Bevins' liability cannot rest on a negligent misrepresentation theory.

2. Innocent Misrepresentation

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

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

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

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

THE COURT: ... I feel that it's the third claim for relief that you seek thereby to impose upon realtors a burden that does not exist except in extraordinary circumstances.

That is when there's been—when there has been evidence adduced as to the duty of a realtor to inquire arising from some circumstances directing the attention of a reasonable prudent realtor to some—some—something unusual. In this case it seems to me that this was just an ordinary transaction. That it's rural property, most of which does require that it be serviced by a well. It is incomplete, and if I accept the evidence as it now stands, that it was represented that there was a good well, that that's the end of the matter, that there's no duty on the realtors to go further and inquire whether that is the actual fact. You know, there's nothing unusual about that well that would alert the ordinary prudent realtor of the need to do something about it. To check it out.

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

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

MR. FRIEDMAN: Correct.

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

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

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

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

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

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

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

puni v. Wright, 110 A.2d 82, 84 (D.C.App. 1954).

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

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

If the broker innocently represented that the heating plant was in workable condition and was mistaken in that representation, or made the representation without knowing whether it was true or false, the injured party may recover in an action for fraud.

... We may assume that the broker was guilty of no deliberate deception and had no actual knowledge of the concealed defect. But on defendants' own evidence their selling agent did not disclaim such knowledge The representation . . . was flagrantly inaccurate, since the defect . . . made it impossible to heat the house at all "Fraud includes the

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

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Id. at 83-84 (citations omitted).

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

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

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

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

7. Some listing agreements contain indemnification provisions, entitling the broker to indemnity from the owner should the broker's communication of the owner's representations engen-

dered, has a cause of action against the broker originating or communicating the misrepresentation. See Restatement (Second) of Torts § 552C(1) (1977).

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

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

COMPTON, J., not participating.

der liability. See, e.g., *Barnes v. Lopez*, 25 Ariz.App. 477, 544 P.2d 694, 698-99 (1976).

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

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

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

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

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



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

Subdividers are subject to, and protected by, the Alaska Land Sales Practices Act, AS 34.55. Under the act, a subdivider is liable for material misrepresentations or omissions affecting the land, "unless in the case of an untruth or omis-

Laureen BAILEY, Appellant and Cross-Appellee,

v.

Dennis J. HAAS, Appellee and Cross-Appellant.

Nos. 6177, 6688.

Supreme Court of Alaska.

Dec. 3, 1982.

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

Reversed and remanded.

1. Parent and Child §3.4(2)

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

sion it is proved that . . . the person offering or disposing of subdivided land did not know and in the exercise of reasonable care could not have known of the untruth or omission." AS 34.55.030(a). Thus, a "subdivider" is not liable for innocent misrepresentations. Such liability is barred by the statute. This protection, however, is not available to the defendants in the case at bar, since they are not "subdividers."

2. Parent and Child §3.4(2) Request for arrearages need not be reduced to judgment by petitioning state prior to recovering such arrearages in an action brought pursuant to the Uniform Reciprocal Enforcement of Support Act. AS 25.25.270.

3. Parent and Child §3.4(2) Civil rule regarding a fee award and value of time where no rate criteria applicable to the Uniform Reciprocal Enforcement of Support Act. Rules Civ. Pr. 40-25.25.270.

4. Parent and Child §3.4(2) Father's recovery in an action for arrearages and therefore of attorney's fees.

Donald V. Anchorage, Gen. Juneau, etc.

Phil N. cross-appell.

Before I CONNOR, JJ.

CONNOR This appeal pursuant to the Uniform Reciprocal Enforcement of Support Act. (RESA)

Laureen Bailey Haas to Connor

1. AS

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

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2 Parent and Request for support need not be reduced to judgment by petitioning state prior to recovering such arrearages in an Uniform Reciprocal Enforcement of Support Act action. AS 25.25.270.

3 Parent and Civil rule regarding a fee award and value of services where the fee criteria applicable to the Uniform Support Act Rules Civ.Pr. 10-25.25.270.

4 Parent and Father's duty in recovery in and therefore of attorney fees.

Donald Anchorage Gen., June 1982

Phil N. cross-appel

Before I CONNOR JJ.

CONNOR This action pursuant to the Uniform Reciprocal Enforcement of Support Act. Laureen Haas vs. Dennis J. Haas 1 month.

1. AS 2

	80	81	82	83	84 ^{2/24}
Total filed	2	57	93	122	30
Withdrawn		10	13	5	
Hearings	2	47	80	117	28
Denied		20 (\$109,000)	36 (\$104,500)	13 (\$53,400)	
Proposed Deny					2 (\$11,000)
Paid/Recov		5 (\$26,225)	3 (\$2800)		
Paid/Unrecov	2 (\$1700)	15 (\$26,900)	17 (\$69,800)	2 (\$20,000)	
Proposed App.				3 (\$18,000)	
App. but Unpd.				2 (\$10,500)	
Undecided \$		\$40,400	\$118,200	\$569,600	\$172,100

Undecided includes the rest of the claims —

Provided by Grayce Oakley,
Alaska Assoc of Realtors

Info re: claims

Industry advocated '74 Legislation

Realized bonds were inadequate

Indemnity vs. E & O

California Model -- Key elements

Judgment	Proof of Recovery Attempt	Surety Fund Payment
↑	↑	
	'74 Leg. omitted this	
'80 amendment replaced this		
3-year experiment that is unacceptable.		

Alaska \$300,000 to 50 parties since inception	4000± licenses
Virginia 340,000 to 84 parties	35,000± licenses
Alaska \$100,000 to 20 parties in 1983	4000± licenses
California \$200,000 to 31 in 1983	190,000± licenses

Judgment

32 states with surety fund--only 4 leave decision solely in hands of REC.
 21 require court judgment; 18 have bonds

Validates the claim hearing officers have recommended denial of 70%

Ensures due process
Issues not fully argued by opposing a Hearing's with neutral judge + decide pts. of law
 State entity removed from position of being both judge and jury
 SB 497- Mobile Home Manufacturers' Bond, an A G *proposed bill -- "rationale" supported concept*
 No other agency in the state awards 3rd party damages without jury trial
 Double jeopardy--defending on multiple fronts--would be eliminated
 REC = laymen H.O. = legal prof -- hard for laymen to overturn points of law.

Proof of Recovery Attempt

Wrongdoer should be the one to pay
 Claims now are "no-risk, no-cost incurred"
 Only 3 other states can pay legal costs from their surety funds

Indemnifications

Surety Fund represents the industry's willingness to indemnify the unrecoverable judgments and thus relieve the consumer from suffering a loss because of the illegal actions of a licensee.

Late in session, but documented and clear cut, essential to restore the intent & integrity of the funds, and in best interests of all Alaskans.

We urge you to pass this out of committee as introduced.

D.

