

ALASKA LEGISLATURE COMMITTEE FILES 1900-1900

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HB 244

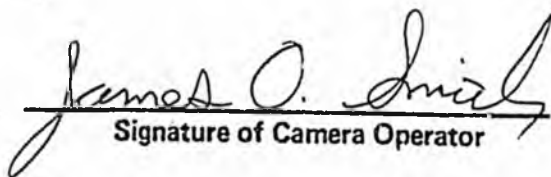
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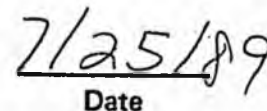


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STATE OF ALASKA
THE LEGISLATURE

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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary

1-22-86

1:30 pm

Alaska State Legislature



House of Representatives House Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4990

House Bill 244 was heard by the House Judiciary Committee during an interim work session on September 19, 1985. See tapes A, and B, dated September 19 and 20.

Bannister ✓
1-18-86

Original Sponsor: Rules Committee

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 244 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to filing and recording and to
7 recordable documents; and providing for an effective
8 date."

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

10 * Section 1. AS 40 is amended by adding a new chapter to read:

11 CHAPTER 17. RECORDING IN PUBLIC RECORDS.

12 Sec. 40.17.010. PLACE OF RECORDING AND ACCESS TO RECORDS. (a)

13 The Department of Natural Resources shall provide at each public
14 office designated by the department

15 (1) the documents and indices or alternative document re-
16 trieval system of the recording district or districts served by that
17 public office;

18 (2) a machine, device or system with which to retrieve
19 stored documents;

20 (3) a means for making copies of recorded documents and a
21 person authorized by the recorder to certify the copies;

22 (4) to the extent money is appropriated for the purpose, a
23 machine, device, or system capable of rapidly transmitting a document
24 eligible for recording to a recorder at one place of recording in the
25 state, and a person to operate the machine, device, or system; if the
26 department determines that it is not feasible to provide a machine,
27 device, or system in an office serving a recording district, it shall
28 provide for transmitting documents from the office by other expedi-
29 tious means.

1 (b) The department shall provide the staff and equipment to re-
 2 ceive and record documents and to store them permanently.

3 (c) When rapid recording and retrieval and secure storage of
 4 documents can be provided for all recording districts with a single
 5 place of recording in the state, the recorder shall record documents
 6 at a single place in the state designated by the department.

7 (d) The recorder shall provide reasonable public access during
 8 business hours to recorded documents, indices, and facilities provided
 9 for in this section.

10 Sec. 40.17.020. RECORDING CONVEYANCES. (a) A conveyance that
 11 is eligible for recording under AS 40.17.030 and 40.17.110 may be
 12 recorded only in the records of the recording district in which land
 13 affected by the conveyance is located. If land affected by the con-
 14 veyance is located in more than one recording district, an original
 15 conveyance may be recorded in the records of any district in which
 16 part of the land is located and an original or a certified copy may be
 17 recorded in the records of each other district in which part of the
 18 land is located. A certified copy so recorded has the same effect
 19 from the time it is recorded as though it were the original convey-
 20 ance.

21 (b) A certified copy of a conveyance that is eligible for re-
 22 cording under AS 40.17.030 and 40.17.110 and that has been recorded or
 23 filed in a public recorder's office in another state or in the United
 24 States Bureau of Land Management may be recorded only in the records
 25 of a recording district where land affected by the conveyance is
 26 located. When so recorded, it has the same effect from the time it is
 27 recorded as though it were the original conveyance.

28 Sec. 40.17.030. FORMAL REQUISITES FOR RECORDING. (a) To be
 29 eligible for recording, a document must be

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(1) legible or capable of being converted into legible form by a machine or device used in the recording office;

(2) capable of being copied by the method used in the recording office;

(3) accompanied by the proper fee for recording and include or be accompanied by information, stamps, certificates, taxes, or fees that under other laws are necessary to qualify the document for recording;

(4) accompanied by or include the information needed to index the document under regulations of the department;

(5) accompanied by or include the name and address of the person to whom the document is to be returned after recording; and

(6) accompanied by or include the mailing addresses of all persons named in the document who grant or acquire an interest under the document if it is a conveyance; this paragraph does not apply to a release of a security interest.

(b) A signature, acknowledgment, seal, or witness is required for a document to be eligible for recording only when required for the specific document by this chapter or by other law.

(c) A name, address, or other information required by this section shall be contained in the document that is to be recorded, or shall be recorded with the document.

(d) The recorder shall prescribe the style, size, form, and quality that a plat, plan or survey map must satisfy for filing and recording under this chapter.

Sec. 40.17.040. INDEXING. (a) The recorder shall maintain an index system of recorded documents in the manner prescribed by regulations adopted by the department. The system must be designed so the public may find documents by names of grantors and grantees, and the

1 system may include other means for locating the documents.

2 (b) The declaration for a common interest community under
3 AS 34.08 shall be indexed in the grantee's index in the name of the
4 common interest community and the association and in the grantor's
5 index in the name of each person executing the declaration.

6 Sec. 40.17.050. INCORPORATION OF MASTER FORM. A recorded master
7 form, or a numbered paragraph of it, may be incorporated by reference
8 in a recorded document by referring to the form by its recording
9 information and the number of the paragraph to be incorporated. The
10 reference has the same effect as if the master form or the numbered
11 paragraph were reproduced in full in the record at the place where the
12 reference to the form or paragraph is made.

13 Sec. 40.17.060. DOCUMENTS EXECUTED UNDER FORMER LAW. If a docu-
14 ment included under AS 40.17.110(b) or (c) was executed in accordance
15 with the law in effect at the time the document was executed, the
16 document remains recordable regardless of later amendments to the law
17 changing the manner in which that document is to be executed.

18 Sec. 40.17.070. DUTIES OF RECORDER. (a) The recorder shall
19 promptly record all documents presented which are recordable in ac-
20 cordance with AS 40.17.020, 40.17.030 and 40.17.110.

21 (b) The recorder shall maintain a daily log and index for re-
22 corded documents.

23 (c) As a document is recorded, the recorder shall indicate on or
24 attach to each document the date, hour, and minute of recording, enter
25 that information and a consecutive serial number in the daily log
26 without delay in the order in which the documents are received, and
27 note the serial number on the document.

28 (d) If a document presented for recording is reviewed and re-
29 jected for recording, the recorder shall indicate on or attach to the

1 document the date, hour, and minute of rejection and a citation of the
 2 statute requiring rejection. If the document is later determined to
 3 be recordable in the form in which it was earlier presented to the
 4 recorder, later recording does not relate back to the time and date of
 5 rejection. Recording is effective when the document is accepted for
 6 recording, regardless of the cause of the rejection.

7 (e) The recorder shall promptly copy recorded documents and
 8 place them in permanent records and shall note the recording informa-
 9 tion at the entry of each document in the daily log.

10 (f) Promptly after recording a document, the recorder shall make
 11 the index entries required in this chapter and in the regulations of
 12 the department.

13 (g) After recording, the recorder shall return the document to
 14 the person who presented it or a person designated by the person who
 15 presented it.

16 (h) The recorder shall certify copies and provide a certified
 17 copy of a recorded document to a person who tenders the proper fee.

18 (i) The recorder need not record part of a document if the part
 19 is identified and preceded by the words "From Previously Recorded
 20 Master Form--Do Not Record" and the recorded part contains a reference
 21 to the master form's recording information.

22 Sec. 40.17.080. EFFECT OF RECORDING ON TITLE AND RIGHTS: CON-
 23 STRUCTIVE NOTICE. (a) Subject to (c) and (d) of this section, from
 24 the time a document is recorded in the records of the recording dis-
 25 trict in which land affected by it is located, the recorded document
 26 is constructive notice of the contents of the document to subsequent
 27 purchasers and holders of a security interest in the same property or
 28 a part of the property.

29 (b) A conveyance of real property in the state (other than a

1 lease for a term of less than one year) is void as against a subse-
2 quent innocent purchaser in good faith for valuable consideration of
3 the property or a part of the property whose conveyance is recorded
4 first. An unrecorded conveyance is valid as between the parties to it
5 and as against one who has actual notice of it. In this subsection,
6 "purchaser" includes a holder of a consensual interest in real prop-
7 erty that secures payment or performance of an obligation.

8 (c) The recording of an assignment of a security interest is not
9 in itself notice to the debtor. The debtor may pay the assignor
10 unless the debtor has actual notice of the assignment.

11 (d) A recorded option or agreement to enter into a contract in
12 the future ceases to be constructive notice for any purpose

13 (1) when six months have elapsed after the date of record-
14 ing of the option or agreement, if the recorded option or agreement
15 contains no expiration date;

16 (2) when 30 days have elapsed after the expiration date of
17 the option or agreement, if the recorded option or agreement contains
18 an expiration date.

19 Sec. 40.17.090. CONVEYANCES AND RECORDED DOCUMENTS AS EVIDENCE.

20 (a) An acknowledged and recorded signed document relating to title to
21 real property creates presumptions with respect to title that

22 (1) the document is genuine and was executed as the volun-
23 tary act of the person purporting to execute it;

24 (2) the person executing the document and the person on
25 whose behalf it is executed are the persons they are purported to be
26 and the person executing it was neither incompetent nor a minor at any
27 relevant time;

28 (3) delivery of the document occurred notwithstanding a
29 lapse of time between dates on the document and the date of recording;

1 (4) any necessary consideration was given;

2 (5) the grantee, transferee, or beneficiary of an interest
3 created or claimed by the document acted in good faith at all relevant
4 times up to and including the time of the recording;

5 (6) a person purporting to act as an agent, attorney in
6 fact under a recorded power of attorney or authority, officer of an
7 organization, or in a fiduciary or official capacity, held the posi-
8 tion the person purported to hold, acted within the scope of the
9 person's authority, and in the case of an organization, the authoriza-
10 tion satisfied all requirements of law; and in the case of an agent,
11 acted for a principal who was neither incompetent nor a minor at any
12 relevant time and who had not revoked the agency;

13 (7) if the document purports to be executed in accordance
14 with or to be a final determination in a judicial or administrative
15 proceeding, or to be executed under a power of eminent domain, the
16 court, official body, or condemnor acted within its jurisdiction and
17 all steps required for the execution of the title document were taken;

18 (8) the recitals and other statements of fact in a convey-
19 ance are true if the matter stated is relevant to the purpose of the
20 document;

21 (9) the persons named in, signing, or acknowledging the
22 document and persons named in, signing, or acknowledging another
23 related document in a chain of title are identical, if the persons
24 appear in those documents under identical names, or under variants of
25 the names, including inclusion, exclusion, or use of

26 (A) commonly recognized abbreviations, contractions,
27 initials, or colloquial or other equivalents;

28 (B) first or middle names or initials;

29 (C) simple transpositions that produce substantially

1 similar pronunciations;

2 (D) articles or prepositions in names or titles;

3 (E) descriptions of entities as corporations, com-
4 panies, or abbreviations or contractions of either; or

5 (F) name suffixes, such as "Senior" or "Junior",
6 unless other information appears of record indicating that they
7 are different persons; and

8 (10) all other requirements for the execution, delivery and
9 validity of the document have been satisfied.

10 (b) The presumptions stated in (a) of this section arise even if
11 the document purports only to release a claim or convey an interest of
12 the person executing it or of the person on whose behalf it is exe-
13 cuted.

14 (c) Facts stated in a recorded certificate of a public official
15 in affidavit form or under the seal of the official's office and
16 derived from information or documents obtained or kept by the official
17 as part of official duties are presumed to be true.

18 Sec. 40.17.100. RECORDING A RECONVEYANCE. When the parties to a
19 recorded conveyance absolute in its terms intend it to serve only as
20 security for repayment of a debt, the conveyance is absolute as to all
21 persons who rely upon it in good faith and for value before a recon-
22 veyance is recorded.

23 Sec. 40.17.110. DOCUMENTS ELIGIBLE FOR RECORDING. (a) A signed
24 document listed in (b) of this section or included under (c) of this
25 section that meets the requisites for recording under AS 40.17.030 may
26 be recorded. The effect on title and rights of recording documents is
27 determined under AS 40.17.080.

