

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7004 HOUSE JUDICIARY

Low-income renters fall out bottom of rising housing market

By TODD BENSIMAN
Times Writer

Landlords hoping to cash in on Anchorage's recuperating housing market always found a way to avoid renting to Jewell Farris.

For nearly four months, the 85-year-old grandmother scoured the Anchorage Bowl for a place big enough for herself, her unemployed daughter and her grand-

daughter. She gets by on a \$560 social security check and a \$684 state housing subsidy.

"Don't call us, we'll call you," was the response Farris usually got from potential landlords when she inquired. Several simply hung up when they learned she had only the \$684 subsidy to pay for a place large enough for three adults.

"If you tell me a place you can crawl into for that amount of money, I'll eat it," Farris said. She finally did find an affordable home with help from Anchorage social workers.

But with property values on the rise again after a three-year hiatus, record numbers of low-income renters like Farris are being pushed into homeless shel-

ters as Anchorage property owners realize they can charge more.

That was the conclusion of a special task force Mayor Tom Fink appointed last month to find out why Anchorage's homeless shelters are overflowing.

A report quickly compiled over the last month by Fink's 12-member task force and released

Monday concluded, "The societal causes of homelessness are complex, ranging from the disintegration of the traditional family structure to failures in this country's care of the mentally ill. . . . It is the loss of affordable housing, though, that immediately precipitates homelessness."

The report noted Anchorage's

emergency homeless facilities — like Brother Francis Shelter, McKinnell House and Clare House — have experienced alarming increases in clientele over the last year.

Families and single mothers who a year ago could afford low-income housing now are the groups whose numbers at shelters

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Housing

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ters have increased the most, the report said. Blacks and Alaska Natives make up the remainder, the report said. Many were plagued by unemployment, mental illness, alcoholism and drug abuse.

The Brother Francis Shelter, with a 15 percent increase in clients this year over last year, next week will move 30 homeless women onto the floor of the neighboring Dean's Cafe, an eatery, to make more room.

So swiftly has the influx of homeless families grown that McKinnell House was forced to convert two nine-bed dormitories into three family rooms, the report said.

Clare House, an emergency shelter for women and children, this year saw a 29.2 percent increase in the numbers of people needing shelter over the same time last year.

"I knew people who worked as day labor used to be able to get an apartment for \$300 with their rental assistance. Now, you won't find one for less than \$550," said Bob Eaton, director of Brother Francis Shelter. "People are coming back to the shelter now."

Eaton and the report blame Anchorage's rebounding economy and greedy landlords, who



Times photo by MICHAEL SHIBBER

Jewell Farris, 85, takes a momentary rest from moving into a new apartment. It took four months of searching in Anchorage's newly tightening rental market to find a spot to match her fixed income.

just one year ago were grateful to rent to someone with a marginal income.

"It is estimated that about 30 percent of the homeless population seen at the Brother Francis Shelter could afford to pay for low-cost housing if it were available," the report said.

In 1987, Alaska's economy and real estate market collapsed when world oil prices took a

sharp dive. About 30,000 people left the state over the next two years and vacancies soared.

But according to a quarterly demographics survey done by the Anchorage Economic Development and Planning Department, Anchorage had grown from 221,870 in December 1989 to 230,185 by July 1990.

During the same time, apartment vacancies fell from 8.4 per-

cent to 5.2 percent, and vacant housing units dropped from 14.6 percent to 9.7 percent, the survey said.

"They were once willing to take them, and now they don't have to," said Joyce Lee, emergency services coordinator for the city Health and Human Services Department, referring to landlords.

"It takes a long time to get

(accepted into the state rental subsidy program) and as you do it takes a long time to find a place to live."

Mark Korting, owner of RE-MAX Properties Inc., a major real estate brokerage in Anchorage, said the recent recovery has emboldened landlords to demand more money and to screen more carefully.

"I don't think that anyone is not renting to disadvantaged people just because they are disadvantaged. It's probably just a monetary situation," Korting said.

The recent demolition or boarding up of hundreds of low-cost housing units, such as Willow Park and Hollywood Vista, also has exacerbated the current crisis, the report said.

The task force's report, sent to Fink and the media Monday, recommended solutions that will be presented to the Anchorage Assembly next week.

The task force recommended the city take the following course of action over the next 60 days:

- Waive some fire and safety standards so emergency housing can be provided in older buildings when needed.

- Encourage top federal Housing and Urban Development officials in Washington, D.C., to raise the ceiling on individual housing subsidies.

- Set up a 24-hour hotline where homeless people can get information about available housing.

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ANCHORAGE TIMES 12/11/90

Anchorage Daily News Thursday, November 8, 1990

Rents rise, vacancies vanish as city's population surges

Apartment hunters face tightest market since boom days

APARTMENT VACANCIES		
Mid-year rates — large apartment complexes		
Year	Overall	Mid-cost apartments*
1981	8.2%	3.8%
1982	3.2%	1.1%
1983	8.5%	9.9%
1984	12.3%	13.0%
1985	14.5%	11.0%
1986	22.0%	19.3%
1987	26.1%	22.4%
1988	17.1%	13.0%
1989	9.7%	7.3%
1990	5.2%	2.7%

Source: Shoren & Pety
* Mid-cost defined as \$325-\$460/mo. for 1 bedroom, \$425-\$530/mo. for 2 bedrooms and \$500-\$600/mo. for 3 bedroom apartments. June 1990 prices

By BRUCE MELZER
Daily News reporter

A population surge in Anchorage, where there is little new construction to house the arrivals, has been pushing up rents and shrinking the number of empty apartments.

City officials estimate Anchorage has grown by 8,000 people in the last year. Anchorage's housing stock is filling up. Vacancy rates for all types of housing have dropped to just under 10 percent this year, the lowest level since the mid-1980s, according to the city's annual housing survey.

Apartment hunters are having a tough time finding a place to live. Vacancy rates for medium- and high-cost apartments dwindled to 2.5 percent by June, according to surveys of larger apartment buildings pub-

Please see Back Page, **RENTERS**

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BRIN HILL / Anchorage Daily News

Christine Pyle and her daughter, Sara: Finding an affordable apartment wasn't easy.

RENTERS: It's a landlord's market out there

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lished by Ken Kincaid of the real estate appraisal firm Shorett & Riely.

That's the tightest market for those units since the early 1980s, when the state was flush with oil money and Anchorage was starting to boom.

The vacancy rates for lower-priced apartments hovered around 11 percent in June. But that number is smaller now, said James Kuntz, manager of Marston Properties.

Christine Pyle found that out when she went shopping for a three-bedroom apartment. As a university student and single parent with a son and daughter, she could afford no more than \$690 a month, including utilities.

She spent two weeks in August with newspaper want ads and the telephone.

"It seemed like the affordable places were gone before the ink was dry on the paper," she said.

Her advice to apartment seekers: "Get on the phone the first thing when the paper comes out. If you wait 'til the end of the day, they'll be gone."

Pyle finally found an apartment to match her needs and budget.

The first week of the month is the best time to look for a rental, suggested Jody Hoffmann, whose Hoffmann Management Co. handles some of Anchorage's larger apartment complexes. Renters wanting to move out usually give their 30-day notice at the start of a month.

Renters are paying more, too.

"I think it would be safe to say that rents have increased on the order of 15 percent in the last year," Kincaid said. On top of that, many landlords who once paid the utilities are now shifting the cost of gas and electricity to renters, he said.

Although some firms and many individual landlords are slow to raise rents, some large property management firms are constantly probing the marketplace, seeking to push up rents.

Hoffmann said her company, which manages more than 1,000 units, has raised rents by as much as 25 percent over the past year.

Rents rose \$25 to \$50 every three months, she said.

Her firm tries to keep the vacancy rate at 5 percent. If apartments aren't turning over, rents may be too low, Hoffmann said. And just because empty units are filling up quickly, doesn't mean it is time to stop advertising.

"If we advertise and we get a lot of calls, then we know we have an opportunity to raise rents," she said.

Despite this year's increases, rents still aren't up to the peak reached in the mid-1980s. And they certainly aren't to the point where developers can justify building new multifamily housing, property managers agree.

Permits for 375 new single-family homes have been issued since January — more than double the number of permits last year — but not enough to have a big impact on the rental market, Fison said.

The real estate crash of the late 1980s took thousands of homes, condos and mobile homes temporarily off the market while they were locked up in foreclosure proceedings.

More than 2,000 housing units are gone for good, said Sue Fison of Anchorage's Planning and Economic Development Department. Hundreds of mobile homes were shipped out of town. Bulldozers leveled hundreds more along with some low-quality homes and apartments during the Alaska recession.

From 1985 to 1988, an estimated 30,000 people left Anchorage, according to Fison's department. Since then, as the economy began to improve, the population has rebounded by about 11,000, to 230,000 residents.

Not all management companies are pushing the edge of the market right now. Kuntz of Marston Properties said prices that have risen over the year have stabilized, and his firm won't start looking again at rent hikes until spring.

Mel Main of Nova Property Management agrees.

"We raised a few of them this summer. We're not raising them in the winter. In the winter we just try to keep them filled."

EXHIBIT G
PAGE 2 OF 2

Housing Authority has long waiting list

Woman applied nearly a year ago for unit

By JEFF BRUCK

Jackie Wichter moves off about patience. When she applied in September for financial assistance from the Alaska State Housing Authority, she was told it would take no less than six months before they could help her and her daughter move to a larger apartment.

Nearly a year later, Wichter still lives in the same small one-bedroom apartment on Midtown Circle. Boxes full with her belongings are ready to move to her new place near Landmark Street and Hoffman Road but business stay scattered through the living room and bedroom.

She was approved for assistance in June but has waited for an inspector to say her new two-bedroom apartment is suitable.

condition. "I've got all those damn boxes packed up. They better tell me it's suitable," she said. "We're cramped up in the other place like we're in a bit-bank. It's like being in a can. You can't even breathe in there."

Wichter is not alone in waiting for a place to call home. Another HUD supervisor, Eugene Ward said his agency has almost 2,000 people on their waiting lists for two separate assistance programs. ASHA is funded by the Department of Housing and Urban Development.

The first program, called the Low Rent Program, offers housing in ASHA-owned properties. The tenant then pays the authority a security deposit and the first month's rent. The amount of first month's rent is suitable. See Housing, back page



Jackie Wichter, 55, and her mother, Jackie, have been waiting nearly a year for financial assistance from the Alaska State Housing Authority so they can move into a larger apartment.

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Anchorage area low-rent housing

Now is a hot time to find low-rent and low-income housing in Anchorage.

Paradise Park, 112 E. 1st Ave., 774-8877. Part View Manor, 808 Karluk St., 774-1164. Louise Manor, 15 Hill-Demand Drive, 774-8811. Church View, (elderly), Antelope Point, 120 E. 17th Ave., 774-1217. Manor, (elderly/handicapped), 774-8877. Cook Inlet Housing Authority, 278-2324. AWAIC Shelter, 274-4281. Brother Francis Shelter, 277-1731. Catholic Social Services, 277-2564. City Emergency Shelter, 277-2564. City Home, 553-5424. McKinnel Residence, 774-1328 or 774-2841. Senior Citizens, 284-4721. Rescue Mission, 774-5222.

Emergency housing: 1911, The Apartments, 377. 211, Robon Rude Center, 28. 360, Mary Conrad Center, 28. 679, KBL Apartments, 74. 978, Lower Lake Villa, 343. 124, City 278-2222. 124, Lower Lake Villa, 343. 124, City 278-2222.

For a one-bedroom apartment, an applicant's total family income must not exceed \$11,500. For a two-bedroom, the limit is \$18,500. The three-bedroom limit is \$23,500 and the four-bedroom ceiling is \$28,500.

HUD has fair market prices in Anchorage. HUD has fair market prices in Anchorage. HUD has fair market prices in Anchorage. HUD has fair market prices in Anchorage.

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Housing

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EMERGENCY SERVICES PROGRAM

	TOTAL DIRECT SERVICE	ANCHORAGE RESIDENCE	RURAL ALASKANS	OUT OF STATE	BUS TOKENS	MEN	WOMEN	CHILD
JUL 89	67	43	5	19	27	15	28	24
JUL 90	320	268	19	33	65	59	96	165
MIG 89	85	69	8	8	2	24	32	29
AUG 90	268	217	14	37	126	53	69	146
SRP 89	281	189	40	52	152	63	108	110
SRP 90	500	335	90	75	130	100	132	268

TOTAL CLIENTS FOR 1989: 443 TOTAL MEN 1989: 102 TOTAL WOMEN 1989: 168 TOTAL CHILD 1989: 163
 1990: 1088 1990: 212 1990: 297 1990: 579

We have 462 requests for food through the Interfaith Clearinghouse in the three month period, for 1989.

We have 49 requests for clothing during the same time period.

We have not kept accurate stats on the request for food and clothing since the Clearinghouse closed, however, between the three of us we figured we were getting approximately 25 calls a day. This would total 1500 for the three month period, a total of 1,038 more than last years for the same period.

EXHIBIT I
PAGE 1 OF 1

Anchorage Daily News Sunday, February 24, 1991

Housing needs of poor addressed

JUNEAU — A trust fund to meet housing needs of the poor would be created through surplus money from the Alaska Housing Finance Corp. under a measure introduced in the House. House Bill 152, sponsored by Rep. Kay Brown, D-Anchorage, also would consolidate the boards of the Alaska Housing Finance Corp. and the Alaska State Housing Authority into a new Alaska Housing Commission. "Housing programs in Alaska are spread among 13 different state agencies, offices and divisions. They are designed with little quantitative information regarding real needs," Brown said in a news release. A companion bill, HB153, would allocate \$100 million from corporation revenues to the trust fund, whose earnings would be used to finance low- and middle-income housing projects.

EXHIBIT

T

PAGE

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OF

1

1989

<u>Bus Tokens July-Dec:</u>	<u>\$351.00</u>	<u>Clients Served</u>
July:	\$1,517.90	67
Aug:	\$ 913.24	85
Sept:	\$5,253.46	281
Oct.:	\$3,287.00	0
Nov.:	\$ 679.43	233
Dec.:	\$1,774.78	154
1-90	\$2,363.11	163
<hr/>		
	\$15,805.92	983

1990

<u>Bus Tokens July-Dec:</u>	<u>\$450.00</u>	<u>Clients Served</u>
July:	\$2,609.64	393
Aug.:	\$2,353.63	411
Sept:	\$1,564.75	463
Oct.:	\$2,891.59	372
Nov.:	\$3,178.58	250
Dec.:	\$2,003.36	311
1-91	\$2,355.95 ^{3212.15} (month)	207 478
<hr/>		
	\$16,957.50	2,407
	\$ 17,813.70	2,678

2007.78
 (Difference: \$1151.58)
 people: 1,424 - 1695
 2/3
 over two and one-half times as many people is the increase.
 overall
 Increase =

Difference Money spent = 2007.78
 Difference amt of people served = 1695

3/31/91 Budget #
 Balance 9,466.50
 Divided by 5 months (3000) = \$1,893.31
 left in fy available per month

We really should have an increase in our budget.
 With the increase of applicants and the same amount of
 no change in money, many people are not
 being helped.

