

ALASKA LEGISLATURE COMMITTEE FILES 1903-1900 00/2

3510 HLAB HB 490 - HB 494

386



# RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

  
Signature of Camera Operator

  
Date

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SECTIONAL ANALYSIS - PROPOSED CS FOR HB 490

Section 1. HB 490 authorizes payment of damages through a periodic payment plan (structured settlement) rather than a lump-sum payment in a personal injury action against the state or political subdivisions (local governments).

A "periodic payment plan" is defined as a plan in which one adjudged liable for damages for personal injury, or one responsible for payment under a compromise of a personal injury action, makes payment for future damages by structured periodic payments equal to the amount of damages awarded by judgment or compromise rather than by lump sum.

The intent of the legislation is to provide compensation sufficient to meet the needs of a plaintiff and his or her dependents for whatever period is necessary while eliminating the potential windfall from a lump-sum recovery. In addition, requiring structured settlements will also significantly reduce the cost of personal injury judgments awarded against the state and local governments.

Section 2. (a) adds 09.50.255 to require final judgments ordering that damages be paid in whole or in part by periodic payment plans rather than by lump-sum payments in suits for personal injury against the state or political subdivisions except when

- (1) the action seeks compensation for disability or death of an employee under the provisions of the workers compensation act, or
- (2) the award of damages is less than \$50,000.

In any instance in which the court requires that damages be paid only in part by periodic payments, the court must indicate, on the record, its reasons for doing so.

(b) specifies what shall be included in a judgment ordering payment of damages by a periodic payment plan.

(c) requires that the office of risk management obtain a periodic payment plan for a judgment against the state rendered in accordance with the provisions of this section. A local government may submit a judgment to the office of risk management to acquire a periodic payment plan.

AS 09.50.257 (a) directs the commissioner of administration to adopt regulations setting out the procedures and methods of source selection, award, contract formation, and all other requirements and qualifications for acquisition of periodic payment plans by the state. Specifies the intent of the regulations.

(b) states that source selection methods and contract procedures established by regulations adopted under this section are in lieu of and not in addition to any other law governing state procurement.

(c) defines "periodic payment plan" .

Section 3. Amends AS 09.50.270 to specify that when a judgment against the state is rendered the clerk of the court shall transmit a certified copy to the department of administration, which shall arrange for a periodic payment plan or approve payment of the judgment if it is less than \$50,000.

Section 4. States that AS 09.50.255 (section 2 of this Act) has the effect of amending Alaska Rule of Civil Procedure 58, by requiring the court to state its reasons for requiring period payment of only part of the damages and by requiring the court to include a specific item in its judgment.

Section 5. Establishes an effective date of January 1, 1987.

2/15/86

Ford  
2/17/86✓

Original sponsor: Szymanski

1 IN THE HOUSE

BY THE LABOR AND  
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 490 (L&amp;C)

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 judgments against the state;  
7 amending Alaska Rule of Civil Procedure 58; and  
8 providing for an effective date."

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

10 \* Section 1. STATEMENT OF PURPOSE. It is the intent of the legislature  
11 in enacting AS 09.50.255 to authorize the entry of judgments in personal  
12 injury actions against the state or political subdivisions of the state  
13 that provide for the payment of damages through periodic payments rather  
14 than lump-sum payments. By authorizing periodic payment judgments, it is  
15 the further intent of the legislature that the court will utilize these  
16 judgments to provide compensation sufficient to meet the needs of an  
17 injured plaintiff and those persons who are dependent on the plaintiff for  
18 whatever period is necessary, while eliminating the potential windfall from  
19 a lump-sum recovery that was intended to provide for the care of an injured  
20 plaintiff over an extended period. It is also the intent of the legisla-  
21 ture that by requiring damages to be structured in this manner, the state  
22 will achieve both adequate and secure compensation to the plaintiff and  
23 dependents of the plaintiff, as well as a significant reduction in the  
24 amount of personal injury judgments awarded against the state.

25 \* Sec. 2. AS 09.50 is amended by adding new sections to read:

26 Sec. 09.50.255. STRUCTURED JUDGMENTS. (a) Except for actions  
27 seeking compensation for disability or death of an employee under  
28 AS 23.30, in a suit for damages for personal injury against the state  
29 or a political subdivision of the state, in which the fact finder

1 decides an award of damages equal to or exceeding \$50,000 is to be  
2 made in favor of the plaintiff against the state or a political subdi-  
3 vision of the state, the court shall render a final judgment ordering  
4 that the damages be paid in whole or in part by periodic payments  
5 rather than by lump sum payment. If the court requires that damages  
6 be paid only in part by periodic payments, the court shall indicate on  
7 the record its reasons for requiring periodic payment of only part of  
8 the damages.

9 (b) A judgment ordering the payment of damages by periodic  
10 payments shall specify the recipient of the payments, the dollar  
11 amount of the payments, the interval between payments, and the number  
12 of payments or the period of time over which payments shall be made.

13 (c) When a judgment rendered in accordance with the provisions  
14 of this section has become final, the judgment shall be submitted by  
15 the state to the office of risk management within the Department of  
16 Administration to obtain a periodic payment plan. A political subdi-  
17 vision of the state may submit a final judgment rendered in accordance  
18 with the provisions of this section to the office of risk management  
19 in the Department of Administration, to obtain a periodic payment  
20 plan.

21 Sec. 09.050.257. PERIODIC PAYMENT PLANS. (a) The commissioner  
22 of administration shall adopt regulations setting out the procedures  
23 and methods of source selection, award, contract formation, and all  
24 other requirements and qualifications for acquisition of periodic  
25 payment plans by the state. The regulations shall be designed to

26 (1) obtain the lowest available payment price while achiev-  
27 ing the highest security, stability, and dependability in the periodic  
28 payment plan;

29 (2) establish qualifying criteria for acceptable plan

1 providers;

2 (3) allow for a state-contracted firm or company to acquire  
3 a plan for the state from a provider in which the firm or company has  
4 no proprietary interest.

5 (4) provide that all quotes for plans solicited by or  
6 offered to the state shall be retained as a public record;

7 (5) allow the purchase of reinsurance to insure the payment  
8 obligations of the periodic payment plan, provided that the plans  
9 shall be acquired so as to avoid constructive receipt of the corpus of  
10 the plan by the person entitled to benefits of the plan.

11 (b) Source selection methods and contract procedures established  
12 by regulations adopted under this section are in lieu of and not in  
13 addition to any other law governing state procurement.

14 (c) In this section, "periodic payment plan" means a plan in  
15 which one adjudged liable for damages for personal injury, or one  
16 responsible for payment under a compromise of a personal injury  
17 action, makes payment for future damages by structured periodic pay-  
18 ments equal to the amount of damages awarded by judgment or compromise  
19 rather than by lump sum.

20 \* Sec. 3. AS 09.50.270. is amended to read:

21 Sec. 09.50.270. PAYMENT OF JUDGMENT AGAINST THE STATE. An [NO]  
22 attachment or execution may not [SHALL] issue against the state. When  
23 a final judgment is rendered against the state in an action, the clerk  
24 of the court shall immediately transmit a certified copy of the judg-  
25 ment to the Department of Administration which shall either arrange  
26 payment of the judgment by periodic payment plan under AS 09.50.257,  
27 or approve payment of the judgment against the state if the amount of  
28 the judgment is less than \$50,000. If an insufficient [A SUFFICIENT]  
29 appropriation exists for payment, the department shall [OR] audit the

1 amount and transmit a copy to the legislature with the recommendation  
2 that an appropriation be made for its payment.

3 \* Sec. 4. AS 09.50.255, enacted in sec. 2 of this Act, has the effect  
4 of amending Alaska Rule of Civil Procedure 58, by requiring the court to  
5 state its reasons for requiring periodic payment of only part of the dam-  
6 ages and by requiring the court to include a specific item in its judgment.

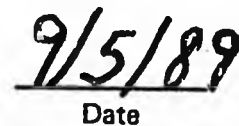
7 \* Sec. 5. This Act takes effect January 1, 1987.  
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Date

HB

494

HB 494  
SUMMARY

The revisions to the lien law will provide subcontractors with a more efficient means to recover payment when owners or general contractors fail to make payment for work or equipment provided by the subcontractor.

It is important to note that the revisions will not affect lenders or general contractors who follow good business practices.

A general contractor is able to make draws from the construction lender for payment to a subcontractor, however, there is no provision to make certain that this is where the money goes. A subcontractor who does not receive payment can issue a stop payment notice but this has not proven to be effective.

The bill will change the stop payment notice to a direct payment notice (DPN). When a claimant has a problem with payment the claimant may file a DPN with the lender and owner. The owner has ten days to object to the notice. If the owner does not object the lender is to pay the claimant directly. If a notice of objection is received within ten days the lender is to issue payment jointly to the owner and claimant and leave it to them to work out their dispute by settlement or in the courts.

It also gives construction lien claimants equal priority with construction lenders. Right now lenders tend to continue to make disbursements to owners who are in trouble because they have their prior deeds of trust to fall back on. This will discourage lenders from continuing to make disbursements on problem loans since the lender's equity would be proportionally reduced in the event of a foreclosure.

Under the bill, after receipt of a DPN, a lender may not withhold or disburse loan proceeds (interest) in satisfaction of the owner's obligations to the lender until all payments specified in the DPN have been made to the claimant.

Another problem is that subcontractors have had only fifteen days after a notice of completion is filed to file a claim of lien or notice of right to lien. Often this is not enough time for a subcontractor to tell if they have a payment problem. The time allowed is changed to 30 days.

Also, an owner must now give a claimant 15 days notice, instead of five, that they intend to file a notice of completion. This will give the claimant an opportunity to be sure completion has actually occurred. The owner is liable for actual damages caused by a prematurely filed notice of completion.

COMPARISON  
HB 494

Section	HB 494	Existing Law
34.35.060(a)(e)	Gives lender and claimants equal priority in the event of a foreclosure.	Gives first priority to lender.
34.35.062(a)	Adds language requiring the owner to certify which parcel of property each portion of each loan draw is allocated to if more than one parcel is involved in the construction financing.  Direct payment notice may be filed by claimant to the lender and owner if payment is not received. If owner does not object within ten days the lender issues the check directly to the claimant. If owner objects, a check is written to both owner and claimant.	Requires the general contractor to certify job progress to the lender.  Stop payment notice may be filed if payment is not made by certain times. Lender is required to withhold enough from the next draws to cover the amount. If not paid in 30 days a law suit may be filed. Claimant must furnish bond in amount of claim.
34.35.062(b)	Lender is liable for damages suffered by claimant <u>or</u> owner if it fails to comply with its obligations.	Lender is liable for damages suffered by the claimant if it fails to comply with its obligations.
34.35.062(d)	New section. Lender may not disburse funds to itself from a construction loan once a DPN has been filed.	
34.35.063	New section. A claimant may file an intent to furnish materials, labor, etc. If notice is given the owner has burden of proof to show that they did not know of or consent to the work or materials.	
34.35.068(b)	Gives claimants 30 days after a notice of completion is filed to file a claim of lien or notice of right to lien.	Gives claimants 15 days.

34.35.071(a)	Requires an owner of real property to give claimants 15 days and owners and lenders 20 days notice that they intend to file a notice of completion.	Requires notice of five days for claimants and ten for owners and lenders.
34.35.114(e)	Penalizes lenders and owners for failure to provide claimants with required information.	Penalizes owners only.
34.35.118	A claimant is liable for injuries caused by filing a DPN too soon and an owner is liable for injuries caused by filing a premature Notice of Completion.	Only a claimant is liable.

1986 - PROPOSED AMENDMENTS TO THE LAW

- Abolishment of Acknowledgement of Right to Lien
- Adoption of a Direct-Payment Notice which requires the owner's construction lender to make a direct payment to the claimant from the next construction draw, unless the owner timely objects to the Notice, in which case the lender is required to make a joint payment to the claimant and owner and leave it up to them to work out their disputes.
- Claimants other than individual laborers are given equal priority with a prior-recorded deed of trust for construction financing in cases of original construction. Individual laborers (excluding individual sub-contractors) and trustees of employment benefit trusts for such laborers continue to have priority over prior-recorded deeds of trust.
- The deadline is extended for recording a Notice of Right to Lien or Claim of Lien after a Notice of Completion is recorded to give the latter job trades more time to prepare their statements and determine if they have a payment problem.

ALASKANS

FOR

LIEN LAW REFORM

## LIEN LAW HISTORY

In 1979 certain amendments were made to the Alaska Lien Laws which have caused large monetary losses to material suppliers and sub-contractors. The intent of these amendments was to expedite loan closings on the sale of real property and also to assure that no liens could be attached after the property was sold. In a joint meeting held between suppliers, sub-contractors, title companies, and lending institutions it was agreed that this new bill would allow the lending institutions to be secured by a first deed of trust on their interim construction financing which gave them priority over all liens or encumbrances which may be recorded by a material supplier or sub-contractor.

In exchange for giving up a historical priority position, suppliers and sub-contractors were to be provided a vehicle by which they could put the lending institution on notice that they were a supplier of record, and in so doing, protect the suppliers interest. The methods provided to material suppliers and sub-contractors under the new law were:

1. Notice of Right to Lien and
2. Stop Payment Notice

The intent of the "Notice of Right to Lien" was to inform the lending institution, and the property owner, that a supplier or sub-contractor had provided materials or services to a specific project and they may have a claim on the interim construction financing. The further intent of this notice was to guarantee that the lending institution would monitor the disbursing of interim construction funds to assure that persons who had given them a "Notice of Right to Lien" would be paid from each draw.

The "Stop Payment Notice" amendment was added as an additional method for securing a payment, when past due from interim construction financing. The intent of this amendment was to cause the lending institution to withhold the amount claimed by the material supplier or sub-contractor from the next draw and to disburse the funds directly to the claimant.

Since there is no liability on the part of the lending institution for failing to disregard the intent of these amendments, they have been circumvented to a large degree. Interim construction draws are being disbursed directly to the contractor with no assurance that the material supplier or sub-contractor will be paid. In many instances the contractor will use these funds for purposes other than paying his suppliers or sub-contractors.

A "Stop Payment Notice" rarely accomplishes the purpose for which it was intended. The lending institutions in many instances interpret this notice as indication that the contractor is in financial trouble and they will call the loan; thereby stopping all draw requests until the liens are removed or the loan is satisfied. Or they may just hold the notice for a period of 30 days at which time the current law mandates that a law suit be instigated to collect the debt. In addition, the current law mandates that a claimant must provide a bond equal to the amount of the claim. With the current cost of bonding, legal fees and the length of time it takes to get a court date a claimant will rarely recover the amount owed to him. Interestingly enough the lending institutions continue making draws to satisfy their interest charges.

A "Claim of Lien" in many instances has no value. The lending institution has priority over all other encumbrances through their First Deed of Trust position. In the event of foreclosure the lending institutions First Deed of Trust must be paid in its entirety before any other claims can be satisfied, in spite of the fact that the lending institution may have disbursed construction funds directly to the contractor with no regard to a supplier, or sub-contractors "Notice of Right to Lien".

## POSITION

The suppliers and sub-contractors position is really quite simple:

We should have the right to reasonably expect to be compensated for the materials supplied and work performed that adds value to someone else's property, and in the event this does not occur we have equal opportunity for recovery under the law.

The trade off or "trust me legislation" of 1979 is simply not working.

Lending institutions are in the best position to review and determine a contractor's financial capability. They have or can have complete access to a contractor's financial information because they control the purse strings. However, loan officers have little or no incentive under existing law to control disbursements so as to assure that suppliers and sub-contractors are paid. At a minimum all they need do is assure that the materials are incorporated into the real estate before they disburse to the contractor. Whether the contractor pays the suppliers or the sub-contractors is really of little concern, because they (the lending institution) are always in first position. This enables them to foreclose and extinguish the liens of suppliers and sub-contractors in the event the contractor ultimately fails to perform. When an institution fails to exercise good control of funds, it is difficult to understand why their investment should be given priority at the expense of suppliers and sub-contractors.