28 (b) The recorder may record only

29 (1) a conveyance acknowledged or proven under

1 AS 34.15.150 - 34.15.250 or a certified copy of the conveyance if
2 recording the copy is permitted by AS 40.17.020;

3 (2) an acknowledged or proven power of attorney or other
4 instrument granting or revoking a power to act as agent or attorney
5 for another person;

6 (3) a contract for the sale or purchase of real property,
7 when acknowledged or proven by all parties to the contract;

8 (4) an option for the purchase of real property when it is
9 acknowledged by the person granting the option;

10 (5) a certificate of a public official or an affidavit of
11 any person that may affect the title to or any interest in real prop-
12 erty in the state that is described in the certificate or affidavit,
13 stating facts relating to age, sex, birth, death, capacity, relation-
14 ship, family history, heirship, names, identity of parties, marital
15 status, possession or adverse possession, adverse use, residence,
16 service in the armed forces, conflicts and ambiguities in description
17 of land in recorded instruments, and the happening of any condition or
18 event that may terminate an estate or interest; a certificate or
19 affidavit recorded under this section must contain the recording
20 information of a recorded document referred to in it;

21 (6) an instrument by which a real property security agree-
22 ment is subordinated or waived as to priority;

23 (7) a document creating a condition, covenant, restriction,
24 or reservation relating to rights in real property;

25 (8) an assignment of all or part of a security interest in
26 real property;

27 (9) a release of lien or security interest in real prop-
28 erty;

29 (10) an exact or fully conformed copy of a document that is

1 otherwise recordable as a document under this section, when the person
2 offering the document attaches to it an affidavit that

3 (A) the exact or fully conformed copy was received by
4 the person in the course of the transaction;

5 (B) the original is not in the person's possession;
6 and

7 (C) the instrument offered for recordation is an exact
8 or fully conformed copy;

9 (11) a conveyance from the United States of an interest in
10 real property in the state;

11 (12) a certified copy of a petition in bankruptcy;

12 (13) a notice of an action previously filed and pending in a
13 court of the state or the United States affecting title to real prop-
14 erty in the state, if the notice contains the case number assigned by
15 the court and a description of the property affected in the recording
16 district;

17 (14) notice of an action for divorce, separate maintenance,
18 annulment or dissolution of marriage previously filed and pending in a
19 court of any state or the United States affecting title to real prop-
20 erty in this state, if the notice contains the case number assigned by
21 the court;

22 (15) notice of a pending judicial proceeding to compel
23 recording or indexing, if the notice contains the case number assigned
24 by the court;

25 (16) a certified copy of a judgment decree or order of a
26 court of a state in an action for divorce, separate maintenance,
27 annulment or dissolution of marriage requiring the execution of a
28 conveyance of real property in this state;

29 (17) a list of real property granted by a governmental

1 entity to the state, a municipality, or a corporation;

2 (18) a conveyance executed by an officer of the state by
3 authority of law in the state;

4 (19) a notice limiting future advances under a recorded
5 security agreement;

6 (20) a certified copy of a judgment or decree of a court of
7 the state or of a court of record of the United States or a certified
8 copy of a satisfaction of judgment or decree;

9 (21) a certificate of attachment or an order or proceeding
10 of record discharging attachment;

11 (22) a condemnation order;

12 (23) a declaration of taking;

13 (24) a copy of the record of the meeting of a cemetery
14 association;

15 (25) a cooperative contract;

16 (26) a list of persons whose cooperative contracts have been
17 terminated;

18 (27) a letter of conservatorship;

19 (28) an employee's lien for failure to make payments to a
20 benefit fund;

21 (29) an employment security contributions lien;

22 (30) a verified workers' compensation lien;

23 (31) a mining claim, location, or lease;

24 (32) a grubstake contract;

25 (33) a mining assessment work affidavit;

26 (34) a notice to contribute or forfeit an interest in a
27 mining claim;

28 (35) a subdivision plat;

29 (36) a signed and sworn-to certificate of limited

1 partnership and a signed and sworn-to amendment to a certificate of
2 limited partnership;

3 (37) a declaration or amendments to a declaration under
4 AS 34.07 or AS 34.08, an instrument by which property may be removed
5 from the provisions of AS 34.07 or AS 34.08, and an instrument affect-
6 ing property controlled by AS 34.07 or AS 34.08; a declaration under
7 AS 34.08 may not be recorded unless it satisfies the requirements of
8 AS 34.08.090(b);

9 (38) a survey map and floor plan for a building under
10 AS 34.07, or a plat or plan for a common interest community under
11 AS 34.08;

12 (39) a substitution of trustee under a deed of trust, or
13 other person having a power of sale under a real property security
14 agreement, when executed and acknowledged by all the beneficiaries;

15 (40) notice and affidavits required in default and sale
16 under a deed of trust;

17 (41) a notice of right to mechanics' or materialmen's lien;

18 (42) an attested or notarized copy of a notice of nonrespon-
19 sibility for construction, alteration, or repair;

20 (43) an acknowledgment of right to mechanics' or material-
21 men's lien;

22 (44) a verified claim of lien under AS 34.35;

23 (45) a verified notice of completion of a building or im-
24 provement;

25 (46) a bond guaranteeing payment of the sum recovered on a
26 mechanics' or materialmen's lien;

27 (47) a notice extending a mechanics' or materialmen's lien;

28 (48) a state tax lien;

29 (49) a federal tax lien;

1 (50) an instrument transferring a water appropriation or a
2 certified copy of it;

3 (51) a financing statement covering goods that are or are to
4 become fixtures to real property described in the financing statement;
5 if the debtor does not have an interest of record in the real prop-
6 erty, the financing statement must show the name of the record owner
7 of the real property;

8 (52) an assignment of rents;

9 (53) a memorandum of lease as defined in AS 40.17.120(b);

10 (54) a state highway right-of-way map;

11 (55) an armed forces report of separation;

12 (56) a document amending or correcting a recorded document
13 listed in this section if the amending or correcting document is exe-
14 cuted by the same parties who executed the original document; and

15 (57) a master form that can be incorporated by reference in
16 documents later recorded.

17 (c) A document specifically permitted or required to be recorded
18 by another law of the state or made recordable by regulation of the
19 department may be recorded.

20 Sec. 40.17.120). RECORDING MEMORANDUM OF LEASE. (a) Recording a
21 memorandum of lease substantially complying with (b) of this section
22 has the same effect as recording the lease.

23 (b) A memorandum of lease is a document signed by the lessor and
24 lessee and containing a reference to an unrecorded lease, sublease, or
25 agreement to lease or sublease, and supplying at least the following
26 information:

27 (1) the names of the parties;

28 (2) any addresses of the parties set out in the lease;

29 (3) the date of the lease;

1 (4) a description of the real property leased or subleased;

2 (5) the commencement and termination dates of the lease if
3 fixed and, if not fixed, the method by which the dates are to be
4 fixed; and

5 (6) a statement of the conditions upon which a party may
6 exercise a right to extend or renew the lease or to exercise a right
7 to purchase or refuse to purchase the real property or part of it.

8 Sec. 40.17.130. ACTIONS AGAINST RECORDER AND STATE. (a) If the
9 recorder fails to record and index a document properly, the recorder
10 may be compelled to record and index the document properly by an
11 action filed in the superior court.

12 (b) The state is liable to a person injured by the failure of
13 the recorder to perform duties under this chapter. Neither the re-
14 corder nor a state employee performing duties of the recorder is
15 individually liable for a good faith error or omission made in the
16 course of employment.

17 Sec. 40.17.900. DEFINITIONS. In this chapter

18 (1) "acceptance" means the determination by the recorder
19 that a document is recordable under this chapter accompanied by mark-
20 ing an identifying code on the document and entering the document in a
21 daily log;

22 (2) "certified copy" means a copy of a document certified
23 as correct by the custodian or other person authorized to make the
24 certification;

25 (3) "conveyance" means a transfer of an interest in real
26 property other than by will or operation of law;

27 (4) "department" means the Department of Natural Resources;

28 (5) "document" means a writing, plat, plan, or map, and
29 includes information in a form (such as electronic, mechanical, or

1 magnetic storage; microfilm; or electronic data transmission signals)
2 that can be converted into legible writing, plat, plan, or map form by
3 a machine or device;

4 (6) "place of recording" means a place designated by the
5 department where documents recordable under this chapter are recorded;

6 (7) "record" means the acceptance of a document by the re-
7 corder that the recorder has determined is recordable under this
8 chapter and that is presented for recording in the place of recording
9 designated for the recording district where affected property is
10 located whether or not the place of recording is in that district, and
11 whether or not under applicable law the recorder is directed to record
12 the document;

13 (8) "recorder" means the commissioner of the department or
14 the commissioner's designee;

15 (9) "recording district" means a part of the state des-
16 ignated a recording district under AS 44.37.025; and

17 (10) "recording information" means information (book and
18 page, document number, electronic retrieval code, or other specific
19 information) needed to find a document in the public records.

20 * Sec. 2. AS 19.10.260 is amended to read:

21 Sec. 19.10.260. REPLACEMENT OF PERMANENT MARKERS AND FILING OF
22 RIGHT-OF-WAY MAP AFTER CONSTRUCTION. The department shall:

23 (1) replace all permanent markers on private or municipal
24 property that were destroyed or lost during highway construction to
25 permit persons to determine accurately new boundary lines resulting
26 from the construction;

27 (2) file and record in the local recording district, after
28 completion of highway construction, an accurate right-of-way map that
29 will contain sufficient engineering and survey information designating

1 where the resulting boundary lines are located on private or municipal
2 property along the highway.

3 * Sec. 3. AS 29.40.090(b) is amended to read:

4 (b) The platting authority shall waive the preparation, sub-
5 mission for approval, filing, and recording of a plat on satisfactory
6 evidence that the subdivision meets the requirements of (a) of this
7 section and each lot created by the subdivision is five acres or
8 larger.

9 * Sec. 4. AS 29.40.110(b) is amended to read:

10 (b) The platting authority shall state in writing its reasons
11 for disapproval of a plat. If the platting authority approves a plat,
12 the plat shall be acknowledged, [AND] filed, and recorded in accor-
13 dance with AS 40.15.010 - 40.15.020.

14 * Sec. 5. AS 29.40.150 is amended to read:

15 Sec. 29.40.150. RECORDING. If the alteration or replat is
16 approved, the revised plat shall be acknowledged, [AND] filed, and
17 recorded in accordance with AS 40.15.010 - 40.15.020.

18 * Sec. 6. AS 29.40.180 is amended to read:

19 Sec. 29.40.180. VIOLATIONS. The [IT IS UNLAWFUL FOR THE] owner
20 of land located in a subdivision may not [TO] transfer, sell, offer to
21 sell, or enter into a contract to sell land in a subdivision before a
22 plat of the subdivision has been prepared, approved, [AND] filed, and
23 recorded in accordance with this chapter. A [IT IS UNLAWFUL FOR A]
24 person may not [TO] file or record a plat or other document depicting
25 subdivided land in a public recorder's office unless the plat or
26 document has been approved by the platting authority. For the viola-
27 tion of a provision of this chapter, a subdivision regulation adopted
28 under this chapter, or a term, condition, or limitation imposed by a
29 platting authority in the exercise of its powers under this chapter, a

1 municipality may by ordinance prescribe a penalty not to exceed a fine
2 of \$1,000 and imprisonment for 90 days.

3 * Sec. 7. AS 34.07.020(14) is amended to read:

4 (14) a reference to the file number and recording informa-
5 tion for [OF] the floor plans of the building affected that [WHICH]
6 are required to be filed and recorded simultaneously with the declara-
7 tion under AS 34.07.030.

8 * Sec. 8. AS 34.07.030 is amended to read:

9 Sec. 34.07.030. FILING AND RECORDING OF SURVEY MAP AND FLOOR
10 PLANS WITH VERIFIED STATEMENT. There shall be filed and recorded
11 simultaneously with the recording of the declaration in the recording
12 district in which the property is located

13 (1) a survey map of the surface of the land submitted under
14 [TO] the provisions of this chapter showing the location of the build-
15 ing on it;

16 (2) a set of the floor plans of the building showing the
17 layout, apartment numbers and dimensions of the apartments in suffi-
18 cient detail to identify and locate each apartment with certainty,
19 stating the name of the building or that it has no name, and bearing
20 the verified statement of a registered architect or registered profes-
21 sional engineer certifying that it is an accurate copy of portions of
22 the plans of the building as filed with and approved by the govern-
23 mental entity having jurisdiction over the approval or issuance of
24 permits for the construction of the building, or a statement that no
25 approval or permit is required.

26 * Sec. 9. AS 34.07.040(a) is amended to read:

27 (a) If the floor plans do not include a verified statement by a
28 registered architect or registered professional engineer that the
29 plans fully and accurately depict the layout, apartment numbers, and

1 dimensions of the apartments as built, there shall be recorded before
2 the first conveyance of an apartment an amendment to the declaration
3 to which shall be attached a verified statement of a registered archi-
4 tect certifying that the plans previously filed and recorded or being
5 filed and recorded simultaneously with the amendment fully and accu-
6 rately depict the layout, apartment number and dimensions of the
7 apartments as built.

8 * Sec. 10. AS 34.07.050 is amended to read:

9 Sec. 34.07.050. FORM OF FLOOR PLANS. The recording office shall
10 prescribe the style, size, form, and quality of floor plans filed and
11 recorded under AS 34.07.030.

12 * Sec. 11. AS 34.08.090 is amended to read:

13 Sec. 34.08.090. CREATION OF COMMON INTEREST COMMUNITIES. (a) A
14 common interest community may be created under this chapter only by
15 recording a declaration executed in the same manner as a deed and, in
16 a cooperative, by conveying the real estate subject to the declaration
17 to the association. The declaration must be recorded, and a plat or
18 plan that is part of the declaration filed and recorded, in each
19 recording district in which a portion of the common interest community
20 is located and must be indexed in the grantee's index in the name of
21 the common interest community and the association and in the grantor's
22 index in the name of each person executing the declaration.

23 (b) In a condominium, a declaration or an amendment to a decla-
24 ration that adds a unit may not be recorded, and a plat or plan that
25 is part of the declaration may not be filed or recorded, unless the
26 structural components and mechanical systems of each building contain-
27 ing or comprising a unit of the condominium are completed substantial-
28 ly in accordance with the plans, as evidenced by a certificate of
29 completion recorded with the declaration or amendment to the

1 declaration and executed by

2 (1) an independent registered engineer, architect, or land
3 surveyor;

4 (2) an appraiser with the designation of Senior Residen-
5 tial Appraiser, Senior Real Property Appraiser or Senior Real Estate
6 Analyst of the Society of Real Estate Appraisers;

7 (3) a Residential Member or Member, Appraisal Institute,
8 of the American Institute of Real Estate Appraisers; or

9 (4) an individual with a designation established by regu-
10 lation of the Alaska Housing Finance Corporation for fee appraisers
11 who certify the completion of construction.

