

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 86/2

9268 HOUSE LABOR & COMMERCE

189

FAX TRANSMITTAL**MAR 20 1997**DATE: 03/20/97TIME: 2:30pmTO: Labor & Commerce Committee Chairman FAX # (907) 465-2040ATTN: Representative Norman RokebergFROM: BAY REALTY, INC.CONTACT PERSON Terry Yager (x) For your comments () As you requested () Please call me about this () As we discussedTotal number of pages, including this page 4 .**IMPORTANT**

If you do not receive all pages, please call back as soon as possible.

Phone Number (907) 235-6183
Fax Number (907) 235-4031

Comments: Representative Rokeberg.

The enclosed signatures represents 100% of the Real Estate licensees in our area that are currently in town. The interest was to the extent that it was suggested on a couple of occasions that I should fax this letter to the other State Boards. They felt comfortable there would be similar concerns expressed.

TERRY YAGER

MAR 20 1997

Terry Yager
331 E. Pioneer Avenue
Suite A
Homer, Alaska 99603

March 20, 1997

To the Honorable Chairman Rokeberg
Alaska State Legislature
House of Representatives
State Capitol
Juneau AK 99801-1182

Fax #(907) 465-2040

Re: House Bill 33

On Monday, March 17, 1997, in an attempt at a teleconference regarding House Bill 33, it was politely pointed out to me that my concerns were wasting the Labor & Commerce Committee's time. Perhaps my message was poorly expressed, but I felt there were very legitimate concerns, so I expressed these concerns at our monthly Board meeting. Below you will find the signatures of licensees that share in those concerns.

In case they were not clearly understood at the Monday Teleconference I will go over them again.

In your "Sponsor Statement" faxed on March 13, 1997 it outlined the committee and the Real Estate Commissions purpose for the need for House Bill 33. This consisted of the following:

- 1) To license property managers
- 2) To help protect the citizens of Alaska
- 3) Technical language revision
- 4) Housekeeping changes

As I read through the work draft and various amendments it became very apparent that this bill was much more far reaching than your single page statement indicated.

I, as well as most licensees, would be much more comfortable if we had a broader idea of the bigger picture.

Inclusions of new subsections and proposed technical language changes would seem to the average licensee that perhaps House Bill 33 has much more far reaching ramifications than the single paragraph outlined in your sponsor statement. If the 1995 case of embezzling from 17 associations is the main catalyst for House Bill 33 it would seem the proposed changes will have a substantially larger impact on the Real Estate side of our current statutes and regulations than the property management side. We already have a very effective way of dealing with dishonest licensees. It's called "Prison".

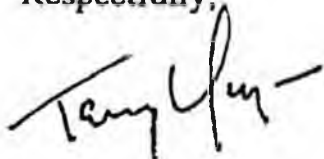
Conclusion:

Lack of information or mis-information in most cases led to perhaps unfounded concerns and suspicions. If the Real Estate Commission and this committee feel they have adequately informed the general Real Estate licensee populace then why are the below signatures expressing concern?

Suggestions:

Have a representative of the Real Estate Commission and legislative arm to travel to each regional Real Estate board and more clearly explain the main purposes for the need of House Bill 33. (Why fix something that isn't broken?) This would allow licensees the opportunity to ask questions first hand.

Respectfully,



Terry Yager
Current Education Chairman
president-elect
Kachemak Board of Realtors

To the Honorable Chairman Rokeberg

Re: House Bill 33

Signatures of Concerned Licensees

Signature	Name	Title	Company
<i>Tom Hall</i>	Tom Hall	salesperson	Bay Realty, Inc.
<i>John D. Koch</i>	John D. Koch	salesperson	Bay Realty, Inc.
<i>Scott Connelly</i>	Scott Connelly	Salesperson	Bay Realty, Inc.
<i>Anne C. Whitney</i>	Anne C. Whitney	salesperson	Coastal Realty, Inc.
<i>Wayne Koster</i>	Wayne Koster	salesperson	RE/MAX of Homer
<i>Allen Tardas</i>	Allen Tardas	Salesperson	RE/MAX of Homer
<i>Wancy Bell</i>	Wancy Bell	Broker	RE/MAX of Homer
<i>Joyce A. Porte</i>	Joyce A. Porte	Assoc. Broker	RE/MAX of Homer
<i>Ancie Newby</i>	Ancie Newby	BROKER	HOMER REAL ESTATE
<i>Devery Willis</i>	DEVERY WILLIS	SALESPERSON	HOMER REAL ESTATE
<i>Mark Edwards</i>	MARK EDWARDS	Salesperson	BAY REAL ESTATE
<i>Dick Strickhorst</i>	DICK STRICKHORST	Associate Broker	Bay Realty, Inc.
<i>Kenneth Bayliss</i>	Kenneth Bayliss	Associate Broker	Bay Realty, Inc.
<i>Bessie K. Leisek</i>	BESSIE K. LEISEK	Associate Broker	Bay Realty, Inc.
<i>Erwin T. Trimble</i>	Erwin T. Trimble	Broker	Coastal Realty

March 21, 1997

Norman and Shirley: REVISED

My quick review:

Differences between Version F, 3/18/97, and Version B, 3/11/97, HB 33

1. Page 7, line 9, version F: adds "the building Owners and Managers Association, or other recognized national organizations;" in place of previous language.
2. Page 8, lines 8-13. (b) is new language regarding commercial real estate services broker.
3. Page 9, line 3 (e) "Unless licensed as a commercial real estate services broker," is new language.
4. Page 9, line 17, new Section 13 - Civil penalty for unlicensed or unauthorized practice. Language from the AELS statutes as adopted in amendment 4(b). Goes to Page 10, line 13. Subsection (c) of this new language is not as was in the amendment adopted by the committee -- "before issuing" language is not in; the "after providing" language is.
5. Page 16, Section 16 is new language regarding commercial real estate services broker license.
6. Page 17, 08.88.191(c), page 14 of version B, is deleted as per amendment.
7. Page 17, line 25 now reads "60 days or less"
Page 17, line 29 now reads "more than 60"
Per amendment adopted by committee
8. Page 18, line 23, now reads "may reactive the license" . . . "by applying for an active" as per the amendment.
9. Page 21, line 28, drops "exclusive" before "real estate personal services contracts" as per amendment.
10. Page 22, lines 3-6, restates (1) with deletion of duplicative "for at least three years" language. Ms. Lauterbach constructed the deletion to delete the added "for at least three years".
11. Page 22, line 8, adds after "provide" "upon request to any principal in a transaction" per amendment.

12. Page 24, Section 37 of B deleted per amendment (agency disclosure section).
13. Page 35, lines 2-3, adds after "licensee", "including a commercial real estate services broker".
14. Page 35, lines 9-10, adds new (6) re "commercial real estate services broker"
15. Page 35, lines 18-19, adds "(8) "employed" includes being an independent contractor with an employer".

