

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8395 SENATE LABOR & COMMERCE

How do I choose a marriage and family therapist?

You should telephone and interview potential marriage and family therapists to find out if they satisfy your needs. *Some questions to ask include:*

- ▲ Are they a Clinical Member of the American Association for Marriage and Family Therapy (AAMFT)? Therapists who meet the requirements for Clinical Membership in AAMFT meet the educational, supervision, and training standards of the Association. AAMFT's Clinical Membership requirements are similar to the training and experience requirements for professional regulation in states which regulate marriage and family therapists.
- ▲ What is their educational and training background? In most cases, the professional will answer this question in terms of their graduate education. The therapist may have a doctorate or a master's degree in marriage and family therapy or in an allied discipline such as psychology, medicine/psychiatry, clinical social work, psychiatric nursing, or the ministry. If the professional's degree is not in marriage and family therapy, you could ask about additional post-graduate training they have completed in marriage and family therapy.
- ▲ Do they have experience treating your kind of problem? For example, marital stress, intimacy, sexual problems, depression, child's behavior, alcohol or drug abuse?
- ▲ How much do they charge? Are fees negotiable?
- ▲ Are the therapist's services covered by health insurance?
- ▲ Where are marriage and family therapy sessions held and what are the office hours? Therapists often have several offices. In addition to regular business hours, some therapists have evening or weekend office hours.
- ▲ How long do sessions last? Lengths of sessions often vary. Frequently, they are 45 or 50 minutes in length, but they can sometimes be shorter or longer.
- ▲ How often are sessions scheduled? One session per week is common, while in some cases sessions are scheduled more or less frequently.
- ▲ What is the average length of marriage and family therapy? Length of marriage and family therapy depends upon various factors, including seriousness of the problem. Generally, marriage and family therapy tends to be short term. Marriage and family therapy tends to be briefer or shorter in length than many other types of therapy.

- ▲ If you or any family members are not proficient in English, ask the therapist if they are fluent in your native language.
- ▲ What is the appointment cancellation policy? Some therapists charge regular fees for missed appointments that are not cancelled early enough for them to reschedule other clients.
- ▲ Will the therapist be available by phone in times of crises? Many therapists are available for emergency phone calls or appointments. Some therapists arrange for other professionals to be available during times when they cannot be reached (for example, illness, vacations, or holidays).

What is AAMFT?

The American Association for Marriage and Family Therapy (AAMFT) is the professional organization representing more than 18,000 marriage and family therapists in the United States, Canada, and abroad. Since 1942, AAMFT has been involved with the problems, needs and changing patterns of marriage and family relationships. The Association leads the way to increasing understanding, research, and education in the field of marriage and family therapy, and to ensuring that public needs are met by trained practitioners. AAMFT believes that therapists with specific education and training in marriage and family therapy provide the most effective mental health care to individuals, couples, and families.



For more information, contact:

DIXIE A. HOOD M.A.

CLINICAL MEMBER
American Association for Marriage
and Family Therapy

222 SEWARD SUITE 210
JUNEAU, AK 99801
PH 907 586-2200

*A Consumer's
Guide to*

Marriage and Family Therapy



American Association for Marriage
and Family Therapy
1100 Seventeenth Street, NW
The Tenth Floor
Washington, DC 20036-4601
(202) 452-0109



October, 1991

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**American Association for
Marriage and Family Therapy**

MARRIAGE AND FAMILY THERAPISTS ARE...

...mental health professionals who apply family systems theories and intervention techniques in clinical practice. Marriage and family therapists diagnose and treat mental and emotional disorders and other health and behavioral problems as well as address a wide array of relationship issues within the context of the family system. Individuals, couples, and families benefit from the unique perspective and skills of marriage and family therapists whether the presenting concern is a specific problem or disorder, for example, substance abuse, eating disorders, stress and anxiety, depression, or other mental or emotional problems, or, if the concern is related to the marital or couple relationship, children, blended or step-families.

Recognizing a problem is the first step in finding a solution. All individuals, couples and families experience some difficult times, but it is not easy to know when problems require the assistance of a mental health professional such as a marriage and family therapist.

Issues that may be considered in marriage and family therapy

Marriage and family therapists consider many factors which have an impact on the problems being discussed in therapy. For example, they may explore the developmental stage of a family in assessing the context in which a problem appears. They may look at interactional patterns to discover how the problem has evolved or how it's being maintained in a family. Additionally, they may explore other life events, or crises, which may have great impact on issues you bring to therapy. Marriage and family therapists often focus on the present and the problem brought to therapy instead of dwelling on past experiences or events, except as a way to help understand the present.

Marriage and family therapists will work with individuals, couples, and families who are experiencing mental and emotional disorders, along with other health and behavioral problems.

How do I know I need help?

Signs of distress are not always obvious. Some distress signals to look for are:

- ▲ Persistent feelings of dissatisfaction.
- ▲ Problems with a child's behavior, school adjustment, or performance
- ▲ Sexual problems or concerns.
- ▲ Unexplainable fatigue or difficulty sleeping.
- ▲ Difficulties in talking with your fiancée, spouse, children, parents, other family members, friends, or co-workers.
- ▲ Feelings of loneliness, moodiness, depression, sadness, failure, stress, or anxiety.
- ▲ The need for tranquilizers, energizers, or sleeping aids.
- ▲ Family stress due to chronic illnesses OR illness in which stress plays a major role.
- ▲ Problems with alcohol or drugs.
- ▲ Frequent financial difficulties.
- ▲ Difficulty in setting or reaching goals.
- ▲ Drastic weight fluctuations or irregular eating patterns.
- ▲ Work difficulties, frequent job changes, problems with co-workers.
- ▲ Difficulties with anger, hostility, or violence.

Do I have to be married to go to a marriage and family therapist?

No. Individuals also often seek marriage and family therapy for help with behavioral problems, relationship issues, or mental and emotional disorders. Individuals may also enter marriage and family therapy to work on issues which may be preventing them from being in a relationship or to work on issues from a marriage or a relationship that has ended.

Couples need not be married to seek or benefit from marriage and family therapy.

Anyone who wants to improve their relationships can benefit. Premarital therapy is increasingly popular, as is postmarital therapy (of divorced couples who share children, extended family, friends, or property). Persons who are involved in other relationships, whether friendships, alternatives to marriage, a parent and child, siblings, or work relationships also seek therapy to solve problems or strengthen the relationship.



What if we're not "sick" or "crazy," but have ordinary problems like everybody else—problems we do not think are serious enough to need therapy?

The idea that only those with a mental illness can benefit from marriage and family therapy is a myth. Changes, stress, and problems can be expected in any relationship and therapy can help to prevent small problems from becoming serious. Marriage and family therapists are trained to ameliorate problems, strengthen relationships, and prevent problems from getting out of hand.

What if my spouse/whole family won't participate?

Not all family members must always take part in marriage and family therapy. Uninterested family members often get involved in the therapy later if there is at least one motivated person in the family. Not all marriage and family therapists require all family members to be present for all sessions.

How do marriage and family therapists work?

Generally, marriage and family therapists focus on the present. They work to understand the problem as it exists now, and focus on solutions or actions which might help to resolve the problem. They may typically ask questions about family roles, patterns, rules, goals, and stages of development. Marriage and family therapists generally view the problems or the issues brought to therapy in the context of the family.

What qualifications should I look for in a marriage and family therapist?

The American Association for Marriage and Family Therapy (AAMFT) has developed standards for the education and training of marriage and family therapists. The U.S. federal government, and many states, have utilized AAMFT's standards when drafting laws regarding marriage and family therapists. AAMFT Clinical Members have a minimum of a Masters degree including specific graduate training in marriage and family therapy, and also have completed at least two years of supervised clinical practice with couples and families. In addition, Clinical Members of AAMFT must meet applicable state licensure requirements.

AAMFT Clinical Members are trained in diagnosis, assessment, and treatment and are trained to use a variety of therapeutic techniques and processes. AAMFT Clinical Members observe a strict code of ethics and welcome inquiries about their training, experience, theoretical orientation, and fees.

How do I find a marriage and family therapist?

First get the names of several marriage and family therapists. Often people ask their family physician, clergy, or friends for recommendations. You can also look in your local Yellow Pages directory under "Marriage and Family Therapists." Under this heading look for the American Association for Marriage and Family Therapy listing. The listing may look like this.



AAMFT — American Association for Marriage and Family Therapy

The AAMFT is a National Organization Requiring High Academic Professional and Ethical Standards in the Field of Marriage and Family Therapy

(List of Local Clinical Members)

You can always contact AAMFT directly by calling 1-800-374-AMFT to obtain a list of Clinical Members who practice in the zip code area you specify. Or, send a self-addressed, stamped envelope with the zip code to:

American Association for Marriage and Family Therapy
REFERRALS
1100 Seventeenth Street, NW, The Tenth Floor
Washington, DC 20036-4601
(202) 452-0109

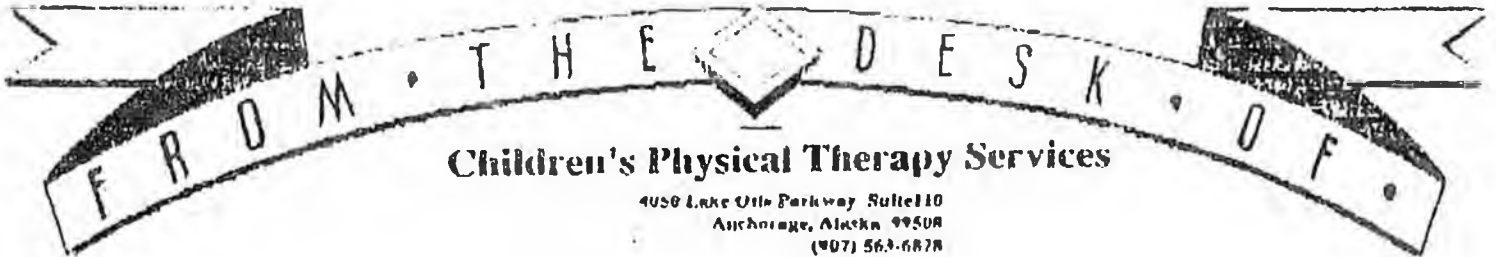


Mercy Dennis
is in Anchorage
to testify.

SB

195-

196



Children's Physical Therapy Services

4050 Lake Otis Parkway Suite 110
Anchorage, Alaska 99508
(907) 563-6878

Mary Pomeroy, L.P.T.
Licensed Physical Therapist

COVER SHEET

DATE: April 18, 1994

TO: Sen Kelly

COMPANY: _____

FROM: Mary Pomeroy P.T.

NUMBER OF PAGES (INCLUDING COVER SHEET): 4

COMMENTS: _____

Please vote NO for

SB 195.

[RE: S.B. 195]

TO: Senator Kelly

From: Mary Pomeroy, P.T.

