ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
4783 HJUD SB 444 - SJR 12

355

Rep Mark Boyer
Alaska State Legislature

Dear Representative Boyer:

As both a resident of this great state of Alaska and as an officer in the Air Force I am deeply concerned about the way the Permanent Fund is being misused by being sent to many members in the military community who are not in reality Alaska State residents. Currently permanent fund divident checks will not be mailed out of state to any civilians who claim residency but can be sent to members of the armed services who have been living out of state for up to 5 years. I don't think this practice is fair to the civilian sector of our state. I personally know of several air force families who have been stationed here for a short period of time and now have been moved elsewhere who continue receiving dividend checks for each member of the family. Most of these have no intention of ever returning to Alaska. In fact many of these didn't want to come here to begin with, hated Alaska, did not live off base, and did not show any desire to live here any longer than necessary. However since they could receive dividend checks by claiming residency they did so and are now using those checks to help support the economy of the states where they are now living until their 5 years are up. Two families I know are receiving yearly dividend checks who have perchased homes in other states where they now live. Neither chose to live off base while here in Alaska. One of these families is receiving 6 dividend checks a year to help make their house payments. There is something really wrong with a system that allows this to occur.
To remedy this very unjust system I suggest we make the following changes to the way our Permanent Fund is distributed.

#1. Domicile requirements should be the same for both civilians and military alike. If someone is living out of state he should not receive a permanent fund check. A possible exception to this rule might be for a soldier who gets sent to a remote assignment and his/her family remains here in Alaska.
#2. If #1 is felt unacceptable at the very least in order to get a permanent fund check mailed to him out of state a soldier must be able to show some permanent roots established by owning a home here in Alaska.
#3. All members of the same household should be required to claim Alaskan residency in order to qualify for a dividend check. It is not uncommon for the military wage earner to retain his home state residency status while his nonworking wife and children all claim Alaska residency. By doing this when he returns to his home state he still retains his residency status should he decide to go back to school. Also if he is enlisted he can get overseas pay. On the other hand all his dependants continue getting their yearly dividend checks although they aren't really planning on staying behind when he leaves.

Neither the USAF or USA publish data on what percent of the military who continue to claim Alaska residency and their permanent fund checks ever return to the state permanently (because it would make them look bad). I am sure it is quite common however because I know many in my section alone who fit into that category.
Please look into this regrettably inequitable situation during your busy current legislative session and do what correcting you feel is necessary. All resident of our great State need to be treated equally and fairly whether civilian or military. Alaska's State Government is responsible to the residents and the economy of Alaska alone. It should not be funding the economy of the other 49 states because someone living there just happened to be stationed here in Alaska in the past.
I would love to hear your reply if you ever have time in your busy schedule.

Sincerely

Capt. Paul H. Rasmussen
3361 Fernwood Ave
North Pole, AK 99705

Alaska State Legislature

Committees:
Chair-State Affairs
V. Chair-Judiciary
Telecommunications
Special Ethics
Legislative Council
Finance Subcommittee
for the University of Alaska
Joint Committee
on Economic Recovery

P.O. Box V
Juneau, Alaska 99811
(907) 465-4947

REPRESENTATIVE FRAN ULMER

COMMITTEE ON STATE AFFAIRS

March 10, 1988

Jim Weir
1380 Fritz Cove Road
Juneau, AK 99801

Dear Jim:

Thank you for calling my office regarding Senate Bill 444, 'An Act relating to eligibility for permanent fund dividends and providing civil penalties for certain conduct involving permanent fund dividends; and providing for an effective date." Enclosed is some background information on the bill which I requested from Senator Hensley, the prime sponsor.

I will reserve judgment on SB 444 until I hear testimony on it should it come before my committee. If it does make it to House State Affairs, I will let you know when it is scheduled so that you may testify.

Thank you again for sharing your concerns with me.

Sincerely,

Fran Ulmer, Chair
House State Affairs Committee

Enclosure

cc: Crondahl

his # 789-3260

On page 1, lines 22, delete "application." and insert "application; or"

On page 1, line 23, insert a new subsection to read:

"(4) the individual has been working in Washington, D.C. for a Member of Alaska's Congressional delegation or the ~~Governor~~ State of Alaska, at some time during the current dividend year; or is the spouse or dependent of such individual.

On page 2, line 7 insert a new paragraph to read:

"( ) I am a state resident on the date of this application; I have been a state resident for at least six months immediately preceding April 1 of the current dividend year; and I have been working in Washington, D.C. for a Member of Alaska's Congressional delegation or the ~~Governor~~ State of Alaska, at some time during the current dividend year, or am a spouse or dependent of such individual.

On page 2, line 14, delete "application." and insert "application; or"

On page 2, line 15, insert a new paragraph to read:

"( ) (name), the individual on whose behalf I am applying; is a state resident on the date of this application, has been a state resident for at least six months immediately preceding April 1 of the current dividend year; and has been working in Washington, D.C. for a Member of Alaska's Congressional delegation or the ~~Governor~~ State of Alaska, at some time during the current dividend year, is the spouse or dependent of such individual.

SB

508

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

H. JUD. 5-8-88 1:30 m.

HOUSE COMMITTEE REPORT

(7)

Date referred: 5/7/88

(Waived from L&C 5/7)

FURTHER REFERRALS:

DATE: May 8, 1988

The Judiciary Committee has considered CSSB 508(Fin)

"An Act relating to property exemptions for homesteads, for certain retirement plan interests and payments, and for other property."

RECOMMENDS:

[ ] replace with _____ [ ] the same title

[ ] attached amendment(s) [ ] a new title

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact

[ ] zero fiscal note

[ ] zero with analysis

[ ] same as previous fiscal note published _____

[✓] same as previous zero fiscal note published 5/3/88

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman's signature

Patrick M. Rodey
Senator

Alaska State Legislature

3111 C. St., Suite 510
Anchorage, Alaska 99503
(907) 561-7618

During Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-3793

Senate

DATE: May 6, 1988

TO : Representative John Sund, Chair
House Judiciary Committee

FROM: Senator Patrick M. Rodey

RE : CS for SB 508 (Finance) - legislation relating to property exemptions for homesteads, for certain retirement plan interests and payments, and for other property.

The above-referenced bill passed the Senate unanimously and has been referred to the House Labor & Commerce Committee as well as your committee for further consideration.

This bill was sponsored and reviewed by the Senate Judiciary Committee and was also considered in the Finance Committee for purposes of adding language which doubles the existing homestead and personal property exemptions.

The bill adds a new presumption (based on Kansas law) which would allow a person in bankruptcy to exclude certain qualifying pension funds by treating those plans as spendthrift trusts. By excluding these plans, bankruptcy creditors would not have access to the funds. It also doubles the current homestead and personal property exemptions.

Several states have recently adopted similar legislation. I believe it is a timely issue, particularly in view of the anticipated increase in bankruptcies combined with the painful realization that even more Alaskans are being financially squeezed out of the state. This proposal would go a long way to protect the "future nest egg" of many Alaskans, particularly those who are concerned about loosing it all as a result of the economic down-turn.

The proposal is scheduled for a hearing in House Labor and Commerce Committee on May 7th, and I am hopeful it will be passed out. In view of the strong support for this bill, the zero fiscal impact, and considering it will be reviewed by three committees, I would sincerely appreciate your consideration to waive the Judiciary Committee referral.

Thank you for your assistance in this request.

SB.508

Patrick M. Rodey
Senator

Alaska State Legislature

3111 C. St., Suite 510
Anchorage, Alaska 99503
(907) 561-7618

During Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-3793

Senate

DATE: April 7, 1988

TO : Senator Jay Kerttula, Chair
Senate Judiciary Committee

FROM: Senator Patrick Rodey Pat

RE : Drafted legislation relating to property exemptions for certain retirement plan interests and payments.

I recently sent you a copy of drafted legislation which I am interested in having introduced as a Senate Judiciary Committee bill relating to property exemptions for certain retirement plan interests and payments.

Since forwarding the first draft to you last week, I have made some revisions in the proposal and am enclosing a copy of the most current draft. Essentially, this version adds a new presumption (based on Kansas law) which would allow a person in bankruptcy to exclude certain qualifying pension funds by treating those plans as spendthrift trusts. By excluding these plans, bankruptcy creditors would not have access to the funds. I believe this approach is considerably tighter than the former version.

Attached is a memo from the legislative drafting attorney and a copy of the current draft for your information. I would appreciate your consideration of introducing this as a Committee Bill and if you have any questions, please feel free to discuss this with me.

Attachments

SB 508

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M April 5, 1988

SUBJECT: Creating spendthrift trust presumption (Work Order No. 5-2123)

TO: Senator Pat Rodey

FROM: Theresa L. Bannister TB
Legislative Counsel

This memo accompanies the most recent version of W.O. 5-2123 and includes a presumption that certain pension plans are spendthrift trusts. The language of the presumption is taken from a Kansas statute and is found in AS 09.38.017(d), added by sec. 1 of this bill.

The new presumption is intended to enable a person in bankruptcy to exclude certain qualifying pension funds from the person's bankruptcy estate under 11 U.S.C. 541(c)(2). If the plans are excluded, bankruptcy creditors will not have access to the funds. Since the proposed new section would apply to individual retirement accounts, which would not normally qualify as spendthrift trusts, the section is attempting to obtain the benefits of sec. 541(c)(2) merely by labelling the plan as a spendthrift trust. Based on my limited research in this area, I believe there is a question whether AS 09.38.017(d) would achieve its intended purpose. sec. 541(c)(2) has been interpreted to exempt from the estate only those spendthrift trusts traditionally beyond the reach of creditors under state law. Goff v. Taylor, 706 F.2d 574, 582 (1983). The presumption created under AS 09.38.017(d) may not satisfy the criteria in Goff because at least one type of included plan, an IRA, would not usually be considered a spendthrift trust under traditional spendthrift law.

I have deleted the reference to common law from AS 09.38.017(d), because statutes do not establish the common law of the state. Statutes may change or supplement the

common law, but statutory law does not determine the common law. See AS 01.10.010.

If I may be of further assistance, please advise.

Enclosure

TLB:gc
WKG2:096

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : SB 508
Publish Date : April 21, 1988

REQUEST:

Revision Date:
Title : Property exemptions for certain retirement plan interests/payments.
Sponsor : Senate Judiciary
Requestor :

Agency Affected :
BRU :
Components :

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

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 : Senate Judiciary Committee
Phone : 465-3717
Division :
Date : April 21, 1988

Approved by Commissioner : Senator Jay Kerttula, Chair
Date : April 21, 1988
Agency : Senate Judiciary Committee

Distribution (by preparer) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

SB

515

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

H. JUD. 5-8-88 1:30 p.m.

(7)

HOUSE COMMITTEE REPORT

Date referred: 5/3/88

FURTHER REFERRALS:

DATE: May 8, 1988

The Judiciary Committee has considered CSSB 515(JUd)

"An Act relating to foreclosure of a deed of trust or a suit on a deed of trust note; and providing for an effective date."

RECOMMENDS:

[✓] replace with HCS CSSB 515 (JUd) [✓] the same title
[ ] a new title

[ ] attached amendment(s)

[✓] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact
[ ] zero fiscal note
[ ] zero with analysis
[ ] same as previous fiscal note published _____
[✓] same as previous zero fiscal note published 4/30/88

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman's signature

To: Representative John Sund, Chairman
House Judiciary Committee

From: Gordon Schadt, Esq.
Bruce Chertkow, Commercial Banker

Date: May 5, 1998

Subj: Senate Bill 515
Amending AS 34.20.070(a)

Senate bill 515 addresses lenders options under the non-judicial (summary) foreclosure section of the Alaska Statutes. It appears the author's intent may be to prevent lenders from circumventing the judicial foreclosure process. The bill as presented, however, precludes both the borrowers' and lenders' ability to negotiate out of litigation.

The draft SB 515 reviewed states (in part):

"If the deed of trust is foreclosed judicially or the note secured by the deed of trust is sued on and, if a judgement is obtained by the beneficiary, the beneficiary may not exercise the remedies under this section".

In effect, this type of wording <u>forces</u> the lender to commence a judicial action following suit on the note even if both the borrower and lender are in agreement to foreclose the property by a non-judicial action.

Senario:

The borrower has a mortgage balance of $150,000.00 secured by property worth $100,000.00. The lender's analysis discloses the borrower has either the ability to pay or assets sufficient to recover funds without taking title to the property, and decides to sue on the note rather than to initiate judicial foreclosure. When judgment is obtained, the judgment is recorded against other assets owned by the borrower.

The borrower now realizes that he cannot liquidate or encumber his remaining assets to insure liquidity for any purpose whether it be emergency, medical or to keep his business alive. The borrower approaches the lender with the following: Borrower offers to pay the lender $50,000 providing the lender takes title to the property worth $100,000 by summary foreclosure. This action will take approximately 90 to 120 days. The lender recovers its funds and the borrower is released from the obligation.

Under SB 515, the above is not possible. The lender has been precluded from summary foreclosure. To effect the settlement, the lender must foreclose judicially which is more costly than a summary action. Additionally, rather than 90 to 120 days, both parties must now face in excess of 6 months to conclude the matter. Holding costs and a 1 year redemption period have decreased the value of the property and increased the borrower's debt.

