ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7113 HOUSE LABOR & COMMERCE

CALIFORNIA EVICTION LAW

AWFUL DETAINER PROCEDURES ...D TIME CHART

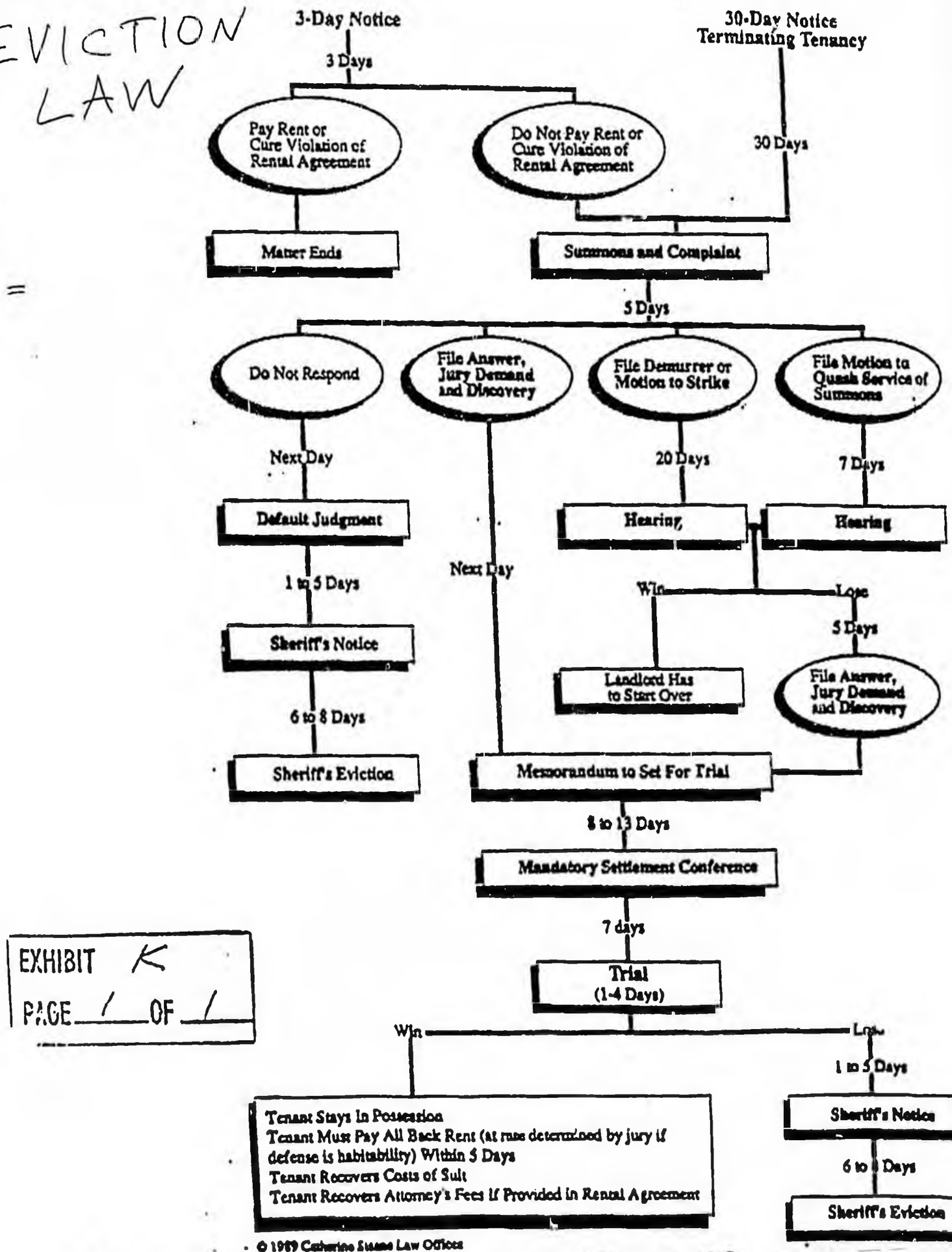

EXHIBIT K
PAGE 1 OF 1

FROM ALASKA LEGAL SERVICES CORP

5-21-91

PEOPLE PARTICULARLY INTERESTED IN SENATE BILL 35
(LANDLORD-TENANT BILL)

For the bill:

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268-6613 (pager)

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Alaska Landlord and Property
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Against the bill:

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Richard Illgen
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Anch. 99501
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5-20-91

PROPOSED HCS CS SB 35 (L&C)

1. 8 calendar days required for landlord's written notice to tenant of intent to evict for non-payment of rent if notice is delivered personally to the tenant--it is 10 calendar days in current law and five calendar days in the Senate bill (I also have a version drafted for 6 court days--this would always be at least 8 calendar days, and in some cases as long as 11 calendar days)--I also have an amendment drafted that requires that the notice specify the rent owed and the date by which the tenant must pay or get out

Adopted

2. If notice is not delivered personally of intent to evict for non-payment of rent, it must be both posted on the premises and sent by certified mail with return receipt requested--this is called "nail and mail" in California, and maximizes the chances the tenant will actually get the notice--current law and the Senate bill provide for registered or certified mail or posting on the premises as alternatives to the delivery of personal notice

Adopted

3. If notice is delivered by "nail and mail," an additional 3 days are allowed for mailing--both current law and the Senate bill provide for this additional 3 days for mailing

4. Gives the court the discretion to grant continuances of longer than 2 days to tenants in court on eviction cases (defendants in FED actions)--current law forbids the court from granting a continuance for longer than 2 days unless the tenant basically comes up with a bond for the disputed rent--this is very difficult for most tenants--this will require a court rule change (Civil Rule 85)--the Senate bill does not address this issue

5. Provides that the bill does not impair existing rental agreements--Senate bill does not address this issue

Adopted

6. Requires a conviction before a tenant can be evicted for illegal alcohol or drug activities--Senate bill just specifies a violation, and leaves it up to the courts to define whether a violation must be defined to require a conviction to be constitutional--proposed CS still requires that police notify landlords after an arrest, same as the Senate bill

7. Deletes Senate bill provision that reputation as a nuisance is admissible in court in abatement proceedings against a landlord, tenant, or building

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

5-20-91

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7-LS0160\V

CS FOR SENATE BILL NO. 35 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/13/91
Referred: Rules

Sponsor(s): SENATORS POURCHOT, Halford

A BILL

FOR AN ACT ENTITLED

"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."

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

* Section 1. AS 04.21 is amended by adding a new section to read:

Sec. 04.21.075. NOTICE TO LANDLORD FOLLOWING ARREST. (a) A peace officer who arrests a person for illegal activity involving alcoholic beverages on premises that the peace officer believes are occupied by a person who is not the owner of the premises shall

(1) make a reasonable attempt to discover the identity of the owner of the premises; and

(2) notify the owner of the person's arrest

(A) in person; or

(B) in writing, at the last address listed on the assessment roll maintained

by the municipality under AS 29.45.160 if the premises are located within a municipality that levies and collects a property tax; if an address is not available, notice of the person's arrest may be sent to the property owner at any other address known to the peace officer.

(b) In this section, "illegal activity involving alcoholic beverages" has the meaning given in AS 34.03.360.

* Sec. 2. AS 09.45.090 is amended to read:

Sec. 09.45.090. UNLAWFUL HOLDING BY FORCE. The following are cases of unlawful holding by force within the meaning of AS 09.45.060 - 09.45.160:

(1) when the tenant or person in possession of a premises

(A) fails or refuses to pay within five days the rent due on the lease or agreement under which the tenant or person holds, or fails to deliver up the possession of the premises within five [FOR 10] days after demand made in writing for the possession; for premises to which the provisions of AS 34.03 (Uniform Residential Landlord and Tenant Act) apply, notice provided under AS 34.03.220(b) by the person seeking to recover possession of the premises satisfies the notice requirements of this subparagraph; or

(B) violates AS 34.03.120(b) or AS 34.05.100(a) and, after a notice to quit as provided in AS 09.45.100, the tenant or person in possession of the premises fails or refuses to deliver up the possession of the premises within five days after demand made in writing for the possession;

(2) when, after a notice to quit as provided in AS 09.45.100 [AS 09.45.060 - 09.45.160], a person continues in the possession of the premises

(A) at the expiration of the time limited in the lease or agreement under which that person holds;

(B) [, OR] contrary to a condition or covenant in the lease or agreement, including the breach of a condition or covenant set out in AS 34.03.120(a) but not including a condition or covenant relating to nonpayment of rent, or the prohibition set out in AS 34.03.120(b) or AS 34.05.100(a); or

(C) without a written lease or agreement;

(3) when, after a notice to terminate the tenancy as provided in this title with reference to termination of estate at will or by sufferance or after receipt of an order of

abatement under AS 09.50.210(a), a person continues in possession of the premises after expiration of the time for determining the tenancy.

* Sec. 3. AS 09.45.100 is amended to read:

Sec. 09.45.100. REQUISITES OF NOTICE TO QUIT. A notice to quit shall be in writing and shall be served upon the tenant or person in possession by being

(1) delivered to the tenant or person; and read to the tenant or person

(2) [OR] left at the premises in case of absence from the premises; [,] or

(3) [THE NOTICE MAY BE] sent by registered or certified mail [, IN WHICH CASE AN ADDITIONAL THREE DAYS SHALL BE ADDED TO THE 10 DAYS]. by reg. or certified mail

* Sec. 4. AS 09.45.100 is amended by adding ~~a~~ new subsections to read: (a)(2) or

(b) If notice is provided by mail under (a)(3) of this section, an additional three days shall be added

(1) to the five days' notice if,

(A) under AS 09.45.090(1)(A), the tenant or person in possession of the premises fails or refuses to pay the rent due on the lease or agreement under which the tenant holds or deliver up the possession of the premises; or

(B) under AS 09.45.090(1)(B), the tenant or person in possession of the premises fails or refuses to deliver up the possession of the premises; or

(2) to the required number of days of notice if notice to quit is given for a reason other than that set out in AS 09.45.090(1).

