

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8462 SENATE STATE AFFAIRS

state had not presented any evidence that so many moose would be taken for funeral potlatch ceremonies as to jeopardize appropriate population levels, it had not met its burden to justify curtailing the religious practice at issue. Id.⁶

As in Frank, the record here is completely devoid of any evidence to suggest that there are so many landlords or property managers in Anchorage whose religious beliefs are identical to Swanner's as to constitute a substantial threat to available housing. In a city the size of Anchorage, it is difficult to conclude based on intuition alone that housing availability for unmarried couples will become so scarce as to constitute a substantial threat to community welfare. If there were some persuasive evidence to support such a conclusion, I may well have arrived at a different conclusion today.

Conclusion

I believe Swanner has been presented with a Hobson's choice of either complying with the law or abandoning the precepts of his religion. Since the government's interest in this

⁶ Our requirement of evidentiary support for the state's refusal to grant an exemption is well-supported by United States Supreme Court precedent. See Thomas v. Review Bd. of Indiana Employment Sec. Div., 450 U.S. 707, 719 (1981) (rejecting state's asserted reasons for refusing a religious exemption due to lack of evidence in the record); Wisconsin v. Yoder, 406 U.S. 205, 224-29 (1972) (rejecting state's argument concerning the dangers of a religious exemption as speculative and unsupported by the record); Sherbert v. Verner, 374 U.S. 398, 407 (1963) ("[T]here is no proof whatever to warrant such fears . . . as those which the [state] now advance[s]."); see also Smith, 494 U.S. at 911 (Blackmun, J., dissenting) (state's assertion that religious exemption for peyote use would harm health and safety of state citizens is unsupported and speculative).

particular law does not outweigh Swanner's fundamental religious rights, Swanner should be granted an exemption to accommodate his beliefs. The AERC relies on nothing more than a pure conclusion that the state has a compelling interest in preventing marital status discrimination in housing. It has not presented any evidence that an exemption in this case would result in a substantial threat to housing availability. Nor does it explain exactly what is so invidious about marital status discrimination as to make its proscription a governmental interest of the highest order, comparable with the state's interest in eradicating racial or gender discrimination. For these reasons, I fail to see how a limited exemption for Swanner and others similarly situated is not justified. In my opinion, the analysis and result set forth in this case will return to haunt this court in future decisions.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO: SB 155

Revision Date: 3/23/93 Dept. Affected: Public Safety
 Title: "An act relating to landlords and tenants termination." BRU: Alaska State Troopers
 Sponsor: Senators Frank, Leman, Pearce Component: Criminal Investigations Bureau
 Requestor: Senator Frank COMPONENT SERIAL NO. 830

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	19.0	19.0	19.0	19.0	19.0	19.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	19.0	19.0	19.0	19.0	19.0	19.0
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 Federal receipts						
1003 GF Match						
1004 GF	19.0	19.0	19.0	19.0	19.0	19.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	19.0	19.0	19.0	19.0	19.0	19.0

POSITIONS:

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

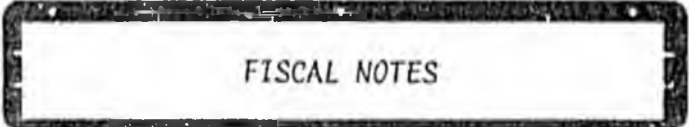
Estimate of current year (FY 93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary.)

See attached analysis.

Prepared By: Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 3/23/93
 Approved by Commissioner: *[Signature]* Date: 3/23/93
 Agency: Richard T. Burton, Dept. of Public Safety

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
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SB 155 amends existing landlord-tenant laws to allow property owners to terminate rental agreements for residential property with renters engaged in certain alcohol and drug violations. The bill creates a duty on the part of peace officers who arrest persons for certain alcohol, drug, and imitation drug offenses committed in residential rental property to make a reasonable effort to discover the identity of the property owner and to notify the owner of the arrest either in person or at the last address listed on tax records and at any other address known to the peace officer(s).

The notice requirement found in Sec. 1 applies to alcohol violation arrests for sales from unlicensed premises where prohibited by local option; notice requirements found in Sec. 13 apply 1) to drug violations involving the manufacture or distribution of all drugs except small amounts of marijuana; 2) to imitation drug violations involving the manufacture or distribution of imitation drugs, or 3) possession of certain precursor chemicals used in the manufacture of imitation drugs.

Although the Alaska State Troopers estimates approximately 130 arrests for violation of the "local option" laws annually, they find no arrests for violation of the statute AS 04.11.010(b) cited in Sec. 24. The Troopers make approximately 500 arrests annually for applicable drug offenses. It is expected that approximately 85% of the drug offenders reside in rented property.

Based upon past arrests for these offenses, it is estimated that the Department of Public Safety will have to notify approximately 425 property owners per year.

There will be fiscal impact upon the Alaska State Troopers. For arrests requiring a written notice, we estimate that research required to identify the property owner, determine the last address listed on tax roles and any other addressed known to police, and to prepare the written notice, will take approximately two (2) staff hours of research time per occurrence. There will be costs for materials, preparation time, and postage.

Since these offenses will be spread throughout the state, no one person would handle them all; the impact would be felt by the detachment personnel handling the cases. Overtime will be needed for this additional work.

Overtime calculations

425 Incidents x 2hrs x \$22.31per hr.*= \$18,963.50
*Clerk Typist III, Range 8/A overtime rate per PACS.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 155

Revision Date: March 16, 1993
Title: ...relating to landlords and tenants...termination of tenancies...recovery of rental premises...*
Sponsor: Senator Frank
Requestor: Senator Frank

Department Affected: Department of Law
BRU: Legal Services
Component: Fair Business Practices
COMPONENT SERIAL NO. 1823

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	10.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	10.0	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF	10.0					
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	10.0	-0-	-0-	-0-	-0-	-0-

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

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Peques, Director
Division: Administrative Services Division
Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law

Phone: 465-3672
Date: March 16, 1993
Date: March 16, 1993

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 155

ANALYSIS (Continued):

This bill amends several statutes relating to termination of tenancies and recovery of rental premises for nonpayment of rent and certain illegal activities. The bill adds illegal activity involving alcoholic beverages, a controlled substance, or an imitation controlled substance to the list of activities that constitute a nuisance that may be enjoined and abated in a place used for the activity. All of the changes will have the effect of substantially changing the information the Department of Law provides to the public in its pamphlet on landlord and tenant rights. The department's publication of the pamphlet is mandated by AS 44.23.020(b)(3).

The department therefore requests \$10,000 to revise and republish the information pamphlet. Of this amount, \$2,500 will be used to publish a pamphlet supplement in the state Bar Association's monthly newsletter, and \$7,500 will be used to publish a revised pamphlet for use by the general public. These funds should be sufficient to publish between 7,500 and 10,000 pamphlets.

SECTIONAL ANALYSIS OF
SB 161 OR HB 226

Prepared by Joseph Geldhof
Assistant Attorney General
Department of Law

INTRODUCTION

SB 161 and HB 226 were introduced at the request of the Governor. The proposed legislation contains two measures relating to interest rates.

SECTIONAL ANALYSIS

Section 1. This section repeals and reenacts the general statutory interest provisions. The proposed version basically adopts a market rate scheme for postjudgment interest based on the formula used by federal courts. In addition, this measure extends market rates for prejudgment interest in addition to past-judgment interest. Consistent with existing law, interest rates set out in contracts are not altered.

Section 2. This section alters the interest rate for "royalty oil" or "net profit share" overpayments. Basically, interest on overpayments is tied closely to market interest rates in order to reduce overpayment incentives for persons required to make royalty oil or net profit share payments under current law.

Section 3. This section makes a similar amendment to the one described in Section 2 for overpayments of state

taxes. However, a different (higher) interest rate is assessed when the overpayment results from a corrected tax assessment made by the Department of Revenue.

Section 4. This section provides for an effective date for the postjudgment interest provision discussed in Section 1. Basically, postjudgment interest on judgment or decrees entered before the effective date of this measure, if enacted, would remain unaffected.

Section 5. This section provides for an effective date for the prejudgment interest provision discussed in Section 1. Basically, prejudgment interest on judgments or decrees entered before the effective date of this measure, if enacted, would remain unaffected.

Section 6. This section provides for an immediate effective date for the provisions relating to interest payments made on overpayments of royalties, net profit share payments and taxes.

Section 7. This section provides for this entire proposal to take effect immediately.

JWG:JLB:kh

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO: SR 155

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 Requestor: Senator Frank COMPONENT SERIAL NO. 830

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CAPITAL						
REVENUE FUND SOURCE:						

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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: \$ _____

ANALYSIS: (Attach a separate page if necessary.)

See attached analysis.

Prepared By: Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 3/23/93
 Approved by Commissioner: *[Signature]* Date: 3/23/93
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CAPITAL						
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REVENUE FUND SOURCE:						
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BILL NO. SB 155

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8-LS0832N
Chenoweth
3/25/94

CS FOR HOUSE BILL NO. 222()

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES JAMES, Porter

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to landlords and tenants and to the applicability of the Uniform
2 Residential Landlord and Tenant Act, to termination of tenancies and recovery
3 of rental premises, to tenant responsibilities, and to the civil remedies of forcible
4 entry and detainer and nuisance abatement; and amending Rule 62(a) of the
5 Alaska Rules of Civil Procedure and Rule 24(a) of the Alaska District Court
6 Rules of Civil Procedure."

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

8 * Section 1. AS 09.45.090 is repealed and reenacted to read:

9 Sec. 09.45.090. UNLAWFUL HOLDING BY FORCE. (a) For property to
10 which the provisions of AS 34.03 (Uniform Residential Landlord and Tenant Act)
11 apply, unlawful holding by force includes each of the following:

12 (1) when, for failure or refusal to pay rent due on the lease or
13 agreement under which the tenant or person holds, and after service, under

1 AS 09.45.100(b), of the written notice required by AS 34.03.220(b) by the landlord for
2 recovery of possession of the premises if the rent is not paid, the tenant or person in
3 possession fails or refuses to vacate or pay the rent within 10 days;

4 (2) when,

5 (A) after a violation of a condition or covenant set out in
6 AS 34.03.120(a), other than a breach of AS 34.03.120(a)(5) due to the
7 deliberate infliction of substantial damage to the premises, or after a breach or
8 violation of a condition or covenant in a lease or rental agreement, and
9 following service of written notice to quit, the tenant fails or refuses to remedy
10 the breach or to deliver up the possession of the premises within the number
11 of days provided for termination under AS 34.03.220(a)(2);

12 (B) after a violation of AS 34.03.120(a)(5) by deliberate
13 infliction of substantial damage to the premises, following service of written
14 notice to quit, the tenant fails or refuses to deliver up the possession of the
15 premises by the date set out in the written notice to quit under
16 AS 34.03.220(a)(1);

17 (C) the landlord requires the tenant to vacate the premises for
18 a reason set out in AS 34.03.310(c)(2) or (c)(4) - (7), following service of
19 written notice to quit, the tenant fails or refuses to deliver up the possession of
20 the premises within the longer of 30 days or the period of notice for the
21 landlord's recovery of possession of the premises set out in the rental
22 agreement;

23 (D) in a mobile home park, there is to be a change in the use
24 of land for which termination of tenancy is authorized by AS 34.03.225(a)(4),
25 following service of written notice to quit, the mobile home dweller or tenant
26 fails or refuses to vacate within the number of days provided for termination
27 under AS 34.03.225(a)(4);

28 (E) after termination of a periodic tenancy as prescribed by
29 AS 34.03.290(a) or (b), following service of written notice to quit, the tenant
30 remains in possession without the landlord's consent after expiration of the
31 term of the rental agreement or after the date of its expiration;

1 (F) after the tenant has violated AS 34.03.120(b) or the tenant
2 has used the dwelling unit or allowed the dwelling unit to be used for an illegal
3 purpose in violation of AS 34.03.310(c)(3), other than a breach of
4 AS 34.03.120(b), following service of written notice to quit, the tenant fails or
5 refuses to deliver up the possession of the premises within five days; or

6 (G) following service of written notice to quit, a person in
7 possession continues in possession of the premises without a valid rental
8 agreement, as that term is defined in AS 34.03.360, and without the consent of
9 the landlord; or

10 (3) when, without a notice to quit, a tenant or person in possession
11 continues in possession of the premises after the tenancy has been terminated by
12 issuance of an order of abatement under AS 09.50.210(a).

13 (b) For property to which the provisions of AS 34.03 (Uniform Residential
14 Landlord and Tenant Act) do not apply, unlawful holding by force includes each of
15 the following:

16 (1) when, for failure or refusal to pay rent due on the lease or
17 agreement under which the tenant or person in possession holds, after service, under
18 AS 09.45.100(c), of demand made in writing by the landlord for the possession of the
19 premises if the rent is not paid, the tenant or person in possession fails or refuses to
20 vacate or pay the rent due within 10 days;

21 (2) when, following service of a written notice to quit,

22 (A) after the tenant or person in possession has breached or
23 violated a condition or covenant of the lease or rental agreement other than
24 breach of a covenant or condition set out in (B) of this paragraph, the tenant
25 or person in possession of a premises fails or refuses to deliver up the
26 possession of the premises within 10 days;

27 (B) after the tenant or person in possession has deliberately
28 inflicted substantial damage to the premises, the tenant or person in possession
29 of a premises fails or refuses to deliver up the possession of the premises on
30 the date required by the landlord; the date specified may not be less than 24
31 hours after demand for possession of the premises by the landlord;

1 (C) after the tenant or person in possession has violated
2 AS 34.05.100(a) or has used the premises for or allowed the premises to be
3 used for an illegal purpose, the tenant or person in possession fails or refuses
4 to deliver up the possession of the premises within five days;

5 (D) for premises the lease or occupation of which is primarily
6 for the purpose of farming or agriculture, after the tenant or person in
7 possession has violated of AS 34.05.025, other than a violation that is a breach
8 under (B) or (C) of this paragraph, the tenant fails or refuses to deliver up
9 possession of the premises within 30 days;

10 (E) a tenancy based upon an estate at will terminates, and the
11 tenant or person in possession continues in possession of the premises; or

12 (F) a person in possession continues in possession of the
13 premises

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

16 (ii) without a written lease or agreement and without the
17 consent of the landlord; or

18 (3) when, without a notice to quit, a tenant or person in possession
19 continues in the possession of the premises after the tenancy has been terminated by
20 issuance of an order of abatement under AS 09.50.210(a).

21 (c) When a landlord who is required to provide written notice to a tenant or
22 person in possession under (a) or (b) of this section, provides notice by mail,
23 notwithstanding any other provision of law, three days must be added to the period set
24 out in (a) or (b) of this section to determine the date on and after which the tenant or
25 person in possession unlawfully holds by force.

26 * Sec. 2. AS 09.45.100 is amended to read:

27 Sec. 09.45.100. [REQUISITES OF] NOTICE TO QUIT. (a) Except where
28 service of written notice is made under AS 09.45.090(a)(1) or (b)(1), or except
29 when notice to quit is not required by AS 09.45.090(a)(3) or (b)(3), a person
30 entitled to the premises who seeks to recover possession of the premises may not
31 commence and maintain an action to recover possession of premises under

1 AS 09.45.060 - 09.45.160 unless the person first gives a notice to quit to the person
 2 in possession.

3 (b) To recover possession of premises after a tenant or person in
 4 possession has failed or refused to pay rent due, for purposes of (c) of this section.
 5 AS 09.45.110 and AS 34.03.310(c), service of the written notice required by
 6 AS 34.03.220(b) or of a demand in writing for possession of the premises
 7 constitutes notice to quit, and service of a separate notice to quit is not required.

8 (c) A notice to quit shall be in writing and shall be served upon the tenant or
 9 person in possession by being

10 (1) delivered to the tenant or person;

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

12 or

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

16 * Sec. 3. AS 09.45 is amended by adding a new section to read:

17 Sec. 09.45.105. CONTENT OF NOTICE TO QUIT. Notice to quit served
 18 upon the tenant or person in possession must

19 (1) state

20 (A) the nature of the breach or violation of the lease or rental
 21 agreement or other reason for termination of the tenancy of the tenant or person
 22 in possession;

23 (B) in circumstances in which the breach or violation described
 24 in (A) of this paragraph may be corrected by the tenant or person in possession
 25 to avoid the termination of the tenancy, the nature of the remedial action to be
 26 taken, and the date and time by which the corrective actions must be completed
 27 in order to avoid termination of the tenancy;

28 (C) the date and time when the tenancy of the tenant or person
 29 in possession under the lease or rental agreement will terminate;

30 (2) direct the tenant or person in possession to quit the premises not
 31 later than the date and time of the termination of the tenancy; and

1 (3) give notice to the tenant or person in possession that, if the tenancy
2 terminates and the tenant or person in possession continues to occupy the premises, the
3 landlord may commence a civil action to remove the tenant or person and recover
4 possession.