Janet

LEGAL SERVICES

MAR 18 1997

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

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

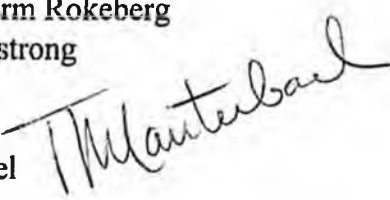
MEMORANDUM

March 18, 1997

SUBJECT: Possible "Family" Amendment for CSHB 33(L&C), F version

TO: Representative Norm Rokeberg
Attn: Shirley Armstrong

FROM: Terri Lauterbach
Legislative Counsel



You have asked for an amendment that gives a definition of "family." I have found the following possible definitions in the Alaska Statutes:

Sec. 04.06.020. Appointment and qualifications.

In this section, "immediate family member" means a spouse, child, or parent.

Sec. 11.41.220. Assault in the third degree.

(c) In this section, "the person's family member" means

- (1) a spouse, child, grandchild, parent, grandparent, sibling, uncle, aunt, nephew, or niece, of the person, whether related by blood, marriage, or adoption;
- (2) a person who lives or has lived, in a spousal relationship with the person;
- (3) a person who lives in the same household as the person; or
- (4) a person who is a former spouse of the person or is or has been in a dating, courtship, or engagement relationship with the person.

Sec. 13.46.990. Definitions.

(10) "member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption;

Sec. 15.13.400. Definitions.

(6) "immediate family" means the spouse, parents, children, including a stepchild and an adoptive child, and siblings of an individual;

Sec. 16.05.940. Definitions.

(32) ...; "family" means persons related by blood, marriage, or adoption, and a person living in the household on a permanent basis;

Representative Norm Rokeberg

March 18, 1997

Page 2

Sec. 23.10.350. Employment of person under 18.

(e)(2) an individual employed by a member of the individual's family; in this paragraph, "member of the individual's family" means the individual's spouse, parent, step-parent, grandparent, step-grandparent, great grandparent, step-great grandparent, brother, sister, uncle, aunt, great-uncle, or great-aunt, whether of the whole or half blood or by adoption or by marriage.

Sec. 24.45.171. Definitions.

(4) "immediate family" means the spouse and dependent children of an individual;

Sec. 24.60.990. Definitions.

(5) "immediate family" means the spouse, parents, children, including a stepchild and an adoptive child, and siblings of a person;

Sec. 42.40.230. Conflicts of interest.

(f)(2) "immediate family" means

(A) spouse;

(B) dependent, parent, parent-in-law, child, son-in-law, daughter-in-law, sibling, uncle, aunt, niece, or nephew.

Sec. 47.08.140. Definitions.

(6) "family" means two or more persons related by blood or marriage or adoption living as one economic unit;

I will use whatever definition you consider appropriate for CSHB 33(L&C). Just let me know your preference.

I am not aware of any legal term for "a close friend who helps you manage your own private property." If the friend signs documents for you, then the friend would need a power of attorney and would be an attorney in fact.

Please let me know if I can be of further assistance.

TML:jdr

97-195.jdr

MAR 29 1997

FACSIMILIE COVER SHEET

PREFERRED REALTY & MTG.
MILE 26.1 KENAI SPUR HWY
P.O. BOX 8317
NIKISKI, ALASKA 99035

(907)776-5557
(907)776-5815

SEND TO/ AN/ A L'ATTENTION DE Company Name/ Firmennamen/ Société	From/ Von/ De
LABOR & COMMERCE	ANNA JOHNS
Attention/ Zu Händen von/ A l'attention de	Date/ Datum/ Date
MR. ROKEBERG	3/28/97
Fax Number/ Fax Nr./ N° de fax	Phone Number/ Telefon/ N° de tél.
(907)465-2040	(907)465-4854

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Nombre de pages (Page de garde incluse)

1 PAGE

COMMENTS/ ANMERKUNGEN/ COMMENTAIRES

LABOR & COMMERCE COMMITTEE

RE: HOUSE BILL 33

I AM SENDING THIS FAX TO LET YOU KNOW I AM NOT IN FAVOR OF HOUSE BILL 33.

THERE ARE SEVERAL REASONS:

1. WE HAVE OUR OWN CODE OF ETHICS THAT MEMBERS OF THE REALTORS FOLLOW AND UPHOLD
2. THE E&O INSURANCE SHOULD NOT BE MANDATORY AND WE SHOULD NOT HAVE TO BUY IT THROUGH THE REAL ESTATE COMMISSION. IT'S A GOOD IDEA TO HAVE E&O INSURANCE BUT EVERYTHING SHOULD NOT BE MANDATED THROUGH THE GOVERNMENT
3. REQUIRING DIFFERENT LICENSES FOR EACH AREA OF REAL ESTATE IS NOT AN ISSUE OF QUALITY CONTROL BUT OF QUANTITY OF MONEY PAID IN LICENSE FEES. THE TESTS WE ARE NOW REQUIRED TO TAKE COVER ALL AREAS OF REAL ESTATE. THE REQUIRED CONTINUING EDUCATION WE ARE REQUIRED TO TAKE IS ON GOING. AND I MIGHT ADD, AN EXCELLENT IDEA. IF YOU WANT TO IMPROVE QUALITY, INCREASE THE HOURS OF CONTINUING EDUCATION REQUIRED TO MAINTAIN OUR CURRENT LICENSES. MOST GOOD AGENTS TAKE ABOVE AND BEYOND WHAT IS REQUIRED BY GETTING ADDITION CERTIFICATIONS SUCH AS, BROKERS, CRS, GRI, CCIM, ARM AND ETC. THESE CERTIFICATIONS ARE EXPENSIVE TO OBTAIN AND THE HIGHER EDUCATION DOES A LOT MORE GOOD THEN ADDITIONAL LICENSING TESTS.

SINCERELY, ANNA JOHNS, BROKER

CC: ALL Legislators

MAR 31 1997



M I C H A E L Q U I N N C O N S T R U C T I O N

FAX

DATE: March 31, 1997

TO: Representative Norman Rokenberg **FAX#:** 465-2040

FROM: Dee Quinn

SUBJECT: House Bill No. 33 (L&C)
Workdraft dated 3/18/97

Fax CC: Alaska Association of Realtors 561-1779
 Anchorage Board of Realtors 563-8476
 Alaska Real Estate Commission 562-5781
 Re/Max of Wasilla 376-6516

I know you and the commission have worked hard on this bill and many of the changes are necessary and timely, such as the endorsements for property management and association management services. However, there are other areas in this draft bill that should be eliminated or revised.

I am asking for your support in making the following changes to the Subject bill. I feel these changes will reduce the workload of the commission and its staff, prove to be more equitable to the licensed practitioners and still provide adequate protection to the general public.

Item 1. - Page 1. Sec. 1 AS 08.88.051 Sub. Par. (a): Add "At least two of the licensed members" must be practicing brokers.

Item 2. - Page 5. Sec. 5 AS 08.88.081 Sub. Par. (1): Remove "ethical standards" from this paragraph. The commission is better served focusing on the legal standards and letting a professional organization such as the National Association of Realtors establish and monitor ethical standards.

Item 3. - Page 6. Sec. 6 AS 08.88.091 Sub. Par. (a)(3): I feel that the scope of the commission should not be expanded into the instructor training field. That job should be left to entities that are in that line of work. However, I do feel that the commission should set the standards for approved instructors in the real estate education programs as well as monitor and enforce their standards.