To preclude the lenders from "having their cake and eating it too," the statute should include wording to the effect:

"If suit is brought on a note secured by real property and, if judgment is obtained, this section may be exercised. Upon issuance of a deed by the trustee, however, the note securing the obligation must be unconditionally canceled and the judgment marked satisfied."

The above wording does not hinder either party's ability to settle. It entitles both parties to settle litigation at a minimum of cost and allows the lender to liquidate the security without a redemption period.

Should a lender desire to foreclose the property after judgment is obtained on the note while at the same time protect a deficiency balance, the lender should look towards the judicial foreclosure action as set forth in A.S. 9.45.170.

Prior to enacting new legislation, it may be helpful to allow public hearings regarding both legal and economic issues related to a change of this nature.

2

Your consideration of this letter is appreciated. Should you have any questions, or desire to discuss the contents, please feel free to contact the undersigned.

Sincerely,

Gordon Schadt, Esq.
Bledsoe and Schadt, P.C.
2525 Blueberry, Suite 206
Anchorage, AK 99503
(907) 276-8003

Bruce Chertkow
7033 Henderson Loop
Anchorage, AK 99507
(907) 274-1651

copy: Rep. Robin Taylor
file

March 7, 1988

Representative Kay Brown
3111 "C" Street
Anchorage, Alaska 99503

Dear Ms. Brown:

This letter is addressed to you as co-chairperson of the Housing and Banking subcommittee of the Legislature Joint Economic Recovery Committee and, in response to the front page article in the March 5, 1988 Daily News entitled "Court Boosts Loan Risk In Real Estate."

I have no doubt that the Legislature will be reviewing existing laws pertaining to foreclosure and litigation due to the recent Supreme Court decisions affirming lenders ability to sue directly on the promissory note rather than first looking towards the real estate securing the obligation. In reviewing such proposals and if new legislation is drafted, please, at all times, keep in mind the word "commercial."

There is a vast difference between Mom and Dad buying a home and the investor financing commercial real estate for speculation or as an investment. If new legislation is drafted, the two should be addressed seperately, i.e., commercial versus residential or primary residence. Fair? Laws already allow the lenders to pursue a money judgment against consummer debt rather than repossession. The fact is, in many cases lenders repossess first then obtain a judgment on the deficiency balance. Another differenciation in contracts is the "in home sale" or "second deed of trust on a primary residence" both of which, except for commercial usage, provide a three-day rescission period.

Speaking of Mom, Dad and being fair, what happens to Mom and Dad when they sell their property to an investor, taking back a second deed of trust for their retirement income? The investor has taken the tax depreciation benefit, allowed the property deteriorate to the point that it is not worth what is owed to the bank, has made the decision not to "feed" the property and now defaults the loan. If Mom and Dad's only recourse is to judicially foreclose (1 year plus time frame) and the bank does a summary foreclosure first (4 to 6 month time frame), Mom and Dad lose their ability to collect even though the investor can well afford to pay them.

When a banker makes a decision to lend many factors are taken into consideration. First is the ability to pay. That includes a review of the balance sheet and an analysis of the borrower's net worth. Second is the collateral. If institutions desired to own real estate they would purchase it--not make a loan and then foreclose.

Judicial versus Non-judicial foreclosure. True, laws allow for deficiency balances; the judicial foreclosure. After spending thousands of dollars and several months in court (at times, in excess of one year), the lender has a deficiency judgment. The lender also has real estate to liquidate but now with a one-year redemption period and increased holding costs. Within that time period the borrower has been able to convert or liquidate assets, forcing the only recovery to be the real estate.

Are not the people requesting tightened legislation the same who want to know how we can keep real estate in the hands of the people? With ability to pursue the note rather than the property, the people retain the real estate and control the market.

William McNall is quoted in part by saying "Prices are set in the marketplace by supply and demand." I would like to add one more condition to "price setting." That is, the lender's willingness to lend. We are already experiencing larger down payment requirements and stricter lending guidelines. By limiting the lenders ability to recapture funds, losses are higher causing interest rates to climb and increasing loan restrictions.

One of the questions we must ask is who is the investor? All the bank desires is to recover funds loaned out. The lender invests in people. People invest in real estate. Why should the bank take a loss if their investment has the ability to pay?

The Daily News reports that lawyer Ralph Cushman has concerns over increased bankruptcies. "You start garnisheeing their wages and picking up their toys--the airplanes and the boats--and money and things, and they're going to look for a way to beat you." What is failed to be realize here is that the borrower has assets which could be used to pay his debts. The boats, airplanes and other pleasures of life were taken into consideration at the time of loan approval. The "toys" could be converted to cash and the cash used to repay the lender.

I do not envision lenders abusing the power of litigation. Costs versus recovery is analyzed prior to litigation: (1)

It is unprofitable to litigate principal and (2) it does not benefit the bank to throw good money after bad. If there is no ability to pay or no assets to pursue, the lender would look towards the real estate first.

Banks have always had the oppertunity to litigate their contract Notes. Borrowers rights and oppertunity to be heard in court remain the same. The reaffermation of law only makes the format clear. The boats, airplains and other assets never were exempt from from due process and this clearity of law does not change that.

All financial institutions are requesting is the ability to pursue recovery at the least expense possible. To enable recovery enhances the ability to lend.

Ms. Brown, if I sound like a banker it's because I am. I have been in the business of credit and collections in excess of sixteen years. I am also a husband and family man. We bankers are no different than anyone else on the street. If we lose our jobs, we too face financial hardships and the same laws as the non-banker.

If you desire to discuss the contents of this letter, please feel free to contact me.

Sincerely,

Bruce Chertkow
7033 Henderson Loop
Anchorage, AK 99507

copy: Virginia Collins
Red Boucher
Ramona Barnes
Jan Falks
Walt Furnace
Max Gruenberg
Rick Halford

6

SB515

Dear Members of the House Judicial Committee:

For the good of Alaska, please take time to read this, give it honest consideration and vote to save the people who believed in Alaska enough to invest their life and economic well being in our beautiful state.

Under existing law, if you owe money on a piece of real estate and get into trouble to the point of becoming delinquent, the lender does not have to foreclose. Lender sues for face value of the note. When he wins the judgement he doesn't have to take the subject property. He can take anything you've got.

Example: You, a borrower has a four plex or six plex. Said building has a note against it for $250,000.00. Payments are $2,541.00 pr. mo.. Income $4,500.00 pr. mo.. Costs are $1,750.00 pr.mo.. Because of declining market, borrower suddenly finds himself making only $2,250.00 pr.mo. gross income. Costs are still $1,750.00, P & I is still $2,541.00 equaling $4,291.00. Forty two ninety one less income of twenty two fifty equals two thousand forty one in cash call. You, the borrower, struggles along making cash calls for eighteen months to two years and finally become delinquent.

Lender doesn't foreclose - he sues on note. He wins. He takes you, the borrower's house and realizes $75,000.00 on that after paying the first. He takes you, the borrower's vacation house and realizes $40,000.00 after expenses. You the borrower has some land that you aren't able to sell or you wouldn't have gotten delinquent yet. The lender takes it for $50,000.00 Now the lender has gotten $165,000.00 against the $250,000.00. All you, the borrower have lost is your home, your cabin, some bare land and the $48,984.00 (that's the 2,041.00 cash call you made for two years trying to live up to your obligation)

Now the Lender forecloses. Straight foreclosure - he goes to the court house steps and bids $90,000.00. He's just picked up a $250,000.00 multi-unit for $90,000.00 that is only a paper transaction. Rental income is still $2,250.00 and going to go up eventually, building expenses are still $1,750.00. Lender is making $500.00 a month and all he had to do was destroy you, the borrower. Oh yeah, by now you've lost your business and, in all probability, your health and your marriage and ten to twenty people you used to employ are out of a job.

If the lender must foreclose against the multi-unit first, it is stated collateral after all, he might have gotten $150,000.00 for it. Then the cabin for $40,000.00 and the land for $50,000.00 and borrower has to come up with $10,000.00 to save his house. The lender has gotten full value. The borrower has taken a beating but not anywhere near as traumatic as the first scenario. He may even survive with his health, his marriage and his business.

Two other quick examples: your son or daughter has just graduated

from college. As a graduation present you help with the purchase of a small condo. You helped with the down payment and co-signed the note. All of a sudden condos are unsellable. Your offspring is seriously injured in an auto accident. You are faced with horrendous medical bills. The condo loan becomes delinquent. Is the lender going to take the condo back? Hell no! Your house is going to do him a lot more good. Hope you can be happy in the condo.

You and some of your friends form a partnership and put up an office building. The building is half full. Finally it's delinquent. Lender sues each partner one at a time. By the time Lender has destroyed each of you, the deficiency on the original note is 10 to 15% of the original face value. Lender goes to court house steps. Nobody is left to bid against him and he's gotten away with destroying some damned fine people and stealing a building for 10 - 15% of its value.

You ask, why would a lender sue on a note when it is going to do so much damage to the community. Well, note buyers are supposed to get the largest, fastest return on the dollar invested. That is their responsibility to the stock holders. As a reasonally prudent employee of a large brokerage house or bank in New York or Tokyo he had better sue on that note. And as FDIC is getting ready to sell $800,000,000.00 worth of notes in June of 88 in New York City in blocks of $50,000,000.00 guess who is going to buy them.

Anybody who thinks the existing law is fair or good for Alaska hasn't thought it through. Lenders can't survive without borrowers. Where are lenders going to find borrowers willing to face a 200% at risk in even a healthy economy. Pass S-515 or sit back and watch Alaska become the "Appalachia of the North".

S-515 merely says that lending institutions will live by the rules that they've always lived with in the past.

Sincerly yours,

Jack Stout

Excerpt from another letter by Jack Stout

The face value of our note is $2.377.000.00 It is worth about $600.000.00 on the open market. It will probably sell outside for 250,000.00. An outside bank will finance 225.000.00. Local banks will get to finance zilch. FDIC has already scheduled to auction 300.000,000.00 in notes. Historically, they sell primarily to organizations from outside the community involved for 10 to 20 cents on the dollar. This is bad for a number of reasons: it leads to further depression of a local economy through lowered tax base, absentee ownership and, indirectly, loss of employment positions.

Examples of the above are as follows: A piece of property is developed with an anticipated value of Two and a half million dollars based upon a rental rate of Two dollars pr. sq. ft.. Actual income is Ninety Cents pr. because of economic downturn. After all the expenses of running the building, there's 8500 pr. mo. for debt service. Using a bankers rule of 115%, there's 7400 pr. mo. for payments which will cover a little less than 800,000.00 at today's interest rate. After taking out fees and points, the best an owner can offer is 725.000.00 against a 2.500.000..00 note. That's 0.25 on the dollar. That's also 800,000.00 borrowed locally that will help feed the local economy. Assuming the owner is a local businessman this will also save the jobs of however many people he employs.

FDIC will not allow the above posibility to happen. Their policy is to sell the note to someone else, most probably from another state for $250-$300.000.00 . First however FDIC will sucker the owner, with promises of consideration, into giving them all his personal information to pump the price from some one else up as much as possible.

Okay, so now FDIC has lost 400-500,000.00 by selling out of state. The local banks have lost the chance to loan out 800,000.00 on a good risk loan. There's another piece of property owned by someone from outside and some number of jobs will surely disapear. The ouside buyer will come in and sue on the note for face value and the guy whose lost it all will have to file bankruptcy to protect himself from the raider. Oh well, at least the attournies will make money.

Based upon the above scenario, our case alone is going to wipe out at least 8 families economically, including our retirements. It will also wipe out at least 22 jobs in the local economy. Measure our little problem against the $300.000,000.00 that FDIC is about to auction and the scope of what is about to happen to the cash flow in Alaska is on a par with a hand grenade going off in a closed room - a small room.

Recvd 4:30pm

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM May 2, 1988

SUBJECT: Interpretation of CSSB 515 (Judiciary)

TO: Senator Jay Kerttula
Chair, Senate Judiciary Committee

FROM: Theresa L. Bannister TB
Legislative Counsel

I wish to bring to your attention an interpretative question in CSSB 515 (Judiciary) that you may wish to address while the bill is in the House. Until now I have interpreted sec. 1 of the bill to prevent only the use of nonjudicial foreclosure after a judgment has been obtained in certain circumstances. However, after studying the bill further, I have determined that it is very possible that the section would be interpreted to prevent the use of both nonjudicial and judicial foreclosure in those circumstances. This conclusion is based on the use of the words "remedies under this section" on line 23, page 1 of the bill. AS 34.20.-070(a) discusses both the remedy of ordinary "foreclosure and sale" and nonjudicial foreclosure. The use of "remedies" rather than "remedy" in the bill suggests that the judicial foreclosure remedy is prohibited as well as the nonjudicial foreclosure remedy.

To limit the bill's prohibition to nonjudicial foreclosure, the language on page 1, line 23 should read something like "remedy of nonjudicial foreclosure authorized under this section". To prohibit both types of foreclosure, the bill should be amended to read something like "remedy of judicial foreclosure or the remedy of nonjudicial foreclosure". I suggest that one or the other of the two changes be made in order to make the bill's application clear.

Please contact me if you wish to have any amendments drafted to address the issues mentioned in this memo.

If I may be of further assistance, please advise.