5 * Sec. 4. AS 09.45.110 is repealed and reenacted to read:

6 Sec. 09.45.110. TIME WHEN ACTION TO RECOVER POSSESSION MAY
7 BE BROUGHT. An action for the recovery of the possession of the premises may be
8 commenced on or after the date the tenant or person in possession unlawfully holds
9 possession of the dwelling unit or rental premises by force, as determined under
10 AS 09.45.090.

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

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

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

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

25 * Sec. 7. AS 09.50.170 is amended to read:

26 Sec. 09.50.170. ABATEMENT OF PLACES USED FOR CERTAIN ACTS
27 [IMMORAL ACT]. A person who erects, establishes, continues, maintains, uses,
28 owns, or leases a building, structure, or other place used for one of the following
29 activities [THE PURPOSES OF LEWDNESS, ASSIGNATION, OR PROSTITUTION
30 OR ANY OTHER IMMORAL ACT] is guilty of maintaining a nuisance, and the
31 building, structure, or place, or the ground itself in or upon which or in any part of

1 which the activity [LEWDNESS, ASSIGNATION, OR PROSTITUTION] is
2 conducted, permitted, [OR] carried on, continues, or exists, and its [THE] furniture,
3 fixtures, and other contents, constitute a nuisance and may be enjoined and abated;

4 (1) prostitution;

5 (2) an illegal activity involving a place of prostitution; or

6 (3) an illegal activity involving

7 (A) alcoholic beverages;

8 (B) a controlled substance; or

9 (C) an imitation controlled substance.

10 * Sec. 8. AS 09.50.170 is amended by adding a new subsection to read:

11 (b) In this section, "illegal activity involving alcoholic beverages," "illegal
12 activity involving a controlled substance," "illegal activity involving an imitation
13 controlled substance," "illegal activity involving a place of prostitution," and
14 "prostitution" have the meanings given in AS 34.03.360.

15 * Sec. 9. AS 09.50 is amended by adding a new section to read:

16 Sec. 09.50.175. ADMISSIBILITY OF EVIDENCE TO PROVE NUISANCE.

17 In an action brought under AS 09.50.170(a) to prove the existence of a nuisance, the
18 court may consider

19 (1) evidence of reputation within a community;

20 (2) evidence derived from records of the courts of the state or of the
21 United States that relate to previous complaints concerning alleged violations of, and
22 to arrests for or convictions of violations of, laws based on activity set out in
23 AS 09.50.170.

24 * Sec. 10. AS 09.50.210 is amended to read:

25 Sec. 09.50.210. ORDER OF ABATEMENT. (a) If the court finds and
26 enters [UPON] judgment that a nuisance exists, the court shall enter an order of
27 abatement. The order of abatement must direct

28 (1) termination of the lease or rental agreement, if any, on the
29 premises subject to the order of abatement, if the tenant who occupies under the
30 lease or rental agreement has been given notice of the proceedings under
31 AS 09.50.170 - 09.50.240;

1 (2) [SHALL BE ENTERED DIRECTING] the removal from the
2 building or place of the fixtures, furniture, and movable property used in the nuisance
3 and their sale in the manner provided for the sale of chattels under execution;

4 (3) [. THE ORDER SHALL ALSO DIRECT] the closing of the
5 building or place against its use for any purpose for a period of one year unless sooner
6 released.

7 (b) A person who breaks and enters or uses a building, structure, or other
8 place [SO] directed to be closed by an order entered under (a)(3) of this section is
9 guilty of contempt and shall be punished for contempt as provided in AS 09.50.200.

10 * Sec. 11. AS 09.50.230 is amended to read:

11 Sec. 09.50.230. RELEASE OF PREMISES TO OWNER. (a) The court may
12 order premises abated under AS 09.50.210 delivered to the owner and cancel the
13 order of abatement if [IF] the owner of the premises

14 (1) has not been guilty of a contempt in the proceedings;

15 (2) [, AND] appears and pays all costs, fees, and allowances that
16 [WHICH] are a lien on the premises; [,] and

17 (3) files a bond with sureties approved by the court in an amount
18 [THE FULL VALUE OF THE PROPERTY AS] determined by the court to the effect
19 that the owner will abate the nuisance that exists at the building or place and prevent
20 the nuisance from being established within a period of one year thereafter [, THE
21 COURT MAY ORDER THE PREMISES TO BE DELIVERED TO THE OWNER
22 AND CANCEL THE ORDER OF ABATEMENT].

23 (b) The lease of the property does not release it from a judgment, lien, penalty,
24 or liability to which it may be subject by law.

25 (c) A cancellation of the order of abatement does not affect a termination
26 of a lease or rental agreement made under AS 09.50.210(a)(1).

27 * Sec. 12. AS 34.03.020 is amended by adding a new subsection to read:

28 (e) If required by the landlord, the landlord and the tenant shall include within
29 the rental agreement, incorporate by reference in the rental agreement, or add as a
30 separate attachment to the rental agreement a premises condition statement, setting out
31 the condition of the premises, including fixtures but excluding reference to any of the

1 other contents of the premises, and, if applicable, a contents inventory itemizing or
2 describing all of the furnishings and other contents of the premises and specifying the
3 condition of each of them. In the premises condition statement and contents inventory,
4 the parties shall describe the premises and its contents at the commencement of the
5 term of the period of the occupancy covered by the rental agreement. When signed
6 by the parties, the premises condition statement and contents inventory completed
7 under this subsection become part of the rental agreement.

8 * Sec. 13. AS 34.03.070(b) is amended to read:

9 (b) Upon termination of the tenancy, property or money held by the landlord
10 as prepaid rent or as a security deposit may be applied to the payment of accrued rent
11 and the amount of damages that the landlord has suffered by reason of the tenant's
12 noncompliance with AS 34.03.120. ["DAMAGES" DOES NOT INCLUDE WEAR
13 RESULTING FROM ORDINARY USE OF THE PREMISES.] The accrued rent and
14 damages must be itemized by the landlord in a written notice mailed to the tenant's
15 last known address within the time limit prescribed by (g) of this section, together with
16 the amount due the tenant. In this subsection, "damages"

17 (1) means deterioration of the premises and, if applicable, of the
18 contents of the premises;

19 (2) does not include deterioration

20 (A) that is the result of the tenant's use of the premises by
21 normal, nonabusive living;

22 (B) caused by the landlord's failure to prepare for expected
23 conditions or by the landlord's failure to comply with an obligation of the
24 landlord imposed by this chapter.

25 * Sec. 14. AS 34.03.090 is amended to read:

26 Sec. 34.03.090. LANDLORD TO SUPPLY POSSESSION OF THE
27 DWELLING UNIT. At the commencement of the term the landlord shall deliver
28 possession of the premises to the tenant in compliance with the rental agreement and
29 AS 34.03.100. The landlord may, after serving a notice to quit under AS 09.45.100
30 - 09.45.105 to a person who is wrongfully in possession.

31 (1) bring an action for possession against any person wrongfully in

1 possession; and

2 (2) [MAY] recover the damages provided in AS 34.03.290.

3 * Sec. 15. AS 34.03.090 is amended by adding a new subsection to read:

4 (b) As a condition of delivery of possession of the premises to the tenant, the
5 landlord may require the tenant to acknowledge or verify by the tenant's signature the
6 accuracy of the premises condition statement and contents inventory prepared under
7 AS 34.03.020(e). Before requiring the tenant's signature, the landlord shall first advise
8 the tenant that the premises condition statement and contents inventory

9 (1) may be used by the landlord as the basis

10 (A) to determine whether prepaid rent or a security deposit shall
11 be applied to the payment of damages to the premises when authorized by
12 AS 34.03.070(b); and

13 (B) to compute the recovery of other damages to which the
14 parties may be entitled under this chapter; and

15 (2) is, in an action initiated by a party to recover damages or to obtain
16 other relief to which a party may be entitled under this chapter, presumptive evidence
17 of the condition of the premises and its contents at the commencement of the term of
18 the period of occupancy covered by the rental agreement.

19 * Sec. 16. AS 34.03.110(a) is amended to read:

20 (a) Unless otherwise agreed, a landlord who conveys premises that include a
21 dwelling unit subject to a rental agreement in a good faith sale to a bona fide
22 purchaser is relieved of liability under the rental agreement and this chapter as to
23 events occurring subsequent to written notice to the tenant of the conveyance.
24 However,

25 (1) the landlord remains liable to the tenant for the property and money
26 to which the tenant is entitled under AS 34.03.070, unless the property and money are
27 specifically assigned to and accepted by the purchaser; and

28 (2) the provisions of

29 (A) a premises condition statement prepared under
30 AS 34.03.020(e) between the landlord and the tenant remains valid as
31 between the purchaser and the tenant until a new premises condition

1 statement is entered into between the purchaser and the tenant; and

2 (B) a contents inventory prepared under AS 34.03.020(e)
3 between the landlord and the tenant remains valid as between the
4 purchaser and the tenant for the contents remaining on the premises after
5 the conveyance of the premises until a new contents inventory is entered
6 into between the purchaser and the tenant.

7 * Sec. 17. AS 34.03.120 is amended by adding a new subsection to read:

8 (b) The tenant may not knowingly engage at the premises in prostitution, an
9 illegal activity involving a place of prostitution, an illegal activity involving alcoholic
10 beverages, an illegal activity involving a controlled substance, or an illegal activity
11 involving an imitation controlled substance, or knowingly permit others in the premises
12 to engage in one or more of those activities at the rental premises.

13 * Sec. 18. AS 34.03.220(a) is amended to read:

14 (a) Except as provided in this chapter,

15 (1) if the tenant or someone in the tenant's control deliberately
16 inflicts substantial damage to the premises in breach of AS 34.03.120(a)(5), the
17 landlord may deliver a written notice to quit to the tenant under AS 09.45.100 -
18 09.45.105 specifying the act constituting the breach and specifying that the rental
19 agreement will terminate upon a date that is not less than 24 hours after service
20 of the notice: for purposes of this paragraph, damage to premises is "substantial"
21 if the loss, destruction, or defacement of property attributable to the deliberate
22 infliction of damage to the premises exceeds \$400 or the amount of the security
23 deposit held by the landlord under AS 34.03.070, whichever is greater;

24 (2) if there is a material noncompliance by the tenant with the rental
25 agreement, or if there is noncompliance with AS 34.03.120, other than deliberate
26 infliction of substantial damage to the premises, materially affecting health and
27 safety, the landlord may deliver a written notice to quit to the tenant under
28 AS 09.45.100 - 09.45.110 specifying the acts and omissions constituting the breach and
29 specifying that the rental agreement will terminate upon a date not less than 10 [20]
30 days after service [RECEIPT] of the notice; if [. IF] the breach is not remedied [IN
31 10 DAYS], the rental agreement terminates as provided in the notice subject to the

1 provisions of this section; if [. IF] the breach is remediable by repairs or the payment
2 of damages or otherwise and the tenant adequately remedies the breach before the date
3 specified in the notice, the rental agreement will not terminate; in [. IN] the absence
4 of due care by the tenant, if substantially the same act or omission that constituted a
5 prior noncompliance of which notice was given recurs within six months, the landlord
6 may terminate the rental agreement upon at least five [10] days written notice to quit
7 specifying the breach and the date of termination of the rental agreement.

8 * Sec. 19. AS 34.03.220 is amended by adding a new subsection to read:

9 (d) An order of abatement entered by a court under AS 09.50.170 terminates
10 a rental agreement on the premises subject to the order of abatement.

11 * Sec. 20. AS 34.03.225 is amended by adding a new subsection to read:

12 (c) When, under (a) of this section, a mobile home park owner is required to
13 give notice to evict a mobile home owner or a mobile home park dweller or tenant,
14 provision of notice to quit under AS 09.45.100 - 09.45.105 satisfies the requirement
15 of notice.

16 * Sec. 21. AS 34.03.290(c) is amended to read:

17 (c) If the tenant remains in possession without the landlord's consent after
18 expiration of the term of the rental agreement or after its termination under (a) or (b)
19 of this section, the landlord may, after serving a notice to quit to the tenant under
20 AS 09.45.100 - 09.45.105, bring an action for possession and if the tenant's holdover
21 is wilful and not in good faith the landlord, in addition, may recover an amount not
22 to exceed one and one-half times the actual damages. If the landlord consents to the
23 tenant's continued occupancy, AS 34.03.020 applies.

24 * Sec. 22. AS 34.03.310(c) is amended to read:

25 (c) Notwithstanding (a) and (b) of this section, after serving a notice to quit
26 to the tenant under AS 09.45.100 - 09.45.105, a landlord may bring an action for
27 possession if

28 (1) the tenant is in default in rent;

29 (2) compliance with the applicable building or housing code requires
30 alteration, remodeling, or demolition that would effectively deprive the tenant of use
31 of the dwelling unit;

1 (3) the tenant is committing waste or a nuisance, or is using the
2 dwelling unit for an illegal purpose or for other than living or dwelling purposes in
3 violation of the rental agreement;

4 (4) the landlord seeks in good faith to recover possession of the
5 dwelling unit for personal purposes;

6 (5) the landlord seeks in good faith to recover possession of the
7 dwelling unit for the purpose of substantially altering, remodeling, or demolishing the
8 premises;

9 (6) the landlord seeks in good faith to recover possession of the
10 dwelling unit for the purpose of immediately terminating for at least six months use
11 of the dwelling unit as a dwelling unit; or

12 (7) the landlord has in good faith contracted to sell the property, and
13 the contract of sale contains a representation by the purchaser corresponding to (4), (5)
14 or (6) of this subsection.

15 * Sec. 23. AS 34.03.330(b) is amended to read:

16 (b) Unless created to avoid the application of this chapter, the following
17 arrangements are not governed by this chapter:

18 (1) residence at an institution, public or private, or in premises used
19 as temporary housing, public or private, if incidental to detention or the provision
20 of medical, geriatric, educational, counseling, religious, or similar services;

21 (2) occupancy under a contract of sale of a dwelling unit or the
22 property of which it is a part [,] if the occupant is the purchaser or a person who
23 succeeds to the interest of a purchaser;

24 (3) occupancy by a member of a fraternal or social organization in the
25 portion of a structure operated for the benefit of the organization;

26 (4) transient occupancy in a hotel, motel, lodgings, or other transient
27 facility;

28 (5) occupancy by an employee of a landlord whose right to occupancy
29 is conditioned upon employment substantially for services, maintenance, or repair to
30 the premises;

31 (6) occupancy by an owner of a condominium unit or a holder of a

1 proprietary lease in a cooperative;

2 (7) occupancy under a rental agreement covering premises used by the
3 occupant primarily for agricultural purposes.

4 * Sec. 24. AS 34.03 is amended by adding a new section to read:

5 Sec. 34.03.335. PROOF OF CERTAIN PROPERTY DAMAGE CLAIMS. In
6 an action initiated by a party to recover damages or to obtain other relief to which a
7 party may be entitled under this chapter, a premises condition statement and contents
8 inventory prepared under AS 34.03.020(e) is presumptive evidence of the condition of
9 the premises and its contents at the commencement of the term of the period of
10 occupancy covered by the rental agreement between the parties. Unless its authenticity
11 is rebutted by clear and convincing evidence by the party against whom the statement
12 and contents inventory is offered, the statement and contents inventory may be offered
13 by a party, without additional supporting evidence, as the basis on which to compute
14 the recovery of damages to which the party may be entitled under this chapter.

15 * Sec. 25. AS 34.03 is amended by adding a new section to read:

16 Sec. 34.03.345. MEDIATION. A landlord and a tenant may agree to mediate
17 disputes between them as to an obligation of either of them arising out of the rental
18 agreement. If the landlord and tenant agree to mediate disputes, they shall include the
19 scope of the agreement within the executed rental agreement, incorporate a reference
20 to that agreement within the rental agreement, or add the text of the agreement as a
21 separate attachment to the rental agreement.