There is no viable vehicle for a supplier or sub-contractor to compel a lending institution to disburse loan draws for materials purchased or work performed.

When the supplier or sub-contractor attempts to utilize a stop payment, or otherwise involve the loan officers, typically the lending institutions' first reaction is to draw down available proceeds to cover interest and other charges or even to call the loan.

**Conclusion.** The make up of the lending institutions as well as the environment under which the legislation was drafted in 1979, differs from that of today and perhaps is one of the prime reasons requiring a change in this legislation.

It is evident that the current law is not working. The unusual large numbers of business failures, bankruptcy's, and foreclosures bear this out. If some form of protection for sub-contractors and material suppliers is not legislated, there will continue to be many bankruptcy's and foreclosures. In addition, the cost of construction will increase dramatically due to the increase in cost of materials and services to cover the losses sustained through the inequities in the existing law.

**CASE HISTORY  
EXAMPLE**

**PROJECT** Residential Units - Fairbanks  
**LENDER** Bank  
**ACCOUNT PROFILE** Customer for several years  
Slow payment record

**HISTORY.** Because of previous problems with this customer and before supplier would enter into an agreement to sell the project, the lending institution agreed to monitor the loan and disburse funds direct to the supplier. After the project was in process the account went 30 days past due and was closed. The supplier contacted the bank was told they (the bank) were working on the draws and payment would be sent in about 10 days. Additionally, the bank requested that the account be left open.

When the account was (45) days past due and no payment received, the supplier again called the bank and was told the loan officer was on vacation. Again the bank requested that the account remain open and that if the materials were allowed to go they would cover the purchases. The supplier was also told there were more than enough funds to cover the balance due. A check would be cut as soon as the loan officer returned.

When the account was (60) days past due the supplier closed the account. The bank was contacted. The loan officer met with supplier, who was again advised that they were working on draws that would bring the account current. The loan officer requested that the account still be left open. Supplier recorded claim of liens.

When the account was (70) days past due the bank filed foreclosure with no advance notice to supplier.

**ACTION TAKEN.** Timely recorded Notice of Right to Lien and notified lender. Filed Claim of Liens totaling \$214,000.

**RESULTS.** Without notice bank filed foreclosure notices. Bank offered supplier \$85,000 in settlement. Customer filed bankruptcy. Loan officer resigned from his position at the bank.

**SUMMARY.** Under the existing law supplier filed all proper documents, and additionally had the assurance of the lending institution that they would disburse directly to them. The supplier had no other recourse except to sue the lending institution or settle because of the first position given the bank under the present lien law.

HB 494  
LIEN LAW REVISIONS  
SECTIONAL ANALYSIS

Sections 1 and 2: Gives construction lien claimants (subcontractors) equal priority with construction lenders. This will discourage lenders from continuing to make disbursements on problem loans since the lenders's equity would be proportionally reduced in the event of a foreclosure.

Section 3: Adds - the lender and the owner are required to certify which parcel of property each portion of each loan draw is allocated to if the construction financing involves more than one parcel of property. This will prevent contractors from directing loan proceeds to other projects or uses. Present law requires certification of job progress to the lender by the general contractor.

The Stop Payment Notice (SPN) is changed to an optional Direct Payment Notice (DPN) because SPN's have proven to be ineffective. When a claimant has a problem with payment the claimant may file a DPN with the lender and owner. The owner has ten days to object to the notice. If the owner does not object the lender is to pay the claimant directly. If a notice of objection is received the lender is to issue a check jointly to the owner and claimant and leave it to them to work out their dispute by settlement or in the courts.

Section 4: The lender is liable for actual damages suffered by the claimant or owner as a result of its failure to comply with these obligations. If the lender complies, it will not be liable to anyone for doing so.

Section 5: A lender that has received a DPN is not allowed to withhold or disburse to itself any further construction loan proceeds to satisfy the owner's obligations to it until all payments specified in the DPN have been made to the claimant.

Section 6: A claimant may file an intent to furnish labor, materials, services, or equipment to the lender. If notice is given the owner than has the burden of proof to show that they did not know of or consent to the work or materials. If an intent is not filed the claimant must prove the owner knew of and consented to the work or materials.

Section 7: Gives claimants 30 days after a notice of completion is filed to file a claim of lien or notice of right to lien rather than 15 days. Fifteen days does not give a subcontractor enough time to see if there is a payment problem.

Section 8: Technical change.

Section 9: Requires an owner to give claimants 15 days notice that they intend to file a notice of completion and owners and lenders a 20 day notice. This is changed from five and ten respectively. This gives subcontractors time make sure the project is really completed.

Section 10: Penalizes lenders as well as owners for failure to provide claimants with required information by requiring them to pay actual damages or \$200 (whichever is greater) to the claimant.

Section 11: Technical change.

Section 12: A claimant is liable for injuries caused by filing a DPN too soon and an owner is liable for injuries caused for filing a premature Notice of Completion.

Section 13: Definitions.

HOUSE  
COMMITTEE REPORT

(7)  
Date referred: 1/24/86

JUDICIARY

FURTHER REFERRALS: FINANCE

DATE: Feb. 13, 1986

The LABOR & COMMERCE Committee has considered HB 503

"An Act relating to ice classics."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS HB 503  same title
- new title

and recommends Ab Pass

further referral to the \_\_\_\_\_ Committee

- and attaches:
- letter of intent
  - first fiscal note
  - new fiscal note
  - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Mike Deane

Mike Savana

George Hanley

Paul Allen

Bob L. Bunker

W. Lee Rouse

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Mike Savana

Chairman

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: 2/6/86

**REQUEST**

Bill/Resolution No: CSHB 503  
Title: An Act Relating to Ice Classics

Sponsor: Navarre/Marrou  
Requestor: House Finance  
Date of Request: January 26, 1986

**FISCAL DETAIL**

Agency Affected: Revenue  
BRU: Public Services

Components: Public Services Operating

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LAND & STRUCTURES	-	-	-	-	-	-
GRANTS/CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-

CAPITAL	-	-	-	-	-	-
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REVENUE	-	-	-	-	-	-
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

**POSITIONS:**

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

**ANALYSIS:** Attach a separate page if necessary

Prepared by: *Sally Smith*  
Division: Public Services

Phone: 465-2392  
Date: February 6, 1986

Approved by: *Henry J. Stedje*  
Commissioner: \_\_\_\_\_  
Agency: Revenue

Date: 2/10/86

Distribution (by Agency preparing fiscal note):

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

A M E N D M E N T

Offered in the HOUSE

TO: CSHB 494(L&C)

By the Labor and

Commerce Committee

Page 7, line 16, after "SUITS." insert "(a)"

Page 7, after line 25, insert a new subsection to read:

"(b) A claimant with a claim of lien recorded under AS 34.35.075 who fails to promptly remove the claim from the record upon receiving payment on the claim or discovering that the claim is in error is liable for actual damages caused by the improperly recorded claim plus costs, including reasonable actual attorney's fees."

## TESTIMONY ON LIEN REFORM

MY NAME IS KENT LEE WOODMAN. I AM AN ALASKAN SINCE 1953. I AM ONE OF THE OWNERS, AND THE LICENSEE FOR COMMONWEALTH, LTD., PARENT CORPORATION FOR YELLOW ELECTRIC, LTD, AMBER ELECTRIC, LTD. AND NORTHERN ELECTRONICS..... ALL STATE-WIDE ELECTRICAL AND ELECTRONIC CONTRACTORS. YELLOW HAS BEEN IN OPERATION FOR OVER 12 YEARS. I ALSO REPRESENT THE ALASKA INDEPENDENT ELECTRICAL CONTRACTORS ASSOCIATION, AIECA, WHICH ITSELF REPRESENTS OVER HALF THE ELECTRICAL CONTRACTORS IN ALASKA.

I WISH TO CONVEY THE CONDITIONS OF A REAL EMERGENCY TO THE LEGISLATURE. I WILL GIVE YOU SOME SPECIFICS IN A MOMENT, SO YOU WILL NOT THINK ME A BLATHERING PANIC MONGER. BEFORE THAT, HOWEVER, PLEASE LET ME OFFER THIS THINKING:

ABOUT 7 YEARS AGO THE LIEN LAW HEAVILY FAVORED THE CONTRACTOR AND SUPPLIER TO THE GREAT DISTRESS OF THE BANKER. AFTER A NUMBER OF LOSSES, THE BANKERS GOT TOGETHER AND WORKED UP THE BASICS FOR THE PRESENT LIEN LAW, HINTING STRONGLY THAT IF THEY DID NOT GET SUCH REFORMS PUT IN PLACE, THEY WOULD BE FORCED TO STOP LOANING MONEY AND OUR CONSTRUCTION AND DEVELOPMENT ECONOMY WOULD GRIND TO A HALT.

FROM THAT DATE TO THIS, THE LIEN LAW HAS BEEN HEAVILY WEIGHTED IN FAVOR OF THE BANKS, AND AGAINST THE CONTRACTOR AND SUPPLIER. THIS APPEARS A CLASSIC CASE OF THE PENDULUM SWING FROM EXTREME TO EXTREME...EXCEPT THAT I PERCEIVE THAT THE PENDULUM, WHICH IS SUPPOSED TO MOVE IN EVER DECREASING ARCS UNTIL IT REACHES THE PROPER MIDDLE, HAS INADVERTANTLY CRASHED THROUGH THE SIDE OF THE CASE!

THERE ARE 3 THINGS THAT WILL CURRENTLY DRIVE A CONTRACTOR OR SUPPLIER OUT OF BUSINESS.....OTHER THAN THE STAGNANT ECONOMY:

1. INSURANCE COSTS: AS YOU ARE NO DOUBT AWARE, INSURANCE COSTS HAVE GONE THROUGH THE ROOF. THIS PROBLEM IS BEING WORKED ON CURRENTLY IN ANOTHER ARENA.
2. COLLECTIONS: THERE IS A BILL WHICH HAS CLEARED BOTH HOUSES AND IS EN ROUTE TO THE GOVERNOR, WHICH WILL RAISE THE SMALL CLAIMS LIMITS FROM \$2000 TO \$5000. THIS WILL BE A BOON TO SMALL CONTRACTORS, AND WE WILL PUT THE NEW TOOL TO GOOD USE IMMEDIATELY.
3. LIEN LAW INEQUITIES: NO MATTER HOW ONE DOCUMENTS, NO MATTER HOW TIMELY, NO MATTER HOW RECORDED, IF SOMETHING GOES WRONG BETWEEN THE BUILDER AND THE BANKER, WE HAVE NO WARNING; THE BANK FORECLOSES AND ALL THE LIENS ARE WIPED OUT!

HERE ARE 2 SPECIFIC CASES FROM OUR FIRM. THEY ARE TYPICAL; I COULD HAVE BROUGHT OVER A DOZEN "FRESH ONES". I DO NOT MIND REVEALING NAMES AS THEY ARE ALL A MATTER OF PUBLIC RECORD:

THE FIRST IS PARK LANE DEVELOPMENT. OUR COMPANY WORKED FOR PARK LANE FOR SEVERAL YEARS WITH NO GREAT PROBLEMS. THEN THIS YEAR, THE FINAL PAYMENT OF \$5,913.30 WAS SLOW TO COME IN. WE CALLED THE DEVELOPER AND WERE TOLD THAT ANOTHER DRAW WOULD SHORTLY PROVIDE CASH...THEN IT WAS; "WHEN THE NEXT UNIT IS SOLD" THERE WOULD BE FUNDS, ETC, ETC. WE HAD PERFECTED ACKNOWLEDGEMENTS OF RIGHT TO LIEN, AND THEN LIENS. ALL WERE CORRECTLY EXECUTED AND PROPERLY RECORDED WITH THE STATE. ALL WERE AND ARE TIMELY.

ON 16 JANUARY 1986, UNITED BANK ALASKA'S ATTORNEYS SERVED UPON US A NOTICE OF DEFAULT AND SALE FOR A TOTAL OF 6 HOMES THAT WE HAD WIRED AND FOR WHICH WE HAD LIENS. THEY WILL HAVE A SALE ON OR ABOUT THE 8TH OF APRIL, AND WE WILL LOSE EVERYTHING AGAIN.

WE ARE TRYING TO WORK WITH THE BANK AND THE DEVELOPER FOR A PARTIAL PAYMENT ON ONE UNIT WHICH HAS BEEN OCCUPIED WITH EARNEST MONEY ON DEPOSIT SINCE BEFORE THE END OF 1985, BUT THE BANK IS DRAGGING ITS FEET IN ORDER TO RETAIN THE UNIT IN THE FORECLOSURE, AND HAS NO INTEREST OR PREFERENCE TO CLOSE AND REDUCE THE DEBT.

OUR NEXT EXAMPLE IS CROWN TREE HOMES, INC. WE DID BUSINESS FOR THIS FIRM FOR SEVERAL YEARS WITHOUT DIFFICULTY AS WELL, BUT THIS YEAR THEY GOT INTO TROUBLE. WE HAD PERFECTED ACKNOWLEDGEMENTS AND THEN LIENS. WHEN THEY COULD NOT PAY THE LAST \$5,752.57, WE EVEN WENT SO FAR AS TO OBTAIN A PROMISSORY NOTE AND DEEDS OF TRUST ON THE REMAINING 16 UNITS. WHEN THEY DID NOT RESPOND TO CERTIFIED LETTERS REQUESTING STATUS, AND THEY DEFAULTED ON THEIR PROMISSORY NOTE, WE DID SOME TITLE SEARCHING AND LEARNED THAT WE ARE 32ND IN LINE WITH LIENS. THIS PRESAGES DISASTER. THOUGH WE HAVE NOT YET BEEN SERVED WITH FORCLOSURE, IT IS OBVIOUSLY GOING TO HAPPEN.

WITH THAT MANY LIEN HOLDERS, IT IS OBVIOUS THAT WE ARE GOING TO BE ASKED TO SETTLE FOR SOME FRACTION ON THE DOLLAR TO FACILITATE SETTLEMENT, OR LOSE EVERYTHING WHEN THE LIENS ARE WIPED OUT BY THE BANK.

IN THESE CASES, <sup>OUR</sup>~~THE~~ MONEY HAS ALREADY BEEN SPENT; SALARIES AND TAXES PAID, MATERIALS PAID, OVERHEAD PAID. WE HAVE NO WAY TO TELL OUR PEOPLE OR SUPPLIERS THAT WE CANNOT PAY THEM BECAUSE WE WERE NOT PAID. WE PAID OUR RENT, OUR INSURANCE, OUR VEHICLE PAYMENTS AND THE LIKE IN ORDER TO STAY IN BUSINESS.

IN OTHER WORDS, WE TOOK THIS MONEY OUT OF OUR POCKET! IF ONE'S PROFIT MARGIN AFTER OVERHEAD AND TAXES IS SAY 3%, THAT MEANS THAT EVERY TIME WE TAKE A BATH FOR \$6000, WE NEED TO GO OUT AND GENERATE AN EXTRA \$200,000 OVER AND ABOVE BUDGET, JUST TO GET THAT MONEY BACK. IF THAT HAPPENS SAY 5 TIMES IN A YEAR, YOU NEED A MILLION!

A COMPANY THAT GROSSES A QUARTER OF A MILLION DOLLARS A YEAR AND HAS EVEN 1 OF THESE BABIES, IS DOOMED!

WHY YOU NEED TO GROSS \$200,000 JUST TO BREAK EVEN!

WE ARE ABSOLUTELY POWERLESS TO DO ANYTHING ABOUT THIS PREDICAMENT. OUR ONLY OTHER OPTION IS TO SUE THE CONTRACTOR. BY THEN, HE IS EITHER IN CHAPTER 11 OR 7, GONE FROM THE STATE, OR HE IS A PRUNE, THAT NO AMOUNT OF SUEING WILL SQUEEZE EVEN A DROP MORE.