March 31, 1997
Representative Norman Rokenberg
House Bill No. 33 (L&C)
Page 2

Item 4. - Page 8. Sec. 12 AS 08.88.161 Sub. Par. (b) and (3): Remove commercial real estate service broker in its entirety. There is no indication from current real estate practices that such a designation is necessary to protect the public. Nor is the requirement to pass a property management exam in addition to the sales exam any special consequence that would require the forming of a new designation. The commercial broker designation would create wide dissension and inequity in the real estate profession in that it would only allow the commercial broker to perform real estate activities in properties valued over \$500,000 when the majority of the participants are either associate brokers or practitioners.

Item 5. - Page 14. Sec. 16 AS 08.88.173 Sub. Par. (3): Remove in its entirety for reason explained above.

Item 6. - Page 5. Sec. 17 AS 08.88.173 Sub. Par. (a) and (b) are too ambiguous and could be financially damaging to the brokers, associate brokers, and practitioners. I believe Errors and Omissions Insurance is necessary, however, the brokers should be allowed to contract with a carrier of their choice for the amount and type of coverage they need as long as the minimum coverage as specified by this statute is met. As it stands, a broker may have to purchase supplemental insurance if the amount and type of coverage contracted for by the commission is less than the brokers feel they need, or the deductible is higher than they feel they want to be responsible for. The supplemental premium in addition to the proposed \$200 mandatory to the commission could be financially damaging.

Sub. Par (d) creates another ambiguity in that it addresses licensees who choose to participate in the program while Sub. Par. (a) stipulates that licensees under this chapter shall carry the insurance.

Item 7. - Page 26. Sec. 39 AS 08.88.401 Sub. Par. (b) and (l): Since many real estate activities are closely related, persons licensed under this chapter should be allowed to share in commissions through referral fees between the different endorsed fields. This would be a benefit for the general public in that it would allow for a smoother flow of professional services to satisfy a principle's needs from one segment of the industry to another, i.e., referral from a sales practitioner to a property manager, etc.

Thank you for the time and effort you have extended in support of our industry.

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE COMMITTEE, CHAIRMAN
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
JUDICIARY COMMITTEE, MEMBER
CORRECTIONS BUDGET SUBCOMMITTEE, MEMBER
ADMINISTRATION BUDGET SUBCOMMITTEE MEMBER
HEALTH & SOCIAL SERVICES BUDGET SUBCOMMITTEE MEMBER



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FAX: (907) 465-2040

Representative Norman Rokeberg

SPONSOR STATEMENT HOUSE BILL 33

House Bill 33, An Act relating to real estate licensing and the real estate surety fund, was introduced at the request of the Real Estate Commission (hereinafter "Commission") and a number of interested Alaskans. Its main purposes are to license property managers and community association managers, and help protect the citizens of Alaska. The length of this bill is due to the many technical language revisions, e.g. from "real estate broker, associate broker or salesman" terminology to "real estate services licensees" terminology. The bill also contains many housekeeping changes.

Licensure of property managers and community association managers is needed and would assure an increased level of competence, knowledge of Alaskan laws, continuing education and oversight by the Commission. Such managers have duties and responsibilities to their clients and often have control over large sums of money. Problems have occurred when unscrupulous managers have converted or embezzled operating and trust funds. In 1995 a case involving a community association manager who embezzled funds from 17 associations occurred.

In January of 1994, the Commission discussed the significant number of recent consumer complaints and surety fund claims filed regarding property managers and also discussed the consumer losses brought about by some community association manager's activities. A Task Force was appointed to consider recommendations for changes to the current law. In January of 1995, the Task Force reported back to the Commission and began work on drafting legislation. HB 33 is the result of the suggestions made by that Task Force and also incorporates a number of the recommendations made by members of the real estate community after the original draft was circulated statewide by the sponsor.

The licensure of property managers and community association managers will provide the consumers with (1) some assurance that they are dealing with a qualified practitioner, (2) a mechanism to file complaints and, if warranted, receive a hearing, and (3) a licensing agency to oversee those who have a fiduciary responsibility to the public. The legislation will not impact individuals who (a) manage their own property, (b) manage four or fewer residential units for another, or (c) are a resident manager.

Your support of this legislation would be appreciated.

STATE OF ALASKA
**DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT**

DIVISION OF OCCUPATIONAL LICENSING

TONY KNOWLES, GOVERNOR

3601 C STREET, SUITE 722
ANCHORAGE, ALASKA 99503-5986
PHONE: (907) 269-8160
FAX: (907) 269-8156
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Rep. Norman Rokeberg, Chairman
Labor & Commerce Committee
State Capitol
Juneau, AK 99801-1182

MAR 12 1997

Thank you for sponsoring HB 33. This bill is the culmination of a major task force study at the direction of the REC beginning in January 1994. The Real Estate Commission was concerned about the significant number of consumer complaints and surety claims filed against property managers. Members were also mindful of the large number of complaints of unlicensed activity associated with property management.

Individual property managers and IREM had repeatedly complained that the vast majority of preclicensing training hours, preclicensing examination questions and required and elective CE courses did not address the responsibilities, the necessary knowledge and skills, or the problems associated with the practice of property management. Commission members were also concerned that Alaska did not license community association managers.

The task force appointed to propose a solution was made up of representatives of the local chapters of the Institute of Real Estate Management (IREM) and the Community Association Institute (CAI), individual property managers from both large and small firms, and from both commercial and residential management firms, from the legal community, consumers and the Real Estate Commission, both members and staff.

The task force looked at various mechanisms used by other states including limited licenses, separate licenses, and single-class licensing as well as the recommendations by the national organizations of property managers and community association managers (IREM and CAI).

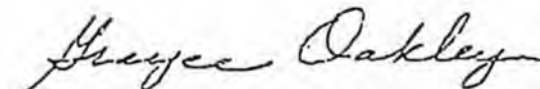
The task force recommended to the REC that:

1. Property managers and community association managers be licensed and regulated by the Real Estate Commission.
2. Education and testing required of property managers and community association managers be directly related to the duties that would be required of them as licensees.
3. Specialized preclicensing training and examinations be required for the three distinct areas—sales, property management, and community association management.
4. Licensees be permitted to apply for as many specialties as they wish provided they complied with the specialized requirements for each area.
5. Definitions for property management and community association management be codified.
6. The REC establish separate curricula requirements for preclicensing and license upgrading in each specialty area, and subject area lists for approved continuing education in each specialty area.

These recommendations formed the basis of the amendments to AS 08.88 which are proposed in HB 33 for your consideration.

If enacted, this bill will enable the Commission to implement a proactive program of education and examination which will correspond to the specialized areas of licensed activity and further increase the competency levels of the practitioners in each specialty. This, in turn, will tend to reduce the complaints and surety claims currently filed against property managers and will introduce an element of protection not previously available to community association members.

I look forward to discussing the provisions of HB33 with the Labor and Commerce Committee in greater detail at the hearing.



Grayce Oakley, Executive Administrator
Alaska Real Estate Commission

*Report of the Property Management Task Force
of the Real Estate Commission
submitted by Terry McGillivray
January 19, 1995*

Identification of the problem

At its January '94 meeting, the Real Estate Commission expressed concern about the significant number of recent consumer complaints and surety fund claims filed against property managers. There was also recognition of the large number of complaints of unlicensed activity filed against property managers.