AWFUL DETAINER PROCEDURES AND TIME CHART

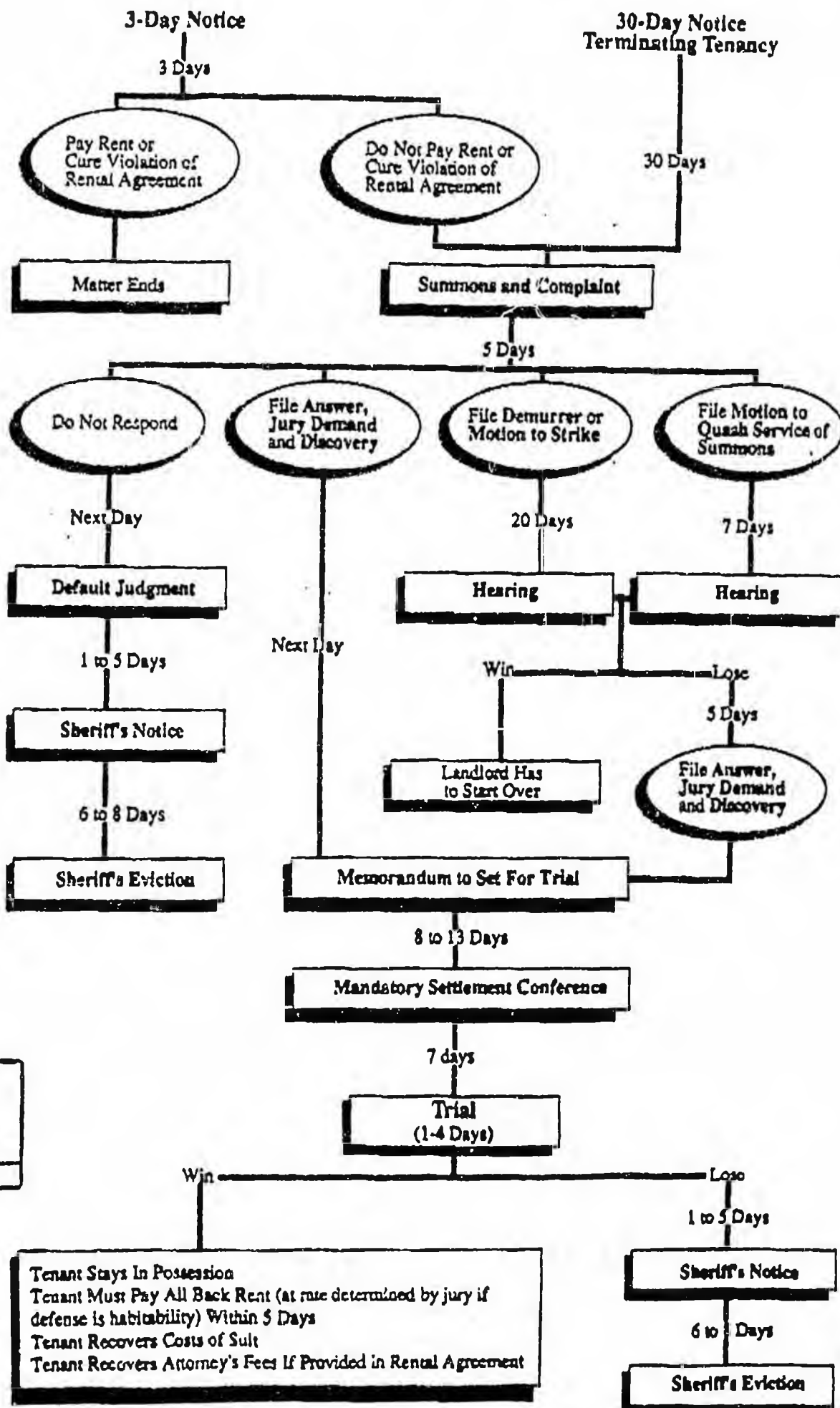


EXHIBIT K
PAGE 1 OF 1

Wash.
REVISED
CODE OF WASHINGTON
ANNOTATED



Titles 58 to 61

EXHIBIT *M*
PAGE *1* OF *3*

RESIDENTIAL LANDLORD-TENANT ACT

59.18.130

RCW 59.18.070, and that the tenant should not remain in the dwelling unit in its defective condition, the court or arbitrator may authorize the termination of the tenancy: *Provided*, That the court or arbitrator shall set a reasonable time for the tenant to vacate the premises.

Enacted by Laws 1973, 1st Ex.Sess., ch. 207, § 12.

Library References

Landlord and Tenant §106.
WESTLAW Top.c No. 233.

C.J.S. Landlord and Tenant §§ 107,
116, 118.

59.18.130. Duties of tenant

Each tenant shall pay the rental amount at such times and in such amounts as provided for in the rental agreement or as otherwise provided by law and comply with all obligations imposed upon tenants by applicable provisions of all municipal, county, and state codes, statutes, ordinances, and regulations, and in addition shall:

(1) Keep that part of the premises which he occupies and uses as clean and sanitary as the conditions of the premises permit;

(2) Properly dispose from his dwelling unit all rubbish, garbage, and other organic or flammable waste, in a clean and sanitary manner at reasonable and regular intervals, and assume all costs of extermination and fumigation for infestation caused by the tenant;

(3) Properly use and operate all electrical, gas, heating, plumbing and other fixtures and appliances supplied by the landlord;

(4) Not intentionally or negligently destroy, deface, damage, impair, or remove any part of the structure or dwelling, with the appurtenances thereto, including the facilities, equipment, furniture, furnishings, and appliances, or permit any member of his family, invitee, licensee, or any person acting under his control to do so. Violations may be prosecuted under chapter 9A.48 RCW if the destruction is intentional and malicious;

(5) Not permit a nuisance or common waste;

(6) Not engage in drug-related activity at the rental premises, or allow a subtenant, sublessee, resident, or anyone else to engage in drug-related activity at the rental premises with the knowledge or consent of the tenant. "Drug-related activity" means that activity which constitutes a violation of chapter 69.41, 69.50, or 69.52 RCW; and

(7) Upon termination and vacation, restore the premises to their initial condition except for reasonable wear and tear or conditions caused by failure of the landlord to comply with his obligations

EXHIBIT *M*
PAGE 2 OF 3

under this chapter: *Provided*, That the tenant shall not be charged for normal cleaning if he has paid a nonrefundable cleaning fee. Enacted by Laws 1973, 1st Ex.Sess., ch. 207, § 13. Amended by Laws 1983, ch. 264, § 3; Laws 1988, ch. 150, § 2.

Historical and Statutory Notes

Laws 1983, ch. 209, § 3, in subsec. (4), inserted the provision relating to prosecution of violations under chapter 9A 48.

Laws 1988, ch. 150, § 2, inserted subsec. (5), and renumbered former subsec. (6) as subd. (7).

Legislative findings—Laws 1988, ch. 150: "The legislature finds that the illegal use, sale, and manufacture of drugs and other drug-related activities is a state-wide problem. Innocent persons, especially children, who come into contact with illegal drug-related activity within their own neighborhoods are seriously and adversely affected. Rental property is damaged and devalued by drug activities. The legislature further finds that a rapid and efficient response is necessary to: (1) Lessen the occur-

rence of drug-related enterprises; (2) reduce the drug use and trafficking problems within this state; and (3) reduce the damage caused to persons and property by drug activity. The legislature finds that it is beneficial to rental property owners and to the public to permit landlords to quickly and efficiently evict persons who engage in drug-related activities at rented premises." [Laws 1988, ch. 150, § 1.]

Severability—Laws 1988, ch. 150: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [Laws 1988, ch. 150, § 15.]

Law Review Commentaries

Landlord-tenant; maintenance and repairs required by legislative acts. 49 Wash.L.Rev. 363 (1974).

Statutory redefinition of rights and duties of landlords and tenants; tenant duties. 9 Gonzaga L.Rev. 302.

Tenants' mode of use; waste. 49 Wash.L.Rev. 335 (1974).

Library References

Landlord and Tenant ¶134, 144, 181 to 193.
WESTLAW Topic No. 233.

C.J.S. Landlord and Tenant §§ 316, 326 et seq., 462 to 470.

Notes of Decisions

Carpeting 1

1. Carpeting

Finding that carpet in apartment was substantially destroyed and that it was

reasonable and proper to replace it was not error in action by landlord against former tenant, particularly where depreciation factor was considered in determining damages awarded to landlord. *James S. Black & Co. v. Charron* (1978) 22 Wash.App. 11, 587 P.2d 196.

59.18.140. Reasonable obligations or restrictions—Tenant's duty to conform

The tenant shall conform to all reasonable obligations or restrictions, whether denominated by the landlord as rules, rental agree-

OFFICE OF THE ATTORNEY GENERAL
STATE OF WASHINGTON
LAND OFFICE

RCWA

Titles 68 to 69

EXHIBIT *N*
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CHAPTER 69.41

LEGEND DRUGS—PRESCRIPTION DRUGS

- Section
- 69.41.010. Definitions.
 - 69.41.020. Prohibited acts—Information not privileged communication.
 - 69.41.030. Sale, delivery or possession of legend drug without prescription or order prohibited—Exceptions.
 - 69.41.040. Prescription requirements.
 - 69.41.050. Labeling requirements.
 - 69.41.060. Search and seizure.
 - 69.41.070. Penalties.
 - 69.41.075. Rules—Availability of lists of drugs.

SUBSTITUTION OF PRESCRIPTION DRUGS

- 69.41.100. Legislative recognition and declaration.
- 69.41.110. Definitions.
- 69.41.120. Prescriptions to contain instruction as to whether or not a therapeutically equivalent generic drug may be substituted—Form—Contents—Procedure.
- 69.41.130. Savings in price to be passed on to purchaser.
- 69.41.140. Minimum manufacturing standards and practices.
- 69.41.150. Liability of practitioner, pharmacist.
- 69.41.160. Pharmacy signs as to substitution for prescribed drugs.
- 69.41.170. Coercion of pharmacist prohibited—Penalty.
- 69.41.180. Rules.

IDENTIFICATION OF LEGEND DRUGS—MARKING

- 69.41.200. Requirements for identification of legend drugs—Marking.
- 69.41.210. Definitions.
- 69.41.220. Published lists of drug imprints—Requirements for.
- 69.41.230. Drugs in violation are contraband.
- 69.41.240. Rules—Labeling and marking.
- 69.41.250. Exemptions.
- 69.41.260. Effective date.
- 69.41.900. Severability—1979 c 110.

Cross References

- Police powers to enforce this chapter, see § 18.61.009.
- Public and private schools, administration of oral medication and safeguarding of legend drugs, see § 28A.21.150.
- Unprofessional conduct, possession, distribution, use, or prescription for use of legend drugs in any way other than for therapeutic purposes, see § 18.57.170.

CHAPTER 69.50
UNIFORM CONTROLLED SUBSTANCES ACT
ARTICLE I—DEFINITIONS

- Section
69.50.101. Definitions.
69.50.102. Drug paraphernalia—Definitions.

ARTICLE II—STANDARDS AND SCHEDULES

- 69.50.201. Authority to control.
69.50.202. Nomenclature.
69.50.203. Schedule I tests.
69.50.204. Schedule I.
69.50.205. Schedule II tests.
69.50.206. Schedule II.
69.50.207. Schedule III tests.
69.50.208. Schedule III.
69.50.209. Schedule IV tests.
69.50.210. Schedule IV.
69.50.211. Schedule V tests.
69.50.212. Schedule V.
69.50.213. Republishing of schedules.

ARTICLE III—REGULATION OF MANUFACTURE, DISTRIBUTION
AND DISPENSING OF CONTROLLED SUBSTANCES

- 69.50.301. Rules.
69.50.302. Registration requirements.
69.50.303. Registration.
69.50.304. Revocation and suspension of registration.
69.50.305. Procedure for denial, suspension or revocation of registration.
69.50.306. Records of registrants.
69.50.307. Order forms.
69.50.308. Prescriptions.
69.50.309. Containers.
69.50.310. Sodium pentobarbital—Registration of humane societies and animal control agencies for use in animal control.
69.50.311. Triplicate prescription form program—Compliance by health care practitioners.

ARTICLE IV—OFFENSES AND PENALTIES

- 69.50.401. Prohibited acts: A—Penalties.
69.50.402. Prohibited acts: B—Penalties.
69.50.403. Prohibited acts: C—Penalties.

CHAPTER 69.52

IMITATION CONTROLLED SUBSTANCES

Section	
69.52.010.	Legislative findings.
69.52.020.	Definitions.
69.52.030.	Violations--Exceptions.
69.52.040.	Seizure of contraband.
69.52.050.	Injunctive action by attorney general authorized.
69.52.060.	Injunctive or other legal action by manufacturer of controlled substances authorized.
69.52.900.	Severability--1982 c 171
69.52.901.	Effective date--1982 c 171.

69.52.010. Legislative findings

The legislature finds that imitation controlled substances are being manufactured to imitate the appearance of the dosage units of controlled substances for sale to school age youths and others to facilitate the fraudulent sale of controlled substances. The legislature further finds that manufacturers are endeavoring to profit from the manufacture of these imitation controlled substances while avoiding liability by accurately labeling the containers or packaging which contain these imitation controlled substances. The close similarity of appearance between dosage units of imitation controlled substances and controlled substances is indicative of a deliberate and wilful attempt to profit by deception without regard to the tragic human consequences. The use of imitation controlled substances is responsible for a growing number of injuries and deaths, and the legislature hereby declares that this chapter is necessary for the protection and preservation of the public health and safety.

Added by Laws 1982, ch. 171, § 2, eff. July 1, 1982.

69.52.020. Definitions

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Controlled substance" means a substance as that term is defined in chapter 69.50 RCW.

(2) "Distribute" means the actual or constructive transfer (or attempted transfer) or delivery or dispensing to another of an imitation controlled substance.