THERE IS NO RELIEF FOR THIS PROBLEM UNLESS THE LIEN LAW ITSELF IS ADJUSTED TO MAKE FOR A MORE REASONABLE, MORE FAIR DISTRIBUTION OF THE BURDEN. UNTIL AND UNLESS WE CAN GET THE PENDULUM BACK NEAR CENTER, AND HAVE THE BANKS, THE SUPPLIERS OF MATERIALS AND LABOR SHARE EQUAL RESPONSIBILITY AND EQUAL REMEDY, WE HAVE A TOOL THAT CAN BE WIELDED VERY EFFECTIVELY, EVEN SURGICALLY, TO PUT ONE CONTRACTOR OR SUPPLIER AFTER ANOTHER RIGHT OUT OF BUSINESS.

WE SUPPORT THE BEGINNING <sup>PROCESSES</sup> STEPS TAKEN IN HB 494, ESPECIALLY AS ADDRESSED IN THE RECENT COMMITTEE SUBSTITUTE BILL. BANKS MAY NOT LIKE IT, BUT WE SEE IN THE PAPERS DAILY ABOUT INCREASED PROFITS BY ALL THE BANKS. AND YOU READ IN THOSE SAME PAPERS ABOUT THE FAILINGS OF CONTRACTORS AND SUPPLIERS.

UNLESS THIS ESSENTIAL TEAM IS PLACED BACK IN BALANCE, IT IS NOT AVAILABLE TO PRODUCE ACTIVELY IN EXPANDING OUR ECONOMY AND PROVIDING FOR EFFECTIVE CAPITOL PROJECTS AND PRIVATE DEVELOPMENT.

WE DO NOT REQUEST ANY SPECIAL SOCIALISTIC PROTECTION, NOR SPECIAL DISPENSATION. WHAT WE REQUEST IS RELIEF FROM PRECISELY THAT EMBODIED IN ALASKA STATUTES, SECTION 34 NOW. WE REQUEST ONLY THAT THE LEGISLATURE MODIFY THE PRESENT, LOPSIDED RULES, IN ORDER NOT TO PROVIDE TOO MUCH GOVERNMENT PROTECTION TO ANY ONE SEGMENT OF OUR INDUSTRIAL COMPLEX.....WHICH IT CLEARLY DOES NOW.

WE ARE STAUNCH ADVOCATES THAT "IF IT DON'T BE BROKE, DON'T FIX IT", BUT GENTELPERSONS, I ASSURE YOU THAT IT'S BROKE AND IT'S BROKE BIG. PLEASE, PLEASE, THIS SECOND SESSION OF THE 14TH LEGISLATURE, PASS OUT SOMETHING TO REDUCE THIS HUMONGOUS GAP BETWEEN THE HAVE'S AND THE HAVE-NOT'S. YOUR CONTRACTORS AND SUPPLIERS ARE ALREADY BATTLING TO HANG ON BY THERE FINGER NAILS, AND BANKERS KEEP STEPPING ON THEIR KNUCKLES.

I'LL CONCLUDE BY BRIEFLY ADDRESSING SEVERAL POINTS MADE BY JUNEAU VISITORS WHEN THIS BILL WAS FIRST ON TELECONFERENCE:

1. IN RESPONSE TO A BUILDING INDUSTRY SPOKESMAN WHO INDICATED THAT ALL WE NEED TO DO IS TIGHTEN UP THE EXISTING LAW AND MAKE IT A FELONY TO SIGN FOR MORE THAN YOUR BANK LOAN OR THAT YOU CAN HANDLE: WE DO NOT WANT TO LITIGATE. WE DO NOT WANT THE BUILDER TO GO TO JAIL, ALL WE WANT IS TO GET PAID.....WITHIN OUR LIFETIME!

2. THE REPRESENTATIVE FROM ~~THE~~ <sup>THE BANK</sup> WHO INDICATED HE IS THE LARGEST CONSTRUCTION LENDER AND ONLY HAD 50 FORECLOSURES IN 10 YEARS: IT'S NOT NECESSARILY THE FORECLOSURES.....WHAT ABOUT ALL THE SETTLEMENTS IN LIEU OF FORECLOSURE THAT ARE ORCHESTRATED AT 20¢ ON THE DOLLAR DAILY BY BANKERS OR ATTORNEYS? THEY ARE 50 OR 75 TO ONE OVER THE RECORDED FORECLOSURES. HIS FIGURES ARE SKEWED; HE MISSES THE POINT OR DELIBERATELY MISLEADS THE COMMITTEE.

INCIDENTALLY, 50 IN 10 YEARS IS 5 A YEAR, AND WE'VE BEEN INVOLVED IN 3 IN THE PAST 18 MONTHS.....IT IS HARD TO BELIEVE THE STATISTICS.

3. THERE WAS A SUGGESTION THAT ABOLISHING THE ACKNOWLEDGEMENT OF RIGHT TO LIEN WOULD SOMEHOW FIX EVERYTHING. THAT WILL NOT FIX ANYTHING. IT'S THE LIENS THAT GET DUMPED ON A FORECLOSURE!

4. THERE WAS A COMMITTEE QUESTION ON PRIORITIES OF EMPLOYEES GETTING PAID, AND I THINK THE ANSWER MAY HAVE BEEN LOST. IF AN EMPLOYEE WORKS FOR A SUB OR A SUPPLIER, HE OR SHE RECEIVES WAGES, AND THEY ARE INDEPENDENT OF THE JOB IN PROGRESS; IT'S SUCCESS OR FAILURE. IF THE JOB BOMBS OUT AND THE SUB DOES NOT PAY HIS EMPLOYEE, THERE WILL BE HELL TO PAY, AND THE EMPLOYEE CAN TAKE A LABOR ACTION....SO CAN BOTH THE IRS AND THE STATE.

WHEN THE EMPLOYEE IS ~~IS~~ A SOLE PROPRIETER, HOWEVER, HE OR SHE IS JUST AS LONELY AT THE END OF THE LINE AS A FULL BLOWN CORPORATION; THEY LOSE IT ALSO, BUT IT'S NOT WAGES THEN....IT'S A CONTRACT GONE AMUCK.

5. THERE WAS SOME DISCUSSION ON WHETHER FOLKS WERE UTILIZING THE PRESENT LAWS FULLY. WHILE THERE MAY BE THOSE WHO DO NOT PULL ALL THE STOPS, IT DOESN'T MATTER; THE FOLKS WHO ARE CONCERNED HERE, ARE THE ONES WHO DO EVERYTHING RIGHT, AND THEN LOSE IT ALL.

ONE CAN GET A PROPERLY EXECUTED ACKNOWLEDGEMENT, SPEND \$130 ON A TITLE SEARCH TO BE CERTAIN THE SIGNATOR IS THE PROPERTY OWNER OF RECORD, TAKE IT DOWN AND HAVE IT RECORDED, MONITOR IT, UPDATE IT AT SIX MONTHS IF REQUIRED, CONVERT IT INTO A FULL LIEN WHEN TROUBLE IS SUSPECTED, AND STILL LOSE EVERYTHING WHEN THE CONTRACTOR OR DEVELOPER OWES YOU SAY 30% AT THE END, HIS BANK LOAN IS DRAWN DOWN, AND THERE IS FORECLOSURE.

6. THE BANK REPRESENTATIVE TOTALLY MISLEAD THE COMMITTEE WHEN HE ANSWERED QUESTIONS ABOUT SALES OF PROPERTIES AND DISPERSED "SURPLUSES". I HAVE NEVER SEEN A FORECLOSURE SALE IN MY ENTIRE LIFE THAT NETTED EVEN ONE PENNEY MORE THAN THE BANK AND THE BANK'S ATTORNEY REQUIRED. SALES ON THE COURT-HOUSE STEPS ARE NOTORIOUSLY GOOD PLACES TO BUY PROPERTIES. OFTEN THE UNIT IS INCOMPLETE AND THE BANK MUST SPEND SOME MORE MONEY TO COMPLETE IT. BY THEN THE TOTAL VALUE OF THE PLACE WHEN COMPLETE IS ABOUT 65% OF THE TOTAL BILLS OUTSTANDING, SO THE BANK TAKES THEIRS, PAYS THE ATTORNEY AND THE REST OF US SUCK WIND.

7. THE BANKER ALSO MISLEAD THE COMMITTEE WHEN CHARACTERIZING THE NATURE OF THE LENDER AND THE SUPPLIERS AND CONTRACTORS. THERE IS A MAJOR DIFFERENCE BESIDES THE ONE POINTED OUT BY SEVERAL CONTRACTORS.....THAT THE BANK IS THE ONLY ONE WHO KNOWS ALL THE PLAYERS. THAT OTHER MAJOR DIFFERENCE IS THAT THE BANK HAS ACCESS TO ADDITIONAL COLLATERAL, UP FRONT, BEFORE THE JOB BEGINS. THEY ALREADY TAKE OUT THEIR LOAN INTEREST FROM THE FRONT OF THE PROCEEDS. THEY HAVE THE OPTION, BACK WHEN THE BUILDER COMPLETES HIS OR HER APPLICATION, TO IDENTIFY OTHER COLLATERAL AND INCLUDE LANGUAGE WHICH WILL ENABLE THE BANK TO ATTACH ADDITIONAL PROPERTIES OR SOURCES OF FUNDING SHOULD THE LOAN FORECLOSE. SUBS AND SUPPLIERS HAVE NO SUCH ACCESS, AND THEY DO NOT CONTROL NOR PRIORITIZE PAYMENTS ONE iota.

8. SEVERAL PEOPLE SAID THAT THE STOP PAY PROVISION WAS NOT BEING UTILIZED BY SUBS AND SUPPLIERS. THAT MAY BE, BUT 99% OF THE TIME, WHEN THERE IS A PROBLEM, IT'S BECAUSE THE LOAN IS DRAWN DOWN TO ITS CREDIT LINE.....THEN HOW MUCH GOOD DOES A STOP PAY DO? MOST SUPPLIERS AND SUBS DO NOT GET INTO TROUBLE WITH THEIR BUILDER ON THE FRONT END OF THE DEAL. THE TROUBLE BEGINS WHEN THE LOAN IS DRAWN DOWN AND THE BUILDER IS CALLED UPON TO CONTRIBUTE HIS OWN FUNDS TO COMPLETE THE JOB.....THAT'S THAT OTHER 20% WE WERE TALKING ABOUT.

WOULD BE INTERESTING TO SEE BANKS REQUIRE THE BUILDER TO PRESENT PAID INVOICES FOR 20% OF THE JOB VALUE AT THE FRONT HALF, PRIOR TO RELEASING THE 80% MONEY THEY LOAN!

9. ANOTHER OBSERVATION OF MINE IS THAT WHEN A FORECLOSURE OF ANY MAGNITUDE TAKES PLACE, OR EVEN A LARGE-ISH SETTLEMENT IN LIEU OF FORECLOSURE, THAT THERE ARE NO ASSETS LEFT FOR THE SUBS AND THE SUPPLIERS TO GO AFTER. EITHER THE CONTRACTOR IS OUT OF BUSINESS, GONE CHAPTER 11 OR 7, OR IS IN MEXICO. AS A PRACTICAL MATTER, THERE IS NO RECOURSE ONCE THE BANK HAS PLAYED ITS TRUMP CARD AND EVEN THREATENED FORECLOSURE.

10. THE BANKER ALSO MISLEAD THE COMMITTEE ABOUT THE AMICABLE ARRANGEMENTS THAT HE CLAIMED WERE MADE WITH SUBS AND SUPPLIERS WHEN THEIR IS A FORECLOSURE. I CAN TELL YOU FOR A FACT, THAT ONCE THAT PLUG IS PULLED, THE BANKERS WILL NOT EVEN CALL YOU BACK. SEVERAL TIMES I HAVE MADE 10 TO 12 CALLS, WRITTEN LETTERS AND EVEN GONE DOWN IN PERSON TO SEE IF THERE WAS ANYTHING I COULD DO TO HELPTHE BANK AND THE BUILDER COMPLETE A UNIT AND GET IT SOLD TO PREVENT FORECLOSURE, OR TO MINIMIZE EVERYONE'S DAMAGES WHEN IT WENT UNDER.....AND THE BANKERS ARE SMUG, UNCOMMUNICATIVE AND IN TOTAL CONTROL. THEY WILL SIT ON DECISIONS, CHANGE LOAN OFFICERS, RENIG ON THEIR COMMITMENTS AND LET THINGS SLIDE INTO SALE THAT COULD BE EASILY SALVAGED.

I MIGHT ADD THAT THE BANK IN QUESTION HAS JUST LOST A MAJOR COURT BATTLE FOR PRECISELY THAT....BUT IT'S THE RARE BUILDER THAT HAS THE RESOURCES TO BRING IT TO LIGHT!

11. THE BANKER INDICATED THAT ALL THE INTEREST IN LIEN LAW REFORM WAS SIMPLY A "RESPONSE TO THE ECONOMIC SLOWDOWN": YES, THAT IS TRUE. WHEN THINGS ARE GOING WELL AND WE ARE ALL BUSY, WE CAN ABSORB SOME OF THIS AND INGORE BAD LEGISLATION. WHEN THINGS GET SLOW AND TOUGH, HOWEVER, THERE IS TIME AND JUSTIFICATION TO FIGHT IT. JUST BECAUSE BAD LEGISLATION WHICH CLEARLY FAVORS ONE SEGMENT OF OUR SOCIETY HURTS US MORE AT ONE TIME THAN IT DOES AT ANOTHER, DOES NOT MEAN THAT IT IS NOT SICK AND DOES NOT REQUIRE DOCTORING.

12. THE BANKER INDICATED THAT FOLKS SHOULD CONSIDER PROPORTIONATE LOSSES IN A FORECLOSURE. HE DID NOT, UNFORTUNATELY, OFFER A FORMULA. LET'S SUPPOSE IT'S A \$300,000 4-PLEX FOR WHICH THE BANK LOANED \$240,000. THE BUILDER WAS SUPPOSED TO COME UP WITH \$60,000 AND LET'S ASSUME THAT HE WENT \$20,000 OVER BUDGET AND THAT HE WAS DRAGGING ALONG A \$45,000 LOSS FROM HIS PREVIOUS JOB. THAT MEANS THAT OF THE \$240,000 FROM THE BANK, ONLY ABOUT \$175,000 IS AVAILABLE FOR SUBS AND SUPPLIERS ON THIS JOB.....LESS THE INTERIM LOAN INTEREST AND COSTS WHICH WILL BE DEDUCTED UP FRONT.

THAT MEANS THAT THE EXCAVATOR MOST LIKELY GOT PAID AND SO DID THE CONCRETE MAN IF THEY WERE ON TOP OF THEIR BILLINGS. THE FRAMER MAY HAVE ALL HIS MONEY, THE PLUMBER PROBABLY HAS THE FIRST HALF, AS HAS THE ELECTRICIAN. THE MILLWORK, CARPET AND APPLIANCE SUPPLIERS MAY BE PAID. THAT MEANS THE PAINTER, THE TILE SETTER, THE MECHANICAL GUY AND THE TRIM BILLINGS FOR PLUMBING AND ELECTRICAL, ARE BEYOND THE CAPABILITY OF THE BUILDER. THE BANK HAS ALREADY LOANED OUT ALL THE CASH, THE LIENS BEGIN TO BUILD. FOLKS STOP GOING BACK TO WORK ON THE UNIT, SO IT IS NOT COMPLETE AND CANNOT SELL, THEN THE BUILDER DEFAULTS ON HIS INTERIM NOTE AND THE BANK FORECLOSES. THE BANK THEN PROCEEDS TO SPEND ANOTHER \$45,000 TO FINISH IT, THEIR ATTORNEY WANTS \$15,000, AND IT GOES ON THE MARKET WITH A TOTAL PRICE TAG OF AT LEAST 60% MORE THAN FAIR MARKET VALUE.

IT WOULD APPEAR THAT THE BANK WOULD HAVE HAD SOME DUTY TO DETERMINE THAT THE BUILDER SPENT THE MONEY ON THIS PROJECT AND THAT THE SUBS AND SUPPLIERS GOT PAID, AND THAT THE BUILDER HAD HIS 20% SHARE READY TO SPEND.