12 * Sec. 12. AS 34.08.140(b) is amended to read:

13 (b) After the declaration for a leasehold condominium or lease-
14 hold planned community is recorded, and a plat or plan that is part of
15 the declaration is filed and recorded, neither the lessor nor the
16 successor in interest of the lessor may terminate the leasehold inter-
17 est of a unit owner who makes timely payment of a unit owner's share
18 of the rent and otherwise complies with the covenants that, if violat-
19 ed, would entitle the lessor to terminate the lease. The leasehold
20 interest of a unit owner in a condominium or planned community is not
21 affected by the failure of any other person to pay rent or fulfill a
22 covenant.

23 * Sec. 13. AS 34.08.140(d) is amended to read:

24 (d) If the expiration or termination of a lease decreases the
25 number of units in a common interest community, the allocated inter-
26 ests must be reallocated under AS 34.08.740(a) as if the units had
27 been taken by eminent domain. The reallocation must be confirmed by
28 an amendment to the declaration prepared, executed, and recorded by
29 the association of unit owners; a plat or plan that accompanies the

1 amendment must be filed and recorded with the amendment.

2 * Sec. 14. AS 34.08.160(b) is amended to read:

3 (b) Except as the declaration otherwise provides, a limited
4 common element may be reallocated by an amendment to the declaration
5 executed by the unit owners between or among whose units the realloca-
6 tion is made. The persons executing the amendment shall provide a
7 copy of the amendment to the association, which shall record the
8 amendment and file and record a plat or plan that accompanies the
9 amendment [IT]. The amendment must be recorded, and an accompanying
10 plat or plan filed and recorded, in the names of the parties and the
11 common interest community.

12 * Sec. 15. AS 34.08.170(b) is amended to read:

13 (b) Each plat must show:

14 (1) the name and a survey or general schematic map of the
15 entire common interest community;

16 (2) the location and dimensions of the real estate not
17 subject to development rights or subject only to the development right
18 to withdraw, and the location and dimensions of each existing improve-
19 ment within the real estate;

20 (3) a legally sufficient description of the real estate
21 subject to development rights, labeled to identify the rights applic-
22 able to each parcel;

23 (4) the extent of each encroachment by or upon a portion
24 of the common interest community;

25 (5) to the extent feasible, a legally sufficient descrip-
26 tion of each easement serving or burdening a portion of the common
27 interest community;

28 (6) the location and dimensions of any vertical unit
29 boundaries not shown or projected on plans filed and recorded under

1 (d) of this section and the identifying number of the unit;

2 (7) the location with reference to an established datum of
3 any horizontal unit boundaries not shown or projected on plans filed
4 and recorded under (d) of this section and the identifying number of
5 the unit;

6 (8) a legally sufficient description of any real estate in
7 which the unit owners will own only an estate for years, labeled as
8 "leasehold real estate";

9 (9) the distance between noncontiguous parcels of real
10 estate comprising the common interest community;

11 (10) the location and dimensions of limited common ele-
12 ments, including porches, decks, balconies and patios, other than
13 parking spaces and the other limited common elements described in
14 AS 34.08.100(2) and (4);

15 (11) in the case of real estate not subject to development
16 rights, all other matters customarily shown on land surveys.

17 * Sec. 16. AS 34.08.170(f) is amended to read:

18 (f) Upon the exercise of a [ANY] development right, the declar-
19 ant shall either file and record new plats and plans necessary to
20 conform to the requirements of (a), (b), and (d) of this section, or
21 file and record new certifications of plats and plans previously filed
22 and recorded if the plats and plans otherwise conform to the require-
23 ments of (a), (b), and (d) of this section.

24 * Sec. 17. AS 34.08.170(h) is amended to read:

25 (h) The state recorder shall prescribe the style, size, form,
26 and quality of plats and plans filed and recorded under this chapter.

27 * Sec. 18. AS 34.08.180(a) is amended to read:

28 (a) To exercise a development right reserved under AS 34.08.-
29 130(a)(8), a declarant shall prepare, execute, and record an amendment

1 to the declaration, file and record a plat or plan that accompanies
2 the amendment, and, in a condominium or planned community, comply with
3 AS 34.08.170. The declarant is the unit owner of the units created
4 under the amendment. The amendment to the declaration must assign an
5 identifying number to each new unit created, and, except in the case
6 of subdivision or conversion of units described in (b) of this sec-
7 tion, reallocate the allocated interests among all units. The amend-
8 ment must describe any common elements and any limited common elements
9 created under the amendment and, in the case of limited common ele-
10 ments, designate the unit to which each is allocated to the extent
11 required by AS 34.08.160.

12 * Sec. 19. AS 34.08.200(b) is amended to read:

13 (b) The association

14 (1) in a condominium or planned community shall prepare,
15 file, and record plats or plans necessary to show the altered bound-
16 aries between adjoining units, and their dimensions and identifying
17 numbers; and

18 (2) in a cooperative shall prepare and record amendments
19 to the declaration, and file and record a plat or plan [INCLUDING ANY
20 PLANS,] necessary to show or describe the altered boundaries between
21 adjoining units [,] and their dimensions and identifying numbers.

22 * Sec. 20. AS 34.08.210(a) is amended to read:

23 (a) If the declaration expressly permits it, a unit may be
24 subdivided into two or more units. Upon application of a unit owner
25 to subdivide a unit, the association shall, subject to the provisions
26 of the declaration and other provisions of law, prepare, execute, and
27 record an amendment to the declaration subdividing the unit, including
28 in a condominium or planned community filing and recording a plat or
29 plan that accompanies the amendment [THE PLATS AND PLANS, SUBDIVIDING

1 THE UNIT].

2 * Sec. 21. AS 34.08.250(c) is amended to read:

3 (c) Each amendment to the declaration must be recorded, and a
4 plat or plan that accompanies the amendment filed and recorded, in
5 each recording district in which a portion of the common interest
6 community is located and the amendment is effective only upon record-
7 ing. An amendment, except an amendment under AS 34.08.200(a), must be
8 indexed in the name of the common interest community and the associa-
9 tion and in the name of the parties executing the amendment.

10 * Sec. 22. AS 34.08.320(a) is amended to read:

11 (a) Except as provided in (b) of this section and subject to the
12 provisions of the declaration, the association may:

13 (1) adopt and amend bylaws and rules and regulations;

14 (2) adopt and amend budgets for revenues, expenditures,
15 and reserves and collect assessments for common expenses from unit
16 owners;

17 (3) hire and discharge managing agents and other employ-
18 ees, agents, and independent contractors;

19 (4) institute, defend, or intervene in litigation or
20 administrative proceedings or seek injunctive relief for violations of
21 its declaration, bylaws or rules in its own name on behalf of itself
22 or two or more unit owners on matters affecting the common interest
23 community;

24 (5) make contracts and incur liabilities;

25 (6) regulate the use, maintenance, repair, replacement,
26 and modification of common elements;

27 (7) cause additional improvements to be made as a part of
28 the common elements;

29 (8) acquire, hold, encumber, and convey in its own name

1 any right, title, or interest to real estate or personal property,
2 except that

3 (A) common elements in a condominium or planned
4 community may be conveyed or subjected to a security interest
5 only under AS 34.08.430; and

6 (B) part of a cooperative may be conveyed or all or
7 part of a cooperative may be subjected to a security interest
8 only under AS 34.08.430;

9 (9) grant easements, leases, licenses, and concessions
10 through or over the common elements;

11 (10) impose and receive a payment, fee, or charge for the
12 use, rental, or operation of the common elements, other than limited
13 common elements described in AS 34.08.100(2) and (4), and for services
14 provided to unit owners;

15 (11) impose a reasonable charge for late payment of assess-
16 ments and, after notice and an opportunity to be heard, levy a reason-
17 able fine for a violation of the declaration, bylaws, rules, and
18 regulations of the association;

19 (12) impose a reasonable charge for the preparation and
20 recording of an amendment to the declaration, the filing and recording
21 of a plat or plan that accompanies an amendment, resale certificate
22 required by AS 34.08.590, or a statement of unpaid assessments;

23 (13) provide for the indemnification of its officers and
24 executive board and maintain directors' and officers' liability insur-
25 ance;

26 (14) assign its right to future income, including the right
27 to receive common expense assessments, but only to the extent the
28 declaration expressly permits the assignment;

29 (15) exercise any other powers conferred by the declaration

1 or bylaws;

2 (16) exercise any other power that may be exercised in the
3 state by a legal entity of the same type as the association; and

4 (17) exercise any other power necessary and proper for the
5 governance and operation of the association.

6 * Sec. 23. AS 34.08.440(h) is amended to read:

7 (h) A portion of the common interest community for which insur-
8 ance is required under this section that is damaged or destroyed must
9 be repaired or replaced promptly by the association unless (1) the
10 common interest community is terminated and AS 34.08.260 applies, (2)
11 repairs or replacement would be illegal under a state statute or
12 municipal ordinance governing health or safety, or (3) 80 percent of
13 the unit owners, including each owner of a unit or assigned limited
14 common element that will not be rebuilt, vote not to rebuild. The
15 cost of repair or replacement in excess of insurance proceeds and
16 reserves is a common expense. If the entire common interest community
17 is not repaired or replaced, (1) the insurance proceeds attributable
18 to the damaged common elements must be used to restore the damaged
19 area to a condition compatible with the remainder of the common inter-
20 est community, and (2) except to the extent that other persons will be
21 distributees, (A) the insurance proceeds attributable to a unit and
22 limited common elements that is not rebuilt must be distributed to the
23 owner of the unit and the owner of the unit to which the limited
24 common elements were allocated, or to lien holders, as their interests
25 may appear, and (B) the remainder of the proceeds must be distributed
26 to each unit owner or lien holder, as their interests may appear, as
27 follows: (i) in a condominium, in proportion to the common element
28 interest of all the units and (ii) in a cooperative or planned commun-
29 ity, in proportion to the common expense liabilities of all the units.

1 If the unit owners vote not to rebuild a unit, the allocated interests
2 of the unit are reallocated upon the vote as if the unit had been
3 condemned under AS 34.08.740(a), and the association promptly shall
4 prepare, execute [EXECUTED], and record an amendment to the declara-
5 tion reflecting the reallocations, and file and record a plat or plan
6 that accompanies the amendment.

7 * Sec. 24. AS 34.08.700 is amended to read:

8 Sec. 34.08.700. SUBSTANTIAL COMPLETION OF UNITS. In the sale of
9 a unit for which delivery of a public offering statement is required,
10 a contract of sale may be executed, but an interest in the unit may
11 not be conveyed until the declaration is recorded, a plat or plan that
12 accompanies the declaration is filed and recorded, and the unit is
13 substantially completed as evidenced by issuance of a certificate of
14 occupancy authorized by law or by a recorded certificate of substan-
15 tial completion executed by

16 (1) an independent registered engineer, architect, or land
17 surveyor;

18 (2) an appraiser with the designation of senior residen-
19 tial appraiser, senior property appraiser or senior real estate ana-
20 lyst of the Society of Real Estate Appraisers;

21 (3) a residential member or member, appraisal institute,
22 of the American Institute of Real Estate Appraisers; or

23 (4) an individual with a designation established by regu-
24 lation of the Alaska Housing Finance Corporation for fee appraisers
25 who certify the completion of construction.

26 * Sec. 25. AS 34.08.740(a) is amended to read:

27 (a) If a unit is acquired by eminent domain or part of a unit is
28 acquired by eminent domain leaving the unit owner with a remnant that
29 may not practically or lawfully be used for any purpose permitted by

1 the declaration, the award must include compensation to the unit owner
 2 for that unit and its allocated interests, whether or not any common
 3 elements are acquired. Upon acquisition, unless the decree otherwise
 4 provides, the allocated interests of the unit are automatically real-
 5 located to the remaining units in proportion to the respective allo-
 6 cated interests of those units before the taking, and the association
 7 shall promptly prepare, execute, and record an amendment to the decla-
 8 ration reflecting the reallocations, and file and record a plat or
 9 plan that accompanies the amendment. A remnant of a unit remaining
 10 after part of a unit is taken under this subsection is a common ele-
 11 ment from that time.

12 * Sec. 26. AS 34.08.990(30) is amended to read:

13 (30) "special declarant rights" means the right reserved
 14 for the benefit of a declarant to

15 (A) complete improvements indicated on plats and
 16 plans filed and recorded with the declaration or, in a coopera-
 17 tive, to complete improvements described in the public offering
 18 statement under [PURSUANT TO] AS 34.08.530(a)(2);

19 (B) exercise a development right;

20 (C) maintain sales offices, management offices, signs
 21 advertising the common interest community, and models;

22 (D) use easements through the common elements for the
 23 purpose of making improvements within the common interest commu-
 24 nity or within real estate that may be added to the common inter-
 25 est community;

26 (E) make the common interest community subject to a
 27 master association;

28 (F) merge or consolidate a common interest community
 29 with another common interest community of the same form of

1 ownership; or

2 (G) appoint or remove an officer of the association
3 or a master association or an executive board member during a
4 period of declarant control;

5 * Sec. 27. AS 34.15 is amended by adding a new section to read:

6 Sec. 34.15.015. USE OF RECORDED MASTER FORM. If reference is
7 made in a document to a recorded master form, a copy of the form, or
8 so much of it as is incorporated by reference, must be provided to
9 each party to the transaction by the party that furnished the docu-
10 ment.