02-24-84 SURETY CLAIM INVENTORY LIST 8963L

PAID--UNRECOVERED COSTS

Date filed

claim

Heating Costs

Gene Tenny	James Pitts	S- 801200-001*	P-JF-05/82	2,710.00	1,031.25
Charles Heaton	James Sullivan	S- 801200-003	P-JF-05/82	5,000.00	243.75
E. Floyd Ross	Tony Calvo	S- 810100-004	P-12/82	0.00	997.10
Darion Powell	Gail McCormick	S- 810100-005	P-JF-05/82	0.00	0.00
Gladys Foris	Daniel Lankford	S- 810100-007	P-Com.	1,693.00	
Keith Hunter	James Sullivan	S- 810100-008	P-JF-05/82	5,000.00	243.75
Louis Sherman	Elbert Patton	S- 810100-009	P-Com.	10,000.00	
Kenneth McDonald	Jerry Woodworth	S- 810100-011	P-Com.	250.00	
James Schmidt	Rod Dunn	S- 810400-024	P-04/83	2,500.00	225.00
Russell Gross	Thomas Hoey	S- 810500-028	P-Com.	0.00	
Ruby Ketola	Gary Motonaga	S- 810600-029	P-Com.	0.00	
Thomas Winter	Mina Odell	S- 810800-037	P-JK-04/82	0.00	1,066.30
Nelson Brown	Robert York	S- 811026-039	P-JK-03/82	500.00	583.57
Alice Corpuz	Judy Rowland	S- 811203-044	P-12/82	3,642.65	542.72
Phillip-Aguirre	Mary Peterson	S- 811204-046	P-04/83	1,500.00	1,348.71
Martin Mulholland	Myrna Johnston	S- 811228-049	P-	1,000.00	1,965.45
Walter Moody	Tom Krenik	S- 811228-051	P-08/83	1,000.00	1,354.27
Marianne Kaemerer	Jonas Arnbrister	S- 820114-002	P-12/82	10,000.00	1,092.15
Josephine Stoll	James Sullivan	S- 820219-011	P-12/82	8,552.00	592.50
Bonnie Yoshitomi	James Sullivan	S- 320330-022	P-04/83	4,700.00	132.37
Leon Erickson	Mary Shelley	S- 820421-028	P-04/83	5,290.00	243.75
Charles Wood	Jerry Jones	S- 820514-032	P-12/82	0.00	406.05
Patrick Hickey	Al Ruzkowski	S- 820514-033	P-12/82	0.00	105.00
Darrell Carpenter	Taylor Gamblin	S- 820517-035	P-04/83	3,634.35	
Leo/Betty Blum	Robert Rink	S- 820603-042	P-12/82	0.00	210.00
Janis Spradlin	Daniel Lankford	S- 820617-043	P-04/83	4,712.24	345.00

Barbara Percy	Ginger Cassel	S- 820618-044	P-12/82	500.00	180.00
Karen Leis	Paul Palmer	S- 820629-046	P-12/82	625.00	452.50
Roger Harapat	Dan Grant	S- 820706-049	P-04/83	6,092.00	532.50
Jennifer Shannon	Roy Charlton	S- 821019-073	P-06/83	4,573.00	259.40
Edgar Sipple	Barry Shennum	S- 821021-074	P-06/83	1,000.00	222.50
Randy Burnham	Harry Lewis	S- 821025-075	P-06/83	500.00	615.00
Kenneth Lewis	Robert York	S- 821101-078	P-06/83	10,000.00	326.65
Rita Trombley	Harold Johnsen	S- 821202-083	JL-01/83	10,000.00	592.50
Charles Bauer	William Price	S- 830202-011	TB-04/83	10,000.00	466.80
Roy Burkhart	Michael Buss	S- 830204-013	TB-04/83	10,000.00	242.50

124,974.24## 16,618.44##

PAID--RECOVERED COSTS

E Floyd Ross	Tony Calvo	S-810100-004	P-12/82	10,000.00	
Darion Powell	Gail McCormick	S-810100-005	JF-05/82	10,000.00	1,275.00
Russell Gross	Thomas Hoey	S-810500-028	AREC	1,000.00	0.00
Ruby Ketola	Gary Motonaga	S-810600-029	AREC	4,225.00	0.00
Thomas Winter	Mina Odell	S-810800-037	JK-04/82	1,000.00	0.00
Charles Wood	Jerry Jones	S-820514-032	12/82	800.00	0.00
James Hickey	Alvin Ruskowski	S-820514-033	12/82	1,000.00	0.00
Leo Blum	Robert Rink	S-820603-042	12/82	1,000.00	0.00

29,025.00## 1,275.00##

APPROVED--UNPAID

Walter Martin	Harold Johnsen	S- 830427-040	JK-01/84	10,000.00
Thomas Bohannon	Anne Weik	S- 830210-017	TB-10/83	500.00

10,500.00##

PROPOSED DECISION--APPROVE:

John Lymer	Gerald Sudkamp	S- 830117-005	KV-03/83	5,890.00
Jackie Woolf	Michael Buss	S- 830330-030	DP-09/83	2,122.00
W.Keith Graham	Ed Gentile	S- 830412-032	JK-07/83	10,000.00
				18,012.00##

DENIED

Jon Meyer	Donald LeMaster	S- 811200-002	D-12/82	3,600.00	204.70
Daniel Breault	Jennie Wasey	S- 810100-010	Denied	1,500.00	187.50
Odean Lee	Bob Booth	S- 810200-013	Denied	10,000.00	0.00
Lucian Dancaescu	Jack Vandenberg	S- 810300-015	D-12/82	10,000.00	333.60
John King	Jerry Woodworth	S- 810300-018	D-12/82	3,962.58	121.65
Harry Helfner	Gloria Church	S- 810300-019	Denied	10,000.00	0.00
James Foster	Marigal Compton	S- 810300-020	Denied	8,020.00	0.00
Glynn Behrend	Louise Severson	S- 810300-021	Denied	1,500.00	0.00
Tracy Belieu	Nancy Porter	S- 810400-025	JK-03/82	500.00	830.35
David Klingbiel	Onita Higgins	S- 810600-031	Denied	10,000.00	395.25
Allen Price	F. G. Nugent	S- 810600-032	D-12/82	1,949.62	408.88
Terry Eastlake	Porter Kearton	S- 810800-034	Denied	709.85	0.00
Roy Troberg	Ben Shennum	S- 810800-035	Denied	10,000.00	615.07
Florence Elliott	Sherrie Ace	S- 810800-036	Denied	2,000.00	0.00
Robert Steel	Radley Hastings	S- 811103-040	Denied	2,000.00	0.00
Betty Freed	Walter Wood	S- 811110-041	Denied	5,941.35	0.00
William Smith	Eleanor Becker	S- 811117-042	D-09/82	8,995.00	180.06
FedAlaska FCU	Bernd Vockner	S- 811215-047	D-05/83	10,000.00	443.45
John Hazen	Barry Shennum	S- 811215-048	JK-02/83	6,890.00	705.85
Allen Smith	Marilyn Warren	S- 811231-052	D-12/82	1,500.00	171.69
Kurt McAlister	Mason Anderson	S- 820113-001	D-09/82	10,000.00	18.75
Betty Evans	Gloria Beckley	S- 820108-004	D-09/82	10,000.00	112.50
Gene Blair	Mark Phillips	S- 820125-005	D-09/82	3,213.00	75.25
Jose Prado	Rusty Harrington	S- 820127-006	(2)	10,000.00	0.00
Barbara Wilson	Mary Moore	S- 820129-007	JK-02/83	0.00	0.00

Mark Chapman	Harold Newcomb	S- 820216-008	D-12/82	8,000.00	233.40
Max Rabinowitz	James Kuntz	S- 820216-009	Denied	867.17	0.00
James Medcoff	Jodie Thomas	S- 820219-010	Denied	1,000.00	0.00
Michael McBride	Edward Pawelek	S- 820225-013	D-12/82	10,000.00	0.00
Blythe Baker	Tom Hoey	S- 820308-015	D-09/82	527.50	264.75
Steve Day	Peggy Bowen	S- 820308-016	D-09/82	2,000.00	204.30
D. Wallis	Rita Shoultz	S- 820312-017	D-12/82	0.00	0.00
George Sampleton	Dana Bachner	S- 820311-018	D-09/82	9,000.00	356.70
Dale Lane	James Suddeth	S- 820311-019	D-09/82	10,000.00	129.75
Danny Simmons	Grace Brown	S- 820316-020	EJ-05/82	7,356.97	446.70
Ross Crane	Greg Cartwright	S- 820322-021	D-12/82	10,000.00	18.75
Albert Devincenu	Paul Palmer	S- 820407-023	D-02/83	3,000.00	117.35
Stan/Sara Smith	James Morrill	S- 820330-024	D-02/83	750.00	75.00
Artell Whitaker	Maurice Matthews	S- 820414-025	D-02/83	3,234.00	157.95
Chris Waterbury	Lee Walker	S- 820505-031	D-04/83	1,000.00	377.10
Brian Millis	Jess Holiday	S- 820525-036	D-12/82	9,600.00	348.00
Mir Javid Karchay	Charles Tanner	S- 820712-053	JK-09/82	3,600.00	37.50
Peter Lyse	Walter Wood	S- 820719-054	D-09/82	6,000.00	452.75
Gene Tenny	James Pitts	S- 820802-058	D-02/83	2,739.43	474.50
Leonard Walker	D Peck/ Beal, Terry	S- 820802-059	D-04/83	507.00	1,030.43
Theodore Glover	Red Mueller	S- 820817-063	HG-10/82	500.00	185.77
Anne Joseph	MaryDee Henderson	S- 820827-065	D-05/83	10,000.00	1,109.40
Patrick Maitland	Brent Heleker	S- 820831-066	D-10/82	9,440.00	0.00
Shirley Summer	Jorgen Lilliebjerg	S- 820907-069	D-02/83	708.00	234.50
Susan Fleming	Beth Allard	S- 821004-070	EJ-02/83 (3)		290.40
Daniel Neil	Jean Butterfield	S- 821014-071	D-04/83	270.00	37.50
Robert Dewees	Jim Jacobs	S- 821019-072	D-04/83	2,035.48	52.50