* Sec. 5. AS 09.45 is amended by adding a new section to read:

Sec. 09.45.125. ORDER. If, after trial, the court finds and enters judgment against the tenant or person in possession, the court shall enter an order to vacate directed to the tenant or person in possession and, at the request of the person recovering possession of the premises, at the same time or at any later date may issue a writ of assistance to a peace officer to secure that officer's assistance in serving and enforcing the order to vacate.

* Sec. 6. AS 09.45 is amended by adding a new section to read:

Sec. 09.45.135. ACTION AGAINST TENANT OCCUPYING PREMISES ABATED AS NUISANCE. In an action under AS 09.45.060 - 09.45.160 against a tenant or person in possession of premises for which an order of abatement has been entered under AS 09.50.210(a), a certified copy of the order of abatement is prima facie evidence of unlawful holding of the

Add to Section 4 of the SB -

Sec. 4. AS 09.45.100

(c) A notice to quit shall contain the following:

(1) the date by which the tenant or person in possession must pay the rent, or perform the act or cure the breach specified in the notice, or to deliver possession to the landlord, ;

(2) in the case of a notice given pursuant to AS 09.45.090 (1)(A) the amount of the rent due on the lease or rental agreement;

(3) in the case of a notice given pursuant to a section of AS 09.45.090 other than subsection (1)(A), the reason for the notice.

SEN. POURCHOT'S STAFF ANALYSIS OF PROPOSED AMENDMENTS

Currently, the length of the notification period provided by the landlord under the LLT statutes is not subject to computation of time schemes. Although David's amendment does not address the Court rules directly, **the effect is to require notification time under LLT statutes to be computed on the basis of court days - i.e., does not allow counting of Saturdays, Sundays or holidays .**

As proposed by David's amendments, the **LLT** notification period would be EXTENDED as follows:

If notice is given on a Monday, Tuesday, or Wednesday:

Total days of **elapsed** time for: 5-day notice = **7 days;** 6-day notice = **8 days;** 7-day notice = **9 days.**

If notice is given on a Thursday:

Total days of **elapsed** time for: 5-day notice = **7 days;** 6-day notice = **8 days**; 7-day notice =**11 days.**

If notice is given on a **Friday**:

Total days of **elapsed** time for: 5-day notice = **7 days;** 6-day notice = **10 days**; 7-day notice = **11 days.**

THE COURT SYSTEM HAS REVIEWED THE AMENDMENT. THE EFFECT WILL BE TO DEFEAT THE PURPOSE OF THE EXPEDITED **FED** PROCEDURE...**AMENDMENT CAN ADD AS MANY AS 6 DAYS TO THE PROCESS.**

[COURT RULE 6 - COMPUTATION OF TIME: DAY OF COURT ORDER/ACTION IS NOT INCLUDED; LAST DAY IS INCLUDED. WHEN PERIOD OF TIME PRESCRIBED OR ALLOWED IS LESS THAN 7 DAYS, INTERMEDIATE SATURDAYS, SUNDAYS AND LEGAL HOLIDAYS SHALL BE EXCLUDED FROM THE COMPUTATION.]

NO 6-days. Amdt. ~~would~~ ~~state~~ if given on Friday, would have the same effect as current law - if given on Mon., Tues., or Weds. it cuts off 2 days (8 ~~actual~~ days instead of 10 actual

7-LS0160\V.1
Chenoweth
05/14/91

AMENDMENT

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.**"

AMENDMENT

OFFERED IN THE HOUSE

TO: CSSB 35 (JUDICIARY)

Page 2, line 10:

Delete "five"

Insert "six"

Page 2, line 12:

Delete "five"

Insert "six"

Page 2, line 19:

Delete "five"

Insert "six"

Page 3, line 13:

Delete "five"

Insert "six"

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:

Delete "**five**"

Insert "**six**"

Page 6, line 29, after "days":

Insert "**, as determined under AS 09.45.137,**"

7-LS0160\V.3 ✓
Chenoweth
05/16/91

AMENDMENT

OFFERED IN THE HOUSE

TO: CSSB 35 (JUDICIARY)

Page 7, following line 31:

Insert a new bill section to read:

"* Sec. 19. APPLICABILITY. To the extent required by the state or federal constitutions, this Act does not apply to leases or rental agreements entered into before the effective date of this Act."

AMENDMENT

OFFERED IN THE HOUSE

TO: Draft HCS CSSB 35(L&C) "E" version

Page 3, line 14:

Delete "a new subsection"

Insert "new subsections"

Page 3, following line 24:

Insert a new subsection to read:

"(c) A notice to quit must contain the following:

(1) for notice

(A) under AS 09.45.090(1)(A) for nonpayment of rent, a statement of the amount of rent due; or

(B) under a provision of AS 09.45.090 other than for nonpayment of rent under AS 09.45.090(1)(A), a description of the act or breach of obligation for which the notice is given; and

(2) the date by which the tenant or person in possession must pay the rent due, perform the act or cure the breach specified, or deliver possession of the premises to the landlord."

7-LS0160\H.1
Chenoweth
05/20/91

AMENDMENT

OFFERED IN THE HOUSE

TO: Draft HCS CSSB 35(L&C) "H" version

Page 3, line 14:

Delete "a new subsection"

Insert "new subsections"

Page 3, following line 24:

Insert a new subsection to read:

"(c) A notice to quit must contain the following:

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(2) the date by which the tenant or person in possession must pay the rent due, perform the act or cure the breach specified, or deliver possession of the premises to the landlord."

7-LS0160\K.1
Chenoweth
05/20/91

AMENDMENT

OFFERED IN THE HOUSE

TO: Draft HCS CSSB 35(L&C) "K" version

Page 3, line 14:

Delete "a new subsection"

Insert "new subsections"

Page 3, following line 24:

Insert a new subsection to read:

"(c) A notice to quit must contain the following:

(1) for notice

(A) under AS 09.45.090(1)(A) for nonpayment of rent, a statement of the amount of rent due; or

(B) under a provision of AS 09.45.090 other than for nonpayment of rent under AS 09.45.090(1)(A), a description of the act or breach of obligation for which the notice is given; and

(2) the date by which the tenant or person in possession must pay the rent due, perform the act or cure the breach specified, or deliver possession of the premises to the landlord."

BILL NO: (Proposed) CSSB 35(JUD) DATE: 3/08/91

TITLE: An Act Relating to Termination of Tenancies

CONTACT: Gayle A. Horetski
Deputy Commissioner
465-4322

DEPARTMENT OF PUBLIC SAFETY

The proposed Judiciary Committee substitute for SB 35 amends existing landlord-tenant laws to allow property owners to terminate rental agreements for residential property with renters who have committed certain alcohol and drug violations. The bill creates a duty on the part of police officers who arrest persons for certain alcohol, drug, and imitation drug offenses committed in residential rental property to make a reasonable effort to discover the identity of the property owner and to notify the owner, in person, or in writing at the last address listed on tax records and at any other address known to police. The notice requirement applies to alcohol violation arrests for sales from unlicensed premises and for possession or sale of alcohol where prohibited by local option; to drug violations involving the manufacture or distribution of all drugs except small amounts of marijuana; and to imitation drug violations involving the manufacture or distribution of imitation drugs, or possession of certain precursor chemicals used in the manufacture of imitation drugs.

Based upon past arrests for these offenses, it is estimated that the Department of Public Safety will have to notify approximately three hundred property owners per year. The proposed CS allows the peace officer to notify the property owner in person, and we anticipate that that will occur in many (perhaps most) cases. If a written notice is necessary, we estimate that research required to identify the property owner, determine the last address listed on tax roles and any other addresses known to police, and to prepare the written notice, will take approximately one hour per occurrence. The requirement in this bill to provide written notice to "any other address known to the peace officer" will result in the preparation and delivery of the written notice to multiple addresses on file with the police for the owner. As an example, APSIN can retain up to four different addresses for a person. This will result in the sending of multiple notices to property owners, a wasteful duplication of effort.

The Department of Public Safety supports this bill, but suggests that the proposed committee substitute be amended to provide that only if no tax records are maintained for the property should notice to other addresses known to the police be required. This could be accomplished by amending Section 1, at page 2, lines 2 and 3, to read ". . .that levies and collects a property tax, of the arrest. If no tax records are available, notice may be sent to the owner at any other address known to the peace officer." A similar amendment would also have to be made in Section 12, page 6, at lines 6 and 7.

Although the provisions of this bill will create additional work for peace officers, the Department of Public Safety recognizes the problems created for property owners who find that they have rented to alcohol or drug violators. Allowing property owners to evict arrested drug and alcohol violators would help neighborhoods take an active role in fighting the war on drug and alcohol abuse. This law gives property owners a tool to help clean up their rental properties.

Richard L. Burton
Commissioner

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

☑ *P.O. BOX B*
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May 13, 1991

POSITION PAPER

RE: Committee Substitute for Senate Bill 35 (Jud)

Sponsor: Senators Pourchot & Halford

Program effects of Bill

This bill would have no direct effect on the Department of Community and Regional Affairs.

Comments

As an investor providing loans to borrowers for housing needs in the rural areas of the state, the department becomes an owner and landlord only after a foreclosure sale when the state takes title to a property. Since the Department of Community and Regional Affairs has the lowest foreclosure rate of any investor, our landlord activity is relatively low.

Edgar Blatchford, Commissioner

21-P1LH

Alaska Court System
State of Alaska
OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

February 4, 1991

The Honorable Pat Pourchot
Co-Chairman, Senate Finance Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator Pourchot:

Your office has inquired about the effect of Senate Bill 35, relating to the use of rental property and drug violations, on the Alaska Court System.

This bill has no direct impact on the administration of the court system, and its fiscal impact is zero.

Please contact me if I can be of any further assistance.