11 * Sec. 28. AS 38.04.045(b) is amended to read:

12 (b) Before the conveyance of surface rights to state land, an
13 official cadastral survey shall be accomplished, unless a comparable,
14 acceptable survey exists that has been conducted by the federal Bureau
15 of Land Management. The rectangular survey section corner positions
16 shall be monumented and shown on a cadastral survey plat approved by
17 the state. However, for those areas where the state may wish to
18 convey surface estate outside of an official cadastral survey grid,
19 the director may waive monumentation of all individual section corner
20 positions and substitute an official control survey with control
21 points being monumented and shown on control survey plats approved by
22 the state. No portion of land to be conveyed may be located more than
23 two miles from such a survey control monument except that the commis-
24 s. may waive this requirement on a determination that topographic
25 features, diffuse settlement, or the public interest do not justify
26 the requirement. The lots and tracts in state subdivisions shall be
27 monumented and the cadastral survey and plats for the subdivision
28 shall be approved by the state. Where land is located within a muni-
29 cipality with planning, platting, and zoning powers, plats for state

1 subdivisions shall comply with local ordinances and regulations in the
2 same manner and to the same extent as plats for subdivisions by other
3 landowners. State subdivisions shall be filed and recorded in the
4 district recorder's office. The requirements of this section do not
5 apply to land made available through a cabin permit system, material
6 sales, or short-term leases; however, for short-term leases the lessee
7 must comply with local subdivision ordinances unless waived by the
8 municipality under procedures specified by ordinance.

9 * Sec. 29. AS 40.15.010 is amended to read:

10 Sec. 40.15.010. APPROVAL, FILING, AND RECORDING OF SUBDIVISIONS.
11 Before the lots or tracts of any subdivision or dedication may be sold
12 or offered for sale, the subdivision or dedication shall be submitted
13 for approval to the authority having jurisdiction, as prescribed in
14 this chapter. The regular approval of the authority shall be shown on
15 it or attached to it and the subdivision or dedication shall be filed
16 and recorded [FOR RECORD] in the office of the recorder. The recorder
17 may [SHALL] not accept a subdivision or dedication for filing and
18 recording unless it shows this approval. If no platting authority
19 exists as provided in AS 40.15.070 - 40.15.130, lands may be sold
20 without approval.

21 * Sec. 30. AS 40.15.020 is amended to read:

22 Sec. 40.15.020. PLATS TO BE ACKNOWLEDGED AND CONTAIN CERTIFICATE
23 THAT TAXES AND ASSESSMENTS ARE PAID. Every plat shall be acknowledged
24 before an officer authorized to take acknowledgment of deeds. A cer-
25 tificate of acknowledgment shall be endorsed on or annexed to the plat
26 and recorded with it. A person filing and recording a plat, map, sub-
27 division, or replat of property, or vacating the whole or any portion
28 of an existing plat, map, subdivision, or replat shall [, AT THE TIME
29 OF FILING IT FOR RECORD OR FILING THE PETITION TO VACATE,] file and

1 record with it a certificate from the tax-collecting official or
2 officials of the area in which the land is located that all taxes
3 levied against the property at that date are paid.

4 * Sec. 31. AS 40.15.030 is amended to read:

5 Sec. 40.15.030. DEDICATION OF STREETS, ALLEYS AND THOROUGHFARES.
6 When an area is subdivided and a plat of the subdivision is approved,
7 filed, and recorded, all streets, alleys, thoroughfares, parks and
8 other public areas shown on the plat are considered to be [DEEMED TO
9 HAVE BEEN] dedicated to public use.

10 * Sec. 32. AS 40.15.040 is amended to read:

11 Sec. 40.15.040. CERTIFIED COPY OF PLAT AS [IS] EVIDENCE. A copy
12 of a plat certified by the recorder of the recording district in which
13 it is filed or recorded as a true and complete copy of the original
14 filed or recorded in the recording office for the district [ON FILE IN
15 HIS OFFICE] is admissible in evidence in all courts in the state with
16 the same effect as the original.

17 * Sec. 33. AS 40.15.050 is amended to read:

18 Sec. 40.15.050. [RECORDED] PLATS LEGALIZED. All plats filed or
19 recorded with the recorder [RECORDED] before March 30, 1953, whether
20 executed and acknowledged in accordance with this chapter or not, are
21 validated and all streets, alleys or public thoroughfares shown on
22 these plats are considered to be [AS HAVING BEEN] dedicated to public
23 use. [THIS SECTION DOES NOT PROHIBIT THE ABANDONMENT OF A PLAT RE-
24 CORDED BEFORE MARCH 30, 1953, IF A SUBSEQUENT PLAT IS FILED INDICATING
25 ABANDONMENT.] The last plat of the area of record on March 30, 1953,
26 is the official plat of the area as of that date, and the streets,
27 alleys, or thoroughfares shown on it are considered [DEEMED] to be
28 [THE STREETS, ALLEYS OR THOROUGHFARES] dedicated to public use. The
29 streets, alleys or thoroughfares shown on an earlier plat of the same

1 area or any part of it which is in conflict with those shown on the
2 official plat are considered to be [IS DEEMED TO HAVE BEEN] abandoned
3 and vacated.

4 * Sec. 34. AS 40.15.060 is amended to read:

5 Sec. 40.15.060. MISSING PLATS. When [WHERE] a filed or recorded
6 plat is missing and no present record is available except by reference
7 to the missing plat, a counterpart copy, approved by the platting
8 authority, may be filed and recorded as of the original date of the
9 missing plat and after filing and recording [RECORDATION] has the same
10 legal effect and notice as the original missing plat.

11 * Sec. 35. AS 40.15.070 is amended to read:

12 Sec. 40.15.070. PLATTING AUTHORITY. If land proposed to be
13 subdivided or dedicated is situated within a first or second class
14 borough, the proposed subdivision or dedication shall be submitted to
15 the borough planning commission for approval. If the land is situated
16 within a city in the unorganized borough or the third class borough,
17 the proposed subdivision or dedication shall be submitted to the city
18 planning commission for approval. The borough planning commission is
19 the platting authority for the first or second class borough, the city
20 planning commission is the platting authority for the city, and the
21 Department of Natural Resources [DIVISION OF LANDS] is the platting
22 authority in the remaining areas of the state and third class borough
23 for the change or vacation of existing plats or a portion of such
24 plats, as provided in AS 40.15.075. If the borough or the city does
25 not have a planning commission, the borough assembly or the city
26 governing body, respectively, is the platting authority and the pro-
27 posed subdivision or dedication shall be submitted to it. A [NO]
28 subdivision may not be filed and recorded [FOR RECORD] until it is
29 approved by the platting authority.

1 * Sec. 36. AS 40.15.075 is amended to read:

2 Sec. 40.15.075. AUTHORITY IN THE UNORGANIZED BOROUGH AND THIRD
3 CLASS BOROUGH. The Department of Natural Resources [DIVISION OF
4 LANDS] is the platting authority in the area outside organized bor-
5 oughs and outside cities in the unorganized borough and in the third
6 class borough for only the purposes of hearing and acting on petitions
7 for the change or vacation of plats and shall execute this function
8 substantially in conformity with the provisions of AS 29.40.130 -
9 29.40.160. Costs of publication and mailing authorized in AS 29.33.-
10 130 shall be paid to the Department of Natural Resources [DIVISION] by
11 the petitioner. The Department of Natural Resources shall adopt
12 reasonable regulations governing the exercise of the authority confer-
13 red by this section [UPON THE DIVISION OF LANDS].

14 * Sec. 37. AS 40 is amended by adding a new chapter to read:

15 CHAPTER 19. RECORDING FEDERAL LIENS.

16 Sec. 40.19.010. APPLICABILITY. The provisions of this chapter
17 apply to federal tax liens and to other federal liens notice of which
18 under an Act of Congress or a regulation adopted under the authority
19 of an Act of Congress is required or permitted to be filed or recorded
20 in the same manner as a notice of federal tax lien.

21 Sec. 40.19.020. PLACE OF RECORDING. (a) Notices of lien,
22 certificates, and other notices affecting a federal tax lien or other
23 federal lien shall be recorded under this chapter.

24 (b) Notices of lien upon real property for obligations payable
25 to the United States and certificates and notices affecting the lien
26 shall be recorded in the records of the recording district in which
27 the real property subject to the lien is situated.

28 (c) Notices of federal lien upon personal property, whether tan-
29 gible or intangible, for obligations payable to the United States and

1 certificates and notices affecting the lien shall be recorded in the
2 records of the recording district where the person against whose
3 interest the lien applies resides at the time of recording of the
4 notice of lien.

5 (d) For purposes of (c) of this section the residence of a cor-
6 poration or partnership is the place in which the principal executive
7 office of the business is located.

8 Sec. 40.19.030. EXECUTION OF NOTICES AND CERTIFICATES. Certi-
9 fication of notices of lien, certificates, or other notices affecting
10 federal liens by the United States Secretary of the Treasury or by the
11 designee of the United States Secretary of the Treasury, or by an
12 official or entity of the United States responsible for filing, re-
13 cording, or certifying, of notice of any other lien, entitles the
14 notices or certificates to be recorded and further attestation, certi-
15 fication, or acknowledgement is not necessary.

16 Sec. 40.19.040. DUTIES OF RECORDER. (a) If a notice of federal
17 lien, a rerecording of notice of federal lien, or a notice of revoca-
18 tion of a certificate described in (b) of this section is presented to
19 the recorder under AS 40.17, the recorder shall endorse on the notice
20 an identification and the date and time of recording and enter it
21 first in the daily log of recorded documents and then in an alphabet-
22 ical index showing the name of the person named in the notice, the
23 date and time of recording, the title of the official or entity certi-
24 fying the lien, and the total amount appearing on the notice of lien.

25 (b) If a rerecorded notice of federal lien referred to in (a) of
26 this section or a certificate of release, nonattachment, discharge, or
27 subordination of lien or a revocation of any of these certificates is
28 presented to the recorder for recording, the recorder shall record it
29 in the way a document listed in (a) of this section would be recorded

1 and shall enter the rerecorded notice or the certificate or revocation
2 with the date of recording in the alphabetical index together with a
3 reference to the recording information for the original notice or
4 certificate to which it relates.

5 (c) A lien on file with records of a recording district on the
6 effective date of this section is considered to have been recorded at
7 the date and time it was filed.

8 (d) In this section "rerecording" includes recording of a lien
9 previously filed.

10 Sec. 40.19.050. UNIFORMITY OF APPLICATION AND CONSTRUCTION. To
11 the extent the provisions of this chapter follow the Uniform Federal
12 Lien Registration Act (1978) they shall be applied and construed to
13 effectuate their general purpose to make uniform the law with respect
14 to the subject of this chapter among the states enacting it.

15 * Sec. 38. AS 43.10.042 is repealed and reenacted to read:

16 Sec. 43.10.042. RECORDING LIEN AND CERTIFICATE OF DISCHARGE.
17 (a) A lien imposed under this title is not valid as against a mort-
18 gagee or other lien holder, pledgee, purchaser, or judgment creditor
19 until notice of it is recorded in the records of the recording dis-
20 trict where the property subject to the lien is situated. However,
21 regardless of the date the liens are recorded, a lien arising out of a
22 tax due under AS 43.56 and AS 43.75, including the penalties and
23 interest on the tax, is a lien prior, paramount, and superior to all
24 other liens, mortgages, hypothecations, conveyances, and assignments,
25 upon all the real and personal property of the person liable for the
26 tax, and upon all the real and personal property used with the permis-
27 sion of the owner to carry on the business which is subject to the
28 tax.

29 (b) AS 40.19.040 applies to a notice of state tax lien and

1 documents relating to a state tax lien as well as to a notice of
2 federal lien and documents relating to a federal lien.

3 * Sec. 39. AS 44.37.025 is amended to read:

4 Sec. 44.37.025. RECORDING. (a) The Department of Natural Re-
5 sources shall adopt regulations [,] establishing, modifying, or dis-
6 continuing recording districts or precincts and prescribing the re-
7 cords to be maintained and the instruments to be recorded, consistent
8 with AS 40.17.

9 (b) The department shall [ENGAGE AND COMPENSATE RECORDERS AND
10 DEPUTY RECORDERS,] prescribe and account for recording fees [,] and do
11 all other things necessary to maintain the recording system estab-
12 lished under the laws of this state.

13 (c) The department, with the concurrence of the administrative
14 director of courts, may appoint judicial employees to perform services
15 in connection with recording, providing access to, and copying [RE-
16 CORD] documents in locations where the department has no employees
17 available to perform those functions [SERVE AS RECORDERS].

18 (d) The department shall file with the commissioner of commerce
19 and economic development a copy of each conveyance recorded that
20 contains a statement that property is conveyed to a nonresident alien
21 or for the benefit of a nonresident alien.