22 * Sec. 26. AS 34.03.360 is amended by adding new paragraphs to read:

23 (19) "illegal activity involving alcoholic beverages" means a person's
24 delivery of an alcoholic beverage in violation of AS 04.11.010(b) in an area where the
25 results of a local option election have, under AS 04.11.490 - 04.11.500, prohibited the
26 Alcoholic Beverage Control Board from issuing, renewing, or transferring a liquor
27 license or permit under AS 04;

28 (20) "illegal activity involving a controlled substance" means a
29 violation of AS 11.71.010(a), 11.71.020(a), 11.71.030(a)(1) or (2), or 11.71.040(a)(1),
30 (2), or (5);

31 (21) "illegal activity involving an imitation controlled substance" means

1 a violation of AS 11.73.010 - 11.73.030;

2 (22) "illegal activity involving a place of prostitution" means a violation
3 of AS 11.66.120(a)(1) or 11.66.130(a) or (4);

4 (23) "prostitution" means an act in violation of AS 11.66.100.

5 * Sec. 27. AS 34.05 is amended by adding a new section to read:

6 ARTICLE 3. ILLEGAL ACTIVITIES IN PREMISES NOT
7 SUBJECT TO UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT.

8 Sec. 34.05.100. TENANT RESPONSIBILITIES IN PREMISES NOT
9 SUBJECT TO AS 34.03. (a) In rented premises other than premises to which the
10 provisions of AS 34.03 apply, the tenant may not knowingly engage at the premises
11 in prostitution, an illegal activity involving a place of prostitution, an illegal activity
12 involving alcoholic beverages, an illegal activity involving a controlled substance, or
13 an illegal activity involving an imitation controlled substance, or knowingly permit
14 others in the premises to engage in one or more of those activities at the rental
15 premises.

16 (b) If there is noncompliance with (a) of this section, a person may seek relief
17 under AS 09.50.170 - 09.50.240.

18 (c) An order of abatement entered by a court under AS 09.50.210 against
19 premises under this section terminates a rental agreement on the premises subject to
20 the order of abatement.

21 (d) In this section,

22 (1) "illegal activity involving alcoholic beverages," "illegal activity
23 involving a controlled substance," "illegal activity involving an imitation controlled
24 substance," "illegal activity involving a place of prostitution," and "prostitution" have
25 the meanings given in AS 34.03.360;

26 (2) "premises" means a structure or the structure of which it is a part,
27 and facilities and appurtenances in it, and grounds, areas, and facilities held out for the
28 use of persons entitled to possession under an agreement that relates to its use.

29 * Sec. 28. AS 34.03.360(18) is repealed.

30 * Sec. 29. AS 09.45.125, added by sec. 5 of this Act, allowing orders to vacate and writs
31 of assistance to issue at the same time as the entry of judgment or at any later date, has the

1 effect of amending Rule 62(a) of the Alaska Rules of Civil Procedure and Rule 24(a) of the
2 Alaska District Court Rules of Civil Procedure by eliminating the respective periods of
3 automatic stays of enforcement upon judgment for orders to vacate premises.

4 * Sec. 30. AS 09.45.125, added by sec. 5 of this Act, takes effect only if sec. 29 of this
5 Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
6 Constitution of the State of Alaska

SENATE BILL NO. 155
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY SENATORS FRANK, Leman, Pearce

Introduced: 3/10/93
Referred: STA, JUD

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to landlords and tenants, to termination of tenancies and
2 recovery of rental premises, to tenant responsibilities, to the civil remedies of
3 forcible entry and detainer and nuisance abatement, and to the duties of peace
4 officers to notify landlords of arrests involving certain illegal activity on rental
5 premises."

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

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

8 Sec. 04.21.075. NOTICE TO LANDLORD FOLLOWING ARREST. (a) A
9 peace officer who arrests a person for illegal activity involving alcoholic beverages on
10 premises that the peace officer believes are occupied by a person who is not the owner
11 of the premises shall
12 (1) make a reasonable attempt to discover the identity of the owner of
13 the premises; and

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

2 (A) in person; or

3 (B) in writing, at the last address listed on the assessment roll
4 maintained by the municipality under AS 29.45.160 if the premises are located
5 within a municipality that levies and collects a property tax; if an address is not
6 available, notice of the person's arrest may be sent to the property owner at
7 any other address known to the peace officer.

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

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

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

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

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

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

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

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

31 (B) [, OR] contrary to a condition or covenant in the lease or

1 agreement, including the breach of a condition or covenant set out in
2 AS 34.03.120(a) but not including the breach of a condition or covenant to
3 which (1) of this section applies; or

4 (C) without a written lease or agreement;

5 (3) when, after a notice to terminate the tenancy as provided in this title
6 with reference to termination of estate at will or by sufferance or after receipt of an
7 order of abatement under AS 09.50.210(a), a person continues in possession of the
8 premises after expiration of the time for determining the tenancy.

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

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

12 (1) delivered to the tenant or person;

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

14 or

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

18 * Sec. 4. AS 09.45.100 is amended by adding a new subsection to read:

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

21 (1) to the five days' notice if,

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

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

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

31 * Sec. 5. AS 09.45.110 is amended to read:

1 Sec. 09.45.110. PERIOD BETWEEN SERVICE OF NOTICE AND ACTION
2 BROUGHT. An action for the recovery of the possession of the premises may be
3 maintained

4 (1) in [THE] cases specified in AS 09.45.090(2)(A), [AS 09.45.090(2)]
5 when the notice to quit has been served upon the tenant or person in possession for the
6 period of five [10] days before the commencement of the action unless the leasing or
7 occupation is for the purpose of farming or agriculture, in which case the notice shall
8 be served 90 days before commencement of the action: and

9 (2) in cases specified in AS 09.45.090(2)(B) and (C), when the notice
10 to quit has been served upon the tenant or person in possession before the
11 commencement of the action.

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

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

19 * Sec. 7. AS 09.45 is amended by adding a new section to read:

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

*(at first
right)
Before closer
inspection*

26 * Sec. 8. AS 09.50.170 is amended to read:

27 Sec. 09.50.170. ABATEMENT OF PLACES USED FOR CERTAIN ACTS
28 [IMMORAL ACT]. A person who erects, establishes, continues, maintains, uses,
29 owns, or leases a building, structure, or other place used for one of the following
30 activities [THE PURPOSES OF LEWDNESS, ASSIGNATION, OR PROSTITUTION
31 OR ANY OTHER IMMORAL ACT] is guilty of maintaining a nuisance, and the

1 building, structure, or place, or the ground itself in or upon which or in any part of
2 which the activity [LEWDNESS, ASSIGNATION, OR PROSTITUTION] is
3 conducted, permitted, [OR] carried on, continues, or exists, and its [THE] furniture,
4 fixtures, and other contents, constitute a nuisance and may be enjoined and abated:

5 (1) prostitution; or

6 (2) an illegal activity involving

7 (A) alcoholic beverages;

8 (B) a controlled substance; or

9 (C) an imitation controlled substance.

*- any illegal activity?
- does this need to be stated here?*

10 * Sec. 9. AS 09.50.170 is amended by adding a new subsection to read:

11 (b) In this section, "illegal activity involving alcoholic beverages," "illegal
12 activity involving a controlled substance," and "illegal activity involving an imitation
13 controlled substance" have the meaning given in AS 34.03.360.

14 * Sec. 10. AS 09.50 is amended by adding a new section to read:

15 Sec. 09.50.175. ADMISSIBILITY OF EVIDENCE TO PROVE NUISANCE.

16 In an action brought under AS 09.50.170(a), the court may consider evidence of
17 reputation within a community to prove the existence of a nuisance.

18 * Sec. 11. AS 09.50.210 is amended to read:

19 Sec. 09.50.210. ORDER OF ABATEMENT. (a) If the court finds and
20 enters [UPON] judgment that a nuisance exists, the court shall enter an order of
21 abatement. The order of abatement must direct

22 (1) termination of the lease or rental agreement, if any, on the
23 premises subject to the order of abatement, if the tenant who occupies under the
24 lease or rental agreement has been given notice of the proceedings under
25 AS 09.50.170 - 09.50.240;

26 (2) [SHALL BE ENTERED DIRECTING] the removal from the
27 building or place of the fixtures, furniture, and movable property used in the nuisance
28 and their sale in the manner provided for the sale of chattels under execution;

29 (3) [THE ORDER SHALL ALSO DIRECT] the closing of the
30 building or place against its use for any purpose for a period of one year unless sooner
31 released.

1 **(b)** A person who breaks and enters or uses a building, structure, or other
2 place [SO] directed to be closed by an order entered under (a)(3) of this section is
3 guilty of contempt and shall be punished for contempt as provided in AS 09.50.200.

4 * Sec. 12. AS 09.50.230 is amended to read:

5 Sec. 09.50.230. RELEASE OF PREMISES TO OWNER. (a) The court may
6 order premises abated under AS 09.50.210 delivered to the owner and cancel the
7 order of abatement if [IF] the owner of the premises

8 **(1)** has not been guilty of a contempt in the proceedings;

9 **(2)** [, AND] appears and pays all costs, fees, and allowances that
10 [WHICH] are a lien on the premises; [,] and

11 **(3)** files a bond with sureties approved by the court in an amount
12 [THE FULL VALUE OF THE PROPERTY AS] determined by the court to the effect
13 that the owner will abate the nuisance that exists at the building or place and prevent
14 the nuisance from being established within a period of one year thereafter [, THE
15 COURT MAY ORDER THE PREMISES TO BE DELIVERED TO THE OWNER
16 AND CANCEL THE ORDER OF ABATEMENT].

17 **(b)** The lease of the property does not release it from a judgment, lien, penalty,
18 or liability to which it may be subject by law.

19 **(c)** A cancellation of the order of abatement does not affect a termination
20 of a lease or rental agreement made under AS 09.50.210(a)(1).

21 * Sec. 13. AS 17.30 is amended by adding a new section to read:

22 Sec. 17.30.160. NOTICE TO LANDLORD FOLLOWING ARREST. (a) A
23 peace officer who arrests a person for illegal activity involving a controlled substance
24 or illegal activity involving an imitation controlled substance on premises that the
25 peace officer believes are occupied by a person who is not the owner of the premises
26 shall

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

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

30 **(A)** in person; or

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

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

5 (b) In this section, "illegal activity involving a controlled substance" and
6 "illegal activity involving an imitation controlled substance" have the meanings given
7 in AS 34.03.360.

8 * Sec. 14. AS 34.03.020 is amended by adding a new subsection to read:

9 (e) If required by the landlord, the landlord and the tenant shall include within
10 the rental agreement, incorporate by reference in the rental agreement, or add as a
11 separate attachment to the rental agreement a premises condition statement, setting out
12 the condition of the premises, including fixtures but excluding reference to any of the
13 other contents of the premises, and, if applicable, a contents inventory itemizing or
14 describing all of the furnishings and other contents of the premises and specifying the
15 condition of each of them. In the premises condition statement and contents inventory,
16 the parties shall describe the premises and its contents at the commencement of the
17 term of the period of the occupancy covered by the rental agreement. When signed
18 by the parties, the premises condition statement and contents inventory completed
19 under this subsection become part of the rental agreement.

20 * Sec. 15. AS 34.03.070(b) is amended to read:

21 (b) Upon termination of the tenancy, property or money held by the landlord
22 as prepaid rent or as a security deposit may be applied to the payment of accrued rent
23 and the amount of damages that the landlord has suffered by reason of the tenant's
24 noncompliance with AS 34.03.120. ["DAMAGES" DOES NOT INCLUDE WEAR
25 RESULTING FROM ORDINARY USE OF THE PREMISES.] The accrued rent and
26 damages must be itemized by the landlord in a written notice mailed to the tenant's
27 last known address within the time limit prescribed by (g) of this section, together with
28 the amount due the tenant. In this subsection, "damages"

29 (1) means deterioration of the premises and, if applicable, of the
30 contents of the premises;

31 (2) does not include deterioration

1 (A) that is the result of the tenant's use of the premises by
2 normal, nonabusive living;

3 (B) caused by the landlord's failure to prepare for expected
4 conditions or by the landlord's failure to comply with an obligation of the
5 landlord imposed by this chapter.

6 * Sec. 16. AS 34.03.090 is amended by adding a new subsection to read:

7 (b) As a condition of delivery of possession of the premises to the tenant, the
8 landlord may require the tenant to acknowledge or verify by the tenant's signature the
9 accuracy of the premises condition statement and contents inventory prepared under
10 AS 34.03.020(c). Before requiring the tenant's signature, the landlord shall first advise
11 the tenant that the premises condition statement and contents inventory

12 (1) may be used by the landlord as the basis

13 (A) to determine whether prepaid rent or a security deposit shall
14 be applied to the payment of damages to the premises when authorized by
15 AS 34.03.070(b); and

16 (B) to compute the recovery of other damages to which the
17 parties may be entitled under this chapter; and

18 (2) is, in an action initiated by a party to recover damages or to obtain
19 other relief to which a party may be entitled under this chapter, presumptive evidence
20 of the condition of the premises and its contents at the commencement of the term of
21 the period of occupancy covered by the rental agreement.

22 * Sec. 17. AS 34.03.110(a) is amended to read:

23 (a) Unless otherwise agreed, a landlord who conveys premises that include a
24 dwelling unit subject to a rental agreement in a good faith sale to a bona fide
25 purchaser is relieved of liability under the rental agreement and this chapter as to
26 events occurring subsequent to written notice to the tenant of the conveyance.
27 However,

28 (1) the landlord remains liable to the tenant for the property and money
29 to which the tenant is entitled under AS 34.03.070, unless the property and money are
30 specifically assigned to and accepted by the purchaser; and

31 (2) the provisions of

1 (A) a premises condition statement prepared under
2 AS 34.03.020(e) between the landlord and the tenant remains valid as
3 between the purchaser and the tenant until a new premises condition
4 statement is entered into between the purchaser and the tenant; and

5 (3) a contents inventory prepared under AS 34.03.020(e)
6 between the landlord and the tenant remains valid as between the
7 purchaser and the tenant for the contents remaining on the premises after
8 the conveyance of the premises until a new contents inventory is entered
9 into between the purchaser and the tenant.

10 * Sec. 18. AS 34.03.120 is amended to read:

11 Sec. 34.03.120. TENANT TO MAINTAIN DWELLING UNIT. The tenant
12 shall

13 (1) keep that part of the premises occupied and used by the tenant as
14 clean and safe as the condition of the premises permit;

15 (2) dispose all ashes, rubbish, garbage, and other waste from the
16 dwelling unit in a clean and safe manner;

17 (3) keep all plumbing fixtures in the dwelling unit or used by the tenant
18 as clean as their condition permits;

19 (4) use in an ordinary, nonabusive [A REASONABLE] manner all
20 electrical, plumbing, sanitary, heating, ventilating, air-conditioning, kitchen, and other
21 facilities and appliances including elevators in the premises;

22 (5) not [DELIBERATELY OR NEGLIGENTLY] destroy, deface,
23 damage, impair, or remove a part of the premises or knowingly permit any person to
24 do so;

25 (6) not [UNREASONABLY] disturb, or permit others on the premises
26 with the tenant's consent to [UNREASONABLY] disturb, a neighbor's peaceful
27 enjoyment of the premises; and

28 (7) maintain smoke detection devices as required under AS 18.70.095.

29 * Sec. 19. AS 34.03.120 is amended by adding a new subsection to read:

30 (b) The tenant may not knowingly engage at the premises in an illegal activity
31 involving alcoholic beverages, an illegal activity involving a controlled substance, or

1 an illegal activity involving an imitation controlled substance, or knowingly permit
2 others in the premises to engage in one or more of those activities at the rental
3 premises.

4 * Sec. 20. AS 34.03.220(a) is amended to read:

5 (a) Except as provided in this chapter, if there is [A MATERIAL]
6 noncompliance by the tenant with the rental agreement or noncompliance with
7 AS 34.03.120(a) [AS 34.03.120 MATERIALLY AFFECTING HEALTH AND
8 SAFETY], the landlord may deliver a written notice to the tenant specifying the acts
9 and omissions constituting the breach and specifying that the rental agreement will
10 terminate 24 hours [UPON A DATE NOT LESS THAN 20 DAYS] after receipt of
11 the notice. If the breach is remediable by repairs or the payment of damages or
12 otherwise and the tenant remedies the breach to the satisfaction of the landlord
13 before the date specified in the notice, the rental agreement will not terminate.

14 If the breach is not remedied [IN 10 DAYS], the rental agreement terminates as
15 provided in the notice, and at that time the landlord may serve a notice under
16 AS 09.45.100 to quit the premises [SUBJECT TO THE PROVISIONS OF THIS
17 SECTION. IF THE BREACH IS REMEDIABLE BY REPAIRS OR THE PAYMENT
18 OF DAMAGES OR OTHERWISE AND THE TENANT ADEQUATELY REMEDIES
19 THE BREACH BEFORE THE DATE SPECIFIED IN THE NOTICE, THE RENTAL
20 AGREEMENT WILL NOT TERMINATE. IN THE ABSENCE OF DUE CARE BY
21 THE TENANT, IF SUBSTANTIALLY THE SAME ACT OR OMISSION THAT
22 CONSTITUTED A PRIOR NONCOMPLIANCE OF WHICH NOTICE WAS GIVEN
23 RECURS WITHIN SIX MONTHS, THE LANDLORD MAY TERMINATE THE
24 RENTAL AGREEMENT UPON AT LEAST 10 DAYS WRITTEN NOTICE
25 SPECIFYING THE BREACH AND THE DATE OF TERMINATION OF THE
26 RENTAL AGREEMENT].