Date: April 18, 1994

As a licensed Physical Therapist in this state, I have major concerns re: S.B. 195. Please read attached letter, which I have sent to Sen. Leman. I appreciate the amendment which has been inserted, however I am still asking that you give it serious consideration prior to the floor vote.

The revised language would allow a person who has not graduated from an approved Physical Therapy Assistant school, to be eligible for licensure, provided they could prove equivalent coursework.

With this revision, the Licensing Board would have to decide on matters of equivalency. This is extra work (time and money) & would open the State up to legal challenges.

RE: S.B. 195

Also, it is my understanding that this revision was created to meet the circumstances of one person in Anchorage. It is not my belief that this revision serves the best interest of the people of this state, in relation to Physical Therapy services.

Please feel free to contact me, if you have further questions; 337-7259 (H)
or 563-6878 (W).

I encourage you to vote No for SB 195. As your constituent, I'm counting on you.

Thank you for your time & concern,
Mary Pomarey

REGISTRATION FOR ARCHITECTS, ENGINEERS, AND LAND SURVEYORS,
BOARD OF
AS 08.48.011-.141

There is created the State Board of Registration for Architects, Engineers, and Land Surveyors in the Department of Commerce and Economic Development.

Purpose: The board is responsible for registering applicants, and has the power to revoke, suspend, or reissue certificates.

Originating Legislation: Chapter 179, SLA 1972

Status: Active. The board shall hold at least four meetings each year. Special meetings may be held as the bylaws of the board provide.

Travel and Per Diem: Standard as authorized under AS 39.20.180.

Compensation: None.

Board Membership: The board consists of nine members appointed by the governor and consists of the following members:

- (1) two civil engineers;
- (2) one land surveyor;
- (3) one mining engineer;
- (4) two engineers from other branches of the profession of engineering;
- (5) two architects; and
- (6) one public member.

Special Facts: Each member of the board must have been a resident in the State for three consecutive years immediately preceding appointment and, except for the public member, must be registered and have a minimum of five years of professional practice in the member's respective field.

Budget Information for FY 93⁶⁴: Dollar amounts are in thousands.

EXPENDITURES	REVENUES
\$454.9	\$335.5

Recommendation: No change is recommended.

⁶⁴ Expenditure and revenue amounts were obtained from the Division of Occupational Licensing cost allocation spreadsheets. The revenue source is general fund/program receipts.

STATE PHYSICAL AND OCCUPATIONAL THERAPY BOARD
AS 08.84.010-.200

The State Physical and Occupational Therapy Board is within the Department of Commerce and Economic Development.

Purpose: The board shall control all matters pertaining to the licensing of physical therapists, physical therapist assistants, occupational therapists, and occupational therapy assistants; and the practice of physical and occupational therapy.

Originating Legislation: Chapter 74, SLA 1957

Status: Active.

Travel and Per Diem: Standard as authorized under AS 39.20.180.

Compensation: None.

Board Membership: The board consists of seven members as follows:

- (1) one physician licensed to practice medicine in the State;
- (2) three physical therapists licensed in the State or two physical therapists and a physical therapy assistant licensed in the State;
- (3) two occupational therapists licensed in the State or an occupational therapist and occupational therapy assistant licensed in the State; and
- (4) one lay person with no direct financial interest in the health care industry.

Special Facts: Members of the board shall be United States citizens domiciled in the State.

Budget Information for FY 93⁶⁷: Dollar amounts are in thousands.

EXPENDITURES	REVENUES
\$43.3	\$28.4

Recommendation: No change is recommended.

⁶⁷ Revenue and expenditure amounts were obtained from the Division of Occupational Licensing's cost allocation spreadsheet. Funding is general funds/program receipts.

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 4/15/93

FURTHER:

24 hr. notice *per Uniform Rule 23(a)*
~~Date of 5-Bus. Notice:~~ 4/16/93
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 4/22/93

L&C Committee considered SB 195

"An Act extending the termination date of the State Physical Therapy and Occupational Therapy Board; and providing for an effective date."

and recommends:

replace with _____ CS _____ ()

same title
 new title
 technical title change (HB only)

attaches amendment(s)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
DCEO	4/15	<input checked="" type="checkbox"/>	

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS

Steve Pini

OTHER RECOMMENDATIONS:

Don Ray N.B.

Tim Kelly

Chair: Signature and Recommendation

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 4/15/93

FURTHER:

24 hr. notice per Uniform Rule 24(d)
Date of 5-Day Notice: 4/16/93
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 4/22/93

L&C Committee considered SB 196

"An Act extending the termination date of the State Board of Registration for Architects, Engineers, and Land Surveyors; and providing for an effective date."

and recommends:

replace with _____ CS _____ ()

- same title
- new title
- technical title change (HB only)

attaches amendment(s)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
DCED	4/15	<input checked="" type="checkbox"/>	

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

Alan A. Thi

OTHER RECOMMENDATIONS:

Rep. [Signature] N.R.
Joe E. Salo N. Kee

Tia Kelly
Chair: Signature and Recommendation

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 195

Revision Date: _____ Dept. Affected: Commerce & Economic Development
 Title: An Act extending the termination date BRU: Occupational Licensing
of the State Physical Therapy and O.T. Board;... Component: Operations
 Sponsor: Senator Leman
 Requestor: Senator Leman COMPONENT SERIAL NO. 1844

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	.0	.0	.0	.0	.0	.0
CAPITAL						
REVENUE FUND SOURCE:	.0	.0	.0	.0	.0	.0

FUNDING:

(Thousands of Dollars)

	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	.0	.0	.0	.0	.0	.0

POSITIONS:

	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY 93) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)
 The bill extends the termination date of the State Physical Therapy and Occupational Therapy Board to June 30, 1997. Funding for the board is included in the FY 94 operating budget; therefore, new funds are not required. A regulation project adjusting fees to cover program costs are under review in the Department of Law.
 Average Annual Costs: \$44.5
 Average Annual Revenue: 25.1

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144
 Division: Occupational Licensing Date: 4/15/93
 Approved by Commissioner: Paul Fuhs Date: 4/16/93
 Agency: Commerce & Economic Development

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STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 196

Revision Date: _____ Dept. Affected: Commerce & Economic Development
 Title: An Act extending the termination date BRU: Occupational Licensing
of the State Board of Registration for AELS;... Component: Operations
 Sponsor: Senator Leman
 Requestor: Senator Leman COMPONENT SERIAL NO. 1844

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	.0	.0	.0	.0	.0	.0
CAPITAL						
REVENUE FUND SOURCE:	.0	.0	.0	.0	.0	.0

FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	.0	.0	.0	.0	.0	.0

POSITIONS:

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

Estimate of current year (FY 93) Impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

The bill extends the termination date of the State Board of Registration for Architects, Engineers, and Land Surveyors to June 30, 1997. Funding for the board is included in the FY 94 operating budget; therefore, new funds are not required. A regulation project adjusting fees to cover program costs are under review in the Department of Law.

Average Annual Costs: \$470.9
 Average Annual Revenue: \$343.4

Prepared by: Jennifer Strickler, Administrative Officer
 Division: Occupational Licensing

Phone: 465-2144
 Date: 4/15/93

Approved by Commissioner: Paul Fuhs
 Agency: Commerce & Economic Development

Date: 4/15/93

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Official Business


Alaska State Legislature

SENATE STATE AFFAIRS COMMITTEE

State Capitol
Juneau, AK 99801-1182

MEMORANDUM

TO: Senator Tim Kelly, Chairman
Senate Labor and Commerce Committee

FROM: Senator Loren Leman, Chairman 
Senate State Affairs Committee

DATE: April 15, 1993

SUBJECT: Request for Hearing: SB195 and SB196

I respectfully request that SB 195, Extending the Board of Physical/Occupational Therapy, and SB 196, Extending the Board of Architects, Engineers, and Land Surveyors, be scheduled at the earliest convenience of the Chairman.

Thank you.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 195

Revision Date: _____ Dept. Affected: Commerce & Economic Development
 Title: An Act extending the termination date BRU: Occupational Licensing
of the State Physical Therapy and O.T. Board;... Component: Operations
 Sponsor: Senator Leman
 Requestor: Senator Leman COMPONENT SERIAL NO. 1844

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	.0	.0	.0	.0	.0	.0
CAPITAL						
REVENUE FUND SOURCE:	.0	.0	.0	.0	.0	.0

FUNDING:

(Thousands of Dollars)

FUNDING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
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1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	.0	.0	.0	.0	.0	.0

POSITIONS:

POSITIONS	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY 93) Impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

The bill extends the termination date of the State Physical Therapy and Occupational Therapy Board to June 30, 1997. Funding for the board is included in the FY 94 operating budget; therefore, new funds are not required. A regulation project adjusting fees to cover program costs are under review in the Department of Law.
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EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	.0	.0	.0	.0	.0	.0

CAPITAL						
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REVENUE FUND SOURCE:	.0	.0	.0	.0	.0	.0
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1002 Federal Receipts						
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ANALYSIS: (Attach a separate page if necessary)

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Status: Active.

Travel and Per Diem: Standard as authorized under AS 39.20.180.

Compensation: None.

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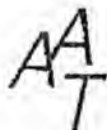
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SB

206



Alaska Action Trust

P.O. Box 102323 • Anchorage, Alaska 99510
Office: 540 "L" Street, Suite 206 • Anchorage, AK 99501
(907) 258-4040 • FAX (907) 276-7185

FAX TRANSMITTAL

TO: Senate Labor & Commerce Committee
Senator Kelly, Chair
Senator Rieger, Vice-Chair
Senator Sharp
Senator Lincoln
Senator Salo

FROM: Alaska Action Trust/Debra Gravo, Executive Director

DATE: January 17, 1994

RE: SB 206, Residential Real Property Transfers

What follows is Mr. Green's written testimony re: SE 206, being heard tomorrow afternoon 1:30 p.m. in Senate Labor and Commerce.

Thank you.



GREEN LAW OFFICES, P.C.

F A X T R A N S M I T T A L

TO: Senate Labor & Commerce
Hearings on SB206

FROM: Harold Green,
Green Law Offices, P.C.

DATE: January 17, 1994

RE: Written Testimony on
Hearing on SB206

Dear Committee Members:

I am submitting this written testimony on SB206 which, as I understand it, will remove civil liability for "innocent" misrepresentation by a licensed real estate professional in Alaska, and thereby reverse *Bevins v. Ballard*, 655 P.2d 757 (Alaska 1982).

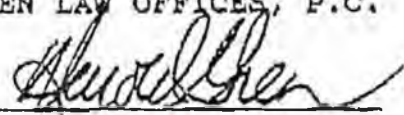
Whether or not to pass SB206 involves real public policy judgment on the part of this legislature. Let us assume that SB206 were to become law. How will the public be notified that they can no longer rely upon certain representations made by a licensed real estate professional?