22 * Sec. 40. In the following statutes the revisor of statutes is di-
23 rected to delete the requirement or permission that a document be filed or
24 filed for record and to substitute a corresponding requirement or permis-
25 sion that the document be recorded: AS 09.40.050; AS 09.55.370; AS 10.15.-
26 230, 10.15.235, 10.15.260; AS 10.30.020; AS 13.26.265; AS 23.10.047;
27 AS 23.20.200, 23.20.250(a); AS 23.30.165; AS 27.10.020, 27.10.050, 27.10.-
28 060, 27.10.070, 27.10.160, 27.10.170, 27.10.190, 27.10.210(b), 27.10.230;
29 AS 32.10.010, 32.10.240; AS 34.07.020, 34.07.040, 34.07.050, 34.07.070;

1 AS 34.20.090; AS 34.35.065, 34.35.160, 34.35.185, 34.35.240, 34.35.250,
2 34.35.305, 34.35.330, 34.35.405, 34.35.440; AS 38.05.195, 38.05.200, 38.-
3 05.205, 38.05.210, 38.05.220, 38.05.230, 38.05.245, 38.05.250, 38.05.265,
4 38.05.275; AS 38.20.100; AS 45.09.402(f); and AS 46.15.160.

5 * Sec. 41. The following laws are repealed: AS 34.15.260 - 34.15.350;
6 AS 34.20.020; and AS 43.10.090 - 43.10.150.

7 * Sec. 42. This Act takes effect January 1, 1987.
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STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907.465 3600

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 17, 1986

SUBJECT: Revised Sectional Analysis for proposed
CSHB 244 (Judiciary)

TO: Representative M. M. Miller
Chairman
House Judiciary Committee

FROM: Theresa L. Bannister *TB*
Legislative Counsel

This is the revised sectional analysis that you requested for proposed CSHB 244 (Judiciary). The bulk of the analysis and language is taken directly from House and Journal Supplement No. 6 of February 27, 1985; I have merely brought it up to date with the proposed committee substitute. The main differences between HB 244 and proposed CSHB 244 (Judiciary) are (1) elimination of class B document recording, and (2) amendments necessitated by the new municipal code (AS 29) and the new Uniform Common Interest Ownership Act (AS 34.08).

Section 1. The main body of the bill is Section 1. It creates a new chapter 17 in AS 40 to replace AS 34.15.260-34.15.350. The Uniform Simplification of Land Transfers Act is the basis for several of the sections and is referred to in these notes as the USLTA. Alaska Statute numbers are used here for reference within the section.

AS 40.17.010

SOURCE: The section is original drafting.

COMMENT: This section is an overview of the recording system expressed in terms of the recording and retrieval services to be provided by the Department of Natural Resources.

There are provisions for future recording in a central place by electronic transmission of documents from offices for the

various recording districts, and records will be available for search in those offices.

Central recording of documents in this basic "constructive notice" recording system can be and perhaps must be, deferred. One or more recording districts at a time can be shifted to central recording based upon readiness for the transfer as reflected in appropriations the department requests and receives for the purpose. (Reference (a) (4)). Under (c), complete transfer to central recording is mandated only when the DNR staff and equipment are ready. The broad standard of readiness in (c) seems necessary at this stage since no malfunction of the system can be risked. Subsection (c) should be read with AS 44.37.025, which gives the Department of Natural Resources broad authority over establishing, modifying, or discontinuing recording districts.

AS 40.17.020

SOURCE: AS 34.15.260 with major changes and additions. Part of existing AS 34.15.260 also appears in Sections 40.17.080 and 40.17.090 in this bill. Subsection (b) provides that certified copies of documents recorded or filed in public recording offices in other states or in the Bureau of Land Management are entitled to recordation. It is sometimes necessary to go to these records to complete a chain of title. Recording is defined in the general definitions section, AS 40.17.140.

AS 40.17.030

SOURCE: (a)(1) is from USLTA sec. 2-301(a)(1); (a)(2) is from USLTA sec. 2-301(a)(2); (a)(3) is from USLTA sec. 2-301(a)(3); (a)(4) and (a)(5) are original drafting; (a)(6) is AS 34.15.345 paraphrased; (b) is based on USLTA sec. 2-301(b); (d) is from AS 34.08.170(h).

COMMENT: Except for subsection (d), the form requirements of this section are applicable to all documents offered for recording. The section fits the definition of "document" which may even be in the form of electronic signals so long as the form is compatible with equipment in the recording office.

Subparagraph (a)(4) contains only a minimal reference to the requirement of indexing information. Indexing is the subject of the following section, AS 40.17.040. Subparagraph

(a)(5) is to discourage the unauthorized presentation of a document for recording and to provide a record of how each document came to the recording office. At present, a document is mailed back after it is recorded. Subparagraph (a)(6) is information needed by municipalities to keep up real property tax rolls and provides assistance in locating parties to transactions.

Regarding subsection (b), the bill leaves intact the requirement that a conveyance must be acknowledged before it can be recorded. Reference AS 40.17.110(b)(1) in the bill. The term is broadly defined in the "definitions" section, AS 40.17.140, to mean any transfer of an interest in real property other than by will or operation of law. But where another document is made recordable by law, only the form requirements of that law and this section apply.

AS 40.17.040

SOURCE: The section is original drafting.

COMMENT: In the bill, except for the specific indexing requirements of AS 34.08 (Uniform Common Interest Ownership Act) that are included in (b) of this section, indexing has been left to regulation of the department responsible for the recording system. Indexing a document to a specific tract is highly desirable. But parts of the state are not sufficiently accustomed to the existing formalities of recording to make it practical to require sophisticated tract indexing information in all recording districts. Regulation is the more flexible approach and seems the desirable one for the present. Unofficial tract indices are kept at present and would be continued in any event.

AS 40.17.050

SOURCE: The section is from USLTA sec. 2-309.

COMMENT: The purpose of allowing the recording of master forms is to reduce the volume of documents recorded. A final sentence of USLTA sec. 2-309(a) provides: "This section does not affect contractual relations of parties to a title transaction." The sentence is omitted as superfluous.

Indexing of a master form is not covered here since indexing is to be generally covered by regulation.

AS 40.17.060

SOURCE: AS 34.15.270, paraphrased.

COMMENT: The section of Alaska Statutes this section would replace applies only to "conveyances" and provides that a conveyance legal when executed remains recordable and retains "the same force as evidence." The redraft is broader since it applies to all recordable documents. The reference to "same force as evidence" is not included since it is considered to be unnecessary. The "force" of recorded documents as evidence is addressed in AS 40.17.090.

AS 40.17.070

SOURCE: (a) is from USLTA sec. 6-203; (b) and (c) are based upon USLTA sec. 6-204(a) and 6-204(b); (d) is original drafting; (e) is from USLTA sec. 6-204(c); (f) is from USLTA sec. 6-205(a); (g) is from USLTA sec. 6-205(d); (h) is from USLTA sec. 6-201(b); and (i) is from USLTA sec. 6-204(d) paraphrased.

COMMENT: The recorder's duties are spelled out in this section. Subsection (b) does not refer to book and page indexing, but book and page indexing is consistent with it and can be continued as long as it is useful. Consistent with the definition of "record", (c) requires acceptance (recording) of a recordable document without delay in the order in which it is received. Subsections (c) and (d) make it clear that the time of recording is the time of acceptance even when a document is erroneously rejected and later accepted. If a person is damaged by erroneous rejection of a recordable class A document, the person's remedy is to seek damages from the state under AS 40.17.130 in this bill. The reference in (i) is to a master form recorded under AS 40.17.050.

AS 40.17.080

SOURCE: (a) is from AS 34.15.260(a); (b) is from AS 34.15.290; (c) is AS 34.20.010 redrafted; and (d) is from USLTA sec. 3-206 paraphrased.

COMMENT: Law on constructive notice is gathered in this section. Existing and traditional law is perpetuated. Subsection (d) allows a title searcher to assume that no contract or deed was executed pursuant to a recorded option

or earnest money agreement after passage of a reasonable period of time.

AS 40.17.090

SOURCE: Subsections (a) and (b) are based upon USLTA sec. 2-305(a) and (b), which in turn are based upon the Model Act concerning Evidenciary Effect of the Record. Subsection (c) is original drafting.

COMMENT: This section is generally designed to pull together provisions for the evidenciary effect of recorded documents. Subsections (a) and (b) provide in detail for several rebuttable presumptions arising from recording. By Alaska Rule of Evidence 301(a), a presumption created here would not shift the burden of proof, but a person seeking to avoid the presumption would have to present some evidence to rebut it.

AS 40.17.100

SOURCE: AS 34.15.310 redrafted.

COMMENT: No change in the substance of existing law is intended by this section, but the statutory language is simplified.

AS 40.17.110

SOURCE: (a) is original drafting. (b) is a list of documents derived from the following sources, with substantial changes in some instances. (b)(1) as indicated in the subparagraph; (b)(2) is from AS 34.15.320(a)(1) and AS 34.15.330; (b)(3) is from AS 34.15.320(a)(2); (b)(4) is original drafting; (b)(5) is from Conn. Gen. Stat. Ann. 47-1(a); (b)(6) is from AS 34.20.130; (b)(7), (b)(8) and (b)(9) are original drafting; (b)(10) is from AS 34.15.340(a)(6) but is expanded in coverage to apply to any otherwise recordable document; (b)(11) is from AS 34.15.340(a)(1); (b)(12) is based on 11 U.S.C. sec. 549(c) of the Bankruptcy Act; (b)(13) is from AS 34.15.340(a)(2); (b)(14) and (b)(15) are original drafting; (b)(16) is from AS 34.15.340(a)(3); (b)(17) is from AS 34.15.340(a)(4); (b)(18) is from AS 34.15.340(a)(5); (b)(19) is from AS 06.30.560; (b)(20) is from AS 09.30.010; (b)(21) is from AS 09.40.050; (b)(22) is from AS 09.55.370; (b)(23) is from AS 19.05.090; (b)(24) is from AS 10.30.020; (b)(25) is from AS 10.15.230--10.15.235;

(b)(26) is from AS 10.15.260; (b)(27) is from AS 13.26.265; (b)(28) is from AS 23.10.047 (b)(29) is from AS 23.20.200; (b)(30) is from AS 23.30.165; (b)(31) is from AS 27.10.050 and AS 27.10.070, AS 38.05.185--38.05.220 and 38.05.245; (b)(32) is from AS 27.10.020 and AS 27.15.010; (b)(33) is from AS 27.10.160; (b)(34) is from AS 27.10.190; (b)(35) is from AS 40.15; (b)(36) is from AS 32.10.010 and 32.10.240; (b)(37) is from AS 34.07 and AS 34.08; (b)(38) is from AS 34.07.030 and AS 34.08; (b)(39) is from AS 34.20.120; (b)(40) is from AS 34.20.070--34.20.080; (b)(41) is from AS 34.35.064; (b)(42) is from AS 34.35.065; (b)(43) is from AS 34.35.069; (b)(44) is from AS 34.35.070, 34.35.085, 34.35.160, 34.35.185, 34.35.240, 34.35.250, 34.35.305, 34.35.330, 34.35.405, 34.35.440 and 34.35.450; (b)(45) is from AS 34.35.071; (b)(46) is from AS 34.35.072; (b)(47) is from AS 34.35.080; (b)(48) is from AS 43.10.042; (b)(49) is from AS 43.10.090--43.10.150 (and see sec. 37 of this bill); (b)(50) is from AS 46.15.160; (b)(51) is from the UCC, secs. 9-313(1)(b) and 9-402(5); (b)(52) and (b)(53) are original drafting; (b)(54) is from AS 19.10.260(2); (b)(55) is from AS 26.10.070; (b)(56), (b)(57) and (c) are original drafting.

COMMENT: This section maintains control over what recorded documents will constitute constructive notice. The section pulls together all documents made recordable throughout existing law and also includes documents made recordable by departmental regulation.

By (b)(1) a document that is a conveyance must be acknowledged or proven to be eligible for recording. Since every document by which an interest in land is transferred (except a will) is a conveyance, all such documents must be acknowledged or proven before they are recordable whether or not the term "acknowledged" or "proven" is used in listing the document as recordable.

Paragraph (b)(5) allows affidavits to be recorded. Recorded affidavits in other states have been helpful in clearing land titles and have caused no special problems. Paragraph (b)(7) broadly affords the opportunity to record a document that limits property rights, including a Public Land Order. Paragraph (b)(12) provides for recording a bankruptcy petition; 11 U.S.C. sec. 549(c) gives a particular legal effect to a recorded bankruptcy petition where a transfer of real property to a good faith purchaser is involved. Paragraph (b)(13) provides for recording a traditional

notice of cases pending in Alaska and United States courts that affect Alaska real property. Paragraph (b)(14) provides for recording a lis pendens from outside the state in specified domestic relations cases where persons dealing with Alaska marital property should know a property settlement is pending; and (b)(16) provides for recording an order or judgment from such a case. Paragraph (b)(51) is a category called "fixture filing" in the 1972 uniform amendments to the UCC. (Reference: AS 45.09.313(1) and 45.09.402(f)). Paragraph (b)(55), an armed forces report of separation, is an example of a document not related directly related to real property but specifically made recordable by another statute, AS 26.10.070.

Subsection (c) allows recordation of all documents made recordable by other law or by regulation of the department.

AS 40.17.120

SOURCE: USLTA sec. 2-310.