**THE PRECEDING PAGES
WERE TREATED AS A UNIT
IN THE ORIGINAL FILE**

To: Cliff Groh

From: Richard Illgen 

Date: May 15, 1991

Re: Comments on Report to Representative Ramona Barnes on SB 35

I have reviewed some of the information on eviction time frames in other states contained in the Chenoweth Report to Representative Ramona Barnes dated December 28, 1990. I note that there are inaccuracies in the eviction time periods for California which were included in footnotes 3 and 5.

Footnote 5 shows California has having a five day period between service of the summons and the eviction trial. This is not correct. An eviction trial in California is by statute set within 20 days after the tenant has filed an answer to the summons and complaint and the landlord has filed a request to set the trial date. It is that answer by the tenant which is filed within 5 days after service of the summons. Therefore, by statute there can be 25 days before the trial is held (in actual practice, trials are rarely if ever scheduled within this time period due to court backlogs).

Footnote 3 shows the period in California for the tenant to pay rent or quit as 3 days. This is not entirely correct; it frequently is 8 days. When service of a notice to quit has been made by posting it on the premises, it must also be mailed. Courts have applied a rule that extends the time by an additional 5 days because the notice was mailed. Therefore, unless the notice was personally served, the tenant may have 8 days to pay rent or quit.

I am not familiar with the specific timetables for evictions in other states. However, because of these significant discrepancies in the representation of California law, it is possible there are similar problems with the representations regarding the time frames for other states.

I would also like to note that in the timetable presented on Alaska eviction procedures, it is largely based on the landlord giving the tenant a 6 day grace period to pay rent. Such a grace period is entirely discretionary on the part of landlord. There is nothing to prevent a landlord from serving a notice to quit on the day after the rent is due. The landlord makes the decision to allow a grace period based on his or her business judgment. Even when a landlord does include a grace period in a rental agreement, it does not prevent a landlord from serving a ten day notice within the grace period. Many grace periods only give the tenant a period of time before the landlord imposes a late fee and do not affect the landlord's ability to serve a 10 day notice the day after the rent is due.

Richard F. Illgen
420 L Street, Suite 400
Anchorage, Alaska 99501

May 7, 1991

Cliff Groh
House, Labor & Commerce Committee
Room 17
P.O. Box V
Juneau, Alaska 99811

Re: Analysis and Comment on SB 35

Dear Mr. Groh:

SB 35 is a step backwards in efforts to address homelessness in Alaska. The provision in the bill reducing the notice to quit period from 10 days to only 5 days adds to the serious deprivation of due process rights which tenants already face under Alaska's existing Forcible Entry and Detainer (FED) procedures. Inevitably, more Alaskan tenants will be forced onto the streets because of unjustified and possibly wrongful evictions resulting because tenants do not have sufficient opportunity to defend against wrongful evictions.

The legislature must keep in mind that landlords are in a business, while tenants seek the most basic of human needs, shelter. If my side should be disadvantaged, it is the landlord who has volitionally chosen to make the investment purely for reasons of profit. A tenant must interact with a landlord for survival.

It is not an understatement to say that tenants have less procedural due process than criminal defendants. Yet it may be the landlord's illegal activity that causes the tenant to face eviction.

Rather than taking precipitous action to further restrict what limited procedural rights tenants now have (and presently in Alaska they have nearly none), the legislature should take a broader look at the FED procedures with an eye towards addressing the need for smaller landlords to evict non-rent paying tenants while improving a tenant's ability to defend against landlords who bring unjustified and wrongful actions.

The notice to quit period in AS 9.45.090 is the period during which a tenant must pay rent or quit the premises. However, the notice to quit period cannot be viewed in isolation; it must be

Cliff Groh
May 7, 1991
Page 2

looked at in combination with the remainder of the FED procedures. Under SB 35, a tenant can receive a notice to quit on the 2nd of the month, be served with an FED summons on the 8th, have a trial by the 10th, and be out on the streets by the 12th of that month. All of this occurs in less time than a litigant in any other case is required to file an answer to a complaint (20 days) let alone conduct discovery. The five days taken away from the notice to quit period by SB 35 is more time than a tenant has to prepare for trial after service of the complaint (2-4 days (AS 09.45.120)). How is a tenant supposed to find an attorney, obtain documents for a defense, subpoena witnesses and conduct a deposition? A tenant who has actually paid rent does not even have time to obtain a cancelled check to prove rent payment.

Believe it or not, many tenants do have defenses to evictions. Defenses to non-payment of rent include retaliation (where the landlord has unlawfully increased the rent after a tenant has complained of lack of repairs) (AS 34.03.310); violation of the warranty of habitability (the tenant may not owe the rent); waiver (the landlord has accepted partial rent); bad-faith of the landlord; or written or oral agreements regarding the rent (for example the tenant performs repairs in lieu of rent).

The limited provisions for continuances in FED statutes are useless for many tenants, because they must post a surety with the court in order to obtain a meaningful continuance beyond two days. Many tenants live on the edge, barely covering expenses as money comes in. Habitability violations can be particularly insidious, causing a tenant to have to pay for repairs and absorb additional expenses due to a landlord's failure to maintain the premises. A tenant may not be able to post rent for a continuance because of such extraordinary expenditures.

Many tenants evicted for non-payment of rent will wind up in shelters or on the streets. If they have difficulty making rent payments, they will have more difficulty raising the additional money for the advance rent and security deposit required to relocate.

There are ways of reforming FED procedures which would allow landlords to readily evict for non-payment of rent while protecting tenant's rights. For example, allowing a tenant to answer an FED complaint would enable the court to determine if the tenant has defenses which require a trial. It would also allow a landlord to take a default without a court appearance when a tenant fails to answer, thus saving the landlord legal costs.

I urge the Legislature to reject those portions of SB 35 which give tenants only five days to respond to a notice to quit.

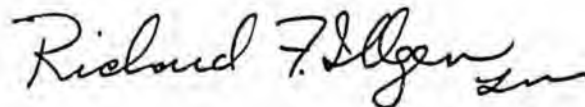
Cliff Groh
May 7, 1991
Page 3

Instead, the Legislature should establish a committee to review FED procedures and recommend a process which comports with more reasonable standards of justice.

As the housing market in Alaska tightens, the problems tenants face will increase. Rents will rise, landlords will have less incentive to keep housing in repair, and landlords will have a greater incentive to evict because of the greater pool of potential tenants. The Legislature must not exacerbate Alaska's housing and homeless problems.

Please read this or duplicate this letter and hand out to the committee members of the House, Labor & Commerce Committee.

Sincerely,

A handwritten signature in cursive script that reads "Richard F. Illgen". The signature is written in dark ink and is positioned above the typed name.

Richard F. Illgen

RFI/ljm

Contact Persons: Jarnie Bollenbach (276-2236), Paul Grant (556-2701)
Address: POB 201844, Anchorage AK 99520-1844

Position Paper on CSSB 35 MAY 1991

The Legislative Committee of the Alaska Civil Liberties Union has reviewed CSSB 35. We were disheartened to learn that it has passed the Senate in its present form, and unless it is substantially changed we must continue to oppose it.

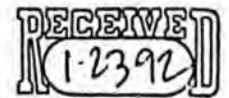
There are several provisions which raise grave constitutional concerns. The first are the provisions which require the government to publicize the arrest of certain people for alleged alcohol or drug offenses. These provisions single out renters of real property and subject them to public opprobrium without proof of guilt. The bill also is discriminatory since it protects landowners from such public exposure. As a general matter, tenants have lower incomes and are more likely to be women and minorities than property owners. Discrimination against those categories of citizens is unfair and inconsistent with the concept of equal protection of the laws.

Second, notice provisions of the bill raise due process issues. This bill reduces the notice required to terminate the tenancy and quit the premises from 20 days to five or 10 days. Sections 3 and 4 of the bill eliminate the requirement to serve notice by registered or certified mail, thereby making it more likely a tenant will not receive actual notice of an eviction. Taken together, these changes increase the likelihood that a tenant will be removed from his or her dwelling with little or no advance notice or opportunity to protest, and this results from the mere accusation of an offense.

Finally, the bill allows a tenant to be summarily evicted for soliciting orders for alcohol in violation of a local option election, or violating certain drug laws or laws prohibiting the sale of imitation drugs. Because the eviction procedure works faster than the criminal justice system, and because notice is given to the landlord at the time of arrest, tenants will be evicted before conviction of a crime and based on evidence which falls far short of that necessary for proof beyond a reasonable doubt. It seems axiomatic that punishment should not precede conviction; to pass this legislation in its present form offends important due process principles.

There are other important difficulties with this bill that this paper does not fully address. The burden of eviction will fall hard on spouses and children of people merely accused of certain crimes.

Although the AKCLU Legislative Committee understands the intent behind this bill, we do not believe that its purpose can be properly achieved by punishing citizens still presumed innocent.



ALASKA LANDLORD & PROPERTY MANAGERS ASSOCIATION

Rep. Dave Donley, Chairman
House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

January 18, 1992

Dear Rep. Donley and Members of the Judiciary Committee:

We urge passage of draft HCS CSSB 35 (JUD).

We reviewed the synopsis of the draft at our Jan. 9 meeting. We were greatly encouraged that the 8 day notice for termination of tenancy for non-payment of rent added in the House Labor and Commerce Committee was changed back to 5 days as was in the original Senate Bill. Research has shown that 5 days is much more common practice in the western states than 10 days, the present Alaska Law.

We were also gratified to see the requirement for certified mail in delivering the above notice (L & C) dropped. The problem, as many testified to, is that tenants may not accept certified mail and the return receipt is slow in coming back. Certified mail should remain an option, not a requirement.

Many from our group testified on these two points at the October hearing and we are pleased the Judiciary Committee has remedied the L & C bill in this regard.

Some of the other provisions added by your committee have been needed for a long time and we are pleased to see them addressed.

Yours truly,

Alice Brewer, Executive Secy.

1201 W. 45th Ave.

Anchorage, Alaska 99503

Phone 563-6734

P.O. Box 103628
Anchorage, AK 99510
3 February 1992

Representative Dave Donley
Judiciary Committee Chairman
3111 "C" Street, Suite 450
Anchorage, AK 99510

Dear Representative Donley:

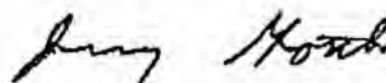
subject: SB 35, revision to landlord-tenant law

Please support and pass SB 35. I own and manage 10 apartments in three buildings. The main effect of SB 35 is to shorten the time for notice-to-quit from ten to five days for the non-payment of rent. I support this and I want you to support it also.

There is no reason for people not to pay the rent on time. If a tenant cannot pay on time and refuses to move it should not be the responsibility of an individual landlord to provide free housing. There is a government agency which provides prompt emergency relief if a tenant faces potential eviction for non-payment. The office is at 5th and Gamble, phone number 274-6524. A nonpaying tenant needs to move or take his ten-day notice (hopefully five-day notice) to the above address. Five-days notice is enough time before seeking a court remedy. The court remedy is a lengthy process in itself.

Representative Donley, please support and pass SB 35.

Sincerely,



Jerry Lee Gottbe

Alaska State Legislature



House of Representatives

House Judiciary Committee

Representative Dave Donley
Chairman

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

November 25, 1991

Willie Devine
Sandra Arnold
8300 E. 20th Avenue
Anchorage, Alaska 99504-2913

Dear Mr. Devine and Ms. Arnold:

Thank you for your recent letter on SB 35. As you probably know, I strongly support this legislation. I also strongly support returning to the version of the bill that passed the Senate. In fact, I have prepared a Judiciary Committee Substitute for SB 35 that corrects the problems created by HCS CSSB 35 (L&C). Your letter will be a part of the Judiciary Committee record, and will help explain why HCS CSSB 35 (L&C) is unworkable.

Once again, thanks for writing.

Very truly yours,

A handwritten signature in cursive script that reads "Dave Donley".

Chairman Dave Donley

DD:lc

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

 * DELIVER TO: LIOCACB *
 * * * * *
 * ORIGINAL *
 * SENT: 05/14/91 TIME: 13:36 *
 * FROM: LIOCMIL *
 * SUBJECT: 91-05-048; FL#2; (H)L&C; 5/14 *
 * PRINT DATE: 05/14/91 TIME: 13:36 *
 * * * * *

SUBJECT LINE TO READ: TC NO.; FL FS; SHORT SUBJECT; DATE

T/C NO: 91-05-048
 DATE: 05-14-91
 SPONSOR: H L&C
 SUBJECT: SB 35, SB 188, SB 258, HB 295
 MODERATOR: JUDY
 SITE: ANCHORAGE

PARTICIPANT LIST

TO TESTIFY

NAMES/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. GLENDA STRAUBE	1318 N ST 99501	274-2010	SB 35
2. DON CLOK SIN	1527 H ST 99501	277-8611	SB 35
3. RICHARD ILLGEN	420 L ST 99501	276-1969	SB 35
4. DON MITCHELL	1335 F ST 99501	276-1681	SB 35
5. ALICE BREWER	1201 W 45 99503	563-6734	SB 35
6. JOE GRAHAM	4107 MINNESOTA 99503	562-4555	SB 35
7. BARBARA JITTOOD/AK LEG. SVS	1016 W 6	272-9431	SB 35
8. KATHLEEN FLUNKET	4828 E 5 99508	337-2451	SB 35

When Rescheduled

*278-4688
278-7704
Bad #*

TO OBSERVE:

NAME/ REPRESENTING	ADDRESS	PHONE	BILL NO.
1. Ellen Montkup		586-4151	
2. John Egan		789-3473	
3. Jimmie Bollenbach		463-3303	

BACK UP NUMBER: 561-1199
 EMAIL ADDRESS: LIOCMIL

Nancy Grozek

witness

*Chenoweth - 2450
 Grozek - 279-2541 (w)
 Pouchak - 278-9336 (w)
 - 3879
 Teleconf.
 Dept. of Law - 3608
 Rich Regier - 3672
 4648*

Alaska State Legislature



Senate Judiciary Committee

March 13, 1991

LETTER OF INTENT

CSSB 35 (JUD)

An Act relating to termination of tenancies and recovery of rental premises for nonpayment of rent and certain illegal activities, to tenant responsibilities, to the civil remedies of forcible entry and detainer and nuisance abatement, and to the duties of peace officers to notify landlords of arrests involving certain illegal activity on rental premises.

Omission of other criminal behavior or activities not addressed in this bill should not be construed as acceptable behavior by tenants.

A handwritten signature in cursive script, appearing to read "Rick Halford".