TLB:bb
b5/085

MAY 2, 1988

CSSB-515 (JUDICIARY)

TO: SENATOR KERTTULA

FROM: BETH

MOVE THE JUDICIARY CS

SB-515 DEALS WITH THE JUDICIAL FORECLOSURE OF PROPERTY AND SLIGHTLY CHANGES THE LAW IN THIS AREA.

IN VERY SIMPLISTIC TERMS, SB-515 WILL AID DEBTORS SO THAT IF A CREDITOR CHOOSES TO UTILIZE JUDICIAL FORECLOSURE AGAINST THEM AND THE CREDITOR OBTAINS A JUDGMENT, THEN THE CREDITOR WILL BE PRECLUDED FROM USING NON-JUDICIAL FORECLOSURE TO RECOVER THE SECURITY ON THE DEBT.

THIS WILL AID IN ADDING MORE CERTAINTY TO THE PROCEEDINGS AND WILL RE-STATE WHAT MANY BELIEVED THE LAW TO BE BEFORE A RECENT SUPREME COURT CASE, MOENING V. ALASKA MUTUAL BANK, DECIDED IN FEBRUARY OF THIS YEAR.

MOENING HELD THAT EVEN THOUGH THE ALASKAN ANTI-DEFICIENCY PAYMENT STATUTE PROHIBITS A DEFICIENCY JUDGMENT FOLLOWING EXERCISE OF A POWER OF SALE IT DOES NOT PRECLUDE THE EXERCISE OF A POWER OF SALE FOLLOWING A JUDGMENT ON THE NOTE. UNDER COMMON LOW, A PRIOR SUIT ON THE NOTE DOES NOT PRECLUDE

SUBSEQUENT JUDICIAL OR NONJUDICIAL FORECLOSURE OF THE SECURITY. SB-515 CLARIFIES THAT IF A JUDGMENT IS OBTAINED THEN AS A PRACTICAL MATTER THE DEED OF TRUST, OR THE NOTE SECURED BY THE DEED OF TRUST, WILL BE EXTINGUISHED AND THE CREDITOR WILL BE BARRED FROM TAKING IT IF THE CREDITOR HAS ELECTED TO PURSUE THE REMEDY OF JUDICIAL FORECLOSURE AND HAS HIS JUDGMENT. THE CREDITOR WILL, HOWEVER, RETAIN HIS RIGHTS IN A BANKRUPTCY PROCEEDINGS.

SENATE JUDICIARY HELD MANY HEARINGS ON SB-515 AND A SIMILAR BILL, SB-305. THE ENTIRE COMMITTEE WANTED TO TRY TO GIVE SOME RELIEF TO THOSE DEBTORS WHO ARE CAUGHT IN OUR CURRENT ECONOMIC CRUNCH. IN DOING SO WE TACKLED ONE OF THE THORNIEST AREAS OF LAW IMAGINABLE. SB-515 IS THE RESULT OF SENATE JUDICIARY'S EFFORT TO MAKE AT LEAST ONE SMALL CHANGE IN HOPES OF SOME CERTAINTY ON BEHALF OF DEBTORS WHO ARE BEING FORECLOSED UPON AND WHO STAND TO LOSE EVERYTHING.

SB 515

SENATE BILL NO. 515 by the Judiciary Committee, entitled:

"An Act relating to foreclosure of a deed of trust or a suit on a deed of trust note; and providing for an effective date."

was read the first time and referred to the Judiciary Committee.

April 21, 1988 SENATE JOURNAL p. 3148

SB 515

Senator Kerttula, Chairman, moved and asked unanimous consent that the five-day notice and publication requirements be waived on SENATE BILL NO. 515 "An Act relating to foreclosure of a deed of trust or a suit on a deed of trust note; and providing for an effective date" for the Judiciary Committee meeting on April 22. Without objection, it was so ordered.

April 30, 1988 SENATE JOURNAL p. 3317

SB 515

The Judiciary Committee considered SENATE BILL NO. 515 "An Act relating to foreclosure of a deed of trust or a suit on a deed of trust note; and providing for an effective date" and recommended it be replaced with

CS FOR SENATE BILL NO. 515(Judiciary)

and do pass. The report was signed by Senator Kerttula, Chairman and concurred in by Senators Josephson, Rodey, Sturgulewski and Faiks.

Zero fiscal note published today from Senate Judiciary Committee.

SENATE BILL NO. 515 was referred to the Rules Committee.

THE SUPREME COURT OF THE STATE OF ALASKA

MARSHALL LEE CONRAD and COLLEEN M. CONRAD, Appellants/Respondents, v. COUNSELLORS INVESTMENT CO., a partnership; BRIAN J. BRUNDIN; BILL LAWRENCE; MARCUS R. CLAPP; JERRY E. MELCHER; and JAMES M. POWELL, Appellees/Petitioners.	File No. S-1996/2102 O P I N I O N [No. 3275 - February 26, 1988]

Appeal in File No. S-1996 from the Superior Court of the State of Alaska, Fourth Judicial District, Fairbanks, Gerald J. Van Hoomissen, Judge. Petition for Review in File No. S-2102 from the Superior Court of the State of Alaska, Fourth Judicial District, Fairbanks, Jay Hodges, Judge.

Appearances: Barry Donnellan, Fairbanks, for Appellants/Respondents. Timothy R. Byrnes, James M. Gorski, Hughes, Thorsness, Gantz, Powell, and Brundin, Anchorage, for Appellees/Petitioners.

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

COMPTON, Justice.

This appeal presents two questions. The first question is whether secured creditors agreed to limit their remedy to nonjudicial foreclosure of their security. The second is whether the creditors' subsequent claim for judicial foreclosure of that security is precluded by the judgment in a prior suit on the note.

I. FACTUAL AND PROCEDURAL BACKGROUND

Counsellors Investment Co. (Counsellors)[1] purchased commercial property in Fairbanks from Marshall Lee Conrad and Colleen M. Conrad. In partial payment for the property, Counsellors gave the Conrads a note secured by a second deed of trust.

Counsellors eventually stopped making payments on the note and offered to reconvey the property to the Conrads in satisfaction of the debt. The Conrads declined the offer and sued Counsellors and its partners for a personal judgment on the note (Conrad I).

The superior court entered summary judgment for Counsellors on the ground that the Conrads' "remedy under their note and deed of trust is that provided in Paragraph B6 of the deed of trust and in AS 34.20.070-.135, and that [the Conrads] may not

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1. Counsellors is a general partnership. The partners are Brian Brundin, Bill Lawrence, Marcus Clapp, Jerry Melcher and James Powell.

maintain a suit on the promissory note alone;" in other words, the Conrads' remedy was limited to nonjudicial foreclosure of the security. Since the judgment form submitted by Counsellors was not consistent with some of the court's oral conclusions, the Conrads moved to amend the judgment to clarify whether they had the right to foreclose judicially. The court denied the motion and entered an order prohibiting the Conrads from exercising "any remedy inconsistent with the deed of trust." However, the court struck language in the proposed order which expressly precluded an action for judicial foreclosure.

The Conrads appealed the judgment in Conrad I and filed a complaint for judicial foreclosure and a deficiency judgment (Conrad II). Counsellors moved to dismiss the complaint, arguing that the Conrads' claim for judicial foreclosure was barred by the judgment in Conrad I. The superior court denied the motion to dismiss because "the question of judicial foreclosure was not before the court in the [prior] action" and "the right of the Conrads to maintain this action for judicial foreclosure of a deed of trust is granted by AS 09.45.170." Counsellors petitioned for review. We granted review and consolidated the cases for appeal.

II. CONRAD I: DID THE CREDITORS AGREE TO LIMIT THEIR REMEDY TO NONJUDICIAL FORECLOSURE OF THE SECURITY?

The Conrads argue that they have the right initially to ignore their security and sue on the note, or to file a complaint

for judicial foreclosure. Counsellors does not dispute that a secured creditor generally has that option; however, it contends that the deed of trust expressly limits the Conrads' remedy to nonjudicial foreclosure.

In Moening v. Alaska Mutual Bank, __ P.2d __, Op. No. 3274 at 6 (Alaska, February 26, 1988), we held that absent an agreement to the contrary, a secured creditor has the option whether to sue on the note or foreclose the security. If the creditor sues on the note and obtains a personal judgment which is returned unsatisfied, the creditor may then foreclose the security. Id.; AS 09.45.200.[2] In determining whether the parties agreed to limit the creditor's remedies, the note and trust deed are construed together and interpreted to carry out the reasonable expectations of the parties. __ P.2d at __, Op. No. 3274 at 7.

The deed of trust note here in issue states that Counsellors "promise(s) to pay" the Conrads the loan amount. In the event of default, the Conrads may at once declare the entire debt due and payable. The note does not indicate that

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2. AS 09.45.200 provides:

> During or after the pendency of an action for the recovery of a debt secured by a lien mentioned in AS 09.45.170, an action cannot be maintained for the foreclosure of the lien unless judgment is given in that action that the plaintiff recover the debt or a part of it, and an execution issued in the action against the property of the defendant is returned unsatisfied in whole or in part.

Counsellors is not liable for payment; therefore, the Conrads are entitled to sue on the note or foreclose judicially unless the deed of trust provides otherwise.

Counsellors argue that Paragraph B6 of the deed of trust limits the Conrads' remedy to nonjudicial foreclosure:

> Upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In the event of default Beneficiary shall execute or cause the Trustee to execute a written notice of such default and of his election to cause to be sold the herein described property to satisfy the obligation hereof, and shall cause such notice to be recorded in the office of the recorder of each recording precinct wherein said real property of [sic] some part thereof is situated.

(Emphasis added). Counsellors reasons that the language "Beneficiary shall execute" must be construed as a limitation on the Conrads' right to do anything else.[3] However, we believe that the only logical interpretation of this language requires the Conrads to execute the notice only after they have "elected" the remedy of nonjudicial foreclosure. The Conrads are entitled to exercise any other remedies permitted by law.

We conclude that the deed of trust does not limit the Conrads to the remedy of nonjudicial foreclosure. The trust deed

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3. See Fowler v. City of Anchorage, 583 P.2d 817, 820 (Alaska 1978) ("Unless the context otherwise indicates, the use of the word 'shall' denotes a mandatory intent.")

does not expressly preclude a suit on the note. The fact that a creditor may foreclose nonjudicially does not imply that it may not foreclose judicially.[4] Because the Conrads' remedies were not expressly waived in the note or deed of trust, they had the right to sue on the note or foreclose the security. Therefore, the superior court erred as a matter of law when it entered summary judgment against the Conrads on their right to sue on the note.[5]

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4. AS 34.20.070(a) provides in part:

> If a deed of trust is executed conveying real property located in the state to a trustee as security for the payment of an indebtedness and the deed provides that in case of default or noncompliance with the terms of the trust, the trustee may sell the property for condition broken, the trustee, in addition to the right of foreclosure and sale, may execute the trust by sale of the property, upon the conditions and in the manner set forth in the deed of trust, without first securing a decree of foreclosure and order of sale from the court,
>
> . . .

(Emphasis added).

5. The superior court appeared concerned that the Conrads filed suit on the note without providing Counsellors any notice of default. Paragraph B6 of the deed of trust requires the Conrads to record a notice of default as one of the steps leading to nonjudicial foreclosure. However, no notice is required if the Conrads pursue one of the other remedies available to them as secured creditors. See Smith v. Certified Realty, 585 P.2d 293, 294 (Colo. App. 1978), aff'd, 575 P.2d 1043 (Colo. 1979) (debtor has no equitable right to cure default in an action brought solely on a promissory note).

III. CONRAD II: IS THE CREDITORS' CLAIM FOR JUDICIAL FORECLOSURE PRECLUDED BY THE PRIOR SUIT ON THE NOTE?

Counsellors argues that the Conrads' claim for judicial foreclosure is precluded by the judgment on the note. The Conrads contend that judicial foreclosure was not addressed in Conrad I.

We described the claim preclusive effect of a prior judgment in State v. Smith, 720 P.2d 40, 41 (Alaska 1986), as follows:

> Under the doctrine of res judicata (claim preclusion), a judgment on the merits of a controversy bars subsequent suits between the same parties asserting the same claim for relief when the matter raised was or could have been decided in the first suit. Pankratz v. State, Department of Highways, 652 P.2d 68, 74 (Alaska 1982); Calhoun v. Greening, 636 P.2d 69, 71-72 (Alaska 1981). The Restatement (Second) of Judgments § 24(a) (1982) states that the claim extinguished by the first judgment:
>
> > includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.
>
> A mere change in the legal theory asserted will not avoid the preclusive effect of the first judgment. Pankratz, 652 P.2d at 74.