Very truly yours,

C. S. Christensen III
Staff Counsel

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(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), relating to the landlord-tenant relationship - - sectional analysis (Work Order No. 7-LS0160/V)

TO: Senator Pat Pourchot
ATTN: Jeanne Larson

FROM: Jack Chenoweth
Legislative Counsel

Senate-passed CSSB 35 (Judiciary) has two principal purposes, both applicable to the landlord-tenant relationship:

> First, the measure substantially amends statutes applicable to the forcible entry and detainer remedy (AS 09.45.060 - 09.45.160) to expedite a landlord's ability to evict a tenant for failure to pay rent when due.
>
> Second, the measure amends the state's nuisance abatement statutes (AS 09.50.170 - 09.50.240) expanding that remedy to cover the identified criminal offenses involving alcohol or drugs, allowing persons to seek redress under the nuisance abatement law for criminal activity in premises that constitutes a nuisance. As a supplemental remedy, the measure amends statutes to give a landlord the opportunity to recover possession under the forcible entry and detainer remedy for that criminal activity by the tenant.
>
> Finally, there are several related changes, noted at the end of the memo.

As with earlier sectional analyses prepared for you, I propose to address the measure's provisions topically rather than sequentially.

EXPEDITED EVICTION OF TENANT FOR FAILURE TO PAY RENT WHEN DUE:

Proposed bill section 2 amends AS 09.45.090 in part as follows: The amendment to (1)(A) reduces from ten days to five days the period in which a landlord must wait after making written demands for possession of rented premises to commence forcible entry and detainer proceedings to secure a tenant's eviction in the event the tenant fails to pay rent when due. No notice separate from that required to be given under the Uniform Residential Landlord and Tenant Act (AS 34.03), as amended by bill section 15, is required.

Bill sections 3 and 4 make related changes. These section, read together, merely carry forward the current requirement of allowing three days additional notice if, under the forcible entry and detainer remedy, notice to the tenant to quit is provided by mail.

Bill section 5 adds authority by which, at the end of a forcible entry and detainer action, the court may enter an order to vacate against the tenant and, at the same time, provide a landlord who requests a writ of assistance to recover possession of the premises.

As has been previously noted, a related change is made in the Uniform Residential Landlord and Tenant Act (AS 34.03) by bill section 15. The change made to AS 34.03.220(b) conforms the number of days in which the tenant must pay rent after receiving written notice of rent nonpayment.

NUISANCE ABATEMENT:

Bill section 7 revises AS 09.50.170. It deletes in that section outdated references to "lewdness, assignation, . . . or any other immoral act"--currently part of the existing basis for nuisance abatement relief--retaining the reference in the current law to "prostitution" and adding, as you directed, an illegal activity involving alcoholic beverages, a controlled substance, or an imitation controlled substance as grounds for relief under the nuisance abatement statutes.

Bill section 8 defines the three additional criminal activities that may trigger nuisance abatement relief, cross-referencing them to the meanings of those terms set out in the Uniform Residential Landlord and Tenant Act.

Following the California statutory model recommended to me by your office, I have included bill section 9, a new section, AS 09.50.175, that would allow the court to consider evidence of reputation within a community if relief is sought under the expanded version of the nuisance abatement relief statute.

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.

JBC:lmb
91-185.lmb

DIVISION OF LEGAL SERVICES

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Mail Stop 3101

M E M O R A N D U M 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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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 any 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

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.4 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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Mail Stop 3101

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 revest 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,

assignation, 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:

<u>Automatic termination for a tenant's illegal use:</u>

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 . . . . "

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[,] permits[,] 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

PCA

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO

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☐ *OFFICE OF SPECIAL PROSECUTIONS AND APPEALS*
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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 C. Knuth
Margot C. Knuth
Assistant Attorney General

MOK:ma

03 C31 LH

DIVISION OF LEGAL SERVICES

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MEMORANDUM December 28, 1990

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

TO: Representative [redacted]es
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).

serving summons. Under AS 09.45.120, "[s]ummons . . . shall be served not less than two nor more than four days before the date of trial." The applicable court rule, Civil Rule 85, contains parallel provisions on time of service and, additionally, directs that "the date set for trial shall be not more than 15 days from the date of filing of the complaint unless otherwise ordered by the court." 5/

CONCLUSION:

My review suggests that, to provide a more expedient remedy, you may profitably consider reducing, from ten to, say, three or five days the period between the giving of written notice of termination of tenancy and the commencement of the forcible entry and detainer action. A reduction to a period of three to five days would bring Alaska law in this regard into line with the time allowed by other western states. Moreover, as with the Nevada statute cited, the period of the time reduction might vary from, for example, three days for notice of tenancy due to nonpayment of rent to five days for other circumstances.

I would not recommend a change in the minimal period between landlord's service

---

5/ Alaska's two-to-four day window period allowed for the landlord's service of summons on the tenant prior to trial compares favorably to like requirements of 11 other western states--Hawaii's service of summons requirement is set by court rule, not available in the Legal Services Division's library:

Arizona ("at least two days before the return date"), Ariz. Rev. Stat. § 12-1175(C);

California ("within five days, including Saturdays and Sundays but excluding all other judicial holidays"), Cal. Code of Civ. Proc. § 1167;

Colorado ("at least five days before the day for appearance"), Colo. Rev. Stat. § 13-40-112;

Idaho ("not less than five days before the day of trial appointed by the court"), Idaho Code § 6-311(5);

Montana ("at least four days before the return day designated [in the summons]"), Montana Code Ann. § 70-27-114(2);

Nevada (service requirements are generally set by court rule with a 20 day minimum, however, by law "[judicial officers] may shorten the time within which the defendant shall be required to appear and defend [an unlawful detainer] action"), Nev. Rev. Stat.§ 40.300(2);

New Mexico ("trial . . . shall be not less than seven nor more than ten days after the service of summons"), N. Mex. Stat. Ann. § 47-8-43;

Oregon (6 days minimum), Ore. Rev. Stat. § 105.135;

Utah ("[defendant's required appearance to be] not less than three or more than 20 days from date of service [of summons]"), Utah Code Ann. § 78-36-8;

Washington ("[trial to be] not less than six nor more than 12 days from date of service"), Rev. Code Wash. § 59.12.070;

Wyoming ("not less than three nor more than 12 days before the date of trial set by the [court]"), Wyo. Stat. § 1-21-1004.

of summons on the tenant and the date of trial on the complaint. Alaska's existing two-to-four day requirement is shorter than the similar time period provided in other jurisdictions.

II

When we spoke, you mentioned a "mediation" or "arbitration" option. Washington state law provides both. A copy of the applicable provisions are included. As you can see from the enclosed, use of mediation or arbitration is permissible, not mandatory, and arbitration is not available in "[a]ny situation where court action has been started by either landlord or tenant to enforce rights under [Rev. Code Wash. 58.18]," including "[a]ny unlawful detainer action." I also have to question whether mediation or arbitration would have any real applicability when the sole question is whether a tenant has timely paid rent in full when due. Still, if you want to explore this option, please advise.

Hope this helps.

JC:gc
90-104.glc

Enclosure

ALASKA STATE LEGISLATURE

SENATE FINANCE COMMITTEE.
CO-CHAIR

L&C

Senator Pat Pourchot

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JUNEAU, AK 99811
(907) 465-3712

MEMORANDUM

TO: All Senators DATE: April 18, 1991

FR: Senator Pat Pourchot Pat

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.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
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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

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

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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MEMORANDUM

TO: Representative Finkelstein, Chair,
Labor and Commerce Committee

FROM: Don Clocksin

DATE: May 15, 1991

SUBJECT: Senate Bill 35 -- Landlord/Tenant

Accompanying this FAX are (1) a memo to your committee members on this bill; (2) a copy of my April 4 memo to Senator Pourchot; and (3) a copy of a pamphlet written to assist landlords and tenants in understanding the Landlord-Tenant Law. Although this pamphlet is not current, it is an example of how we can educate landlords and tenants as to their rights and responsibilities.

Could you have your staff copy and distribute these to each committee member?

Thanks.

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To Rep. Finkelstein	From Don Clocksin
Co.	Co. Wagstaff Pope & Clocksin
Dept. Labor & Commerce Committee	Phone # 277-8611
Fax # 465-4964	Fax # 274-8040

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MEMORANDUM

TO: House Labor and Commerce Committee Members

FROM: Don Clocksin

DATE: May 15, 1991

SUBJECT: Senate Bill 35 -- Relating to Landlords and Tenants (HEARING TODAY)

Because two of my children are sick, I will be unable to testify at tonight's hearing on SB 35 -- the landlord/tenant bill. I want to testify, and hope I will have an opportunity at a later date.

Attached is a letter I sent to Senator Pourchot criticizing his bill. The criticisms are still valid. In addition, in case I cannot testify in person, here are a few comments.

1. Reduced Notice Is Impractical: The bill reduces from 10 to 5 days the notice a landlord must give to a tenant who is behind in rent. This notice can either be sent by certified mail (3 days added) or left at the premises. That notice period is too short. Tenants who need money from the State or BIA to pay rent often cannot get it in five days. The Anchorage Public Assistance office indicates it would be difficult to provide rent checks in time it

the notice is reduced to five days. Furthermore, tenants who are absent when the notice is posted on their door may be terminated with no actual notice. Tenants in rural areas may not even receive a certified letter within the eight days allowed (time is measured from mailing, not receipt). Finally, the proof of receipt for certified mail ("green card") often will not be returned by the post office to the sender until well past the deadline for holding a trial (2-4 days). I checked with the Eastchester Post Office (Fairview Neighborhood) and was told it could take five days or more for a sender to get the green card back.

2. Changing "Arrest" to "Violation" Is Not The Answer:

The original bill was criticized because it allowed tenants to be evicted based upon an arrest for a drug or alcohol-related offense. The Senate changed it to allow eviction upon a "violation". No one knows if that means eviction prior to a criminal conviction or afterwards. Jack Chenoweth admits as much in his May 13 memorandum. The Senate amendment avoids the question. If it feels this bill should be passed, this committee should amend it to delete "violation" and insert "conviction".

3. The Fiscal Impact Is Real: AS 44.23.020(b)(8) requires the Attorney General to prepare a pamphlet on revisions of the landlord-tenant law. Such a pamphlet will be necessary if this bill passes, particularly in light of the bill's complexity. To my knowledge, the Department of Law has not submitted a fiscal note.