27 * Sec. 21. AS 34.03.220(b) is amended to read:

28 (b) If rent is unpaid when due and the tenant fails to pay rent within five [10]
29 days after written notice by the landlord of nonpayment and the intention to terminate
30 the rental agreement if the rent is not paid within that period of time, the tenancy
31 terminates unless the landlord agrees to allow the tenant to remain in occupancy, and

1 the landlord may terminate the rental agreement and immediately recover possession
2 of the rental unit; only one written notice of default need be given the tenant by the
3 landlord as to any one default.

4 * Sec. 22. AS 34.03.220 is amended by adding a new subsection to read:

5 (d) An order of abatement entered by a court under AS 09.50.170 terminates
6 a rental agreement on the premises subject to the order of abatement.

7 * Sec. 23. AS 34.03 is amended by adding a new subsection to read:

8 Sec. 34.03.335. **PROOF OF BASIS IN CERTAIN PROPERTY DAMAGE**
9 **CLAIMS.** In an action initiated by a party to recover damages or to obtain other relief
10 to which a party may be entitled under this chapter, a premises condition statement and
11 contents inventory prepared under AS 34.03.020(e) is presumptive evidence of the
12 condition of the premises and its contents at the commencement of the term of the
13 period of occupancy covered by the rental agreement between the parties. Unless its
14 authenticity is rebutted by clear and convincing evidence by the party against whom
15 the statement and contents inventory is offered, the statement and contents inventory
16 may be offered by a party, without additional supporting evidence, as the basis on
17 which to compute the recovery of damages to which the party may be entitled under
18 this chapter.

19 * Sec. 24. AS 34.03.360 is amended by adding new paragraphs to read:

20 (19) "illegal activity involving alcoholic beverages" means a person's
21 delivery of an alcoholic beverage in violation of AS 04.11.010(b) in an area where the
22 results of a local option election have, under AS 04.11.490 - 04.11.500, prohibited the
23 Alcoholic Beverage Control Board from issuing, renewing, or transferring a liquor
24 license or permit under AS 04;

25 (20) "illegal activity involving a controlled substance" means a
26 violation of AS 11.71.010(a), 11.71.020(a), 11.71.030(a)(1) or (2), or 11.71.040(a)(1),
27 (2), or (5);

28 (21) "illegal activity involving an imitation controlled substance" means
29 a violation of AS 11.73.010 - 11.73.030.

30 * Sec. 25. AS 34.05 is amended by adding a new section to read:

31 **ARTICLE 3. ILLEGAL ACTIVITIES IN NONRESIDENTIAL PREMISES.**

1 Sec. 34.05.100. TENANT RESPONSIBILITIES IN PREMISES OTHER
2 THAN DWELLING UNITS. (a) In rented premises other than premises to which the
3 provisions of AS 34.03 apply, the tenant may not knowingly engage at the premises
4 in an illegal activity involving alcoholic beverages, an illegal activity involving a
5 controlled substance, or an illegal activity involving an imitation controlled substance,
6 or knowingly permit others in the premises to engage in one or more of those activities
7 at the rental premises.

8 (b) If there is noncompliance with (a) of this section, a person may seek relief
9 under AS 09.50.170 - 09.50.240.

10 (c) An order of abatement entered by a court under AS 09.50.210 against
11 premises under this section terminates a rental agreement on the premises subject to
12 the order of abatement.

13 (d) In this section, "dwelling unit," "illegal activity involving alcoholic
14 beverages," "illegal activity involving a controlled substance," and "illegal activity
15 involving an imitation controlled substance" have the meanings given in AS 34.03.360.

16 * Sec. 26. AS 34.03.360(18) is repealed.

Deborah

Please see page 13, lines 4-5
(underlined sections) for changes
made RE: abbot loop church.
Call if you have any questions.
Mike to

WORK DRAFT

WORK DRAFT

8-LS0832R
Chenoweth
3/2/94

CS FOR HOUSE BILL NO. 222()

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES JAMES, Porter

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to landlords and tenants and to the applicability of the Uniform
2 Residential' Landlord and Tenant Act, to termination of tenancies and recovery
3 of rental premises, to tenant responsibilities, to the civil remedies of forcible entry
4 and detainer and nuisance abatement, and to the duties of peace officers to notify
5 landlords of arrests involving certain illegal activity on rental premises; and
6 amending Rule 62(a) of the Alaska Rules of Civil Procedure and Rule 24(a) of
7 the Alaska District Court Rules of Civil Procedure."

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

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

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

13 (1) make a reasonable attempt to discover the identity of the owner of

1 the premises; and

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

3 (A) in person; or

4 (B) in writing, at the last address listed on the assessment roll
5 maintained by the municipality under AS 29.45.160 if the premises are located
6 within a municipality that levies and collects a property tax; if an address is not
7 available, notice of the person's arrest may be sent to the property owner at
8 any other address known to the peace officer.

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

11 * Sec. 2. AS 09.45.090 is repealed and reenacted to read:

12 Sec. 09.45.090. UNLAWFUL HOLDING BY FORCE. (a) For property to
13 which the provisions of AS 34.03 (Uniform Residential Landlord and Tenant Act)
14 apply, unlawful holding by force includes each of the following within the meaning
15 of AS 09.45.060 - 09.45.160:

16 (1) when, for failure or refusal to pay rent due on the lease or
17 agreement under which the tenant or person holds, and after receipt of demand under
18 AS 34.03.220(b) by the landlord for possession of the premises if the rent is not paid,
19 the tenant fails or refuses to vacate or pay the rent within 10 days;

20 (2) when, after receipt of demand made in writing for the possession
21 of the premises,

22 (A) because of a violation of a condition or covenant set out in
23 AS 34.03.120(a), other than a breach of AS 34.03.120(a)(5) due to the
24 deliberate infliction of substantial damage to the premises, the tenant fails or
25 refuses to deliver up the possession of the premises within the number of days
26 provided for termination under AS 34.03.220(a)(2);

27 (B) because of a violation of AS 34.03.120(a)(5) by deliberate
28 infliction of substantial damage to the premises, the tenant fails or refuses to
29 deliver up the possession of the premises by the date set out in the notice
30 provided under AS 34.03.220(a)(1);

31 (C) because the tenant has violated AS 34.03.120(b) or the

1 tenant has used the dwelling unit or allowed the dwelling unit to be used for
2 an illegal purpose, the tenant fails or refuses to deliver up the possession of the
3 premises within five days;

4 (D) because the landlord requires the tenant to vacate the
5 premises for a reason set out in AS 34.03.310(c)(2) or (c)(4) - (7), the tenant
6 fails or refuses to deliver up the possession of the premises within the longer
7 of 30 days or the period of notice for the landlord's recovery of possession of
8 the premises set out in the rental agreement; or

9 (E) because the tenancy is based upon an estate at will or by
10 sufferance, the tenant or person in possession continues in possession of the
11 premises after expiration of the time for determining the tenancy; or

12 (3) when, without a demand made in writing for the possession of the
13 premises,

14 (A) a person in possession continues in possession of the
15 premises

16 (i) *at the expiration of the time limited in the lease or*
17 *agreement under which that person holds; or*

18 (ii) without a valid rental agreement as that term is
19 defined in AS 34.03.360 and without the consent of the landlord; or

20 (B) a tenant or person in possession continues in possession of
21 the premises after the tenancy has been terminated by issuance of an order of
22 abatement under AS 09.50.210(a).

23 (b) For property to which the provisions of AS 34.03 (Uniform Residential
24 Landlord and Tenant Act) do not apply, unlawful holding by force includes each of
25 the following within the meaning of AS 09.45.060 - 09.45.160:

26 (1) when, for failure or refusal to pay rent due on the lease or
27 agreement under which the tenant or person in possession holds, after receipt of
28 demand made in writing by the landlord for the possession of the premises if the rent
29 is not paid, the tenant or person in possession fails or refuses to vacate or pay the rent
30 due within 10 days;

31 (2) when, after receipt of demand made in writing for the possession

1 of the premises,

2 (A) because the tenant or person in possession has violated a
3 condition or covenant of the lease or rental agreement other than breach of a
4 covenant or condition set out in (B) of this paragraph, the tenant or person in
5 possession of a premises fails or refuses to deliver up the possession of the
6 premises within 10 days;

7 (B) because the tenant or person in possession has deliberately
8 inflicted substantial damage to the premises, the tenant or person in possession
9 of a premises fails or refuses to deliver up the possession of the premises on
10 the date specified in the demand for possession; the date specified may not be
11 less than 24 hours after the date of receipt of the demand for possession;

12 (C) because the tenant or person in possession has violated
13 AS 34.05.100(a) or has used the premises for or allowed the premises to be
14 used for an illegal purpose, the tenant or person in possession fails or refuses
15 to deliver up the possession of the premises within five days;

16 (D) for premises the lease or occupation of which is primarily
17 for the purpose of farming or agriculture, because the tenant or person in
18 possession has violated of AS 34.05.025, other than a violation that is a breach
19 under (B) or (C) of this paragraph, the tenant fails or refuses to deliver up
20 possession of the premises within 30 days; or

21 (E) because the tenancy is based upon an estate at will or by
22 sufferance, the tenant or person in possession continues in possession of the
23 premises after expiration of the time for determining the tenancy; or

24 (3) when, without a demand made in writing for the possession of the
25 premises,

26 (A) a person in possession continues in possession of the
27 premises

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

30 (ii) without a written lease or agreement and without the
31 consent of the landlord; or

1 (B) a tenant or person in possession continues in the possession
2 of the premises after the tenancy has been terminated by issuance of an order
3 of abatement under AS 09.50.210(a).

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

5 Sec. 09.45.100. [REQUISITES OF] NOTICE TO QUIT. (a) Except where
6 demand for possession of premises is made under AS 09.45.090(a)(1) or (b)(1), in
7 addition to a demand made in writing for possession of premises required to be
8 given under AS 09.45.090, a person entitled to the premises who seeks to recover
9 possession of the premises may not commence and maintain an action to recover
10 possession of premises under AS 09.45.060 - 09.45.160 unless the person first gives
11 a notice to quit to the person in possession.

12 (b) To recover possession of premises after a tenant or person in
13 possession has failed or refused to pay rent due, for purposes of (d) of this section
14 and AS 09.45.110, demand for possession of the premises under AS 09.45.090(a)(1)
15 or (b)(1) constitutes notice to quit, and service of a separate notice to quit is not
16 required.

17 (c) Except as provided in (b) of this section, a notice to quit may not be
18 given until the number of days specified in AS 09.45.090 has expired following the
19 receipt by the person in possession of the demand in writing for possession.
20 However, if, under AS 09.45.090, there is no requirement that the person in
21 possession receive a demand in writing for the possession of the premises, the
22 person who seeks to recover possession may immediately serve a notice to quit
23 under this section.

24 (d) A notice to quit shall be in writing and shall be served upon the tenant or
25 person in possession by being

26 (1) delivered to the tenant or person;

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

28 or

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

1 * Sec. 4. AS 09.45.110 is amended to read:

2 Sec. 09.45.110. PERIOD BETWEEN SERVICE OF NOTICE AND ACTION
3 BROUGHT. An action for the recovery of the possession of the premises may be
4 commenced

5 (1) after service of [MAINTAINED IN THE CASES SPECIFIED IN
6 AS 09.45.090(2) WHEN] the notice to quit [HAS BEEN SERVED] upon the tenant
7 or person in possession

8 (A) by personal delivery of the notice to quit to the tenant
9 or person: or

10 (B) by leaving a copy of the notice to quit at the premises:
11 or

12 (2) on or after

13 (A) the 14th day following mailing of the demand for
14 possession of the premises to the tenant or person in possession by
15 registered or certified mail, when demand is made under
16 AS 09.45.090(a)(1) or (b)(1); or

17 (B) the fourth day following mailing of the notice to quit to
18 the tenant or person in possession by registered or certified mail in
19 circumstances not covered by AS 09.45.090(a)(1) or (b)(1) [FOR THE
20 PERIOD OF 10 DAYS BEFORE THE COMMENCEMENT OF THE ACTION
21 UNLESS THE LEASING OR OCCUPATION IS FOR THE PURPOSE OF
22 FARMING OR AGRICULTURE, IN WHICH CASE THE NOTICE SHALL
23 BE SERVED 90 DAYS BEFORE COMMENCEMENT OF THE ACTION].

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

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

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

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

7 * Sec. 7. AS 09.50.170 is amended to read:

8 Sec. 09.50.170. ABATEMENT OF PLACES USED FOR CERTAIN ACTS
9 [IMMORAL ACT]. A person who erects, establishes, continues, maintains, uses,
10 owns, or leases a building, structure, or other place used for one of the following
11 activities [THE PURPOSES OF LEWDNESS, ASSIGNATION, OR PROSTITUTION
12 OR ANY OTHER IMMORAL ACT] is guilty of maintaining a nuisance, and the
13 building, structure, or place, or the ground itself in or upon which or in any part of
14 which the activity [LEWDNESS, ASSIGNATION, OR PROSTITUTION] is
15 conducted, permitted, [OR] carried on, continues, or exists, and its [THE] furniture,
16 fixtures, and other contents, constitute a nuisance and may be enjoined and abated:

17 (1) prostitution:

18 (2) an illegal activity involving a place of prostitution: or

19 (3) an illegal activity involving

20 (A) alcoholic beverages:

21 (B) a controlled substance: or

22 (C) an imitation controlled substance.

23 * Sec. 8. AS 09.50.170 is amended by adding a new subsection to read:

24 (b) In this section, "illegal activity involving alcoholic beverages," "illegal
25 activity involving a controlled substance," "illegal activity involving an imitation
26 controlled substance," "illegal activity involving a place of prostitution," and
27 "prostitution" have the meanings given in AS 34.03.360.

28 * Sec. 9. AS 09.50 is amended by adding a new section to read:

29 Sec. 09.50.175. ADMISSIBILITY OF EVIDENCE TO PROVE NUISANCE.
30 In an action brought under AS 09.50.170(a) to prove the existence of a nuisance, the
31 court may consider

- 1 (1) evidence of reputation within a community;
- 2 (2) evidence derived from records of the courts of the state or of the
- 3 United States that relate to previous complaints concerning alleged violations of, and
- 4 to arrests for or convictions of violations of, laws based on activity set out in
- 5 AS 09.50.170.

6 * Sec. 10. AS 09.50.210 is amended to read:

7 Sec. 09.50.210. ORDER OF ABATEMENT. (a) If the court finds and

8 enters [UPON] judgment that a nuisance exists, the court shall enter an order of

9 abatement. The order of abatement must direct

10 (1) termination of the lease or rental agreement, if any, on the

11 premises subject to the order of abatement, if the tenant who occupies under the

12 lease or rental agreement has been given notice of the proceedings under

13 AS 09.50.170 - 09.50.240;

14 (2) [SHALL BE ENTERED DIRECTING] the removal from the

15 building or place of the fixtures, furniture, and movable property used in the nuisance

16 and their sale in the manner provided for the sale of chattels under execution;

17 (3) [. THE ORDER SHALL ALSO DIRECT] the closing of the

18 building or place against its use for any purpose for a period of one year unless sooner

19 released.

20 (b) A person who breaks and enters or uses a building, structure, or other

21 place [SO] directed to be closed by an order entered under (a)(3) of this section is

22 guilty of contempt and shall be punished for contempt as provided in AS 09.50.200.

23 * Sec. 11. AS 09.50.230 is amended to read:

24 Sec. 09.50.230. RELEASE OF PREMISES TO OWNER. (a) The court may

25 order premises abated under AS 09.50.210 delivered to the owner and cancel the

26 order of abatement if [IF] the owner of the premises

27 (1) has not been guilty of a contempt in the proceedings;

28 (2) [, AND] appears and pays all costs, fees, and allowances that

29 [WHICH] are a lien on the premises; [,] and

30 (3) files a bond with sureties approved by the court in an amount

31 [THE FULL VALUE OF THE PROPERTY AS] determined by the court to the effect

1 that the owner will abate the nuisance that exists at the building or place and prevent
2 the nuisance from being established within a period of one year thereafter [, THE
3 COURT MAY ORDER THE PREMISES TO BE DELIVERED TO THE OWNER
4 AND CANCEL THE ORDER OF ABATEMENT].