Individual property managers and the Alaska chapter of the Institute of Real Estate Management (IREM) have repeatedly complained that the vast majority of prelicensing training hours, prelicensing examination questions, and required and elective continuing education courses do not address the responsibilities, the necessary knowledge and skills, or the problems associated with the practice of property management.

In addition, the Commission has expressed concern about the fact that Alaska does not license or regulate community association managers, in light of consumer losses caused by fraud and theft on the part of a few community association managers in Alaska and many in other parts of the country.

The Commission appointed a task force, chaired by John Thomas, public member of the Commission, to propose a solution to these problems.

Task force charges

The task force was initially asked to consider:

- 1) whether Alaska should have a separate license for property managers;
- 2) whether community association (CA) managers should be licensed;
- 3) exactly what property management activities require a license; and
- 4) whether the statutory exemption for resident managers should be eliminated.

Makeup of the task force

The task force was made up of representatives of the Alaska chapters of the Institute of Real Estate Management (IREM) and the Community Association Institute (CAI), individual property managers from both large and small firms, individual community association managers, consumer representatives, a real estate attorney and Real Estate Commission members and staff. A list of the task force members is attached as an addendum to this report.

The consideration process

The task force first reviewed the statutory framework of property management regulation in Alaska and in other jurisdictions and studied the position statements of industry organizations on this issue. The report of ARELLO's committee on the regulation of property management was examined. Task force meetings were public noticed, and the task force sought and considered public comment.

Both IREM and CAI representatives came to the conclusion that though a separate board would be preferable, regulation by the real estate Commission was the best of the affordable options. The main concern of these practitioners was that they not be expected to study and be examined on their knowledge of real estate sales in order to be permitted to practice management. They maintained that this does nothing to ensure minimum competency in management, therefore providing little benefit to the publics served by these groups.

Initial task force recommendations

The Property Management Task Force presented some recommendations at the Commission's March '94 meeting. Specifically, the task force recommended that:

- 1) A license be required for property managers, with the exception of resident managers as currently defined and managers of one to four residential units.
- 2) Community association managers be licensed and regulated by the Real Estate Commission.
- 3) Education and testing required of property and community association managers be directly related to the duties they will perform on the job.
- 4) The Real Estate Commission require specialized prelicensing training and examining for each of three real estate specialty licenses: one with an endorsement for sales, one for property management and one for community association management. Licensees could apply for as many specialties as they wish, but would have to complete separate requirements for each.

In September '94, the task force reinforced those recommendations, proposed a definition of property management, and recommended courses of study for property managers and community association managers.

In addition, this January '95 proposal includes:

- definitions of property management and community association management,
- required education proposals for pre-licensing and upgrade courses as well as acceptable subject area lists for continuing education for both specialties, and
- A draft of statutes and regulations necessary to implement the recommendations enumerated in this report.

Property management defined

5) The task force defined property management as:

"Any activity undertaken for another, pursuant to an agreement, in exchange for a fee, commission or other valuable consideration; activities to include marketing; the leasing; contracting for the physical, administrative, or financial maintenance; and performing overall management of real property and the supervision of such actions:

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

Report of the Property Management Task Force of the Real Estate Commission submitted by Terry McGillivray January 19, 1995

Identification of the problem

At its January '94 meeting, the Real Estate Commission expressed concern about the significant number of recent consumer complaints and surety fund claims filed against property managers. There was also recognition of the large number of complaints of unlicensed activity filed against property managers.

Individual property managers and the Alaska chapter of the Institute of Real Estate Management (IREM) have repeatedly complained that the vast majority of prelicensing training hours, prelicensing examination questions, and required and elective continuing education courses do not address the responsibilities, the necessary knowledge and skills, or the problems associated with the practice of property management.

In addition, the Commission has expressed concern about the fact that Alaska does not license or regulate community association managers, in light of consumer losses caused by fraud and theft on the part of a few community association managers in Alaska and many in other parts of the country.

The Commission appointed a task force, chaired by John Thomas, public member of the Commission, to propose a solution to these problems.

Task force charges

The task force was initially asked to consider:

- 1) whether Alaska should have a separate license for property managers;
- 2) whether community association (CA) managers should be licensed;
- 3) exactly what property management activities require a license; and
- 4) whether the statutory exemption for resident managers should be eliminated.

Makeup of the task force

The task force was made up of representatives of the Alaska chapters of the Institute of Real Estate Management (IREM) and the Community Association Institute (CAI), individual property managers from both large and small firms, individual community association managers, consumer representatives, a real estate attorney and Real Estate Commission members and staff. A list of the task force members is attached as an addendum to this report.

The consideration process

The task force first reviewed the statutory framework of property management regulation in Alaska and in other jurisdictions and studied the position statements of industry organizations on this issue. The report of ARELLO's committee on the regulation of property management was examined. Task force meetings were public noticed, and the task force sought and considered public comment.

Methods of regulating property managers

The task force found that other licensing authorities have tried many different ways of dealing with the problems associated with the regulation of property managers.

In an effort to deal with the unlicensed property manager problem, some have instituted a limited license for residential property managers. By creating a residential property manager license which is relatively easy to get and requires little preparation or education, regulators hoped to encourage compliance with the licensing requirement.

Regulators in states and provinces with a limited license for property managers have not been pleased with the results. Complaints and claims have not diminished; in fact, initially it seems that a higher number of reported consumer problems associated with residential property managers and trust violations discovered by auditors have resulted in an increased enforcement case load.

Other states have very recently initiated a system of "separate but equal" licenses for property managers and sales associates. In these jurisdictions, there are different education and testing standards for those licenses, which are more closely related to the actual duties performed by the licensees. It is too early to judge the effect of such specialty licensing on complaints and claims against property managers. But since education and testing levels have increased and become more closely related to the tasks performed by property managers, it is expected that these programs will have a positive effect.

Colorado, on the other hand, is considering institution of a single license program. The proposal of a Commission task force there is to license only brokers, no associate brokers or salespersons. The required education and testing would cover every licensed activity a broker could be asked to perform. There would be only one real estate license, a broker license, and each applicant would have to serve as an unlicensed apprentice and complete a greatly increased educational requirement before becoming eligible for that license. This system has not yet been introduced anywhere, so there are no statistics available with respect to its effect on violations.

Input from the industry

The task force considered the pros and cons of each of these licensing methods. They also carefully considered the recommendations of the Institute of Real Estate Management (IREM) and the Community Associations Institute (CAI). Both of these organizations were represented on the task force, and both strongly support the licensing of their members.

CAI members initially expressed some trepidation at the idea of being licensed under the Real Estate Commission. However, as staff members explained the funding realities under which the Division of Occupational Licensing operates, it became clear that a separate board for community association managers would be prohibitively expensive. Industry members then began to search for creative ways to address their needs under the auspices of the real estate commission.

Both IREM and CAI representatives came to the conclusion that though a separate board would be preferable, regulation by the real estate Commission was the best of the affordable options. The main concern of these practitioners was that they not be expected to study and be examined on their knowledge of real estate sales in order to be permitted to practice management. They maintained that this does nothing to ensure minimum competency in management, therefore providing little benefit to the publics served by these groups.