Clyde Stoker	Barry Shennum	S- 821015-076	D-04/83	1,998.60	153.70
James Henderson	Jim Thomas	S- 821101-077	D-04/83	300.00	37.50
Dan Nicoll	Betty Greely	S- 821112-079	D-04/83	682.50	191.30
Robert MacGill	Curtis Kutil	S- 821117-080	D-04/83	6,707.55	318.50
James Kohler	Richard Erickson	S- 830103-001	PG-01/84	5,290.00	
Jeffery Wesley	Clyde Lower	S- 830202-010	TB-01/84	3,676.00	290.00
Randy Helgeson	Harry Lewis	S- 830208-014	D-11/83	1,240.80	293.50
Ronald Raasch	Ray Walker	S- 830216-019	D-11/83	1,046.20	218.50
Gregory Thomason	Bob Barbutti	S- 830429-037	JK-01/84	10,000.00	318.75
Michael Alley	Bruce Cook	S- 830202-009	D/04/83	10,000.00	298.85
Jerry Henry	Evan Tobler	S- 830210-016	D/04/83	3,200.00	309.70
Mark Heirigs	Pat Wilson	S- 830413-034	D/07/83	6,582.21	
Daniel Painter	Lotti Buscemi	S- 830208-018	D-11/83	1,757.96	32.15
Sally Benedrix	Gail Haunold	S- 830412-033	D-11/83		39.60
Nancy Inglis	Cher Brown	S- 830425-038	D-11/83	10,000.00	18.75
Ruth Dawson	Bill Schlegel	S- 820604-037	EJ-08/82	1,000.00	
Louis Maggio	Dawson Lindbloom	S- 820802-060	HG-10/82(3)		339.21

317,898.77## 14,300.56##

PROPOSED DECISION--DENY:

McFall

Willy Sherman

S-820831-067

HG-07/84

10,000.00

Willie Taylor

Sally Mummy

S- 830427-039

JK-07/83

1,000.00

11,000.00## ##

HEARINGS

Jerry Gallagher	Mary Bunes	S- 810100-006	-02/82	4,234.98	
Charles Hobbs	Jan Brechan	S- 810300-016	BS-0 /82	1,105.00	18.75
Randall Rogers	Kenneth Jones	S- 810300-017	RP-C2/82	10,000.00	18.75
Joseph Thomas	Les Pace	S- 810500-027	TB-08/83	10,000.00	
Max Bivens	James Anthony	S- 810800-033	JF-02/82	10,000.00	243.75
John Curtis	James Suddeth	S- 811000-038	JK-02/82	3,642.65	154.10
Phillip Aguirre	Mary Peterson	S- 811204-046	AP-04/83	1500.00	1348.71
Leon Chandler	Peter Kinneen	S- 820416-027	JK-08/82	10,000.00	37.50
Douglas McBride	Carol Black	S- 820423-029	JL-08/82	4,290.00	234.50
James DeFrank	Nadene Thorne	S- 820517-034	KV-11/82	10,000.00	112.50
Marilyn Campbell	Nadene Thorne	S- 820607-038	KV-11/82	7,302.00	
Kenneth Ray	George Barth	S- 820609-039	EJ-08/82	1,000.00	
Harold Neese	John Gross	S- 820610-040	EJ-08/82	500.00	57.40
John Faulkner	Nadene Thorne	S- 820610-041	KV-08/82	10,000.00	
Barry Auf der Heide	Debbie Wise	S- 820629-047	KV-11/82	5,213.45	
James Welsch	Nadene Thorne	S- 820630-048	KV-11/82	10,000.00	
Teva Marrow	John Gross	S- 820610-050	Hearing	500.00	
Lowell Mueller	Jackie Dahl	S- 820706-051	JK-09/82	6,979.27	76.75
Virginia Giles	Nancy Richardson	S- 820721-056	BS-09/82	6,372.00	18.75
Joyce Eischen	Russell Briard	S- 820729-057	BS-09/82	5,000.00	
Patrick Stidmon	C Curly, Bogle, Gail	S- 820812-062	HG-10/82	1,000.00	352.97
Roy McFall	Willy Sherman	S- 820831-067	HG-10/82	10,000.00	109.85
William Mulnix	Tom Hoey	S- 821129-082	MB-01/83	1,000.00	
James Estes	Daniel Lankford	S- 821202-085	JL-01/83	9,640.00	37.50
Gary Vanderbrug	Tom Mungle	S- 821206-086	MB-01/83	5,000.00	

Malcolm Miner	Harold Johnsen	S- 821207-087	JL-01/83	10,000.00	
Stacey Lawrence	Carol Syzmanski	S- 821206-089	JL-01/83	1,000.00	
Margaret Cunningham	Andre Marrow	S- 821208-090	JL-01/83	1,000.00	
Peter Burton	Wayne Bass	S- 821208-091	JL-01/83	1,000.00	
John O. Elgee	Ben Hardwick	S- 821221-092	JL-01/83	1,510.90	
Karen Hodge	William Price	S- 821118-093	JL-01/83 (3)		300.00
Rasmus Anderson	Mary Peterson	S- 830112-003	KV-03/83	5,950.00	
Jesse Prince	L.A. Hansen	S- 830117-004	KV-03/83	8,730.00	
Rick McConnell	Pat Ramsey	S- 830117-006	KV-03/83	10,000.00	
Bryl Eddy	Barry Shennum	S- 830117-007	KV-03/83	5,000.00	
William Thompson	Karen Berg	S- 830127-008	KV-03/83	5,000.00	
Charles Lamb	Pat Stephans	S- 830204-012	TB-04/83	7,343.32	383.90
Raymond Aubin	Ike Prieto	S- 830222-020	TB-04/83	1,500.00	316.00
James Pearce	Linda Spencer	S- 830301-021	PW-10/83	800.00	
Alice Hunter	Joseph Jackson	S- 830301-022	PW-10/83	10,000.00	320.50
Robert Huppert	Neal Hausan	S- 830308-023	PW-10/83	10,000.00	
Elisabeth Vischer	Peter Kineen	S- 830308-024	JK-10/83	3,000.00	
Terry Madison	Daniel Twitchell	S- 830314-025	PW-10/83	10,000.00	
Douglas Rowe	Janice Brechan	S- 830314-026	PW-10/83	10,000.00	
LeRoy Mitchell	Gail Haunald	S- 830314-027	PW-10/83	10,000.00	
Johnnie Powell	Hal Bancroft	S- 830318-028	PW-10/83	7,250.00	548.90
Richard Richart	Michael Buss	S- 830412-031	JK-07/83		18.75
Susan Wade	Linda Smith	S- 830414-035	JK-07/83	10,000.00	
Joseph Wall	Don Girvan	S- 830506-041	DM-08/83		
Stanley David	Ken Calhoon	S- 830516-042	BS-09/83	500.00	
Erwin Davis	Karen Smithson	S- 830525-043	DM-08/83	1,583.79	
Elizabeth Lumpkin	Barb Bowden	S- 830525-044	BS-09/83	4,000.00	