Senator Rick Halford, Chair
Senate Judiciary Committee

Adopted by the Senate: 5/3/91

SUMMARY

HCS CSSB 35 (L&C) would expedite eviction of tenants in the following situations:

1) For nonpayment of rent - Currently, a landlord must give the tenant a 10-day written notice of intent to evict for nonpayment of rent. The House Labor and Commerce CS would reduce the notification period to 8 days as opposed to the 5-day notification required in the Senate version. Alaska has the longest notification period of the other 12 western states: three states require a five day notice; nine states require only a three day notice.

2) For engaging in felony alcohol or drug activities - There is no specific provision in statute allowing a landlord to evict for illegal alcohol or drug activities. As proposed in this bill, a commercial or residential tenant who engages in these activities could be noticed and evicted under the same procedures as for nonpayment of rent.

3) To assist neighborhoods in halting drug trafficking - The nuisance statutes are amended to include felony alcohol and drug activities related to manufacture and delivery. This would allow a landlord or neighbors to petition the court to abate the nuisance. The order of abatement would terminate a rental agreement. Under the nuisance statutes, evidence of reputation would be admissible by the court in proving the existence of a nuisance.

In all cases where a tenant refuses to pay rent or move after having received notice, the landlord must seek eviction under the forcible entry and detainer (FED) statutes which provide due process protection. To eliminate statutory ambiguity and in accordance with court practice, a provision is included to allow the notice required under the landlord-tenant statutes to serve as the notice required under the FED statutes.

Finally, a provision is included requiring a police officer to make a reasonable effort to notify the owner in person or in writing when a tenant is arrested for violation of felonies relating to manufacture or delivery of drugs or alcohol.

The House Labor and Commerce CS carries a \$10,000 fiscal note.

SUMMARY

CS SB 35 (JUD) would expedite eviction of tenants in the following situations:

1) For nonpayment of rent - Currently, a landlord must give the tenant a 10-day written notice of intent to evict for nonpayment of rent. SB 35 would reduce the notification period to 5 days. Alaska has the longest notification period of the other 12 western states: three states require a five day notice; nine states require only a three day notice.

2) For engaging in felony alcohol or drug activities - There is no specific provision in statute allowing a landlord to evict for illegal alcohol or drug activities. As proposed in this bill, a commercial or residential tenant who engages in these activities could be noticed and evicted under the same procedures as for nonpayment of rent.

3) To assist neighborhoods in halting drug trafficking - The nuisance statutes are amended to include felony alcohol and drug activities related to manufacture and delivery. This would allow a landlord or neighbors to petition the court to abate the nuisance. The order of abatement would terminate a rental agreement. Under the nuisance statutes, evidence of reputation would be admissible by the court in proving the existence of a nuisance.

In all cases where a tenant refuses to pay rent or move after having received notice, the landlord must seek eviction under the forcible entry and detainer (FED) statutes which provide due process protection. To eliminate statutory ambiguity and in accordance with court practice, a provision is included to allow the notice required under the landlord-tenant statutes to serve as the notice required under the FED statutes.

Finally, a provision is included requiring a police officer to make a reasonable effort to notify the owner in person or in writing when a tenant is arrested for violation of felonies relating to manufacture or delivery of drugs or alcohol.

The bill carries a zero fiscal note.

SUMMARY

EVICTON FOR NONPAYMENT OF RENT

[Amends both the Forcible Entry and Detainer (FED) statutes and the Landlord-Tenant (LLT) Act]

The proposed CS for SB 35 retains the provision in the original bill that reduces the length of time a landlord must wait after giving written notice to vacate from 10 to 5 days before instituting FED proceedings.

EVICTON FOR CERTAIN ILLEGAL ALCOHOL/DRUG ACTIVITIES

Originally, SB 35 focused on making it easier for the landlord to evict a tenant under LLT statutes by allowing "arrest" to trigger eviction through the FED process.

Because of constitutional problems, this provision was dropped. Instead, two separate options are proposed which would:

- 1) shorten the notification period for eviction for certain illegal activities under current LLT/FED statutes, and
- 2) amend the nuisance statutes to allow landlords or **neighbors** to get the nuisance abated.

Current Statutes

Under current LLT/FED statutes, to get rid of a tenant who is in noncompliance with a rental agreement takes approximately 34 days (20 day notice required under the LLT statutes plus 10 days for the FED proceedings).

Option 1

Using the same remedy (LLT/FED), Option 1 under the proposed CS would take approximately 20-23 days. To accomplish this the LLT and FED statutes are amended to reduce the notice period to 5-days for specified illegal activities - treated with the same severity as nonpayment of rent.

Option 2

Option 2 would amend the Nuisance statutes to allow abatement of property being used for certain illegal alcohol or drug activities. This procedure involves filing a complaint, the court issuing an

injunction or restraining order, a 20-day period for the defendant to respond, followed by a short trial at which an **order of abatement would be issued terminating the rental agreement**. Evidence of reputation would be admissible by the court to prove the existence of a nuisance. From time of filing complaint to issuance of abatement order would be approximately 24 days. Although it is highly unlikely the tenant would not voluntarily move from the premises before the order of abatement were issued (to protect his/her personal property), if such were the case, the landlord would be able to resort to the FED remedy.

Although the eviction process under Option 1 (and probably Option 2) is shorter than under current law, Option 2 has the advantage of giving the landlord an additional tool for getting rid of a recalcitrant tenant, as well as providing a means, not now available, for neighbors to halt specified illegal drug activities.

Other Considerations:

Violation of an injunction or restraining order is **criminal contempt**.

To remove an occupant who refuses to leave - regardless of the reason - requires going through the FED process; i.e., a landlord can't physically move a tenant out.

To eliminate confusion, a provision is included to **allow the FED notification period to run concurrently with the notification period required under the LLT and nuisance statutes**.

A provision is included to allow the court to enter an order to vacate and a writ of assistance at the same time (although the tenant still has two days to vacate) to save the landlord another court visit.

OPTION 1

OPTION 2

[Time frames represent best possible scenario. If day court assistance is needed falls on Saturday, Sunday or holiday, time will be extended. If tenant cannot be served, court has to set new hearing date. If tenant fights eviction, Judge may grant continuance.]

Landlord/Tenant Approach

Nuisance Approach

5-day notice given to tenant	DAY 1	File complaint/Summons/ temporary restraining order or injunction (may run into day 2). Tenant has 20 days to respond as to why order of abatement should not be issued. During this time, tenant is liable for criminal contempt if injunction is violated.
Institute FED Process Complaint filed in Court Hearing date set. (usually takes 7-10 days)	DAY 7	
Court Hearing date/obtain Order to Vacate	DAY 15	
Tenant remains/Writ of Assistance	DAY 18	
House back in Landlord's Possession	DAY 20	
	DAY 22	
	DAY 23	Half-day trial/Order of abatement issued/rental agreement terminated. Institute FED process. File complaint in court, get hearing date (usually 7-10 days)
	DAY 31	Court Hearing date/ Order to Vacate and Writ of Assistance issued.
	DAY 33	House back in landlord's possession.

Senator Pat Pourchot
February 5, 1991

SUMMARY

SB 35 would make two major changes to the Alaska Uniform Residential Landlord-Tenant Act.

The first proposal would expedite eviction of tenants who fail to pay their rent when due by shortening the notification period from ten to five days prior to eviction. Currently, landlords who are trying to evict tenants for nonpayment of rent must give a ten-day notice of intent to evict prior to filing a complaint. The earliest the eviction process can be completed is approximately three weeks (see attached Flow Chart); the more likely eviction scenario is a month to six weeks. This places an undue hardship on landlords, many of whom rely on rental income for their livelihood.

Compared to 12 other western states, Alaska provides a long notice period. For example, only three days' notice by the landlord to the tenant is required in California, Colorado, Idaho, Montana, New Mexico, Oregon, Utah, Washington, and Wyoming. Five days required notice is required in Arizona, Hawaii and Nevada.

I believe the five-day notification period would still allow well-intentioned tenants to work out their difficulties but accelerate the eviction process for tenants unwilling to pay. This proposal in no way interferes with the tenant's rights in the judicial Forcible Entry and Detainer (FED) process.

The second proposal would assist landlords trying to evict tenants who are engaged in specified drug-related or bootlegging activities (related to manufacture and distribution). SB 35 would allow landlords to immediately start the eviction process if the tenant was arrested for one of the specified violations. Law enforcement officials would also be required to make a concerted effort to notify a property owner(s) when making an arrest for these types of offenses. The tenant's rights in court under the FED process are unaffected.

**FLOW CHART FOR EVICTION FOR NONPAYMENT OF RENT
(AVERAGE TIME SCENARIO UNDER CURRENT STATUTE)**

DAY

- 1 Rent due (rent due on 1st and delinquent on 6th in most rental agreements)
2
3
4
5
6 10-day notice given tenant [SB35 would reduce notification
7 period from 10 to 5 days]
8
9 (If landlord accepts full or partial payment of rent,
10 the process is voided; must start over by giving
11 another 10-day notice.)
12
13
14
15
16
17 Complaint filed in Court - Court sets Hearing date
18
19 (Law states that tenant must be served by Process
20 Server at least 2 days prior to Hearing date which
21 is usually set 7-10 days following filing of Complaint.
22 If tenant cannot be served in time, landlord must go
23 back to Court for a new Hearing date.)
24
25 Court Hearing date - obtain Order to Vacate
26 (Tenant has minimum of 2 days to vacate; Judge may
27 grant additional time.)
28 Tenant remains: obtain Writ of Assistance - deliver to Troopers
29 (Troopers usually remove tenant within 24 hours)
30 House back in landlord's possession

NOTE:

- 1) TIME MAY BE EXTENDED
 - if, the day Court assistance is needed (filing Complaint, Hearing, etc.) falls on a Saturday, Sunday or holiday - extend days accordingly;
 - if tenant fights eviction, Judge may grant Continuance;
 - if tenant cannot be served, landlord has to go back to Court for new hearing date;
 - if 10-day notice not immediately given - time extended accordingly.
- 2) TIME MAY BE SHORTENED
 - if there is no 5-day "grace" period in rental agreement;
 - if tenant can be served immediately; Hearing date can legally be set for 3rd day after filing of Complaint if Court calendar permits.
- 3) The eviction process does not recover any cost other than for filing fees, service and process fees and postage under Court Rule 79 and attorney fees under Court Rule 82; motion to recover costs must be filed within 10 days of Clerk entering FED Order; treated as a judgement. Getting back rent is another more lengthy process.
- 4) If process is not completed within the 1st month, landlord will be out rent for additional time tenant remains on premises.

**FLOW CHART FOR EVICTION FOR ILLEGAL ALCOHOL OR DRUG
ACTIVITIES AS PROPOSED IN SB 35**

[Time frames represent best possible scenario. If day court assistance is needed falls on Saturday, Sunday or holiday, time will be extended. If tenant cannot be served, court has to set new hearing date. If tenant fights eviction, Judge may grant continuance.]

**Landlord/Tenant/FED
Approach**

Nuisance Approach

5-day notice given to tenant

DAY 1

File complaint/Summons/
temporary restraining order or
injunction (may exceed one day).
Tenant has 20 days to respond as to
why order of abatement should not be
issued. During this time, tenant is
liable for criminal contempt if
injunction is violated.

**Institute FED Process
if tenant refuses to move.**
Complaint filed in Court
Hearing date set. (usually
takes 7-10 days)

DAY 7

Court Hearing date/obtain
Order to Vacate

DAY 15

Tenant remains/Writ of
Assistance

DAY 18

House back in Landlord's
Possession

DAY 20

DAY 22

DAY 23

Half-day trial/Order of abatement
issued/rental agreement terminated.
**Institute FED process if tenant
refuses to move.** File complaint
in court, get hearing date (usually
7-10 days)

DAY 31

Court Hearing date/
Order to Vacate and Writ of
Assistance issued.

DAY 33

House back in landlord's possession.

PROPOSED AMENDMENTS TO EVICTION STATUTES (AS 09.45 ET SEQ.)

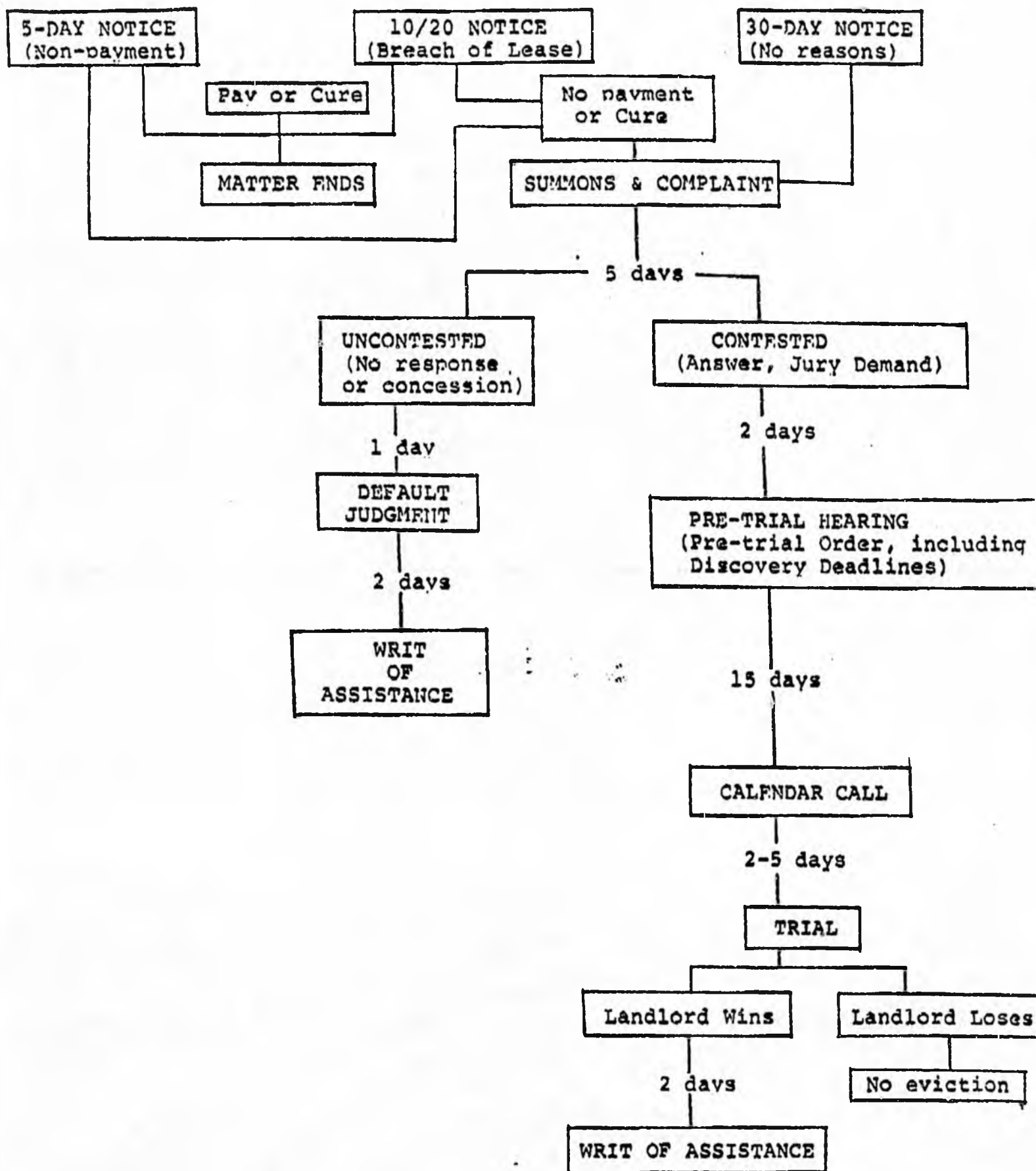
Sec. 1. AS 09.45.120 is deleted and replaced by adding new sections to read:

AS 09.45.120. SUMMONS AND DEFAULT. Summons in actions for forcible entry and detainer shall be served not less than five days from the date notice of eviction is given pursuant to AS 09.45.110 or AS 34.03.220. The tenant or person in possession shall have five days from the date of service of the summons to file an answer with the court. If no answer is filed, a default judgment of eviction may be entered on the sixth day following service of the summons. A writ of assistance to take effect in 48 hours may be issued with the default judgment, authorizing law enforcement officials to assist in the removal of the tenant or person in possession.