5 (b) The lease of the property does not release it from a judgment, lien, penalty,
6 or liability to which it may be subject by law.

7 (c) A cancellation of the order of abatement does not affect a termination
8 of a lease or rental agreement made under AS 09.50.210(a)(1).

9 * Sec. 12. AS 17.30 is amended by adding a new section to read:

10 Sec. 17.30.160. NOTICE TO LANDLORD FOLLOWING ARREST. (a) A
11 peace officer who arrests a person the peace officer believes is not the owner of the
12 premises for an illegal activity involving a controlled substance or an illegal activity
13 involving an imitation controlled substance on the premises shall

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

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

17 (A) in person; or

18 (B) in writing, at the last address listed on the assessment roll
19 maintained by the municipality under AS 29.45.160 if the premises are located
20 within a municipality that levies and collects a property tax; if an address is not
21 available, notice of the person's arrest may be sent to the property owner at
22 any other address known to the peace officer.

23 (b) In this section, "illegal activity involving a controlled substance" and
24 "illegal activity involving an imitation controlled substance" have the meanings given
25 in AS 34.03.360.

26 * Sec. 13. AS 34.03.020 is amended by adding a new subsection to read:

27 (e) If required by the landlord, the landlord and the tenant shall include within
28 the rental agreement, incorporate by reference in the rental agreement, or add as a
29 separate attachment to the rental agreement a premises condition statement, setting out
30 the condition of the premises, including fixtures but excluding reference to any of the
31 other contents of the premises, and, if applicable, a contents inventory itemizing or

1 describing all of the furnishings and other contents of the premises and specifying the
2 condition of each of them. In the premises condition statement and contents inventory,
3 the parties shall describe the premises and its contents at the commencement of the
4 term of the period of the occupancy covered by the rental agreement. When signed
5 by the parties, the premises condition statement and contents inventory completed
6 under this subsection become part of the rental agreement.

7 * Sec. 14. AS 34.03.070(b) is amended to read:

8 (b) Upon termination of the tenancy, property or money held by the landlord
9 as prepaid rent or as a security deposit may be applied to the payment of accrued rent
10 and the amount of damages that the landlord has suffered by reason of the tenant's
11 noncompliance with AS 34.03.120. ["DAMAGES" DOES NOT INCLUDE WEAR
12 RESULTING FROM ORDINARY USE OF THE PREMISES.] The accrued rent and
13 damages must be itemized by the landlord in a written notice mailed to the tenant's
14 last known address within the time limit prescribed by (g) of this section, together with
15 the amount due the tenant. In this subsection, "damages"

16 (1) means deterioration of the premises and, if applicable, of the
17 contents of the premises;

18 (2) does not include deterioration

19 (A) that is the result of the tenant's use of the premises by
20 normal, nonabusive living;

21 (B) caused by the landlord's failure to prepare for expected
22 conditions or by the landlord's failure to comply with an obligation of the
23 landlord imposed by this chapter.

24 * Sec. 15. AS 34.03.090 is amended by adding a new subsection to read:

25 (b) As a condition of delivery of possession of the premises to the tenant, the
26 landlord may require the tenant to acknowledge or verify by the tenant's signature the
27 accuracy of the premises condition statement and contents inventory prepared under
28 AS 34.03.020(e). Before requiring the tenant's signature, the landlord shall first advise
29 the tenant that the premises condition statement and contents inventory

30 (1) may be used by the landlord as the basis

31 (A) to determine whether prepaid rent or a security deposit shall

1 be applied to the payment of damages to the premises when authorized by
2 AS 34.03.070(b); and

3 (B) to compute the recovery of other damages to which the
4 parties may be entitled under this chapter; and

5 (2) is, in an action initiated by a party to recover damages or to obtain
6 other relief to which a party may be entitled under this chapter, presumptive evidence
7 of the condition of the premises and its contents at the commencement of the term of
8 the period of occupancy covered by the rental agreement.

9 * Sec. 16. AS 34.03.110(a) is amended to read:

10 (a) Unless otherwise agreed, a landlord who conveys premises that include a
11 dwelling unit subject to a rental agreement in a good faith sale to a bona fide
12 purchaser is relieved of liability under the rental agreement and this chapter as to
13 events occurring subsequent to written notice to the tenant of the conveyance.
14 However,

15 (1) the landlord remains liable to the tenant for the property and money
16 to which the tenant is entitled under AS 34.03.070, unless the property and money are
17 specifically assigned to and accepted by the purchaser; and

18 (2) the provisions of

19 (A) a premises condition statement prepared under
20 AS 34.03.020(e) between the landlord and the tenant remains valid as
21 between the purchaser and the tenant until a new premises condition
22 statement is entered into between the purchaser and the tenant; and

23 (B) a contents inventory prepared under AS 34.03.020(e)
24 between the landlord and the tenant remains valid as between the
25 purchaser and the tenant for the contents remaining on the premises after
26 the conveyance of the premises until a new contents inventory is entered
27 into between the purchaser and the tenant.

28 * Sec. 17. AS 34.03.120 is amended by adding a new subsection to read:

29 (b) The tenant may not knowingly engage at the premises in prostitution, an
30 illegal activity involving a place of prostitution, an illegal activity involving alcoholic
31 beverages, an illegal activity involving a controlled substance, or an illegal activity

1 involving an imitation controlled substance, or knowingly permit others in the premises
2 to engage in one or more of those activities at the rental premises.

3 * Sec. 18. AS 34.03.220(a) is amended to read:

4 (a) Except as provided in this chapter,

5 (1) if the tenant or someone in the tenant's control deliberately
6 inflicts substantial damage to the premises in breach of AS 34.03.120(a)(5), the
7 landlord may deliver a written notice to the tenant specifying the act constituting
8 the breach and specifying that the rental agreement will terminate upon a date
9 that is not less than 24 hours after receipt of the notice: at any time after the date
10 set out in the notice, the landlord may serve a notice to quit the premises: for
11 purposes of this paragraph, damage to premises is "substantial" if the loss,
12 destruction, or defacement of property attributable to the deliberate infliction of
13 damage to the premises exceeds the amount of the security deposit held by the
14 landlord under AS 34.03.070:

15 (2) if there is a material noncompliance by the tenant with the rental
16 agreement or noncompliance with AS 34.03.120, other than deliberate infliction of
17 substantial damage to the premises, materially affecting health and safety, the
18 landlord may deliver a written notice to the tenant specifying the acts and omissions
19 constituting the breach and specifying that the rental agreement will terminate upon
20 a date not less than 10 [20] days after receipt of the notice: if [. IF] the breach is not
21 remedied in five [10] days, the rental agreement terminates as provided in the notice
22 subject to the provisions of this section: if [. IF] the breach is remediable by repairs
23 or the payment of damages or otherwise and the tenant adequately remedies the breach
24 before the date specified in the notice, the rental agreement will not terminate: in [.
25 IN] the absence of due care by the tenant, if substantially the same act or omission that
26 constituted a prior noncompliance of which notice was given recurs within six months,
27 the landlord may terminate the rental agreement upon at least five [10] days written
28 notice specifying the breach and the date of termination of the rental agreement.

29 * Sec. 19. AS 34.03.220 is amended by adding a new subsection to read:

30 (d) An order of abatement entered by a court under AS 09.50.170 terminates
31 a rental agreement on the premises subject to the order of abatement.

1 * Sec. 20. AS 34.03.330(b) is amended to read:

2 (b) Unless created to avoid the application of this chapter, the following
3 arrangements are not governed by this chapter:

4 (1) residence at an institution, public or private, or in premises used
5 as temporary housing, public or private, if incidental to detention or the provision
6 of medical, geriatric, educational, counseling, religious, or similar services;

7 (2) occupancy under a contract of sale of a dwelling unit or the
8 property of which it is a part [,] if the occupant is the purchaser or a person who
9 succeeds to the interest of a purchaser;

10 (3) occupancy by a member of a fraternal or social organization in the
11 portion of a structure operated for the benefit of the organization;

12 (4) transient occupancy in a hotel, motel, lodgings, or other transient
13 facility;

14 (5) occupancy by an employee of a landlord whose right to occupancy
15 is conditioned upon employment substantially for services, maintenance, or repair to
16 the premises;

17 (6) occupancy by an owner of a condominium unit or a holder of a
18 proprietary lease in a cooperative;

19 (7) occupancy under a rental agreement covering premises used by the
20 occupant primarily for agricultural purposes.

21 * Sec. 21. AS 34.03 is amended by adding a new section to read:

22 Sec. 34.03.335. PROOF OF CERTAIN PROPERTY DAMAGE CLAIMS. In
23 an action initiated by a party to recover damages or to obtain other relief to which a
24 party may be entitled under this chapter, a premises condition statement and contents
25 inventory prepared under AS 34.03.020(e) is presumptive evidence of the condition of
26 the premises and its contents at the commencement of the term of the period of
27 occupancy covered by the rental agreement between the parties. Unless its authenticity
28 is rebutted by clear and convincing evidence by the party against whom the statement
29 and contents inventory is offered, the statement and contents inventory may be offered
30 by a party, without additional supporting evidence, as the basis on which to compute
31 the recovery of damages to which the party may be entitled under this chapter.

1 * Sec. 22. AS 34.03 is amended by adding new sections to read:

2 Sec. 34.03.342. NOTICE TO LANDLORD FOLLOWING ARREST
3 RELATED TO PROSTITUTION. A peace officer who arrests a person the peace
4 officer believes is not the owner of the premises for prostitution or an illegal activity
5 involving a place of prostitution alleged to have been committed by the person on the
6 premises shall

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

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

10 (A) in person; or

11 (B) in writing, at the last address listed on the assessment roll
12 maintained by the municipality under AS 29.45.160 if the premises are located
13 within a municipality that levies and collects a property tax; if an address is not
14 available, notice of the person's arrest may be sent to the property owner at
15 any other address known to the peace officer.

16 Sec. 34.03.345. MEDIATION. A landlord and a tenant may agree to mediate
17 disputes between them as to an obligation of either of them arising out of the rental
18 agreement. If the landlord and tenant agree to mediate disputes, they shall include the
19 scope of the agreement within the executed rental agreement, incorporate a reference
20 to that agreement within the rental agreement, or add the text of the agreement as a
21 separate attachment to the rental agreement.

22 * Sec. 23. AS 34.03.360 is amended by adding new paragraphs to read:

23 (19) "illegal activity involving alcoholic beverages" means a person's
24 delivery of an alcoholic beverage in violation of AS 04.11.010(b) in an area where the
25 results of a local option election have, under AS 04.11.490 - 04.11.500, prohibited the
26 Alcoholic Beverage Control Board from issuing, renewing, or transferring a liquor
27 license or permit under AS 04;

28 (20) "illegal activity involving a controlled substance" means a
29 violation of AS 11.71.010(a), 11.71.020(a), 11.71.030(a)(1) or (2), or 11.71.040(a)(1),
30 (2), or (5);

31 (21) "illegal activity involving an imitation controlled substance" means

1 a violation of AS 11.73.010 - 11.73.030;

2 (22) "illegal activity involving a place of prostitution" means a violation
3 of AS 11.66.120(a)(1) or 11.66.130(a)(1) or (4);

4 (23) "prostitution" means an act in violation of AS 11.66.100.

5 * Sec. 24: AS 34.05 is amended by adding a new section to read:

6 ARTICLE 3. ILLEGAL ACTIVITIES IN PREMISES NOT
7 SUBJECT TO UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT.

8 Sec. 34.05.100. TENANT RESPONSIBILITIES IN PREMISES NOT
9 SUBJECT TO AS 34.03. (a) In rented premises other than premises to which the
10 provisions of AS 34.03 apply, the tenant may not knowingly engage at the premises
11 in prostitution, an illegal activity involving a place of prostitution, an illegal activity
12 involving alcoholic beverages, an illegal activity involving a controlled substance, or
13 an illegal activity involving an imitation controlled substance, or knowingly permit
14 others in the premises to engage in one or more of those activities at the rental
15 premises.

16 (b) If there is noncompliance with (a) of this section, a person may seek relief
17 under AS 09.50.170 - 09.50.240.

18 (c) An order of abatement entered by a court under AS 09.50.210 against
19 premises under this section terminates a rental agreement on the premises subject to
20 the order of abatement.

21 (d) A peace officer who arrests a person the peace officer believes is not the
22 owner of the premises for prostitution or an illegal activity involving a place of
23 prostitution alleged to have been committed by the person on the premises shall

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

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

27 (A) in person; or

28 (B) in writing, at the last address listed on the assessment roll
29 maintained by the municipality under AS 29.45.160 if the premises are located
30 within a municipality that levies and collects a property tax; if an address is not
31 available, notice of the person's arrest may be sent to the property owner at

1 any other address known to the peace officer.

2 (e) In this section,

3 (1) "illegal activity involving alcoholic beverages," "illegal activity
4 involving a controlled substance," "illegal activity involving an imitation controlled
5 substance," "illegal activity involving a place of prostitution," and "prostitution" have
6 the meanings given in AS 34.03.360;

7 (2) "premises" means a structure or the structure of which it is a part,
8 and facilities and appurtenances in it, and grounds, areas, and facilities held out for the
9 use of persons entitled to possession under an agreement that relates to its use.

10 * Sec. 25. AS 34.03.360(18) is repealed.

11 * Sec. 26. AS 09.45.125, added by sec. 5 of this Act, allowing orders to vacate and writs
12 of assistance to issue at the same time as the entry of judgment or at any later date, has the
13 effect of amending Rule 62(a) of the Alaska Rules of Civil Procedure and Rule 24(a) of the
14 Alaska District Court Rules of Civil Procedure by eliminating the respective periods of
15 automatic stays of enforcement upon judgment for orders to vacate premises.

16 * Sec. 27. AS 09.45.125, added by sec. 5 of this Act, takes effect only if sec. 26 of this
17 Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
18 Constitution of the State of Alaska.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 222() "U" Version

Page 12, line 30:

Delete "as temporary housing, public or private."

Insert "as a temporary shelter, whether public or private, for persons who meet the definition of "homeless" under applicable regulations of the Department of Housing and Urban Development"

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HB 222 Finance Subcommittee Changes

(a) Adopted Rep. Brown's Amendment J.10

(1) Divides section AS 34.03.220 into 2 subsections

A. When the tenant deliberately inflicts substantial damage to the premises, the landlord may serve notice to quit and terminate the rental agreement 24 hours after service of notice.

B. When there is material non-compliance by the tenant of AS 34.03.120(a), other than (a)(5), the landlord may serve notice to quit, and if the noncompliance is not remedied within 10 days, the landlord may terminate the rental agreement.

(2) Returns original language of AS 34.03.120(a) as it currently appears in statute.

(b) Adopted Representative Hanley's amendment J.12 (amended amendment)

Amended AS 34.03.330(b)(1), under arrangements not governed by this chapter to include, "in premises used as temporary housing, public or private,..."

(c) Adopted Amendment J.1

Adds notice of change of relevant court rules (Rule 62(a) of Alaska Rules of Civil Procedure and Rule 24(a) of Alaska District Court Rules of Civil Procedure), due to the addition of AS 09.45.125 in the draft's section 6.

(d) Modified and adopted Representative Finkelstein's amendment J.9

Adopted a new section, draft's section 27, which would require notice to landlord following arrest for activities involving prostitution or an illegal activity involving a place of prostitution alleged to have been committed by the person on the premises.

(e) Adopted Representative Brown's amendment R.1 (amended amendment)

Changed the definition of substantial damage in draft's section 20, to include "\$400.00 or" the amount of the security deposit held by the landlord under AS 34.03.070, whichever is greater.

(f) Added a new section, AS 34.03.345 "Mediation" to draft's section 27, from Representative Finkelstein's amendment K.18. Only the first two sentences of

amendment's page 2, section 26 were adopted.

(g) adopted rewrite of AS 09.45.090, "Unlawful holding by force."

(1) Cross referenced applicable provisions in Title 34 and Title 9

(2) Clarified notice required under 09.455.100-105 satisfies requirements on corresponding provisions in Title 34

(h) Adopted Representative Parnell's amendment R.4

Replaces existing references of "receipt" of notice with "service" of notice.

(i) Added definition of "peace officer" to AS 34.03.360(23) to draft's section 28.