COMMENT: This USLTA section is based upon the law of Pennsylvania and provides in simple terms for the recording of a memorandum of a lease. Some state laws on the subject are much more complex. A memorandum of lease avoids cluttering the records with lengthy documents of temporary significance.

AS 40.17.130

SOURCE: (a) is from USLTA sec. 6-210 with changes and (b) is from USLTA sec. 6-211 with changes.

COMMENT: This section provides for an action to compel recording, clarifies the state's liability, and limits the conditions for liability of recording employees.

AS 40.17.140

SOURCE: (1) is original drafting; (2) is based on Rule 902, Alaska Rules of Evidence; (3) is from USLTA sec. 1-201; (4) is founded on AS 44.37.025; (5) is based on USLTA sec. 1-201; (6) is original drafting (7) is based upon USLTA sec. 1-201; (8) and (9) are original drafting; and (10) is based on USLTA sec. 1-201.

COMMENT: The broad definition of "document" is used in the draft to permit advanced technology in recording. Paragraph (7) makes acceptance for recording the event that determines when a document is recorded.

Sections 2-26

Sections 2 through 26 deal with plats, floor and construction plans, and maps and can be considered as a unit.

Some of the existing statutes on plats used the terms "file" and "record" interchangeably. Although statutory directions are not always clear, existing practice is to not record plats but to keep them on file in the recording offices.

Section 2 through 26 require that plats and plans be kept on file and that they be recorded, that is, copied into public records. In generations past, recording required laborious copying in longhand. These days a document is quickly copied by a photo process exactly in the form in which it is presented. (By AS 40.17.030 in the bill, if a plat, map or other document cannot be copied, it is not accepted for recording.)

The bill is drafted both for the existing system and for the future time when most use of the recording system will be through remote terminals. As noted above, plats, plans and maps that are required to be filed for public access will also be recorded so they can be viewed and copied at remote terminals. Since not all needs for a plat or plan will be met by the recorded copy, the original will be available in the district recorder's office to the same extent as at present.

Sections 2 through 26 accomplish this purpose for the following:

- maps Sec. 2 (AS 19.10.260(2))--state highway right-of-way
- plats Sec. 3 (AS 29.40.090(b))--subdivision and dedication
- plats Sec. 4 (AS 29.40.110(b))--subdivision and dedication
- Sec. 5 (AS 29.40.150)--subdivision and dedication plats
- Sec. 6 (AS 29.40.180)--subdivision and dedication plats
- Sec. 7 (AS 34.07.020(14))--condominium floor plans

Sec. 8 (AS 34.07.030)--condominium floor plans and survey maps
Sec. 9 (AS 34.07.040(a))--condominium floor plans
Sec. 10 (AS 34.07.050)-- condominium floor plans
Sec. 11 (AS 34.08.090)--common interest community plats/plans
Sec. 12 (AS 34.08.140(b))-- common interest community plats/plans
Sec. 13 (AS 34.08.140(d))-- common interest community plats/plans
Sec. 14 (AS 34.08.160(b))-- common interest community plats/plans
Sec. 15 (AS 34.08.170(b))-- common interest community plats/plans
Sec. 16 (AS 34.08.170(f))-- common interest community plats/plans
Sec. 17 (AS 34.08.170(h))-- common interest community plats/plans
Sec. 18 (AS 34.08.180(a))-- common interest community plats/plans
Sec. 19 (AS 34.08.200(b))-- common interest community plats/plans
Sec. 20 (AS 34.08.210(a))-- common interest community plats/plans
Sec. 21 (AS 34.08.250(c))-- common interest community plats/plans
Sec. 22 (AS 34.08.320(a))-- common interest community plats/plans
Sec. 23 (AS 34.08.440(h))-- common interest community plats/plans
Sec. 24 (AS 34.08.700)-- common interest community plats/plans
Sec. 25 (AS 34.08.740(a))-- common interest community plats/plans
Sec. 26 (AS 34.08.990(30))-- common interest community plats/plans

Section 27

SOURCE: This section is original drafting.

COMMENT: Recording of a master form is provided by AS 40.17.050 in section 1 of this bill. Section 27 is inserted to prevent a possible misuse of the recordable form.

Sections 28 - 36

Sections 28 - 36 are included for the same purpose as sections 2 - 26. Section 28 - 36 accomplish this purpose for the following:

- Sec. 28 (AS 38.04.045(b))--state subdivision plats
- Sec. 29 (AS 40.15.010)--subdivision and dedication plats
- Sec. 30 (AS 40.15.020)--subdivision and dedication plats
- Sec. 31 (AS 40.15.030)--subdivision and dedication plats
- Sec. 32 (AS 40.15.040)--subdivision and dedication plats
- Sec. 33 (AS 40.15.050)--subdivision and dedication plats
- Sec. 34 (AS 40.15.060)--subdivision and dedication plats
- Sec. 35 (AS 40.15.070)--subdivision and dedication plats
- Sec. 36 (AS 40.15.075)--subdivision and dedication plats

Section 37

SOURCE: AS 40.19.010--40.19.050 are the Uniform Federal Lien Registration Act (1978), with significant changes and deletions.

COMMENT: Several features of the Uniform Federal Lien Registration Act (1978) were found to be objectionable or unnecessary and are changed or deleted from this bill. The changes and deletions all approved, according to the original sectional analysis, by the Internal Revenue Service, are:

(1) The uniform act provides for "filing" of federal liens. This bill provides for recording them. Filing requires the recorder to retain paper liens and releases, a procedure inconsistent with the photocopying system in use for documents generally in the recorder's offices. Although 26 U.S.C. sec. 6323 refers to "filing" of federal tax liens, the original sectional analysis indicated that IRS regional counsel considers the term to be used broadly to include recording, the procedure called for in this bill.

(2) The uniform act provides generally for filing (here the term includes recording) of both real and personal property liens with the recorder but calls for filing liens on personal property of corporations and partnerships with

the "secretary of state." This is an apparent reference to Uniform Commercial Code filing. Federal law (26 U.S.C. sec. 6323) contains no such requirement. The original sectional analysis indicated that recording officials of King County, Washington had indicated that adoption of the provision in that state led to much confusion there. It is deleted from AS 40.19.020--40.19.050 in this bill, which provides a single method of recording all federal liens.

(3) The uniform act provides that the recorder, upon request, shall certify whether liens are filed against a named person. This would be a departure from the tradition that the recorder only keep the records available for search and not be required to search them. The provision is deleted from AS 40.19.040 in this bill.

(4) The uniform act sets fees and provides for billing. Since statutes are a poor place for such details, and since AS 44.37.025(b) gives broad power to the Department of Natural Resources to set fees and establish procedures, the provisions are deleted from this bill.

A repealer at the end of the bill provides for repeal of the obsolete earlier version of the Uniform Federal Tax Lien Registration Act (AS 43.10.090--43.10.150) which was adopted by Alaska as ch 94, CLA 1933. Existing state law is inadequate mainly because (1) it lacks provisions for determining where personal property will be deemed to be located; (2) it requires separate tax liens indices that are unnecessary and are not being kept as separate indices; and (3) its provisions for physically attaching a release to the original lien is not workable for recorded liens.

Section 38

SOURCE: AS 43.10.042

COMMENT: By this section, the method of recording federal tax liens in AS 40.19.040 in the bill is made applicable to state tax liens also.

Section 39

SOURCE: AS 44.37.025

COMMENT: The changes are designed to be compatible both with the existing system and with a central place of recording. The original sectional analysis indicated that the revisor of statutes might wish to move this section to

Title 40 with recording statutes rather than leave it in
Title 44 with statutes on duties of state departments.

Section 40

COMMENT: Except as indicated earlier in the commentary for sections 2-26 of the bill, there is no clear reason for the distinction made in existing laws that provide for filing some documents and recording (copying) others. With the concept of a central place of recording where all records (copies) are to be stored with access through remote terminals, maintaining the distinction between filing and recording becomes impractical. Keeping original documents such as tax liens on file instead of recording them would be cumbersome and would serve no useful purpose. In keeping with this concept, the various statutes are listed in which terminology should be changed to "record" from "file" or "file for record."

Section 41

This section repeals the following sections:

- AS 34.15.260, Recording conveyances and conveyances as evidence;
- AS 34.15.270, Conveyances executed and acknowledged under former laws;
- AS 34.15.280, Certificate of reception and recording of conveyance;
- AS 34.15.290, Invalidity of unrecorded conveyance;
- AS 34.15.300, Record or transcript of conveyance as evidence;
- AS 34.15.310, Recording instrument of defeasance;
- AS 34.15.320, Powers to convey and contracts to sell or purchase land;
- AS 34.15.330, Revocation;
- AS 34.15.340, Other real instruments that may be recorded;
- AS 34.15.345, Disclosure of address of record purchaser;
- AS 34.15.350, Definition;
- AS 43.10.090, Filing notices of liens and certificates of discharge;
- AS 43.10.100, Entry and filing of tax lien notices in Federal Tax Lien Index;
- AS 43.10.110, Entry of discharge certificate in Federal Tax Lien Index and attachment to notice of lien;
- AS 43.10.120, Manner of furnishing Federal Tax Lien Index and Federal Tax Lien Notices file;

Representative M.M. Miller
Page 13
January 17, 1986

AS 43.10.130, Purpose;
AS 43.10.140, Interpretation;
AS 43.10.150, Short title.

Section 42
Makes the act effective January 1, 1987.

TLB:csh
c5/009

Alaska
MUNICIPAL
League

TELEPHONE
(907) 586-1325

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

January 21, 1986

To: Representative Mike Miller, Chairman
Members, House Judiciary Committee

From: Scott A. Burgess, Executive Director
Alaska Municipal League



Subject: HB 244 - Document Recording

During the AML Annual Conference in November, representatives of the League's 116 member municipalities chose to include, on page eleven of the AML Policy Statement, the following language:

" Proof of Approval: Subdivision of land is a major factor in community development, creating patterns which have long lasting effects. Although present legislation clearly recognizes the need for regulation of subdivisions, means of enforcement are inadequate. The League supports legislation which would require proof of approval by local authorities prior to the filing of an instrument, including those filed or ordered by the State, which would change the boundaries of land."

Sec. 40.15.010, (page 6) of HB 244 accomplishes that. Thus, the Alaska Municipal League would like to go on record as supporting HB 244, as long as Sec. 40.15.010 remains intact in the bill.

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES & CORPORATIONS

BILL SHEFFIELD, GOVERNOR

POUCH D
JUNEAU, ALASKA 99811

Banking & Securities (907) 465-2521
Corporations Section (907) 465-2530

ANCHORAGE

Corporation Information (907) 563-2163

December 4, 1985

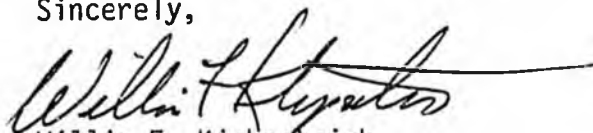
Mr. Hayden Kaden
Committee Counsel
Pouch V
Juneau, AK 99811

Dear Mr. Kaden:

RE: HB 244 and HB 245

Our staff in the Division of Banking, Securities and Corporations has reviewed the subject bills and find they are out of our area of responsibility and expertise. Thank you, however, for the opportunity to comment.

Sincerely,



Willis F. Kirkpatrick
Director

WFK/me1267M
120485A

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF TECHNICAL SERVICES

BILL SHEFFIELD, GOVERNOR

RECORDER'S OFFICE

250 Cushman St. Suite 3A
Fairbanks, Alaska 99701

October 25, 1985

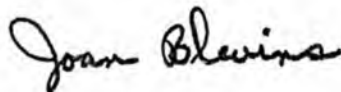
Hayden Kaden
Committee Counsel
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Kaden:

In response to your letter dated October 18, 1985 concerning House Bill 244 relating to filing and recording of recordable documents.

The Fairbanks District Recorders Office concurs with House Bill 244 except for the section on Class B documents.

Sincerely yours,



Joan Blevins
Fairbanks District Recorder

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF TECHNICAL SERVICES

BILL SHEFFIELD, GOVERNOR

RECORDER'S OFFICE
1001 W. 4TH AVENUE
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-2653

House of Representatives
House Judiciary Committee
Pouch V
Juneau, Ak. 99811
Atten: Hayden Kaden

November 5, 1985

Dear Mr. Kaden:

In reviewing HB 244, I have found a few areas of concern.

Class B documents mentioned under Sec. 40.17.010 (4)(C) serve no purpose and will only cost the state money to maintain a separate system for them.

Accepting a copy of a document under current laws is very restrictive. As I read Sec. 40.17.110 (10) it would open it up to all documents. I do not feel that this would benefit the citizens of this state as it could result in documents being altered for fraudulent purposes.

I appreciate the opportunity to add my comments.

Sincerely,



Robin P. Carr
Anchorage Recording Supervisor

RPC:rc

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

OFFICE OF THE COMMISSIONER

October 11, 1985

The Honorable Mike M. Miller
Chairman
House Judiciary Committee
Pouch V
Juneau, AK 99811

Dear Representative Miller:

As you have requested, I am providing additional information about the Fiscal Note for House Bill 244 (copy attached). The current Fiscal Note relates to the portion of the bill which concerns Class B documents. If this portion of the bill is deleted, the Fiscal Note for the amended bill would be zero.