Arguably, Conrad II is barred under this reasoning. Conrad I involved the same parties and resulted in a judgment on the merits. The Conrads could have joined a claim for judicial

foreclosure with their claim for judgment on the note. Thus, it is irrelevant whether the Conrad I court ruled on this issue.[6]

On the other hand, the common law permits a creditor to judicially foreclose a security following an action on the note. E.g., Foothills Holding Corp. v. Tulsa Rig, Reel & Mfg., 393 P.2d 749, 751 (Colo. 1964); Berg v. Liberty Fed. Sav. & Loan Ass'n, 428 A.2d 347, 348-49 (Del. 1981); Klondike, Inc. v. Blair, 211 So. 2d 41, 42-43 (Fla. App. 1968). Moreover, AS 09.45.200 permits an action for judicial foreclosure "after the pendency of an action for the recovery of a [secured] debt," provided that the creditor prevails in the prior action and its judgment remains unsatisfied in whole or in part.[7]

We believe that this situation is best viewed as an express statutory exception to general principles of res judicata. A creditor need not join its claim for judicial foreclosure in the suit for recovery on the note at the risk of losing its security. In one sense, the subsequent foreclosure may be considered a special form of execution on the prior

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6. To the extent that Counsellors argues that this issue is precluded by Conrad I, it is relevant whether the first court ruled on the judicial foreclosure question. We agree with the Conrads that the superior court did not rule that the Conrads are limited to nonjudicial foreclosure; despite Counsellors' best efforts to obtain a decision on this question, the court left it unresolved.

7. See AS 09.45.200, supra note 2.

judgment for the creditor. Under AS 09.45.200, the creditor may bring these claims consecutively.[8]

The decision of the superior court in File No. S-1996 is REVERSED; the decision in File No. S-2102 is AFFIRMED. The cases are REMANDED to the superior court for further proceedings. The Conrads may elect whether to proceed with the suit on the note or the foreclosure.

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8. However, when the creditor resorts first to judicial foreclosure, failure to join its claim for a deficiency judgment may result in claim preclusion. See AS 09.45.170; see also Darnell v. Denton, 669 P.2d 981, 983 (Ariz. App. 1983); but see Perpetual Bldg. & Loan Ass'n v. Braun, 242 S.E.2d 407 (S.C. 1978).

THE SUPREME COURT OF THE STATE OF ALASKA

HAROLD J. MOENING and COLLEEN M. MOENING, Appellants, v. ALASKA MUTUAL BANK, Appellee.	File No. S-1980 O P I N I O N [No. 3274 - February 26, 1988]

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

Appearances: Francis J. Nosek, Jr. and Kelly Fisher, Anchorage, for Appellants. Gordon F. Schadt and Milford H. Knutson, Anchorage, for Appellee.

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

COMPTON, Justice.

This appeal presents three questions. The first question is whether a secured creditor initially may ignore the security and sue for a personal judgment on the underlying debt, absent an agreement to the contrary. The second is whether the creditor agreed to limit its remedy to foreclosure of the security. The third is whether the suit on the debt extinguishes the security as a matter of law.

I. FACTUAL AND PROCEDURAL BACKGROUND

Harold Moening and Ronald Rivard became business associates in 1983. Prior to their association, Rivard was the sole shareholder of Quest Enterprises, Inc. (Quest). Moening agreed to guarantee Quest's debts to Alaska Mutual Bank (AMB) in exchange for a 40% interest in the business.[1]

To effectuate the guarantee, Moening executed a $700,000 deed of trust note in favor of AMB.[2] The note was secured by a deed of trust on Moening's home, and on the property which originally secured the Quest obligations extinguished by the consolidation. Moening defaulted. Later Moening executed a secured promissory note for $33,000 to guarantee the debt for

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1. Colleen Moening is a named defendant because she co-signed many of the obligations with her husband Harold Moening.

2. The principal was payable on demand in a single installment. Absent a demand, the note was due on May 7, 1985.

property purchased by Quest in Peters Creek.[3] Moening defaulted on this note as well.

AMB filed a complaint against Moening seeking a personal judgment on the notes. It did not foreclose the deeds of trust nor attempt to exercise the power of sale. The superior court entered summary judgment for AMB, concluding that AMB had the right initially to ignore its security and sue on the note. The court entered a money judgment for $733,000 in principal due on the notes, plus accrued interest, costs, and attorney's fees. In addition, the court ordered that the notes should be filed with the court, marked "Conditionally Cancelled" and, "if subsequent execution on the judgment does not satisfy it, the amount by which it is not satisfied may form the basis of judicial or non-judicial foreclosure of the collateral securing the promissory notes."

Moening appeals on the grounds that (1) as a matter of law, AMB must exhaust the security first; (2) AMB agreed to exhaust the security first; and (3) AMB waived its security by suing on the notes.[4] For the reasons hereinafter set forth, we affirm the judgment of the superior court.

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3. The note was secured by a deed of trust identical to that securing the $700,000 note. The trust deed is not part of the record.

4. Moening also argues that AMB failed to join indispensable parties (Rivard and Quest). Alaska R. Civ. P. 19(b). This is an action to collect a debt. Neither Rivard nor

(Footnote Continued)

II. THE RIGHTS OF A SECURED CREDITOR

Moening argues that a secured creditor may not ignore the security and sue on the underlying obligation; it must first exhaust the security. AMB contends that a secured creditor has the option to foreclose or sue on the note, and that it may pursue these remedies concurrently or consecutively.

Statutes provide a secured creditor with a variety of remedies when the debtor defaults. For example, the creditor may bring an action for judicial foreclosure. AS 09.45.170.[5] The creditor is then entitled to a deficiency judgment against the debtor. Id.; Smith v. Shortall, 732 P.2d 548, 549 (Alaska 1987); Suber v. Alaska State Bond Comm., 414 P.2d 546, 555-56 (Alaska

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(Footnote Continued)

Quest was a party to the note and neither has an interest in this lawsuit. Civil Rule 19(a)(2). Moreover, their absence does not preclude granting complete relief between Moening and AMB. Civil Rule 19(a)(1). The fact that Moening may have claims against Rivard arising from other agreements, or that Rivard and Quest may have interests of record in the security, does not render them indispensable to AMB's suit on the note.

5. AS 09.45.170 provides:

> A person having a lien upon real property, other than that of a judgment, whether created by mortgage or otherwise, to secure a debt or other obligation may bring an action to foreclose the lien. In the action, the court may direct the sale of the encumbered property or a portion of it and the application of the proceeds of the sale to the payment of costs, expenses of sale, and the amount due the plaintiff. The judgment shall also determine the personal liability of a defendant for the payment of the debt secured by the lien and be entered accordingly.

Similar to deficiency

1966). The debtor has a statutory right of redemption for twelve months after the sale is confirmed. AS 09.45.190, 09.35.250.

The creditor may elect to conduct a nonjudicial foreclosure sale if the deed of trust provides for this remedy. Suber, 414 P.2d at 555-56; AS 34.20.070(a).[6] The creditor is not entitled to a deficiency judgment following a nonjudicial foreclosure. Smith, 732 P.2d at 549; AS 34.20.100.[7] The debtor is not entitled to redeem the property, unless the deed of trust provides otherwise. AS 34.20.090(a).

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6. AS 34.20.070(a) provides in part:

> If a deed of trust is executed conveying real property located in the state to a trustee as security for the payment of an indebtedness and the deed provides that in case of default or noncompliance with the terms of the trust, the trustee may sell the property for condition broken, the trustee, in addition to the right of foreclosure and sale, may execute the trust by sale of the property, upon the conditions and in the manner set forth in the deed of trust, without first securing a decree of foreclosure and order of sale from the court
>
> . . . .

(Emphasis added).

7. AS 34.20.100 provides:

> When a sale is made by a trustee under a deed of trust, as authorized by AS 34.20.070 -- 34.20.130, no other or further action or proceeding may be taken nor judgment entered against the maker or the surety or guarantor of the maker, on the obligation secured by the deed of trust for a deficiency.

Statutes also refer to an action on the underlying obligation. Alaska Statute 09.45.200 provides:

> During or after the pendency of an action for the recovery of a debt secured by a lien mentioned in AS 09.45.170, an action cannot be maintained for the foreclosure of the lien unless judgment is given in that action that the plaintiff recover the debt or a part of it, and an execution issued in the action against the property of the defendant is returned unsatisfied in whole or in part.

The clear implication of this section is that the creditor may sue directly on the note without first foreclosing the property. Moreover, if the creditor prevails in the legal action and cannot satisfy the judgment against the debtor's personal property, it may then maintain an action for judicial foreclosure of the security.

The superior court order also permits AMB to foreclose nonjudicially if the judgment on the note is returned unsatisfied. Moening argues that, even if AMB initially may ignore the security, it may not foreclose nonjudicially after obtaining a judgment on the note.

The anti-deficiency statute prohibits a deficiency judgment following exercise of a power of sale; however, it does not preclude the exercise of a power of sale following a judgment on the note. AS 34.20.100, supra note 7. Under the common law, a prior suit on the note does not preclude subsequent judicial or nonjudicial foreclosure of the security. Foothills Holding Corp. v. Tulsa Rig, Reel & Mfg., 393 P.2d 749, 751 (Colo. 1964); Berg

Common law.

v. Liberty Fed. Savings & Loan, 428 A.2d 347, 348-49 (Del. 1981); Klondike, Inc. v. Blair, 211 So. 2d 41, 42-43 (Fla. App. 1968). The doctrine of election of remedies does not apply, because foreclosure and a suit on the note are not inconsistent remedies. Klondike, 211 So. 2d at 42; Norwood Realty v. First Fed. Savings & Loan, 109 S.E. 2d 844 (Ga. App. 1954); Skach v. Lydon, 306 N.E. 2d 482, 485 (Ill. App. 1973). See also 55 Am. Jur. 2d Mortgages § 543, at 523 (1971).

We conclude that the statutes permit a secured creditor initially to ignore the security and sue on the note. Once the creditor obtains a personal judgment which is returned unsatisfied in whole or in part, the creditor may judicially or nonjudicially foreclose the security.[8]

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8. In Smith v. Shortall, 732 P.2d at 549, we held that a spouse who nonjudicially foreclosed a deed of trust securing her former husband's property division obligation was not entitled to a deficiency judgment under AS 34.20.100. In dicta we stated:

> The obligation was evidenced by a promissory note and secured by a deed of trust. When [Debtor] defaulted on the obligation, [Creditor] had several options. She could have waived the security of the deed of trust and sued on the note. Or, she could have brought an action to judicially foreclose the deed of trust, retaining the right to recover a deficiency judgment. AS 09.45.170; Suber v. Alaska State Bond Committee, 414 P.2d 546, 555 (Alaska 1966). Instead, [Creditor] elected the remedy of non-judicial foreclosure. By electing this remedy, [Creditor] lost her right to recover a deficiency judgment against [Debtor].

(Footnote Continued)

III. THE PARTIES' AGREEMENT

When a note is executed and secured by a deed of trust, the documents are read and construed together as one contract to ascertain the parties' intent. In re Sutton Inv., 266 S.E.2d 686, 689 (N.C. App. 1980), rev. denied, 301 N.C. 90 (1980); Herrington v. Murphy, 446 P.2d 595, 597 (Okla. 1968). The contract is interpreted to give effect to the reasonable expectations of the parties, looking to the language of the contract, the circumstances surrounding its adoption, and case law interpreting similar agreements. Craig Taylor Equip. v. Pettibone Corp., 659 P.2d 594, 597 (Alaska 1983). Ambiguities are construed in favor of the debtor. Patton v. First Fed. Sav. & Loan Ass'n, 578 P.2d 152, 156 (Ariz. 1978).

Any agreement between the parties that the creditor will not seek a deficiency judgment and will look only to the security is enforceable. Stern v. Itkin Bros., 385 N.Y.S.2d 753, 754 (N.Y. Sup. 1975).[9] Such an agreement is enforced even when the security is destroyed by foreclosure of a superior lien. The

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(Footnote Continued)

Id. We disapprove of this dicta insofar as it suggests that a suit on the note constitutes a legal waiver of the security.

9. A rider to the Stern mortgage provided in part:

> On default hereunder, no deficiency judgment shall be sought, rendered or entered against the mortgagor and mortgagees will look only to the mortgaged premises.

385 N.Y.S.2d at 754.

formerly secured inferior creditor is not entitled to sue on the note. Laclede Inv. Corp. v. Kaiser, 596 S.W.2d 36, 39 (Mo. App. 1980).[10]

The $700,000 obligation was evidenced by a "deed of trust note." By its terms, Moening expressly promised to pay principal and interest. The note also stated:

> [E]very party signing . . . this note hereby . . . binds himself thereon as a principal, . . . and promises, if this note is not timely paid and is placed in the hands of an attorney for collection, or suit is brought hereon, to pay all costs of collection, including reasonable attorney's fees.

(Emphasis added). The note constitutes a personal obligation of Moening. It does not preclude AMB from suing directly on the note.

The $33,000 debt is evidenced by a "single payment promissory note" in which Moening expressly promised to pay principal and interest. In case of default, Moening agreed to pay AMB's collection costs and attorney's fees. It does not limit AMB's ability to sue Moening.

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10. The Kaiser note contained the following provision:

> No personal liability shall be asserted or be enforceable against the maker, it being intended that the sole remedy of the holder hereof be by the foreclosure of the Deed of Trust and Security Agreement . . . .

596 S.W.2d at 39 n.1.

The deeds of trust securing the loans contain a power of sale provision permitting nonjudicial foreclosure. The trust deeds also expressly allow judicial foreclosure.[11] They do not limit the creditor's right to ignore the security and sue on the note.

IV. CANCELLING THE NOTES AND TRUST DEEDS

When AMB submitted a proposed judgment on the notes, Moening objected because the judgment did not include an order cancelling the notes and deeds of trust under Civil Rule 78(d).[12] AMB submitted the original notes to the court, but did not submit the trust deeds. AMB requested that the notes not be cancelled in case the personal judgment was returned unsatisfied. The superior court ordered that the notes be marked "Conditionally

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11. The trust deed states in part:

> In the event that this Deed of Trust is foreclosed as a mortgage and said property sold as a foreclosure sale [the purchasers may make necessary repairs or alterations] . . . .