John Nixon	Ben Waldrop	S- 830601-045	DM-08/83	4,053.86	
Delroy Keller	Patsy Daily	S- 830606-046	DM-08/83	5,000.00	
Jo Rhoades	Linda Boemmel	S- 830606-047	DM-08/83	1,000.00	
Doug Stark	Jim Thomas	S- 830610-048	DM-08/83	9,000.00	1
John Chya	Mary Peterson	S- 830615-049	BS-09/83		
Karen Brown	Mike Tapley	S- 830622-050	DM-08/83	4,000.00	
Pam Hennessey	Paul Wilson	S- 830623-051	BS-09/83	10,000.00	
Barbara Loomis	Dan Rodey	S- 830627-052	DM-08/83	1,000.00	
Robert Faro	Dan Canoy	S- 830629-053	DM-08/83	1,619.50	
Ron Romph	Louis Forstner	S- 830701-054	DM-08/83	5,610.00	
Bryan Horton	Barbara Bowden	S- 830705-055	DM-08/83	1,000.00	
Robert Ameen	Eugene Johnson	S- 830711-056	BS-09/83	10,000.00	
Carl Loschiavo	Robin Bernard	S- 830713-057	BS-09/83	3,500.00	
Marcia Freedman	Brooke Marston	S- 830713-058	BS-09/83	10,000.00	
Steve Bugni	Mary Peterson	S- 830721-059	BS-09/83	10,000.00	
Don Caswell	Phillis Goodman	S- 830721-060	BS-09/83	10,000.00	
William Pallis	Mary Osborn	S- 830801-061	BS-09/83	1,000.00	
D. W. Haas	Mary Bunes	S- 830801-062	BS-09/83	1,860.00	
Dawian Kirlin	Michael Buss	S- 830405-063	BS-09/83	625.00	
Lowell Rudder	Max Bevins	S- 830804-064	EJ-10/83	2,500.00	
Suzanne Thompson	Alta Schmidt	S- 830805-065	EJ-10/83		
Glendon Hardman	Marty Margensen	S- 830805-066	EJ-10/83	10,000.00	
Leroy Phillips	Russell Briard	S- 830418-067	JK-10/83	10,000.00	
Franklin Price	Diane Christ	S- 830815-068	JS-09/83	4,000.00	
William Graves	Daniel Lankford	S- 830815-069	TB-09/83	5,000.00	
Suzanne Kincaid	Ken Calhoon	S- 830815-070	JS-09/83	10,000.00	
Roger Multvedt	Helen Morgan	S- 830815-071	JS-09/83	10,000.00	

Thomas Sparks	Ken Calhoon	S- 830818-072	JS-09/83	10,000.00
Marjorie Asiter	Henry Warren	S- 830822-073	JS-09/83	10,000.00
Koeta Imhof	Pat Kruger	S- 830823-074	JS-09/83	3,000.00
Daniel Sheehan	Mary Peterson	S- 830824-075	BS-09/83	5,000.00
Eve Lenfestey	Mickey Sleeper	S- 830825-076	JS-09/83	1,000.00
Mitko Dalkovski	Gail Glad	S- 830826-077	RH-09/83	10,000.00
Chris Monagle	Chris Foster	S- 830826-078	DP-09/83	2,000.00
Daniel Stevens	Bruce Pfau	S- 830816-079	JS-09/83	3,394.21
Carol Duncan	Ken Calhoon	S- 830829-080	JS-09/83	6,000.00
Scott Roland	John Gross	S- 830830-081	JS-09/83	500.00
Eldon Spradling	William Schlegel	S- 830830-082	JS-09/83	10,000.00
Robert Whisenlunt	Gary Munson	S- 830830-083A	EJ-1283	
Kenneth Wert	Lola Pederson	S- 830908-083B	EJ-1283	
Thomas Ward	Harold Johnsen	S- 830914-084	EJ-1283	
Patrick Curron	Helen Buss	S- 830914-085	EJ-1283	3,000.00
William Berg	Earlene Hanifen	S- 830928-086	EJ-1283	500.00
Curtis Classon	Hal Hume	S- 830928-087	EJ-1283	3,000.00
James Smith	Gary Cotton	S- 830928-088	EJ-1283	
Sandra Vonda	Gloria Bondi	S- 831007-089	EJ-1283	8,780.00
Hoffman, Roslyn	Calhoon/Boudreaux	S- 831010-090	EJ-1283	1,000.00
Beach, David	Morgan/Burns/Burns	S- 831012-091A	EJ-1283	10,000.00
Ollestad, Onnalee	Palmer/Shennum	S- 831013-092	EJ-1283	1,000.00
Onstatt, Richard	Shennum/Bowden	S- 831013-093	EJ-1283	
Boots, Michael	Chasten/Wood	S- 831004-094	EJ-1283	2,750.00
Beach, David	Morgan/Burns	S- 831004-095B	EJ-1283	10,000.00
Grange, Ray B.	Morgan/Burns/Burns	S- 831017-096	EJ-1283	10,000.00
Chabernaude, Simone	Morgan/Burns	S- 831014-097C	EJ-1283	10,000.00

Nowak, Johannes	John Burns	S- 831019-098D	EJ-1283	10,000.00
Barbara Mauro	John Burns	S- 831020-099E	EJ-1283	10,000.00
Veda Bell	John Burns	S- 831020-100F	EJ-1283	10,000.00
Patrick Bell	John Burns	S- 831020-101G	EJ-1283	10,000.00
Mischler, Janet	Rochon/Taplin	S- 831104-103	HOR	30,000.00+
Maura, Barbara	Morgan/Burns/Burns	S- 831107-105	HOR	10,000.00
Meyer, Elida	Sullivan/Kruger	S- 831107-104	HOR	2,562.00+
Douville, Richard	Rhines, Esther	S- 831208-106A	HOR	500.00
Armstrong	Shennum/Williams	S- 831110-106B	HOR	2,332.00
Dauids, Richard	George Barth, Sr	S- 831110-107	HOR	1,150.00
Nowak, Johanne	Morgan/Burns/Burns	S- 831114-108	HOR	5,500.00
Smith, James	Cotton/Lincoln	S- 831116-109	HOR	1,575.00+
Fejes, Claire	Cotton/Cotton/Calh	S- 831116-110	HOR	10,000.00
Knedlik, Stanley	Morgan/Burns	S- 831117-111	HOR	20,675.00
Mudzaid, Resad	Morgan/Burns/Weik	S- 831121-112	HOR	15,000.00
Graves, Wilford	Lankford/Dennis	S- 831122-113	HOR	6,000.00
Belander/Foster	Warner/Pace/Girvan	S- 831130-114	HOR	3,700.00
Watkins, Robert	Johnston, William	S- 831130-115	HOR	1,000.00
Bren, Kenneth	Fowler, Gary	S- 831208-116	HOR	1,232.08
Jones, Kendall	Padgett/Bowden	S- 831209-119	HOR	2,145.00
Morrell, Gary/Bev	Chasten, Clark	S- 831212-120	HOR	4,880.00+
Hadley, Judith	Gay, Don	S- 831216-121	HOR	10,000.00
Williford, Stephen	Bernard/Holliday	S- 831227-123	HOR	20,000.00
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Lentfer, Jack	Valkama, Ralph	S- 840105-001	HOR	3,200.00
Perry, Michael	Jones/Snowden	S- 840105-002	HOR	500.00
Murphy, John	Gaughan/Gaughan	S- 840105-003	HOR	1,000.00
Holderman, David	Jacobs/Coffey	S- 840105-004	HOR	1,000.00

Sparaga, John	Lastufka/Houston	S- 840105-005	HOR	21,000.00
Smith, William	Priest, Jan	S- 840105-007	HOR	1,000.00
Halle, Louis	Hulce, Violet	S- 840105-008	HOR	10,000.00
Lawyers Title Ins.	Buss, Michael	S- 840105-009	HOR	10,000.00
Godfrey, John	Harold Johnsen	S- 840105-010	HOR	10,000.00
Chotiner, Andrew	Kinneen, Peter	S- 840105-011	HOR	10,000.00
Painter, Michael	Blanchard, Ralph	S- 840105-012	HOR	1,867.00
Burton, Mark	Grundeland, Roy	S- 840105-013	HOR	435.00
Engelke/Scaletta	Schoultz, Rita Jo	S- 840106-014	HOR	10,000.00
Mabey, Raymond	Lilliebjerg, J	S- 840106-015	HOR	10,000.00
Throne, Homer	Ward, Thomas	S- 840111-016	HOR	3,300.00
Michael/Black	Peterson, Mary	S- 840111-017	HOR	10,000.00
Williams, Gary	Divens/Thorson	S- 840117-019	HOR	10,000.00
Upton, Herbert	Palma, Vince	S- 840201-020	HOR	10,000.00
JRK Construction	Cullip, Dale	S- 840201-021	HOR	3,000.00
Dillion, Thomas	Yoshimura, Connie	S- 840201-022	HOR	10,000.00
Craig, Earl	Backus, Donna	S- 840201-025	HOR	605.00
Mullaly, William	Palmer, Lou	S- 840201-028	HOR	10,000.00
Hickle, James	Burns, Helen	S- 840201-029	HOR	10,000.00
Banning, Roger	Burns, John	S- 840210-030	HOR	8,405.00
Dorsher, Roseileen	DiBene, John	S- 840210-031	HOR	629.38
Thompson, Beverly	Augestad, Al	S- 840215-032	HOR	1,000.00
Mullaly, William	Lipson, Ann	S- 840215-033	HOR	4,925.00
Shelley, George	Kruger/Geraci	S- 840215-034	HOR	400.00