This bill must go to the Finance Committee, not because to do

so is a clever strategy by its opponents, but because the law requires it.

4. Reputation And Nuisance: This bill allows a tenant to be evicted based solely on rumor in the community as to his/her character. See Section 9. Jack Chenoweth says this is okay because it's already authorized by a court rule (Evidence Rule 405). However, that rule does not allow reputation evidence to prove commission of an act -- this bill does. The law should not allow community opinions as to someone's character to be "proof" the person sold drugs or after-hours liquor.

5. There Are Other Alternatives: No one wants a crack house or after-hours bar in his/her neighborhood. And no one wants to deny landlords the tools to regain their property from deadbeats. But the tools currently exist, and this bill's denial of the rights of non-deadbeats is not necessary.

I am willing to work with you to look for better remedies to clean up our neighborhoods. We can also educate landlords and tenants as to their rights and obligations, and how to proceed when there are problems.

This bill is not the answer.

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April 4, 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 recently sent you a letter criticizing your Senate Bill 35. For your convenience, a copy is attached to this letter. Since then I have had the opportunity to review the Judiciary Committee Substitute and to speak with your staff about the bill. The substitute alters several provisions, but is still very objectionable. In fact, for reasons I will discuss, the substitute is even worse than the original bill. The ACLU has chosen to submit separate testimony, and this letter is submitted by me on my own behalf and on behalf of the thousand of tenants who live in downtown Anchorage.

1. The Bill Violates Constitutional Principles.

I believe there are some important principles imbedded in our constitution, even if they may not appear in any court interpretation of that document. Those include the right to adequate, actual notice before the courts take away an important right, like housing. They also include the right not to be treated differently than others based upon one's race, sex or economic status, and the right not to be punished for something without proof the "something" actually occurred.

This bill violates all three principles.

First, it reduces the notice required before eviction to almost meaninglessness. Under current law a tenant who does not pay rent when due must received a ten-day notice to pay rent or vacate. If the rent is not paid in that ten-day period, and the tenant does not leave, the tenancy is terminated and another ten-

day notice to quit must be provided without the option of paying. If the tenant still doesn't leave, the landlord may file a lawsuit, and can get a trial within two to four days after the tenant gets notice of the suit. A tenant being evicted for a problem other than non-payment of rent must receive a notice to cure the problem in ten days or vacate in 20 days. For a second offense, the tenancy can be terminated with ten day's notice, giving the tenant no choice to cure the violation. The ten day notice to quit and the lawsuit procedures are the same.

These procedures would be changed by reducing the notice from 20 days to five or eight days. (In fact, through a drafting error, one could argue that no notice is required before suing a tenant for eviction for non-payment of rent.) Since the bill eliminates the obligation to give notice by registered or certified mail, there is no assurance that tenants will get actual notice that their rent is unpaid and they have to leave. Even if they do get actual notice, five days is simply not a reasonable period of time to respond. Please remember that there are many circumstances where the rent has actually been paid, or where a reasonable notice will result in payment without further action. These changes largely foreclose amicable resolution of these types of rent disputes.

Second, this bill treats tenants as second class citizens. Home-owners who don't make their payments have much more liberal time periods than these. The fact that much greater numbers of minorities, women, and low-income citizens rent than own their homes means the effect of these changes falls disproportionately on those groups. As I said in my March 27th letter, when this legislation was enacted in 1974 it was a careful compromise between the needs of landlords to protect their investment and the needs of tenants to avoid being precipitously and unfairly thrown out of their homes. These changes clearly favor the property-owner.

Third, tenants will suffer from government publication of their arrest for alcohol or drug crimes before there has been any determination the crime has been committed. Tenants will also suffer because they - and their families - will be evicted for the conduct of others not under their control. Finally, tenants will suffer because they will be evicted before they have the opportunity to defend themselves on the criminal charges. I note that in his Position Paper, Commissioner Burton says CSSB 35 allows property owners to evict arrested drug and alcohol violators. I agree, your staff's protestions to the contrary notwithstanding. This bill will require tenants to defend themselves from allegations that they violated the alcohol or drug laws with only a few days' notice. Within two to four days after receiving notice of an eviction lawsuit, the tenant will have to be prepared to go

to trial on those charges. The summary eviction procedure was not intended to provide a forum for such complicated issues. The result will be that an order of eviction will quite likely be issued before the criminal charges are finally resolved.

2. The Bill Is Incomprehensible.

I spent eight years as a legislative lobbyist and six years as a legislator. My ability to read and digest a bill is better than most, particularly a bill relating to landlord-tenant law. (I helped write the original law in 1973-74). After several hours of trying I do not understand portions of this bill. Since the subject is not particularly complicated, there can only two explanations. Either the bill drafting has not been done competently or there is a deliberate effort to write a bill which is not understandable by the general public.

A normal citizen can't understand this bill, and no bill should ever be passed that a normal citizen can't understand.

3. The Nuisance Statute.

In a clever twist, the proponents of this legislation have found a way landlords can ignore the procedural requirements of AS 34.03. and AS 09.45.060-.160. All they need to do is sue to abate the tenant's dwelling as a nuisance based upon its use as a "crack house" or a bootlegging operation. That way no one needs to prove the illegal conduct by evidence beyond a reasonable doubt, as would be necessary if a criminal charge were filed. The bill does not require a criminal conviction before winning a nuisance action. The attractiveness of this new remedy is increased by the fact the landlord doesn't even have to show the tenant was at fault. The conduct of any person in the dwelling can be enough to declare it a nuisance.

The bill makes this remedy even easier by providing that, the landlord can get the dwelling declared a nuisance based solely upon "evidence of reputation within a community." He or she doesn't even have to prove the tenant did anything wrong - only that the tenant's neighbors think so. This embellishment overturns the rule that has been in effect in Alaska since 1928 - that the neighbors' perception as to whether a dwelling is a nuisance is not enough to make it a nuisance. U.S. v. Rex Hotels, 8 Alaska 21 (1928).

Finally, this new remedy is particularly attractive to landlords since it might put a tenant in jail for up to six months if the tenant tries to stay in his home after a nuisance abatement order is issued. See AS 09.50.200-.210.

I cannot adequately express the disgust I feel over anyone who would attempt to use this archaic and draconian remedy in the landlord-tenant relationship.

4. Rule Changes.

Section 09.45.125 grants the court the authority to simultaneously enter an order to vacate and issue an order to a peace officer to forcibly remove the tenant. I believe this affects a matter of court procedure.

Section 09.45.100 also appears to alter current court procedure. Therefore, this Section of the legislation requires a two-thirds vote. See Alaska Constitution, Article IV, Section 15.

5. Fiscal Impact.

I have reviewed several position papers and fiscal notes on both versions of SB35. All the fiscal notes are zero. The Public Safety analysis indicates about 300 hours of increased work per year, plus supplies, postage, etc. This analysis admits that the bill will cause a fiscal impact. The Court System fiscal note is faulty because it does not recognize the increased number of eviction cases filed (when the notice period is shortened, the number of informally resolved cases will go down) nor does it realize the effect of a revitalized nuisance statute.

But most importantly, the agency which will suffer the most obvious fiscal impact has not even submitted a fiscal note. AS 44.23.020(b)(8) requires the Department of Law to prepare a handbook describing the landlord-tenant law. The passage of this bill will necessitate a new version of that handbook, particularly in light of the complicated provisions. Since the preparation of that handbook inevitably will cost money, a Finance Committee referral is required.

6. The Bill Is Not Necessary.

It must be emphasized that this bill is not necessary. Alaska law provides powerful remedies for landlords - abbreviated notice requirements and a speedy eviction procedure combined with a cooperative judicial system. Do not let landlords tell you the law does not allow them to evict "bad" tenants. The tools are there for the landlords and lawyers who know how to use them.

7. Conclusion.

This bill should not pass. It is technically defective. It constitutes a move away from enlightened landlord-tenant law, which recognized that the rights of both parties deserve respect and

protection. It will increase homelessness, since it will summarily remove families from their homes, often for events which are not their fault. It violates important principles which are the foundations of our system of justice - due process, equal treatment, and punishment only on proof of misconduct. Finally, it will destroy a carefully crafted legislative compromise that has lasted for seventeen years, and open old wounds and cause new legislative wars.

Thank you for the opportunity to communicate with you on this bill.

Sincerely,

Don Clocksin

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cc: All members of the Senate

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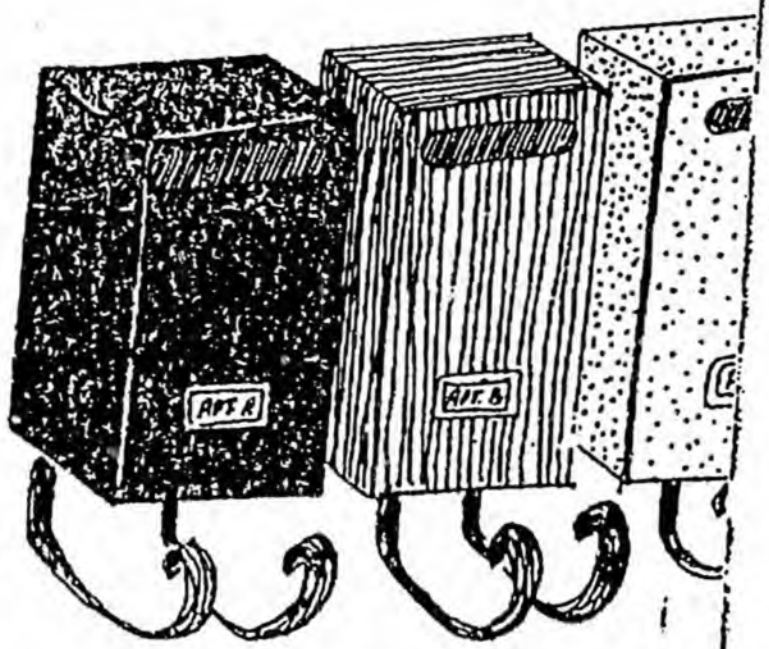
ALASKA LANDLORD-TENANT LAW



Acknowledgements

The following agencies have participated in the preparation of this booklet.