IN LARGER JOBS, THE DRAWS ARE BASED UPON PERCENTAGE OF COMPLETION, AND ARE CERTIFIED BY THE INSPECTOR; THE LENDER KNOWS PRECISELY WHAT THE STATUS OF THE JOB IS AND WHO THE SUPPLIERS ARE.

BACK TO PROPORTIONS, HOWEVER: LET'S TRY THIS FORMULA: BANKS TRADITIONALLY HAVE A LOAN LOSS RATIO OF LESS THAN 1%; LET THEM TAKE THE 1% AND SPLIT THE REST AMONG THE OTHER CREDITORS.

SERIOUSLY THOUGH: A \$15,000 BANK LOSS ON A \$300,000 4-PLEX DOES NOT RELATE IN ANY WAY TO THE 20% OF ANNUAL GROSS SALES FOR THE TILE SETTER OR THE CARPETLAYER. PERHAPS THE BEST FORMULA IS TO ADD ALL THE COSTS OF THE PARTIES TOGETHER AND DIVIDE THIS NUMBER INTO EACH CREDITOR'S LOSS FOR A PERCENTAGE OF THE PROCEEDS ON SALE AT FORECLOSURE. THAT WAY IF SAY THE TOTAL AVAILABLE IS 60%, EACH PARTY TAKES IT'S 40% LOSS AND THE BANK GOES BACK THROUGH THEIR ORIGINAL NOTE COLLATERALIZATION AGREEMENT AND BACKFILLS THEIR LOSS BACK TO 100%. THAT'S REASONABLE!

13. BANKERS LOOK DOWN THEIR NOSES AT SUBS BECAUSE THEY ARE "JOHNNY COME LATELY". WHEN THE WORK ON THAT PHASE IS COMPLETED BETWEEN THE 1ST AND THE 15TH, IT IS BILLED THE 30TH, DISCOUNTED 2% FOR PAYMENT ON THE 10TH OF THE NEXT MONTH, LATE ON THE 25TH, AND A MATTER OF FOLLOWUP ON THE 25TH OF THE 2ND MONTH WHEN IT TRIPS OVER 30 DAYS. WE HAVE NO INKLING THAT THERE IS A PROBLEM UNTIL 65 DAYS AFTER THE WORK WAS DONE...AFTER THE SUBS HAVE PAID THEIR HELP AND SUPLIERS AND OVERHEAD.

THANK YOU VERY MUCH FOR YOUR ATTENTION. I WILL TURN IN A TYPED COPY OF MY PREPARED TEXT, AND I AM AVAILABLE FOR QUESTIONS.

Sam -

You mentioned earlier  
that the various interests  
were working on a  
compromise.

Any progress?

NO -

Home builders  
may have lined up  
w/ Banks

---

This



# ROBINSON HOMES

215 Corral Ave., Soldotna, Alaska 99669

(907) 262-5074

Cont. Lic. No. AA-5818

March 1, 1986

Rep. Mike Navarre  
Alaska State House of Representatives  
Pouch V (MS 3100)  
Juneau, Alaska 99811

Dear Mike,

I would like to thank you for your hospitality while the Home Builders were in Juneau. I would also like to assure you and your staff that I continue to work hard here on the grass-roots level to promote that dearest of issues, close to all of our hearts: the swift passage of H.B. 700!

## H.B. 494

I feel that the position expressed in the Teleconference hearing on Feb. 26th by the Homebuilders represents middle ground, and that to do more than these suggested changes is to assure future Legislatures of having to correct the law back closer to what it is now. **Making the misappropriation of funds a criminal offense** should go a long way towards correcting the problems of the present law. Further, if Subs and Suppliers can simply file a **Right to Lien** instead of having to get an Acknowledgement of Right to Lien signed by the Owner of Record, this will make this part of the process much less onerous, and ultimately result in more Subs and Suppliers getting their money. The inclusion of a **criminal penalty for the filing of a false or fraudulent lien** would keep "grudge liens" from being the next problem we would have to deal with.

## S.S.H.B. 506

In Chapter 76. JOINT INSURANCE ARRANGEMENTS., Sec. 21.76.010 AUTHORITY TO ESTABLISH JOINT INSURANCE ARRANGEMENTS., sub-section (a) should be amended further to include " and non-profit corporations".

## FUNDING FOR MUNICIPAL PROJECTS IN SOLDOTNA FOR FY 1987

We in Soldotna are satisfied with the Governor's Capital Budget figures as they were passed to the House from the Senate. These represent the projects that are at the top of our priorities, and will allow us to move forward with plans to include traffic signalization in our Binkley Street Project next summer. Including Signalization at this time will ultimately cost less than doing it as a separate job later, and as you well know, is badly needed. We also need to expand our water and sewer on the south side of the Kenai River to allow for the Development of the Salamantof property, and the building of a much-needed Water Storage Tank.

Sincerely,

Mitchel L. Robinson

sounds like part of the  
solution is need for  
bonded + licensed  
contractors (not in  
this bill, though)

**ALASKA MORTGAGE BANKERS ASSOCIATION**

P.O. BOX 4-2691/ANCHORAGE, ALASKA 99509

February 20, 1986

Honorable Mike Navarre  
Members: Labor and Commerce Committee  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

RE: House Bill 494

Dear Representatives:

The Alaska Mortgage Bankers Association has reviewed HB494 and has the following comments:

AS 34.35.060: This clause would give labor and materialmen liens equal priority with a prior mortgage.

Passage of this clause would, in our opinion, effectively preclude construction lending for a significant number of builders/contractors. In order to protect its loan, the lender would probably select one or more of the following:

- 1) Require significantly higher cash injection
- 2) Require a bond
- 3) Require additional collateral
- 4) Require a percentage holdback until Notice of Completion is filed and time frame had expired.

The net effect of such a clause would be to eliminate the small builder/contractor, and owner-builder from the industry.

AS 34.35.062: This clause would abolish the Stop-Payment Notice; require the lender and the owner to identify which property each portion of the loan draw is allocated to; and preclude any disbursements to lender, including interest payments or reimbursement for advances until a Direct Payment Notice has been paid. (Lenders need not comply with this section if builder/contractor has a 50% payment bond. Very few builder would be able to obtain such a bond, and if they could obtain the bond, the cost would be high.)

Direct Payment Notice (in lieu of Acknowledgement of Right to Lien and Stop Payment Notice); the effect would be that upon performance, a claimant could submit a DPN to the lender who would be obligated to pay unless the owner objected within 10 days. Performance could include delivery to a site; lenders normally advance funds only on a percentage of completion, not on delivery of the materials. Materials could "disappear" after the lender had advanced funds to pay for them.

Alternatively, if owner objects to DPN within timely manner, lender would be obligated to issue payment jointly to owner and claimant. The lender would have no control over its funds; this could lead to under-secured loans, over-disbursement for budgeted items and loss to the lender.

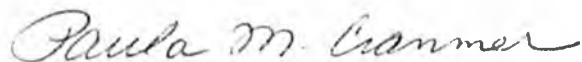
Honorable Mike Navarre  
February 20, 1986  
Page 2

AS 34.35.068 and .071: These sections would extend the time required for notice of filing the Notice of Completion from 5 days to 15 days and extend the time frame after Notice of Completion from 15 days to 30 days for filing of liens. This extension of time will cause delays in closing of residential loans and increased interest costs to the builder, unless title companies will accept an indemnity from the builder. It is doubtful that title companies will be willing to accept indemnities from any but the strongest builders/contractors. As is the case with section 34.35.060, the net effect will be to eliminate the small builder.

The current law has provisions in place to protect claimants; these provisions are seldom used.

We recommend the law be left intact as it currently exists.

Sincerely,



Paula Cranmer  
President

ry

February 26, 1986

POSITION OF ALASKANS FOR  
LIEN LAW REFORM

1. There are serious problems with the present Lien Law that are prejudicing Suppliers and Subcontractors.
2. The 1978-79 amendments to Lien Law are not working. Liens no longer a practical remedy for Suppliers and Subcontractors.
3. The 'trust me' attitude by Lenders in 1978-79 led Suppliers and Subcontractors to concede their superior lien priority to the Lenders in the mistaken belief that the new stop payment remedy would offset the loss of their superior lien priority.
4. The stop payment remedy is not working due to (a) the shortness of the 30 day deadline by which a suit must be filed by the lien claimant, (b) the bonding requirement, and (c) the Lenders' right to foreclose construction loans and wipe out the Suppliers', Subcontractors' and Builders' liens after failing to responsibly and diligently monitor their loans; eg. Lenders seldom condition construction loan disbursements on receipt of lien releases from Suppliers and Subcontractors.
5. All that Suppliers and Subcontractors want is PARITY with Lenders, not a return to their former superior lien position.
6. HB 494 would solve the Suppliers' and Subcontractors' problems, but has met with stiff resistance from Builders as well as Lenders.
7. The Suppliers and Subcontractors appreciate the Builders' problems and are willing to amend HB 494 to accommodate them, but believe that the Lenders are not seriously interested in a compromise because they want to 'have their cake and eat it too', ie. no statutorily mandated requirements for carefully monitoring their construction loans while having priority over Builders', Suppliers' and Subcontractors' liens.
8. As a result, in an effort to compromise, the Suppliers and Subcontractors are willing to amend HB 494 to accommodate the Builders by (a) abolishing stop payment provisions, (b) dropping direct payment notices and joint payment proposals, (c) requiring the mandatory recording of Notices of Right to Lien within a short period after supplies are furnished or work is begun as a condition to subsequent lien right, and (d) dropping proposals to extend notice of completion deadlines.

9. The cornerstones of the amendments proposed by the Suppliers and Subcontractors are:
- Abolishing acknowledgements of Rights to Lien and instead requiring the timely mandatory recording of Notices of Right to Lien; this eliminates notice problems that plagued the title companies in 1978-79.
  - Elevating liens of Suppliers, Subcontractors and Builders to a level of equal priority with Lenders, with appropriate accommodations to Lenders to enable them: (a) to still summarily foreclose their deeds of trust out of court; (b) to sell property purchases at such a foreclosure sale free and clear of all liens by bonding or escrowing around them; and (c) to provide joint ownership between the Lender and valid lien claimants if the property cannot be sold at a reasonable price by the Lender. Lenders and lien claimants equitably share losses proportionately.
  - Requiring Builders to apply construction loan proceeds to the authorized project with appropriate civil and criminal penalties if they don't.
  - Subcontractors and Builders will be elevated to equal rank with Suppliers for foreclosure proceeds sharing purposes.

March 5, 1986

Alaska Banker's Association  
Proposed substitute for HB 494

\*Section 1. AS 34.35.062 is repealed and reenacted to read:\*\*

Section 34.35.062. Construction financing. (a) A claimant to whom payment for the labor, materials, services or equipment furnished is past due may give the lender written notice to stop lending. The claimant shall at the same time give a copy of the notice to the owner and to the prime contractor. A stop-lending notice shall instruct the lender to stop disbursing, advancing or otherwise providing construction financing, shall be verified by the claimant and shall:

(1) state the claimant's name, address and telephone number;

(2) describe the labor, materials, services or equipment furnished by the claimant and state the name of the person to whom the same were furnished;

(3) describe the real property improved by such labor, materials, services or equipment and state the name of the owner of the real property;

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\*\* Note: Further amendments, to change "stop-payment" to "stop-lending", are necessary in various other places throughout §050-120. They are, presumably, the same places as those at which the present bill offers amendments to employ the term "direct-payment".

(4) state the amount due and unpaid to the claimant for such labor, materials, services or equipment.

(b) A stop-lending notice is binding upon a lender from the time the lender has received it and had a reasonable opportunity to act upon it until it expires or is revoked. A notice expires on the sixty-first day after it is received by the lender unless, prior to that day, the claimant has commenced an action on its claim and the lender has received written notification of that fact. A notice may be revoked at any time by a writing signed by the claimant. Expiration or revocation of a notice extinguishes any liability of the lender to the claimant under (c) of this section.

(c) A lender who disburses, advances or otherwise provides construction financing that is the subject of a binding stop-lending notice is liable to the claimant in an amount equal to the lowest of:

(1) the amount of construction financing disbursed, advanced or otherwise provided by the lender subsequent to its receipt of the claimant's stop-lending notice; if there are two or more binding stop-lending notices when such disbursement, advance or other provision of construction financing is made, the lender's liability for the amount disbursed, advanced or otherwise provided is to the claimant or claimants entitled to priority under AS 34.35.112(b);

(2) the amount properly owed to the claimant for labor, materials, services or equipment furnished by the claimant, as established by a written agreement signed on or after the date of the stop-lending notice by the claimant, the owner and the prime contractor or by a final judgment in an action to which the owner is a party; and

(3) 150 per centum of the amount stated in the stop-lending notice.

(d) Within ten days after receiving pursuant to (c)(2) of this section the written agreement or a certified copy of the judgment establishing the amount properly owed to a claimant from whom it has a binding stop-lending notice, a lender shall send to the claimant a statement showing, by date and amount, all construction financing provided by the lender. Except as provided at (e) of the section, the lender shall at the same time send the claimant payment in the amount of the lender's liability to the claimant under (c) of this section.

(e) If there are two or more claimants to whom a lender is or may be liable under (c) of this section and the lender is uncertain of the amount of its liability or possible liability among those claimants, the lender may bring an action to require the claimants to interplead their claims.

\*Section 2. AS 34.35.064(a)(7) is amended to read:

(7) the following statement in type no smaller than that used in providing the information required by (1) - (6) of this subsection:

WARNING: Unless provision is [HAS BEEN] made for payment of such sums as may be due to the undersigned, your above property may be subject to foreclosure to satisfy such sums even though you may pay a prime contractor or other person for the labor, materials, services or equipment furnished by the undersigned [THIS CLAIM, YOU MAYBE LIABLE FOR PAYMENT DIRECTLY TO THIS CLAIMANT NOTWITHSTANDING THE FACT THAT PAYMENT HAS BEEN MADE TO A PRIME CONTRACTOR OR OTHER PARTY].

\*Section 3. AS 34.35.064 is amended by adding a new subsection to read:

(c) A claimant other than an individual performing labor shall not have or claim a lien or submit a stop-lending notice under AS 34.35.050-120 for labor, materials, services or equipment furnished to a person other than the owner prior to the time the owner was given notice by the claimant under this section.

\*Section 4. AS 34.35.080(a) is amended to read:

(a) A lien provided for in AS 34.35.050 - AS 34.35.120 does not bind land or a building [, STRUCTURE,] or other improvement for more than six months after the claim of lien is recorded [FILED], unless an action is commenced in a [SUIT IS BROUGHT BEFORE THE] proper court to enforce the lien

(1) within that time, or

(2) within six months after recording of an extension notice in the same recording office within the original six-month period showing the recording date and the book and page or instrument number of the initial claim of lien, and the balance owing.

\*Section 5. AS 34.35.080(b) is repealed and reenacted to read:

(b) A lien whose duration is extended by commencement of an action pursuant to (a) of this section is void as against a person who, after the commencement of such action and without knowledge or actual notice of its pendency, acquires an interest in the subject property in good faith and for valuable consideration, unless a notice of the pendency of the action has been duly filed for record prior to the time such person's conveyance is duly filed for record. Notice of the pendency of the action shall conform to the requirements of AS 09.45.790.

\*Section 6. AS 34.35.114(c) is repealed and reenacted to read:

(c) A person who receives a stop-payment notice or notice of right to lien that identifies a project with respect to which the person is not a lender, accompanied with a copy of a writing by which the claimant's customer has identified such person as lender, shall, within five days, notify the claimant in writing that such person is not the lender.

\*Section 7. AS 34.35.114(d) is repealed and reenacted to read:

(d) At the request of an owner or lender to whom a claimant has given a stop-lending notice or notice of right to lien, a claimant shall, within five days, provide the owner or lender a written statement of the current amount due and unpaid to the claimant.

\*Section 8. AS 34.35.114(e) is amended to read:

(e) A person [AN OWNER OR HIS AGENT] who fails to provide information as required by this section, or who furnishes incorrect information, is liable to the person to whom such information should have been, or was, given in the amount of the actual damage caused by such failure or incorrectness [WHICH CAUSES A CLAIMANT TO FAIL TO REALIZE ON A LIEN IS LIABLE TO THE REQUESTING PARTY FOR ACTUAL DAMAGES].