In earlier testimony the department was concerned that if HB 244 was enacted, up to one and one-half years might be needed to adequately inform the public about changes in the law and develop regulations to implement the legislation. Since that time, the department has drafted and will soon promulgate regulations which would allow changes of the type required by HB 244. We now estimate that six months would be sufficient time to inform the public and implement changes required by the bill and support the January 1, 1987, effective date for HB 244.

Please let me know if you would like additional information.

Sincerely,



Robert D. Arnold
Deputy Commissioner

Enclosure

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST HB-244
Bill/Resolution No.: SB-197
Title: Recording Bill

FISCAL DETAIL
Agency Affected: Dept. of Natural Resources
Program Category Affected: NRMEC

Sponsor: Legislative Council
Requestor: Code Revision Committee
Date of Request: 2/27/85

BRU, Program or Subprogram(s) Affected: Information/Records Mgmt.

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES	-0-	-0-	27.3	28.6	30.1	31.1
200 TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL	-0-	10.	-0-	-0-	-0-	-0-
400 SUPPLIES	-0-	-0-	8.	8.	8.	8.
500 EQUIPMENT	-0-	5.	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
800 MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	15.	35.3	36.6	38.1	39.1

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	15.	35.3	36.6	38.1	39.1
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

FY '86 \$10.0 in contractual is for class B computer program. EDP standards require very rigid written documentation for any program developed. \$5.0 is for a terminal, hook-up, printer, cable, etc.

FY '87 one position to perform class B documents, microfilming and computer supplies.

Prepared By: Joseph Burch and Rose Farren Phone: 786-2400
Division: Technical Services Date: 3/11/85

Approved by Commissioner: Mrs D Arnold Date: _____
Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget

HOUSE & SENATE JOINT
JOURNAL SUPPLEMENT

February 27, 1985

No. 6

THE FOLLOWING COMMENTARY

FROM THE

ALASKA CODE REVISION COMMISSION

COVERS

HOUSE BILL NO. 244)

)

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

SENATE BILL NO. 197)

to state tax liens also.

Section 24

SOURCE: AS 44.37.025.

COMMENT: The changes are designed to be compatible both with the existing system and with a central place of recording.

The Revisor of Statutes might wish to change this section to Title 40 with recording statutes rather than to leave it in Title 44 with statutes on duties of state departments.

Section 25

COMMENT: There is not a clear reason for the distinction made in existing laws that provide for filing some documents and recording (copying) others. With the concept of a central place of recording where all records (copies) are to be stored with access through remote terminals, maintaining the distinction between filing and recording becomes impractical. Keeping original documents such as tax liens on file instead of recording them would be cumbersome and would serve no useful purpose. In keeping with this concept, in (d) of the section the various statutes are listed in which terminology should be changed to "record" from "file" or "file for record." The sections listed in (d) are gathered together in a binder and marked up for assistance to the Revisor of Statutes.

Section 26

COMMENT: Sections included in this repealer are discussed in the general comments at the start of these notes.

Section 27

COMMENT: It is primarily preparation for recording and indexing class B documents that warrants a deferred effective date. Amendment of the bill before passage could require an earlier or later date.

ALASKA CODE REVISION COMMISSION



COMMISSIONERS
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ALASKA STATE LEGISLATURE
POUCH V, STATE CAPITOL
JUNEAU, ALASKA 99811
907/465-4878
OFFICE LOCATION
ROOMS 5 AND 8
110 SEWARD ST.
JUNEAU, ALASKA 99801

February 15, 1985

The Honorable Jack Fuller
Chairman, Alaska Legislative Council
Pouch V, State Capitol
Juneau, Alaska 99811

Re: Bill on recording and recorded documents

Dear Chairman Fuller:

The attached bill is submitted to the Alaska Legislative Council pursuant to AS 24.20.075 with the request that it be introduced in the Fourteenth Legislature.

The bill has been in the legislature before. In the Thirteenth Legislature it was HB 342/SB 245 which in turn was a somewhat revised version of SB 78 of the Twelfth Legislature.

The commission continues to believe the legislation is needed and, in fact, overdue. It appears that the recording system is being left behind in the state's communication system. The bill would lay the groundwork for recording in a central place that is connected electronically with recording offices around the state. From those offices documents would be transmitted and in those offices the central records could be searched with equipment available in each office.

The bill provides that each existing recording office could participate in the interconnected system only when that office is ready and the central office is ready for it. Full statewide participation would evolve over whatever time period proved to be feasible.

As a necessary part of providing the framework for an electronically interconnected system, the bill gathers together and clarifies provisions on recording that are scattered through Alaska Statutes. Other features of the bill include provision for recording a subordinate class of document for safekeeping only and provision for recording federal liens consistent with the Uniform Federal Lien Registration Act.

Differences between this bill and the corresponding bill first introduced are explained in the attached commentary and section analysis.

The Department of Natural Resources joins the commission in urging enactment of the bill in its present form.

Respectfully submitted,

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

JWA:chw

Attachments

cc: Hon. Bill Sheffield
Hon. Edmond W. Burke, Chief Justice
Executive Director, Legislative Affairs Agency

deleted from AS 40.19.020--40.19.040 in this bill, which provides a single method of recording all federal liens.

(3) The uniform act provides that the recorder, upon request, shall certify whether liens are filed against a named person. This would be a departure from the tradition that the recorder only keep the records available for search and not search them himself. The provision is deleted from AS 40.19.-040 in this bill.

(4) The uniform act sets fees and provides for billing. Since statutes are a poor place for such details, and since AS 44.37.025(b) gives broad power to the Department of Natural Resources to set fees and establish procedures, the provisions are deleted from this bill.

A repealer at the end of the bill provides for repeal of the obsolete earlier version of the Uniform Federal Tax Lien Registration Act (AS 43.10.090--43.10.150) which was adopted by Alaska as ch. 94, S.L. 1933. Existing state law is inadequate mainly because (1) it lacks provisions for determining where personal property will be deemed to be located; (2) it requires separate tax lien indices that are unnecessary and are not being kept as separate indices; and (3) its provision for physically attaching a release to the original lien is not workable for recorded liens.

Section 22

SOURCE: The section is original drafting.

COMMENT: Recording of a master form is provided for by AS 40.17.050 as it appears in section 20 of this bill. This section is to outlaw a possible misuse of the recordable form.

Section 23

SOURCE: AS 43.10.042.

COMMENT: By this section, the method of recording federal tax liens in AS 40.19.040 in the bill is made applicable

original drafting; (7) is based upon USLTA sec. 1-201; (8) and (9) are original drafting; and (10) is from USLTA sec. 1-201.

COMMENT: The broad definition of "document" is used in the draft to permit advanced technology in recording. (7) makes acceptance for recording the event that determines when a document is recorded.

Section 21

SOURCE: AS 40.19.010--40.19.250 are the Uniform Federal Lien Registration Act (1978), with significant changes and deletions.

COMMENT: Several features of the Uniform Federal Lien Registration Act (1978) were found to be objectionable or unnecessary and are changed or deleted from this bill. The changes and deletions, all approved by the Internal Revenue Service, are:

(1) The uniform act provides for "filing" of federal liens. This bill provides for recording them. Filing requires the recorder to retain paper liens and releases, a procedure inconsistent with the photocopying system in use for documents generally in the recorder's offices. Although 26 U.S.C. sec. 6323 refers to "filing" of federal tax liens, IRS regional counsel considers the term to be used broadly to include recording, the procedure called for in this bill.

(2) The uniform act provides generally for filing (here the term includes recording) of both real and personal property liens with the recorder but calls for filing liens on personal property of corporations and partnerships with the "secretary of state." This is an apparent reference to Uniform Commercial Code filing. Federal law (26 U.S.C. sec. 6323) contains no such requirement. We are informed by recording officials of King County, Washington that adopting of the provision in that state led to much confusion there. It is

INDEX TO RECORDING BILL

Sec. 1-19

Amending AS sections to provide for filing and recording of plats and maps, as detailed at start of Section: Analysis.

Sec. 20

Creating a Chapter 17 in Title 40 on RECORDING IN PUBLIC RECORDS.

AS 40.17.010--PLACE OF RECORDING AND ACCESS TO RECORDS

AS 40.17.020--RECORDING CONVEYANCES

AS 40.17.030--FORMAL REQUISITES FOR RECORDING

AS 40.17.040--INDEXING

AS 40.17.050--INCORPORATION OF MASTER FORM

AS 40.17.060--DOCUMENTS EXECUTED UNDER FORMER LAW

AS 40.17.070--DUTIES OF RECORDER

AS 40.17.080--EFFECT OF RECORDING ON TITLE AND RIGHTS:

CONSTRUCTIVE NOTICE

AS 40.17.090--CONVEYANCES AND RECORDED DOCUMENTS AS

EVIDENCE

AS 40.17.100--RECORDING A RECONVEYANCE

AS 40.17.110--CLASSES OF DOCUMENTS ELIGIBLE FOR RECORDING

AS 40.17.120--RECORDING MEMORANDUM OF LEASE

AS 40.17.130--ACTIONS AGAINST RECORDER AND STATE

AS 40.17.140--DEFINITIONS

Sec. 21

Creating a Chapter 19 in Title 40 on RECORDING FEDERAL LIENS.

AS 40.19.010--SCOPE

AS 40.19.020--PLACE OF RECORDING

AS 40.19.030--EXECUTION OF NOTICES AND CERTIFICATES

AS 40.19.040--DUTIES OF RECORDER

AS 40.19.050--UNIFORMITY OF APPLICATION AND CONSTRUCTION

Sec. 22

AS 34.15.015--USE OF RECORDED MASTER FORM

Sec. 23

AS 43.10.042--RECORDING LIEN AND CERTIFICATE OF DISCHARGE

Sec. 24

AS 44.37.025--RECORDING (basic authority of Department of
Natural Resources)

Sec. 25

Listing sections in which Revisor of Statutes is to
change terminology.

Sec. 26

Repealer.

Sec. 27

Effective date.

ing a traditional notice of cases pending in Alaska and United States courts that affect Alaska real property. (b) (14) provides for recording a lis pendens from outside the state in specified domestic relations cases where persons dealing with Alaska marital property should know a property settlement is pending; and (b) (16) provides for recording an order or judgment from such a case. (b) (51) is a category called "fixture filing" in the 1972 uniform amendments to the UCC. (Reference: AS 45.09.313(1) and 45.09.402(f)). (b) (55), an armed forces report of separation, is an example of a document not related directly related to real property but specifically made recordable by another statute. AS 26.10.070.

(c) is to include in class A all documents made recordable by other law or by regulation of the department.

AS 40.17.120

SOURCE: USLTA sec. 2-310.

COMMENT: This USLTA section is based upon the law of Pennsylvania and provides in simple terms for the recording of a memorandum of a lease. Some state laws on the subject are much more complex. A memorandum of lease avoids cluttering the records with lengthy documents of temporary significance.

AS 40.17.130

SOURCE: (a) is from USLTA sec. 6-210 with changes and (b) is from USLTA sec. 6-211 with changes.

COMMENT: This section provides for an action to compel recording, clarifies the state's liability, and limits the conditions for liability of recording employees.

AS 40.17.140

SOURCE: (1) is original drafting; (2) is from USLTA sec. 1-201; (3) is based on Rule 9(2), Alaska Rules of Evidence; (4) is founded on AS 44.37.025 (part of Executive Order 47 which became law during 1980); (5) is from USLTA sec. 1-201; (6) is

160; (b) (51) is from the UCC, secs. 9-313(1)(b) and 9-402(5); (b) (52) and (b) (53) are original drafting; (b) (54) is from AS 19.10.260(2); (b) (55) is from AS 26.10.070(a); (b) (56), (b) (57) and (c) and (d) are original drafting.

COMMENT: This section maintains control over what recorded documents will constitute constructive notice in the real property recording system (class A), but permits other writings to be recorded in a class B that will not be indexed with or clutter the real property recording system. The section pulls together as class A documents all documents made recordable throughout existing law and also includes documents made recordable in class A by departmental regulation. Class B includes any other document a person may wish to place in the public records for his own private purpose, generally for safekeeping. Throughout the bill the traditional recording function is confined to class A, while class B is provided as a service that does not give constructive notice and would not be searched in a real property title search.

By (b) (1) a document that is a conveyance must be acknowledged or proven to be eligible for recording. Since every document by which an interest in land is transferred (except a will) is a conveyance, all such documents must be acknowledged or proven before they are recordable whether or not the term "acknowledged" or "proven" is used in listing the document as recordable.

(b) (5) allows affidavits to be recorded. Recorded affidavits in other states have been helpful in clearing land titles and have caused no special problems. (b) (7) broadly affords the opportunity to record a document that limits property rights, including a Public Land Order. (b) (12) provides for recording a bankruptcy petition which appears still to be required by Bankruptcy Rule 502(a). (b) (13) provides for record-

FEBRUARY, 1985

ALASKA CODE REVISION COMMISSION
COMMENTARY TO ACCOMPANY DRAFT ON
RECORDING AND RECORDED DOCUMENTS

GENERAL FEATURES OF THE BILL

A bill drafted by the Alaska Code Revision Commission to revise the law on the public recording system was in the Twelfth Legislature as SB 78 and in the Thirteenth Legislature as HB 342/SB 245. There were significant changes in the bill between the Twelfth and Thirteenth Legislatures. Because of other priorities, the bill in the Thirteenth Legislature got little attention and did not move out of committee. That bill is here reintroduced without material change. Since the changes are to the initial form of the bill, notes on changes relate back to SB 78 of the Twelfth Legislature. The attached bill is a redrafted SB 78 with changes to accommodate some requests from title companies and by the Department of Natural Resources.