WITHDRAWN

Walter Green	Marlene Mungle	S- 810928-003	Withdrawn	917.74	
Rhonda Sleighter	Lars Ekstrand	S- 810200-012	Withdrawn	10,000.00	
James Cone	Walter Bolling	S- 810200-014	Withdrawn	10,000.00	
Lilly Lake	Jerry Woodworth	S- 810400-022	Withdrawn (3)		
Clyde Munn	Jim Ford	S- 810400-023	Withdrawn	10,000.00	
Frank Dahl	Richard Black	S- 810500-026	Withdrawn	10,000.00	
John Wreggit	Clark Chasten	S- 810600-030	Withdrawn	10,000.00	
Roberta Chevalier	Michael George	S- 811202-043	Withdrawn	10,000.00	
Brad Acord	Glen Wilcox	S- 811203-045	Withdrawn	10,000.00	
Lewis Olson	Matt Matthews	S- 811222-050	Withdrawn	631.50	
Lynn Wegener	Bob Conte	S- 820225-012	Withdrawn	99.13	
Leana Culley	Kurt Knecht	S- 820301-014	EJ-05/82	1,245.00	534.00
Maryalyce Sagen	James Arnold	S- 820414-026	Withdrawn	1,000.00	
Charles Wehner	Rita Jo Shoultz	S- 820426-030	Withdrawn	1,000.00	
Donald Sanders	Eleanor Parker	S- 820628-045	Withdrawn	500.00	
Neil Murakami	Nadene Thorne	S- 820712-052	BS-09/82	6,874.00	
Jerrold Larson	Mary Psenak	S- 820719-055	Withdrawn	429.00	56.82
Jean Case;M. Andrew	Bob Monson	S- 820805-061	Withdrawn	1,300.00	190.30
Michael Setzer	Everett Honegger	S- 820816-064	Withdrawn	6,062.88	273.95
John Whitford	Jack Daley	S- 820902-068	Withdrawn	1,000.00	114.00
Lavorne Brunson	Pat Craig	S- 821122-081	DIS-01/84	1,000.00	
Charles Biastoch	Mary Bunes	S- 821202-084	Withdrawn	819.00	
Stacey Lawrence	Bruce Crawford	S- 821208-088	Withdrawn	1,000.00	
Paul Swenning	Carl Wallace	S- 830103-002	KV-03/83	10,000.00	

Alaska USA FCU	Clark Chasten	S- 830208-015	Withdrawn	1,000.00	
Joyce Story	Virginia Kohfield	S- 830323-029	PW-11/83	10,000.00	
Noreeta Clark	Ann Lipson	S- 830419-036	JK-07/83	10,000.00	56.25
Griggs, Robert	Mack/Sleeper	S- 831020-102	HOR	10,000.00	

134,878.25## 1,225.32##

Total Undecided	901,657.39	58.2%
Paid, Unrecovered	124,974.24	8.1%
Paid, Recovered	29,025.00	1.9%
Approved/Unpaid	10,500.00	.7%
PD-Approved	18,012.00	1.2%
Denied	317,898.97	20.5%
PD-Denied	11,000.00	.7%
Withdrawn	134,878.25	8.7%
Appealed	<u>(10)</u>	<u> </u>
Total Decided	<u>646,288.46</u>	<u>41.8%</u>
Total Filed	<u>1,547,945.85</u>	<u>100.0%</u>

- | | Hearing Officers |
|---|--|
| (1) Properly completed form not yet received. | |
| (2) Awaiting clarification of claim by claimant. | T Beebe P Nash |
| (3) Amount not stated. | H Gazaway D Pope |
| (4) PD-Approved: Proposed Decision-Approved. | P Grant R Preston |
| (5) HOR: Hearing Officer requested. | R Holl B Sherman |
| (6) PD-Denied: Proposed Decision-Denied. | E Johnson J Stanley |
| (7) Appealed. | J Katz K Vasser |
| (8) The Mulholland case, S-122881-049, though appealed, was not stayed, so payment was made. The Appeals Court reversed the decision of the Commission, and the award is not recoverable. | J Lohff P Wilcox
D Maloney |
| (9) The undecided total is the sum of the cases with Hearing Officers requested and those with notes 1,2,3, and 5. | |
| (10) The Aguirre-Peterson case, S-811204-046, was paid. Though it has | |

(9) each of the following:

(A) a domestic or foreign corporation, or a general or limited partnership; or

(B) a partner or regular employee of a domestic or foreign corporation or a general or limited partnership, when performing an act described in AS 08.88.161 in the regular course, or as an incident to, the management, sale or other disposition of real estate owned by the corporation or partnership; the exemption provided in this subparagraph does not apply to a person who performs an act described in AS 08.88.161 either as a vocation or for compensation if the amount of the compensation is dependent upon or directly related to the value of the real estate with respect to which the act is performed.

(10) a resident manager of rented real estate if the resident manager's duties are limited to the negotiation of leases and rental agreements and the collection of rent for the use of the real estate and if the resident manager is

(A) employed by the owner of the real estate; or

(B) employed by, or engaged under contract with, a licensed real estate broker. (§ 1 ch 95 SLA 1964; am § 1 ch 38 SLA 1969; am § 19 ch 28 SLA 1974; am §§ 29—31 ch 167 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "who is not licensed under this chapter who makes" for "making" near the beginning of paragraph (1); added "which is not in Alaska" at the end of paragraph (1); in paragraph (9), restructured the paragraph into present subparagraphs (A) and (B), added the introductory phrase, "each of the following", inserted "or a" preceding "general" in subparagraph (A), substituted a semicolon for a comma following "limited partnership" at the end of subparagraph (A), substituted "a domestic or foreign corporation or a general or limited partnership" for "one of these," and "an

act" for "acts", deleted "however" following "the corporation or partnership", inserted "exemption provided in this subparagraph does not apply to a", and substituted "who performs an act described in AS 08.88.161 either" for "may not perform these acts", all near the middle of subparagraph (B), and substituted "act is" for "acts are" at the end of subparagraph (B); and added paragraph (10).

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, S.A. 1982.

Sec. 08.88.431. Definitions. In this chapter

- (1) "real estate" means an interest or estate in land, corporeal or incorporeal;
- (2) "commission" means the Real Estate Commission;
- (3) Repealed by § 42 ch 167 SLA 1980.
- (4) "lease" includes a lease that is a part of another transaction.
- (5) "resident manager" means a person who resides on real property and manages it for the benefit of another person. (§ 1 ch 95 SLA 1964; am § 58 ch 218 SLA 1976; am §§ 32, 42 ch 167 SLA 1980)

Effect of amendments. — The 1980 amendment repealed paragraph (3), and added paragraph (5).

Article 5. Real Estate Surety Fund.

Section	Section
450. Real estate surety fund	475. Maximum liability
455. Payments by real estate brokers and salesmen	480. Order of claim payment
460. Claim for payment	485. False claims or documents
465. Consideration of application	490. Right to subrogation
470. Findings and payment	495. Disciplinary action against brokers and salesmen
472. Hearing costs	500. Definition

Editor's notes. — The sections contained in this article, except for AS 08.88.472, derive from AS 45.85.010 — 45.85.120 and were renumbered by the revisor of statutes pursuant to AS 01.05.031.