\*Sections 9, 10 and 11 - same as sections 7 - 9 in original bill

\*Section 12. AS 34.35.120(4) is amended to read:

(4) "construction financing" means money loaned or other credit extended to an owner on the security of real property [THAT PORTION OF MONEY SECURED BY AN ENCUMBRANCE] to finance the costs of a project on that [ORIGINAL CONSTRUCTION OF A BUILDING OR OTHER IMPROVEMENT ON, OR DEVELOPMENT OF,] real property; [, BUT] it does not include money loaned or credit extended to:

(A) finance acquisition of [FUNDS TO ACQUIRE] real property;

(B) finance payment of prior indebtedness secured by real property [FUNDS TO PAY PRINCIPAL AMORTIZATION OF ENCUMBRANCES WITH PRIORITY OVER THE ENCUMBRANCE SECURING THE CONSTRUCTION FINANCING];

(C) finance payment of [FUNDS TO PAY] loan, commitment, title, legal, closing, recording, [OR] appraisal, or

other fees and costs incurred in connection with the making or extension of construction financing [ON THE CONSTRUCTION LOAN;].

\*Section 13. AS 34.35.120(12) is amended to read:

(12) "owner" means a person who owns real property, or a possessory interest in real property, [THE BUILDING OR OTHER IMPROVEMENT] and who enters into a contract, express or implied, for the construction, alteration or repair of a building or improvement on or to the real property.

\*Section 14. AS 34.35.120 is amended by adding a new subsection to read:

(17) "project" means the construction, alteration or repair of a building or other improvement on or to real property.

\*Section 15. AS 34.35.069, AS 34.35.070(f), and AS 34.35.120(6) are repealed.



# ROBINSON HOMES

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Cont. Lic. No. AA-5818

February 8, 1986

Rep. Mike Navarre  
Alaska State House of Representatives  
Pouch V (MS 3100)  
Juneau, Alaska 99811

**Subject: H.B. 494**

Dear Mike,

As you may already know, House Bill 494 is not loved by all in the Construction Industry. It is seen by many as an attempt by the supplier/sub-contractor portion of the industry to improve their position when a builder or other buyer of materials and/or services gets into financial trouble. That effort has merit, in that, since the Lien Law has been in its present form, it has been very difficult for this portion of the industry (suppliers and sub-contractors) to protect themselves. We feel the proposed legislation will ultimately have a detrimental impact to good, solid, credit-worthy Builders, and goes beyond what's needed to cure the ills of the present Lien Law.

There is a feeling by some in the industry that the suppliers are attempting to use H.B. 494 as a substitute for a good, sound credit policy. Wouldn't it be the best of both worlds if the suppliers could extend credit to both credit-worthy and unworthy builders alike, knowing that, if the unworthy builder gets into financial difficulty, the bank is obligated to pay these claims from subs and suppliers upon their demand? This flies in the face of good credit policy, yet if this legislation is allowed to become law as proposed, the Building Industry would be subject to a "credit policy" that would be considered unacceptable in any other industry. Of course, these poor-risk builders generally are the same ones that are causing builders to suffer from a poor reputation in the public's mind (the so-called "fly-by-night" builders), so we are not serving that public well by making it easier for them to operate.

The banks are also holding up the spectre of builders being forced to have all their bills paid by the banks, so that they can be sure the builder is paying them in a responsible way with the money borrowed. I submit that the bad builder, again, is the one that is creating the problem in the first place, and any legislation that either wittingly or unwittingly makes it easier for him to operate, is ill-advised, and is not in the public's interest.

On a lighter note, I'd like to inform you that the Alaska State Home Builders Association Board of Directors will be in Juneau on Feb. 26th and 27th, and will be holding a Legislative Reception at the Baronof Hotel on the evening of Feb. 26th. I would very much appreciate your accepting my invitation to this event. Since many of the issues facing our industry seem to cross your committee desk, I feel it would be beneficial to both sides of the table to know each other better on a social level.

Sincerely,

Mitchel L. Robinson

Analysis of Alaska Banker's Association's  
proposed substitute for HB494

Section 1

(a) Revises §062 to more clearly and accurately state the present "stop-payment" rule.

(b) Eliminates the current requirement that a claimant wait 20 - 30 days after an account becomes delinquent before he can give a stop notice to the lender.

(c) Doubles (to sixty days) the time within which the claimant must bring suit to preserve his rights, and eliminates the present requirement that he give a bond.

(d) Addresses the lender's obligations in cases where two or more stop notices are pending.

Section 2

Revises the required warning in the Notice of Right to Lien to more correctly alert the owner of the significance of the Notice.

Section 3

Provides that a claimant who is not in contract with the owner must give the owner a Notice of Right to Lien as a condition of his acquiring any statutory rights in the owner's property. This accomplishes the apparent purpose of the present §069, which would be repealed (Section 15).

#### Section 4

Clean-up revisions to §080(a).

#### Section 5

Under current law, a prospective purchaser who encounters a recorded lien claim must, no matter how old or apparently stale the claim, undertake to find out if the action required by §080(a) to keep the lien alive has been brought. First National Bank v. Dent, 683 P.2d 722 (Alas. 1984). Such a suit could be pending in any court, Superior or District, from Ketchikan to Barrow. Thus, a stale claim can put an onerous burden on properties' transferability.

AS 09.45.790 enables the claimant to record notice that he has brought the suit required, by §080(a), to keep the lien alive. This Section 5 simply provides that, unless he does record a lis pendens notice, the claimant risks losing his lien to a subsequent good faith purchaser for value who doesn't know of the claimant's action. It reverses the rule in FNBA v Dent.

#### Sections 6 - 8

Impose clearer obligations on lenders and claimants to provide correct information respecting their relationship to a project.

Sections 9 - 11

Extends the time a claimant is given to record a lien claim in the manner proposed by the bill.

Sections 12 and 13

Revises the definitions of "construction financing" and "owner" in interests of accuracy and clarity.

Section 14

Defines "project", a term used in the proposed §114(c) (Sec. 6) and 120(4) (Sec. 12).

Section 15

Repeals the current law's "acknowledgement of right to lien" provision, an unintelligible subsection of §070, and the definition of "draws" -- a term that is not used if §062 is amended as proposed at Section 1.

WORK DRAFT

WORK DRAFT

WORK DRAFT

Cook  
3/14/86

Original sponsors: Cotten, Szymanski,  
Phillips, et al

1 IN THE HOUSE

BY THE LABOR AND  
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 494 (L&C)

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 liens for labor or material  
7 furnished."

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

9 \* Section 1. AS 34.35.062 is repealed and reenacted to read:

10 Sec. 34.35.062. CONSTRUCTION FINANCING. (a) A claimant to whom  
11 payment for the labor, material, service, or equipment furnished for a  
12 project is past due may give the lender a stop-lending notice. The  
13 claimant shall at the same time give a copy of the notice to the owner  
14 and to each prime contractor with whom or through whom the claimant or  
15 the claimant's debtor has contracted. A stop-lending notice shall

16 (1) instruct the lender to stop disbursing, advancing, or  
17 otherwise providing construction financing for the project;

18 (2) be verified by the claimant;

19 (3) state the claimant's name, address, and telephone  
20 number;

21 (4) describe the labor, material, service, or equipment  
22 furnished by the claimant and state the name of the person to whom  
23 furnished;

24 (5) describe the real property improved by the labor,  
25 material, service, or equipment and state the name of the person the  
26 claimant believes to be the owner of the real property;

27 (6) state the amount due and unpaid to the claimant for the  
28 labor, material, service, or equipment.

29 (b) After the lender has received a stop-lending notice and has

1 had a reasonable time to act on it the lender may not disburse a draw  
2 until the notice expires or is revoked. A notice expires on the 91st  
3 day after it is received by the lender unless the claimant has com-  
4 menced an action on the claim that is the subject of the notice before  
5 that day and the lender has received written notification of the  
6 action. A stop-lending notice may be revoked at any time in writing  
7 signed by the claimant. Expiration or revocation of a notice extin-  
8 guishes the liability of the lender to the claimant under (c) of this  
9 subsection.

10 (c) A lender who provides construction financing for a project  
11 after it is the subject of a binding stop-lending notice is liable to  
12 the claimant in an amount equal to the lowest of the following  
13 amounts:

14 (1) the amount of construction financing provided by the  
15 lender after receipt of the claimant's stop-lending notice; if there  
16 are two or more binding stop-lending notices when the disbursement  
17 occurs, the lender's liability to each claimant is based on the claim-  
18 ant's ranking under AS 34.35.112;

19 (2) the amount owed to the claimant for labor, material,  
20 service, or equipment furnished for the project by the claimant,  
21 including interest, costs, and attorneys fees, as established by a  
22 written agreement signed on or after the date of the stop-lending  
23 notice by the claimant, the owner and the prime contractor with whom  
24 or through whom the claimant or the claimant's debtor has contracted  
25 or by a final judgment in an action in which the owner, the claimant  
26 and the claimant's debtor are named and, if necessary, served parties;

27 (3) 150 percent of the amount stated as due in the stop-  
28 lending notice.

29 (d) Within 10 days after receiving the written agreement or a

1 certified copy of the judgment under (c)(2) of this section estab-  
 2 lishing the amount owed to a claimant from whom it has a binding  
 3 stop-lending notice, a lender shall send to the claimant a verified  
 4 statement showing, by date and amount, all construction financing  
 5 provided by the lender for the project. Except as provided in (e) of  
 6 this section, the lender shall include with the statement payment in  
 7 the amount of the lender's liability to the claimant under (c) of this  
 8 section.

9 (e) If there are two or more claimants to whom a lender is or  
 10 may be liable under (c) of this section and the lender is uncertain as  
 11 to the amount of its liability or possible liability to each, the  
 12 lender may bring an action to require the claimants to interplead  
 13 their claims.

14 (f) A lender may not provide a draw to the owner or an agent of  
 15 the owner until

16 (1) the owner delivers a verified certificate to the lender  
 17 that states the

18 (A) progress of the project, including the percentage  
 19 of completion of the project;

20 (B) name, address, and telephone number of each prime  
 21 contractor who has furnished labor, material, service, or equip-  
 22 ment for the project;


23 (C) amount owed by the owner to each listed prime  
 24 contractor;

25 (D) portion of the draw that the owner will pay to  
 26 each listed prime contractor; and

27 (2) each prime contractor listed in the owner's certificate  
 28 delivers a verified certificate to the lender that states the

29 (A) amount owed to the prime contractor by the owner

*Is this done anyhow*



1 for the project;

2 (B) name, address, and telephone number of each person  
3 who has furnished labor, material, service, or equipment for the  
4 project under a contract with the prime contractor;

5 (C) description of the labor, material, service, or  
6 equipment furnished by each listed person;

7 (D) amount owed by the prime contractor to each listed  
8 person for the labor, material, service, and equipment;

9 (E) portion of the draw to be paid by the owner to the  
10 prime contractor that the prime contractor will pay to each  
11 listed person; and

12 (F) name, address, and telephone number of each person  
13 who has not entered into a contract with the prime contractor but  
14 has furnished labor, material, service, or equipment to or for  
15 the benefit of the project through the prime contractor.

16 (g) The owner and each prime contractor shall use each draw as  
17 indicated in the certificates given by them to the lender under (f) of  
18 this section. The lender may not be required to verify the informa-  
19 tion in a certificate and is not liable for an error in a certificate.

20 (h) An owner or prime contractor who wilfully and intentionally  
21 fails to apply construction financing proceeds as indicated by the  
22 certificate required under (f) of this section is guilty of a class C  
23 felony. If the owner or prime contractor is not a natural person,  
24 upon conviction the owner or prime contractor may be fined in an  
25 amount not to exceed \$50,000.

26 (i) Within 10 days after being requested, a lender shall provide  
27 a person who has given it a notice of right to lien with a copy of

28 (1) each certificate received by the lender under (f) of  
29 this section; and

1 (2) a verified certificate stating the amount of construc-  
2 tion financing proceeds committed by the lender for the project that  
3 have not been disbursed by the lender.

4 (j) The lender may not provide construction financing proceeds  
5 for payment of indebtedness of the owner that is not incurred for the  
6 project.

7 \* Sec. 2. AS 34.35.064(a) is amended to read:

8 (a) Before furnishing labor, material, service, or equipment for  
9 a project, a person [AFTER ENTERING INTO A CONTRACT, A CLAIMANT] may  
10 give a notice of right to lien to the owner or owner's agent [AND THE  
11 LENDER]. If the notice is given in accordance with this section, the  
12 owner has the burden of proof to show that the owner did not know of  
13 or consent to the furnishing of the labor, material, service, or  
14 equipment by the claimant in an action to foreclose the claimant's  
15 lien on the property under AS 34.35.050 - 34.35.120. Otherwise the  
16 claimant has the burden of proof to show that the owner knew of and  
17 consented to the furnishing of the labor, material, service, or equip-  
18 ment. The notice of right to lien shall be in writing, state that it  
19 is a notice of a right to assert a lien against real property [A  
20 BUILDING OR OTHER IMPROVEMENT] for labor, materials, services, or  
21 equipment furnished in connection with a project [CONSTRUCTION, ALTER-  
22 ATION, OR REPAIR OF THE BUILDING OR OTHER IMPROVEMENT], and contain

23 (1) a legal description sufficient for identification of  
24 the real property [UPON WHICH THE BUILDING OR OTHER IMPROVEMENT IS  
25 LOCATED];

26 (2) the name of the owner;

27 (3) the name and address of the claimant;

28 (4) the name and address of the person with whom the claim-  
29 ant contracted;

1 (5) a general descriptor of the labor, materials, ser-  
2 vices, or equipment provided or to be provided;

3 (6) a statement that the claimant may be entitled to record  
4 a claim of lien; and

5 (7) the following statement in type no smaller than that  
6 used in providing the information required by (1) - (6) of this  
7 subsection: WARNING: Unless provision is [HAS BEEN] made for payment  
8 of sums due to this claimant, your property described in this notice  
9 may be subject to foreclosure regardless of whether [THIS CLAIM, YOU  
10 MAY BE LIABLE FOR PAYMENT DIRECTLY TO THIS CLAIMANT, NOTWITHSTANDING  
11 THE FACT THAT] payment has been made to a prime contractor or other  
12 person for the labor, material, service, or equipment furnished by the  
13 claimant [PARTY].

14 \* Sec. 3. AS 34.35.067 is amended to read:

15 Sec. 34.35.067. RECORDING NOTICE OF RIGHT TO LIEN. A notice of  
16 right to lien may be recorded by a claimant at any time after the  
17 claimant enters [ENTERING] into a contract for or first furnishes  
18 labor, material, service, or equipment [FURNISHED] in connection with  
19 a project [THE CONSTRUCTION, ALTERATION OR REPAIR OF A BUILDING OR  
20 OTHER IMPROVEMENT]. The notice shall be recorded in the same manner  
21 as specified for the recording of a claim of lien under AS 34.35.070.

22 \* Sec. 4. AS 34.35.070(a) is amended to read:

23 (a) A [SUBJECT TO THE PROVISIONS OF AS 34.35.069(a), A] claimant  
24 may record a claim of lien after entering into a contract for a proj-  
25 ect [THE CONSTRUCTION, ALTERATION, OR REPAIR OF A BUILDING OR IMPROVE-  
26 MENT]. A claim of lien may not be recorded later than the time spec-  
27 ified under AS 34.35.068.