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Sec 2 UNLAWFUL HOLDING BY FORCE includes:

a For property to which Uniform Landlord/Tenant Act DOES APPLY, UNLAWFUL HOLDING BY FORCE includes:

1. when tenant fails to pay rent 10 days after service of written notice;
2. when
  - A tenant fails to maintain premises, affecting health and safety, and fails to vacate 10 days after service of written notice
  - B tenant has deliberately inflicted substantial damage of \$400 or security deposit, whatever is greater, and has RECEIVED notice that agreement will terminate in 24 hours, and fails to vacate in specified time
  - C tenant fails to vacate 30 days after landlord gives notice of: remodeling due to code; good faith recovery for personal purposes or remodeling; or sale of property
  - D tenant in mobile home park fails to vacate in specified time after land use change
  - E tenant fails to vacate within specified time after expiration of week-to-week or month-to-month agreement
  - F tenant knowingly engages in illegal activity and fails to vacate in 5 days after service of written notice
  - G tenant has no valid rental agreement and fails to vacate.
3. when without a notice to quit, but after an order of abatement, tenant fails to vacate.

**b** For property to which Uniform Landlord/Tenant Act DOES NOT APPLY,  
UNLAWFUL HOLDING BY FORCE includes:

1. when tenant fails to pay rent 10 days after service of written notice;
2. when, following service of notice to quit
  - A tenant has breached rental agreement and fails to vacate in 10 days
  - B tenant has deliberately inflicted substantial damage and fails to vacate in 24 hours
  - C tenant has used premises for illegal purposes and fails to vacate in 5 days
  - D tenant on agricultural property breaches agreement and fails to vacate in 30 days
  - E tenant fails to vacate after estate at will terminates
  - F tenant fails to vacate
    - i. at expiration of time limited in agreement
    - ii. without written agreement or consent
3. when tenant fails to vacate after order of abatement.

**C** when landlord is required to provide written notice by mail, 3 days must be added to a and b above.

## Tenant fails to pay rent when due

Tenant fails to pay rent when due  
(Violation of AS 09.45.090(a)(1))

Landlord may serve notice  
under AS 09.45.100(b), of  
written notice required by  
AS 34.03.220(b)

If notice is served  
by being (1)  
delivered to the  
tenant or person;  
(2) left at the  
premises in case  
of absence from  
the premises

If notice is served  
by being sent by  
registered or  
certified mail

Unlawful holding of  
force occurs if the  
rent is not paid and  
the tenant or person  
in possession of  
premises fails to  
vacate within 10  
days of service of  
notice

Unlawful holding of  
force occurs if the  
rent is not paid and  
the tenant or person  
in possession of  
premises fails to  
vacate within 13  
days of service of  
notice

### 09.45.090(a)(1)

When, for failure or refusal to pay rent due on the lease or agreement under which the tenant or person holds, and after service, under AS 09.45.100(b), of the written notice required by AS 34.03.220(b) by the landlord for recovery of possession of the premises of the rent is not paid, the tenant or person in possession fails or refuses to vacate or pay the rent within 10 days;

### 09.45.100(b)

To recover possession of premises after a tenant or person in possession has failed or refused to pay rent due, for purposes of (c) of this section and AS 09.45.110, service of the written notice required by AS 34.03.220(b) or a demand in writing for possession of the premises constitutes notice to quit, and service of a separate notice to quit is not required.

### 34.03.200(b)

If rent is unpaid when due and the tenant fails to pay rent within 10 days after written notice by the landlord of nonpayment and the intention to terminate the rental agreement if the rent is not paid within that period of time, the tenancy terminates unless the landlord agrees to allow the tenant to remain in occupancy, and the landlord may terminate the rental agreement and immediately recover possession of the rental unit; only one written notice of default need be given the tenant by the landlord as to any one default.

An action for the recovery of the possession of the premises may be commenced on or after the date the tenant or person in possession unlawfully holds the possession of the dwelling unit by force as determined under AS 09.45.090.

**Tenant violates condition under AS 34.03.120(a),  
other than AS 34.03.120(a)(5)**

Tenant violates condition of AS 34.03.120(a), other than AS 34.03.120(a)(5), or condition in the rental agreement

Landlord may serve notice under AS 09.45.100, of written notice required by AS 34.03.220(a)(2)

If notice is served by being (1) delivered to the tenant or person; (2) left at the premises in case of absence from the premises

If notice is served by being sent by registered or certified mail

Unlawful holding of force occurs if noncompliance is not satisfied within the number of days specified under AS 34.03.220(a)(2)

Unlawful holding of force occurs if noncompliance is not satisfied within three days added to the number of days specified under AS 34.03.220(a)(2)

An action for the recovery of the possession of the premises may be commenced on or after the date the tenant or person in possession unlawfully holds the possession of the dwelling unit by force as determined under AS 09.45.090.

**AS 34.03.120(a) Tenant to maintain dwelling unit.**

The tenant shall

- (1) keep that part of the premises occupied and used by the tenant as clean and safe as the condition of the premises permit;
- (2) dispose all ashes, rubbish, garbage, and other waste from the dwelling unit in a clean and safe manner;
- (3) keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;
- (4) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilation, air-conditioning, kitchen, and other facilities and appliance including elevators in the premises;
- (6) not unreasonably disturb, or permit others on the premises with the tenant's consent to unreasonably disturb, a neighbor's peaceful enjoyment of the premises; and
- (7) maintain smoke detection devices as required under AS 18.70.095.

**AS 34.03.220(a)(2)**

If there is a material noncompliance by the tenant with the rental agreement, or if there is noncompliance with AS 34.03.120, other than deliberate infliction of substantial damage to the premises, materially affecting health and safety, the landlord may deliver a written notice to quit to the tenant under AS 09.45.100 - 09.45.110 specifying the acts and omission constituting the breach and specifying that the rental agreement will terminate upon a date not less than 10 days after receipt of the notice; if the breach is not remedied the rental agreement terminates as provided in the notice subject to the provisions of this section; if the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach before the date specified in the notice, the rental agreement will not terminate; if noncompliance recurs within six months, the landlord may terminate the rental agreement upon at least five days written notice to quit.

**Tenant violates condition under AS 34.03.120(a)(5),  
deliberately inflicting substantial damage to the premises**

Tenant violates condition under AS 34.03.120(a)(5), deliberately inflicting substantial damage to the premises

**AS 34.03.120(a)(5) Tenant to maintain dwelling unit.**  
The tenant shall  
(5) not deliberately or negligently destroy, deface, damage, impair, or remove a part of the premises or knowingly permit any person to do so.

Landlord may serve notice under AS 09.45.100, of written notice required by AS 34.03.220(a)(1)

**AS 34.03.220(a)(1)**  
...for purposes of this paragraph, damage to premises is "substantial" if the loss, destruction, or defacement of property attributable to the deliberate infliction of damage to the premises exceeds \$400 or the amount of the security deposit held by the landlord under AS 34.03.070, whichever is greater.

If notice is served by being (1) delivered to the tenant or person;  
(2) left at the premises in case of absence from the premises

If notice is served by being sent by registered or certified mail

Unlawful holding of force occurs if tenant refuses to vacate within 24 hours after receipt of notice specified under AS 34.03.220(a)(1)

Unlawful holding of force occurs if the tenant refuses to vacate the premises within 4 days of service of notice specified under AS 34.03.220(a)(1)

An action for the recovery of the possession of the premises may be commenced on or after the date the tenant or person in possession unlawfully holds the possession of the dwelling unit by force as determined under AS 09.45.090.

**Landlord requires tenant to vacate the premises for a reason set out in AS 34.03.310(c)(2) or (c)(4)-(7)**

Landlord requires tenant to vacate the premises for a reason set out in AS 34.03.310(c)(2) or (c)(4)-(7)

Landlord may serve notice under AS 09.45.100

If notice is served by being (1) delivered to the tenant or person; (2) left at the premises in case of absence from the premises

If notice is served by being sent by registered or certified mail

Unlawful holding of force occurs if tenant fails to vacate within the longer of 30 days or period of notice for the landlord's recovery of premises set out in rental agreement

Unlawful holding of force occurs if tenant fails to vacate within three days added to the longer of 30 days or period of notice for the landlord's recovery of premises set out in rental agreement

An action for the recovery of the possession of the premises may be commenced on or after the date the tenant or person in possession unlawfully holds the possession of the dwelling unit by force as determined under AS 09.45.090.

**AS 34.03.310 Retaliatory conduct prohibited**

(c) Notwithstanding (a) and (b) of this section, a landlord may bring an action for possession if

(2) compliance with the applicable building or housing code requires alteration, remodeling, or demolition that would effectively deprive the tenant of use of the dwelling unit;

(4) the landlord seeks in good faith to recover possession of the dwelling unit for personal purpose;

(5) the landlord seeks in good faith to recover possession of the dwelling unit for the purpose of substantial altering, remodeling, or demolishing the premises;

(6) the landlord seeks in good faith to recover possession of the dwelling unit for the purpose of immediately terminating for at least six months use of the dwelling unit as a dwelling unit; or

(7) the landlord has in good faith contracted to sell the property, and the contract of sale contains a representation by the purchaser corresponding to (4), (5), or (6) of this subsection.

**In a mobile home park, if there is to be a change in the use of land for which termination of tenancy is authorized by AS 34.03.225(a)(4)**

In a mobile home park, if there is to be a change in the use of land for which termination of tenancy is authorized by AS 34.03.225(a)(4)

Landlord may serve notice under AS 09.45.100

If notice is served by being (1) delivered to the tenant or person; (2) left at the premises in case of absence from the premises

Unlawful holding of force occurs if tenant fails to vacate within the longer of 180 days or period of notice for the landlord's recovery of premises set out in rental agreement

If notice is served by being sent by registered or certified mail

Unlawful holding of force occurs if tenant fails to vacate within three days added to the longer of 180 days or period of notice for the landlord's recovery of premises set out in rental agreement

An action for the recovery of the possession of the premises may be commenced on or after the date the tenant or person in possession unlawfully holds the possession of the dwelling unit by force as determined under AS 09.45.090.

**AS 34.03.225(a)(4) Limitations on mobile home park operator's right to terminate**

(a) A mobile home park operator may evict a mobile home or a mobile home park dweller or tenant only for one of the following reasons:

(4) a change in the use of the land comprising the mobile home park, or the portion of it on which the mobile home to be evicted is located; however, all dwellers or tenant so affected by a change in land use shall be given at least 180 days notice, or longer if a longer notice period is provided in a valid lease.

**Tenant remains in possession of the premises without the landlord's consent after the termination of a periodic tenancy prescribed by AS 34.03.290(a) or (b)**

Tenant remains in possession of the premises without the landlord's consent after the termination of a periodic tenancy prescribed by AS 34.03.290(a) or (b)

Landlord may serve a notice to quit under AS 09.45.100 of written notice required by AS 34.03.290(a) & (b)

If notice is served by being (1) delivered to the tenant or person; (2) left at the premises in case of absence from the premises

If notice is served by being sent by registered or certified mail

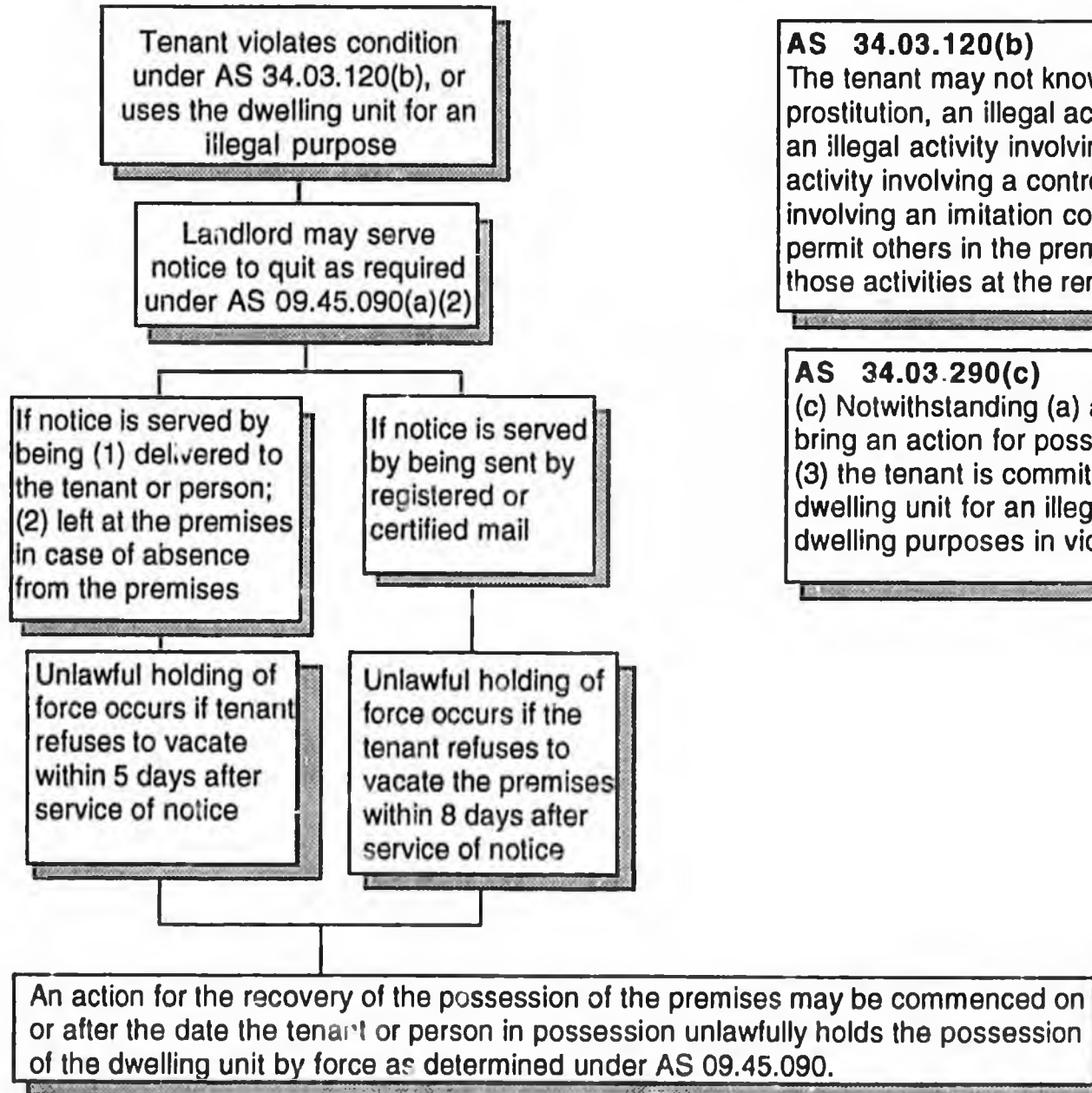
Unlawful holding of force occurs if tenant refuses to vacate within time specified under AS 34.03.290(a) & (b)

Unlawful holding of force occurs if tenant refuses to vacate within three days added to time specified under AS 34.03.290(a) & (b)

An action for the recovery of the possession of the premises may be commenced on or after the date the tenant or person in possession unlawfully holds the possession of the dwelling unit by force as determined under AS 09.45.090.

**AS 34.03.290 Periodic tenancy and holdover**  
(a) While rent is current, the landlord or the tenant may terminate a week to week tenancy by written notice given to the other at least 14 days before the termination date specified in the notice  
(b) The landlord or the tenant may terminate a month to month tenancy by written notice given to the other at least 30 days before the rental due date specified in the notice.

**Tenant violates condition under AS 34.03.120(b) or uses the dwelling unit for an illegal purpose in violation of AS 34.03.310(c)(3)**



**AS 34.03.120(b)**

The tenant may not knowingly engage at the premises in prostitution, an illegal activity involving a place of prostitution, an illegal activity involving alcoholic beverages, an illegal activity involving a controlled substance, or an illegal activity involving an imitation controlled substance, or knowingly permit others in the premises to engage in one or more of those activities at the rental premises.

**AS 34.03.290(c)**

(c) Notwithstanding (a) and (b) of this section, a landlord may bring an action for possession if (3) the tenant is committing waste or a nuisance, or is using the dwelling unit for an illegal purpose or for other than living or dwelling purposes in violation of the rental agreement;

**Tenant continues in possession of the premises without a valid rental agreement as defined in AS 34.03.360**

**AS 34.03.360 Definitions**

(13) "rental agreement" means all agreements, written or oral, and valid rules and regulation adopted under AS 34.03.130 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

Tenant continues in possession of the premises without a valid rental agreement as defined in AS 34.03.360

Landlord may immediately serve notice to quit under AS 09.45.100

If notice is served by being (1) delivered to the tenant or person; (2) left at the premises in case of absence from the premises

If notice is served by being sent by registered or certified mail

Unlawful holding of force occurs if tenant refuses to vacate immediately after service of notice

Unlawful holding of force occurs if tenant refuses to vacate within 3 days of service of notice

An action for the recovery of the possession of the premises may be commenced on or after the date the tenant or person in possession unlawfully holds the possession of the dwelling unit by force as determined under AS 09.45.090.