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Text and graphics — Stephanie Scowcroft
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Technical Assistance — Jim Smith, Jane Windsor

Consumer and Homemaking Section
Division of Vocational and Adult Education
Alaska Department of Education

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INTRODUCTION

On March 18, 1974, the Governor signed an important new law which affects landlords and tenants. If you are in public housing or rent a house, apartment, mobile home, or mobile home space for residential purposes, this law applies to *you!* Become familiar with your new rights and responsibilities. You will be better able to *avoid* or *solve* your landlord-tenant problems.

when?

You are covered by the new law from the day you next paid rent after March 19, 1974 (usually April 1) *and* if you rent monthly or weekly. If you signed a lease before March 19, 1974, in which you promise to stay for more than a month, you will not be covered by the new law until that lease expires or is renegotiated.

NOT COVERED

1. Residency in an institution (school dorm, jail, hospital, nursing home, etc.)
2. Hotels, motels and transient housing
3. Condominiums
4. Live-in employment
5. Agricultural tenancies
6. Occupancy under a contract of sale
7. Fraternal or Social organizations

Some terms are used rather loosely in this booklet. "Landlord," for instance, generally means the owner *or* his manager *or* rental agent. "Your place," "dwelling," "unit," "property," and "premises" generally refer to your rental, whether it is a house, apartment, mobile home, or mobile home space.

MOVING IN

change your mind?

Once you've agreed to rent a place, have given the landlord all or part of the deposit and rent money, then don't move in, you may not be able to have all your money returned. If this happens on a month to month agreement (written *or* oral) you may have to pay for one month's rent or rent on a day to day basis until someone else rents the place, whichever is less. IF you signed a lease, you may owe rent until the landlord re-rents the place or the lease period ends, whichever is less.

EXCEPTION: If the landlord lied to you about the place or deceived you by not telling you about important problems (for instance, no heat, the building is condemned, etc.) you should get all your money back. In addition, you could sue for fraud. If this situation comes up, see a lawyer.

illegal discrimination

It is illegal for landlords to refuse to rent to someone because of sex, race, religion, national origin or color. Local, state, and federal laws protect against this type of discrimination.

It is unlikely that a landlord will openly refuse to rent to someone because of sex, race, religion, national origin or color. There are some indications that a landlord is practicing discrimination in renting when:

- the apartment you called about is "suddenly" taken when the landlord sees you in person.
- a place you've been told was "rented" remains vacant.
- the rent or deposit is much higher than advertised or charged for similar units.
- rules will be different for you than others in the same apartment house or court (for example, others have pets, but you cannot. However, a landlord may decide to allow no more pets—but he must stick to the new rule as far as *all new* tenants are concerned).

Everyone should have a free choice about where they live, and there are ways of fighting discriminatory practices legally. If you feel you have been discriminated against, and want to do something about it,

In the *City of Anchorage* contact:
HUMAN RELATIONS COMMISSION
326 E. Third Street
phone: 272-2525, ext. 342

In the *Fairbanks* area contact:
STATE HUMAN RIGHTS COMMISSION
502 Barnette, Room 162
phone: 452-1561

for *anywhere in Alaska* contact:
STATE HUMAN RIGHTS COMMISSION
2457 Arctic Blvd. Anchorage
phone: 274-4692

Check your local listing in
Juneau and Ketchikan
for new office location and phone numbers.

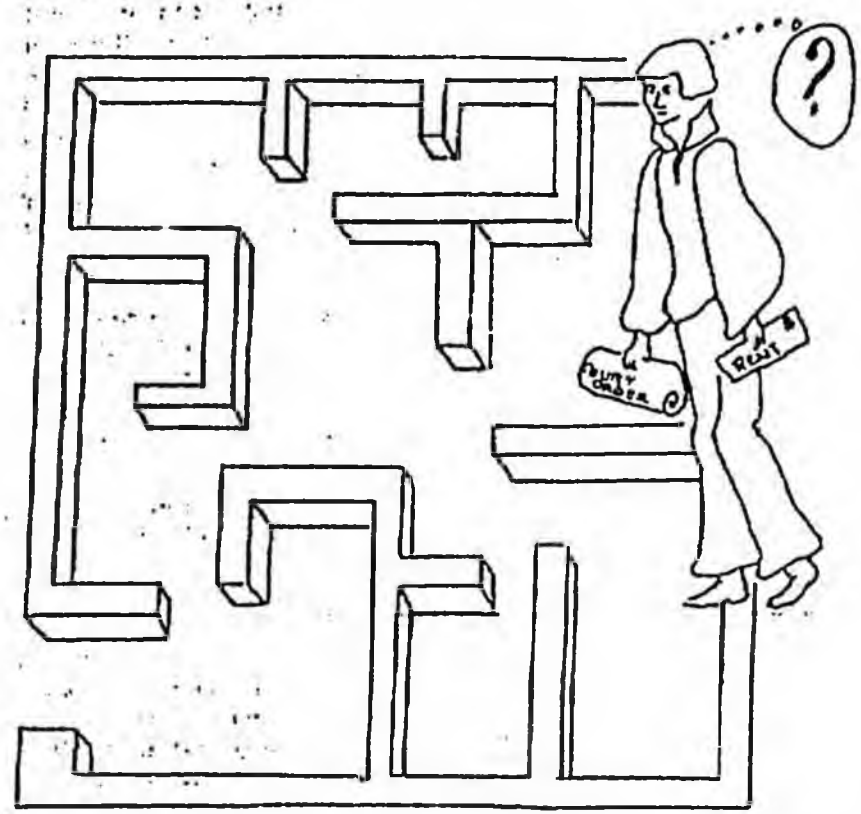
Another course you may wish to take is a lawsuit in State or Federal court. In this case you would probably want to find an attorney experienced in this area of the law. A good source of information is the American Civil Liberties Union (ACLU).

disclosure

The law says that someone must be responsible for such things as decisions about maintenance, repairs, collecting rent and receiving notices, from tenants or the court. It is now a requirement that when a tenant moves in, he/she must be told who the owner is (or who the owner wants his/her agent to be). This information must include a name and address, be in writing, and kept up-to-date.

If this information is *not* provided, whoever made the rental agreement with you or receives your rent becomes the legally responsible person. When you are required to give a written notice or want to sue:

1. contact the owner or his/her agent, or
2. if that information was never officially given to you, contact the person who made the original agreement or takes your rent.



WHILE RENTING

paying rent

When a tenant moves in, the time, place and method of rent collection is sometimes not mentioned. First, the landlord is *not* required to ask his/her tenants each month for their rent before they are "required" to pay it. A time and place should be agreed upon when you move in. (For example, at the apartment on the first of each month). If this matter was never discussed, then it is assumed by the new law that the rent will be collected at your dwelling. If you rent monthly, the rent is due every 30 days, unless otherwise agreed, so if you moved in on the 8th rent is due on the 8th of each month.

deposits, prepaid rent

When you move in, you will undoubtedly have to pay some kind of deposit, and often the last month's rent, as well as your first month's rent. Deposits are often collected for pets, cleaning, children or security. The new law requires that the total amount of money collected at the beginning of the tenancy for all deposits and the last month's rent cannot equal more than two times the monthly rental rate. This is in addition to the first month's rent. So, if you pay $200 a month rent, the maximum a landlord could require when you move in would be $600 ($200=first month's rent; $200=last month's rent; $200=security). The deposit and prepaid rent *must* be deposited in a trust account in a bank, savings and loan association, or licensed escrow agent. The only exception is where it is impractical to bank the money, as in areas without such facilities.

When the deposit is collected, it is a good idea to have the landlord write on your receipt what has to be done to get the deposit back. (*Always get and keep receipts* for any money you pay!) All or part of the deposit can be kept *only* if you cause damage, don't leave the place as clean as you found it, or owe rent. You cannot be charged for ordinary use of the dwelling. (See MOVING OUT.) A good way to make sure you and the landlord will remember what condition the place was in when you began living there is to make a list of what is broken, dirty or falling apart. Have the landlord sign a copy and keep a signed copy for your records.

When you move out, the landlord has *two weeks* to return your money to you. If he/she is keeping all or part of the deposit, a *written* statement telling you why he/she is not returning the deposit is REQUIRED! It is important to insist on receiving a written statement when the landlord keeps deposit money. If you feel it has been unfairly kept, you can sue for up to TWICE the amount wrongfully kept.

If you are renting some place and the building is sold, there is often confusion as to which person, the old or new landlord, is responsible for your deposit and prepaid rent money. The original landlord who accepted the money is the person responsible for returning the money to you — UNLESS the new owner receives the money from your old landlord and agrees to the responsibility of taking care of it.

rental agreements

Rent agreements may be written or oral. Leases are rental agreements which say you promise to stay a certain length of time (usually four, six or twelve months). If you have a lease, the landlord cannot raise the rent, or evict you unless you break promises in the lease. If you have a lease but must move, you are legally responsible for the rent for the rest of the term. (In order to be able to rent your apartment to someone else, see the requirements in the section called SUBLEASING.)

Rental agreements cannot:

1. force a tenant to waive any legal rights or remedies;
2. excuse the landlord from the responsibility for his/her negligence;
3. let the landlord sue the tenant without notice;
4. require the tenant to pay attorney fees; or
5. allow the landlord to take the tenant's personal belongings.

Some common things appearing in rental agreements that you can ask be removed before you sign are these:

1. agreeing to let the landlord come into your place whenever necessary (see section on PRIVACY!)
2. agreeing to immediate eviction for non-payment of rent (see section on EVICTION).
3. agreeing that you'll make all repairs (see sections on HANDYMAN AGREEMENTS and LANDLORD DUTIES).
4. excusing the landlord from all liability in case of accidents due to his/her neglect.
5. giving up your rights to the deposit (see section on DEPOSITS).
6. agreeing to pay the landlord's attorney fees.