28 \* Sec. 5. AS 34.35.071(a) is amended to read:

29 (a) The owner of real property that may be subject to a lien

1 under AS 34.35.050 - 34.35.120 may announce the date of completion of  
2 the project [A BUILDING OR OTHER IMPROVEMENT ON THE PROPERTY] by

3 (1) recording a notice of completion after completion of  
4 the project [CONSTRUCTION, ALTERATION OR REPAIR OF THE BUILDING OF  
5 OTHER IMPROVEMENT] in the office of the recorder of the district in  
6 which the real property [BUILDING OR OTHER IMPROVEMENT] is situated;  
7 and

8 (2) giving notice at least five days before the recording  
9 of the notice of completion to all claimants who have given a notice  
10 of right to lien or a stop-lending [STOP-PAYMENT] notice to the owner  
11 and the lender prior to 10 days before recording a notice of comple-  
12 tion; the notice must include a copy of the notice of completion and a  
13 statement advising claimants that a notice of completion will be  
14 recorded not earlier than five days after the date of the notice.

15 \* Sec. 6. AS 34.35 is amended by adding a new section to read:

16 Sec. 34.35.074. CIVIL SUITS. A person injured by a violation of  
17 AS 34.35.050 - 34.35.120 may bring a civil action

18 (1) for actual damages that are proximately caused by the  
19 violation, and if the person prevails and the defendant's conduct is  
20 found to be wilful and intentional, the person shall be awarded three  
21 times the amount of actual damages plus costs, including reasonable  
22 actual attorney's fees;

23 (2) to enjoin the violation, and if the person prevails,  
24 the person shall be awarded costs, including reasonable attorney's  
25 fees.

26 \* Sec. 7. AS 34.35.080(a) is amended to read:

27 (a) A lien provided for in AS 34.35.050 - 34.35.120 does not  
28 bind real property [A BUILDING, STRUCTURE, OR OTHER IMPROVEMENT] for  
29 more than six months after the claim of lien is recorded [FILED].

1 unless an action is commenced in [SUIT IS BROUGHT BEFORE] the proper  
2 court to enforce the lien within

3 (1) [WITHIN] that time; [,] or

4 (2) [WITHIN] six months after recording of an extension  
5 notice in the same recording office within the original six-month  
6 period showing the recording date and the book and page or instrument  
7 number of the initial claim of lien, and the balance owing.

8 \* Sec. 8. AS 34.35.080 is amended by adding a new subsection to read:

9 (c) A lien extended by commencement of an action in accordance  
10 with (a) of this section does not affect an interest of a person in  
11 real property acquired after the commencement of the action without  
12 knowledge or actual notice of the action if the person acquired the  
13 interest in good faith for valuable consideration. For purposes of  
14 this subsection, notice of the pendency of the action conforming to  
15 requirements under AS 09.45.790 and recorded before the person ac-  
16 quires the interest in property constitutes actual notice of the  
17 action.

18 \* Sec. 9. AS 34.35.112 is amended to read:

19 Sec. 34.35.112. PAYMENT OF CLAIMANT'S LIENS. (a) If more than  
20 one lien created under AS 34.35.050 - 34.35.120 is claimed against  
21 property, the court in its judgment shall declare the rank of each  
22 lien or class of liens in the following order:

23 (1) all persons other than prime contractors or subcontractors  
24 with lien rights under AS 34.35.050(1);

25 (2) the trustees of employment benefit trusts for persons  
26 described in (1) of this subsection;

27 (3) all materialmen and subcontractors;

28 (4) [SUBCONTRACTORS, INCLUDING] prime contractors other  
29 than the general contractor [AND PERSONS DESCRIBED IN

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AS 34.35.050(5)];

(5) the general contractor.

(b) For purposes of AS 34.35.050 - 34.35.120, if the proceeds of the foreclosure sale of the property are insufficient to pay the lien claims of all persons who have recorded claims [A CLAIM] of lien, the

(1) [THE] liens of all individuals with lien rights under AS 34.35.050(1) shall first be paid in full, or pro rata if the proceeds are insufficient to pay them in full;

(2) [THE] liens of trustees of employment benefit trusts for persons described in (1) of this subsection shall be paid in full or pro rata if the proceeds are insufficient to pay them in full;

(3) [THE] liens of materialmen and subcontractors shall be paid in full or pro rata if the proceeds are insufficient to pay them in full;

(4) liens of persons described in AS 34.35.050(5) and [OUT OF THE REMAINDER THE SUBCONTRACTORS, INCLUDING] prime contractors, other than the general contractor, shall be paid in full [,] or pro rata if the remainder is insufficient to pay them in full; and

(5) lien of the general contractor [THE BALANCE] shall be paid out of [TO THE GENERAL CONTRACTOR; A GENERAL CONTRACTOR IS ENTITLED TO EXECUTION FOR] the balance [DUE AFTER DISTRIBUTION].

\* Sec. 10. AS 34.35.112 is amended by adding a new subsection to read:

(c) For purposes of AS 34.35.050 - 34.35.120, if the proceeds of the foreclosure sale of the property are sufficient to pay the lien claims of all persons who have recorded claims of lien, the balance shall be paid to the person who owned the property before the foreclosure sale.

\* Sec. 11. AS 34.35.114(c) is repealed and reenacted to read:

(c) A person who receives a stop-lending notice or notice of

1 right to lien identifying a project for which the person is not the  
2 lender shall notify the claimant in writing within 10 days after  
3 receipt of the notice that the person is not the lender.

4 \* Sec. 12. AS 34.35.114(d) is repealed and reenacted to read:

5 (d) A claimant shall, within 10 days after receipt of a request,  
6 provide an owner or lender to whom the claimant has given a stop-lend-  
7 ing notice or notice of right to lien a written statement of the  
8 amount due to the claimant and unpaid.

9 \* Sec. 13. AS 34.35.117(a) is amended to read:

10 (a) Except as provided under (b) of this section, a written  
11 waiver of lien or stop-lending [STOP-PAYMENT] notice of rights created  
12 under AS 34.35.050 - 34.35.120 signed by a claimant requires no con-  
13 sideration and is valid and binding. A waiver permitted under this  
14 section may not relate to labor, materials, services, or equipment  
15 furnished after the date the waiver is signed by the claimant.

16 \* Sec. 14. AS 34.35.120(4) is amended to read:

17 (4) "construction financing" means [THAT PORTION OF] money  
18 loaned or other credit extended to an owner secured by an encumbrance  
19 on real property to finance a project on that [ORIGINAL CONSTRUCTION  
20 OF A BUILDING OR OTHER IMPROVEMENT ON, OR DEVELOPMENT OF,] real prop-  
21 erty [, BUT DOES NOT INCLUDE

22 (A) FUNDS TO ACQUIRE REAL PROPERTY;

23 (B) FUNDS TO PAY PRINCIPAL AMORTIZATION OF ENCUM-  
24 BRANCES WITH PRIORITY OVER THE ENCUMBRANCE SECURING THE CONSTRUC-  
25 TION FINANCING;

26 (C) FUNDS TO PAY LOAN, COMMITMENT, TITLE, LEGAL,  
27 CLOSING, RECORDING OR APPRAISAL FEES ON THE CONSTRUCTION LOAN];

28 \* Sec. 15. AS 34.35.120(9) is amended to read:

29 (9) "give notice" means to mail a notice required under

1 AS 34.35.050 - 34.35.120 by first-class mail and by using a form of  
2 mail requiring a signed receipt, or to deliver the notice and obtain a  
3 receipt signed by the person to whom it is directed or an agent of  
4 that person; a notice is effective when given or delivered to

5 (A) [TO] a lender at the address designated in the  
6 encumbrance securing that lender;

7 (B) [TO] an owner at the last known address of the  
8 owner;

9 (C) [TO] a prime contractor at the last known address  
10 of the prime contractor;

11 (D) [TO] a potential lien claimant at the address  
12 specified in a stop-lending [STOP-PAYMENT] notice or notice of  
13 right to lien or claim of lien;

14 \* Sec. 16. AS 34.35.120(13) is amended to read:

15 (13) "owner" means a person who owns real property or a  
16 possessory interest in real property [THE BUILDING OR OTHER IMPROVE-  
17 MENT] and who enters into a contract, express or implied, for a proj-  
18 ect on that property [THE CONSTRUCTION, ALTERATION OR REPAIR OF A  
19 BUILDING OR IMPROVEMENT];

20 \* Sec. 17. AS 34.35.120 is amended by adding a new paragraph to read:

21 (17) "project" means construction, alteration, or repair of  
22 an improvement on real property or work done to enhance the real  
23 property itself.

24 \* Sec. 18. AS 34.35.069, 34.35.070(f), 34.35.080(b), 34.35.114(e), and  
25 34.35.118 are repealed.

*file  
w/ HB 494*

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE MIKE NAVARRE  
FROM: ALAN SHAFER  
4101 1/2 TAFT DRIVE  
ANCHORAGE ANCHORAGE 99503  
248-1242

BILL NO: HB 494

SUBJECT: LIENS FOR LABOR OR MATERIALS FURNISHED

MESSAGE:

I AM IN SUPPORT OF THE BILL INCLUDING THE CRIMINAL PENALTIES  
FOR FAILURE TO COMPLY. I AM AGAINST MANDATORY RECORDING  
FOR NOTICES OF RIGHT TO LIEN.

DATE: 04/02/86 TIME: 16:14:07 SENT BY: ANCHORAGE LIO

COPIES TO: HOUSE MEMBERS  
SENATE MEMBERS

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE MIKE NAVARRE  
FROM: BRUCE NIEMI  
12131 RAINBOW AVENUE  
ANCHORAGE 99516  
345-1657

BILL NO: HB 494

SUBJECT: LIENS FOR LABOR OR MATERIALS FURNISHED

MESSAGE:

I AM REAL DISAPPOINTED THE WAY THE LAW IS SET UP NOW, AND I WOULD LIKE TO SEE THE BILL CHANGED. I WOULD HATE TO SEE MY JOB AND FUTURE JEOPARDIZED IN THIS WAY DUE TO THE FACT WE HAVE LOST SO MUCH MONEY IN A SHORT PERIOD OF TIME. I AM OPPOSED TO THE MANDATORY REPORTING AMENDMENT.

DATE: 04/02/86 TIME: 16:04:01 SENT BY: ANCHORAGE LIO

COPIES TO: HOUSE MEMBERS  
SENATE MEMBERS

PUBLIC OPINION MESSAGE

TO: REPRESENTATIVE MIKE NAVARRE  
FROM: ROBERT GENTRY  
8410 BROOKRIDGE ST  
ANCHORAGE 99504  
333-7932

BILL NO: HB 494

SUBJECT: LIENS FOR LABOR OR MATERIALS FURNISHED  
MESSAGE:

I WOULD ENCOURAGE YOU TO VOTE FOR HB 494 AND ALSO, I AM  
AGAINST THE MANDATORY RECORDING BECAUSE LITTLE BUSINESSES  
AND INDIVIDUALS WHO OWN AND OPERATE THOSE BUSINESSES CANNOT  
COMPLY WITH THIS. TOO MANY BUSINESSES HAVE GONE OUT OF BUSINESS  
BECAUSE OF A LACK OF A BILL LIKE THIS.

DATE: 04/02/8 TIME: 14:54:05 SENT BY: ANCHORAGE LIO

COPIES TO: HOUSE MEMBERS  
SENATE MEMBERS

**STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE**

Revision Date: \_\_\_\_\_

**REQUEST**

Bill/Resolution No.: HB 597  
 Title: An Act relating to powers of the Guide Licensing and Control Board and to regulations adopted by the board;  
 Sponsor: Reps. Marrou & Davis  
 Requester: \_\_\_\_\_  
 Date of Request: \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected: Commerce & Econ. Dev.  
 BRU: Occupational Licensing  
 \_\_\_\_\_  
 Components: \_\_\_\_\_  
 \_\_\_\_\_

**EXPENDITURES / REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
TRAVEL		-0-	-0-	-0-	-0-	-0-
CONTRACTUAL		.8	-0-	-0-	-0-	-0-
SUPPLIES		-0-	-0-	-0-	-0-	-0-
EQUIPMENT		-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		.8	-0-	-0-	-0-	-0-

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

REVENUE		**				
---------	--	----	--	--	--	--

**FUNDING: (Thousands of dollars)**

GENERAL FUND		.8	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		-0-	-0-	-0-	-0-	-0-

**POSITIONS:**

FULLTIME		0	0	0	0	0
PARTTIME						
TEMPORARY						

**ANALYSIS:** Attach a separate page if necessary.

The bill amends the board's authority under AS 08.54.040(a) to establish a quota for licensed guides and requires that the quota for any area be consistent with game harvest levels in the area. The bill also annuls regulations 12 AAC 38.051 - 12 AAC 38.058 relating to guide areas. (See attached for further explanation of costs.)

\*\*The bill is not expected to generate new revenues.

Prepared by: Jennifer Strickler, Management Analyst

Division: Occupational Licensing

Phone: 465-2144

Date: 3-28-86

Approved by Commissioner: *Sam S. Armstrong*  
 Agency: Commerce & Economic Development

Date: 4/1/86

Distribution (by Agency preparing fiscal note):

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

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 597

Since the bill annuls regulations 12 AAC 38.051 - 12 AAC 38.058, new regulations regarding guide areas would have to be established. Contractual costs consist of the following:

Printing of public notices in three major newspapers and for distribution to interested parties (approximately 200 individuals) = \$ .3

Teleconference of public hearing using the Legislative Teleconference Network System for two hours at \$50 per site, per hour, and connected to the following sites where most of the guides participate from:

Anchorage  
Fairbanks  
Kodiak  
Juneau  
Ketchikan

= .5  

---

---

\$ .8

MS  
494

from Dan Koch

SID

HERE IS SOME BACKGROUND DATA ON THE MECHANICS + MATERIALMENS LIEN ISSUE. WE HAVE BEEN INTO THIS THING SEVERAL TIMES.

ORDER 77-3

ORDER 77-3 SUPPLEMENT

ORDER 77-3 SUPPLEMENT #2

ORDER 77-3 SUPPLEMENT #3

ORDER 78-4

ORDER 80-1 (TEMPORARY)

ORDER 84-2

ORDER 77-3 IS THE BEST IN TERMS OF DETAILED BACKGROUND.

IN ADDITION, ORDER 78-5 IS GOOD BACKGROUND ON HOW TITLE INSURANCE WORKS. THE REFS WERE TRO'D AND WERE ULTIMATELY WITHDRAWN.

STATE OF ALASKA  
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT  
DIVISION OF INSURANCE  
POUCH D  
JUNEAU, ALASKA 99803

Order 77-3

To: All Title Insurers Admitted to do Business in Alaska  
All Licensed Title Insurance Agents in Alaska

RE: Title Insurance - Mechanics' Liens - Continued use of the ALTA  
Standard Loan Policy

The Director of Insurance does hereby find, as follows:

Background

1. On December 17, 1976, the Pioneer National Title Insurance Company (Hereinafter Pioneer), an admitted title insurer and reinsurer of one of the major writers of title insurance in Alaska, requested a hearing before the Division of Insurance. In its request, Pioneer expressed its serious concern about the degree of hazard presented to title insurers issuing the American Land Title Association Standard Loan Policy (hereinafter ALTA policy) because of the peculiarities of the Alaska Mechanics Lien Law (AS 34.35.050-120) and a superior court decision in the case against Habitat Ketchikan, Inc. et al (case number 73-270 civil, 73-202 civil, 73-302 civil and 73-318 civil at Ketchikan). A prime concern offered by Pioneer for consideration in our decision to grant a hearing was the potential impact on title insurer solvency. Pioneer petitioned that the Division disallow the ALTA policy form in this State.
2. After reviewing the request by Pioneer, the Division granted the hearing. A notice of hearing was sent to:

All authorized title insurers in Alaska;  
All licensed title insurance agents in Alaska; and  
All Alaska State Legislators.

The hearing was held as noticed on February 18, 1977 in Juneau. During the hearing it became clear that we should also be receiving input from the lending community. Accordingly, the hearing was recessed and a new notice of hearing was sent to:

All title insurers admitted to do business in Alaska;  
All life insurers admitted to do business in Alaska;  
All banks in Alaska;  
All savings and loan associations in Alaska;  
The Federal Housing Administration;  
The Federal National Mortgage Association;  
The Alaska State Housing Authority;  
The Association of General Contractors of America;  
The Teamsters Pension Fund;  
The Surety Association of America;  
All Alaska State Legislators; and  
Other interested persons.