Must each real estate transaction contain conspicuous language such as WARNING: YOU SHOULD NOT RELY UPON STATEMENTS MADE BY YOUR LICENSED REAL ESTATE PROFESSIONALS IN ALASKA; or should the real estate professional be required to start each conversation with a new prospective client with such a notice. How will the public be notified that they can no longer rely upon statements made by a licensed real estate professional? How will the public know which statements from a licensed real estate professional can be relied upon, and which statements from a licensed real estate professional cannot be relied upon?

Wouldn't it be cruel to pass SB206 without concurrently passing express notice requirements that clearly tell the public they should no longer rely upon statements of licensed real estate professionals in Alaska.

Perhaps SB206 will erode public confidence in our licensed real estate professionals. Does SB206 truly benefit the real estate profession? Does SB206 benefit the citizens of Alaska?

GREEN LAW OFFICES, P.C.

By: 
Harold Green, Esq.

Alaska State Legislature

Senator Tim Kelly, Chair
Senator Steve Rieger, Vice Chair
Senator Bert Sharp
Senator Judy Salo
Senator Georgianna Lincoln



STATE CAPITOL SUITE 101
JUNEAU, ALASKA 99801-1182
PHONE: (907) 465-3822
FAX: (907) 465-3756

SENATE LABOR AND COMMERCE COMMITTEE

716 W. 4TH. SUITE 400
ANCHORAGE, AK 99501-2133
PHONE (907) 258-8180
FAX: (907) 258-4524

MEMORANDUM

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee

FROM: Senator Tim Kelly, Chair
Senate Labor & Commerce Committee *TDK*

DATE: February 9, 1994

RE: SB 206 - Innocent Misrepresentation by Real Estate Professionals

I am respectfully requesting that you schedule CS SB 206 (L&C) for a hearing before the Senate Judiciary Committee at the Committee's earliest convenience.

For your easy reference, I've attached my sponsor statement, a bill analysis prepared by the REALTORS Association, a copy of the Alaska Supreme Court's decision in Bevins v. Ballard, and a case summary. In addition, I've attached 19 letters supporting SB 206 and resolutions from the Anchorage, Fairbanks, Kachemak, Kenai Peninsula, Kodiak, Southeast, and Valley Boards of REALTORS.

Your timely consideration is appreciated. Thank you.



GREEN LAW OFFICES, P.C.

F A X T R A N S M I T T A L

TO: Senate Labor & Commerce
Hearings on SB206

FROM: Harold Green,
Green Law Offices, P.C.

DATE: January 17, 1994

RE: Written Testimony on
Hearing on SB206

Dear Committee Members:

I am submitting this written testimony on SB206 which, as I understand it, will remove civil liability for "innocent" misrepresentation by a licensed real estate professional in Alaska, and thereby reverse *Sevins v. Ballard*, 655 P.2d 757 (Alaska 1982).

Whether or not to pass SB206 involves real public policy judgment on the part of this legislature. Let us assume that SB206 were to become law. How will the public be notified that they can no longer rely upon certain representations made by a licensed real estate professional?

Must each real estate transaction contain conspicuous language such as WARNING: YOU SHOULD NOT RELY UPON STATEMENTS MADE BY YOUR LICENSED REAL ESTATE PROFESSIONALS IN ALASKA; or should the real estate professional be required to start each conversation with a new prospective client with such a notice. How will the public be notified that they can no longer rely upon statements made by a licensed real estate professional? How will the public know which statements from a licensed real estate professional can be relied upon, and which statements from a licensed real estate professional cannot be relied upon?

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Perhaps SB206 will erode public confidence in our licensed real estate professionals. Does SB206 truly benefit the real estate profession? Does SB206 benefit the citizens of Alaska?

GREEN LAW OFFICES, P.C.

By: 

Harold Green, Esq.

12





REALTOR

ALASKA ASSOCIATION OF REALTORS, INC.
741 Sesame Street, Suite 100 • Anchorage, Alaska 99503
Telephone 907-563-7133

DATE. 7-22-93

Re: SB 206

TO: Senator Tim Kelly

Original to follow
by mail.

FAX # 258-4524

FROM: Dea Turner
Alaska Assn. of REALTORS

Number of pages including cover sheet: 3

If there are problems with this FAX, please call (907) 563-7133.

*The Voice for Real Estate*TM in Alaska

REALTOR[®] is a registered mark which identifies a professional in real estate who subscribes to a strict Code of Ethics as a member of the NATIONAL ASSOCIATION OF REALTORS[®]





REALTOR®

ALASKA ASSOCIATION OF REALTORS, INC.†

741 Seaweed Street, Suite 100 • Anchorage, Alaska 99503

Telephone 907-563-7133

DATE: July 22, 1993
TO: Board Presidents
Executive Officers
FROM: Dea Turner, Executive Vice President
SUBJECT: SB 206 - "Innocent Misrepresentation"

Attached is a resolution drafted by the Greater Fairbanks Board of REALTORS® supporting passage of SB 206, which was introduced during the last legislative session. Please present to your Board of Directors—AAR requests each Board to consider adopting same or similar resolution. An original, signed resolution adopted by your Board should be delivered to AAR on or before Friday, August 6.

The initial teleconference for public testimony on SB 206 is scheduled for Tuesday, August 10, at 1:00 p.m. Please contact your local Legislative Information Office to verify that your LIO will be "on-line" for the teleconference.

If you have questions, please call me at 563-7133, or Frank Michel, Legislative Committee Chairman, at 376-3842.

Attachment

cc: Senator Tim Kelly, Chairman, Senate Labor & Commerce Committee
Rick Hunter, AAR President
Frank Michel, Chairman, AAR Legislative Committee
Greg Erkins, Vice Chairman, AAR Legislative Committee



JUL 22 10 13:33 AM REALTOR BOARD OF REALTORS
DRAFT

DRAFT

A RESOLUTION SUPPORTING SENATE BILL 206, INNOCENT MISREPRESENTATIONS BY AGENTS IN REAL PROPERTY TRANSACTIONS

WHEREAS, Senate Bill 206 was introduced in the Eighteenth Session of the Alaska State Legislature at the request of the Alaska Association of REALTORS®, and

WHEREAS, this legislation would remove liability for "Innocent Misrepresentations" by agents in a real estate transaction, and

WHEREAS, Alaska and two other states are the only jurisdictions in which real estate professionals are made liable for "Innocent Misrepresentations," and

WHEREAS, Alaska statutes are silent on "Innocent Misrepresentations" there has been cause for numerous lawsuits, causing errors and omissions underwriters to either withdraw from issuing policies in Alaska or causing insurance companies to increase their premium rates to real estate professionals, and

WHEREAS, errors and omissions insurance premiums are so expensive real estate agents may determine the insurance to be cost prohibitive to carry, and

WHEREAS, the absence of such protection is not in the public's best interest because the Alaska Surety Fund does not cover innocent misrepresentation claims, and

WHEREAS, the Alaska Association of REALTORS® wholeheartedly supported the passage of legislation during the Seventeenth Legislature addressing Real Property Transfer Disclosure (AS 34.70) which further increases a real estate agent's liability exposure, and

WHEREAS, the state community's position is that an agent or broker for the transferor or transferee should not be liable for "Innocent Misrepresentations" in information provided to the transferee in the transfer of an interest in real property if the agent does not have personal knowledge of the error, inaccuracy, or omission that is the basis for the misrepresentations,

NOW, THEREFORE, BE IT RESOLVED that the Greater Fairbanks Board of REALTORS® strongly urges the Alaska State Legislature to pass Senate Bill 206.

Adopted this xxxx day of July, 1993.

BY: GREATER FAIRBANKS BOARD OF REALTORS®

Scott Grundy, President

Susan L. McDonald, Executive Officer

Alaska State Legislature

Senator Tim Kelly, Chair
Senator Steve Rieger, Vice Chair
Senator Bert Sharp
Senator Judy Salo
Senator Georgianna Lincoln



STATE CAPITOL, SUITE 101
JUNEAU, ALASKA 99801-1182
PHONE: (907) 465-3822
FAX: (907) 465-3756

SENATE LABOR AND COMMERCE COMMITTEE

716 W. 4TH, SUITE 400
ANCHORAGE, AK 99501-2133
PHONE: (907) 258-8180
FAX: (907) 258-4524

Background and Analysis of Proposed "Innocent Misrepresentation" Legislation Senate Bill 206

In 1982, on an appeal to the Supreme Court of Alaska, Bevins v. Ballard, 655 2nd 757, the court upheld a lower court decision that a (real estate) broker/or agent was liable for "innocent misrepresentations" made to a buyer. In other words, under Alaska law a real estate broker/agent may be liable for fraudulent, negligent and even innocent misrepresentation. The broker/agent is liable for damages resulting from representations concerning property, even though he had no knowledge that his statement was incorrect. Simply reporting a statement from an owner may result in liability. Only two other jurisdictions in the U.S. have similar liability statutes.

The Real Estate Surety Fund, a fund created to allow injured parties in a real estate transaction the ability to file a claim (up to \$10,000) and funded by all licensees, does not cover "innocent misrepresentation" claims. Errors and omissions insurance carriers have become increasingly wary of writing policies in Alaska due to this liability. The majority have refused (at any price) to issue errors and omissions insurance for real estate agents/brokers in the state. It is virtually impossible to obtain coverage. The result is the consumer does not have the needed protection in real estate transactions for the occurrence of fraudulent and intentional misrepresentation by an agent/broker who does not have the resources available to pay a judgement.

NATIONAL ASSOCIATION OF REALTORS®

Legal Affairs Memorandum

To: Dee Turner
From: Ralph Holmen, NAR Legal Dept.
Subject: Alaska Broker Liability Legislation
Date: November 30, 1993

MAX
FYI
Dee Turner

Re:

For your information, attached is short memo I provided to Paula Scavara of the Alaskan Legislative staff, in response to her question about states which limit liability for "innocent misrepresentation" by real estate brokers and agents. I advised her that I was not aware of any state the statutorily limited such liability, but that I was aware of case decisions in only two jurisdictions (other than Alaska) that created such liability.

Feel free to call me (312)329-8375 if you have any questions or comments.

Ralph Holmen

NATIONAL ASSOCIATION OF REALTORS®
Legal Affairs Memorandum

To: Paula Scavara
From: Ralph Holmen
Subject: Broker Liability for Innocent Misrepresentations
Date: November 24, 1993

Paula:

Pursuant to our telephone conversation, the following cases are those of which I am aware (in addition to the Bevins case in Alaska) which hold real estate agents liable for making innocent misrepresentations:

Spargnapan v. Wright, 110 A.2d 82 (Pa., 1954);

Gauerke v. Rozga, 112 Wis. 2d 271, 337 N.W. 2d 304 (1983);

Reda v. Sincaban, 145 Wis. 2d 266, 426 N.W. 2d 130 (1988);

I hope this is helpful, but feel free to call me (12-329-8375) if you'd like to discuss further.

Happy Thanksgiving!!