Initial task force recommendations

The Property Management Task Force presented some recommendations at the Commission's March '94 meeting. Specifically, the task force recommended that:

- 1) A license be required for property managers, with the exception of resident managers as currently defined and managers of one to four residential units.
- 2) Community association managers be licensed and regulated by the Real Estate Commission.
- 3) Education and testing required of property and community association managers be directly related to the duties they will perform on the job.
- 4) The Real Estate Commission require specialized prelicensing training and examining for each of three real estate specialty licenses: one with an endorsement for sales, one for property management and one for community association management. Licensees could apply for as many specialties as they wish, but would have to complete separate requirements for each.

In September '94, the task force reinforced those recommendations, proposed a definition of property management, and recommended courses of study for property managers and community association managers.

In addition, this January '95 proposal includes:

- definitions of property management and community association management,
- required education proposals for pre-licensing and upgrade courses as well as acceptable subject area lists for continuing education for both specialties, and
- A draft of statutes and regulations necessary to implement the recommendations enumerated in this report.

Property management defined

5) The task force defined property management as:

"Any activity undertaken for another, pursuant to an agreement, in exchange for a fee, commission or other valuable consideration; activities to include marketing; the leasing; contracting for the physical, administrative, or financial maintenance; and performing overall management of real property and the supervision of such actions:

Recommended exemptions:

"(a) Any person, partnership, or corporation, who as owner and lessor shall perform any of the activities defined;"

It was the opinion of the task force that employees of a corporation or of an owner should not be exempted, and that to be considered an owner, there should be a required minimum ownership/equity interest of 5% of the corporation. This could be accomplished by defining "ownership interest". The legislation also needs to define "partners" and "corporation".

"(b) Any attorney at law in the performance of his or her duties as such;"

The task force did not choose to include an exemption for individuals acting under a power of attorney. However, it was the opinion of the task force that should the Commission choose to exempt individuals performing property management functions under a power of attorney, a limit must be imposed (such as two transactions per year) and "transaction" must be defined.

"(c) Any receiver, trustee in bankruptcy, conservator, or guardian while acting under a court order or under the authority of a will or of a trust instrument or as a witness in any judicial proceeding or other proceeding conducted by a governmental subdivision or agency;"

The task force included this exemption as standard language in other jurisdictions, but would like a legal opinion regarding whether it is necessary to exempt receivers and individuals acting as a witness in a judicial proceeding. They also wished to see a limit imposed on the value of an estate which could be managed without a license, and a time limit on the unlicensed management arrangement.

"(d) Any person acting as a resident manager, when such resident manager resides on the premises and is engaged in the renting or leasing of property in connection with his or her employment;

The task force felt that a clear, regulatory definition of resident manager is needed, which defines the authority of the manager with regard to contiguous properties or properties within a 1/2 mile radius, and exactly what activities may be performed by resident managers.

"(e) Any officer or employee of a federal agency in the conduct of his or her official duties;

"(f) Any officer or employee of the state government or any political subdivision thereof performing his or her official duties related to the acquisition of any interest in real property when the interest is being acquired for a public purpose;"

The task force wants to see this exemption clearly defined as well. Specifically, the definition needs to establish whether quasi-governmental agencies are included in the exemption. Care should be taken that agencies are not encouraged through this exemption to use public monies to compete with private enterprise.

"(g) managers of from one to four individual dwelling units.

"(h) an employee of a property owner or a property manager delivering a lease application, a lease, or any amendment thereof to any person.

"(i) an employee of a property owner or a property manager receiving a lease application, lease, or amendment thereof, or a security deposit, rental payment, or any related payment for delivery to and made payable to a property manager or owner.

"(j) an individual assisting in the performance of property management activities by carrying out administrative, clerical or maintenance tasks."

Community association management defined

The task force defined community association management as:

"Any activity undertaken for others with regard to a property defined under AS 34.08, pursuant to an agreement, in exchange for a fee, commission or other valuable consideration; including responsibility for preparing budgets and other financial documents; responsibility for collecting, controlling and/or disbursing funds; responsibility for obtaining insurance for the association; contracting for maintenance and repair to the association property; and supervising the day to day operations of the association under the direction of the association's board of directors."

Recommended exemptions:

"(a) Any licensed individual such as an attorney, an accountant, or an insurance agent performing those duties for which he or she is licensed;

"(b) Bookkeepers performing bookkeeping functions;

"(c) Tradesmen or vendors of services performing maintenance and repair functions, such as plumbers, electricians, maintenance personnel or landscapers;

"(d) Property owners managing a self-managed community association without remuneration;

"(e) Developers of community associations during the period that the developer retains control of the association, provided that the developer shall have in its employ or under contract a licensed community association manager."

The Commission's response

The Commission has expressed support for the task force's ideas on how to best prepare, educate and test Alaska management licensees for the duties they actually perform once they are licensed. The Commission also specifically asked that the task force identify required prelicensing study and examination areas for the property management and community association management endorsements, and continuing education requirements for each.

Task force education recommendations

The task force required education recommendations are attached as addenda to this report.

Summary

The task force believes that community association management is a profession which has the potential to harm Alaska consumers, and should therefore be licensed and regulated by the state. This is evidenced by practitioners who have fraudulently stolen association funds and those who have inadvertently harmed associations by offering poor and incomplete advice.

The task force also believes that many potential problems experienced by property managers and consumers of property management services could be avoided if property management was treated as a separate specialty, and if the required prelicensing and continuing education courses for property managers related more directly to the actual job done by property managers.

The task force recommends a program of special endorsements by which all real estate professionals, regardless of whether they are involved in sales, property management, or community association management, be educated and tested based on a determined minimum level of knowledge and competency for the specialty in which they wish to work. Training required of those wishing to run an office and supervise others also needs to reflect the subjects each professional truly needs to know. And continuing education can only be effective if the hours required address the needs of the profession the licensee practices.

The task force believes that this approach for licensure of real estate professionals will reduce the currently high levels of claims and complaints against property managers, and will offer protection to consumers of community association management services which has previously been non-existent in Alaska. At the same time, these recommendations will enable the Commission to implement a proactive program of education and examination which actually increases and ensures the competency in real estate licensees in whatever area of practice they choose.

*Recommended
Pre-licensing Requirements
for Property Managers
(20 hours)*

- I. Agency relationships - 2 hours
 - A. Understanding agency relationships between property owners, tenants and managers
 - B. Single and dual agency, conflicts of interest
 - C. Agency disclosure for property managers
- II. Ethics in property management - 1 hour
- III. Forms of Ownership - 2 hours
- IV. Property Law - 2 hours
- V. Uniform Residential Landlord and Tenant Act - 3 hours
- VI. Real Estate License Law - 3 hours
- VII. Fair Housing Law - 2 hours
- VIII. Foreclosures - 1 hour
- IX. Property Management Contracts - 4 hours
 - A. Contract negotiations
 - B. Management agreements
 - C. Rental Agreements
 - D. Leases
 - E. Insurance documents

*Recommended
Principal Property Manager
Training Requirements
(15 hours)*

- I. Property management trust accounting
- II. Agency relationships in property management
- III. Landlord and Tenant Law
- IV. Formulating a management plan
- V. Management contracts
- VI. Maintenance contracting
- VII. Operating reports and tax records
- VIII. Managing the management office

*Recommended
Property Manager
Continuing Education Requirements
(20 hours per renewal period)*