Collateral references. — 12 Am. Jur. 2d, Brokers, §§ 23-29.
12 C.J.S., Brokers, §§ 8-13.

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 143 SLA 1974; am § 34 ch 167 SLA 1980; AS 45.85.010)

Effect of amendments. — The 1980 amendment substituted "\$500,000" for "\$300,000" near the beginning of the third sentence.

Sec. 08.88.455. Payments by real estate brokers and salesmen. (a) A licensed real estate broker or associate broker, 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 bond fee not to exceed \$125, and a licensed salesman, when obtaining or renewing a license, in lieu of obtaining a corporate surety bond, shall pay to the commission in addition to the license fee, a bond fee not to exceed \$40. After the fund reaches \$250,000 the commission shall by regulation adjust the 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.

(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)

Effect of amendments. — The 1980 amendment substituted "commission" for "commissioner of commerce" near the beginning of subsection (a) and for "commissioner" wherever else it appears throughout the section.

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

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

- (1) the name and address of the real estate broker, associate real estate broker, or real estate salesman;
- (2) the amount of the alleged loss;
- (3) the date or period of time during which the alleged loss occurred;
- (4) the date upon which the alleged loss was discovered;
- (5) the name and address of the claimant; or
- (6) the general statement of facts relative to the claimant.

(b) A copy of a claim filed with the commission under (a) of this section shall be sent to the real estate broker, associate real estate broker, or real estate salesman alleged to have committed the misconduct resulting in losses, as well as a real estate broker employing an associate real estate broker or real estate salesman alleged to have committed the conduct resulting in losses, at least 20 days before any hearing held on the claim by the commission. (§ 36 ch 167 SLA 1980; AS 45.85.031)

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

- (1) take and hear evidence pertaining to the claim;
- (2) administer oaths and affirmations;
- (3) compel, by subpoena, the attendance of witnesses and the production of books, papers and documents pertaining to the claim;
- (4) engage the services of an investigator, accountant, or other expert necessary to process the claim.

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

(c) Before the commission finds that payment should be made from the real estate surety fund, the real estate broker, associate broker, or real estate salesman shall be afforded an opportunity to file with the

commission, within 10 days after receipt of notification of the claim under AS 08.88.460(b), either a written statement in opposition to the claim or an application for the presentation of additional evidence.

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

(e) The commission may postpone consideration of a claim until after a hearing under AS 08.88.071(a)(3) or until after a pending or contemplated court proceeding is completed. (§ 36 ch 167 SLA 1980; AS 45.85.041)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 08.88.470. Findings and payment. At the conclusion of the commission's consideration of a claim made under AS 08.88.460, it shall make in writing findings and conclusions on the evidence. If the commission finds that the claimant has suffered a loss 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 broker, or salesman, the commission may award a claimant reimbursement out of the real estate surety fund for the claimant's loss up to \$10,000. However, not more than \$10,000 may be paid for each transaction regardless of the number of persons injured or the number of parcels of real estate involved in the transaction. (§ 36 ch 167 SLA 1980; AS 45.85.051)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 08.88.472. Hearing costs. (a) When an award is made from the real estate surety fund under AS 08.88.470, the commission may charge to the fund the costs of a hearing held under AS 08.88.071 or 08.88.465. Amounts subsequently recovered by the commission for these costs from the licensee under AS 08.88.071(b) or from other parties under AS 08.88.490 shall be deposited to the real estate surety fund.

(b) An amount charged to the fund by the commission for costs under (a) of this section may not be considered in determining the maximum reimbursement to be awarded under AS 08.88.470 or in determining the maximum liability of the real estate surety fund under AS 08.88.475. (§ 6 ch 96 SLA 1982)

Sec. 08.88.475. Maximum liability. (a) The maximum liability of the real estate surety fund does not exceed \$50,000 for any one broker or salesman.

(b) If the \$50,000 liability of the fund as provided in (a) of this section is insufficient to pay in full the valid claims of all persons who have filed claims against one broker or salesman, the \$50,000 shall be distributed among the claimants in the ratio that their individual claims bear to the aggregate of valid claims, or in another manner that the commission considers equitable. Distribution shall be among the persons entitled to share in the recovery, without regard to the order of priority in which their claims were filed. (§ 1 ch 143 SLA 1974; AS 08.45.85.060; am § 11 ch 59 SLA 1982)

Effect of amendments. — The 1982 amendment, in subsection (b), substituted "commission" for "court" in the first sentence, and, in the second sentence, deleted "their judgments for obtained or" following "priority in which" and inserted "were" preceding "filed."

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 § 37 ch 167 SLA 1980; AS 45.85.070)

Effect of amendments. — The 1980 amendment substituted "commission" for "commissioner."

Sec. 08.88.485. False claims or documents. A person who files with the commission a notice, statement or other document required under this chapter which contains a wilful material misstatement of fact, is guilty of a misdemeanor and is punishable by imprisonment for a period of not more than one year, or a fine of not more than \$1,000, or by both. (§ 1 ch 143 SLA 1974; am § 38 ch 167 SLA 1980; AS 45.85.080)

Effect of amendments. — The 1980 amendment substituted "commission" for "commissioner."

Sec. 08.88.490. Right to subrogation. When the commission has paid to a claimant from the real estate surety fund the sum awarded by the commission, the commission shall be subrogated to all of the rights of the claimant to the amount paid and the claimant shall assign all right, title and interest in that portion of the claim to the commission. Amounts subsequently realized by the commission on the claim

shall be deposited to the real estate surety fund. (§ 1 ch 143 SLA 1980; am § 39 ch 167 SLA 1980; AS 45.85.090)

Effect of amendments. — The 1980 amendment substituted "commission" for "commissioner" wherever it appears throughout the section except the second time in the first sentence where it is substituted for "court", substituted "claimant" for "judgment creditor" wherever it appears throughout the section, inserted "surety" and substituted "awarded" for "ordered" near the beginning of the first

sentence, substituted "claim" for "judgment" near the end of the first sentence and near the middle of the second sentence, and inserted "real estate surety" at the end of the section.

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 08.88.495. Disciplinary action against brokers and salesmen. Repayment in full of all obligations to the real estate surety fund does not nullify or modify the effect of disciplinary proceedings brought under the provisions of this chapter. (§ 1 ch 143 SLA 1974; AS 45.85.110)

Revisor's notes. — References to AS 45.85 were removed and the section was rearranged by the revisor of statutes, in

conjunction with the relocation of the material in AS 08.88.

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

Chapter 92. Concert Promoters.

Section	Section
10. Registration required	50. Injunction
20. Fees	60. Violations
30. Bond or cash deposit required	70. Exemption
35. Re. and caption required	80. Regulations
40. Denial, revocation, and suspension of registration	90. Definitions

Collateral references. — 58 Am. Jur. 2d, Occupations, Trades and Professions, §§ 1-23.

53 C.J.S., Licenses, §§ 32-45.

Sec. 08.92.010. Registration required. A person may not engage in the business of promoting concerts in this state without first obtaining and holding a current and valid promoter's certificate of registration issued by the department. To remain valid, a certificate of registration must be renewed on or before a date set by the department.

HB

711

Board of Public Accountancy

FY '83 - Allocated 12.0 (Board Travel and Per Diem)

Revenues (7/1/82 - 6/30/83) 25.4
(Total number of Active Licenses 648)

Expenses: Board Travel and Per Diem	9.5
Personal Services	13.6
Contractual	<u>16.4</u>
Total	39.5

FY '84 - Allocated 12.1 (Board Travel and Per Diem)

Revenues (7/1/83 - 2/1/84) 26.8

Expenses: Board Travel and Per Diem	4.5
**Personal Services (7/1/83 - 2/1/84)	4.1
*Contractual	<u>6.4</u>
Total	15.0

FY '85 Board Component - Division Budget Total - 95.0
Board of Public Accountancy Allocation - 2.0

* The above items are funded in the division's budget under the Administration component.

** Personal services or 1/3 of one licensing examiner's position.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 436
Title: An Act extending the term
date of the Board of Public Accountancy;
Sponsor: Labor & Commerce Committee
Requestor: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Dept. of Commerce & Econ. Dev.
Program Category Affected: Public Protection
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						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

No additional fiscal impact is expected to incur with this Senate Bill.