12. Alaska R. Civ. P. 78(d) provides:

> In all cases in which a judgment upon a written instrument is entered, such instrument shall be filed with the court, and unless the court otherwise orders, it shall be cancelled by marks and writing upon its face. The clerk shall retain the same in the files unless otherwise directed by the court.

Cancelled." Moening argues that the superior court erred by failing to unconditionally cancel the notes and trust deeds, entering the order without adequate briefing, and entering the order after the notice of appeal was filed.

When judgment is entered on a written instrument, the instrument shall be filed with the court and cancelled on its face, unless the court orders otherwise. Civil Rule 78(d). We perceive no reason why a secured note should not be subject to this general rule. The note merges with the judgment, and any further proceedings will be to enforce the judgment rather than the note.

In contrast, the deeds of trust should neither be filed with the court nor cancelled:

> [A] judgment recovered upon a debt <u>secured</u> by a mortgage does not merge the mortgage nor operate as a discharge, abandonment, or release of the mortgage security.
>
> . . . The mortgage continues to secure such debt and is not released, discharged, or satisfied by a judgment on the debt, note, or bond. Such judgment stands <u>subordinate</u> to the mortgage lien.

<u>Silver v. Williams</u>, 175 A.2d 673, 676 (N.J. Super. Ct. Ch. Div. 1961) (emphasis in original), <u>rev'd on other grounds</u>, 178 A.2d 649 (N.J. Super. Ct. App. Div. 1962). In essence, the creditor ends up with a secured judgment.

Although the superior court could have simply cancelled the notes, it had discretion under the rule to order otherwise.

The conditional cancellation order does not constitute an abuse of that discretion.[13]

AFFIRMED.

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13. The record does not support Moening's assertion that the conditional cancellation order was entered after Moening filed a notice of appeal. The order was entered on January 7. The notice of appeal contains an initial filing stamp of December 19; however, that stamp was cancelled and the notice shows a second stamped filing date of January 7.

ALASKA STATE SENATE

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(907)465-4525

SB 515

April 8, 1988

APR 8 1988

Pleas Bill introduce

The Honorable Jalmar Kerttula
Chair
Senate Judiciary Committee
Alaska State Senate
P.O. Box V
Juneau, Alaska 99801

Dear Senator Kerttula:

I am enclosing for your consideration a draft bill entitled "an Act relating to judicial and nonjudicial foreclosures".

The Senate Committee on Economic Recovery adopted the concepts contained in the draft and has recommended that the bill be referred to your Judiciary Committee for introduction, and, in addition, that a Judiciary Committee bill, if introduced, should incorporate the concepts contained in HB 549, entitled "an Act relating to notice requirements on the use of a deed of trust".

✓ 3/28 + ✓ HB 549 OK - w/Frank Left this for Dick Bradley to do this.

The enclosure is an effort to reverse recent decisions of the Supreme Court of Alaska regarding creditor's rights in foreclosure situations. As a member of the Judiciary Committee and as a member of the Committee on Economic Recovery, I would recommend that legislation be sponsored through the Judiciary Committee for consideration of the Senate..

Please let me know if you desire additional information or background.

With best wishes, I am

Sincerely,

Joe Josephson.

Joe P. Josephson
State Senator

JPJ:rak
Enclosure

cc: Senator Arliss Sturgulewski
Senator Lloyd Jones

S-2103A
Bradley
3/28/88

IN THE SENATE

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to judicial and nonjudical foreclosures."

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

* Section 1. AS 09.45.170 is amended to read:

Sec. 09.45.170. JUDGMENT ON FORECLOSURE OF LIEN. A person having a lien upon real property, other than that of a judgment or deed of trust, whether created by mortgage or otherwise, to secure a debt or other obligation may bring an action to foreclose the lien. In the action, the court may direct the sale of the encumbered property or a portion of it and the application of the proceeds of the sale to the payment of costs, expenses of sale, and the amount due the plaintiff. The judgment shall also determine the personal liability of a defendant for the payment of the debt secured by the lien and be entered accordingly.

* Sec. 2. AS 09.45.170 is amended by adding a new subsection to read:

(b) A deed of trust may be foreclosed only under AS 34.20.070 - 34.20.135.

* Sec. 3. AS 34.20.070(a) is amended to read:

(a) If a deed of trust is executed conveying real property located in the state to a trustee as security for the payment of an indebtedness and the deed provides that in case of default or noncompliance with the terms of the trust, the trustee may sell the property for condition broken, the trustee, in addition to the right of foreclosure and sale, may execute the trust by sale of the property, upon

the conditions and in the manner set forth in the deed of trust, without first securing a decree of foreclosure and order of sale from the court, if the trustee has complied with the notice requirements of (b) of this section. If the trust is executed by a suit on the note and foreclosure and sale by the court, the foreclosure and sale extinguishes the deed of trust.

* Sec. 4. AS 34.20.100 is amended to read:

Sec. 34.20.100. DEFICIENCY JUDGMENT PROHIBITED. When a sale authorized under AS 34.20.070 - 34.20.135 is made by a trustee under a deed of trust, [AS AUTHORIZED BY AS 34.20.070 - 34.20.130,] no other or further action or proceeding may be taken nor judgment entered against the maker or the surety or guarantor of the maker [,] on the obligation secured by the deed of trust for a deficiency.

* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

SCR

23

(7)

HOUSE COMMITTEE REPORT

Date referred: 4/13/87

FURTHER REFERRALS:

DATE: 5-4-87

The Judiciary Committee has considered CSSCR 23(Jud)

Requesting the Governor to consider appointing a peace officer nominated by the Alaska Peace Officers Associaiton to serve on the Alaska Judicial Council.

RECOMMENDS:

[ ] replace with _____ [ ] the same title

[ ] attached amendment(s) [ ] a new title

- [ ] do pass
- [ ] do not pass
- [✓] no recommendation
- [ ] individual recommendations
- [ ] additional referral to the _____ Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- [ ] fiscal impact
- [ ] zero fiscal note
- [ ] zero with analysis
- [ ] same as previous fiscal note published _____
- [✓] same as previous zero fiscal note published 3/6/87

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Vice-Chairman's signature

Alaska State Legislature

SENATOR JIM DUNCAN

P. O. BOX V JUNEAU, ALASKA 99811

(907) 465-4766

COMMITTEES:
FINANCE
RESOURCES
BUDGET AND AUDIT

May 4, 1987

TO: House Judiciary Committee

From: Senator Jim Duncan

Subj: SCR 23

SCR 23, requests that the Governor appoint a peace officer nominated by the Alaska Peace Officer Association (APOA) to serve on the Alaska Judicial Council.

Article 4, section 8 of the Alaska constitution spells out how the Alaska Judicial Council is set up.

APOA is the largest law enforcement body in Alaska yet is not represented on the Judicial Council.

This resolution is offered, to allow the Governor to appoint a peace officer to the Judicial Council, the only other way is to amend the constitution. This is the best approach to take care of this problem, and allow the APOA the opportunity to be represented on the Alaska Judicial Council.

I would respectively request that this committee give favorable consideration to SCR 23.

alaska judicial council

1031 W. Fourth Avenue, Suite 301, Anchorage, Alaska 99501 (907) 279-2526

EXECUTIVE DIRECTOR
Harold M. Brown

May 4, 1987

Representative John Sund
House of Representatives
P.O. Box V, Mail Stop: 3100
Juneau, Alaska 99811

Dear Representative Sund:

We have been notified that SCR 23 will be heard by House Judiciary Committee on Monday, May 4. The Resolution requests that the Governor consider appointing a peace officer to fill the vacant non-attorney position on the Judicial Council. The Judicial Council has discussed it briefly and neither supports nor opposes the resolution. However, we wish to point out that since 1976 police officers have been polled directly by the Council when the retention of a sitting judge was being considered. Police officers have had, and will continue to have, the opportunity to participate in the Council's decision-making process.

There are three non-attorney members on the Judicial Council. Obviously, not every interest group can have a representative on the Council and it seems to us that the proper focus is or should be on the general qualifications of the particular individual and not his or her occupation. Further, Article 4, Section 8 of the Constitution of the State of Alaska specifically provides that appointments to the Judicial Council should be made "without regard to political affiliation."

Please let us know if you have any further questions regarding this legislation.

Sincerely,

Harold M. Brown
Executive Director

HMB/jmz/053

SJR

12

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/28/88 FURTHER REFERRALS:

DATE: April 19, 1988

The Judiciary Committee has considered CSSJR 12(Jud)

Relating to the determination of the state's boundaries with the Soviet Union and Canada.

RECOMMENDS:

[ ] replace with _____ [ ] the same title

[ ] attached amendment(s) [ ] a new title

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact [ ] same as previous fiscal note published _____

[ ] zero fiscal note

[ ] zero with analysis [✓] same as previous zero fiscal note published 3/29/88

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman's signature

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

H. JUD. 4-19-88 1:30p.m.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

175

Bill Version: CSSJR 12 (Jud)
Publish Date: 3/9/88

REQUEST:

Revision Date:
Agency Affected:
Title: Relating to the determination of the state's boundaries with the Soviet Union
BRU:
Sponsor: Uenling
Components:
Requestor:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Senate Judiciary Committee
Phone: 465-3717
Division:
Date:

Approved by Commissioner: Senator Jay Kerttula
Date: 3-8-88
Agency: Senate Judiciary Committee

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

Senator Rick Uehling

Senate District H
Downtown, Elmendorf, Northeast Anchorage

Senate Finance Committee
Chair, International Trade Committee
Vice-Chair, State Affairs Committee
Labor & Commerce Committee

March 29, 1988

M E M O R A N D U M

TO: Representative John Sund
Chair, House Judiciary Committee

FROM: Senator Rick Uehling

RE: Senate Joint Resolution 12 "Relating to the determination of the state's boundaries with the Soviet Union and Canada."

I have asked staff to provide the following background and analysis of SJR 12, "Relating to the determination of the state's boundaries with the Soviet Union and Canada."

SJR 12 is designed to gain Alaskan involvement in the current negotiations between the U.S. State Department and the Soviet Union over the ownership of five islands located in the Arctic Ocean off the northern coast of the Soviet Union. The islands in question are the Wrangell and Herald Islands and the three De Long Islands, all located off Alaska's northwest coast in the Arctic Ocean.

I feel the only way to enforce Alaska's boundary interests is to have direct Alaska representation in the negotiating process. This resolution simply asks that an Alaskan representative be involved in any future boundary negotiations. The present negotiations over the Wrangell Islands boundary dispute should have Alaskan representation, however, there will also be future negotiations over Alaska's boundaries with Canada in the northern Arctic region and on the southern tip of the Panhandle and there will be further negotiations with the Soviet Union concerning the boundary line in the Bering Sea region. Alaskans should have a presence in the negotiating process.

SJR 12 was heard in the Senate State Affairs and Judiciary Committee, and received favorable testimony. Thomas Koester, Assistant Attorney General, testified before the Senate State Affairs Committee that the Governor strongly supports SJR 12. Mr. Koester emphasized the State's desire to set a precedent in the present negotiations and thus become an active participant in future Alaska boundary disputes.

P.O. BOX V, JUNEAU, AK 99811 (907) 465-4821 • 3111 C ST. #515, ANCHORAGE, AK 99503 (907) 561-7613

SJR 12 "Relating to the determination of the state's boundaries with the Soviet Union and Canada."

Information packet includes:

1. A copy of Senate Joint Resolution 12, and a zero fiscal note.

2. Position paper on boundary negotiations by the American Legislative Exchange Council.

3. A copy of the California Assembly Joint Resolution 37 "Relative to the boundaries of Alaska."

4. Letter of thanks to the California Legislature for AJR 37, from Governor Steve Cowper.

5. A copy of a bill by U.S. House of Representative's requiring a treaty to release or transfer any territory or claim of the United States by Representative Dannemeyer.

6. Questions and Answers posed to nominee for Ambassador to Soviet Union by Senate Foreign Relations Committee, March 1987.

7. The Wall Street Journal article, November 13, 1985, regarding State Department negotiations on the Wrangell "boundary dispute."

8. The Washington Times article, January 1, 1988, "5 Frozen Islands Stir A Dispute With The Soviet."

9. Maps of the Arctic region, Wrangell, Herald, Bennett, Henrietta, and Jeannette.

10. A paper on the Northeastern boundary negotiation process.

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

THE STATE'S ROLE IN FEDERAL BOUNDARY NEGOTIATIONS

The Alaska island controversy centers on the possesion of five islands: Bennett, Henrietta, Herald, Jeanette, and Wrangell. Their value lies in the fishery, oil and military potential of the area.

One of our legislative members in Alaska asserts that historical documents prove that American naval explorers were the first to discover the islands. However, The strength or weakness of Alaska's claim is not as significant of an issue to California as the manner in which the boundary negotiations are carried out.

The question as to the roll Alaska should play in the negotiations is of paramount importance to California, as well as to any state that shares a border with a foreign nation (15 at last count). If Alaska is successfully excluded from these negotiations now, a clear precedent will have been set for excluding California from possible future negotiations over its border with Mexico.