- A. Eight required hours
To be selected biennially by the Real Estate Commission
- B. Twelve elective hours in these areas, or in the required or elective course lists for real estate sales or community association management:
- Americans with Disabilities Act
 - Collections and related legal issues
 - Commercial leases
 - Contracting and negotiating for services
 - Disaster planning
 - Environmental issues
 - Ethics/prohibited conduct
 - Fair Housing law
 - Fire and safety issues
 - Forcible Entry and Detainer proceedings
 - Forms of ownership
 - Human resources management, Workers Compensation issues
 - Maintenance management
 - Managing housing for the elderly
 - Managing the management office
 - Managing and marketing troubled assets
 - Managing single family homes
 - Property inspections
 - Property management agreements
 - Reserve accounts: managing and effective use
 - Residential leases/rental agreements
 - Risk management and insurance
 - Scheduled maintenance issues
 - Trust funds and fiduciary responsibility for association funds

*Recommended
Pre-licensing Requirements
for Community Association Managers
(20 hours)*

- I. Agency relationships - 2 hours
 - A. What agency relationships exist between association boards, association members, tenants of association members and managing agents?
 - B. Understanding agency duties with regard to association boards, association members, tenants of association members and managing agents.
 - C. Single and dual agency.
 - D. Agency disclosure for association managers.

- II. Ethics in Community Association Management - 1 hour

- II. Forms of Ownership - 2 hours
 - A. Discussion and review of various ownerships: PUD, HOA, Townhouse, Condo, Master Association relationships
 - B. Interpretation of documents

- III. Property Law - 5 hours
 - A. Uniform Common Interest Ownership Act
 - B. Real Estate License Law
 - C. Public rights and limitations
 - D. Case Law
 - E. Fair Housing

- IV. Forms of Conveyances and Recording documents - 3 hours
 - A. Amendments
 - B. Document reinstatement requirements
 - C. Notice/proxies/liens

- V. Contracts and Transaction Documents - 4 hours
 - A. Contract negotiations
 - B. Management agreements
 - C. Insurance documents
 - D. Resale certificates

- VI. Financing instruments and accounting practices - 3 hours
 - A. Lender requirements for recertifications
 - B. Basic accounting principles for common interest associations

*Recommended Principal
Community Association Manager
Training
(15 hours)*

- I. Legal basics of condominium associations
- II. Budget and reserve requirements for sound management
- III. Uniform Common Interest Ownership Act:
Legal requirements for resale certificates
- IV. Trust account procedures as they apply to association management
(eliminating sales-oriented accounting practices)
- V. Organizing and managing a community association
management office

*Recommended
Community Association Manager
Continuing Education Requirements
(20 hours per renewal period)*

- A. Eight required hours
 To be selected biennially by the Real Estate Commission

- B. Twelve elective hours in these areas, or in the required or elective course lists for real estate sales or property management:
 - Americans with Disabilities Act
 - Assessment issues
 - Basics of sound financial reporting and audits
 - Board meetings and decision-making
 - Budget and reserve requirements
 - Collections and related legal issues
 - Communications (newsletters, minutes, notices, etc.)
 - Community management skills
 - Contracts
 - Environmental Issues
 - Ethics/Prohibited Conduct
 - Fair Housing Law
 - Human Resources Management, Workers Compensation issues
 - Maintenance Management
 - New Construction
 - Public Offering Statement
 - Resale Certificates
 - Reserve accounts: managing and effective use
 - Risk Management and Insurance
 - Rules development for associations
 - Trust funds and fiduciary responsibility for association funds
 - Uniform Common Interest Ownership Act

Property Management Task Force Members

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Pioneer Management Services
3000 A Street, Suite 400
Anchorage AK 99503
Phone: 563-4849
Fax: 562-3200

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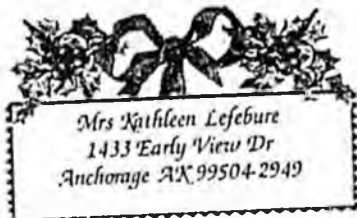
Dear Legislator:

In the fall of 1995 it was discovered that Ron Thornton of Frontier Management had embezzled monies in excess of \$570,000 dollars from eighteen homeowners/condominium associations including our own in the Anchorage area. This was a devastating blow to us and others. However, because of Alaska Housing Finance Corporation we believed that we were insured against that loss. In 1985 AHFC came out with a requirement that all associations requesting approval for AHFC financing have dishonesty insurance against embezzlement.

At the request of AHFC and on advice of State Farm Insurance our association purchased an endorsement on our original policy. This endorsement was for employee dishonesty. State Farm sold this endorsement to our association, and continued to do so from 1986 until 1996, knowing full well that all of the affected associations had no employees other than the association manager.

We now find that State Farm has denied all claims to date because Mr. Thornton was our agent, not an employee. We believe that we were misled by State Farm and by AHFC as they approved this insurance to remain on their approved financing list. We have requested assistance from AHFC in resolving this matter, but they indicated that there is nothing they can do and that the associations have to pursue this matter on their own.

At this time we feel that we have been let down by both AHFC and State Farm. We appeal to you in the legislature to assist us in addressing this issue with both AHFC and State Farm.



Thank you,
Katie Lefebure
Chugach View
Condo Assoc.
District 24

DEC 02 1996

DEC 02 1996

Dear Legislator:

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District 24
Richard John

DEC 02 1996

no return
address

DEC 02 1996

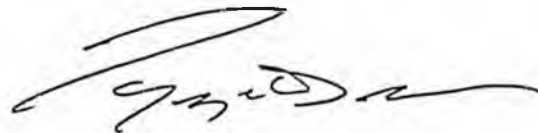
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District 24

1533 Fairly View Ave
Anch Ak 99504

DEC 04 1996

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Sincerely
Phyllis Fieke
C. Regard View Condo
Association Owner
District 24

1413 Early View Dr
Anch Ak 99504

Dear Legislator:

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DEC 20 1996

1423 Emily Vinodler
Anch Ak 99504

Al Johnson
Dist. 24

JAN 20 1997

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Mark D. McDonald

District #24

*1403 Early View Dr
Anch Ak 99504*

08316029

HOMEOWNERS MISSING FUNDS MAN WHO MANAGED PROPERTY ASSOCIATION UNDER INVESTIGATION

Anchorage Daily News (AD) - SATURDAY November 11, 1995

By: BRUCE MELZER Daily News business reporter

Edition: FINAL Section: Business Page: C1

Word Count: 724

ANCHORAGE DAILY NEWS

Homeowners missing funds

Man who managed property associations under investigation

By BRUCE MELZER
Daily News business reporter

Ronald W. Thornton, owner of Frontler Management Inc., is under investigation for allegedly embezzling money from at least one of the 19 homeowners associations he managed, Anchorage police detective Steve Elkins said Friday.

No criminal charges have been filed against Thornton, but his lawyer, Joe Josephson, said Friday, "I do expect that there will be a criminal charge."

Thornton told police in a taped statement that he took between \$50,000 and \$100,000 altogether, Elkins said. The police department does not

YOUR HOUSE, YOUR MONEY

Advice from Gordon Hazel of Bonanza Realty.