Some things which *should* appear in your rental agreement are these:

1. name and address of the landlord (or his/her agent) and tenant.
2. what is included in the rent (heat, lights, water, phone, etc.) and what is provided (driveway, garage, parking space, snow removal, laundry facilities, portion of lawn, storage space, yard upkeep, etc. Also, a complete list of all furniture and its condition is very important).
3. total number of full-time occupants and pets allowed.
4. a list of equipment prohibited (such as snowmobiles, musical instruments, motorcycles, etc.)

5. the rental terms (the date the rental begins, whether it is a month-to-month agreement or term lease, when rent is considered overdue and a penalty or eviction will be considered, etc.)

6. the amount of deposit and what it is for (what do you have to do to get it back).

7. a list of the landlord and tenant repair and maintenance duties (see the section on their duties).

rules and regulations

Almost every landlord has rules and regulations. Often these are not mentioned until after a tenant moves in or until the rule has been broken. To avoid problems, the new law requires the landlord to show his/her rules and regulations to you before you commit yourself to a rental agreement (oral or written). You may discover that you do not agree with them and decide not to move in. The rules and regulations must be reasonable and specific. Ask the landlord to cross out those that are not because under the new law he will not be able to enforce them.

Remember that once you have seen the rules and move in, you are agreeing to live by those rules. A copy must be posted some place at the dwelling where it can be easily seen.

Rules must apply to all tenants equally and fairly. Rules and regulations cannot be changed without giving you reasonable notice first. New rules *cannot* be added *or* old rules changed if they change your original agreement a great deal. (Example, if you were allowed to have a pet when you moved in, a new rule *cannot* say that you *cannot* have a pet.)

subleasing

When you sign a lease, you are promising to stay for a certain length of time (usually four, six or twelve months). You are telling your landlord that each and every month, whether you still live in the apartment or not, you are responsible for paying the rent. Unless the landlord signs a paper saying it's okay with him for someone else to move in if you move out, you cannot just have someone "take over" your place.

There are usually only two ways you can get out of a lease.

1. If the landlord breaks his/her part of the bargain (what's written in the lease) you can terminate your tenancy (move).
2. Get the landlord to agree to let you sublease your place.

Under the new law the landlord has a right to ask for certain information about the tenants you want to move into your place. He/she can reject your choice *only* for certain reasons, and cannot unreasonably keep you from subleasing.

The information the landlord can ask for IN WRITING about the new tenant includes:

1. name, age, and present address,
2. occupation, present employment, and name and address of employer,
3. marital status,
4. how many people will live in the apartment,
5. two credit references, and
6. names and addresses of all landlords of this person for the last three years.

Once this information has been given to your landlord, he/she has 14 days to answer your request. No answer within 14 days is considered the same as consent, so go ahead and sublease. If the answer is "no," the landlord must give reasons for his decision. The only legal reasons he can give are:

1. bad credit record,
2. too many people,
3. too many children,
4. unwillingness of new tenant to accept rental agreement,
5. pets not acceptable,
6. proposed business activity, and
7. bad report from former landlord.

If the landlord says "no" to your suggested new tenant, but doesn't give reasons in the list of acceptable rejection reasons, the law says you can go ahead and sublease or legally break the lease (move).

privacy!

A common problem landlords and tenants have is that of the tenant's right to privacy. Many landlords feel they can come and go from their apartments whenever they please. Some tenants feel they *never* have to let a landlord come in. To clear up the confusion, the new law says a landlord must give you 24 hours notice that he/she plans to come for the purpose of making repairs, maintenance, an inspection or showing the place (at reasonable times).

TWO EXCEPTIONS: No such notice is required if it is not possible to contact you by ordinary means within 24 hours, or if there is an emergency (smoke, water, explosion, etc.).

Landlords *cannot* abuse their right to request entry, or harass you, and tenants *cannot* unreasonably keep a landlord from entering.

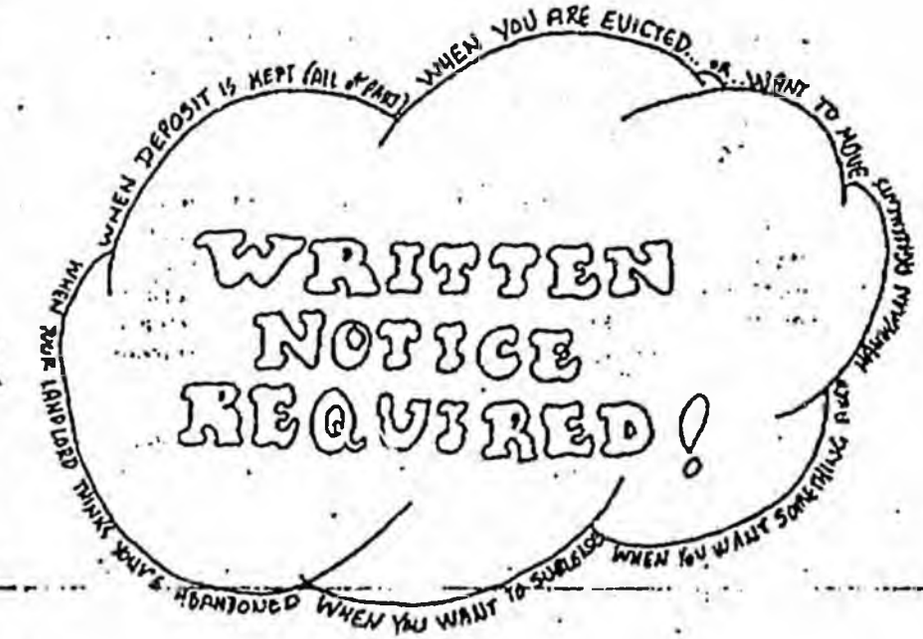
If you have a nosey landlord who believes he/she can come and go as he/she pleases, it might be a good idea to get a copy of the new law to show him/her the section called ACCESS (34.03.140). If your landlord comes in and will not leave, call the police.

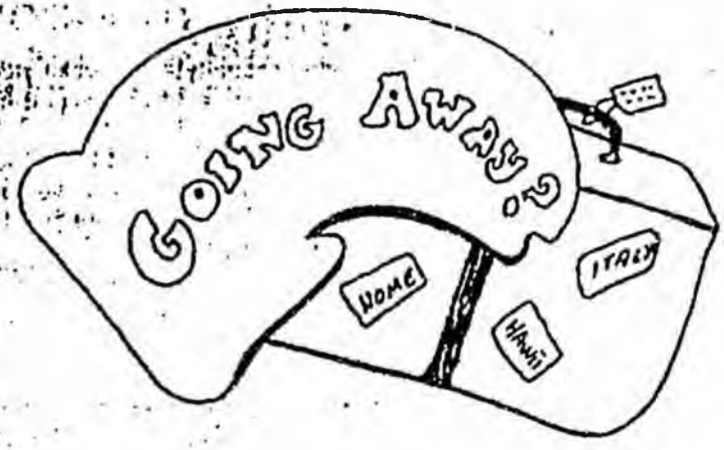
When a landlord *does* abuse his/her right to enter (by coming in without the tenant's permission, or when the tenant is gone, or repeatedly without need) the tenant can ask a court to demand that he/she *stop* (called an INJUNCTION). If the tenant unreasonably refuses to allow the landlord in, he/she can also get an injunction.

written notices

Most people are not used to giving written notices. Sometimes this is because a written notice doesn't seem necessary, you don't know what to say, or do not know a notice *in writing* is required. It cannot be emphasized strongly enough how important it is to get *all promises*, receipts for the payment of money, and notices IN WRITING! An *oral* agreement to change a *written* agreement is *not valid*! If a problem comes up later, you can't have better proof than something in writing. Also, many protections provided for you in the new law can ONLY be used when the proper written notice has been used.

Putting things in writing does not mean you and your landlord are enemies. It will *avoid* disagreements.





absence/abandonment

There is something completely new to the Alaska landlord-tenant law that you should know about. You must tell your landlord every time you go away for more than *seven* days. If you are not planning to be gone that long, then find that for whatever reason you will be gone more than a week, you must notify your landlord AS SOON AS POSSIBLE.

This part of the new law was written to protect the landlord's property during very cold weather when the pipes may freeze up. However, it applies year 'round. During your absence, your landlord can enter your place if he/she thinks there is an emergency (see section on PRIVACY!), or with 24 hours notice.

The landlord may assume you have *abandoned* the dwelling when:

1. You are behind in rent *and*,
2. You are gone for more than seven straight days *and*,
3. You did NOT give notice to your landlord that you would be gone.

The landlord may enter and store your belongings and re-rent the place. You will be liable for storage charges and up to one month's rent.

YOUR PROPERTY: If when you move you leave some of your property in the place you were renting, or the landlord believes you have abandoned the property (explained above under ABANDONMENT) he/she MUST attempt to send a notice to you that tells you to remove your property by a certain date (this must be at least 15 days after his notice is mailed or delivered). The notice to you must also tell you whether the landlord is going to have a public sale to get rid of the property or is going to throw or give it away. Your belongings cannot be thrown or given away unless they can be considered valueless (or are food).

fire/casualty damage

If the dwelling is damaged by a fire or other casualty (earthquake, flood, etc.), depending on the amount of damage, there are a couple of things you can do:

1. Partial Damage: When only a part of the dwelling is damaged and it is lawful for you to stay, (the place isn't condemned) move out of the damaged part. You can reduce your rent to an amount which shows the fair value of the undamaged part of the dwelling.

2. Total Destruction: If you can no longer live in the place, you can move out, notify your landlord, and stop paying rent. Your rental agreement and responsibility to pay rent ends when you move.

After you have moved, the landlord must return any deposits and/or prepaid rent to you. Rent you have coming back because you didn't live out the days you'd paid for that month (or week) must be returned (counted from the day of the casualty).

housing/fire codes

The primary objective of codes is the protection of the health and safety of the people who live in houses and apartments. A minimum standard of maintenance is set, making the landlord (*not* his tenants) responsible for keeping rental property in decent shape. (The section of this booklet called LANDLORD DUTIES explains what you can expect the landlord to repair and maintain.)