Although the Federal Government has negotiated border disputes in the past, it was consistently done with the approval of the states in question. During the negotiations that delineated the border between Canada and the Northeastern States (the Webster-Ashburton Treaty of 1842), President Tyler proposed that "the Governments of Maine and Massachusetts should, severally, appoint a Commissioner, or Commissioners, empowered to confer with the authorities of this Government upon a Conventional line,...no such line will be agreed upon without the assent of such commissioners."

This effective veto power was not merely lent to the states but was insinuated to be Constitutionally reserved to the states. The arbitration decision on the same issue rendered by the King of the Netherlands in 1831 had been rejected by the Senate because, according to ther Secretary of State Forsyth, "... under the peculiar structure of our political system, the Federal Government cannot alienate any portion of the territory of a State, without its consent."

And finally, a letter was sent in 1838 from the Secretary of State to the Governor of Maine assuring him "That the General Government is not competent to negotiate, unless perhaps on grounds of imperious public necessity, a conventional line involving a cession of territory to which the State of Maine is entitled...without the consent of the State."

214 Massachusetts Ave., N.E. • Suite 400 • Washington, D.C. 20002 • 202/547-4646

It is apparent that the principles which guided the Federal Government in the Northeast Boundary negotiations went a lot further than just informing the States of progress. Clearly then, this is not merely a boundary claim issue, but an issue of State's Rights. A precedent set in Alaska could eventually come back to haunt California.

Enclosed are State Department documents dealing with the negotiations preceding the Northeast Boundary Treaty.

NOTES:

1: United States Department of State, Treaties and Other International Acts of the United States, 1776-1863, Vol. IV, (Washington, D.C.: 1931), pg. 383.
2: Ibid, pg. 384.
3: Ibid, pg. 385.

Assembly Joint Resolution No. 37

Introduced by Assembly Member La Follette

April 22, 1987

Assembly Joint Resolution No. 37—Relative to the boundaries of Alaska.

LEGISLATIVE COUNSEL'S DIGEST

AJR 37, as introduced, La Follette. Alaska: boundary negotiations.

This measure would state the Legislature's support for the State of Alaska in its rightful position of participation in any boundary negotiations involving its boundaries with the Soviet Union or Canada. It would memorialize the President and Congress of the United States to ensure that any terms and conditions of any boundary agreement with respect to Alaska's boundaries is consented to by the State of Alaska and that the agreement is drafted in the form of a treaty for ratification by the United States Senate.

Fiscal committee: no.

WHEREAS, The boundaries of the State of Alaska are of vital concern to the state government of Alaska; and

WHEREAS, The essence of sovereignty of a state within America's federal system requires that a state government have complete and unambiguous jurisdiction over well-defined geographical boundary lines; and

WHEREAS, Any time that boundaries of a state are to be altered in any way, that state has an essential and overriding interest in the determination of the boundary; and

WHEREAS, Alaska is unique among all American

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

☐ *1031 W 4th AVENUE*
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

☐ *1st NATIONAL CENTER*
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

☒ *P.O. BOX K—STATE CAPITOL*
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

October 13, 1987

R. Brian Kidney
Assistant Chief Clerk
Assembly
California Legislature
State Capitol
Sacramento, California 95814

Re: Assembly Joint Resolution No. 37, relative to the boundaries of Alaska

Dear Mr. Kidney:

Alaska Governor Steve Cowper asked that I respond to your September 24, 1987 letter which invited our attention to Assembly Joint Resolution No. 37, relating to the boundaries of Alaska.

On behalf of Governor Cowper and all Alaskans, please communicate our thanks for this resolution of support for Alaska sovereignty. As the California Legislature correctly notes, states have "an essential and overriding interest" in the negotiation of the United States' international boundaries when the negotiation may have the effect of altering state boundaries. The United States currently has disputes with Canada over boundary delimitation in Dixon Entrance to the south of Alaska and the Beaufort Sea to the north, as well as the dispute with the Soviet Union to the west.

The United States Supreme Court has repeatedly noted that the treaty power does not authorize the federal government unilaterally to divest a state of territory without its consent. See, e.g., DeGeofroy v. Riggs, 133 U.S. 258, 33 L.Ed. 642, 645 (1890); Fort Leavenworth R.R. Co. v. Lowe, 114 U.S. 525, 541 (1885). Rest assured that Alaska will fully assert its sovereign rights in this regard.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

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WHEREAS, The essence of sovereignty of a state within America's federal system requires that a state government have complete and unambiguous jurisdiction over well-defined geographical boundary lines; and

WHEREAS, Any time that boundaries of a state are to be altered in any way, that state has an essential and overriding interest in the determination of the boundary; and

WHEREAS, Alaska is unique among all American

states in that it is the only state with the potential for having boundaries with more than one foreign country (i.e. Canada and the Soviet Union); and

WHEREAS, Boundaries with foreign countries and a state are, and ought to be, coterminous with America's national boundaries with those foreign countries; and

WHEREAS, Negotiations are underway between the United States Department of State and the government of the Soviet Union over setting boundaries between the United States and the Soviet Union, and there have been at least seven rounds of negotiations on this issue since 1981; and

WHEREAS, The economic issues of petroleum, fishery, and other valuable resources have great impact on Alaska's welfare and prosperity; and

WHEREAS, At no time has the United States Department of State allowed, or even offered to invite, a representative of the state government of Alaska to be on any negotiating delegation, nor has it formally solicited the input or advice of the state government of Alaska over the content or form of these negotiations; and

WHEREAS, These negotiating delegations that the United States Department of State has assembled have included representatives of various other agencies of the federal government; and

WHEREAS, It is settled procedure for negotiation of boundaries that representatives of any affected state not only must be included in the negotiations, but also must consent to the proposed terms of the boundary treaty (such as was the case when Secretary of State Daniel Webster negotiated with Great Britain in 1842 over the boundary between Canada and the State of Maine); and

WHEREAS, A usurpation of one state's rights and sovereignty is an attack on the entire federal system of the United States of America; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California supports the State of Alaska in its rightful position of participation in any boundary negotiations involving its boundaries with the Soviet Union or Canada; and be it further

Resolved, That the Legislature of the State of California respectfully memorializes the President and Congress of the United States to ensure that any terms and conditions of any boundary agreement with respect to Alaska's boundaries is consented to by the State of Alaska, and that any such boundary agreement is drafted in the form of a treaty for ratification by the United States Senate; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the Governor of Alaska.

O

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

☐ *1031 W 4th AVENUE*
SUITE 200
ANCHORAGE, ALASKA 99501-1994
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Assistant Chief Clerk
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We appreciate California's support in this effort. Thank you for communicating our appreciation to both houses of the California Legislature.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: G. Thomas Koester
G. Thomas Koester
Assistant Attorney General

GTK:dlm
cc: Honorable Ted Stevens
United States Senate
522 Hart Building
Washington, D.C. 20510

Honorable Frank N. Murkowski
United States Senate
709 Hart Building
Washington, D.C. 20510

Honorable Donald E. Young
House of Representatives
2331 Rayburn House Office Bldg.
Washington, D.C. 20515

Rosita Worl
Special Assistant
Office of the Governor
(CTS #87272HDC0001)

John Katz
Special Counsel, State/Federal Relations
Office of the Governor

David A. Colson
Assistant Legal Adviser
United States Department of State
Room 6420
Washington, D.C. 20520

Scott Hajost
Assistant Legal Adviser
United States Department of State
Room 6420
Washington, D.C. 20520

John Briscoe, Esq.

Michael W. Reed, Esq.

100TH CONGRESS
1ST SESSION

H. R. 341

To require a treaty for any relinquishing to any country of any territory, exclusive economic zone, or fishery conservation zone of the United States, and for establishing international boundaries.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1987

Mr. DANNEMEYER introduced the following bill; which was referred to the Committee on Foreign Affairs

---

A BILL

To require a treaty for any relinquishing to any country of any territory, exclusive economic zone, or fishery conservation zone of the United States, and for establishing international boundaries.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LIMITATION ON RELEASE OR TRANSFER OF TERRITORY OR CLAIMS OF THE UNITED STATES.

The President may not relinquish or transfer to any country any territory, land, exclusive economic zone, or fishery conservation zone of the United States or any claim of the United States to any right, title, or interest in or to any

Q14. With respect to the negotiations between the United States and the Soviet Union concerning our boundary situation and the disposition of Wrangel, Herald, Bennett, Jeanette and Henrietta islands, what are your views? What is the policy of the Department of State with respect to these five islands? Does the Department of State consider thses to be U.S. territory? Do you consider these islands to be U.S. territory? Do you consider the 1867 Convention Line between Tsarist Russia and the United State to be the current boundary between the two countries? What are your views with respect to this convention line? What is the policy of the Department of State with respect to this line and to our boundary with the Soviet Union?

A14. The United States is not involved in negotiations with the Soviet Union bearing directly upon the disposition of Wrangel, Herald, Bennett, Jeanette or Henrietta islands. The negotiations in which the United States Government is involved with the Soviet Union on our boundary are discussions concerning the interpretation and application of the line established by the 1867 U.S.-Russian Convention Ceding Alaska. The legal status of the five islands mentioned has not been the subject of negotiation in these discussions. The extent to which any final boundary settlement would have implications for the U.S. position regarding the islands would depend on a number of issues not yet resolved.

The U.S. regards the 1867 Convention Line as our maritime boundary with the U.S.S.R. for the purpose of dividing jurisdiction over maritime resources, including fisheries and continental shelf resources. Following the establishment in 1977 of 200-nautical-mile fisheries zones by the U.S. and the Soviet Union, it became apparent that we had technical differences in depiction of the 1867 Convention Line. The U.S. depicts the Line by arcs of great circles, the shortest distance between two points on the earth appearing as straight lines on a globe. The Soviet Union depicts the Line by rhumb lines, lines of constant direction used mainly by mariners. This difference results in areas in the Bering Sea which each country claims are under its maritime resource jurisdiction.

As for the islands you mentioned, the Department of State has informed me that each was formally claimed by the Russian government in 1916 and by the U.S.S.R. in 1924 and 1926. Wrangel, the largest of the five, has been occupied by the Soviet Union since 1924. Although American citizens were involved in the discovery and early exploration of several of the islands, the Department of State has found no evidence that the Government of the United States has ever formally asserted a claim to any of these islands or protested the Russian or Soviet claims.

(Source: Questions and Answers posed to nominee for Ambassador to Soviet Union by Senate Foreign Relations Committee, March 1987)

CORRECTION

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HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

100TH CONGRESS
1ST SESSION

H. R. 341

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The President may not relinquish or transfer to any country any territory, land, exclusive economic zone, or fishery conservation zone of the United States or any claim of the United States to any right, title, or interest in or to any

territory, land, exclusive economic zone, or fishery conservation zone unless provided for by a treaty between the United States and that other country.

SEC. 2. BOUNDARIES TO BE ESTABLISHED BY TREATY.

A boundary (including land boundaries, maritime boundaries, exclusive economic zones, and fishery conservation zone boundaries) between the United States and any other country may be established only by treaty, signed by the President and ratified by the Senate.

O

Q14. With respect to the negotiations between the United States and the Soviet Union concerning our boundary situation and the disposition of Wrangel, Herald, Bennett, Jeanette and Henrietta islands, what are your views? What is the policy of the Department of State with respect to these five islands? Does the Department of State consider thses to be U.S. territory? Do you consider these islands to be U.S. territory? Do you consider the 1867 Convention Line between Tsarist Russia and the United State to be the current boundary between the two countries? What are your views with respect to this convention line? What is the policy of the Department of State with respect to this line and to our boundary with the Soviet Union?

A14. The United States is not involved in negotiations with the Soviet Union bearing directly upon the disposition of Wrangel, Herald, Bennett, Jeanette or Henrietta islands. The negotiations in which the United States Government is involved with the Soviet Union on our boundary are discussions concerning the interpretation and application of the line established by the 1867 U.S.-Russian Convention Ceding Alaska. The legal status of the five islands mentioned has not been the subject of negotiation in these discussions. The extent to which any final boundary settlement would have implications for the U.S. position regarding the islands would depend on a number of issues not yet resolved.

The U.S. regards the 1867 Convention Line as our maritime boundary with the U.S.S.R. for the purpose of dividing jurisdiction over maritime resources, including fisheries and continental shelf resources. Following the establishment in 1977 of 200-nautical-mile fisheries zones by the U.S. and the Soviet Union, it became apparent that we had technical differences in depiction of the 1867 Convention Line. The U.S. depicts the Line by arcs of great circles, the shortest distance between two points on the earth appearing as straight lines on a globe. The Soviet Union depicts the Line by rhumb lines, lines of constant direction used mainly by mariners. This difference results in areas in the Bering Sea which each country claims are under its maritime resource jurisdiction.

As for the islands you mentioned, the Department of State has informed me that each was formally claimed by the Russian government in 1916 and by the U.S.S.R. in 1924 and 1926. Wrangel, the largest of the five, has been occupied by the Soviet Union since 1924. Although American citizens were involved in the discovery and early exploration of several of the islands, the Department of State has found no evidence that the Government of the United States has ever formally asserted a claim to any of these islands or protested the Russian or Soviet claims.