- Board members have the legal responsibility for an association's money. Hiring a manager does not relieve the board of that fiduciary responsibility.
- Look at your finances at least once a month. You may not be able to stop embezzlement, but you'll catch it much more quickly.
- Spend the money for a complete financial audit once a year. Make sure the auditor bypasses the manager and sends at least one copy directly to a board member or the board chair. Take the time to review the results.
- All accounts should require two signatures, one should be a board officer's.
- Don't look to the state or professional associations to keep managers honest. Association managers are neither licensed nor bonded in Alaska.

know yet how many homeowners associations were hit.

"He was remorseful and said that he'd gotten into some financial difficulties, and there was no other way out. He borrowed the money and it was his intention to pay it

back, just never got around to it yet," Elkins said.

Thornton's firm collected association dues, kept the books, oversaw maintenance and paid the bills for some of its clients. Josephson, the lawyer, would not confirm whether his

client confessed, but he did say that Thornton was "candid and cooperative." Thornton has been looking for ways to come up with some cash. "I think he has wanted to make things make people whole, if there were losses," Josephson said.

The district attorney is reviewing the case, Elkins and Josephson said. "I haven't proposed any deal. No specific charges have been disclosed to me as to what they will be," Josephson said. "There's certainly been no plea bargaining," he said.

Thornton could not be reached for comment. His Tu-

Please see Page C-2, CONDO

Peso buys less each day

A man samples imported U.S. tomatoes at La Merced in Mexico City on Friday, a day after the country's swooning peso hit an all-time low of 8.25 to the dollar. Intervention helped the peso recover to 7.55 to the dollar on Friday, but the slight improvement was little comfort to Mexicans who have seen the value of their bank accounts plunge relentlessly in recent months. Just three months ago, five pesos bought a green-



State exports to Russia increased from about \$13 million in 1993 to almost \$30 million in 1994, according to statistics reported by the University of Alaska Anchorage Center for International Business. The biggest exports were fishing vessels, jet motor fuel, diesel generators, airplane parts and equipment and clothing.

The exports have been rising in the face of the inflation, changing taxes and shifting regulations that have plagued Russian businesses in their transition to a free-market economy.

here, writes Doug Isarry in the November edition of the university's Russian Far East News.

The data also do not include the value of services performed by Alaska companies in the Russian Far East, nor the value of goods that may have been brokered by Alaska companies but exported through Lower 48 ports. Those services would add millions of dollars to the tally.

In all, Alaska had \$2.5 billion in exports last year, the center said. Alaska's share of the Russian Far East trade, however, still is

mining project in a remote corner of the Magadan region. That mine is being developed by Denver-based Cyprus Amax Minerals Co. and five Russian companies, and it is expected to produce 238,700 ounces of silver and 312,900 ounces of gold each year. The mine equipment accounted for much of the \$338 million in heavy equipment shipped from Washington last year.

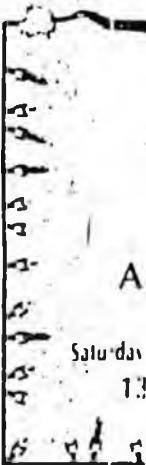
Other Washington export products included chicken parts, fuel oils, apples, sausage, potatoes and jet fuel.

Drug...
American...
rushed...
Ketoprofen...
fen, the gen...
other painki...
and with ab

NOTICE

Municipal...
Rick Nystr...

**Municipal
Rick Nystr...**



CONDOS: Property manager under investigation

Continued from Page C-1

door Road office is closed, some chains in it are stacked and boxes are stacked on the far wall.

Irregularities were first uncovered when Gold Leaf Terrace Townhouses, at Strawberry Road and Cranberry Street in southwest Anchorage, was due for paint job Loren Taft, president of the townhouses association, said he started looking for the money in January that was supposed to be in reserve to cover the painting. But the cash wasn't there. Taft said at a meeting Thursday of representatives from various homeowners associations that had hired Frontier

Taft said when he inquired about the money, Thornton replied, "Don't worry, the funds will be there."

Taft went to the association's auditor. There he found out that even though the association has been audited each year, Thornton never passed those audits to the board.

As they cobbled together a financial picture, Taft and the auditor saw that the missing money "was disguised in many ways." Thornton appears to have billed the association for work he didn't perform, Taft said. And if the board had budgeted but did not spend money on an item, then "he zapped it," Taft said.

By March, Taft and the auditor concluded the association was missing about \$20,000, he said. That's when the association filed a complaint with the police. The money appears to have been taken between

1992 and early this year, he said.

Condo association members at the meeting were stunned that the police had evidence that Thornton was taking money and yet allowed him to operate without warning the others.

"I'm having a hard time dealing with the fact that you knew it" and didn't say, Pat Strand told Elkins at the meeting.

"We were not going to jeopardize the investigation," Elkins replied.

Most associations got their first signal of the problem in late October. That's when Elkins seized Thornton's records, the very records the associations need to pay their bills and figure out if they were ripped off.

But association leaders

were steamed that they can't tell if they got taken because the police still have the files. And police can't release the records without permission from the district attorney, who is examining the case and deciding whether to prosecute, said Elkins.

Elkins urged the associations to get audits once they get their records back.

"The most important is, if you know you're a victim, let us know," Elkins said.

Don't expect the police to do the financial legwork, he said. "You're going to have to go in a look at your books and show me," he said.

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er. The Matanuska-Susitna Borough. The project essentially stands where it did in 1990, when the development was halted because of Mental Health Lands Trust litigation.

"We are trying to make

permits. He did say the company is seeking coal buyers and a partner to do the mining.

During a Legislative Budget and Audit Committee hearing in Anchorage Wednesday, leg-

Please see Page E-7, COAL



RON ENGSTROM Daily News



MICHAEL S. GREEN / THE DAILY NEWS

new computer Tuesday at his Arlington Heights, Ill., home. The charitable deal was struck with Intel Corp. to grant the paraplegic 12-year-old's fondest wish: A processor and all the hardware he could imagine.

Paraplegic boy's chip wish with \$10,000 system

paraplegic boy's chip wish with \$10,000 system

Walt Disney World, perhaps? — Pete instead chose a chip: Intel Corp.'s new Pentium Pro microprocessor and all the hardware he could imagine. Intel agreed, donating a \$10,000 system that would make any cyberfreak salivate. The Santa Clara, Calif., company also made Pete a member of an elite user group that is testing the chip for flaws.

"He has the most powerful computer of any 12-year-old on the face of the earth," Intel spokesman Howard High said. "It's great," Pete said Wednesday. "It is so fast compared to my other one, it is like light speed."

He said a game that takes three minutes to load on his

Please see Page E-3, CHIP

Condo manager charged

Thousands allegedly diverted over 4 years

By HAL BERTON
Daily News business reporter

The Anchorage district attorney's office has charged Anchorage condo association manager Ronald Thornton with six felony counts of fraud, theft and falsifying business records.

The criminal complaint charges that Thornton made about \$20,725 in unauthorized withdrawals from the Goldleaf Terrace Townhouse Association account and deposited them into his personal account. He then tried to hide those withdrawals by submitting fraudulent financial reports to the association, the complaint says.

The charges stem from an ongoing investigation of the 47-year-old Thornton, who has managed the accounts of 17 other area homeowner associations. Anchorage police have seized "a great quantity" of financial records and computer tapes. Several of the associations have reported financial irregularities and additional charges may be filed, according to a filing in state Superior Court by Steve Elkins of the Anchorage Police Department.