AS 09.45.121. ANSWER, DISCOVERY AND TRIAL. If a tenant answers the summons and complaint as set forth in AS 09.45.120, a pre-trial hearing shall be set no later than two days from the date of the answer, at which the court shall consider any preliminary motions by the parties and establish pre-trial procedures for discovery and other matters. Both parties shall be entitled to a minimum of fifteen days to exchange discovery, and normal discovery deadlines are reduced from 30 days to 15 days. At the close of the 15-day period, the matter shall be scheduled for calendar call to establish a date of trial. No continuance of the trial date shall be permitted beyond two days unless the party seeking the continuance shall post with the court a bond to cover rent that will accrue during the period of the continuance.

PLEASE NOTE: Implementation of these procedures will require a change in the present court rule governing forcible entry and detainer actions, which is Civil Rule 85.

FLOW CHART
PROPOSED AS 09.45.120, .121:



ALASKA STATE LEGISLATURE



SENATE FINANCE COMMITTEE,
CO-CHAIR

ANCHORAGE
P.O. BOX 104836
ANCHORAGE, AK 99510
(W) (907) 561-7623
(H) (907) 338-2425

JUNEAU
P.O. BOX V
STATE CAPITOL
JUNEAU, AK 99811
(907) 465-3712

Senator Pat Pourchot

MEMORANDUM

TO: Rep. Dave Donley, Chair
House Judiciary Committee

DATE: February 12, 1992

FR: Senator Pat Pourchot

RE: SB 35

As you know, the Code Revision Commission was requested, and in their April 4 letter to me, agreed to prepare for introduction at the beginning of this session draft legislation revising the URLLT and FED statutes to eliminate ambiguities and inconsistencies. Unfortunately, they have taken no action to date.

Alternatively, I have spoken with Tam Cook, Director, Division of Legal Services, who has agreed to undertake this project during the 1992 interim and to have draft legislation ready for introduction in January 1993. A copy of her response will be forwarded to you tomorrow.

Because of this different approach, I have drafted a new Letter of Intent for the Committee's consideration. In addition, I suggest that we amend the bill to add a July 1, 1993 effective date. Both the new Letter of Intent and proposed amendment are attached for your consideration.

Please let me know if you foresee any problems or if I can provide you with additional information.

ALASKA STATE LEGISLATURE

SENATE FINANCE COMMITTEE,
CO-CHAIR



Senator Pat Pourchot

ANCHORAGE
P.O. BOX 104836
ANCHORAGE, AK 99511
(W) (907) 561-7623
(H) (907) 338-2425

JUNEAU
P.O. BOX V
STATE CAPITOL
JUNEAU, AK 99811
(907) 465-3712

MEMORANDUM

DATE: January 22, 1991

TO: Senator Steve Frank, Chair
Senate Community and Regional Affairs Committee

FROM: Senator Pat Pourchot *pat*

RE: Scheduling of SB 35, an Act amending the Uniform
Residential Landlord-Tenant Act

Attached is a copy of SB 35 which 1) shortens the notice period for tenants who have not paid rent from 10 to 5 days (tenant's rights in the judicial Forcible Entry and Detainer process are not impinged), and 2) allows landlords to use an immediate eviction process against tenants arrested for certain drug- or alcohol-related crimes. A provision is also included that would require law enforcement officials to notify property owners when they arrest renters for these types of offenses.

This bill would still allow well-intentioned tenants sufficient time to work out their financial difficulties but would accelerate the eviction process for tenants unwilling to pay or those engaged in drug-related or bootlegging activity.

I would be most appreciative if you would schedule SB 35 for a hearing before the Senate Community and Regional Affairs Committee at your earliest convenience.

ALASKA STATE LEGISLATURE

STATE STATE AFFAIRS,
CHAIR
SENATE FINANCE COMMITTEE,
CO-CHAIR
ETHICS COMMITTEE,
CHAIR



Senator Pat Pourchot

MEMORANDUM

ANCHORAGE
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JUNEAU
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TO: House Labor & Commerce Comm.
Rep. David Finkelstein, Chair
Rep. Pat Parnell, Vice-Chair
Rep. Betty Bruckman
Rep. Dave Donley
Rep. Ivan Ivan
Rep. Robin Taylor
Rep. Jim Zawacki

DATE: May 14, 1991

FR: Senator Pat Pourchot

RE: CS SB 35 (JUD) - Use of Rented Properties/Drug Violations.

Pat

The goal of the proposed legislation is to shorten the length of time it takes to evict a tenant:

- 1) For nonpayment of rent;
- 2) For engaging in felony alcohol or drug activities related to manufacture and delivery; and
- 3) To assist neighborhoods in halting drug trafficking.

The bill has passed the Senate by a vote of 17 - 0, and carries a zero fiscal note.

DRAFT

LETTER OF INTENT

HCS CSSE 35 (JUD)

An Act relating to termination of tenancies and recovery of rental premises for nonpayment of rent and certain illegal activities, to tenant responsibilities, to the civil remedies of forcible entry and detainer and nuisance abatement, and to the duties of peace officers to notify landlords of arrests involving certain illegal activity on rental premises.

It is the intent of the legislature that the Department of Law delay revising or publishing the information pamphlet on landlord and tenant rights required under AS 44.23.020(b)(8) until the Code Revision Commission has completed its rewrite of AS 09.45.060 - AS 09.45.160 (Forcible Entry and Detainer) and AS 34.03 (Uniform Residential Landlord and Tenant Act).

LETTER OF INTENT

HCS CSSB 35 (JUD)

An Act relating to termination of tenancies and recovery of rental premises for nonpayment of rent and certain illegal activities, to tenant responsibilities, to the civil remedies of forcible entry and detainer and nuisance abatement, and to the duties of peace officers to notify landlords of arrests involving certain illegal activity on rental premises.

It is the intent of the legislature that the Department of Law delay revising or publishing the information pamphlet on landlord and tenant rights required under AS 44.23.020(b)(8) until the Division of Legal Services has completed its rewrite of AS 09.45.060 - AS 09.45.160 (Forcible Entry and Detainer) and AS 34.03 (Uniform Residential Landlord and Tenant Act).

POURCHOT

AMENDMENT

OFFERED IN THE HOUSE
TO: HCS CSSB 35 (JUDICIARY)

Page 12, following line 20:

Add:

Sec. 31. This Act takes effect July 1, 1993.

ALASKA STATE LEGISLATURE



SENATE FINANCE COMMITTEE,
CO-CHAIR

Senator Pat Pourchot

MEMORANDUM

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JUNEAU
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(907) 465-3712

TO: Tam Cook, Director
Division of Legal Services

DATE: February 12, 1992

FR: Senator Pat Pourchot *Pat*

RE: Revision of URLLT and FED statutes

Per our conversation, this letter is to request the Division of Legal Services to review the Uniform Residential Landlord-Tenant (URLLT) and the Forcible Entry and Detainer (FED) statutes during the 1992 interim and to prepare for introduction in January 1993 draft legislation to eliminate ambiguities and inconsistencies that currently exist in these statutes.

These statutes have been in disarray for a number of years (see attached report). Of primary concern is the resolution of existing contradictions between the FED statutes and the Uniform Residential Landlord-Tenant Act. Another concern is the confusion that results because it is unclear whether superior or district court has jurisdiction in the FED process. The current ambiguities impede both the landlord's and tenant's ability to assert their rights.

As you know, a similar request was made to the Code Revision Commission in March of last year. In their April 4th reply they agreed to undertake the project and have draft legislation ready for introduction at the beginning of this session. Unfortunately, they have taken no action to date and I am by copy of this letter withdrawing my request.

Please don't hesitate to contact me if you have questions regarding this request.

ALASKA CODE REVISION COMMISSION



COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
WILSON L. CONDON
PETER FROEHLICH
RICK HALFORD
MARY HUGHES
DICK MADSON
JUDGE (RET.) THOMAS B. STEWART
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ALASKA STATE LEGISLATURE
P.O. BOX Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-2450

EXECUTIVE SECRETARY
TAMARA BRANDT COOK

APR - 8 1991

April 4, 1991

The Honorable Pat Pourchot
State Senator
Alaska State Legislature
P.O. Box V
State Capitol
Juneau, AK 99811

Re: FED statutes, Uniform Residential Landlord-Tenant Act.

Dear Senator Pourchot:

I received your letters under date of March 13, 1991, concerning the above-referenced Alaska statutes. The Commission agrees with you that there exists a great deal of confusion concerning which court has jurisdiction and which act governs in actions involving the forceable removal of a tenant, notice requirements, etc.. The Alaska Supreme Court has (depending upon your point of view) either ameliorated or exasperated the jurisdiction problem by use of temporary Superior Court "appointments" of District Court Judges. As you may not be aware, the Court is now appointing District Court Judges to hear matters traditionally and under Title 22 been considered only by Superior Court judges. I expect this practice to continue.

FED actions have, since statehood, been heard in the District Court. However, since the passage of the Uniform Residential Landlord-Tenant Act, many such actions are now being heard in Superior Court. It would be well to have a statutory determination as to

Letter to Senator Pat Pourchot
Alaska State Legislature
FED/Uniform Residential Landlord-
Tenant Act.
April 4, 1991
Page 1 of 3

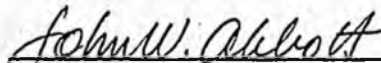
which court is the appropriate court to hear FED matters.

Concerning other aspects of the Uniform Residential/Landlord-Tenant Act, it is, in fact, a uniform act subject to all of the disabilities of such an act. It requires careful review and consideration by the Legislature insofar as there are many "hard" policy decisions to be made. The Commission has, in the past, been reluctant to consider reform of these provisions precisely because they were controversial. However, since you have made a request, we will gladly and enthusiastically consider and provide draft legislation for consideration by you or your committee. As we have done in the past when dealing with a proposed bill fraught with political and controversial provisions, we will provide the Senate with a bill that provides alternative approaches to resolution of matters coming within the scope of the acts. You will then be able to choose from among competing provisions and make the hard policy decisions.

I will be placing your request on the agenda for our next Commission meeting. I do not have a date at the present time as the Commission has exhausted all of its fiscal 1991 funds. Unfortunately, our budget was allocated in a new manner which provided for specific funding of positions within the Legislative Affairs Agency, Legal Division. Our monthly budget reports regrettably did not disclose that certain funds were encumbered, thus leading us to believe we had sufficient funding to complete our yearly meeting schedule. When we discovered that we had no further funds, we shut down the operation of the Commission. We are at this time awaiting a decision by the Legislature on a supplemental appropriation in the amount of \$10,000 (the amount requested). If such funding is forthcoming, we will have one or two further meetings during fiscal year 1991. In any event, we will be able to take up this project during fiscal year 1992 and will attempt to have a draft bill for consideration during the next legislative session.

The Commission will keep you apprised of progress on this project. And, I want to express our thanks for the legislative interest in the work done by the Commission. We are always happy to respond to a request from legislators.

Very truly yours,



JOHN W. ABBOTT

Chair

Letter to Senator Pat Pourchot
Alaska State Legislature
FED/Uniform Residential Landlord-
Tenant Act.
April 4, 1991
Page 2 of 3

cc: Senator Bettye Fahrenkamp,
Chair, Legislative Council

Terry Banister
Division of Legal Services

Letter to Senator Pat Pourchot
Alaska State Legislature
FED/Uniform Residential Landlord-
Tenant Act.
April 4, 1991
Page 3 of 3

ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS,
CHAIR

ETHICS COMMITTEE,
CHAIR



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JUNEAU
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JUNEAU, AK 99811
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Senator Pat Pourchot
MEMORANDUM

TO: Rep. Dave Donley, Chair
House Judiciary Committee

DATE: Dec. 10, 1991

FR: Senator Pat Pourchot

RE: CS SB 35 (JUD) - Use of Rented Properties/Drug Violations

As you know, the goal of the proposed legislation is to shorten the length of time it takes to evict a tenant (a summary is attached):

- 1) For nonpayment of rent;
- 2) For engaging in felony alcohol or drug activities related to manufacture and delivery; and
- 3) To assist neighborhoods in halting drug trafficking.

It is my understanding that the House Judiciary Committee is planning to restore the 5-day notice provision as specified in the bill that passed the Senate and to delete the provision added in House Labor and Commerce requiring a "notice to quit" to be delivered by certified mail. I strongly support these proposed Judiciary Committee revisions.

Additionally, as I mentioned in my October 4 memo to you, the Code Revision Commission's proposed legislation to harmonize the FED and URL-TA statutes will necessitate that the Department of Law revise and republish its pamphlet on landlord/tenant rights. As the provisions in SB 35 will also be subject to this revision, it appears a fiscal note for republishing the pamphlet would more appropriately accompany the Commission's proposed legislation. Therefore, I respectfully request the House Judiciary Committee to delete the fiscal note accompanying HCS CSSB 35 (L&C).

I would greatly appreciate your scheduling this bill for a hearing at your earliest convenience.