The hearing was reconvened on March 16, 1977 in Juneau and additional input was received.

### Title Insurance

3. The title insurance policy is a report which the title insurer guarantees is correct and provides indemnification to the degree that the policy is incorrect and loss or damage results. Title insurance is different from all other kinds of insurance in this regard. The premium paid is primarily a service fee that covers the expense of searching, analyzing, sorting, cross checking, and indexing of recorded information so that the history or "chain of title" on a property can be compiled. In addition to the guarantee feature of the title insurance coverage, the title insurer can assume certain known risks. The title insurer may take a calculated risk for business reasons in the belief that the danger of loss is remote or that if an adverse claim is asserted, the insured title can be successfully defended.
4. The title insurer will also assume risk upon the basis of indemnity furnished to the insurer by the seller, mortgagor, developer or contractor. The indemnity is usually in the form of a personal indemnity agreement, accepted on the integrity and financial responsibility of the indemnitor or fortified by a deposit of cash or securities. Though not the usual practice, the indemnity could take the form of a bond executed by a surety company.
5. In underwriting a title policy, the title insurer eliminates the loss by identifying defects and excluding the defects from coverage by listing the defects as exceptions to otherwise clear title in an exception schedule in the title policy. This effort can be contrasted with the property or casualty insurer where the underwriter attempts to measure the risk and magnitude of loss rather than exclude the loss from coverage. In each case, the title insurer or the property-casualty insurer, assuming it may legally offer a coverage, has the right to offer or not to offer a particular coverage, or policy form. Each is expected to exercise underwriting judgment when considering an application for coverage.
6. In 1974 the Alaska Legislature adopted a title insurance law substantially tracking a model law developed by the American Land Title Association (ALTA). Title insurance is defined in this new law under AS 21.66.480(7) as

"... insuring, guaranteeing or indemnifying owners of real or personal property or the holders of liens or encumbrances on it or others interested therein against loss or damage suffered by reason of

- (a) Liens, encumbrances upon, defects in or the unmarketability of the title to the property; or
- (b) The invalidity of unenforceability or liens or encumbrances on the property."

The scope of the definition is further confined by a limitation on the powers of a title insurer. The limitation found in AS 21.66.190(b) states:

"No title insurance company may engage in the business of guaranteeing the payment of the principal or the interest of bonds or other obligations."

This limitation is entirely appropriate from two standpoints. First, the guaranteeing of payment of the principal or the interest of bonds or other obligations is surety and is properly covered by a surety company. Secondly, the underwriting necessary to conduct a surety business is alien to the experience, expertise and financial condition of the title insurer.

#### ALTA Standard Loan Policy

7. The American Land Title Association Standard Loan Policy (ALTA policy) is presently issued to lenders by all title insurers doing business in Alaska subject to the underwriting judgment of each insurer. The ALTA policy offers lenders the broadest title insurance coverage of mortgages available. It was designed to insure mortgages, the proceeds of which have been fully dispersed. Included in the coverages provided is protection against "any statutory lien for labor or materials which now has gained or hereafter may gain priority over the lien of said mortgage or Leed of Trust upon said estate (emphasis added)." This policy contemplates an inspection by the insurer prior to commitment, since coverages are provided for unrecorded matters as well as recorded exceptions. This policy form is used in almost all jurisdictions.

#### Role of Title Insurance in Marketing Mortgages

8. When a lending institution agrees to finance construction of a building and/or the "permanent" or "take out" loan on the structure, it is justifiably concerned with the condition of the title on the property and the priority or its security. This guarantee is provided through a title insurance policy in which it is named insured.
9. Since few Alaska lending institutions fund long term mortgages with their own capital, they must be concerned with the requirements and expectations of the firms or organizations that purchase those loans. The lending institutions sell the loans to others, referred to as the secondary market, and reuse the replenished capital to finance more loans. Some lending institutions experience this capital turnover on a daily basis.
10. The largest buyer of loans in the secondary market for Alaska is the Federal National Mortgage Association (FNMA). Other buyers of Alaska mortgages include the State of Alaska Pension Fund, the Alaska Housing Finance Corporation, the Mortgage Corporation, life insurance companies, and others. These buyers generally follow the lead of FNMA as to requirements for loans being purchased. FNMA requires an ALTA policy including protection against mechanics' liens. Without the ALTA policy, most mortgages are not marketable in the secondary market.

#### Mechanics of Policy Issuance

11. As can be inferred from the foregoing, the primary customers of the title insurer is the lending institution. Competition is keen and accommodation is normal. The lending institutions generally transfer as much risk to the title insurer as is possible.

When an order for a construction loan policy is given to the title insurer, the insurer performs its search of the title plant, conducts its inspection of the property if it is deemed appropriate, and issues a preliminary title

report or commitment to issue title insurance. This document may contain exceptions that are negotiated out after obtaining proper support. For example, certain liens may be removed after obtaining indemnity agreements. The order for a permanent or "take out" loan follows much the same procedure.

#### Solvency of Title Insurers

12. All title insurers doing business in Alaska are regulated by the Division of Insurance under AS 21.66. Foremost among the regulatory concerns of the Division is the continued solvency of all insurers. If an insurer undertakes to provide a coverage or coverages that has a substantial potential for jeopardizing the solvency of that insurer and thus the ability of that insurer to pay its contractual obligations, then the Division must intervene to prevent the use of such coverage.

#### Alaska Mechanics' Lien Law

13. Under Alaska law AS 34.35.050-120 is the article concerning the rights of mechanics and materialmen to lien property. Section 060 of the article establishes that a lien created by this article in favor of a person actually performing labor upon or furnishing material used in a building or other improvement in its original construction is preferred to a prior lien, mortgage or other encumbrance upon the land on which the building or other improvement is constructed. The lien claimant is further barred from waiving these rights by AS 34.35.495.
14. AS 34.35.070 sets forth the requirements for filing a lien. Unfortunately, the law contains some ambiguities which appear to extend, indefinitely in some cases, the right of the lien claimant to file a lien. The lien claimant has 90 days to file his lien after proper notice of completion is filed by the contractor. Under present law, the contractor must file such notice within 10 days of completion. The 1977 Legislature addressed this issue during the last session and passed SB 252 (Chapter 123 SLA 1977) which will become effective on September 12, 1977. The intent of the legislation is to place a more specific time limitation on the right of the lien claimant to file his lien.
15. The Legislature also considered some major changes in the section dealing with the priorities noted in 13 above. HB 282 would have revised the law to prevent mechanics' or materialmen's liens from gaining priority over a prior recorded mortgage. The effect of the current State of Alaska law is that the mortgagee has no assurance that he has or will continue to have the priority lien on a property even though its mortgage has been properly recorded prior to commencement of any construction.
16. The Division notes that Alaska's law is similar to the law of other states in this regard but that a vast majority of states adopted the view that prior recorded mortgages do not lose their priority to any liens or encumbrances (except governmental tax or assessment liens). It appears that such public policy is consistent with permitting orderly development of real estate projects with adequate protection for both the lender and the materialmen.

## The Habitat Ketchikan, Inc., Case

17. On November 2, 1976, a superior court decision was rendered in a case against Habitat Ketchikan, Inc., which has wrought substantial unrest amongst insurers. The decision, in part, negated the effectiveness of the indemnity agreement as a device to limit or eliminate exposure to loss.

Without discussing the complexities of the case, it is sufficient to note that the title insurer took an indemnity agreement from Habitat and the contractor as to liens for materials and labor which the court held was not enforceable and required the title insurer to discharge a contractor's lien which, though construction commenced after recording of the mortgage, had, because of Alaska's law, acquired priority over the insured mortgage.

18. The use of the ALTA policy by the lenders as means of gaining protection against mechanic's lien priority, has the effect of providing the protection through title insurance which the Legislature chose not to give the lenders by a re-ordering of priorities.

### Delay of Order

19. At the time the hearings were being held, the Legislature had SB 252 under consideration. Passage of that bill would have rendered this issue moot. In view of that, this order was delayed.

### Conclusions

20. Since title insurance by definition insures, guarantees or indemnifies against loss or damage suffered by reason of liens, it is necessary to consider how mechanics' liens coverage fits within the scope of the definition. It is also necessary to consider the limitation of powers on title insurers. As noted in section 3 of this order, the title insurance policy is basically a report. This report relies on the quality of the title plant and of the inspection performed by the insurer. Other incidental coverages are provided but the guaranteed report is the title insurance function.
21. When a title insurer issues an ALTA policy, it is guaranteeing to the lender that it has a mortgage with first priority. The title report and title policy are expected to reflect any existing liens on the property covered. While the mechanics and materialmen may have the right to lien at inception of coverage, the mechanics' lien is not reflected in any record until it is properly recorded, thus the title insurer has no practical way of knowing what lien rights may have accrued. If the lien has not been recorded and the title insurer has guaranteed to the lender that the mortgage has priority, knowing full well that preferred liens may continue to come in, it is in effect, guaranteeing the payment of those obligations, which is an action barred by AS 21.66.190(b). That the exposure is not incidental or negligible can be attested to by a review of the title insurer's liability in the Habitat Ketchikan case, where the loss was in excess of \$1,000,000.
22. There are essentially four basic types of mortgage loans that must be considered since mortgagees generally have been requiring ALTA policy protection on all four types. The four types are:

- (1) Mortgage on unimproved property to secure a loan, the proceeds of which are to be used to purchase the unimproved property or to secure a loan for purposes unrelated to the land. Generally no immediate construction is contemplated. If any construction takes place at any time after the recordation of the mortgage, the mechanics' liens arising out of such construction would have priority over the mortgage.
  - (2) Mortgage on improved property to secure loans to finance the purchase of the property, finance other than the purchase of the property, or to finance additional improvements to the property. Since the original construction is already complete, the mechanics' liens that may attach for work done after the recordation of the mortgage could not, under Alaska law, attain priority over the mortgage. Thus the problem referred to in this order does not affect this category of transaction.
  - (3) Mortgage securing permanent financing of a construction project on what was originally unimproved property. In this situation all mechanics liens would have priority over the mortgage, however, there are statutory provisions for cutting off mechanics lien claimants by the timely recording of a notice of completion of construction in accordance with the newly amended AS 34.35.070.
  - (4) Mortgage securing the construction loan on originally unimproved property. In this situation, all work done on or for the premises entitles the supplier or mechanic to a lien which could acquire priority over the construction loan mortgage, irrespective of the relative dates of recording the mortgage and the date work is commenced.
23. Under the situation noted in 22(1) above, loans on unimproved property where no construction is contemplated, there is a risk, should at any time after recordation the owner elect to commence construction without obtaining a replacement construction loan. It is conceivable that the risk could be substantial, but incidence of persons building on unimproved properties without obtaining a construction loan is regarded as sufficiently infrequent as to not justify a separate rule for this situation.

The Division recognizes that underwriters may elect not to issue a policy in a particular circumstance because of this risk, but to prohibit the use of the ALTA policy seems at this time unnecessary.

24. The situation described in 22(2) above, mortgages on improved property, other than mortgages securing "take out" loans of newly completed improvements, presents no unusual risk to title insurers and the ALTA policy should remain available.
25. Under the situation described in 22(3) above, the "take out" loan, there is a substantial risk that deserves special consideration. The ability to control that risk, however, does exist and if the controls are exercised, prohibition of the ALTA policy is unnecessary.

It is clear that the Legislature intended the notice of completion law, AS 34.35.070, to be an effective method for cutting of mechanics' liens. The reason for changing the language was to clarify the latitude the owner or builder had in recording the notice in order to avoid defeating the effect of the notice

where there was a failure to record within a strict 10 day period following completion. While the statute still leaves open such questions as a definition of completion and is thus not the full measure of protection a title insurer would like, it must be assumed that in most cases the statute has meaning and will be used. The ALTA policy can be issued to cover these loans provided the notice of completion is duly recorded and the period for recording liens has run.

Of course, any mechanics' liens that are recorded, if not discharged will have to be disclosed as exceptions.

26. Finally, the situation described in 22(4) above, where the mortgage secures the construction loan, must be considered. If the ALTA policy is issued then the title insurer assumes a substantial risk with respect to mechanics' liens arising out of construction funded by the proceeds of the loan which the mortgage secures. This is a risk which the title insurer has little ability to control. On the other hand, the lender of the construction funds is in a good position to control the risk through judicious disbursement of the construction funds.

The prudent lender could use joint payee checks to assure that known materialmen, subcontractors and suppliers are paid; employ disbursement control to assure no more funds are advanced than evidenced by the degree of completion of the project; withhold a percentage of each draw to assure a reserve for contingencies including undisclosed potential lien claimants; utilize periodic inspections to assure compliance with plans and specifications; require surety bonds to provide alternative sources of payment in the event of contractor failure; and, use more careful review of credit of the borrower, the contractor and other principals in the project.

Since the risk is high and the ability to control the risk lies more readily with the lender, it is inappropriate for the risk to be shifted to the title insurer. It is further inappropriate, considering the general inability of the title insurer to use the control techniques available to the lender.

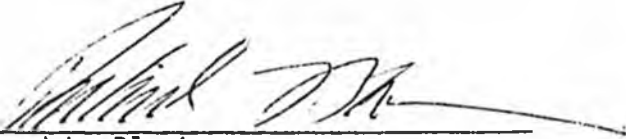
Thus the ALTA policy cannot issue to protect mortgage against mechanics' liens arising out of work done on a project all or a portion of which is funded by the loan secured by the subject mortgage.

#### The Director Hereby Orders

- A. The petition by Pioneer National Title Insurance Company to disallow the issuance of the ALTA Standard Loan Policy is denied except as herein provided.
- B. The ALTA Standard Loan Policy may not be issued to cover a mortgage or Deed of Trust securing a loan replacing a construction or interim financing loan, the proceeds of which were used in whole or in part to fund the construction until a notice of completion of construction has been duly recorded and the 90 day period for filing mechanics' lien has run.
- C. The ALTA Standard Loan Policy may not be issued to cover a mortgage or Deed of Trust securing a loan, all or any portion of the proceeds of which are used to finance original construction on property which is essentially unimproved at the date of recording unless such policy includes a general exception for mechanics' liens or materialmen's liens which arise out of the construction which is wholly or partially funded by the proceeds of the loan secured by the Deed of Trust or mortgage being insured.

- D. No policy of title insurance may be issued at any time which fails to list as exceptions to title mechanics' liens or materialmen's liens recorded prior to the date of recording the mortgage or trust deed insured or prior to the effective date of title insurance unless the title insurer has evidence of the discharge of that lien.
- E. This order is effective July 15, 1977 at 12:01 a.m., except that it shall not invalidate any title policy or commitment to issue a title policy outstanding at the effective date hereof.

Signed this 5th day of July, 1977.



Richard L. Block  
Director of Insurance

STATE OF ALASKA  
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT  
DIVISION OF INSURANCE  
POUCH D  
JUNEAU, ALASKA 99803

Order 77-3 Supplement

After the publication of the Order 77-3 several significant segments of the building industry in Alaska, particularly home builders and mortgage brokers made known the serious concerns with certain provisions of the order. The Division of Insurance believes it in the best interest of the state to defer application of one aspect of the order while its implications on these industries is further considered.

Section A. No changes.

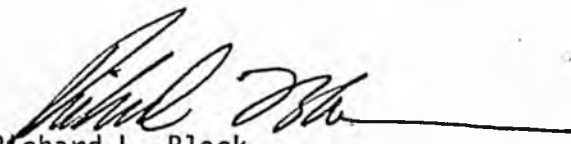
Section B. No changes.

Section C. No changes.

Section D. This section is amended to read:  
"No policy of title insurance may be issued at any time which fails to list as exceptions to title, mechanics liens or materialmen's liens recorded prior to the date of recording the mortgage or trust deed insured or prior to the effective date of title insurance unless the title insurer (1) has evidence of the discharge of that lien; (2) has evidence of a bond for disputed amounts recorded pursuant to AS 34.35.072; or, (3) has been named and protected in an indemnity agreement by the owner of the lien property and an escrow account has been established and funded to pay amounts disputed if the lien is determined to be proper."