(Source: Questions and Answers posed to nominee for Ambassador to Soviet Union by Senate Foreign Relations Committee, March 1987)

Q15. Exactly how many sessions have been held between the United States and the Soviet Union with respect to this issue? Exactly what were the dates and where the meetings? Exactly who was present on the Soviet side during each of these meetings? What issues were discussed and what decisions were reached?

A15. As authorized by the President, we have had seven rounds of discussions with the Soviets since 1981, the latest in October 1986, for the purpose of resolving differences in the interpretation and application of the Convention Line. The meeting sites have alternated between Washington and Moscow. The most recent U.S. delegations were led by Assistant Secretary John Negroponte and were composed of representatives from the Departments of State, Defense, Interior, Energy and Transportation. The Soviet delegations have been composed of representatives from similar Soviet governmental entities.

As I noted above, the issue in these discussions is the interpretation and application of the 1867 Convention Line. No decisions have been reached and we anticipate further discussions. In connection with the October 1986 talks, however, the U.S. and the Soviet Union reached an informal understanding that pending resolution of the boundary each would not take enforcement action against the fishing vessels of the other in areas of the Bering Sea which both claim as part of their fisheries zones.

Q16. What is the exact status of Wrangel, Herald, Bennett, Jeanette and Henrietta island? Are these today legal possessions of the United States? Precisely who in the Department of State has been assigned to work on this issue?

A16. As I noted in reply to question 14, above, these islands were claimed by the Russian government in 1916 and the Soviet Union in 1924 and 1926, and the Soviets have occupied Wrangel since 1924. The United States has has never formally recognized Soviet sovereignty over these islands, and has from time to time indicated that it has not formally relinquished any claims to these islands. Extensive research has not produced evidence of any formal United States assertion of claims or of United States protest of the Soviet claims or their occupation of Wrangel.

Several State Department bureaus have been involved in this issue, including: the Bureau of International Oceanic, Environmental and Scientific Affairs; The Office of the Legal Adviser; the Bureau of Intelligence and Research; and the Bureau of European and Canadian Affairs.

Border Dispute

Question: What country was the first to lose territory to Soviet aggression?

Answer: Not Finland, not even the unfortunate Baltic States, but the United States of America.

That happened on Aug. 20, 1924, when the crew of the Soviet gunboat Krasny Oktober (Red October) landed on Wrangell Island off the northeast coast of Siberia and took as prisoners the 14 American fur trappers encamped there. Twelve survivors were eventually released. Two men died in captivity. The Soviets claimed Wrangell and now operate a political prison camp on the island.

On "Face the Nation" last month, National Security Adviser Robert McFarlane indicated that the Wrangell "boundary dispute" will be on the table at the Geneva summit. Some members of Congress believe the State Department wants to finally resolve the island's status—in the Soviets' favor. Resolutions demanding that any agreement be subject to congressional approval have been drafted by Sen. Jesse Helms and Rep. Mark Siljander.

A U.S. irredentist claim to a chilly piece of Arctic real estate might sound like small potatoes. But the congressmen figure that it doesn't make much sense to complain to the Soviets about their expansionist tendencies—as President Reagan clearly intends to do—while at the same time politely forgetting that they once grabbed some land from the U.S. itself.

The U.S. claim to Wrangell and four small nearby islands dates from 1881. A U.S. Revenue Marine (Coast Guard) party that included John Muir, the famed naturalist and founder of the Sierra Club, visited the area that year. Mr. Muir later wrote that they "landed on Wrangell Land and took possession of it in the name of the United States." A czarist explorer, Lt. Ferdinand Wrangell, admitted in his memoirs that he never actually discovered the island that bears his name. Until the Krasny Oktober showed up, there was no official Russian presence.

Several U.S. oil companies are interested in searching for oil on the continental shelf between the U.S. and the Soviet Union. When last year the Interior Department announced it would begin leasing tracts in the Arctic Ocean, the State Department warned that anyone bidding on tracts to the west of the so-called 1867 Convention Line should be aware that the area might become Soviet territory.

As recently as 1973, the State Department maintained that the U.S. had never relinquished its claims to Wrangell and the other islands, and that the "convention lines" depicted on maps *did not* constitute an international boundary. But in December 1984, after some negotiations in Moscow, the department said it had not "found any evidence that the Government of the United States has ever formally asserted a claim to any of the islands." That seems to contradict the John Muir account. It also ignores a 1959 ruling of the Foreign Claims Settlement Board that the property of the fur trappers was illegally expropriated. *Russian* maps made early in this century show the islands as American.

We've had our own doubts about irredentist claims. The further back in history you go, the greater amount of disputed acreage there is. But the Soviets themselves are among history's most aggressive irredentists. Aside from their grab of the Baltic States and their expansion of the old czarist empire westward to the Elbe and southward to Kandahar, they have border disputes with Norway, Sweden, Japan and China. Whatever the prospects for satisfaction, the U.S. should hang tough over Wrangell Island just to demonstrate its resistance to Soviet imperialism.

THE WALL STREET JOURNAL.

WEDNESDAY, NOVEMBER 13, 1985

SUMMIT MEETING IN GENEVA IN 1985 HAD THE GIVEAWAY OF ALASKAN ISLANDS TO THE SOVIET UNION ON THE AGENDA.

If you want the Wall Street Journal to publish a hard-hitting editorial on the Alaska giveaway, as it did just before the Summit Meeting in 1985, please write ASAP to:

Mr. John Fund
Editorial Page Asst. Editor
Wall Street Journal
200 Liberty Street
New York, NY 10281

Time to Sober Up

Let's hope President Reagan's pre-summit TV address tonight will sober up the Washington community, which is suffering from a terminal case of silliness over its hopes about what Mr. Reagan's sitdown with Mikhail Gorbachev is likely to accomplish.

Contributing to the air of unreality are tales of White House gnomes delivering tons of briefing papers to the Oval Office and setting up projectors to show the president the Gorbachev-Mitterrand game films. Newspaper Style sections this Sunday will describe in infinite detail what Nancy will wear when she has tea in Geneva with the lovely Raisa. Tip O'Neill is taking time out from the budgetary chaos he presides over on Capitol Hill to make the outrageous claim that Congress has given the president the support he needs for a summit "success."

On a more serious level, George Shultz has been treating with the Soviets since his meeting with Andrei Gromyko last January, laying the summit groundwork. Without knowing the game plan, it's impossible to assess how well Mr. Shultz is doing. But we mostly have been hearing about gifts the State Department might like to lay before Mr. Gorbachev. Surrender of the U.S. claim to Wrangell Island (discussed in this space yesterday) is one possibility. An offer to pool fusion energy research with the Russians is another. And the U.S. is prepared to go on pretending SALT II is a real agreement, however much abuse it gets from the Russian side.

In short, the Washington community, by merely following its own instincts, is once again setting the president up to have his pockets picked. Mr. Reagan's Strategic Defense Initiative is being negotiated and renegotiated on Mr. Gorbachev's behalf. The president is being urged to rush back, as Richard Nixon once did, to dramatically present some "breakthrough" to a joint session of Congress. Word is going around, as it always does, that the Soviet leader is in deep trouble and will be eager to make deals.

Mr. Reagan has tried to discourage such nonsense. He has wisely rejected the idea of a post-summit communique, for example, saying that you don't promise a communique when all you are doing is having a little get-acquainted session. He has discouraged the notion that there will be any "agreements." But even for a president with Mr. Reagan's keen understanding of what the U.S.-Soviet relationship is and must be, there are dangers of being trapped. Arms control is, as always, the biggest area of danger.

The policy of abiding by SALT II, which Mr. Shultz seems prepared to continue, hasn't made much sense. Consider the just-published "Military Balance" report of London's well-respected International Institute for Strategic Studies. It says the Soviets have increased their supply of long-range nuclear warheads by 37% in just three years. They now enjoy a 2.4-to-one advantage over the U.S. in land and submarine based megatonnage. That's mutual restraint?

U.S. soft-liners want the president to promise that the U.S. will not over the next five years exercise its option to withdraw, on one year's notice, from the 1972 anti-ballistic missile treaty. That treaty also has not placed much restraint on the Soviets. The IISS says the Soviets are actively pursuing their own space-based nuclear defense research even while they attack the U.S. effort. A Pentagon report sent to the White House Tuesday cites a series of serious Soviet ABM treaty violations. So while Mr. Reagan temporizes and generously offers to make future U.S. defense technology available to all comers, the Russians are actually putting a defense in place. The danger in this is clearly outlined in the open letter to the president from Rep. Kemp and Sen. Wallop excerpted nearby.

People often ask why the Russians have invested so much in weapons of mass destruction while living standards in the Soviet Union are, on the whole, only slightly above Third World levels. The summit ballyhoo in the U.S. provides the obvious answer. They want to be feared. They surround themselves in mystery so that American congressmen, permitted an audience with the Great Gorbachev, will come away awed by having been spoken to in English or fixed with his steely gaze. Showmanship of this skill level wins concessions.

Richard Nixon, who has had some experience with summits, wrote in the latest Foreign Affairs some cautionary words: "This is a long struggle with no end in sight. Whatever their faults, the Soviets will be firm, patient and consistent in pursuing their foreign policy goals. We must match them in that respect."

A good way to match them will be for Mr. Reagan to go to the summit, complain as he intends about Soviet aggressions and abuses of human rights and make no promises. And tonight will not be too soon to start damping down the mindless euphoria that has overtaken pre-summit Washington.

THE WALL STREET JOURNAL THURSDAY, NOVEMBER 14, 1985

STATE DEPARTMENT BOWS TO SOVIET DEMANDS AND FORCES HUNDREDS OF PRO-AMERICAN AND ANTI-SOVIET PROTESTERS AWAY FROM THE STATE DEPARTMENT'S PUBLIC BUILDING IN WASHINGTON.

A foreign mission

Reaction around town indicates this column was not taken overly seriously when we reported last week that during the visit of Soviet Foreign Minister Eduard Shevardnadze, the State Department designated its main building a foreign mission.

It's no joke. That astonishing move, reflecting what Sen. Jesse Helms and other conservative critics have been saying all along, enabled State to invoke a law to keep protesters 500 feet away from the building. At least for the duration of Mr. Shevardnadze's visit, our State Department was a foreign mission.

—John Elvin

The Washington Times

TUESDAY, SEPTEMBER 22, 1987

The Washington Times

FRIDAY, JANUARY 1, 1988 WASHINGTON, D.C.

5 frozen islands stir a dispute with the Soviets

By John McCaslin
THE WASHINGTON TIMES

The State Department and a 40-year-old Agriculture Department bureaucrat are locked in a bitter dispute over whether the United States or the Soviet Union should control five frozen, wind-swept islands near a disputed section of the U.S.-Soviet border.

The Agriculture Department employee accuses the FBI of harassing him at the State Department's request.

Since 1981, a secret U.S. negotiating delegation has held eight meetings with Soviet counterparts to establish an exact boundary between Alaska and the Soviet Union, according to a State Department official who asked not to be named.

"Once a boundary line is agreed to by both nations, which could come early this year, it's a safe bet that the five-island chain will become official Soviet territory," the official said.

But Mark Seidenberg, an Agricul-

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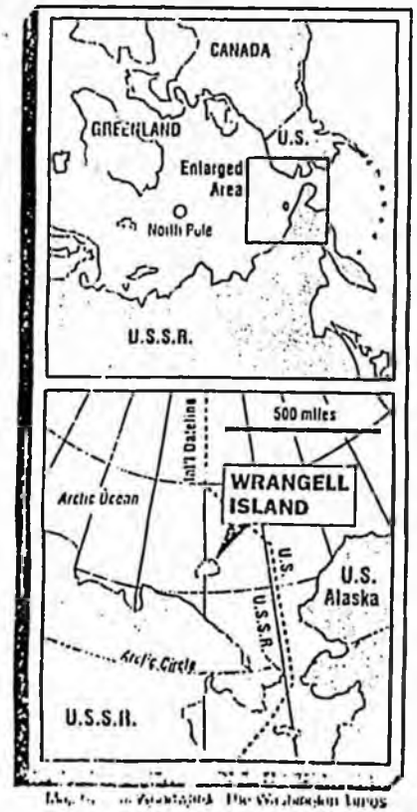


ALASKA

From page A1

ture Department employee, has spent more than a decade battling to reassert what he claims is U.S. sovereignty over Wrangell Island, a patch of frozen tundra in the Arctic Ocean that has been suggested to be the site of a Soviet concentration camp.

Also in dispute are four smaller islands off the same Soviet coastline — Herald, Bennett, Henrietta and Jeannette.

Carl Olson, chairman of State Department Watch, a group which has also fought for U.S. rights to the islands, said in a telephone interview from Los Angeles that he is "equally optimistic the United States will retain the islands."

"The important thing is to get the State Department on our side, but so far they have shown zero initiative," Mr. Olson said.

"We have not been able to get anything out of State," he said. "They refuse to talk about it — point blank. And they've stonewalled the House Foreign Affairs Committee and the Senate Foreign Relations Committee."

A House bill introduced last Jan. 6 by Rep. William E. Dannemeyer, California Republican, would require that Congress approve any treaty for "transfer of territory or setting of a boundary line" between the United States and any foreign country. The bill has at least 30 co-sponsors.