Ralph Holmen

Alaska State Legislature

Senator Tim Kelly, Chair
Senator Steve Rieger, Vice Chair
Senator Bert Sharp
Senator Judy Salo
Senator Georgianna Lincoln



STATE CAPITOL, SUITE 101
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SENATE LABOR AND COMMERCE COMMITTEE

716 W. 4TH, SUITE 400
ANCHORAGE, AK 99501-2133
PHONE: (907) 258-8180
FAX: (907) 258-4524

FAX TRANSMITTAL

TO: Carolee/Advertising
Juneau Empire
FAX: 586-9097

FROM: Josh Fink, Legislative Aide for
Senator Tim Kelly
Phone: 258-8180
FAX: 258-4524

DATE: August 3, 1993

RE: Committee's Public Notice Advertising

Here is the 4" by 4" (or 2 column by 4") advertisement for the August 6th, 8th, and 9th issues of the Juneau Empire for total price of \$131.70.

The seal under the layout should be inserted lightly in the white background under inverted print.

I've put a hardcopy of this in the mail.

If you have any questions, please call.

(I'll be out after 1:00, so if you have a proof ready after that, please run it by Max or Beverley in my office. Our fax number is above.)

**Innocent Misrepresentation
in
Property Transactions**

Public Hearing

**Senate Labor & Commerce Committee
Senator Tim Kelly, Chair**

The Committee, will take public testimony in a State-
wide Teleconference on SB 206,
relating to "innocent misrepresentation" by
real estate professionals in property transfers

August 10th at 1:00 pm

**For teleconference information, call the
Juneau Legislative Information Office
at 465-4648**

for further information call: 258-8180



Alaska State Legislature

Senator Tim Kelly, Chair
Senator Steve Rieger, Vice Chair
Senator Drue Pearce
Senator Judy Salo
Senator Georgianna Lincoln



STATE CAPITOL, SUITE 101
JUNEAU, ALASKA 99801-1182
PHONE: (907) 465-3822
FAX: (907) 465-3756

SENATE LABOR AND COMMERCE COMMITTEE

3111 C STREET, SUITE 550
ANCHORAGE, ALASKA 99503
(907) 561-7612

MEMORANDUM

DATE: July 16, 1993

TO: Senator Steve Rieger
Senator Bert Sharp
Senator Judy Salo
Senator Georgianna Lincoln

FROM: Senator Tim Kelly, Chair *TK*
Senate Labor & Commerce Committee

RE: Public Hearing for SB 206, "An Act relating to Real Property Transfers"

The Senate Labor & Commerce Committee will hold a public hearing on SB 206, "An Act relating to real property transfers," on August 10th at 1:00 p.m. at the new Anchorage Legislative Information Office in the second floor conference room. I have written all licensed brokers in the State soliciting their input, and the meeting will be teleconferenced statewide.

For your reference, I've attached a copy of the bill and my sponsor statement. If you have any questions, please contact myself or committee staff, Josh Fink, at 258-8180.

Thank you.



Official Business

Alaska State Legislature

SENATOR TIM KELLY

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT & ANALYSIS FOR SB 206: INNOCENT MISREPRESENTATION BY REAL ESTATE PROFESSIONALS

Senate Bill 206 would remove real estate professional from liability for "innocent misrepresentation" in real property transactions.

The Alaska Supreme Court ruled in 1982 in Bevins v. Ballard that brokers who make an "innocent misrepresentation" to a purchaser of real property are liable for the misrepresentation. (This case involved a well that was represented to the buyers by a real estate agent to be working and able to supply the water needs of the home. The owner provided this information to the broker. However, the well proved to be too shallow and the buyer filed suit. The court held that both the seller and the seller's broker, even though the broker's misrepresentation was not intentional, were liable.)

Moreover, this ruling puts brokers in even greater risk with the passage of HB 398 last year, requiring detailed written disclosures in residential real property transfers. Written disclosures provided by the seller to the broker, then forwarded by the broker to potential buyers, could make the broker liable for any misrepresentations the seller makes.

Furthermore, the Supreme Court ruled in 1984 in State of Alaska, Real Estate Commission v. Myrna Johnston and Eva Loken that the Alaska Surety Fund does not cover innocent misrepresentation claims. (In this case the Court ruled that the "misrepresentation" referenced in statute was "intended to encompass only intentional wrongdoing, not innocent or negligent wrongdoing.") Those in the real estate profession assert that this has made errors and omissions insurance either extremely expensive or unobtainable in Alaska.

The sponsor concurs with Justice Connor's dissenting opinion:

"When a realtor acts as a mere conduit for passing on information supplied by the seller, he should be under no duty independently to verify that information unless he has reason to believe the information to be false. ... Allowing an innocent misrepresentation action against the broker in such circumstances is quite close to imposing strict liability. There is no reason to make the broker the "insurer" of the seller's representations."

SB 206 would overturn the Court's decision in Bevins v. Ballard, removing a real estate agent's liability for innocent misrepresentations.



Official Business

Alaska State Legislature

SENATE

SENATOR TIM KELLY

P.O. Box V
State Capitol
Juneau, Alaska 99811

SPONSOR STATEMENT FOR SB 206: INNOCENT MISREPRESENTATION BY REAL ESTATE PROFESSIONALS

Senate Bill 206 would remove real estate professionals from liability for "innocent misrepresentation" in real property transactions.

The Alaska Supreme Court ruled in 1982 in Bevins v. Ballard that brokers who make an "innocent misrepresentation" to a purchaser of real property are liable for the misrepresentation. This ruling puts an unjustified liability on real estate professionals.

SENATOR KELLY AGREES WITH JUSTICE CONNOR'S DISSENTING OPINION:

"When a realtor acts as a mere conduit for passing on information supplied by the seller, he should be under no duty independently to verify that information unless he has reason to believe the information to be false. ... Allowing an innocent misrepresentation action against the broker in such circumstances is quite close to imposing strict liability. There is no reason to make the broker the "insurer" of the seller's representations."

Moreover, the Supreme Court ruled in 1984 in State of Alaska, Real Estate Commission v. Myrna Johnston and Eva Loken that the Alaska Surety Fund does not cover innocent misrepresentation claims. This has made errors and omissions insurance for real estate professionals more expensive and difficult to obtain in Alaska.

The passage of HB 298 last year, requiring detailed written disclosures in residential real property transfers as of July 1st, has substantially increased brokers' liability risk. Written disclosures provided by the seller to the broker, then forwarded by the broker to potential buyers, could place liability on the broker for any misrepresentation the seller makes.

SB 206 would overturn the Court's decision in Bevins v. Ballard, removing a real estate agent's liability for innocent misrepresentations.

Innocent Misrepresentation in Property Transactions

Public Hearing
Senate Labor & Commerce Committee
Senator Tim Kelly, Chair

The Committee will take public testimony in a Statewide Teleconference on SB 206, relating to "innocent misrepresentation" by real estate professionals in property transfers.

August 10th at 1:00 pm

Anchorage Legislative Information Office
716 West 4th Avenue
2nd Floor Conference Room

For further information call 258-8180

Innocent Misrepresentation in Property Transactions

Public Hearing
Senate Labor & Commerce Committee
Tim Kelly, Chair

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August 10th at 1:00 pm

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716 West 4th Avenue
2nd Floor Conference Room

For further information call 258-8180

THE ALASKA

JOURNAL OF COMMERCE

FAX TRANSMITTAL SHEET

DATE: 8/2

TO: [Handwritten]

COMPANY: [Handwritten]

FAX NUMBER: 250-4524

PHONE NUMBER:

NUMBER OF PAGES: 2

SPECIAL INSTRUCTIONS:

[Lined area for special instructions]

FROM: [Handwritten]

PHONE NUMBER: [Handwritten]

228-4524

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To	Max of Beverly
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Dept.	
Fax #	
From	Mile
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Phone	694-2727
Fax #	694-1575

Innocent Misrepresentation in Property Transaction

Public Hearing Senate Labor & Commerce Committee Senator Tim Kelly, Chair

The Committee, will take public testimony in a Statewide Teleconference on SB 206, relating to "innocent misrepresentation" by real estate professionals in property transfers

August 10th at 1:00 pm
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716 West 4th Avenue
2nd floor conference room

for further information call 258-8180

8/6,8,9 tm kelly hearing

Row 1 Column 1 Composite

Innocent Misrepresentation in Property Transactions

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**Senate Labor & Commerce Committee
Senator Tim Kelly, Chair**

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August 10th at 1:00 pm

**For teleconference information, call the
Juneau Legislative Information Office
at 465-4648**

for further information call 258-8180

Publish August 6, 8, 9, 1993

M
make caps.

To: Josh Fink - AK State Legislature
From: Carolee Lonsdale - Juneau Empire

Josh- Here's a pic of your ad
set to run in the Juneau Empire
on 8/4/89 for a total cost of \$273.40
I've made one change. if you have any
changes or fixes let me know by
2:pm today 8/4. You don't see the State
seal on here because that's a camera
shot when it goes to press.

Fax 586-9097

Thanks!
Carolee
586-3740

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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


130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 23, 1993

SUBJECT: Enclosed Work Drafts (Work Order No. 8-LS1007\A and \E)

TO: Senator Tim Kelly
Attn: Josh Fink

FROM: David R. Dierdorff 
Revisor of Statutes

Enclosed, as version "E", is the revised draft that you requested, applicable to all real property transactions. As you can see, I placed the provision in AS 09.65, which contains most of the general immunity or limitation on liability provisions of the statutes. Cross-references can be editorially placed in appropriate locations if this becomes law. For example, I would place cross-references in AS 34.70 and AS 08.88 so that readers of those laws would be made aware of the immunity provision.

I have also enclosed a rewrite of version "A", which I put together after reviewing the original draft. After that review, I determined that former sec. 2 was not needed (after all, an innocent misrepresentation can not be a negligent violation -- if it were negligent, it wouldn't be innocent), and that former secs. 3 and 4 needed minor surgery to ensure that they would be interpreted properly (AS 34.70.030(b) does not provide an exception, it provides immunity and is intended, in this context, to cover all residential real property transfers; it grants a legal right to agents that could not, in any event, be waived by the parties to the transfer, only by the agent).

I sent the revised "A" so that when you consider this measure, you will have the latest versions to compare.

If I may be of further assistance, please advise.

DRD:pl
93-323.plm

Enclosure

SENATE BILL NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY SENATOR KELLY

Introduced:
Referred:

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to residential real property transfers."

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

3 * Section 1. AS 34.70.030 is amended by adding a new subsection to read:

4 (b) The agent of a transferor or transferee is not liable for an innocent
5 misrepresentation in the information provided to the transferee in the transfer of
6 residential real property if the agent does not have personal knowledge of the error,
7 inaccuracy, or omission that is the basis for the misrepresentation.

8 * Sec. 2. AS 34.70.110 is amended to read:

9 Sec. 34.70.110. WAIVER BY AGREEMENT. This chapter, except for
10 AS 34.70.030(b), does not apply to the transfer of an interest in residential real
11 property if the transferor and transferee agree in writing that the transfer will not be
12 covered under this chapter.