The new law protects tenants who use their right to report code violations. If you call to complain and ask for an inspection, your landlord cannot take revenge by evicting or harassing you. (see the section on RETALIATION).

Alaska has a statewide fire code but does not have a statewide housing code. The following places *do* have codes, though, and you can report substandard conditions.

Anchorage — City: Building Safety Section (274-2525, ext. 324)
Borough: EQC (274-4561)
(Environmental Quality Control)

Fairbanks — Fairbanks Building Official - 452-1881

Juneau — Juneau-Douglas Borough Housing Inspector (586-3300)

Ketchikan — City Building Inspector - 225-3111

Kodiak — City Building Inspector - 486-5731

condemned!

Buildings inspected and found to be *very* unsafe may be condemned. The housing inspector will tell your landlord that he/she *must* repair the problems or he/she will be taken to court. If the problems are so serious that the inspector feels the building is beyond repair, he will order that it be torn down. You may come home one day and find a sign posted on your building saying that the place is unsafe for anyone to live there. You should immediately find out when the inspector and landlord expect all the tenants to move. You should also see an attorney before paying any more rent.

retaliation

IF YOU:

1. complain to your landlord about his/her failure to repair or,
2. use the rights and remedies in the landlord-tenant laws of Alaska, or,
3. join a tenant union or organization or,
4. complain to a government agency about housing code violations or need for rent control,

THEN YOUR LANDLORD CANNOT:

1. raise your rent or,
2. decrease services (for example, stop providing utilities), or,
3. evict you.

If this revenge against you occurs, you can move out *or* stay *and*, in either case, sue for an amount not more than 1½ times your actual damages.

...and eviction

The landlord is not considered to be evicting the tenant out of revenge if he/she evicts because:

1. the tenant is behind in rent,
2. the landlord must make repairs to meet code requirements,
3. the tenant is using the place for illegal purposes,
4. the landlord wants to use the place for personal purposes,
5. the landlord is going to make *big* repairs or changes that require a vacant dwelling,
6. the landlord is going to use your place for something other than a residence for at least six months, or,
7. the landlord is selling the property.

...and rent increases

The rent can be increased, and not be considered revenge if:

1. the landlord's taxes have gone up a great deal, or,
2. the ordinary costs of maintaining the property have gone up a great deal in the past four months. (The costs of a repair made because of a tenant's complaint cannot be passed on to the tenant as a rent increase), or,

3. the landlord makes *improvements* to the property and passes the costs on to his/her tenants in an equal and fair way.

4. the landlord can prove that the rent he wants to charge is equal to what is charged for similar dwellings, and that he/she has been undercharging.

landlord duties

MAINTENANCE:

These are the things tenants can expect their landlords to do:

1. make all repairs to keep the dwelling in a liveable condition,

2. keep all common areas (stairs, halls, yard, garbage area, etc.) clean and safe.

3. keep in safe and working condition all electrical, plumbing, toilet ventilating (fans, windows), air conditioning; kitchen and other appliances or facilities supplied by him/her,

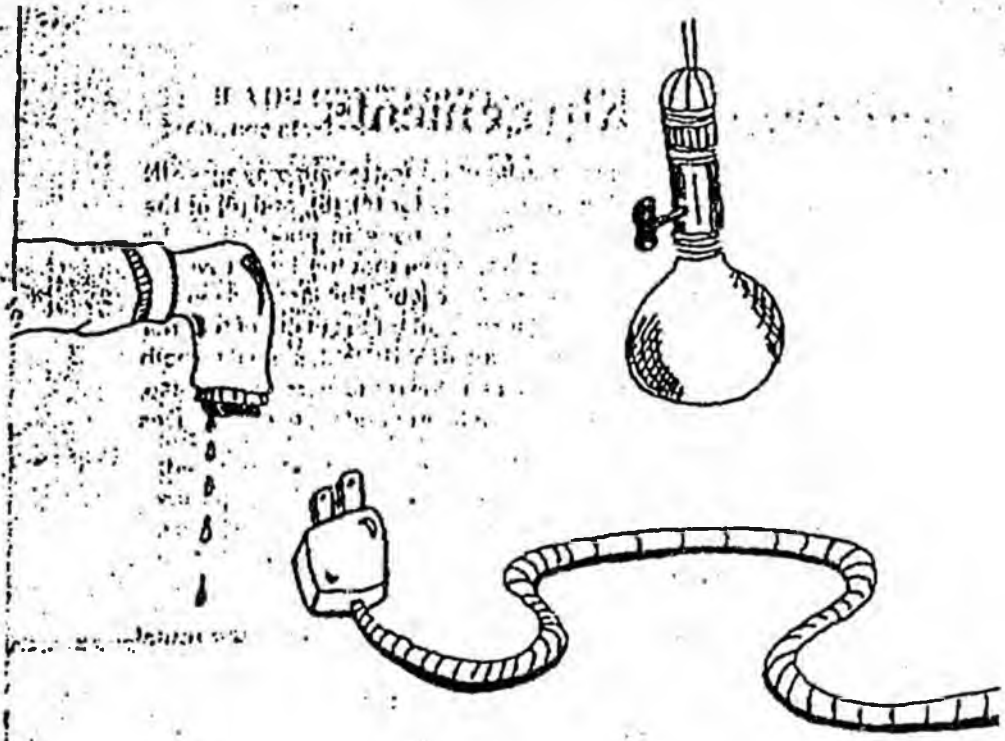
4. provide garbage cans and arrange for removal service,

5. supply running water and reasonable amounts of hot water and heat at all times, unless there is a severe energy shortage or the furnace or hot water heater is in the complete control of the tenant (as in a house).

6. *If* requested by the tenant, supply locks and keys. If the lock you have can be easily broken, it does not provide you with enough protection. You can demand that a *proper* lock be put on your door!

This is a check list of the main things your landlord should repair and maintain:

- doors, windows, roof, floors, walls, and ceilings that leak or have holes.
- plumbing fixtures (must work, not leak and provide a reasonable amount of running water, hot and cold water and at a reasonable water pressure level),
- a working and safe stove and oven,
- a reliable heating system which provides heat to all rooms in a reasonable amount,
- a safe electrical system (no loose or exposed wires, sockets that do not spark and enough power so the system does not blow fuses when used normally),
- windows (or fans) that provide fresh air when wanted,
- enough garbage cans to provide an adequate and safe trash removal service,
- extermination service if roaches, rats, mice or other pests infest the building, apartments or property,
- proper maintenance of vacuum cleaners, washing machines, dish washers, etc. supplied by the landlord (when not abused or broken by the tenant).



If you have a problem with something mentioned above and that problem results in a threat to your health or safety:

1. notify your landlord IN WRITING of what the problem is, and that he/she has 10 days to correct the situation or you will move in 20 days.

2. IF the landlord makes the repairs within 10 days you cannot move (unless you give a regular 30 day written notice).

3. IF you were the cause of the problem, you cannot use this solution.

4. IF the same problem comes up again within six months because the landlord did not do a good job of fixing it the first time, then you can give the landlord a 10-day written notice telling him/her what the problem is and that you are going to move out in 10 days.

EXCEPTION: If the place you are renting is in an isolated area where public sewer or water service has never existed or where running water, hot water, sewage or sanitary facilities were not provided by a private system (as by a septic tank) when you moved in, the landlord is *not* required to provide these services. Basically, if there are facilities, they must be maintained by the landlord.

handyman agreements

In the renting of a house or duplex, the landlord and tenant *may* agree IN WRITING that *the tenant* will be responsible for (4), (5), and (6) of the LANDLORD OBLIGATIONS. Also, if it is done in good faith, the landlord and tenant of any dwelling may agree that the tenant will do *specific* repairs, remodeling, or maintenance jobs. The landlord cannot force a tenant to agree to this kind of arrangement to get out of his/her obligations as a landlord. It must be made IN WRITING, signed by both parties and cannot be on the same paper as the rental agreement. Also, this agreement cannot be made if it will reduce or endanger the services to the other tenants.

tenant duties

These are the duties you must perform to keep your part of the rental bargain:

1. pay rent on time (see section PAYING RENT).
2. keep the place clean (take garbage out),
3. use the facilities (sinks, toilet, kitchen appliances, etc.) properly,
4. do not disturb the neighbors,
5. do what is required by the lease or rental agreement.
6. replace or fix anything you damage or break because of an accident or carelessness,
7. do not destroy, damage or deface any part of the property. You may be held responsible for the actions of others on the property with your permission.

This is what may happen if you do not complete your part of the bargain:

IF YOU DON'T PAY RENT: If rent is not paid when due, the landlord can evict you. He/she must give you a 10-day WRITTEN NOTICE saying that you will be evicted if you do not pay *within* 10 days. If you pay within 10 days, you can stay. If you try to pay *after* 10 days, the landlord does not have to accept the rent.

IF YOU DON'T KEEP THE PLACE CLEAN OR USE FACILITIES PROPERLY: If your failure to keep your place clean or use the facilities properly leads to problems which affect health and safety the landlord can give you a WRITTEN NOTICE to repair or remedy the situation within 10 days or leave in 20 days. The notice must be specific.

IF YOU DISTURB THE NEIGHBORS: If, for example, you have long, loud parties which disturb the neighbors' quiet enjoyment of their dwelling you may be evicted. When this happens, your landlord can give you a 20-day notice to correct the situation in 10 days or leave at the end of 20. This means that you are being strictly warned to keep the noise down or move.

IF YOU DON'T COMPLY WITH RENTAL AGREEMENT: If you break one of your lease or rental agreements you may face eviction. This does not apply to illegal parts of the agreement. (See RENTAL AGREEMENTS.) Disturbing your neighbors, discussed above, is an example. Other examples might include getting a pet where none is allowed, having extra people move in without notifying the landlord, making big changes to the place without asking the landlord, etc. The 20-day notice, with 10 days to comply, must be given.