Funding to be continued and provided for in the Department's FY '85 budget.

ANALYSIS: Attach a separate page for analysis

Prepared By: Jennifer Strickler Management Analyst Phone: 465-2144
Division: Occupational Licensing Date: February 15, 1984
Approved by Commissioner: Richard A. Lyon Date: 3/12/84
Agency: Dept. of Commerce & Economic Development

Distribution (by Agency preparing fiscal note):

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

12/1/83

HB 711

THE BOARD OF PUBLIC ACCOUNTANCY IS CURRENTLY OPERATING SMOOTHLY AND EFFICIENTLY IN ACCOMPLISHING ITS STATUTORY RESPONSIBILITIES. THE BOARD IS OPERATING IN THE PUBLIC INTEREST BY PROMULGATING REGULATIONS WHICH PROTECT THE PUBLIC FROM INCOMPETENT AND FRAUDULENT PRACTITIONERS. THE BOARD MEETINGS ARE HELD AT LEAST THREE TIMES ANNUALLY AND ARE ADVERTISED IN A TIMELY MANNER SO AS TO ENCOURAGE PUBLIC PARTICIPATION.

THIS BOARD IS VERY EFFECTIVELY REGULATING AND LICENSING THE PROFESSION OF PUBLIC ACCOUNTANCY AND SHOULD BE CONTINUED ANOTHER FOUR YEARS UNTIL JUNE 30, 1988. THE DEPARTMENT OF COMMERCE STRONGLY SUPPORTS THE CONTINUATION OF THIS BOARD.

I RECOMMEND PASSAGE OF HB 711.

ADDITIONAL INFORMATION

1) AS MANY STAFF MEMBERS OF THE DIVISION OF LEGISLATIVE AUDIT HOLD CERTIFIED PUBLIC ACCOUNTANT CERTIFICATES, AND ARE SUBJECTED TO REGULATIONS BY THAT BOARD, THE DIVISION CONTRACTED WITH R.W. PAVITT AND ASSOCIATES TO PERFORM THE REVIEW.

2) THE BOARD EFFICIENTLY AND SUCCESSFULLY IMPLEMENTED ALL RECOMMENDATIONS SUGGESTED IN THE LAST AUDIT. THE CURRENT AUDIT RECOMMENDED ONLY 2 POSSIBLE IMPROVEMENTS. BOTH NEED IMPLEMENTATION BY THE ADMINISTRATION.

A PERFORMANCE REVIEW
OF THE
BOARD OF PUBLIC ACCOUNTANCY

November 7, 1983

Commissioner of the Department of Commerce and Economic Development	-	RICHARD A. LYON
Deputy Commissioner of the Department of Commerce and Economic Development	-	J. VINCENT O'REILLY
Director of the Division of Occupational Licensing	-	HARRY D. TRAEGER

Members of the
Board of Public Accountancy

President	-	J. Shelby Stastny
Member	-	L. Pete Hogan*
Member	-	Deloris Dash*
Member	-	Michael T. Cook*
Member	-	Vernon R. Johnson
Member	-	Sandra L. Langland
Member	-	Kaye May

* term expired April 25, 1983

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

November 7, 1983

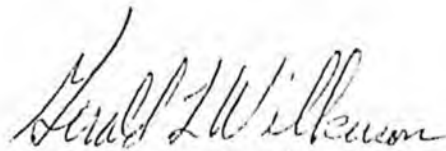
Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Title 24 and 44 of the Alaska Statutes, the Division of Legislative Audit was mandated to perform a "Sunset" review of the Alaska State Board of Public Accountancy.

As many staff members of the Division hold Certified Public Accountant certificates, and are subjected to regulation by that Board, the Division lacked the apparent independence necessary to perform the review.

The Division contracted with R.W. Pavitt and Associates, Inc. to perform this review. This firm is a reputable management consultant business that has been in operation for several years. In addition, it conducted the review for us in 1979.

We feel this report discharges our responsibility, mandated under Title 24 and 44. The report is submitted for your review.



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

R. W. PAVITT AND ASSOCIATES, INC.
PLANNING CONSULTANTS

November 7, 1983

LEGISLATIVE AUDIT DIVISION
State of Alaska
Pouch W
Juneau, Alaska 99811

Attention Merle R. Jenson, Deputy Legislative Auditor

Dear Mr. Jenson:

In accordance with the Contract for Services between the Legislative Audit Division and our firm, we have completed a performance review of the Board of Public Accountancy using guidelines and standards established in Alaska Statutes for such "sunset" audits.

The report, entitled A PERFORMANCE REVIEW OF THE BOARD OF PUBLIC ACCOUNTANCY, is hereby submitted.

Respectfully,



R. W. Pavitt, AICP
President

RWP/bp

A PERFORMANCE REVIEW OF THE BOARD OF PUBLIC ACCOUNTANCY

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Responses

Agency Response:

Department of Commerce and Economic
Development

PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with the intent of Alaska Statutes 24.20.271(1) and 44.66.050 (Sunset legislation), a review of the Board of Public Accountancy was conducted to examine Board activities, operations, policies and accomplishments. The purpose of the review is to determine if the Board has operated in a fair, effective, efficient and economical manner in the performance of its statutory functions, duties and responsibilities.

As required by AS 44.66.050, this report shall be considered during the legislative oversight procedure in determining whether the Board of Public Accountancy should be continued or reestablished. The law currently specifies that this Board will terminate on June 30, 1984, but will continue until June 30, 1985 for the purpose of concluding its affairs.

Scope

The major areas studied were the Board's operations, policies, procedures and its examination, licensing, administration, complaint and affirmative action responsibilities. Our review consisted of research, analysis and evaluation of the following:

- (1) Applicable Alaska Statutes and Alaska Administrative Code regulations;
- (2) Records, minutes and documents of the Board and the Division of Occupational Licensing;
- (3) Licensing and certification requirements of other jurisdictions;
- (4) Interviews with Board members
- (5) Interviews conducted with personnel of:
Division of Occupational Licensing
Office of the Ombudsman
Human Rights Commission
- (6) Complaints filed with:
Human Rights Commission
Office of the Ombudsman

ORGANIZATION AND FUNCTION

Although regulation of the profession of public accountancy in Alaska dates back to 1949, the Alaska State Board of Public Accountancy was established by the First Alaska Legislature when it adopted the Accountancy Act of 1960 (AS 08.04). An amendment to the Act in 1976 added two public members to the Board, bringing its total membership to seven. (Chapter 258 SLA 1976).

The Act was further amended in 1980 (Chapter 82 SLA 1980) to provide that of the seven board members, five shall be certified public accountants and two members shall be public members. Other changes, both technical and substantive, were made in the 1980 amendments, but the Accountancy Act as amended continues to assign to the board the following major responsibilities:

1. the promulgation and amendment of rules to "establish and maintain a high standard of integrity and dignity in the profession of public accountancy" (AS 08.04.080)
2. granting of certificates of "Certified Public Accountant" to persons meeting the specified requirements (AS 08.04.100)
3. administering the Uniform CPA Examination prepared and graded by the Board of Examiners of the American Institute of Certified Public Accountants (AS 08.04.130)
4. registration of partnerships and corporations engaged in the practice of public accountancy (AS 08.04.240)
5. prescribing requirements for continuing education as a prerequisite to renewal of permit to practice (AS 08.04.425)
6. consideration of revocation or suspension of a certificate or license for a cause specified in the Act (AS 08.04.450)
7. consideration of reinstatement of a revoked or suspended certificate or license (AS 08.04.490)
8. consideration of application to the appropriate court for an order enjoining certain unlawful acts (AS 08.04.630)

Except for the exemptions specified in AS 08.04.570, the Accountancy Act of 1960 prohibits the practice of public accountancy by any individual, firm, partnership or corporation not holding a currently valid certificate license and/or permit to practice in Alaska (AS 08.04.500 et seq.).

REPORT CONCLUSION

In our opinion, the Board of Public Accountancy should be continued. Protection of the public interest is a basic tenet of Alaska's Constitution, and a continuing responsibility of state government. We believe that state regulation and licensing of the profession of public accountancy is necessary and desirable for the continued protection of the citizens of Alaska.