Existing AS 34.15.260--34.15.350, AS 34.20.020, and AS 43.10.090--43.10.150 would be repealed by the bill.

The main purpose of the bill remains the same: (1) to gather together and clarify the jumble of Alaska law on recording, and (2) to provide a structure for future centralized recording. That structure, with other provisions in the bill, would make it possible to use existing and future advanced technology for transmitting, indexing, storing, retrieving and searching title documents. There is continually improving technology available for computer assisted search of documents in which the image of the document is called up from central storage and viewed at a remote terminal and copied at the remote terminal if a copy is needed. With safeguards in the bill, and with flexibility for either rapid or gradual extension of the high technology system into recording districts, there need be no

lessening of access to recording and retrieval in any recording district during development of the improved system.

Most of SB 78 is carried over into the attached bill, but there are some changes.

A provision in SB 78 would have removed a requirement of existing law that a conveyance be acknowledged before a person authorized to take an oath. This provision in the bill proved to be extremely controversial, as did its corollary that permitted recording of an unacknowledged conveyance. Although title company representatives who testified about the provision agreed that there are shortcomings in the practices of some notaries public, they urged that the acknowledgment requirement not be dropped. The commission has accepted their position in the attached redrafted bill.

SB 78 provided for recording of subdivision plats and certain other maps and plats. The attached bill continues the requirement of SB 78 that these plats and maps be recorded. However, it adds the requirement that the original be retained in the recording office, the practice under existing law. What results is a system in which access to the original plat is retained, but the document also is photocopied as a record that may be called up for viewing at a remote terminal where copies can be taken off.

An innovative part of the bill carried over from SB 78 is a provision for recording two general classes of documents. Section 40.17.110 defines the two classes. Class A includes documents relating to title to real property and includes all other documents required or permitted to be recorded by other statute or by regulation of the Department of Natural Resources. Recording of a class A document would provide constructive notice of the document to all persons, and therefore

AS 40.17.110

SOURCE: (z) is original drafting. (b) is a list of documents derived from the following sources, with substantial changes in some instances. (b)(1) as indicated in the subparagraph; (b)(2) is from AS 34.15.320(a)(1) and AS 34.15.330; (b)(3) is from AS 34.15.320(a)(2); (b)(4) is original drafting; (b)(5) is from Conn. Gen. Stat. Ann. 47-1(a); (b)(6) is from AS 34.20.130; (b)(7), (b)(8) and (b)(9) are original drafting; (b)(10) is from AS 34.15.340(a)(6); (b)(11) is from AS 34.15.-340(a)(1); (b)(12) is based upon Bankruptcy Rule 602; (b)(13) is from AS 34.15.340(a)(2); (b)(14) and (b)(15) are original drafting; (b)(16) is from AS 34.15.340(a)(3); (b)(17) is from AS 34.15.340(a)(4); (b)(18) is from AS 34.15.340(a)(5); (b)(19) is from AS 06.30.560; (b)(20) is from AS 09.30.010; (b)(21) is from AS 09.40.050; (b)(22) is from AS 09.55.370; (b)(23) is from AS 19.05.090; (b)(24) is from AS 10.30.020; (b)(25) is from AS 10.15.230--10.15.235; (b)(26) is from AS 10.15.260; (b)(27) is from AS 13.26.265; (b)(28) is from AS 23.10.047; (b)(29) is from AS 23.20.200; (b)(30) is from AS 23.30.165; (b)(31) is from AS 27.10.050 and AS 27.10.070, AS 38.05.185--38.05.220 and 38.05.-245; (b)(32) is from AS 27.10.020 and AS 27.15.010; (b)(33) is from AS 27.10.160; (b)(34) is from AS 27.10.190; (b)(35) is from AS 40.15; (b)(36) is from AS 32.10.010 and 32.10.240; (b)(37) is from AS 34.07; (b)(38) is from AS 34.07.030; (b)(39) is from AS 34.20.120; (b)(40) is from AS 34.20.070--34.20.080; (b)(41) is from AS 34.35.064; (b)(42) is from AS 34.35.065; (b)(43) is from AS 34.35.069; (b)(44) is from AS 34.35.070, 34.35.085, 34.35.-160, 34.35.185, 34.35.240, 34.35.250, 34.35.305, 34.35.330, 34.-35.405, 34.35.440 and 34.35.450; (b)(45) is from AS 34.35.071; (b)(46) is from AS 34.35.072; (b)(47) is from AS 34.35.080; (b)(48) is from AS 43.10.042; (b)(49) is from AS 43.10.090--43.10.-150 (and see sec. 19 of this bill); (b)(50) is from AS 46.15.-

AS 40.17.080

SOURCE: (a) is from AS 34.15.260(a); (b) is from AS 34.15.290; (c) is AS 34.20.010 redrafted; and (d) is from USLTA sec. 3-206 paraphrased.

COMMENT: Law on constructive notice is gathered in this section. Constructive notice is limited to class A documents which are defined in AS 40.17.110 in the bill. Within class A existing and traditional law is perpetuated. (d) allows a title searcher to assume that no contract or deed was executed pursuant to a recorded option or earnest money agreement after passage of a reasonable period of time.

AS 40.17.090

SOURCE: (a) is from AS 34.15.260(c)(1). (b) and (c) are based upon USLTA sec. 2-305(a) and (b), which in turn are based upon the Model Act Concerning Evidentiary Effect of the Record. (d) is original drafting; and (e) is from USLTA sec. 2-305(c) and Alaska Rules of Evidence, Rule 301(c).

COMMENT: This section is generally designed to pull together provisions for the evidentiary effect of recorded documents. (a) makes a recorded conveyance in proper form admissible in evidence without further proof. This is consistent with Rule 1005, Alaska Rules of Evidence. (b) and (c) provide in detail for several rebuttable presumptions arising from recording in class A. By Alaska Rule of Evidence 301(a), a presumption created here would not shift the burden of proof, but a person seeking to avoid the presumption would have to present some evidence to rebut it.

AS 40.17.100

SOURCE: as 34.15.310 redrafted.

COMMENT: No change in the substance of existing law is intended by this section, but the statutory language is simplified.

would protect the rights of the person whose document is recorded. The second class of document, class B, would be recordable for safekeeping but with no constructive notice afforded by the recording. Any document that is not included in class A and that can be processed by the recording equipment falls into class B.

In order to meet the concerns of the Department of Natural Resources, a requirement is added to the bill that class B convenience recording be physically separate from class A constructive notice recording. In the attached bill class B recording will be done only at a central recording office in the state. A separate indexing system will be used to further assure that the class A system is safe from any possible confusion with class B convenience recording.

While the bill deals with all recorded documents in general, it also deals specifically with federal liens. Existing Alaska law on federal liens is the obsolete Uniform Federal Tax Lien Registration Act, AS 43.10.090--43.10.150, adopted in Alaska in 1933. That Act would be repealed and replaced by proposed AS 40.19.010--40.19.030. The new sections follow the current Uniform Federal Lien Registration Act (1978) with changes and deletions to fit Alaska's statewide recording system. The form of these sections has been approved by the Internal Revenue Service at both the state and national levels. The bill applies part of these sections to state tax liens as well.

SECTION ANALYSIS

Sections 1-19

Sections 1 through 19 deal with plats and maps and can be considered as a unit.

Some of the existing statutes on plats use the terms "file" and "record" interchangeably. Although statutory directions are not always clear, existing practice is to not record

plats but to keep them on file in the recording offices.

Sections 1 through 19 change existing law and practice. They retain provisions for keeping plats on file but add the requirement that they be recorded; that is, copied into public records. In generations past, recording required laborious copying in longhand. These days a document is quickly copied by a photo process exactly in the form in which it is presented. (By AS 40.17.030 in the bill, if a plat, map, or other document cannot be copied, it is not accepted for recording.)

The bill is drafted both for the existing system and for the future time when most use of the recording system will be through remote terminals. As noted above, plats and maps that are required to be filed for public access will also be recorded so they can be viewed and copied at remote terminals. Since not all needs for a plat will be met by the recorded copy, the original will be available in the district recorder's office to the same extent as at present.

The first nineteen sections of the bill make this change for the following:

- Sec. 1 (AS 19.10.260,2)--state highway right-of-way maps
- Sec. 2 (AS 29.33.160(b))--subdivision and dedication plats
- Sec. 3 (AS 29.33.170)--subdivision and dedication plats
- Sec. 4 (AS 29.33.190)--subdivision and dedication plats
- Sec. 5 (AS 29.33.200)--subdivision and dedication plats
- Sec. 6 (AS 29.33.230)--subdivision and dedication plats
- Sec. 7 (AS 34.07.020(14))--condominium floor plans
- Sec. 8 (AS 34.07.030)--condominium floor plans & survey maps
- Sec. 9 (AS 34.07.040(a))--condominium floor plans
- Sec. 10 (AS 34.07.050)--condominium floor plans
- Sec. 11 (AS 34.08.045(b))--state subdivisions
- Sec. 12 (AS 40.15.110)--subdivision and dedication plats
- Sec. 13 (AS 40.15.020)--subdivision and dedication plats

AS 40.17.060

SOURCE: AS 34.15.270, paraphrased.

COMMENT: The section of Alaska Statutes this section would replace applies only to "conveyances" and provides that a conveyance legal when executed remains recordable and retains "the same force as evidence." The redraft is broader since it applies to all class A documents. The reference to "same force as evidence" is not included since it is considered to be unnecessary. The "force" of recorded documents as evidence is covered in AS 40.17.090. See also Rule 1005, Alaska Rules of Evidence.

AS 40.17.070

SOURCE: (a) is from USLTA sec. 6-203; (b) is original drafting; (c) and (d) are based upon USLTA sec. 6-204(a) and 6-204(b), with additions; (e) is from USLTA sec. 6-204(c); (f) is from USLTA sec. 6-205(a); (g) is from USLTA sec. 6-205(d); (h) is from USLTA sec. 6-201(b); and (i) is from USLTA sec. 6-204(d) paraphrased.

COMMENT: The recorder's duties are spelled out in this section. (b) is another provision to assure that class B recording will not be confused with class A. (b) does not refer to book and page indexing, but book and page indexing is consistent with it and can be continued so long as it is useful. Consistent with the definition of "record", (c) requires acceptance (recording) of a recordable document without delay in the order in which it is received. (c) and (d) make it clear that the time of recording is the time of acceptance even when a document is erroneously rejected and later accepted. If a person is damaged by erroneous rejection of a recordable class A document, the person's remedy is to seek damages from the state under AS 40.17.130 in this bill. The reference in (i) is to a master form recorded under AS 40.17.050.

erty other than by will or operation of law. But where another document is made recordable by law, only the form requirements of that law and this section apply.

AS 40.17.040

SOURCE: The section is original drafting.

COMMENT: In the bill, indexing of class A documents has been left to regulation of the department responsible for the recording system. Indexing a document to a specific tract is highly desirable. But parts of the state are not sufficiently accustomed to the existing formalities of record to make it practical to require sophisticated tract indexing information in all recording districts. Regulation is the more flexible approach and seems the desirable one for the present. Unofficial tract indices are kept at present and would be continued in any event.

The index of class B documents is kept with the class B records at one central recording office, another safeguard to ensure that class B recording will not be confused with class A.

The indexing of class B documents is specifically limited to emphasize that class B is for personal safekeeping of documents not part of the chain of title to real property. It is intended that a title search should never involve searching the class B index.

AS 40.17.050

SOURCE: The section is from USLTA sec. 2-309.

COMMENT: The purpose of allowing the recording of master forms is to reduce the volume of documents recorded. A final sentence of USLTA sec. 2-309(a) provides: "This section does not affect contractual relations of parties to a title transaction." The sentence is omitted as superfluous.

Indexing of a master form is not covered here since indexing is to be generally covered by regulation.

Sec. 14 (AS 40.15.030)--subdivision and dedication plats

Sec. 15 (AS 40.15.040)--subdivision and dedication plats

Sec. 16 (AS 40.15.050)--subdivision and dedication plats

Sec. 17 (AS 40.15.060)--subdivision and dedication plats

Sec. 18 (AS 40.15.070)--subdivision and dedication plats

Sec. 19 (AS 40.15.075)--subdivision and dedication plats

Section 20

The main body of the bill is Section 18. It creates a new chapter 17 in title 40 to replace AS 34.15.260--34.15.350. In it the Uniform Simplification of Land Transfers Act is the basis for several of the sections and is referred to in these notes as the USLTA. Alaska Statute numbers are used here for reference within the section.

AS 40.17.010

SOURCE: The section is original drafting.

COMMENT: This section is an overview of the recording system expressed in terms of the recording and retrieval services to be provided by the Department of Natural Resources. References to class B documents in (c) and to class A documents in (d) can be clarified by looking at AS 40.17.110 in the bill where class A and class B are defined. Class A may be thought of as the existing recording system, while class B is a new and subordinate system with no purpose beyond providing a convenience to persons who wish a permanent repository of a copy of any document. Therefore, the concentration of the bill is on class A recording.

Basic to the class A system are provisions for future recording in a central place by electronic transmission of documents from offices for the various recording districts, and records will be available for search in those offices.

By subsection (c), the date for starting the class B system is the effective date of the bill. Although recording of