### **Problem**

Tenant fails to pay rent when due.

### **Current Procedure**

1. Landlord gives notice of nonpayment & intention to terminate rental agreement if rent is not paid.  
See AS 34.03.220(b).

2. Tenant has 10 days to pay rent or vacate premises.  
See AS 34.03.220(b).

3. If rent is not paid, then tenancy terminates, the landlord may terminate the rental agreement, & immediately seek to recover possession of the rental unit; in addition, it becomes a case of unlawful holding.  
See AS 34.03.220(b).  
Also see AS 09.45.090(1).

4. Court must schedule trial no earlier than 2 days after receipt of summons by tenant & no later than 15 days after landlord files complaint.  
See AS 09.45.120.  
Also see Civil Rule 85, Alaska Rules of Court.

5. If judge decides in favor of landlord, tenant will be served a court order to vacate premises; the time allowed varies.

6. If tenant still does not vacate premises, landlord can get writ of assistance that permits police to participate.

### **Proposed Procedure\***

1. Landlord gives notice of nonpayment & intention to terminate rental agreement if rent is not paid.

2. Tenant has 5 days to pay rent or vacate premises.  
See bill sec. 2 & 21.

3. If rent is not paid, then tenancy terminates, the landlord may terminate the rental agreement, & immediately seek to recover possession of the rental unit; in addition, it becomes a case of unlawful holding.

4. Court must schedule trial no earlier than 2 days after receipt of summons by tenant & no later than 15 days after landlord files complaint.

5. If judge decides in favor of landlord, tenant will be served a court order to vacate premises; the time allowed varies. The court may issue a writ of assistance at the same time if it so chooses.  
See bill sec. 6.

\* Changes underlined.

**Problem**

Tenant holds premises without written lease or agreement against landlord's wishes.

**Current Procedure**

1. Landlord serves tenant with notice to quit premises.  
See AS 09.45.100

2. Tenant has 10 days to vacate premises.  
See AS 09.45.110

3. If tenant remains after expiration of 10 days, it becomes a case of unlawful holding by force, & landlord may seek to recover possession of premises.  
See AS 09.45.090  
Also see AS 09.45.110

4. Court must schedule trial no earlier than 2 days after receipt of summons by tenant & no later than 15 days after landlord files complaint.  
See AS 09.45.120  
Also see Civil Rule 85, Alaska Rules of Court

5. If judge decides in favor of landlord, tenant will be served a court order to vacate premises; the time allowed varies.

6. If tenant still does not vacate premises, landlord can get writ of assistance that permits police to participate.

**Proposed Procedure\***

1. Landlord serves tenant with notice to quit premises.  
See AS 09.45.100

2. Tenant must vacate premises immediately.  
See bill sec. 2 & 5

3. If tenant remains, it becomes a case of unlawful holding by force, & landlord may seek to recover possession of premises.  
See bill sec. 2 & 5.

4. Court must schedule trial no earlier than 2 days after receipt of summons by tenant & no later than 15 days after landlord files complaint.  
See AS 09.45.120  
Also see Civil Rule 85, Alaska Rules of Court

5. If judge decides in favor of landlord, tenant will be served a court order to vacate premises; the time allowed varies. The court may issue a writ of assistance at the same time if it so chooses.  
See bill section 6

\* Changes underlined.

**Problem**

Tenant continues in possession of premises at expiration of lease against wishes of landlord.

**Current Procedure**

1. Landlord serves tenant with notice to quit premises.  
See AS 09.45.100

2. Tenant has 10 days to vacate premises.  
See AS 09.45.110

3. If tenant remains after expiration of 10 days, it becomes a case of unlawful holding by force, & landlord may seek to recover possession of premises.  
See AS 09.45.090  
Also see AS 09.45.110

4. Court must schedule trial no earlier than 2 days after receipt of summons by tenant & no later than 15 days after landlord files complaint.  
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**Proposed Procedure\***

1. Landlord serves tenant with notice to quit premises.  
See AS 09.45.100

2. Tenant has 5 days to vacate premises.  
See bill sec. 2 & 5

3. If tenant remains after expiration of 5 days, it becomes a case of unlawful holding by force, & landlord may seek to recover possession of premises.  
See bill sec. 2 & 5

4. Court must schedule trial no earlier than 2 days after receipt of summons by tenant & no later than 15 days after landlord files complaint.  
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5. If judge decides in favor of landlord, tenant will be served a court order to vacate premises; the time allowed varies. The court may issue a writ of assistance at the same time if it so chooses.  
See bill section 6.

\* Changes underlined.

**Problem**

Tenant violates condition of lease or condition of AS 34.03.120(a).

**Current Procedure**

1. If the breach is one materially affecting health & safety, the landlord may give tenant written notice specifying both the details of the breach & that the rental agreement will terminate in 20 days. See AS 34.03.220

2. If breach is able to be remedied & tenant adequately does so, rental agreement will not terminate. See AS 34.03.220

3. If breach is not remedied in 10 days, rental agreement terminates as specified in notice. See AS 34.03.220

4. If tenant remains after expiration of 20 days, it becomes a case of unlawful holding by force, & landlord may seek to recover possession of premises. See AS 09.45.090 Also see AS 09.45.110

5. Court must schedule trial no earlier than 2 days after receipt of summons by tenant & no later than 15 days after landlord files complaint. See AS 09.45.120 Also see Civil Rule 85, Alaska Rules of Court

6. If judge decides in favor of landlord, tenant will be served a court order to vacate premises; the time allowed varies.

7. If tenant still does not vacate premises, landlord can get writ of assistance that permits police to participate.

8. If same breach occurs again within 6 mos., landlord may terminate tenancy at 10 days' notice. See AS 34.03.220

9. There is another process for breaches of this sort that is set out in AS 09.45, but AS 34.03.220 would probably have legal precedence as it was adopted at a later date.

**Proposed Procedure\***

1. Landlord serves tenant with notice to quit premises that specifies the details of the breach and that the rental agreement will terminate in 24 hours. See bill sec. 20

2. If breach is able to be remedied & tenant does so to the satisfaction of landlord, rental agreement will not terminate. See bill sec. 20

3. If breach is not remedied in 24 hrs. or is not able to be remedied, then the tenancy is terminated & the tenant must quit premises immediately. See bill sec. 20

4. If tenant remains after expiration of 24 hrs., it becomes a case of unlawful holding by force, & landlord may seek to recover possession of premises. See bill sec. 2 & 5

5. Court must schedule trial no earlier than 2 days after receipt of summons by tenant & no later than 15 days after landlord files complaint.

6. See (6) & (7) above; court may do both at same time. See bill sec. 6

\* Changes underlined.

### **Problem**

Tenant engages in an illegal activity in rental unit (or knowingly permits others to do so) involving: alcohol, controlled substances, imitation controlled substances, or prostitution.

### **Current Procedure**

1. Current statutes do not specifically address the tenant's responsibility not to engage in illegal activity involving alcohol or controlled substances.

2. If tenant is suspected of engaging in prostitution, atty. general or a citizen may bring action in court to enjoin the nuisance & person(s) maintaining it.  
See AS 09.50.180

3. If court determines that tenant is engaging in prostitution, tenant is guilty of maintaining a nuisance, & court shall issue an order of abatement that closes the bldg. where nuisance took place for one year.  
See AS 09.50.170 and AS 09.50.210

4. If landlord was unaware of activity, court may release premises to him upon fulfillment of certain conditions.  
See AS 09.50.230

### **Proposed Procedure**

1. If tenant engages at premises in illegal activity involving alcohol/controlled substances, landlord may deliver notice to quit.  
See bill sec. 2

2. Tenant has 5 days to vacate premises.  
See bill sec. 2

3. If tenant remains after expiration of 5 days, it becomes a case of unlawful holding by force, & landlord may seek to recover possession of premises.  
See bill sec. 2

4. If tenant is accused of engaging in prostitution or illegal activity involving alcohol/controlled substances, court may consider evidence of reputation w/in a community to prove the existence of a nuisance.  
See bill sec. 10

5. If court determines that tenant did commit alleged violation, then tenant is guilty of maintaining a nuisance.  
See bill sec. 8

\* Changes underlined.

(Continued on next page.)

6. The court shall enter an order of abatement that terminates the rental agreement & closes the bldg. / place where the activity took place.

See bill sec. 11

7. If landlord was unaware of illegal activity, court may release premises to him/her upon fulfillment of certain conditions.

See bill sec. 12

8. An order of abatement shall be presumptive evidence of an unlawful holding by force and if shall automatically terminate the rental agreement.

See bill sec. 7 & 22

9. If tenant fails to vacate premises after court issues order of abatement, landlord may obtain writ of assistance from the court.

# The Accidental Landlord

These Anchorage homeowners didn't necessarily want strangers in their houses, but negative equity and a weak economy made the choice for them.



By WESLEY LOY  
Daily News Business reporter

Could somebody buy Frank Singleton's extra house? Please? He's tired of renting out the blasted thing.

Listen to this story. Once, after a long war with a bad tenant, Singleton was forced to hire a locksmith to help him get into the place, a duplex in South Anchorage. He knew he had big trouble when he

cracked open the door and heard growling.

Mean, nasty, rip-your-face-off *grrrrrr*. The tenant had abandoned a pair of pit bulls inside, and they'd been scrapping. They'd tried to kill each other, in fact, gnawing ears to bits and spluttering blood all over the walls, the floors, everything.

As for the duplex, well, it was a wreck. The washing machine had been hurled down some steps into a wall. Trash was piled everywhere. The carpet was a matted mess. It took Singleton, a 37-year-old public-relations manager, almost a month of working nights and weekends to clean the place. He started the job with a leaf rake and a wheelbarrow.

"You didn't want to touch things in there," Singleton said. "It was just funky."

This all happened in 1987. Since then, other tenants have similarly misbehaved, balking on rent or slipping away after only a month or two.

Why does Singleton put up with this? He and lots of other people in Anchorage don't have much choice. They are reluctant landlords, people who own homes they would like to sell, but can't.

The sad plight of most reluctant landlords in Anchorage stems from an evil called "negative equity." That's the gap between what a home is worth today, and what the owner still owes on the mortgage.

For people who need to move because of a growing family, or a lost job, or marriage, the question then becomes: How can you sell the house if the gap's too big?

You can't, Singleton said, bitten hard by the negative equity bug. You just can't.

Please see Page F-3, RELUCTANT



Frank Singleton poses in front of his duplex rental property, where a series of unsavory tenants have lived.



## So you want to be a landlord

Here's a rundown of agencies, businesses and other sources to help you do the job right.

**U.S. Department of Housing and Urban Development** — HUD can give you the rules on how to legally choose a tenant, as well as evict one. Basically, you must treat everyone the same. Screening based on race, religion, sex, disability, nationality or whether a person has children is not legal. For information or advice call (202) 220-6170 or write HUD, Seattle Federal Office Building, 909 First Ave., Suite 200 (10E), Seattle, WA 98104-1000.

**Anchorage Equal Rights Commission** — For further, local rules on housing discrimination, contained in Title 5 of the municipal code, call 343-4342 or write Equal Rights Commission, 620 E. 10th Ave., Anchorage 99501.

**Alaska's Landlord Tenant Act** — A copy of the act, with a straightforward booklet on terms from rental agreements to damage deposits to privacy, available from the state Department of Law, 1031 W. Fourth Ave., Suite 200, Anchorage 99501.

**Rental agreements** — Forms good at least as a starting point are available at Arctic Office Products, 100 W. Fireweed Lane, or from Adams Stationers, 4200 Old Seward Highway.

**Internal Revenue Service** — For rules on reporting rental income, and writing off rental property expenses. Ask for Publication 527, "Residential Rental Property," or call the agency's toll-free Tele-Tax number, 800-829-4477, and follow the directions to hear topic 213 on rental income and expenses.

**"Peoria Heights"** — This movie about a "tenant from hell," and a landlord who makes lots of mistakes, is available from most any video store. Watch it at your own peril.

# RELUCTANT LANDLORDS: Negative equity is major culprit

Continued from Page F-1

## THE BIG CRASH

Not too many years ago, negative equity ran rampant in Anchorage. It's still fairly widespread today, casting dozens if not hundreds of people into the unwanted role of landlord, real estate professionals say.

Here's what happened. In the early 1980s, when Singleton bought his duplex, Alaska's economy was booming. The state was flush with oil money, and builders were busy as could be. Houses, condominiums and other residential properties were much in demand, and property values were shooting up, up, up. People thought nothing of dropping big bucks for a nice place to live; they were sure it would be worth even more in a few years if they decided to sell and move to a roomier place, or leave town for a new job.

"Nothing could go wrong," said James Kuntz, general manager at Marston Property Management Inc.

Well, something did go wrong. Terribly wrong. In 1986, world oil prices crashed. The construction boom had, by then, left the town in a flood of housing space. Banks folded. Property values crumbled. Almost overnight, a \$100,000 house wasn't worth anywhere near that. The same thing happened to commercial property.

One study at the time found that the average house fell 25 percent in value, the average condo 50 percent.

Lots of people just walked away, defaulting on their mortgage loans. The rest opted to salvage their credit ratings and cope with high mortgage payments, often stranded in houses too small for their growing families, Kuntz said.

But some, especially those forced to move because of kids, or because they lost a job in Alaska, turned landlord to make payments on their old places.

It was a growing family that drove Singleton into bigger digs in Eagle River in 1987. But he couldn't get anywhere near the \$90,000 he paid for the duplex. So, he rents it out.

The good news is that the negative equity problem is dissipating. It's not nearly as bad as it was three or four years ago, Kuntz said. Many houses have fully recovered, meaning their market value today is equal to the balance of the mortgage, he said.

"Some reluctant landlords have been able to sell and get out from underneath," he said.

But for some the problem persists, especially those owning condos or duplexes or row houses. And just closing the gap between a property's worth and what's still owed on it isn't enough, noted real estate lawyer and radio talk show host Bill McNall.

"You have to cover the cost of sale," he said. That includes paying a real estate agent to handle the sale, title insurance, recording fees, and a few other items. Typically, it costs 10 percent of the sale price just to sell a place, McNall said.

## NO LEISURE

Dr. Aron Wolf is a psychiatrist at the Langdon Psychiatric Clinic. It's probably a handy trade, self-help for the aggravation he sometimes feels as a reluctant landlord.

Wolf rents out two places — a ski cabin at Alyeska, and a small house downtown. He's tried to sell these places. And he probably could "if I was willing to take a real shellacking. And I'm not."

Some tenants have been kind to Wolf, like the ones he has now. Some have not, like the guy who stuck him with a \$1,700 electricity bill on the cabin. Or the one who stayed less than two months in the house then disappeared, leaving the place in a shambles. The walls were nicked and dirty, dog feces all over.

"It was just like, whoa, how could anybody live like this?" Wolf recalled thinking at the time. He had to repaint and clean all the rugs before he could rent it out again.

The worst thing about being a landlord, though, Wolf said, has to be the nagging calls you get — the roof is leaking, the boiler's busted, the power's out. "Those are

the things that are just real annoying," he said.

Not everyone reports a bad experience. Take Tom Walker, a retired Air Force colonel. He started out as a reluctant landlord and later discovered he actually liked it.

Walker found himself in a fix back in 1988. A costly divorce left him unable to make the payments on his four-bedroom house in east Anchorage. And he couldn't sell because of a serious negative equity problem — the gap was about \$40,000.

So he rented the place, and then found an apartment for himself. Things went so well that he decided to invest in two bargain apartment houses and rent those, too. "Don't fight 'em, join 'em," he figured.

Not for everyone

Ever seen the movie "Pacific Heights"? If you haven't, and you're a landlord, beware: This film could give you nightmares.

Wise-cracking actor Michael Keaton takes on a decidedly nasty attitude here, playing a psychotic fraud who rents an apartment in a nice San Francisco couple's spacious house. The couple, living upstairs, spent \$750,000 for the house, and they need renters to help them make the mortgage payments.

Keaton seems like a good tenant — dressed smartly in suits and driving a Porsche. The nice couple doesn't bother to check him out, though. And pretty soon, he's not paying rent. He hammers and saws all night. Roaches scurry out of his apartment in droves. Finally, landlord punches out tenant, tenant shoots landlord and, well, you get the picture.

"I WANT HIM OUT OF HERE!" screams the landlord, frustrated by strong tenant-protection laws.