13 * Sec. 3. AS 34.70.120 is amended to read:

14 Sec. 34.70.120. EXEMPTION FOR FIRST SALES. This chapter, except for

1 AS 34.70.030(b), does not apply to the transfer of an interest in residential real
2 property if the transfer is the first transfer of the property and if the property has never
3 been occupied.

4 * Sec. 4. This Act does not apply to causes of action that accrue before the effective date
5 of this Act.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSB 206 (L&C)

Revision Date: 1-18-94
 Title: An Act relating to real property transfers.
 Sponsor: Sen. Kelly
 Requestor: Senate Labor & Commerce

Dept. Affected: Senate Labor & Commerce
 BRU: _____
 Component: _____

COMPONENT SERIAL NO. _____

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

CHANGE IN REVENUES ()	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY94) cost: \$ 0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Linda Fink, Committee Aide *Linda Fink* Phone: 465-4823
 Division: Senate Labor & Commerce Date: 1-18-94
 Approved by Commissioner: Chairman: Senator Tim Kelly *Tim Kelly* Date: 1-18-94
 Agency: Senate Labor & Commerce

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

MAX BEVINS and JOHNSON-BEVINS
INC., d/b/a STAR REALTY,

Appellants,

v.

DAVID L. BALLARD and LINDA K.
BALLARD,

Appellees.

File No. 4571

O P I N I O N

[No. 2582 - November 19, 1981]

Appeal from the Superior Court of the State of Alaska; Third Judicial District, Anchorage, Alaska.
Eben H. Lewis, Judge.

Appearances: Fredrick P. Pettyjohn, Anchorage, for Appellants. Saul R. Friedman, Hedland, Fleischer & Friedman, Anchorage, for Appellees.

Before: Rabinowitz, Chief Justice, Connor, Burke, and Matthews, Justices, and Dimond, Senior Justice.* (Compton, Justice, not participating.)

BURKE, Justice:
CONNOR, Justice, with whom RABINOWITZ, Justice, joins, dissenting in part.

* Dimond, Senior Justice, sitting by assignment made pursuant to article IV, section 11 of the Constitution of Alaska, and Alaska R. Admin. P. 23(a).

This is an appeal from a judgment holding a real estate broker liable for certain misrepresentations made in the course of a real estate transaction.

A. Facts

On February 3, 1975, David and Linda Ballard purchased a lot with an unfinished dwelling from Josephine, Patricia, and William Ferris. Prior to their purchase, certain representations were allegedly made to the Ballards regarding the adequacy of a well on the property. The purchaser, David Ballard, who had previous experience as a general contractor, attempted to complete the existing well on the property. He installed a pump and piping from the well to the house. The well, however, failed to provide sufficient water. As a result, the Ballards were forced to haul water to their property. They subsequently incurred expenses of \$6,935.00 in deepening the well to an adequate level.

Believing themselves the victims of fraudulent misrepresentations, the Ballards sued the sellers, the broker (Bevins), and an employee of the broker (Lucas). Their complaint alleged, in part, intentional and negligent

misrepresentation.¹ In addition, it alleged that Bevins and

1. The complaint made the following factual allegations:

(a) Bevins personally inspected the property;

(b) sellers told Bevins that there was a well drilled on the property;

(c) sellers failed to disclose to Bevins the incomplete nature of the well, with the knowledge and intent that Bevins would tell potential buyers there was a well;

(d) sellers represented to the broker's employé that the well was finished, held 36 feet of standing water, and was capable of supporting the reasonable water needs of residents of the house;

(e) sellers made those representations with the intent that Lucas would tell the buyers;

(f) Lucas did so represent to the Ballards;

(g) the representations were false;

(h) Lucas made the representations with the knowledge they were false;

(i) sellers made the representations knowing they were false, for the purpose of deceiving plaintiffs and inducing them to buy;

(j) plaintiffs did rely and were induced; and,

(k) plaintiffs were unable to discover the defect until after purchase.

In addition, the following legal allegations were made:

(l) Bevins owed plaintiffs a duty to investigate the accuracy of the sellers' representations, and breached that duty (this count was dismissed at the close of plaintiffs' evidence);

(Cont'd)

Lucas had a duty to check the well's condition; that Lucas knew there was no functional well, that Bevins was vicariously liable for Lucas's acts, and that the Ferrises were vicariously liable for the actions of their agents, Bevins and Lucas. The complaint did not explicitly allege innocent misrepresentation.

After the close of plaintiffs' evidence, the trial court dismissed certain counts of the complaint. First, the court ruled that the broker did not have a general duty to inspect the premises. Second, it held that the broker was not vicariously liable for the acts of his employee, Lucas. In a subsequent written decision, the court further ruled that Lucas was not liable. It then held that Bevins and the sellers were jointly and severally liable, each with a right of contribution from the other for any payment in excess of a pro rata share. While both the sellers and the broker filed timely notice of appeal, only Bevins, the broker, pursues his appeal.

1. (Cont'd)

(2) Lucas (broker's employee) owed plaintiffs a duty to investigate, and breached that duty;

(3) Bevins was vicariously liable for acts of his employee Lucas (this count was dismissed at the close of plaintiffs' evidence); and,

(4) sellers were vicariously liable for the acts of their agents, Bevins, the broker, and his employee, Lucas.

The basis of the broker's liability is not clear. The court found that the sellers were the source of the representation that the well was "good," i.e., capable of supplying the reasonable water needs of the residents. It ruled that the broker had a right to rely on the representations, and thus the sellers were liable (as principals) for the act of Bevins (their broker and thus their agent) who passed on the misrepresentation. The court also found that Lucas passed on the representation intending that it be relied upon; Bevins admitted to the same intent. The court further found that the Ballards did so rely, and that their reliance was justified.

Although the court earlier concluded that Bevins had no general duty to inspect, it subsequently held that a duty of inquiry arose when Lucas asked Bevins, on behalf of the Ballards, about the adequacy of the well. The court concluded that Bevins acted unreasonably by simply assuring Lucas that it was a "good well" rather than by investigating. Thus Bevins' liability appears to rest on a negligence theory.

Certain facts are not contested:

1. The listing mentioned a 100 foot well.
2. The well proved to be incomplete, i.e., inadequate to support reasonable water needs.

3. Bevins, the broker, testified that the listing of a well would reasonably lead buyers to assume the well was "good," i.e., adequate.
4. The Ballards relied on the listing and representations that the well was "good."
5. Both Lucas and Bevins intended that the Ballards so rely.

As to the source of the misrepresentation, Bevins testified that he would not have written it on the listing unless it came from the sellers. The sellers, however, denied telling him about it; they testified that Bevins must have misunderstood. The court believed Bevins, concluding that the sellers were the original source of the representation.

B. The Broker's Liability

There are three types of misrepresentations: intentional, negligent, and innocent. While the Ballards did assert an intentional misrepresentation claim against the sellers, they did not do so against Bevins or Lucas. Thus, we need address only the negligent and innocent mis-

representation claims in this appeal. Bevins' liability to be sustained, must rest on one of these two theories.

1. Negligent Misrepresentation

The Ballards' third claim for relief stated a cause of action for negligence against Bevins. That claim alleged that Bevins had a duty to "take reasonable steps to determine whether or not the well . . . was a completed well" and had sufficient capacity to support a purchaser's reasonable water needs, that Bevins breached that duty, and that as a direct and proximate result of Bevins' breach the Ballards purchased the property believing the well was completed. As noted, the trial court subsequently dismissed that claim, and the Ballards did not appeal. In its final opinion, however, the trial court imposed liability on

2. Bevins' liability could be based on a vicarious liability for the acts of his employee Lucas. As we noted in *Black v. Dahl*, 625 P.2d 876, 879 n.3 (Alaska 1981), a real estate broker can be liable under the doctrine of respondeat superior for the acts of his or her salespeople. However, two of the rulings below preclude resting liability on such a basis. First, at the close of the Ballards' evidence, the trial court dismissed the eighth claim for relief, which had asserted that Bevins was vicariously liable. Second, in its written opinion, the trial court found in favor of Lucas, the salesman. Thus there is no underlying liability for which Bevins could be held vicariously responsible. The Ballards have not appealed these rulings.

grounds that Bevins had a "duty to inquire of the sellers whether the well was, in fact, 'a good well.'" Bevins argues that the court thus held him negligent even though negligence was dismissed from the case and, further, that he was prejudiced thereby because dismissal of the third claim led him to forego a negligence defense.

We recognized the tort of negligent misrepresentation in Transamerica Title Insurance Co. v. Ramsey, 507 P.2d 492 (Alaska 1973), and Howarth v. Pfeifer, 443 P.2d 39 (Alaska 1968). Under this theory, Bevins could have been liable for breaching his duty to provide accurate information once he undertook to speak. In determining whether such a duty exists, one must consider: (a) whether the defendant had knowledge, or its equivalent, that the information was desired for a serious purpose and that the plaintiff intended to rely upon it; (b) the foreseeability of harm; (c) the degree of certainty that plaintiff would suffer harm; (d) the directness of causation; and (e) the policy of preventing future harm. Howarth v. Pfeifer, 443 P.2d at 42; see Transamerica Title Insurance Co. v. Ramsey, 507 P.2d at 494-95.³ In the land sales context, such a duty

3. In Transamerica Title, we upheld submitting the negligence issue to the jury where a title insurance company failed to inform a client that a power of attorney, upon which she was relying in asserting her authority to sell the property, had been revoked. Although the title

(Cont'd)

can arise when a broker becomes aware of suspicious facts regarding his or her representations, or when a buyer makes an affirmative inquiry and the broker fails to check the accuracy of his subsequent responding representation, or when a court determines that public policy requires brokers to undertake certain functions. See, e.g., First Church of the Open Bible v. Cline J. Dunton Realty, Inc., 574 P.2d 1211 (Wash. App. 1978).

We believe, however, that the trial court's dismissal of Ballards' third claim for relief, which was their only negligence claim against Bevins, precludes the broker's liability from resting on a negligent misrepresentation

3. (Cont'd)

company was unaware of the revocation, that information was readily available to it. We concluded that the title insurer knew that the seller, its client, desired information about her legal capacity to sell the land, that she intended to rely on that information, and that there was foreseeable harm to her should she be poorly advised. We concluded that the jury could find that the title company had a "duty to speak carefully." We rejected any distinction between the nonfeasance of the title company and the misfeasance in the Howarth case. 507 P.2d at 494-95.

In Howarth, a vendor sought damages for the alleged negligent misrepresentation by the defendant insurer that a purchaser of vendor's property had obtained fire insurance on the property. We held that assuming the presence of the essential factors establishing a duty of care, those engaged in the insurance business are required to speak with reasonable care.