ALASKA STATE LEGISLATURE

L.O. Potin file

SENATE STATE AFFAIRS,
CHAIR



ETHICS COMMITTEE,
CHAIR

ASIA
9:30 AM Friday

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Senator Pat Pourchot MEMORANDUM

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House Judiciary Committee

DATE: Dec. 10, 1991

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I would greatly appreciate your scheduling this bill for a hearing at your earliest convenience.

Dave, let's get together & chat this week!
Pat

ALASKA STATE LEGISLATURE

SENATE FINANCE COMMITTEE,
CO-CHAIR



Senator Pat Pourchot

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MEMORANDUM

TO: Representative Dave Donley, Chair
House Judiciary Committee

DATE: Oct. 4, 1991

FR: Senator Pat Pourchot

RE: Fiscal Note Accompanying HCS CSSB 35 (L&C)

In working on SB 35 last session, the lack of harmony between the FED and URL-TA statutes became painfully obvious. As a result, I requested the Code Revision Commission to review these statutes and prepare draft legislation to eliminate ambiguities and inconsistencies. The Commission agreed to undertake this project during the interim. To confirm that this project was underway, I spoke with John Abbott, Chair of the Commission, last week and he assured me that Legal Services is currently working on draft legislation for introduction next January.

Notwithstanding SB 35, this revision of the FED and URL-TA statutes will necessitate that the Department of Law revise and republish its pamphlet on landlord and tenant rights as required by AS 44.23.020(b)(8). As the provisions of SB 35 will also be subject to this revision, it appears a fiscal note for republishing the pamphlet would more appropriately accompany the Commission's proposed legislation. Therefore, I respectfully request the House Judiciary Committee to delete the fiscal note accompanying HCS CSSB 35 (L&C).

Thank you for your consideration of this matter.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSSB 35 (JUDICIARY)

Page 3, line 27:

Delete "a new section"

Insert "new sections"

Page 4, following line 1:

Insert a new section to read:

"Sec. 09.45.137. COMPUTATION OF TIME. In computing any period of days for which notice must be given under AS 09.45.060 - 09.45.160,

(1) the day on which notice is given is not to be included;

(2) the last day of the period is to be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday; and

(3) intermediate Saturdays, Sundays, and legal holidays are excluded from the computation."

Page 6, line 29, after "days":

Insert "as determined under AS 09.45.137,"

Pat
STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

March 5, 1991

The Honorable Pat Pourchot
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: SB 35

Dear Senator Pourchot:

You have inquired through staff whether the Department of Law uses the nuisance abatement procedures set out in AS 09.50.170 and, thus, whether our practices would be affected by an amendment to this statute. AS 09.50.170 et seq. authorize the attorney general to initiate legal proceedings to abate the nuisances created by "places used for immoral acts."

Any such abatement procedures would be undertaken by the civil division of the Department of Law, rather than by the criminal division. I have conferred with Assistant Attorney General Jeff Bush on behalf of the civil division and he advises me that the department currently does not utilize these procedures. Accordingly, the department would not be affected by any amendment to the statutes.

Thank you for inquiring. If you have any further questions that we may be able to answer, please do not hesitate to contact us.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: Margot O. Knuth

Margot O. Knuth
Assistant Attorney General

MOK:ma

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

February 13, 1992

SUBJECT: Landlord-Tenant and Forcible Entry and Detainer Statutes
(Work Order No. 7-LS2028)

TO: Senator Pat Pourchot

FROM: Tamara Brandt Cook
Director *TBC*

You have asked whether the Legal Services Division can prepare a draft over the interim to eliminate inconsistencies that exist in the Uniform Residential Landlord-Tenant and Forcible Entry and Detainer statutes for introduction at the beginning of the next regular session. It is my understanding that you would be shooting for a July 1, 1993 effective date.

This should present no major problem for the division to handle as an interim project. The bill has, therefore, been assigned a work order number. It has also been assigned to me, but that is only for our tracking purposes. At the end of the session, once staffing levels and general topic assignments can be reviewed, the bill will be assigned as a special project to a drafting attorney. That person will need guidance from your office with respect to policy choices that must be made to reconcile these statutes.

TBC:pl
92-101.plm

Enclosure

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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(907) 465-3867 or 465-2450
FAX (907) 465-2029

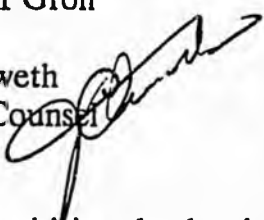
Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

May 13, 1991

SUBJECT: CSSB 35 (Judiciary)

TO: Representative David Finkelstein, Chair
House Labor and Commerce Committee
ATTN: Cliff Groh

FROM: Jack Chenoweth
Legislative Counsel 

You have asked me to respond to criticism that has been voiced of this Senate-passed measure.

In the context of amendment of the forcible entry and detainer remedy, the reduction of the ten-day notice to five days in the event of non-payment of rent and, as provided in the Judiciary Committee Substitute, in the event the tenant's breach of the duty not to illegally engage in use of alcohol or drugs in rented premises, is a policy decision for the legislature. As has been noted in the course of the bill's consideration, among western states, Alaska alone provides for 10 days' notice. The statutes of all of the rest authorize commencement of FED or similar proceedings for the nonpayment of rent on as little as three or five days' notice.

The initial bill authorized use of the forcible entry and detainer remedy upon a tenant's arrest for violation of one or more of three sets of statutes involving the sale or possession with intent to sell controlled substances or imitation controlled substances, or for certain illicit sales of alcoholic beverages. The Senate-passed bill abandons the "arrest" requirement and substitutes a more general statement of the tenant's "violation" of one those provisions. I assume that, in the absence of a definitive statement in the measure as to at what point tenant's conduct constitutes a "violation," the courts will eventually have to step in and define that circumstance. And, probably for all the reasons noted in the objection to the earlier version of the bill, that definition may require evidence of tenant's guilt--a plea of guilty or nolo contendere, or a conviction by court or jury. In at least one other jurisdiction with which I am familiar that has a substantially comparable measure, the state prosecutor interceded to impose an interpretation that the statute might only be invoked after a tenant's conviction.

Representative David Finkelstein

May 13, 1991

Page 2

Objection is made that the measure authorizes eviction because of illegal conduct of others not under the tenant's control. The standard in fact is one that looks to evidence of the tenant's "knowingly permit[ing] others in the premises to engage in one more of [the] activities . . ." AS 34.03.120(b). I suggest that the tenant's control of the rented premises is not compromised by that provision.

To the objection that the bill may be applied to impair existing contracts, to cut off any possibility of that, the House may want to add a provision making the measure's provisions applicable to rental agreements entered into on and after the measure's effective date.

good idea

JC:pl

91-360.plm

Bill section 10 recasts existing law under which a court may issue a nuisance abatement order. The principal substantive change adds the underlined material in (a)(1) and directs the termination of the lease or rental agreement on premises subject to the abatement order if the tenant has been given notice of the nuisance abatement proceedings.

The substantive change made by bill section 11 is set out at p. 5, line 15: It adds flexibility in the abatement remedy by giving the court latitude to determine the amount of bond with sureties necessary when premises under abatement are to be returned to the owner rather than maintaining the requirement that the value of that bond reflect the full value of the property. The provision also adds, as a new subsection (c), a statement to clarify that, if an abatement order is subsequently cancelled because of compliance with (a) of that section, the related lease or rental agreement--terminated with the issuance of the abatement order under the authority of AS 09.50.210(a)(1) [bill section 10]--is not automatically revived.

Bill section 16 directs that, under the Uniform Residential Landlord and Tenant Act, an order of abatement entered by the court terminates the related rental agreement.

Bill section 17 identifies the particular activities involving alcoholic beverages, controlled substances, and imitation controlled substances that warrant relief under the expanded nuisance abatement provisions. Generally, these statutes identify sales and possession with intent to sell in violation of law. The Senate-passed measure abandons the "arrest" standard of the original bill and substitutes reference to "a violation" of one of the criminal statutes cited.

FORCIBLE ENTRY AND DETAINER REMEDY AS ALTERNATIVE OR SUPPLEMENT TO NUISANCE ABATEMENT:

Proposed bill section 2 amends AS 09.45.090 in part as follows:

-- The amendment made to (1)(B) sets five days as the period in which a landlord must wait after giving notice to quit and making written demands for possession of rented premises to commence a forcible entry and detainer proceeding in the event the tenant has violated provisions of the Uniform Residential Landlord and Tenant Act against knowing engagement in certain illegal activities involving alcohol or drugs on premises or for violation of a similar provision in rented premises not covered by that Act.

-- The amendment made to (3) authorizes the landlord to use the forcible entry and detainer remedy to enforce an order of abatement. Under the provision, the landlord may, after obtaining the abatement order under AS 09.50.210(a), seek immediate relief.

A related provision, bill section 6, a new section, authorizes the use of an abatement order, obtained at the end of a trial under the nuisance abatement statute, to serve as prima facie evidence of unlawful holding of premises by force for purpose of the hearing required by the forcible entry and detainer process.

OTHER RELATED CHANGES:

Bill sections 1 and 12, adding AS 04.21.075 and AS 17.30.160, respectively, impose on peace officers the requirement to notify a landlord when a tenant has been arrested for violation of one of the identified criminal offenses involving alcohol or drugs.

Proposed bill section 2 amends AS 09.45.090 in part as follows: The addition of material in (2)(B) is included in order to authorize a landlord to recover premises after a notice to quit is given for the tenant's breach of a condition or covenant other than nonpayment of rent or engaging in identified criminal activity involving alcohol or drugs. (Under AS 09.45.110, not amended by this measure, ten days minimum notice must be given--90 days in the event of a farm- or agriculture-related tenancy.)

Bill section 13 adds as a tenant's duty the obligation of the tenant not to engage in illegal activities on rented premises or to knowingly allow others in the premises to do so.

Bill section 14 makes a technical change. Under current law, in order to secure relief under AS 34.03.220(a), a provision detailing the tenant's responsibilities under a rental agreement with respect to rented premises as those are enumerated in AS 34.03.120, the tenant's noncompliance must "materially [affect] health and safety." As noted immediately above, bill section 13 adds to the tenant's responsibilities "not knowingly [to] engage at the premises in [the specified] illegal [activities] . . . or knowingly permit others in the premises to [do so]" The change made by this bill section confines the "noncompliance materially affecting health and safety" standard to the tenant responsibilities set out in current law and serves not to impose that limiting standard to the added tenant responsibility not to engage on the premises in dealing in alcohol and drugs in violation of law.

The measure's bill section 18 adds a codified section, proposed AS 34.05.100, extending to tenancies not covered by the Uniform Residential Landlord and Tenant Act the provisions establishing the duty on the tenant not to use the rented premises for illegal activities. Under this new section, noncompliance with the provision is a basis for seeking relief through the nuisance abatement process and, as with bill section 16 above, an order of abatement covering a premises that falls within this section terminates the rental agreement.

ALASKA STATE LEGISLATURE

SENATE FINANCE COMMITTEE,
CO-CHAIR



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Senator Pat Pourchot

MEMORANDUM

TO: All Senators

DATE: April 18, 1991

FR: Senator Pat Pourchot

RE: Response to April 4 Clocksin letter objecting to SB 35
(Landlord/Tenant legislation)

For your information, I've attached a copy of a response from Legal Services to Don Clocksin's April 4 letter which he sent to you regarding his concerns with provisions contained in SB 35 relating to eviction of tenants for nonpayment of rent and for certain alcohol and drug activities.

Recognizing the need to revise the referenced statutes to clarify and remove existing ambiguities, I have requested the Code Revision Commission to undertake this project during the interim.

YMA

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

April 13, 1991

SUBJECT: Don Clocksin's April 4 letter objecting to
Senate Bill 35

TO: Senator Pat Pourchot

FROM: Jack Chenoweth
Legislative Counsel

Your staff provided me a copy of Don Clocksin's recent letter and solicited my comments.

The reduction of the ten-day notice to five days in the event of non-payment of rent is a policy decision of the Alaska legislature. As was noted in the course of the bill's consideration, among western states, Alaska alone provides for 10 days' notice. The statutes of all of the rest authorize commencement of FED or similar proceedings for nonpayment of rent on as little as three or five days' notice. Moreover, Doug Baily, responding to an objection that five days' notice may not be sufficient in cases involving tenancies in rural Alaska where mail service can often be sporadic, pointed out that the tenant's actual receipt of notice would not seem to be required: the statute (set out as AS 09.45.100(3) in CSSB 35 (Jud)) only makes a reference to the landlord's sending notice by mail; it doesn't depend on the notice's receipt. The current notice provisions are not without fault, but reducing the amount of notice required to five days in the event of non-payment of rent would not seem to be out of line with what is commonly being done elsewhere.

At the bottom of page 2, Don voices objection to a tenant's suffering possible eviction because of the illegal conduct of others "not under their control," and questions the use of the summary proceeding authorized by the FED action to secure eviction in those situations before the underlying criminal action is resolved. In response to the first objection, let me point out that CSSB 35 (Judiciary) provides for eviction of a tenant engaged in illegal activity involving alcoholic beverages or controlled substances, or the tenant's "knowingly permit[ting] others in the premises to engage in one or more of those activities . . ." (AS 34.03.120(b), p. 6, lines 12, 13). The tenant's control of the premises is not compromised by that provision. If the tenant has knowledge of the activity, AS 34.03.120 may serve as the basis for an FED

Senator Pat Pourchot

April 13, 1991

Page 2

action under AS 09.45.090(1)(B). On the second point, Don is correct in the conclusion he reaches: unless the tenant pleads guilty at arraignment, the FED action, a civil remedy, would likely precede any significant activity taken on disposing of the criminal charge in the criminal process and it is, as he concludes, likely that an order of eviction may be entered before the criminal charge is finally resolved. But my recollection is that the objection was earlier considered, in the context of substituting "conviction" for "arrest" and the committee adopted instead the language now set out in bill section 17 of the current CS: the tenant's being engaged in "a violation of [a specific statute]." You and your colleagues should understand that the court may be asked to pin down just exactly when "a violation" of the statute occurs. If the court concludes that there is no violation short of a conviction, then the conviction--on a guilty plea or on entry of judgment following a trial before a jury or a judge--will always precede eviction. If the court concludes otherwise, the FED action will almost surely occur first. (The handing of this topic by the City of Seattle is summarily discussed in the footnote at the last page of my February 5 memo.)

The nuisance "twist"--the changes made to AS 09.50--is hardly original with us. It is, as you well know, derived from a California precedent that was in turn based on a civil action of the same kind--nuisances in red light districts--as the Alaska statute that is amended and extended in this bill. Jeannie Larson of your staff provided me with a report summarizing one California community's successful use of the statute to clean out a known crack house when other attempts and initiatives to eliminate drug activities had failed.