An extreme case, for sure. A Hollywood melodrama. But there's some good lessons in there. Landlords can save themselves a lot of grief by thoroughly checking out prospective tenants. And understanding laws on how to properly handle problem tenants. And accepting one maxim of the rental market: "People don't take care of things that don't belong to them. They just

don't," said Peggy Benkert, an instructor with the Commonwealth School of Real Estate in Anchorage.

Being a landlord, in fact, just isn't for everybody. Lots of people stuck in the rental game in Anchorage seek out a professional to do the often time-consuming job. For maybe a 10 percent cut of the rent, several companies in town will screen tenants. And keep the books. And troubleshoot plugged drains. And track the myriad of ever-changing landlord-tenant laws. And when necessary, be the bad guy.

"I've got at least half a dozen clients who fit the bill," said David Seal, president and broker at RCI Management Inc.

Among them is a man who isn't a reluctant landlord in the usual sense; he willingly owns a string of apartment buildings. He even does most of the maintenance on his buildings, too. And that's all the tenants think he is — a maintenance man, said Seal. He doesn't want the pressure of being landlord.

"His primary problem is he's got a heart as big as all outdoors," Seal said. "He doesn't have the heart to kick anybody out. All of his tenants were taking gross advantage of him, not paying rent, when I started managing his properties."

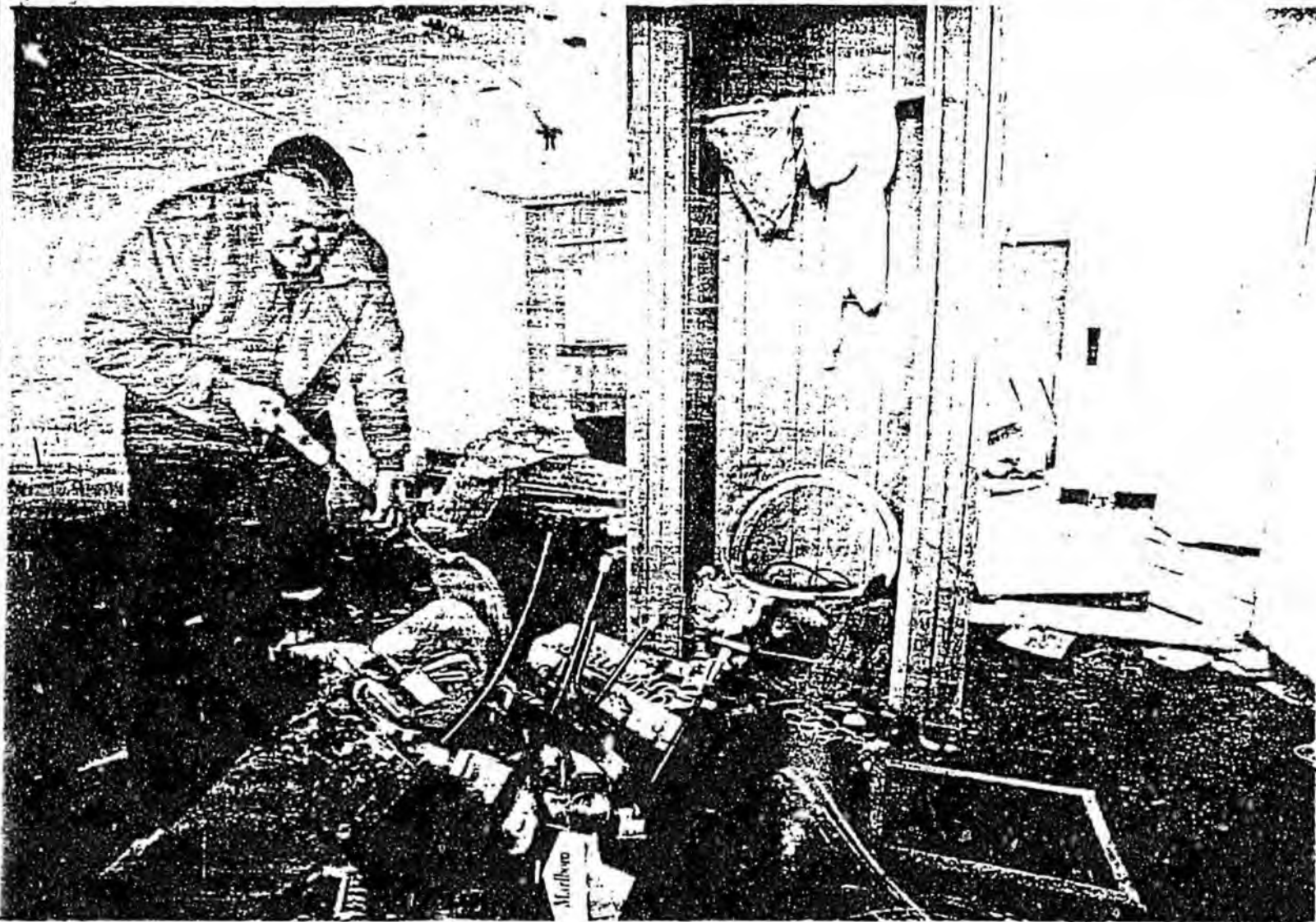
Frank Singleton, the PR man, doesn't want a management company. He just wants rid of his duplex, a first home he thought would turn him a nice profit but instead became a "millstone."

One time Singleton went on vacation. He had just reseeded the yard behind his duplex. His tenant had another idea. They dug up the yard and put in a garden.

"They promised to restore it," said Singleton, a Georgia native. "When they left, I was stuck with a big old wad of potato vines."

Within the next year, he figures, the duplex will be worth the balance of the mortgage, now about \$60,000. He figures he'll sell, if he can manage the sale costs.

"No, I don't want to be a landlord," he said.



Dan Hyde News-Mine

**TRASHED OUT**—Landlord Sam Helms scoops up garbage in a house he rents out in South Fairbanks. Helms says a former tenant caused \$10,000 damage to the home, but the renter denies any wrongdoing.

## Landlord blames law for home's disorder

By KATE RIPLEY  
Staff Writer

For 17 days Sam Helms watched as his tiny rental home at 1536 Stacia St. was trashed. Helms claims unfair state landlord-tenant laws rendered him helpless in the case against his 20-year-old renter, George Cooper Jr.

Cooper moved into the rental home, one house down the street from Helms' own house, Oct. 15, Helms said. The landlord prorated the \$385 monthly rent and charged a \$200 damage deposit.

Problems with Cooper and an endless stream of friends visiting the home started almost immediately, Helms alleged. The

result is \$10,000 in damaged property, he said.

"There were continuous parties . . . There was shooting, urinating in public, fighting. It was keeping the neighbors awake," said Helms, 57, the husband of former Borough Mayor Juanita Helms.

Police officers responded when Helms called, but told him it was a civil matter, Helms said. Five days after Cooper moved in, Helms gave the renter the required 20-days notice under state law for eviction.

Then it was a matter of waiting.

"As soon as I gave him (Cooper) the eviction notice, he had 20

days to destroy my place," Helms said.

Cooper, a convicted felon, eventually was arrested Nov. 6 for violating his probation and was removed from the house, according to probation officer Lou Anne Maxwell. The man is being held without bail at Fairbanks Correctional Center.

The felony conviction stemmed from a July 1990 second-degree forgery. Cooper also was convicted of fraudulent use of a credit card, a misdemeanor.

Maxwell said an anonymous caller told her Cooper and other under-aged youths were drinking at the Stacia Street home. He also allegedly was keeping com-

pany with another convicted felon—not allowed under terms of his probation, Maxwell said.

Cooper gained media attention two years ago after a tragic vehicle accident in the village of Ruoy claimed both of his legs.

While the probation violation arrest removed Cooper from Helms' rental home, the landlord said Fairbanks police should have arrested him before it got to that point.

"The police call it a civil matter, when it's malicious destruction," Helms said.

But John Shover, Fairbanks public safety director, said claiming a renter destroyed  
**See LANDLORD on Back Page**

# LANDLORD

Continued from Page A-1  
property is one thing, while proving it is another.

"If it's a landlord-tenant situation, those situations generally are totally civil" rather than criminally prosecuted, Shover said.

Under state law, if a tenant destroys a landlord's property on purpose, the tenant may be guilty of vandalism and face up to one year in prison and a \$5,000 fine. The law also could require a tenant to pay for the damage.

Shover confirmed Fairbanks police responded to Helms' complaints at least four or five times. They interviewed Cooper, who denied any wrongdoing and placed the blame on friends, Shover said.

Without a confession or witnesses, Shover said the District Attorney's Office "won't touch it" and an arrest would have been pointless.

District Attorney Harry Davis said he is not intimately aware in the case. But he said the probation violation arrest was likely a speedier approach than arresting Cooper under the landlord-tenant act.

Cooper, meanwhile, maintains his innocence. In a hearing in Fairbanks Superior Court Thursday, the young man denied violating his probation. The case has not yet been scheduled for trial.

Regardless of who actually damaged Helms' rental, one look around the home tells a sad tale of destruction.

The white porcelain bathroom sink is smashed. Doors outside and inside the home are riddled with dents, perhaps made with a hammer. Ceiling tiles are either missing or punctured with holes. Empty liquor bottles, beer cans, food containers, old magazines and other debris are scattered across the floor.

The walls are filthy. Two bureaus are overturned, their drawers

smashed. A TV screen is shattered, and a dinette set dismantled.

Insurance will cover most of the estimated \$10,000 in structural damage, Helms said. But it will not replace the furniture.

Cooper has had a handful of run-ins with the law before, but several cases against him have been dismissed in the past.

He was asked to leave Southall Manor within days after he moved there May 31, 1991, according to an Alaska State Housing Authority memo.

His apartment "became a nest for street kids," the memo said.

"Teen-agers were on the roof of Southall Manor, throwing rocks into the street. In short, they had the building under seige," the memo said.

City Mayor Jim Hayes, a consumer investigator for the state attorney general's office, said his office receives about five calls daily on landlord-tenant disputes alone. Budget cuts leave his office ill-equipped to deal with the matter.

"This is a really serious problem in the Fairbanks area," Hayes said.

Hayes is a friend of Helms. He inspected the Stacia rental home as a personal favor. Helms requested help from the City Council but Hayes said there is little the city can do.

"The landlord-tenant act is a state act. The only thing we (the city) can do is just refer people to small claims court or a private attorney," he said.

Helms is bent on changing state law. He said he will organize landlords into an association for that purpose as his "winter project."

"I don't have any problem with the tenant having rights but the landlord should have equal rights," he said.

## LANDLORDS!

Alaska Landlord & Property Managers Assn.  
Organized 1972

### 10 Reasons Why You Should Join ALPMA:

- Credit report
- Promote favorable legislation
- Knowledgeable guest speakers (Accountants, Attorneys, etc.)
- Familiarization with Statutes
- Experience from others
- Enjoy forum of the association
- Problems of other members
- Education
- Marketing skills
- Helps military interaction with civilian population

NEXT MEETING  
OCTOBER 8, 1992  
7:00 PM

### FOR INFORMATION CONTACT

ALICE BREWER  
(Exec. Secretary)  
563-6734

Douglas W. Isaacson  
Alaska Director

## CREDIT SERVICES, INC.

Alaska's Trans Union Serviced Credit Bureau

1305 21st Avenue, Suite 200  
P.O. Box 72739  
Fairbanks, Alaska 99707  
(907) 456-1740  
Fax (907) 456-6203

100 W. International Airport Road  
Suite 207  
Anchorage, Alaska 99518  
(907) 561-7272  
FAX (907) 561-7278

# RELUCTANT LANDLORDS: Negative equity is major culprit

Continued from Page F-1

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Here's what happened. In the early 1980s, when Singleton bought his duplex, Alaska's economy was booming. The state was flush with oil money, and builders were busy as could be. Houses, condominiums and other residential properties were much in demand, and property values were shooting up, up, up. People thought nothing of dropping big bucks for a nice place to live; they were sure it would be worth even more in a few years if they decided to sell and move to a roomier place, or leave town for a new job.

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Wolf rents out two places — a ski cabin at Alyeska, and a small house downtown. He's tried to sell these places. And he probably could "if I was willing to take a real shellacking. And I'm not."

Some tenants have been kind — Wolf, like the ones he has now. Some have not, like the guy who stuck him with a \$1,700 electricity bill on the cabin. Or the one who stayed less than two months in the house then disappeared, leaving the place in a shambles. The walls were nicked and dirty, dog feces all over.

"It was just like, whoa, how could anybody live like this?" Wolf recalled thinking at the time. He had to repaint and clean all the rugs before he could rent it out again.

The worst thing about being a landlord, though, Wolf said, has to be the nagging calls you get — the roof is leaking, the boiler's busted, the power's out. "Those are

the things that are just real annoying," he said.

Not everyone reports a bad experience. Take Tom Walker, a retired Air Force colonel. He started out as a reluctant landlord and later discovered he actually liked it.

Walker found himself in a fix back in 1988. A costly divorce left him unable to make the payments on his four-bedroom house in east Anchorage. And he couldn't sell because of a serious negative equity problem — the gap was about \$40,000.

So he rented the place, and then found an apartment for himself. Things went so well that he decided to invest in two bargain apartment houses and rent those, too. "Don't fight 'em, join 'em," he figured.

## Not for everyone

Ever seen the movie "Pacific Heights"? If you haven't, and you're a landlord, beware: This film could give you nightmares.

Wise-cracking actor Michael Keaton takes on a decidedly nasty attitude here, playing a psychotic fraud who rents an apartment in a nice San Francisco couple's spacious house. The couple, living upstairs, spent \$750,000 for the house, and they need renters to help them make the mortgage payments.

Keaton seems like a good tenant — dressed smartly in suits and driving a Porsche. The nice couple doesn't bother to check him out, though. And pretty soon, he's not paying rent. He hammers and saws all night. Roaches scurry out of his apartment in droves. Finally, landlord punches out tenant, tenant shoots landlord and, well, you get the picture.

"I WANT HIM OUT OF HERE!" screams the landlord, frustrated by strong tenant-protection laws.

An extreme case, for sure. A Hollywood melodrama. But there's some good lessons in there. Landlords can save themselves a lot of grief by thoroughly checking out prospective tenants. And understanding laws on how to properly handle problem tenants. And accepting one maxim of the rental market: "People don't take care of things that don't belong to them. They just

don't," said Peggy Benkert, an instructor with the Commonwealth School of Real Estate in Anchorage.

Being a landlord, in fact, just isn't for everybody. Lots of people stuck in the rental game in Anchorage seek out a professional to do the often time-consuming job. For maybe a 10 percent cut of the rent, several companies in town will screen tenants. And keep the books. And troubleshoot plugged drains. And track the myriad of ever-changing landlord-tenant laws. And when necessary, be the bad guy.

"I've got at least half a dozen clients who fit the bill," said David Seal, president and broker at RCI Management Inc.

Among them is a man who isn't a reluctant landlord in the usual sense; he willingly owns a string of apartment buildings. He even does most of the maintenance on his buildings, too. And that's all the tenants think he is — a maintenance man, said Seal. He doesn't want the pressure of being landlord.

"His primary problem is he's got a heart as big as all outdoors," Seal said. "He doesn't have the heart to kick anybody out. All of his tenants were taking gross advantage of him, not paying rent, when I started managing his properties."

Frank Singleton, the PR man, doesn't want a management company. He just wants rid of his duplex, a first home he thought would turn him a nice profit but instead became a "millstone."

One time Singleton went on vacation. He had just reseeded the yard behind his duplex. His tenant had another idea. They dug up the yard and put in a garden.

"They promised to restore it," said Singleton, a Georgia native. "When they left, I was stuck with a big old wad of potato vines."

Within the next year, he figures, the duplex will be worth the balance of the mortgage, now about \$60,000. He figures he'll sell, if he can manage the sale costs.

"No, I don't want to be a landlord," he said.

March 19, 1993

Senator Loren Leman  
State Capitol  
Juneau, AK 99801-1182

MAR 23 1993

Dear Senator Leman:

I am in support of SB155 to change the landlord/tenant laws. These changes are not meant to hurt the good tenant, but would help support the landlords in keeping their apartments in good shape for all tenants when and if there is one bad apple in the bunch. As it stands right now, the good tenants are also in jeopardy when there is someone that is being obnoxious and knows that the landlord can't do anything legally to evict them.

The new changes are not meant to help the landlord have the upper hand but to make the laws more equal, both for the good tenant and the landlord. I do not believe that these laws are too outrageous as most other states have similar and sometimes stricter laws to protect the landlord from vandalism, violence and non-payment of rent.

Sincerely,

*Cheryl A. Stahl*

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