4. That the court intended to dismiss negligence claims from the case is further evidenced by the following colloquy:

THE COURT: . . . I feel that it's the third claim for relief that you seek thereby to impose upon realtors a burden that does not exist except in extraordinary circumstances. That is when there's been -- when there has been evidence adduced as to the duty of a realtor to inquire arising from some circumstances directing the attention of a reasonable prudent realtor to some -- some -- something unusual. In this case it seems to me that this was just an ordinary transaction. That it's rural property, most of which does require that it be serviced by a well. It is incomplete, and if I accept the evidence as it now stands, that it was represented that there was a good well, that that's the end of the matter, that there's no duty on the realtors to go further and inquire whether that is the actual fact. You know, there's nothing unusual about that well that would alert the ordinary prudent realtor of the need to do something about it. To check it out.

MR. FRIEDMAN: Well, if the court finds that there was no duty, then they can't obviously be negligent. But I still ask the court

THE COURT: They -- well, they still can be -- the defendants still could be -- they made the representation, which is -- facts show was not true.

MR. FRIEDMAN: Correct.

THE COURT: So that they can be -- they can be held liable for having made the same. But not on -- not on -- (indiscernible) negligence -- or negligence theory.

post-judgment amendments to conform the issues tried to the evidence, and further provides that the failure to so amend "does not affect the result of the trial" on those issues, the rule sets as a threshold the requirement that such issues be "tried by express or implied consent of the parties." We do not believe that this condition was met in the case at bar. Subsequent to the dismissal neither party argued negligent misrepresentation in their trial briefs. The court and parties treated the case as one involving innocent misrepresentations. Bevins neither expressly nor impliedly consented to trying a negligence claim. Accordingly, Bevins' liability cannot rest on a negligent misrepresentation theory.

2. Innocent Misrepresentation

The case went forward against Bevins on an apparent theory of innocent misrepresentation, evidenced by the colloquy quoted in note 4 and the arguments advanced in the trial briefs.⁵ The tort of innocent misrepresenta-

5. The elements of innocent misrepresentation were alleged to a sufficient degree. Paragraph 8 of the Ballards' first claim for relief makes the necessary allegation concerning Bevins' scienter. Paragraph 2 of the fifth claim for relief alleged that Bevins' agent passed on the representation with the intent to cause action in reliance thereon. Finally, paragraph 15 of the first claim for relief alleged actual reliance. In light of this, plus the

(Cont'd)

tion is defined by section 552C(1) of the Restatement (Second) of Torts (1977) as follows:

One who, in a sale, rental or exchange transaction with another, makes a misrepresentation of a material fact for the purpose of inducing the other to act or to refrain from acting in reliance upon it, is subject to liability to the other for pecuniary loss caused to him by his justifiable reliance upon the misrepresentation, even though it is not made fraudulently or negligently.

Id. The Restatement leaves open the question of whether such a cause of action lies against real estate brokers.

Id. § 552C, Comment g.

We have recognized a cause of action against the owner of realty who innocently misrepresents its condition to the purchaser. Cousineau v. Walker, 613 P.2d 608 (Alaska 1980). In Cousineau, we granted rescission and restitution to a purchaser where the seller made false statements concerning the highway frontage and gravel content of the purchased land. In so doing, we held that an owner guilty of even innocent misrepresentation could not hide behind the doctrine of caveat emptor. Id. at 614-16. This is so because owners are presumed to know the character and attri-

5. (Cont'd)

court's and the parties' arguments concerning Section 552 of the Restatement, we conclude that Bevins was "adequately notified" that the Ballards were asserting a cause of action based on innocent misrepresentations. See Clary Ins. Agency v. Doyle, 620 P.2d 194, 201 (Alaska 1980).

butes of the land conveyed and buyers are consequently entitled to rely on the seller's reasonable representations. See Sorenson v. Adams, 571 P.2d 769, 776 (Idaho 1977), quoted in Cousineau v. Walker, 613 P.2d 608, 615 n.14 (Alaska 1980). The owner of land must therefore be both truthful and informed in making any representations, for fraud includes the pretense of knowledge where there is none. Spargnapani v. Wright, 110 A.2d 82, 84 (D.C. App. 1954).

The question presented in this case is whether or not liability for innocent misrepresentation should extend to the owner's agent, the real estate broker, where that party serves as a conduit for the owner's misinformation. Most courts addressing this issue recognize a cause of action by the purchasers of property against the broker for the latter's innocent misrepresentation.⁶

6. Sodal v. French, 531 P.2d 972, 973 (Colo. App. 1974); Spargnapani v. Wright, 110 A.2d 82, 85 (D.C. App. 1954); Pumphrey v. Quillen, 135 N.E.2d 328, 331 (Ohio 1956); Berryman v. Riegert, 175 N.W.2d 438, 442 (Minn. 1970); Lawlor v. Scheper, 101 S.E.2d 269, 271 (S.C. 1957); Polk Terrace, Inc. v. Harper, 386 S.W.2d 588, 593 (Tex. App. 1965). Contra Lyons v. Christ Episcopal Church, 389 N.E.2d 623, 625 (Ill. App. 1979).

A.2d 82 (D.C. App. 1954). There, both the seller and broker were held liable for representing that a house could be heated for a little more than \$100.00 per year, when a defect in the boiler made it impossible to heat the house at all. Id. at 85. The broker had merely passed on the seller's information, and neither defendant had knowledge of a defect. Nevertheless, the court sustained liability:

If the broker innocently represented that the heating plant was in workable condition and was mistaken in that representation, or made the representation without knowing whether it was true or false, the injured party may recover in an action for fraud.

... We may assume that the broker was guilty of no deliberate deception and had no actual knowledge of the concealed defect. But on defendants' own evidence their selling agent did not disclaim such knowledge. . . . The representation . . . was flagrantly inaccurate since the defect . . . made it impossible to heat the house at all. . . . "Fraud includes the pretense of knowledge when knowledge there is none."

Id. at 83-84 (citations omitted).

The policy favoring liability for innocent misrepresentation is found on a recognition that purchasers should be entitled to rely on a broker's representations. As one opinion notes:

a cause of action against the broker originating or communicating the misrepresentation. See Restatement (Second) of Torts § 552C(1) (1977).

In our view, the consequences of recognizing a cause of action in this situation are entirely beneficial. The presence of a cause of action against the broker would tend to lessen the likelihood of transactions tainted by misinformation and confusion. Additionally, recognizing a cause of action against the broker would provide another source of recovery to the purchaser of defective property. Frequently, the owners may move away, leaving the broker as the only reachable defendant. As between the broker who communicated the misrepresentation, and the purchaser whose only fault was to rely on the broker, we think it preferable that the broker bear any loss caused by misrepresentation. Brokers, in turn, can protect themselves from liability by investigating the owner's statements, or by disclaiming knowledge, by requiring the seller to sign at the time of listing a statement setting forth representations which will be made, certifying that they are true and providing for indemnification if they are not.⁷ See Goldman v. Hart, 214

7. Some listing agreements contain indemnification provisions, entitling the broker to indemnity from the owner should the broker's communication of the owner's representations engender liability. See, e.g., Barnes v. Lopez, 544 P.2d 694, 698-99 (Ariz. App. 1976).

Real estate brokers and their agents hold themselves out to the public as having specialized knowledge with regard to housing, housing conditions and related matters. The public is entitled to and does rely on the expertise of real estate brokers in the purchase and sale of its homes. Therefore there is a duty on the part of real estate brokers to be accurate and knowledgeable concerning the product they are in the business of selling -- that is, homes and other types of real estate. Courts have held in many cases that purchasers are entitled to rely on real estate brokers' statements.

Lyons v. Christ Episcopal Church, 389 N.E.2d 623, 628 (Ill. App. 1979) (dissenting opinion).

We find this reasoning persuasive. Parties to real estate transactions frequently do not deal on equal terms. Real estate brokers are licensed professionals, possessing superior knowledge of the realty they sell and the real estate market generally. Prospective purchasers recognize this expertise and tend to rely on a broker's representations. Just as purchasers are entitled to rely on an owner's representations, Cousineau v. Walker, 613 P.2d 608 (Alaska 1980), purchasers should be entitled to rely on the broker's representations. Any other rule would permit brokers to use misleading statements in selling the property, yet remain immune from liability by simply remaining ignorant of the property's true characteristics. Accordingly, we hold that a purchaser who relies on a material misrepresentation, even though innocently made, has

S.E.2d 670 (Ga. App. 1975).

Having determined that a cause of action in innocent misrepresentation exists, it is apparent that the judgment below must be affirmed. Bevins does not contest that the listing he prepared mentioned a 100 foot well, that this listing would reasonably lead buyers to assume the well was good, that the Ballards so relied, and that the well was, in actuality, inadequate. These facts establish liability under an innocent misrepresentation theory. See Restatement (Second) of Torts § 552C(1) (1977). The decision below is therefore AFFIRMED.⁸

8. This case is distinguishable from Stepanov v. Gavrilovich, 594 P.2d 30 (Alaska 1979), wherein we affirmed a judgment in favor of a small "subdivider," in a damage action founded upon the subdivider's innocent failure to disclose undetected permafrost conditions in lots sold to the plaintiffs.

Subdividers are subject to, and protected by, the Alaska Land Sales Practices Act, AS 34.55. Under the act, a subdivider is liable for material misrepresentations or omissions affecting the land, "unless in the case of an untruth or omission it is proved that . . . the person offering or disposing of subdivided land did not know and in the exercise of reasonable care could not have known of the untruth or omission." AS 34.55.030(a). Thus, a "subdivider" is not liable for innocent misrepresentations. Such liability is barred by the statute. This protection, however, is not available to the defendants in the case at bar, since they are not "subdividers."

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tics in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA, REAL ESTATE)
COMMISSION,)
)
Appellant,)
)
v.)
)
MYRNA JOENSTON and EVA LOKEN,)
)
Appellees.)

File No. 7826

O P I N I O N

[No. 2825 - May 4, 1984]

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

Appearances: Richard D. Monkman, Assistant Attorney General, Anchorage, Norman C. Gorsuch, Attorney General, Juneau, for Appellant. W. Richard Fossey, Bankston & McCollum, Anchorage, and Peggy Alayne Roston, Anchorage, for Appellees. Lewis Gordon, Sally & Mason, Anchorage, for Alaska Association of Realtors, Amicus Curiae.

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

PER CURIAM.

This appeal presents a first impression question as to the scope and applicability of Alaska's Real Estate Surety Fund.¹ The issue raised is one of statutory construction, namely, whether the Real Estate Surety Fund provides recovery to claimants who, in the context of real estate transactions, suffer losses due to innocent misrepresentations made by real estate brokers or agents.

FACTS

Newly arrived in Alaska the Mulhollands sought to purchase a home and contacted Eva Loken, a sales person with Area Realtors. In August of 1981, Loken showed the Mulhollands Larry Gross' home located near Eagle River. The following day the Mulhollands made an offer on the house to which the owner counter-offered. On August 10, 1981, the parties entered into an earnest money agreement and the Mulhollands tendered one thousand dollars in earnest money to Loken.

Subsequent to the initial earnest money agreement the Mulhollands contemplated rescinding on the purchase agreement and signing an earnest money agreement on another home; they were distraught over what they perceived as

1. AS CE.8E.450-500.

apparent misrepresentations made by Loken concerning mid-winter sunlight and driveway accessibility. Eventually, after discussions with Loken and Myrna Johnston, an associate broker with Area Realtors, the Mulhollands decided to go through with the deal and they signed an extension to the earnest money agreement.