Don's assertion concerning use of reputation evidence would seem to be undercut by our reliance on a court rule, Evidence Rule 405, that permits admission of reputation evidence under certain conditions and authorizes cross-examination of parties offering that testimony or evidence. Our mention of reputation evidence in this bill follows that precedent and, while it does set aside the 1928 trial court decision, the court will apply the standard otherwise applicable to introduction and use of reputation evidence.

On the issue of court rule changes Don's letter doesn't identify specific rules affected by the changes, so I'm not prepared to respond on point. Still, the legislature has latitude to make substantive changes that affect court rules that may not require court rule change treatment under article IV, section 15.

I can't speak to matters of fiscal impact and necessity.

*

Finally, since my fingerprints are on the documents, I am somewhat sympathetic to Don's conclusion about the difficulty in understanding the draft ("The Bill is Incomprehensible."). The forcible entry and detainer provisions and the nuisance law date from territorial days and, from a drafting perspective, are terrible products to

Senator Pat Pourchot
April 13, 1991
Page 3

have to amend in a piecemeal fashion as has been proposed here. The Uniform Residential Landlord-Tenant Act, the more recent addition to the body of Alaska law, is a significant improvement, but amending that Act is not without its share of problems. The changes made to all--the need to try to tie them all together into one cohesive package--was not easy. The evidence of that, I think, is the labors that your staff and I performed in trying to provide information as to how this all would fit together. With all the time and attention given, there were still some unanswered questions.

In the course of the committee proceedings on the bill, I made reference to a fifteen-year old law review article that Don authored in which he cites the continuing inconsistencies between the FED proceedings and the URL-T Act, and suggests that they need to be better harmonized. I agree. Unfortunately, that was not the goal of this drafting assignment. Meshing the two is still a task that should be done.

Whether or not the bill drafting was done competently, I understand the objection but respectfully suggest that, until the FED and nuisance provisions are comprehensively revised and until the FED and URL-TA provisions are better harmonized, drafting amendments that interrelate these three areas of law will be difficult--difficult to fashion and especially difficult to explain to laymen not readily familiar with their provisions.

*

Thanks, I think, for the opportunity to read the critical reviews and to respond.

JBC:lmb
91-117.lmb

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March 27, 1991

Senator Pat Pourchot
Room 504, Capitol Building
P.O. Box "V"
Juneau, Alaska 99811

Re: Senate Bill 35
Our File No. 3014.31

Dear Senator Pourchot:

I have been asked by the Board of Directors of the Alaska Civil Liberties Union to review and comment on your Senate Bill 35 relating to landlord and tenant law. After reviewing that Bill, I find that I must criticize it not only for its invasion of certain important constitutional principles, but also because it is unfair to tenants and unnecessarily tips the scales of justice in favor of landlords.

As background, I participated in the drafting of this legislation in 1973-74 as a lobbyist for the Alaska Legal Services Corporation. At the time of its passage, it constituted a careful balance between the rights and obligations of tenants and the countervailing rights and obligations of owners of rental property. Throughout the years following its enactment, including the six years I served in the Legislature, there were numerous attempts to amend this legislation, primarily by landlord advocates. Those efforts were almost universally opposed by legislators who had been involved in the original adoption of the legislation because they would destroy the careful balance that had been achieved. Chief among those who was reluctant to alter the balance was Senator Bob Ziegler, by no means a tenant advocate, but an aggressive believer in maintenance of a carefully crafted legislative compromise.

There are three portions of this legislation which are particularly offensive to constitutional principles. First, the legislation would grant the right to evict a tenant based solely on the individual determination of a police officer with regard to what crime has been committed. The right to evict in the bill is triggered by an arrest, not the filing of a charge nor the

Senator Pat Pourchot
March 27, 1991
Page 2

conviction for that charge. This violates due process, one of the most fundamental rights in our constitution, because it authorizes the court to remove somebody from his or her home prior to any determination that the alleged conduct has actually occurred. A single police officer who finds a small amount of marijuana in a home has the power under this legislation to force the removal of the family from that home even though there is no conduct which ultimately results in a conviction for an offense listed under AS 34.03.360(20), which appears as Section 13 of this legislation. In no other situation does a civilized society leave that kind of power with the individual police officer.

Second, the reduction from ten to five days of the notice required prior to eviction will have the practical effect of evicting many people before they have an opportunity to respond. AS 09.45.100(2) allows this notice to quit to be left at the premises. My experience is that this is the common method of providing notice. If the tenant is absent for the five day period of this notice, he or she will have no opportunity to respond to the notice. Failure to respond will result in eviction, even if there had been a legitimate defense. Deprivation of property by providing inadequate notice violates due process of law. Furthermore, as noted above, this ten day notice provision was a compromise which provided the landlord an expedited procedure but assured a reasonable period of time for the tenant to respond. This ten day notice provision was comparable to the notice imposed upon a tenant under AS 34.03.170, as well as the ten day requirement in AS 34.03.160. The effect of this provision of your bill is to strengthen the powers of landlords without a concomitant strengthening of any right of the tenant.

Third, this law would alter many existing landlord-tenant contracts. Typically, those contracts do not contain a five day notice provision, and do not allow eviction upon arrest for a crime. If this legislation is interpreted to modify those contracts, then it impairs the obligation of contract in violation of Article I, Section 15 of the Alaska Constitution. As a practical matter, since there is no delayed effective date in this legislation, there will be great difficulty in determining which landlord-tenant relationships to which this legislation applies. It cannot alter existing contractual relationships. Since some of those relationships are month to month and some are for longer periods of time, it will be unclear which relationships are affected by the legislation and when.

Furthermore, it appears that you are trying to exclude so-called "possession" crimes from this legislation. While that is an admirable goal, the fact that the right to evict is triggered by an arrest, and not upon the filing of a charge or conviction, means

Senator Pat Pourchot
March 27, 1991
Page 3

that this limitation is illusory. A police officer who enters a home and observes an amount of marijuana could believe that the marijuana was possessed with "intent to deliver" and arrest on that basis. However, upon review of the case by a prosecutor, or a judge and jury, the determination may be that there was no "intent to deliver." In such a case a person will have been evicted, in effect, for a possession crime - a result not intended by this legislation.

Finally, AS 34.03.120(8), added by Section 9 of this legislation, allows you to evict a tenant if he or she knowingly permits someone else to engage in these illegal activities. This allows a family to be evicted from their home even though the tenant has not engaged in any illegal activity. While you may feel that you are responsible for every person who visits your home, I doubt that you would consider it fair to have your family evicted because someone commits an illegal act in your home with your knowledge. This constitutes the rankest form of guilt by association - a principle that should not be reflected in any legislation adopted by the Alaska Legislature.

I encourage you to rethink the purpose behind this legislation and whether the legislation actual accomplishes that purpose. The legislation is not necessary, because landlords currently have the tools to deal with after-hours clubs and drug dealing in their rental units. Their inability to utilize those tools is a social problem, not one to be solved by the deprivation of the rights of a class of citizens who find it necessary to rent their premises and who may be innocent of any crime.

Thank you very much.

Sincerely,


Don Clocksin

DIVISION OF LEGAL SERVICES

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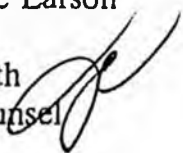
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Court Plaza, Room 500
Mail Stop 3101*

MEMORANDUM

February 26, 1991

SUBJECT: Questions concerning Senate Bill 35 and draft
CSSB 35 ()

TO: Senator Pat Pourchot
ATTN: Jeannie Larson

FROM: Jack Chenoweth 
Legislative Counsel

1. Unless the landlord and tenant have provided in their rental agreement for a different remedy, the landlord must use the forcible entry and detainer process of AS 09.45.060-09.45.160 to secure termination of a tenant's forcible entry or unlawful detainer of rented premises.

2. In a residential tenancy, if the landlord seeks to remove a tenant from possession of rented premises based on the tenant's alleged illegal drug activities on the rented premises, under current law the landlord (1) must determine that the tenant has, under AS 34.03.220(a), failed to comply with a tenant's obligation under the rental agreement or under AS 34.03.120 (presumably § 120(a)(6), interference with quiet enjoyment of the premises by neighbors, the justification cited by the Alaska Legal Services Corporation in its February 5 letter in opposition to SB 35), (2) give the 20 day notice under AS 34.03.220(a) directing the tenant to rectify the breach, and (3) if the breach is not adequately remedied within the time allowed--and one wonders how a tenant who engages in illicit alcohol- or drug-activity will do that--move to terminate the rental agreement under the forcible entry and detainer process outlined, presumably under AS 09.45.090(2)(the tenant holds "contrary to a condition or covenant in the lease or agreement,"), in which case, AS 09.45.100 directs a minimum of 10 additional days' notice. Thus, the period under which the landlord would be obligated to wait would necessarily exceed 30 days: a minimum of 20 days under AS 34.03.220(a) and not less than 10 days under AS 09.45.100.

3. The proposed amendment to AS 09.45.130 set out in section 7 of SB 35 is intended to address the situation in which a tenant has prepaid rent and thereafter

the landlord, during the period of tenant's occupancy covered by the prepaid rent, seeks the tenant's removal for tenant's involvement in illegal drug- or alcohol-related activity. AS 09.45.130(a) appears to protect the tenant who has paid advance rent "until the expiration of the period for which that tenant or person may have paid rent for the premises in advance." In other words, there is the color of argument that a tenant may try to "protect" or insulate himself by paying, say, three-months or even one year in advance and go about using the premises for illegal activities without apparently worrying about removal under AS 09.45.060 - 09.45.160. The proposed subsection (b) is intended to eliminate that possibility. Nothing waives the forcible entry and detainer notice requirement, and the notice provisions of AS 09.45--taken in conjunction with those that may be required by AS 34.03--are otherwise applicable.

4. Section 7 of draft CSSB 35 (), M version, offered yesterday, authorizes introduction of reputation evidence to demonstrate nuisance. Rule 405 of the Evidence Rules authorizes introduction of evidence of the reputation of or opinion about a person. The circumstances under which that evidence may be offered, received, and considered are fairly well established in the Rules; this is not, then, a provision intended to change the evidence rule as it relates to persons. Taking "reputation" in its dictionary sense ("estimation in which a person or thing is commonly held"--Webster's New World Dictionary), there seemed to be a need for a provision by which neighbors or other residents of a community could describe to a court the opinion or judgment concerning the premises based on their collective opinion of it. Since premises may come to have a community or neighborhood reputation, there should be a clear statement of authority for a court to permit the use of that evidence, subject, of course, to the parameters otherwise applicable to reputation evidence. The provision is permissive. Thus, the bill section would cover evidence relating to personal reputation as well as the collective judgment or repute of a neighborhood or community concerning the premises, though it is only as to the latter that this provision would appear to have substantive effect.

JC:gc
91-102.glc

DIVISION OF LEGAL SERVICES

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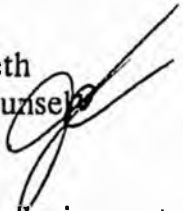
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Mail Stop 3101

MEMORANDUM

February 19, 1991

SUBJECT: G.2 and G.4 amendments to Senate Bill 35

TO: Senator Pat Pourchot
ATTN: Jeanne Larson

FROM: Jack Chenoweth
Legislative Counsel 

Enclosed are two amendments introducing material amending the nuisance statutes in the context of expansion of landlord remedies for illegal drug and alcohol transactions in rented premises. Both versions take the approach we discussed: expansion of the statutory remedy authorizing abatement of lewd houses.

Let me briefly review the abatement provisions (AS 09.50.170-09.50.240) as they currently exist: These are, as I indicated, typically brought as "in rem" actions, in which the real estate is named the defendant (i.e. State of Alaska v. Property located at 900 East First Street in the City of Borough of Juneau) as well as the premises owner or occupant. Under the statute, the attorney general or a private citizen may seek relief. Injunctive relief is authorized "to perpetually enjoin the nuisance . . .", and contempt proceedings may be initiated for violation of the nuisance injunction. The court is also authorized to abate the nuisance--in essence, order its closure--with contempt authorized for violation of the abatement order. The abatement order may direct sale of the premises and its contents. However, short of a sale, the owner may seek to recover immediate possession. The owner may recover if he or she (1) has not committed contempt in conjunction with an injunction in the proceeding, (2) appears and pays all costs, and (3) files a bond with sureties "in the full value of the property as determined by the court."

Amendment G.2, the shorter of the two amendments submitted, essentially makes two changes: (1) it adds to the abatement statute circumstances in which the remedy may be used to include property used for illegal drug- and alcohol-related purposes, and (2), as we had discussed, it diminishes the severity of the surety bond requirement by eliminating the "in the full value of the property as determined by the court" and replacing it with "an amount to be determined by the court." In all other

Senator Pat Pourchot
February 19, 1991
Page 2

respects, the relief authorized by the amendment follows the procedures of the current lewd house abatement statute.

Because it is tied, through the definition, to the "illegal activity . . ." definition of AS 34.03.360, amendment G.2 presupposes that the nuisance abatement provisions would be available to the attorney general or to private citizens only if the tenant suffers the act that triggers relief under the changes being made to the forcible entry and detainer statute and the Uniform Residential Landlord and Tenant law by the measure, i.e. that is, the tenant was "arrested" (as under current provisions of SB 35) for one of the enumerated drug- or alcohol-related violations. Consequently, objection may be raised to the first amendment for the reasons that objection is being raised to the provisions of the measure.

I prepared amendment G to avoid that difficulty. The second amendment

(1) strips from SB 35 the provisions that tie drug- and alcohol-related penalties to arrests;

(2) authorizes relief, as in amendment G.4, through the revised nuisance mechanism; and

(3) expands, following the California model (California Health & Safety Code § 11575.5), the admissibility of testimony to prove the nuisance; admission of reputation evidence is authorized by Evidence Rule 405, so a court rule change would not seem to be necessary.

I retained, in both amendments, the provisions by which state and municipal peace officers are to contact the landlord when arrests are made on rented premises. Independently of the handling of nuisance abatements introduced by these two amendments, there seems to me good reason for a property owner to know what is occurring on the premises the landlord is renting. But retention of the provision, in light of these amendments, is a policy call, not one that must be changed or deleted by law.

I can make further changes to these two approaches as you may direct, but believe that these are the two basic approaches that you asked me to consider in preparing the nuisance amendment revision to this bill.