Section E. This section is amended to read:  
"Sections A, C, and D of this Order are effective July 15, 1977 at 12:01 a.m. Section B of this Order is effective October 1, 1977 at 12:01 a.m. This order shall not invalidate any title policy or commitment to issue a title policy outstanding at the effective date hereof. For the purpose of this Order, a commitment to issue a title policy shall be considered outstanding on the date the title insurer places the order for a title policy in its order book, provided a commitment is actually issued within ten days after receipt of order, and the commitment relates to a specific property and lists all specific exceptions."

Signed this 15th day of July, 1977

  
Richard L. Block  
Director

STATE OF ALASKA  
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT  
DIVISION OF INSURANCE  
POUCH D  
JUNEAU, ALASKA 99803

Order 77-3 Supplement #2

Since publication of Order 77-3 and Supplement dated July 1, 1977, the title insurance industry and others affected by presence of the Order have made known several concerns with the operation of same. The Division of Insurance believes these expressions address legitimate concerns and accordingly amends the Order as follows:

Section A. No changes.

Section B. This section is amended to read:

The ALTA Standard Loan Policy may not be issued to cover a mortgage or Deed of Trust securing a loan replacing a construction or interim financing loan, the proceeds of which were used in whole or in part to fund the construction until a notice of completion of construction has been duly recorded and the 90 day period for filing mechanics' lien has run unless the title insurer has been named and protected against all mechanics liens which could become prior liens in an indemnity agreement by a bank, savings and loan association or other title insurance company or a title reinsurance company authorized to transact business within the State of Alaska, or, has been named as an obligee in a surety bond executed by an admitted surety company, covering all mechanics liens and materialmens liens arising from said construction.

Section C. This is amended to read.

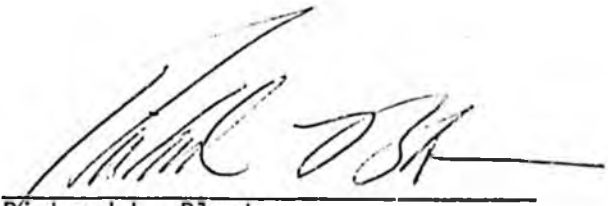
The ALTA Standard Loan Policy may not be issued to cover a mortgage or Deed of Trust securing a loan, all or any portion of the proceeds of which are used to finance original construction on property which is essentially unimproved at the date of recording unless such policy includes a general exception for mechanics liens or materialmens liens which arise out of the construction which is wholly or partially funded by the proceeds of the loan secured by the Deed of Trust or mortgage being insured or unless the title insurer has been named and protected against all mechanics liens which could become prior liens in an indemnity agreement by a bank, savings and loan association or other title insurance company or a title reinsurance company authorized to transact business within the State of Alaska, or has been named as an obligee in a surety bond executed by an admitted surety company, covering all mechanics liens and materialmens liens arising from said construction.

Section D. This section is amended to read:

"No policy of title insurance may be issued at any time which fails to list as exceptions to title, mechanics' liens or materialmen's liens recorded prior to the date of recording the mortgage or trust deed insured or prior to the effective date of title insurance unless the title insurer (1) has evidence of the discharge of that lien; (2) has evidence of a bond for disputed amounts recorded pursuant to AS 34.35.072; (3) has been named and protected in an indemnity agreement and an escrow account has been established and funded to pay amounts disputed if the lien is determined to be proper; or, (4) has been named and protected in an indemnity agreement by a bank, savings and loan association or other title company, or a title reinsurance company authorized to transact business within the State of Alaska. An indemnity agreement given under this subsection (4) need not be secured by a funded escrow account."

Section E. No changes.

Signed this 23rd day of November, 1977.



Richard L. Block  
Director

STATE OF ALASKA  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
DIVISION OF INSURANCE  
POUCH D  
JUNEAU, ALASKA 99803

Order 77-3 Supplement No. 3

Additional and legitimate concerns have been presented since the last Supplement to Order 77-3 which we believe warrant revision of the Order to accommodate the expressed concern. The indemnity agreements permitted by the Order were those given only by persons subject to solvency regulation by a State or federal agency. An analysis of this position suggests that this position can be modified, thus granting greater flexibility to title underwriters. We accordingly amend the Order as follows:

Section A. No changes.

Section B. This section is amended to read:  
The ALTA Standard Loan Policy may not be issued to cover a mortgage or Deed of Trust securing a loan replacing a construction or interim financing loan, the proceeds of which were used in whole or in part to fund the construction until a notice of completion of construction has been duly recorded and the 90 day period for filing mechanics' lien has run unless the title insurer has been

(1) named as an obligee in a surety bond executed by an admitted surety company, covering all mechanics liens and materialmens liens arising from said construction;

(2) named and protected against all mechanics liens which could become prior liens in an indemnity agreement by another title insurance company or a title reinsurance company authorized to transact business within the State of Alaska;

(3) named and protected against all mechanics liens which could become prior liens in an indemnity agreement by a bank, savings and loan association, or any other person, as defined in AS 01.10.060(7), with an audited financial statement prepared by a certified public accountant and showing a net worth of at least \$1,000,000. Such statement shall bear an effective date of not more than 12 months prior to the effective date of the indemnity agreement. The indemnity amount shall not exceed 10% of the audited net worth.

Section C. This is amended to read:

The ALTA Standard Loan Policy may not be issued to cover a mortgage or Deed of Trust securing a loan, all or any portion of the proceeds of which are used to finance

original construction on property which is essentially unimproved at the date of recording unless such policy includes a general exception for mechanics liens or materialmens liens which arise out of the construction which is wholly or partially funded by the proceeds of the loan secured by the Deed of Trust or mortgage being insured or unless the title insurer has been

(1) named as an obligee in a surety bond executed by an admitted surety company, covering all mechanics liens and materialmens liens arising from said construction;

(2) named and protected against all mechanics liens which could become prior liens in an indemnity agreement by another title insurance company or a title reinsurance company authorized to transact business within the State of Alaska;

(3) named and protected against all mechanics liens which could become prior liens in an indemnity agreement by a bank, savings and loan association, or any other person, as defined in AS 01.10.060(7), with an audited financial statement prepared by a certified public accountant showing a net worth of at least \$1,000,000. Such statement shall bear an effective date of not more than 12 months prior to the effective date of the indemnity agreement. The indemnity amount shall not exceed 10 percent of the audited net worth.

Section D.

This section is amended to read:

"No policy of title insurance may be issued at any time which fails to list as exceptions to title, mechanics' liens or materialmens' liens recorded prior to the date of recording the mortgage or trust deed insured or prior to the effective date of title insurance unless the title insurer

(1) has evidence of the discharge of the lien;

(2) has evidence of a bond for disputed amounts recorded pursuant to AS 34.35.072;

(3) has been named and protected in an indemnity agreement and an escrow account has been established and funded to pay amounts disputed if the lien is determined to be proper; or,

(4) has been named and protected in an indemnity agreement by

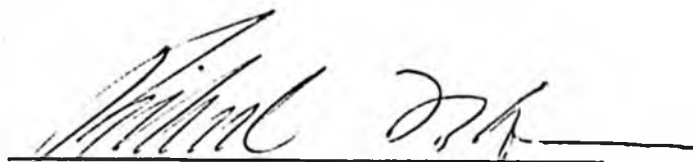
(a) another title insurance company or a title reinsurance company authorized to transact business within the State of Alaska, or,

(b) a bank, savings and loan association, or any other person, as defined in AS 01.10.060(7), with an audited financial statement prepared by a certified public account showing a net worth of at least \$1,000,000. Such statement shall bear an effective date of not more than 12 months prior to the effective date of the indemnity. The indemnity amount shall not exceed 10 percent of the audited net worth.

An indemnity agreement given under this subsection need not be secured by a funded escrow account.

Section E. No Changes.

Signed this 3rd day of May, 1978.

A handwritten signature in dark ink, appearing to read 'Richard L. Block', is written over a horizontal line. To the right of the signature, there are some additional scribbles or initials.

Richard L. Block  
Director

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

POUCH D  
JUNEAU, ALASKA 99811

Order 78-4

To: All Title Insurers Admitted to do Business in Alaska  
All Licensed Title Insurance Agents in Alaska

RE: Title Insurance - Mechanics Liens - Use of the ALTA Standard Loan Policy.

The Director of Insurance does hereby find as follows:

### Background

1. On July 5, 1977, this division issued Order 77-3 after hearing and in response to a situation described in that order wrought by the Alaska Mechanics' Lien Law (AS 34.35.050-120). This Order was subsequently modified by supplements issued on July 15, 1977, November 23, 1977 and May 3, 1978.
2. With the passage of HB 739 (ch 175 SLA 1978) by the Alaska Legislature, the Mechanics Lien Law has been substantially restructured in a manner that negates much of the major concerns expressed in Order 77-3, Sections 13-26.
3. The new law has changed the priorities of liens on land. Under previous law (AS 34.36.060), a lien created by law in favor of a person actually performing labor upon or furnishing material used in a building or other improvement in its original construction was preferred to a prior lien, mortgage or other encumbrance upon the land on which the building or other improvement is constructed. Under the new law, preference is based on the date the lien is filed. (See Section 13 of Order 77-3.)
4. A substitute mechanism has been developed to protect the potential mechanic lienholder. A new requirement that a Notice of Right to Lien be given is intended to result in making potential liens more readily identifiable. The time for filing a lien is limited to 10 days after a Notice of Completion is recorded. The potential mechanic lienholder also has the ability to stop or restrict the flow of funds via a stop notice. This assures that sufficient funds are withheld to pay the particular claim. (See Sections 13-16 of Order 77-3.)

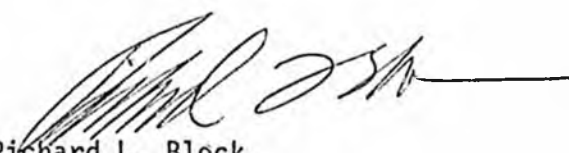
Conclusions

5. When a title insurer issues an ALTA policy, it is guaranteeing to the lender that it has a mortgage with first priority. The title report and title policy are expected to reflect any existing liens on the property covered. With the passage of HB 739, a title insurer cannot issue an ALTA policy with the assurance that the mortgage priority will not be usurped by a later filed mechanics lien. (See Section 21 of Order 77-3.)
6. Chapter 175 SLA 1978 applies only to liens on projects commenced after the effective date of the law, thus, repealing Order 77-3 effective immediately which permits the title insurers to cover some mortgages not protected by the new law. The division has determined that for the short time duration between the effective date of this order and the applicability date of the new law, the risk to the title insurers is outweighed by the need to make the coverage available to expedite the flow of construction during this summer's construction season.

The Director hereby Orders:

- A. Section B of Order 77-3 is repealed.
- B. Section C of Order 77-3 is repealed.
- C. Section D of Order 77-3 as set forth in Supplement #3 remains unchanged.
- D. This order is effective July 18, 1978 at 12:01 a.m.

Signed this 24th day of July, 1978.

  
Richard L. Block  
Director

JAY S. HAMMOND, GOVERNOR

**DEPARTMENT OF COMMERCE &  
ECONOMIC DEVELOPMENT**

*DIVISION OF INSURANCE*

POUCH D  
JUNEAU, ALASKA 99811

ORDER 80-1 (Temporary)

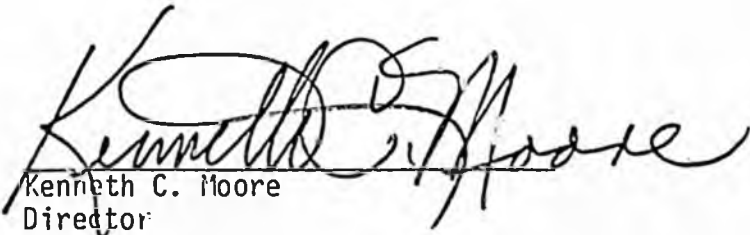
TO: ALL TITLE INSURANCE INSURERS AND AGENTS AUTHORIZED OR LICENSED TO  
WRITE TITLE INSURANCE

RE: TITLE INSURANCE - MECHANICS LIENS

Due to the possibility that title insurers appear to be suffering financial losses resulting from possible unfair competitive advantages, and pending a complete analysis and review of the particular title practice; it is hereby ordered that until further notice all title insurers authorized to transact business within the State of Alaska, in instances of original construction, shall not issue owners standard coverage policies until the expiration of 15 days after the recording of a valid notice of completion and after compliance with all other requirements of AS 34.35, unless the owner's policy excludes from coverage all mechanics and materialmens liens, whether recorded to not, under Schedule B of said policy.

This order takes effect immediately.

Dated February 25, 1980.

  
Kenneth C. Moore  
Director

DEPARTMENT OF COMMERCE &  
ECONOMIC DEVELOPMENT

POUCH D  
JUNEAU, ALASKA 99811  
PHONE: 465-2515

DIVISION OF INSURANCE

ORDER 84-2

TO: All Title Insurers Admitted to do Business in Alaska  
All Title Insurance Agents Licensed in Alaska  
Alaska Land Title Insurance Association

RE: Title Insurance - Acting as a Surety Prohibited

The Director of Insurance does hereby find as follows:

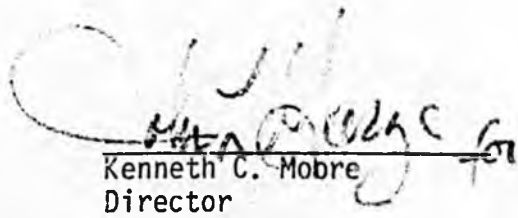
BACKGROUND

1. On April 27, 1984, the Alaska Land Title Association filed an advice that stated in brief, that title insurers and agents in the Anchorage Recording District have been committing to insure title insurance policies based on written closing instructions without the benefit of examining documents up to the time of closing. This appears to be done because of a backlog of indexing documents in the recorder's office.
2. On July 5, 1977, after several hearings, the Director of Insurance issued Order 77-3. In the conclusions portion of that order (sections 20-26), the Director pointed out that title insurers are barred from acting as a surety. This is specifically stated in AS 21.66.190(b).
3. The issues generating Order 77-3 are essentially the same in the situation described in the Alaska Land Title Insurance Association correspondence.

The Director Hereby Orders

- A. No policy of title insurance may be issued at any time which fails to list as exceptions, documents of the public record which have not been reviewed by the title examiner.

Signed this 1st day of June, 1984.

  
Kenneth C. Mobre  
Director

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# STATE OF ALASKA

## DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

JAY S. HAMMOND, GOVERNOR

POUCH D

JUNEAU, ALASKA 99811

ORDER 78-5

TO: All Title Insurers Admitted to do Business in Alaska  
All Licensed Title Insurance Agents in Alaska

RE: Adoption of Title Insurance Regulations

The Director of Insurance does hereby find as follows:

### BACKGROUND

1. On August 14, 1974, a substantial revision of AS 21.66 became effective with impact on the title insurance companies of Alaska. Many of the changes made in this act (CH 120 SLA 1974) track the recommendations of the American Land Title Association's (ALTA) model title insurance legislation. No regulations had been adopted under the previous law which became effective in 1966 or under the current law.
2. Starting on December 17, 1976, a number of issues relating to title insurance confronted the Division, such as Federal Register items, mechanics lien problems and title rate levels. After a study of these issues, it was realized that other title and title related problems and issues exist which should be addressed by the Division, thus a study of the title insurance business in Alaska was scheduled. This study commenced in July 1977 with a "Letter of Call for Information," the results of which were due by September 1, 1977. At the same time several limited subject market conduct examinations were conducted. These investigations tended to focus our attention on the need to promulgate regulations, to clarify existing statute and provide procedures with which to comply with statutory requirements.
3. The Division has already considered and responded to several issues relating to title insurance. Meetings have been held, hearings conducted and orders or bulletins have been issued.

Order 77-3 issued on July 5, 1977 and subsequently revised on July 15, 1977; November 23, 1977 and May 8, 1977 deals with the Alaska Mechanics' Lien Law and its impact on issuance on the ALTA Standard Loan Policy.