On October 14, 1981, the Mulhollands were asked to accept an "as-built" survey of the property; however, because the survey failed to depict the driveway the Mulhollands refused to sign or accept the survey. Johnston ordered an updated survey. The updated survey revealed that the driveway encroached upon neighboring land to the extent of ten feet by thirty feet.

Having contacted the seller, Larry Gross, to discuss alternative solutions to the encroachment problem, Johnston informed Loken, who in turn contacted the Mulhollands. During the phone conversation between Loken and the Mulhollands a meeting was arranged for October 23, 1981 -- the day the earnest money agreement expired.

At the October 23rd meeting between the Mulhollands and Johnston, the Mulhollands terminated the transaction and signed a rescission agreement which provided that the earnest money would be returned. Johnston, however, on the advice of Area Realtors' attorney, never executed the rescission agreement; the Area Realtors'

attorney felt that the encroachment was a curable defect which did not render title to the property unmarketable.

In December 1981, the Mulhollands filed a claim with the Real Estate Commission for the reimbursement of their earnest money deposit. Thereafter, a Real Estate Commission hearing examiner conducted a hearing on the Mulhollands' reimbursement claim. The hearing examiner concluded that Loken and Johnston had innocently misrepresented the boundaries of the Gross property. The misrepresentation of fact, according to the hearing officer's finding, "consisted of the implied assertion that the driveway was included in the boundaries of the Gross property." Concluding that the Real Estate Surety Fund provided recovery for innocent misrepresentations of this nature the hearing officer recommended that the Fund reimburse the Mulhollands' earnest money deposit.

The Real Estate Commission adopted the recommended decision and awarded the Mulhollands the equivalent of their earnest money deposit. The Commission's decision was then appealed to the superior court. The superior court reversed the award, holding that the Surety Fund did not provide recovery for innocent misrepresentation. The State of Alaska Real Estate Commission now brings this appeal.

II.

THE REAL ESTATE SURETY FUND DOES NOT
PROVIDE REIMBURSEMENT TO CLAIMANTS FOR
INNOCENT MISREPRESENTATIONS MADE BY
MEMBERS OF THE REAL ESTATE PROFESSION.

As indicated at the outset, the principal issue presented in this appeal is whether the Real Estate Surety Fund is obligated to reimburse claimants for innocent misrepresentations made by members of the real estate profession. In relevant part AS 08.88.460(a) provides as follows:

Claim for payment. (a) A person seeking reimbursement for a loss suffered in a transaction as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of a real estate broker . . . shall make a claim to the commission for reimbursement. . . . 2/

2. The full text of AS 08.88.460(a) and (b) reads as follows:

(a) A person seeking reimbursement for a loss suffered in a transaction as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of a real estate broker, associate real estate broker, or real estate salesman licensed under this chapter shall make a claim to the commission for reimbursement on a form furnished by the commission. The form shall be executed under penalty of perjury, and information required to be supplied shall include the following:

(1) the name and address of the real estate broker, associate real estate broker, or real estate salesman;

(2) the amount of the alleged loss;

(footnote continued)

The superior court concluded that "misrepresentation" as used in AS 08.88.460(a) was intended to encompass only intentional wrongdoing, not innocent or negligent wrongdoing. More particularly the superior court reasoned as follows:

I think the term misconduct as used in Section (b) of the statute implies intentional-type wrongdoing, not negligent or innocent wrongdoing. And I think the statute's use of the phrase fraud, deceit, misrepresentation or conversion, particularly with the term misrepresentation coming sandwiched between fraud and deceit and coming as it does amidst a group of intentional-type wrongdoings, coupled with the presence of the word misconduct in subsection (b), all indicate that the proper construction of this statute lies in construing it as including among its terms only intentional-type wrongdoing, not innocent or negligent but

(footnote continued)

(3) the date or period of time during which the alleged loss occurred;

(4) the date upon which the alleged loss was discovered;

(5) the name and address of the claimant; or [sic?]

(6) the general statement of facts relative to the claimant.

(b) A copy of a claim filed with the commission under (a) of this section shall be sent to the real estate broker, associate real estate broker, or real estate salesman alleged to have committed the misconduct resulting in losses, as well as a real estate broker employing an associate real estate broker or real estate salesman alleged to have committed the conduct resulting in losses, at least 20 days before any hearing held on the claim by the commission.

nonreckless wrongdoing. And I think that that's squarely in line with the comments of the chairman of the commerce committee. Furthermore, it seems to me that with a real estate fund limited by law to only \$500,000.00, if we're going to open the flood gates to innocent and negligent misrepresentation claims being made against this fund, there very likely soon wouldn't be any fund to collect for dishonest-type actions on the part of the real estate profession. So I'm going to reverse the real estate commission and award judgment in this case in favor of the appellants.

In our view, the superior court correctly analyzed the question, and thus we affirm the superior court's construction of AS 08.88.460.³

Prior to the establishment of the Real Estate Surety Fund in 1974, real estate brokers were required to obtain a real estate bond. This corporate bond was made payable to the state and was breached if the licensee injured another by a wrongful act or default in the conduct of the business for which the license was issued. In 1974 the legislature created the Real Estate Surety Fund. AS 45.85.010. [§ 1 Ch. 143 SLA 1974] As originally enacted the Real Estate Surety Fund functioned similarly to the surety bond requirement. In relevant part the Surety Fund

3. The applicable standard of review here is one of independent judgment. *Wien Air Alaska, Inc. v. Dept. of Revenue*, 647 P.2d 1087, 1090 (Alaska 1982).

Act provided that a licensed real estate broker when obtaining or receiving a real estate license, in lieu of obtaining a corporate surety bond, had to pay a bond fee to the commissioner. [AS 45.85.020(a)] Recovery from the newly established surety fund was conditioned upon the claimant first obtaining "a final judgment in a court against a real estate broker" If judgment was not satisfied within thirty days from the court order, the claimant could apply for a post-judgment order directing payment out of the Real Estate Surety Fund.

In 1980 the Real Estate Surety Fund Act was amended, providing for a simpler recovery process. [AS 08.88.450 - .500] The 1980 amendment obviated the requirement that the claimant first obtain a civil judgment before filing a claim for reimbursement; instead, the Real Estate Commission was remolded to function in a quasi-judicial role, adjudicating the merits of Surety Fund claims in administrative hearings. [§ 34-36 Ch. 167 SLA 1980] Procedures governing the Real Estate Commission's administration of Surety Fund claims are provided for in 12 AAC 64.280-.330.

As the superior court correctly emphasized, nothing in the historical development of the Real Estate Surety Fund directly indicates legislative intent as to the scope of the Fund's coverage. Given this background, we

think a textual analysis of AS 08.8B.460 is controlling.⁴ The apposition of the term "misrepresentation" to the terms "fraud," "deceit," and "conversion" persuades us that misrepresentation should be limited to only wrongful misrepresentations. A widely applied tenet of statutory interpretation is that if "the legislative intent or general meaning of a statute is not clear, the meaning of doubtful words may be determined by reference to their association with other associated words and phrases." 2A C. Sands, Sutherland Statutory Construction, § 47.16 at 101 (4th ed. 1973); in accord: United States v. Ravenor, 302 U.S. 540, 82 L.Ed. 413 (1938); State v. Taylor, 425 P.2d 1014, 1021 (Hawaii 1967); Heathman v. Giles, 374 P.2d 839, 840 (Utah 1962). Similarly: Matter of Hutchinson's Estate, 577 P.2d 1074, 1075 (Alaska 1977) (all sections are to be construed together so that all have meaning and no section conflicts with another); City of Anchorage v. Seaverus, 539 P.2d 1169, 1174 (Alaska 1975) (each part of a statute should be construed with every other part or section so as to produce a harmonious whole).

4. In State v. Alex, 646 P.2d 203, 209 n.4 (Alaska 1982), we held that the plainer the statute's language, the more convincing contrary legislative history must be. See also City of Homer v. Gangl, 650 P.2d 396, 400 n.4 (Alaska 1982); see gen. North Slope Borough v. Schio (footnote continued)

In short, we hold that innocent misrepresentations are not within the ambit of the term "misrepresentation" as that term is employed in AS 08.88.460(a). In reaching this conclusion we have carefully considered each of the state's arguments pertaining to legislative history, policy considerations, and textual analysis and have found none of them persuasive.⁵ Thus we affirm the superior court's construction of AS 08.88.460(a) and (b).⁶

AFFIRMED.

(footnote continued)

Petroleum Corp., 585 P.2d 534, 540 (Alaska 1978) (where we first adopted this sliding scale approach).

5. We think it appropriate to further note that when the Surety Fund was first established in 1974 and amended in 1980, Alaska did not recognize a cause of action for innocent misrepresentation. In *Bevins v. Ballard*, 655 P.2d 757 (Alaska 1982), this court first recognized a cause of action against a real estate broker for innocent misrepresentation.

6. The amicus has attempted to raise the question of whether on this record any innocent misrepresentation was made. In the procedural context of this case this issue is not properly before us and thus will not be addressed.

LETTERS OF SUPPORT RECEIVED BY THE COMMITTEE:

Bill Allen, Broker
Real Estate Counselor
Bill Allen & Sons Real Estate
Fairbanks

Sherrelyn Argend, Broker
E.X.C.E.L. Properties & Investments
Fairbanks

Elaine M. Bales, Assoc. Broker
Vista Real Estate
Anchorage

Gene Bates, Assoc. Broker
2001 Realty
Anchorage

Edna DeVries, Broker
& 6 Agents
DeVries & Associates
Palmer

R. Eric Dyrud
Associated Brokers
Anchorage

Peter M. Enticknap
Haines Financial Services
Haines

G. Hayden Green, Ph.D.
School of Business
University of Alaska
Anchorage

Helen Henderson
& 10 Associates
Heritage Real Estate
Anchorage

Peter Jarratt
Heritage Real Estate
Anchorage

Don Karabelnikoff, CRE
Karabelnikoff & Associates
Anchorage

Dean Parker
2001 Realty
Anchorage

Bruce Schirmers
Bruce & Co.
Anchorage

Deborah Sedwick, V.P.
Jack White Co.
Anchorage

Janice J. Souve, Assoc. Broker
Heritage Real Estate
Anchorage

Leif M. Stenford, Broker
& 4 Associates
Tongass Realty, Inc.
Ketchikan

Pat Varnell, Broker
Suburban Realty
Anchorage

Kirk Wickersham,
Attorney at Law
Anchorage

Glen M. Wilcox, Broker
North Star Realty
Fairbanks

LTRS. OF SUPPORT

8-8-93

Sherrelyn Argend
4734 Glasgow
Fairbanks, Alaska 99709
907-479-7299 Fax 907-479-7322

Mr. John Davies
Alaska State Legislature
Senate Labor and Commerce Committee
716 W. 4th, Suite 400
Anchorage, Alaska 99501-2133
Fax 907-258-4524

Re: SB 206: INNOCENT MISREPRESENTATION BY REAL ESTATE PROFESSIONALS

I am in full support of the legislation introduced by Senator Tim Kelly. The Alaska Supreme Court ruling Bevins V. Ballard is unfair and unwarranted. It is my understanding only three states in the US continue to blame an innocent party for the wrongful acts of another.