JBC:pl
91-092.plm

Enclosures

DIVISION OF LEGAL SERVICES

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MEMORANDUM

February 4, 1991

SUBJECT: Re Senate Bill 35

TO: Senator Pat Pourchot
ATTN: Jeannie Larson

FROM: Jack Chenoweth
Legislative Counsel

You have asked for an overview of legislation in other states permitting a landlord to terminate a lease when the landlord determines that the tenant has used the premises for illegal purposes without having evidence of a conviction. The following examples, not intended as an exhaustive list, are suggestive of the authority provided by the various states. The statutes reported generally address the tenant's illegal activities in three areas--illegal sale of liquor, gambling, and prostitution.

1. Automatic termination of lease, or termination of the lease at the landlord's option, without specification that the landlord is entitled to possession:

Automatic termination:

Colorado Rev. Stat. Ann. §13-21-103 -- "unlawful sale or giving away of intoxicating liquors works a forfeiture of all rights of the lessee or tenant under any lease or contract of rent upon the premises."

Illinois Ann. Stat., ch. 43 §135 -- "unlawful sale or gift of alcoholic liquor works a forfeiture of all rights of the lessee or tenant under any lease or contract of rent upon the premises where the unlawful sale or gift takes place."

At landlord's option:

Alabama Code, §28-4-91 -- "unlawful manufacture, sale, . . . giving away or otherwise disposing of any prohibited liquors or beverages contrary to the law of the state . . . shall, at the option of the landlord or lessor, work a forfeiture of all the rights of any lessee or tenant under any lease or contract of rent of the premises where such unlawful act is performed . . . by the lessee or tenant or by any agent, servant, clerk, or employee of the lessee or tenant with the latter's knowledge or permission."

2. Automatic termination of lease, thereby entitling the landlord to recover possession but without specifying the procedure the landlord is to follow:

Ohio Rev. Code. Ann. §4399.06 -- "all contracts whereby any building or premises are rented, leased, used, or occupied shall become void when such building or premises are used, in whole or in part, for the sale of intoxicating liquors contrary to law, and the lessor, on and after the sale or gift of intoxicating liquors, shall be held to be in possession of such building or premises."

* 3. Automatic termination of lease, or termination of the lease at the landlord's option, entitling the landlord to recover possession without process of law:

Automatic termination:

Mississippi Code Ann. §95-3-23 -- "if a tenant or occupant of a building or tenement under lawful title uses such place as a nuisance . . . , such use shall annul and make void the lease or other title under which he holds and, without any act of the owner, shall cause the right of possession to revert and vest in the owner, and the owner may without process of law make immediate entry upon the premises."

New Hampshire Rev. Stat. Ann. §544.41 -- "if a tenant or occupant of a building or tenement, under a lawful title, uses such premises . . . for any of the unlawful purposes enumerated herein[,] such use shall annul and make void the lease or other title under which he holds and, without any act of the owner, shall cause the right of possession to revert to him, and he may, without process of law, make immediate entry upon the premises."

Rhode Island Gen. Laws Ann.

§11-19-23 -- "every lease of any house, shop, or place used as a gambling house or place where gaming is practiced or carried on . . . shall be void, and no notice to the occupant thereof other than a demand for the possession of the premises, shall be necessary to eject such occupant therefrom."

§11-30-6 -- "if any person, being a tenant or occupant under any lawful title of any building or tenement not owned by him, shall use said premises or any part thereof for [unlicensed manufacturing or distribution of intoxicating liquor], such use shall annul the lease or other title under which said occupant holds, and, without any act of the owner, shall cause the right of possession thereof to revert and vest in him, and said owner may make immediate entry thereon and repossess himself of the premises without process of law."

At landlord's option:

Ohio Rev. Code Ann. §3767.10 -- "if a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of lewdness,

assignment, or prostitution, such use makes void the lease or other title under which he holds, at the option of the owner, and, without any act of the owner, causes the right of possession to revert and vest in such owner, who may without process of law make immediate entry upon the premises."

4. Automatic termination of lease, allowing the landlord to enter on to the leased property or to use the remedy provided in the state's summary proceeding statute:

Kansas Stat. Ann. §41-805(1) -- "if a tenant of any building or premises uses the same, or any part thereof, in maintaining a common nuisance . . . , or knowingly permits such use by another, such use shall render void the lease under which he or she holds, and shall cause the right of possession to revert to the owner or lessor, who may make immediate entry upon the premises, or may avail himself or herself of the remedy provided for the forcible detention thereof."

Maine Rev. Stat. Ann., tit. 17 §2743 -- "if any tenant or occupant, under any lawful title, of any building or tenement not owned by him uses it or any part thereof for any purpose [involving illegal sale or keeping of intoxicating liquor or narcotics, lewdness, or gambling], he forfeits his right thereto, and the owner thereof may make immediate entry, without process of law, or may avail himself of the remedy provided [i.e. forcible entry and detainer]."

Oklahoma Stat. Ann., tit. 21, §958 -- "whenever any lessee of any house or building shall be convicted of suffering any of the said prohibited gambling devices or games of chance to be carried on in said house or building, the lease or contract or letting such house or building shall become void and the lessor may enter upon the premises and shall recover possession of said leased property as in the case of forcible detainer."

5. Automatic termination of lease, granting the landlord the same remedy as the landlord would have against a holdover tenant:

Automatic termination for a tenant's illegal use:

Missouri Rev. Stat. §441.020 -- "whenever any lessee of any house or building shall suffer any prohibited gaming table, bank, or device to be set up or be kept or used therein, for the purpose of gaming, or keeping in the same a bawdyhouse, brothel, or common gaming house, the lease or agreement for letting such house or building shall become void, and the lessor may enter on the premises so let, and shall have the same remedies for the recovery thereof as in the case of a tenant holding over his term."

New Jersey Stat. Ann. §46.8-8 -- "if the lessee of any dwelling house or other premises situate in this state shall use the same for purposes of prostitution or assignation, the lease or agreement for letting the same shall enter thereupon become immediately void, and the landlord may enter thereon, and shall have the same remedies to recover possession as are given by law when a tenant holds over after the expiration of his lease."

Utah Code Ann. §32A-13-6(6) -- "if any tenant of any premises uses the same or any part thereof in maintaining a common nuisance . . . , or knowingly permits use by another, the lease is rendered void, and the right to possession reverts to the owner or lessor[,] who is entitled to the remedy provided by law for forcible detention of the premises."

Termination at landlord's option:

Oregon Rev. Stat. §91.240(3) -- "any person letting or renting any room, building, or place mentioned in [O.R.S. § 91.240(1)] which is at any time used by the lessee or occupant thereof, or any other person with the knowledge or consent of the lessee or occupant, for gambling purposes, upon discovery thereof, may avoid and terminate such lease or contract of occupancy, and recover immediate possession of such building or other place by an action at law for that purpose"

Rev. Code of Washington §4.24.080 -- "it shall be lawful for any person letting or renting any house, room, shop, or other building whatsoever . . . which shall, at any time, be used by the lessee or occupant thereof, or any other person, with his knowledge or consent, for gambling purposes, upon discovery thereof, to avoid or terminate such lease, and to recover immediate possession of the premises by an action at law for that purpose."

6. Automatic termination of lease, or termination of the lease at the landlord's option, but mandating that the landlord serve a notice to quit on the tenant:

Automatic termination of the lease:

California Code of Civil Procedure §1161(4) -- "any tenant . . . assigning or subletting or committing waste upon the demised premises, contrary to the conditions or covenants of his lease, or maintaining, committing, or permitting the maintenance or commission of a nuisance upon the demised premises . . . thereby terminates the lease, and the landlord, or his successor in estate, shall upon service of three days' notice to quit upon the person or persons in possession, be entitled to restitution of possession in such demised premises"

Senator Pat Pourchot
February 4, 1991
Page 5

Termination at landlord's option:

Nevada Rev. Stat. Ann. §40.2514 -- "a tenant of real property or a mobile home . . . is guilty of unlawful detainer when he:

....
(4) suffers[,] permis[.] or maintains on or about the premises any nuisance;

....
and remains in possession after service upon him of 3 days' notice to quit.

*

An amendment extending the authority of proposed AS 34.03.222 to tenancies other than tenancies in dwelling units covered by the Uniform Residential Landlord and Tenant Act is enclosed.

JBC:lmb
91-013.lmb

Enclosure

DIVISION OF LEGAL SERVICES

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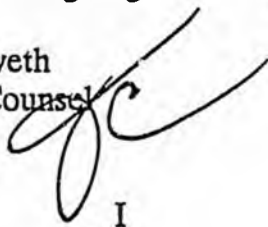
MEMORANDUM

December 28, 1990

SUBJECT: Landlord's remedies (Work order 7-0368A) -

TO: Representative ~~Ramona Barnes~~
ATTN: Mel Krogseng

FROM: Jack Chenoweth
Legislative Counsel



I

This is by way of response to your request for an overview of the operation of the state's forcible entry and detainer statutes as a remedy for landlords to regain possession of rental premises. Involving two sometimes inconsistent sets of statutes, this is a somewhat complicated area of law. We agreed that, before drafting any amendments or changes to the forcible entry and detainer statutes, I would prepare a summary of the current law governing the landlord's removal of tenants from rental premises. Your request was apparently prompted in part by a request to make available to landlords a more expedient eviction remedy.

FORCIBLE ENTRY AND DETAINER DEFINED:

"Forcible entry and detainer" is a civil remedy that governs the eviction or removal of tenants from rental premises. The applicable statutes are to be found in AS 09.45.060 - 09.45.160. As a general rule, the remedy most commonly applies in those instances in which a tenant has failed to pay rent when due under the rental agreement, AS 09.45.090(1), or when the landlord has given the tenant notice to quit and the tenant fails to do so, AS 09.45.090(2).

LIMITATIONS ON USE OF FORCIBLE ENTRY AND DETAINER ACTION:

The forcible entry and detainer remedy does not apply in a vacuum. Alongside the forcible entry and detainer remedy, the state's Uniform Residential Landlord and Tenant Act, AS 34.03, sets out rights and remedies applicable to both residential landlords and tenants. In McCall v. Fickes, 556 P.2d 535 (Alaska 1976), the court determined that the statutory provisions of the forcible entry and detainer remedy

might be used "where they do not conflict with the Uniform [Residential Landlord and Tenant] Act," thereby setting the Uniform Act as a limitation on the civil remedy. Taking the Uniform Act and the civil remedy together, then, forcible entry and detainer is typically available to assert and establish the landlord's right to possession under circumstances giving rise to the right of possession under either AS 09.45.060 - 09.45.160 or AS 34.03. The remedy is available in the event the tenant fails to pay rent when due--particularly when, under a month-to-month tenancy, the tenant fails to pay rent in full in advance--but continues to hold over in possession of the rented premises.

TERMINATION OF TENANCY THROUGH FORCIBLE ENTRY AND DETAINER:

The forcible entry and detainer statute sets out time periods that, after notice has been given to the tenant by the landlord, determine when the tenancy ends.

Each of the two principal instances in which the forcible entry and detainer remedy is available to evict the tenant requires written notice given at least 10 days prior to initiating the forcible entry and detainer action. The first involves unpaid rent: If a tenant has failed to pay rent when due under the rental agreement and eviction is sought under AS 09.45.090(1), the paragraph allows use of the action to recover possession only upon 10 days' demand made in writing for the possession. ^{1/} If, in different circumstances, the landlord gives the tenant notice to quit and the tenant fails to do so and eviction is sought under AS 09.45.090(2), then AS 09.45.100 and 09.45.110, setting out the requirements for a notice to quit, direct that the notice to quit be in writing and served at least 10 days before the action. ^{2/}

^{1/} Ten days' notice is also required by applicable provisions of the Uniform Residential Landlord and Tenant Act when rent remains unpaid when due:

If rent is unpaid when due and the tenant fails to pay rent within ten days after written notice by the landlord of nonpayment and the intention to terminate the rental agreement if the rent is not paid within that period of time, the tenancy terminates . . . , and the landlord may terminate the rental agreement and immediately recover possession of the rental unit;

AS 34.03.220(b) (Emphasis added.)

^{2/} Similarly, ten days' notice is also required in instances in which the landlord gives the tenant notice to quit under the Uniform Residential Landlord and Tenant Act. Under AS 34.03.290(c),

If [a] tenant remains in possession [of rented premises]

(continued...)

When compared to the same or substantially similar notice requirements for termination of tenancy found in the forcible entry and detainer, unlawful detainer, or similar remedial statutes in other jurisdictions, the ten day notice requirement of Alaska law provides the tenant with a comparatively long notice period. Of the other 12 western states, for example, the notice requirements applicable to use of the detainer remedy in the event of tenant's failure to pay rent when due have been set at either three ^{3/} or five ^{4/} days.

JUDICIAL PROCEEDINGS UNDER THE FORCIBLE ENTRY AND DETAINER STATUTE:

Having received sufficient notice of termination of the tenancy, if the tenant thereafter refuses to leave the rented premises within the time allowed, the landlord may begin the process of obtaining the tenant's eviction by filing an action and

^{2/}(...continued)

without the landlord's consent after the expiration of the term of the rental agreement or after its termination, the landlord may bring an action for possession

and under AS 34.03.270,

If [a] rental agreement is terminated, the landlord may have a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement.

In McCall v. Fickes, 556 P.2d 535 (Alaska 1976), the court concluded that the forcible entry and detainer remedy was available to a landlord as the "action for possession" identified in AS 34.03.290(c), thereby implying the application of the ten day notice period of the forcible entry and detainer statute for evictions of tenants in these circumstances.

^{3/} Three days' required notice by the landlord to the tenant is provided for under the laws of California (Cal. Code of Civ. Proc. § 1161(2) and (3)), Colorado (Colo. Rev. Stat. § 13-40-104(d)), Idaho (Idaho Code § 6-303(2)-(4)), Montana (Montana Code Ann. § 70-27-108(2)), New Mexico (N. Mex. Stat. Ann. § 47-8-33(A) and (B)(3 days' notice for failure to pay rent, but 7 days for other circumstances), Oregon (Ore. Rev. Stat. §§ 90.405(2) and 105.115(2)(a)), Utah (Utah Code Ann. § 78-36-3(1)(a)), Washington (Rev. Code Wash. ¶ 59.12.030(3)), and Wyoming (Wyo. Stat. §§ 1-21-1002(a)(1) and 1003).

^{4/} Five days' required notice by the landlord to the tenant is provided for under the laws of Arizona (Arizona Rev. Stat. § 12-1173(2)-(4)), Hawaii (Hawaii Rev. Stat. § 521-68(a)(5 business days' notice), and Nevada (Nev. Rev. Stat. § 40-253).