That conclusion is supported by the following rationale:

- Financial statements, audited and attested by certified public accountants, are relied on by many persons required to make judgments on important financial and business transactions. Users of such financial statements cannot reasonably be expected to investigate the individual qualifications and competency of every accountant who performs the attest function.
- State licensing and regulation protects the public from incompetent and fraudulent practitioners.
- State licensing and regulation assures the public that only individuals who have proven themselves skilled and knowledgeable of technical accounting principles and procedures may perform the attest function.
- The public interest is advanced when individuals, financial institutions, businesses and government agencies are able to identify and rely on public accountants who have demonstrated professional skill and competence.

All fifty states of these United States, the District of Columbia, Guam, Puerto Rico and the Virgin Islands require that a person must pass the Uniform CPA Examination in order to qualify for a CPA license. Every jurisdiction has found it in the public interest to pass laws regulating public accountancy, and each has established a board of accountancy to administer and enforce the laws. Although the requirements of those laws with respect to experience, education, age, citizenship and residency vary somewhat from one jurisdiction to another, the requirements of the Alaska Accountancy Act of 1960, as amended, appear reasonable and prudent when reviewed along with the accountancy laws of other jurisdictions.

The Alaska Statute governing public accountancy is clearly designed to set apart those who have met certain qualifications for a license, and

to restrict the use of the titles "Certified Public Accountant" and "Public Accountant" to those who have so qualified. The policies and practices of the Board of Public Accountancy observed in the conduct of this review appear to be consistent with that objective.

FINDINGS AND RECOMMENDATIONS

FINDINGS

An exhaustive performance audit of the Board of Public Accountancy was conducted in the fall of 1979. Eight specific recommendations were made in that review. The recommendations made, and actions taken pursuant to the legislative oversight hearings of 1980 follow:

Recommendation No. 1

The qualifications and conditions of Board membership (AS 08.04.020) should be amended to specify five certified public accountants or public accountants, and two public members.

Action

Recommendation accomplished in Chapter 82, SLA 1980)

Recommendation No. 2

The Board of Public Accountancy should be brought to its full complement of seven members, and maintained at that strength by means of timely appointments of qualified professional and public members.

Action

None. Over 6 months have passed since the terms of 3 members of the board have expired. The board has submitted a list of names to the Governor's Office, but as of November 7, 1983, no appointments have been made. (see Recommendation No. 1; this review)

Recommendation No. 3

Without affecting the rights and privileges of presently-licensed Public Accountants, the Accountancy Law should be amended to discontinue the licensing of new applicants as Public Accountants.

Action

Recommendation accomplished in Chapter 82, SLA 1980

Recommendation No. 4

Electronic recordings should be made of all Board meetings, and the tapes retained by DOL for two years.

Action

Recommendation accomplished in Chapter 82, SLA 1980

Recommendation No. 5

The Board should adopt a formal statement of goals, objectives and policies; and should prepare an annual report of its activities.

Action

Recommendation accomplished in Chapter 82, SLA 1980

Recommendation No. 6

AS 08.01.025 should be amended to state more clearly legislative intent with respect to the qualifications of public members of boards.

Action

Recommendation accomplished in Chapter 82, SLA 1980

Recommendation No. 7

DOL should develop improved statistical record-keeping methods and procedures.

Action

DOL's record-keeping methods and procedures have shown substantial improvement. Much of the essential data is now maintained on DOL's computer system, and appears to be easily accessible and retrievable.

Recommendation No. 8

DOL should handle investigations in a more comprehensive, efficient and timely manner.

Action

Board minutes, and interviews with board members and DOL personnel indicate that great improvement has been made regarding the investigatory function of DOL as related to public accountancy. Reports on cases in progress are now made at nearly every board meeting, and much of the backlog of public accountancy cases has been cleared up and the cases closed. (see Recommendation No. 2; this review)

In summary, it is the finding of this review that nearly all of the recommendations made in the 1979 sunset review of the Board of Public Accountancy have been implemented. The Board currently appears to be operating smoothly and efficiently in accomplishing its statutory responsibilities.

RECOMMENDATIONS

Following are the recommendations of this review:

Recommendation No. 1

The Board of Public Accountancy should be brought to its full complement of seven members, and maintained at that strength by means of timely appointments of qualified professional and public members.

Slow appointment procedures make it difficult for the Board to operate at peak efficiency. While it is true that "a member continues to serve until a successor is appointed . . ." (AS 08.04.040), it is unreasonable to expect those members whose terms have expired to invest the many hours of time required of board members over an extended period of time.

Board meetings typically extend over a full two day period, and require many hours of diligent preparation, and substantial travel of the members. The charge to "establish and maintain a high standard of integrity and dignity in the profession of public accountancy" is taken seriously by the Board. The State as well as the people of Alaska benefit from the many hours of unpaid and dedicated service contributed by members of the Board.

It is recommended that the office of the Governor expeditiously appoint qualified new members to the three expired Board seats, and continue to make appointments or reappointments to this Board in a timely manner.

Recommendation No. 2

The records of the investigations unit of DOL should be systematized and automated.

Although much of the work done by the investigatory personnel of DOL is confidential in nature, the same is true of the Ombudsman's Office, the Human Rights Commission and numerous other State agencies. They have

invariably found, however, that statistical information regarding investigations is made immeasurably faster and simpler to store and retrieve using modern computer technology.

Considering the many boards, commissions and functions served by the investigations unit, automation of these records and statistics would be of substantial assistance to the overall effectiveness and efficiency of the Division of Occupational Licensing.

*

ANALYSIS OF PUBLIC NEED

The following analysis of Board activities relates to the public need factors defined in AS 44.66.050(c). This analysis addresses those areas able to be covered within the scope of this review.

- I. The extent to which the board, commission or agency has operated in the public interest.
 1. The Board of Public Accountancy has established criteria and authored regulations setting forth the standards which an individual must satisfy in order to practice public accountancy in Alaska.
 2. The Board has established regulations requiring evidence of continuing professional education (CPE) as a condition of license renewal.
 3. The Board has held an average of three meetings per year and conducts examinations twice a year in Anchorage, Fairbanks and Juneau.

- II. The extent to which the operation of the board, commission or agency program has been impeded or enhanced by existing statutes, procedures and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.
 1. Operation of the Board has been enhanced by improvements in DOL's administration, record-keeping and statistical capabilities.
 2. Operation of the Board has been enhanced by improvements in DOL's investigations of public accountancy matters, and by the development of better rapport between the Board and its investigatory arm.

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

1. The Board has recommended several amendments to the Accountancy Act of 1960 which appear to be consistent with other jurisdictions and generally in the public interest.

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

1. Individuals who contact Board members or the Licensing Examiner who wish to present information, ask questions or register complaints are invited and encouraged to attend Board meetings.

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

1. Board meetings are held at least three times annually, are open to the public, and are advertised in a timely manner by DOL in Anchorage, Fairbanks and Juneau newspapers.
2. In accordance with the Administrative Procedures Act, the Board has invited interested persons and groups to offer testimony in regard to proposed changes in regulations, and has held advertised public hearings to receive testimony.

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

1. In the past four years, two complaints concerning the Board's activities were filed with the Ombudsman's Office. A complaint in 1980 charging the board with unfair handling of an application

was found by the ombudsman to be unsupported, and a 1982 complaint dealing with an anticipated reapplication problem proved to be a misunderstanding that was rapidly resolved to the complainant's satisfaction.

2. No complaints regarding the Board's practices or activities have been recorded in the past four years by the Human Rights Commission or the Equal Opportunity Office.

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

1. The Board has proposed and adopted regulations and standards with respect to acceptable experience necessary for certification.
2. The Board has proposed and adopted regulations for continuing professional education (CPE) as a requisite for license renewal.
3. The Board exercises diligence to assure that only those individuals who fully comply with the requirements of the statute and regulations are certificated to practice public accountancy.

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

1. The application forms for examination and certification do not inquire as to race or sex, nor do they require photos.
2. No evidence has been presented that the Board has discriminated against applicants on the basis of age, race or sex.

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

Please see RECOMMENDATIONS subsection of this review.