The State of Alaska surety fund is costly to all licensed Brokers and Agents. As the law is now, what good is it doing? Errors and Omissions is prohibited in costs to Real Estate firms due to "innocent misrepresentation" as it is today.

Please support Senator Tim Kelly and do everything you can to correct and overturn this Supreme Court decision, this widely abused error, and put our State Statutes in line with reality. I have been a licensed agent/broker for twelve years and the terrors of this unjust ruling need immediate correction.

Sincerely,



Sherrelyn Argend/Broker
Athens Inc. dba
E.X.C.E.L Properties and Investments

cc Senator Bert Sharp Fax 456-4221
cc Mr. Al Vezey
cc Senator Mike Miller Fax 488-4271



Bill Allen & Sons Real Estate
P.O. Box 73765 • Fairbanks, AK 99707 • (907) 451-7244 • FAX (907) 451-7274

Honorable Tim Kelly
Senator
Alaska State Legislature
Chair
Senate Labor and Commerce Committee
3111 C Street, Suite 550
Anchorage, Alaska
99503

July 20, 1993

Dear Tim,

Thanks for your letter of July 9, 1993 regarding SB206. I agree with you totally about the real estate professional's limit of liability on real estate transactions.

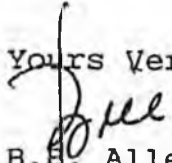
I'm not sure about the other real estate offices in the state but my fee structure and commission base does not include insuring the sellers representations.

Tim, enclosed is a draft Resolution I wrote for the Greater Fairbanks Board of REALTORS for your review. Our board has not taken action on the resolution but I expect them to do so shortly.

Thanks for your help in introducing this important legislation.

Personal Regards

Yours Very Truly


B.E. Allen
Broker

CC: Susan McDonald



VISTA REAL ESTATE
BETTER HOMES AND GARDENS®

August 5, 1993

The Honorable Tim Kelly, Chairman
Senate Labor & Commerce Committee
716 W. 4th Av.
Anchorage, AK 99501

Re: SB 206

Dear Senator Kelly,

I am in support of SB 206 which is a more realistic approach to property disclosure; resting the burden on the sellers who have actually resided in the property and would be aware of any problems that may exist.

The real estate agent is merely a liaison between the buyer and the seller passing information received from their clients.

Real estate agents cannot be expected to be responsible for untruthful or unfactual information given to them by their clients, no more than an attorney can be responsible for the actions of their clients. The real estate industry should not be expected to be the engineer, excavator, roofer, plumbing and heating specialist in a transaction. Our function is marketing the property and procuring a qualified buyer.

It will not be possible for me to attend the hearing. Please submit it into the record on my behalf.

Sincerely yours,

Elaine M. Bales, Associate Broker
Accredited Residential Manager

July 27, 1993

Dear Mr. Kelly :

I am writing to request your strong support for **Senate Bill 206** which would remove liability of real estate brokers and agents for innocent misrepresentations in real property transactions. I believe the ruling of the Alaska Supreme Court in 1982 regarding *Bevins vs. Ballard* puts an unjustified liability on real estate professionals. Senate Bill 206 will change that--finally.

Sincerely,

Gene W. Bates

DeVries & Associates

"Serving Your Real Estate Needs in the Valley"

101 W. Arctic, Palmer
1-907-745-3362
FAX 1-907-746-4157

Cottonwood Creek Mall, Wasilla
1-907-373-3362
FAX 1-907-373-0678

July 21, 1993

Senator Tim Kelly
Alaska State Legislature
3111 C Street, Suite 550
Anchorage, Ak. 99503

RE: SB 206

Dear Senator Kelly:

We the undersigned of DeVries & Associates appreciate your efforts by introducing SB 206. We would urge passage during the upcoming legislative session.

We will be unable to attend the teleconference but please record our support.

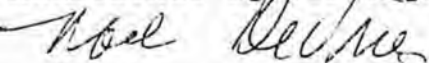
Thank you.


Yours truly,




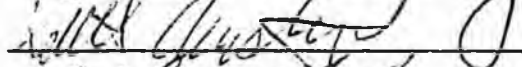
Edna DeVries, Broker

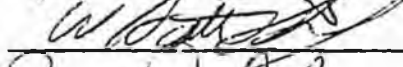
Additional agents signatures

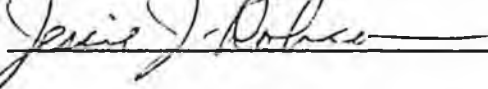












R. Eric Dyrud
7450 Augustine Drive
Anchorage, Ak 99504
337-2177

August 4, 1993

Senator Tim Kelly
716 W. 4th Ave, Suite 400
Anchorage, Ak 99501-2133

Dear Senator Kelly:

I would like to thank you for your sponsorship of SB 206 and I am hopeful that it will pass. As a real estate agent, several attorneys have advised me and various committees I have chaired or served on that the courts are holding real estate people to a standard higher than any other professional including attorneys and doctors. Innocent misrepresentations or the agent knew or "should have known" liability have placed an unfair burden on the industry. I appreciate all your efforts on this matter!

There is one item that I would also like to bring to your attention and ask for your assistance. Almost all Alaskans are exposed to the Department of Motor Vehicle Registration. Yet the staffing here in Anchorage is terrible. I recently paid off the loan on my vehicle and was required to go to the local offices to have the lien holder removed and a new title issued. I started the process on June 20th. About every three days thereafter I would walk in to the offices on Dowling and see lines stretched all thru the mazes. I tried early in the morning and different times throughout the day-it was all the same, about a two hour wait. I even tried the downtown office but the times were the same. On August 4th, I asked one of the employees when the best time was for avoiding the approximately two hour wait. She advised me that there really was no best time and the line wasn't really too bad now (The line had about 50 people in it). I went to the downtown office and bit the bullet even though I and 32 other people had better things to do. I had only put in one hour and 45 minutes of money in the parking meter and it was expiring. NO WAY WAS I GOING TO FORFEIT MY PLACE IN LINE TO AVOID A TICKET! It is unbelievable that the State of Alaska asks the average citizen to spend almost two hours in line on a constant basis! Thousands of man-hours are being lost standing in line. The staff was courteous and professional once you got to them but they were clearly over powered. Can't we do better for our citizens? I know that I and every person who has had to stand in line would appreciate help on this one! Can you help?

Sincerely,

R. Eric Dyrud



HAINES FINANCIAL SERVICES

July 22, 1993

Investments

Financial Planning

Real Estate Brokerage

Appraisals

Accounting

Bookkeeping

Consulting

The Honorable Tim Kelly, Chair
Senate Labor and Commerce Committee
Alaska State Legislature
State Capitol, Suite 101
Juneau, AK 99801-1182

RE: SB 206: Real Estate Broker Liability

Dear Senator Kelly:

Thank you for introducing this important legislation. I fully support your effort to limit needless litigation.

A good friend sold land he had purchased in a borough land sale. The buyer sued since there was a cloud over legal access to the property. My friend was found guilty of "innocent misrepresentation" since he passed along the same information provided him in the borough land sale. My friend was devastated by this decision and nearly forced into bankruptcy.

It is fundamentally wrong that an agent can be held liable for misinformation provided by his client particularly when the agent has no way to verify the information. I fully support the real property disclosure law, however, correcting "innocent misrepresentation" is essential in creating a fair and reasonable standard for brokers. Thank you for your efforts.

Sincerely,

HAINES LAND

Peter M. Enticknap
Broker

cc: Jerry Mackie
Fred Zharoff



UNIVERSITY OF ALASKA ANCHORAGE

3211 Providence Drive
Anchorage, Alaska 99508-8244

OFFICE OF THE DEAN
SCHOOL OF BUSINESS
(907) 786-4100
FAX (907) 786-4119

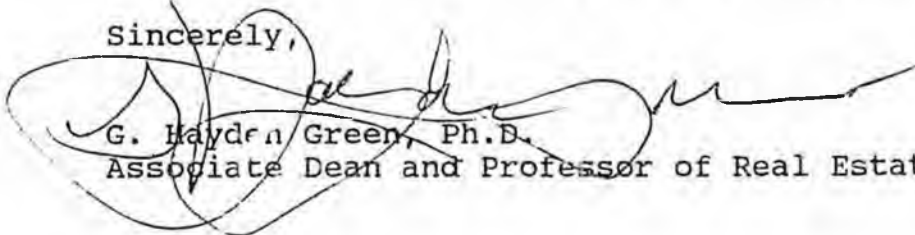
Senator Tim Kelly
Alaska State Legislature
3111 C St, Suite 550
Anchorage, Alaska 99503

Dear Senator Kelly:

I have just finished reviewing SB 206. This is excellent legislation and long overdue. The only improvement that I could recommend would be a statement to the effect "unless the agent should have known that the information was misrepresented." I am concerned that without this additional statement real estate agents will fail to check the accuracy of questionable owner representations.

You are to be commended for sponsoring this legislation.

Sincerely,



G. Hayden Green, Ph.D.
Associate Dean and Professor of Real Estate

HERITAGE

Real Estate
Corporation

August 6, 1993

Senator Tim Kelly, Chair
Senate Labor and Commerce Committee
Alaska State Legislature
716 W. 4th, Suite 200
Anchorage, AK. 99501

Dear Senator Kelly:

I am in total support of SB 206. The Bevins v. Ballard case set a precedent unlike any other outside the State of Alaska. In this situation, it is to no ones advantage to be the only State who finds licensees responsible for innocent misrepresentation. The licensee is faced with unjust and extensive liability while the representations were made by someone else, or not made at all.

I urge your committee to pass this legislation through the Senate and on to the Governor for his signature into law.

Thank you for your consideration,



3230 C Street, Suite 102
Anchorage, Alaska 99503
(907) 562-1222 FAX 273-2473

18550 Eagle River Road
Eagle River, Alaska 99577
(907) 694-4994 FAX 694-3641

35571 Spur Highway
Soldotna, Alaska 99669
(907) 262-5862 FAX 262-1004

502 Lake Street
Kenai, Alaska 99611
(907) 283-4408 FAX 283-4225

701 East Parks Hwy, Suite 101
Wasilla, Alaska 99654
(907) 376-2448 FAX 373-7296

END

HERITAGE

Real Estate
Corporation

August 6, 1993

Senator Tim Kelly, Chair
Senate Labor and Commerce Committee
Alaska State Legislature
716 W. 4th, Suite 200
Anchorage, AK. 99501

Dear Senator Kelly:

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I urge your committee to pass this legislation through the Senate and on to the Governor for his signature into law.

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