On the Senate side, Sen. Jesse Helms, North Carolina Republican, has introduced similar legislation, complaining that surrendering the five islands would amount to handing over half of the entire outer continental shelf, which Mr. Olson said contains "vast oil-rich seabeds."

The State Department official said the United States "obviously hasn't sent any drilling ships to the area."

But he added: "The Department of Interior and other geologists haven't found any indication of any

[oil] up there."

"And as far as our maritime boundary agreement negotiations go, we are actively looking for natural resources — oil, fisheries, what have you — that might benefit us."

The official said that, contrary to complaints from both lawmakers and other individual parties, the State Department has and will continue to brief Congress and state officials in Alaska of its ongoing boundary negotiations with the Soviets.

The California state legislature passed a joint resolution in September that said the State Department should go a step further, and include Alaska in future U.S.-Soviet negotiations.

Mr. Seidenberg, charging harassment, said two FBI agents stopped by his Arlington apartment one night three weeks ago to ask why he was so obsessed for the past 14 years with seeing the island chain become U.S. territory.

"The FBI picked me up because the State Department asked them to," Mr. Seidenberg said in an interview yesterday.

"The agents told me to keep silent, that anything I say can be used against me," he said. "It was an upsetting experience."

The agents, who carried no arrest warrant, asked Mr. Seidenberg to accompany them to their waiting car, where he was interrogated for an hour and a half.

"They wouldn't even let me call my attorney," he said. "They went so far as to tell the receptionist in my apartment building not to call my attorney when I asked her to. They told her, 'You don't want to do that,' and then proceeded to escort me out of my building."

Some officials conclude that Wrangell Island has been under Russian control since 1924, when the last 14 Americans occupying it — reindeer meat shippers — were captured and shipped to Siberia.

As far as U.S. officials know, little else other than snow has fallen on Wrangell since, although author Abraham Shifrin suggests in his book, "The Concentration Camps of the Soviet Union," that a Soviet prison camp might be on the island.

The other four islands are believed uninhabited, and are ice-covered most of the time.

Perhaps this is why the State Department is so willing, as some critics have charged, to "give away" the five islands, which dot the ocean 300 to 900 miles off Alaska's northwest coast.

"Somehow the idea has crept out that we're going to give these islands away," said the State Department official.

"Wrangell Island was discovered in the 19th century, and there was some U.S. involvement in the discovery," the official said. "But lawyers from our government have searched out and tried to find what belonged to Alaska, but the U.S. never made a claim to the islands. The Russians, on the other hand, have claimed sovereignty to them."

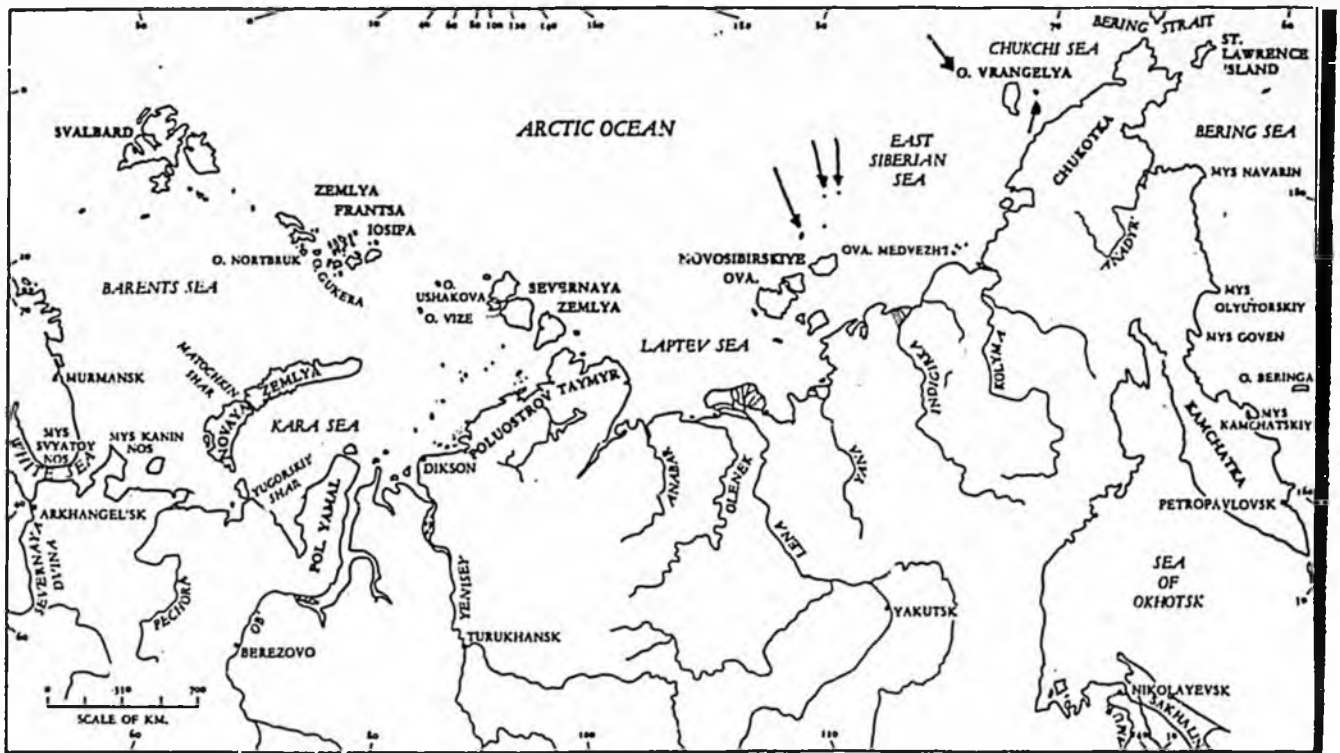
Mr. Seidenberg, who is by no means alone in his endeavor to keep the island chain out of Soviet hands, is not so convinced.

His interest in Wrangell Island, which began as a high school student in 1963, became greater when Ralph Loman, a U.S. businessman who claimed to have bought the island in the early 1920s, asked Mr. Seidenberg to continue working to get it returned to the proper owner. Mr. Loman made the request 14 years ago when he was on his death bed.

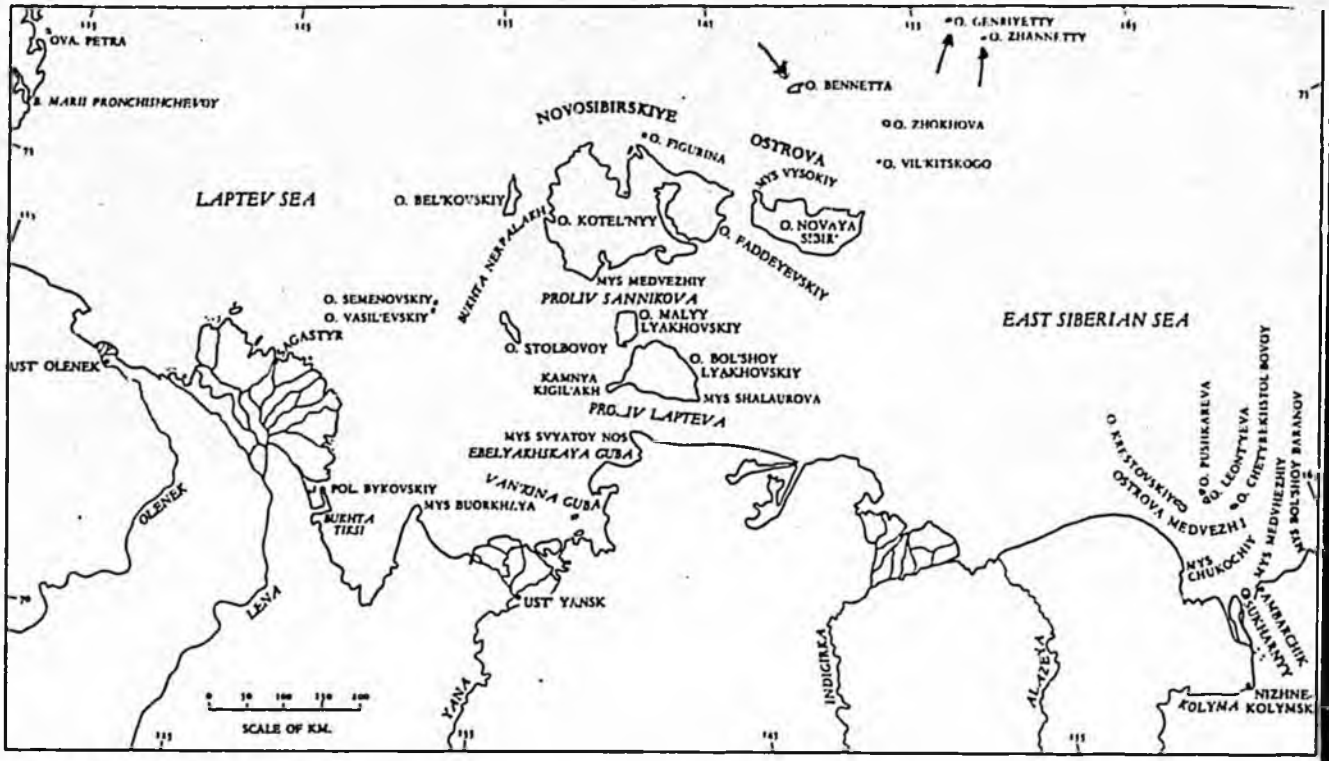
If the islands were not returned to him, the dying man at least wanted them returned to the United States, of which he was a citizen. Mr. Loman tried to sue the Russian government before his death over his rights to the land, but to no avail.

"I will not let this [or] the FBI's visit to my apartment stand in the way," said Mr. Seidenberg, who has pressured not only the State Department, but Moscow. "I will do everything I can to keep the islands in Alaska and in the United States."

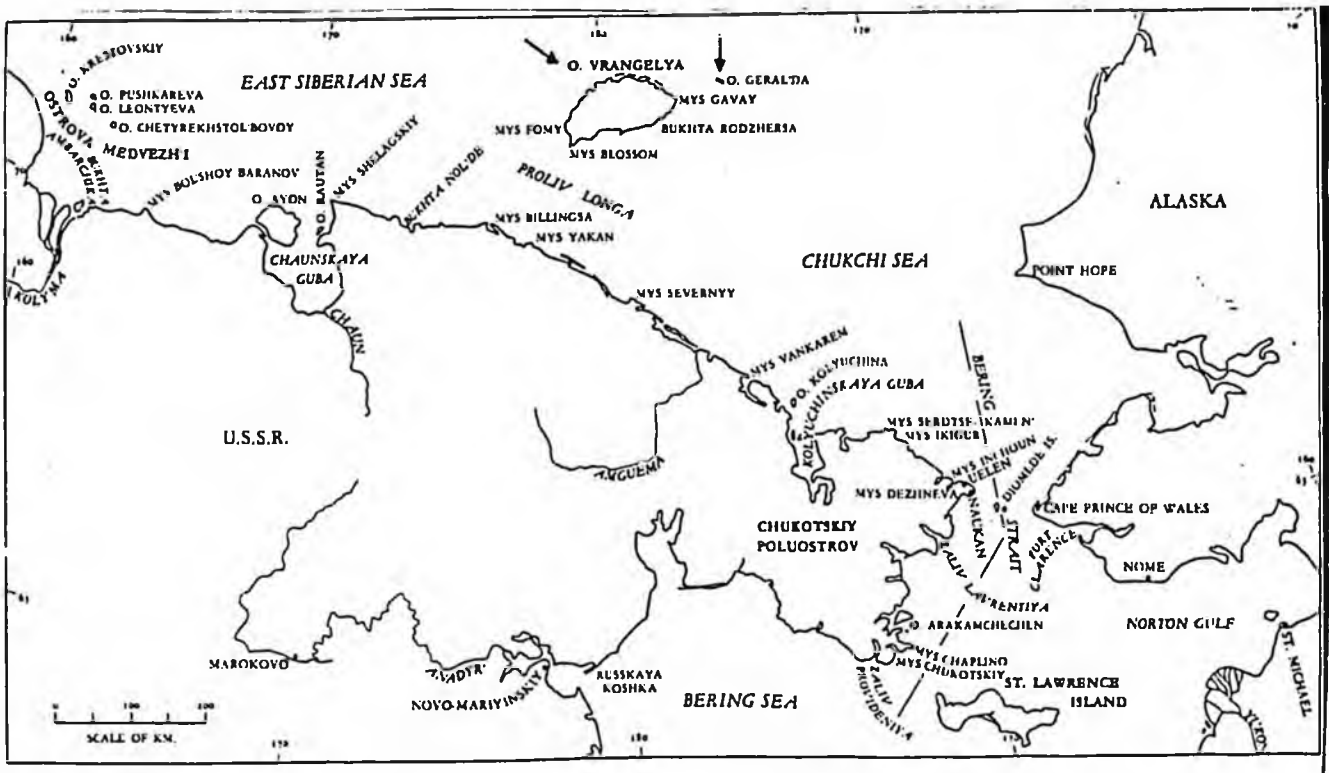
In 1986, the Alaska Senate voted 16-4 on its own resolution that restated Alaska's sovereignty over the five islands, and the assembly is scheduled to take up the issue again when it convenes later this month.



1 *The Soviet Arctic*



3 *The Laptev and East Siberian seas*



2 *Northeastern Siberia and Bering Strait*