IF YOU CAUSE DAMAGE: If you damage, break or destroy something by accident in the place you are renting, you will have to repair the damage. Your damage deposit can be kept by the landlord — but only the amount needed to make repairs. If you purposely destroy the property of your landlord, (for example, throw a rock through the window, write on the walls, smash furniture, etc.), you may be guilty of a misdemeanor and face not more than one year in prison or a fine of up to $500 or both. You may also be ordered to pay for the damage you caused.

MOVING OUT

The law requires WRITTEN NOTICES to cover the moving out process. This means that whether you are moving out for general reasons, using the remedies of the new law, *or* are being evicted, the only legal move is one discussed in writing.

YOUR NOTICE: When you are going to move, the law requires that you give your landlord a written notice telling him/her that you are going to leave. This must be delivered *30 days before your next rental due date*. Therefore, when you are planning a move, it is best to give notice when you pay your last rent and not after that time because you will be held responsible for the rent up to that 30 day period or until the place is re-rented, whichever is less. (Example: if you pay on the 8th of the month, on a month to month basis, and you decide on the 20th that you want to move, the soonest you can get out of the obligation will be 30 days *after* your *next rent due day*).

A 20-day notice IN WRITING is required when you are informing your landlord that an *important* part of the rental agreement has been broken by him/her and that you will move if the situation is not properly taken care of in 10 days. This kind of notice is required when the landlord is being requested to repair something that endangers your health and safety, also.

If your dwelling has been seriously damaged by fire or other casualty, and you have to move, you may leave without immediate written notice, but you must notify your landlord that you have moved as soon as you can.

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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

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

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

DC:[illegible]

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

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 defense's 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.

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,

Richard F. Illgen

Richard F. Illgen

RFI/ljm

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 <u>after</u> 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 statue 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 not 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.

AKCLU

Contact Persons: Jamie Bollenbach (276-2258), Paul Grant (586-2701)
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.

The are several positions 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 inconsisten 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 likelyhood 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 that the criminal justice system, and because notice is given to the landlord at the time of arrest, tenants will be evicted <u>before</u> 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.

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May 13, 1991

Rep. David Finkelstein
Alaska House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Rep. Finkelstein:

Enclosed please find a one-page statement entitled "Objections to SB 35", which I am sending in response to your office's request for the comments of Alaska Legal Services Corporation on proposed changes to the landlord-tenant act. Also enclosed please find a recent editorial from the Anchorage Daily News that addreses the current housing crisis in Anchorage.

Please contact me at the above number if you have questions about the enclosed, or desire further information.

Thank you very much for the opportunity to comment.

Very truly yours,

Barbara J. Hood

Barbara J. Hood
Staff Attorney

OBJECTIONS TO SB 35

THE REDUCED FIVE-DAY NOTICE PROVISION SHOULD FAIL:

1. **IT IS A LANDLORD'S BILL, WITH NOTHING FOR TENANTS.** The current 10-day notice provision has worked fairly and effectively for 17 years. There has been no change of circumstances that would warrant a cut-back of tenant protections. If changes to landlord-tenant law are to be made, they should take the interests of both landlords and tenants into account, which the current bill glaringly fails to do.

2. **IT WILL PREVENT MANY TENANTS FROM "CURING" NONPAYMENT.** The shortened notice will make it twice as difficult for tenants and their families to timely secure the funds needed to preserve their shelter. Governmental and private relief agencies cannot respond with assistance in the sharply curtailed time frame proposed. As a result, families will be displaced. Public policy should favor the prevention, not promotion, of displacement because of the serious toll (emotional, financial, educational, and otherwise) that it exacts on the families themselves and the agencies that try to assist them.

3. **IT WILL INCREASE HOMELESSNESS.** Communities throughout the state have experienced serious increases in homelessness within the past year. While private landlords are not responsible for solving this problem, the legislature must consider the social impact of its decision. Shorter notice periods *will* mean more evictions, and many tenants *will* have no place to go. The current 10-day notice places no great burden on landlords when viewed in light of this countervailing concern. The legislature must take a *comprehensive* approach to housing problems for *all* the residents of Alaska, not a piecemeal approach that benefits a few at great cost to many.

4. **IT IS UNNECESSARY.** It is currently quite simple for landlords to evict non-paying tenants. After a ten-day notice, a landlord can initiate summary procedures that permit a court eviction hearing to be held in 48 hours, and a 48-hour vacate order to be entered. These unique summary procedures allow landlords quicker resolution of their legal claims than is available to other litigants. Delays usually result when landlords either fail to meet their own obligations under landlord-tenant law or fail to timely avail themselves of existing remedies.

5. **IT IGNORES PROCEDURAL INEQUITIES THAT PLACE TENANTS AT SERIOUS DISADVANTAGE.** Current expedited eviction procedures are already woefully inadequate to protect the rights of tenants who raise defenses to eviction. Alaska has lagged behind other states in this area by failing to ensure that such tenants have adequate time to prepare their claims, obtain counsel, and conduct discovery, etc., before being forced to trial. The proposed changes make no effort to remedy this significant problem, and instead compound it.

6. **IT WILL HAVE A FISCAL IMPACT ON SOCIAL SERVICE AGENCIES, LEGAL SERVICES, AND THE COURT SYSTEM.** The shortened notice and resulting increase in evictions will likely result in an added fiscal burden to the Division of Public Assistance (DHSS), the emergency services offices of municipalities throughout the state, Alaska Legal Services, and the court system.

THE BOTTOM LINE: SB 35 IS SHORT-SIGHTED, ONE-SIDED, AND COUNTER TO SOUND PUBLIC POLICY OR FAIRNESS.

Submitted 5/13/91, by Barbara J. Hood, Alaska Legal Services Corporation

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May 13, 1991

Rep. David Finkelstein
Alaska House of Representatives
P.O. Box V
Juneau, Alaska 99811

RE: Requested Proposed Amendments to SB 35

Dear Rep. Finkelstein:

Enclosed please find three documents that we are sending in response to your office's request for comments on proposed changes to SB 35. These are entitled "Proposed Modifications to SB 35," "Proposed Amendments to Eviction Statutes (AS 09.45. *et seq.)*," and "Flow Chart, Proposed AS 09.45.120, .121."

In submitting the enclosed, we would like to emphasize that ALSC remains strongly opposed to the effort to shorten the ten-day notice period for non-payment of rent to five days. If the legislature is to choose this course, the changes discussed in the enclosed are essential to prevent the serious erosion of tenants' rights that will occur if current eviction procedures remain unchanged.

Please contact me if you have any questions or need further information.

Thank you once again for the opportunity to comment.

Very truly yours,

Barbara J. Hood

Barbara J. Hood
Staff Attorney

Enclosures

PROPOSED MODIFICATIONS TO SB 35

I. SUMMARY:

PERMIT SHORTENING OF THE NOTICE PERIOD FOR NON-PAYMENT OF RENT, BUT IMPLEMENT PROCEDURAL PROTECTIONS FOR TENANTS WHO RAISE VALID DEFENSES TO EVICTION.

II. PURPOSE:

(1) To ensure that tenants with defenses to eviction have an adequate and fair opportunity to prepare and present their claims, and that the shortened notice does not unduly jeopardize their rights.

(2) To ensure that landlords are able to timely evict tenants who have not paid rent and raise no defenses to eviction.

III. DISCUSSION:

The notice provisions of SB 35 make the apparent assumption that tenants who don't pay rent on time are "dead-beats" who should be kicked out as quickly as possible. While there are certainly irresponsible tenants to whom this characterization might apply, many tenants have defenses to eviction based on their landlord's own irresponsible conduct. The bill should be modified to recognize that tenants who raise defenses are entitled to a fair opportunity to present them. This can be done without jeopardizing a landlord's ability to summarily evict the vast majority of tenants who don't raise defenses.

TWO EXAMPLES OF TENANT DEFENSES (based on actual cases in Anchorage, 1990-91):

(A) LANDLORD'S BREACH OF WARRANTY OF HABITABILITY.

Tenant's sliding door in his one-room apartment is jammed open nearly 12 inches in the middle of winter, and his carpet is sopping and mildewed because of a leak in the bathroom plumbing. Tenant makes numerous requests for repairs over a three month period, but landlord fails to make repairs. Tenant's efforts to fix the problems himself are unsuccessful, and he and his 2-year-old child endure near-freezing temperatures in a damp and smelly apartment. Tenant gives written notice that he will not pay rent until repairs are made. Landlord immediately shuts off tenant's electricity and locks tenant out. Tenant obtains a temporary restraining order reinstating him to the apartment. Landlord counterclaims for eviction. Tenant's defenses include (1) breach of covenant of good faith and fair dealing, (2) breach of the warranty of habitability, and (3) unlawful lock-out and termination of utilities. Landlord denies that the shut-off was intentional and refutes the habitability problems.

(B) LANDLORD'S ABUSE OF ACCESS.

Tenants complain to landlord of a number of serious problems requiring repair. Landlord responds by ripping off the apartment's door, peering through the windows at all hours, and verbally harassing tenants on a number

of occasions. Tenants withhold rent, and landlord sues for eviction. Tenants' defenses include abuse of access and harassment, which entitle them to a minimum one-month offset against rent allegedly due. Landlord claims that the door was taken off because the unit was abandoned (despite the presence of all of tenants' belongings).

In both of the above examples, tenants raise defenses to eviction that are seriously jeopardized by current eviction procedures. Tenants must prove a course of conduct by their landlords without time to seek discovery, subpoena witnesses, obtain counsel, or otherwise adequately prepare their defenses. The result is a greatly heightened risk of wrongful eviction.

IV. PROPOSED PROCEDURAL ADDITIONS TO SB 35

Current summary eviction laws are decades-old and predate the Uniform Residential Landlord and Tenant Act. Their procedures are no longer fully appropriate for the modern landlord-tenant relationship, and should be amended to better address the procedural concerns spelled out above.

Towards this end, we propose that the language set forth in the attached "Proposed Amendments to Eviction Statutes (AS 09.45.*et seq.*)" be added to SB 35. A flow chart of these procedures is also attached.

SUBMITTED BY:

Barbara J. Hood
Staff Attorney
Alaska Legal Services Corporation

5/13/91

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 evicion 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