Thornton could not be reached for comment Wednesday. His attorney, Joe Josephson, said Thornton has received the complaint and a summons for a court appearance in December. He said Thornton "knows he has a lot of things to be responsible for" and wants to try to make up for any losses.

Financial irregularities were uncovered when the Goldleaf townhouses were due for a paint job. Loren Taft, president of the townhouse association, said he looked for the money in January that was supposed to be in reserve to cover the painting. But the cash wasn't there, Taft said.

An investigation found that Thornton, during a four-month period, ordered

08328044
CONDO MANAGER CHARGED THOUSANDS ALLEGEDLY DIVERTED OVER 4 YEARS
Anchorage Daily News (AD) - THURSDAY November 23, 1995
By: HAL BERTON Daily News business reporter
Edition: FINAL Section: Business Page: E1
Word Count: 395

Cleanup in state's hands

time the state has attempted a cleanup of this magnitude."

Among byproducts at the plant were dioxins and heavy metals.

While managing the hazardous waste program for the BFC,



MICHAEL B. GREEN / The Associated Press
 v computer Tuesday at his Arlington Heights, Ill., home. The charitable up with Intel Corp. to grant the paraplegic 12-year-old's fondest wish: A essor and all the hardware he could imagine.

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up in state's hands

ime the state has attempted a cleanup of this magnitude.

Among byproducts at the plant were dioxins and heavy metals.

While managing the hazardous waste program for the DEC's northern regional office in Fairbanks from 1988 to 1990, Cormack handled state oversight of the Environmental Protection Agency's cleanup of the Arctic Surplus Superfund site in Fairbanks.

He also participated in the Superfund cleanup of the Alaska Battery site in Fairbanks. The Superfund



RON ENGSTROM, ANCHORAGE NEWS

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ask them.

selves this question and wonder if they've already missed out on the big money, stock pros are telling people what they always have. It's never too late to get into the stock market, as long as you're prepared to stay there for a long time.

Over prolonged periods, stocks consistently have beaten out bonds, certificates of deposit, money market funds and other comparatively stable investments.

But shareholders must avoid the temptation to sell during the inevitable downward moves, known on Wall Street as corrections. History shows stocks often take a dip after hitting milestones like 5,000 as people who are already in the market take their profits home.

"A new investor should put his money

Please see Page E-7, DOW

the charges stem from an ongoing investigation of the 47-year-old Thornton, who has managed the accounts of 17 other area homeowner associations. Anchorage police have seized a "great quantity" of financial records and computer tapes. Several of the associations have reported financial irregularities and additional charges may be filed, according to a filing in state Superior Court by Steve Elkins of the Anchorage Police Department.

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Financial irregularities were uncovered when the Goldleaf townhouses were due for a paint job. Loren Taft, president of the townhouse association, said he looked for the money in January that was supposed to be in reserve to cover the painting. But the cash wasn't there, Taft said.

An investigation found that Thornton, during a four-year period ending in 1995, made four fraudulent withdrawals that included billings for payments to the Alaska Housing Finance Corp. and Farmers Home Administration that were never made.

The complaint also alleges that Thornton, meet-

Please see Page E-7, CHARGES

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2
 43

in and not pick up a news paper," quipped James Schway, director of research for Argus Research in New Park.

Seriously, "If a person has plans to retire or put children through college, the only way to achieve those goals is by taking some greater risk under standing that time is a great ally and even if prices were to move lower from here, five years from now they should be substantially higher," he said.

If a correction is coming there was no sign of it Wednesday. The bull market that pushed the Dow Jones industrial average through the 4,000 and 5,000 point milestones this year continued, with the index gaining an additional 18.06 points to close at 5,041.61.

Despite the market's lofty levels, many analysts say fundamental economic conditions are ripe for a continued rise. Moderate economic growth, low inflation and low interest rates have kept corporate profits rising steadily. Mutual funds, which pool shares of different companies together to curb risk, continue to grow rapidly as average Americans join with pension funds and other institutional investors in a buying spree.

Still, unexpected events like a Persian Gulf War or an Arab oil embargo can shock a market downward and keep it there for many months. So analysts caution those who may need to withdraw their cash in a year or two from investing too heavily in stocks.

However, even the 5,000 level ends up as the market's latest plateau, a recent study shows those willing to keep their money invested can still do well, said Steven Norwitz, vice president of Price Associates Inc., Baltimore mutual fund company.

The Price study showed if you invested \$2,000 in the companies of the Standard & Poor's 500-stock index at its highest level each year for the past 25 years, your account would still have been worth about \$333,000 this June. That represents a respectable annual return of 10 percent.

"So, if you're investing for the long term you shouldn't be too concerned about the level of the market today," he said, offering the standard industry disclaimer that past performance is no guarantee of the future.

There are several classes of conservative mutual funds that new investors

One issue the committee wanted to settle involves a 1990 legislative appropriation of \$9 million for the purchase of rail cars and locomotives needed to open Wishbone Hill. The Alaska Railroad has been investing the money, which has grown to \$12 million.

During the hearing, Rep. Terry Martin, R-Anchorage, questioned whether the money should have been transferred to the state's general fund when Idemitsu backed away from developing the mine. Martin also questioned whether Northern Pacific should benefit from the rail-car money when the money was appropriated for an Idemitsu mine project.

Robert Hatfield Jr., railroad president, said the railroad's legal staff determined the contract and leases were transferable to Northern Pacific. That

to the state if the mine failed or Idemitsu did not develop the mine. Failure during the first year of operation, for example, required a \$7 million payment. If the failure occurred during the 10th year — the last year of the obligation — the payment would have been \$700,000. Crafford said Northern Pacific has assumed the same payment responsibility.

Sen. Rick Halford, D-Chugiak, said the \$9 million appropriation was intended for economic development in the Mat-Su area, and there was no accident. It was not a stronger effort to law the money into the state treasury when Idemitsu backed away from the mine project. Halford's legislative district includes some of Mat-Su.

"It was my attitude that we should leave it alone," Halford said, referring to

aware Cook Inlet Region was working on a deal with Idemitsu. But like other committee members, Halford said he only recently learned a deal had been reached.

While Idemitsu estimated the project could create roughly 200 jobs, Northern Pacific will likely inch its way into the world coal market.

"The difficult thing is the start-up costs," Crafford said. "We may start small."

Wishbone Hill's project lease covers more than 7,400 acres, with mining permits for more than 1,300 acres. The project

trust property included a po mine.

Crafford estimated 15.1 of bituminous proposed surf could be shipped. The price jumped to a ton this year increase from Crafford to 400. And the expected to next year, he said.

North Pacific banking on jump in coal what it sees as the Mer Lands Trust's

CHARGES: Fraud alleged

Continued from Page E-1

ing with Taft on Aug. 29, said he knew he had over-billed Goldleaf for about \$16,000 and promised to make good on the money within 30 days.

Then on Oct. 16, Thornton again told Taft that he

would take care of the missing money.

"I want to make this right, and I will make it right," Thornton said in a tape-recorded conversation with Taft. "You know, that you will have your money."

Smucker sells pie division

Knight-Ridder Inc. reports

ORRVILLE, Ohio — The J.M. Smucker Co. said Wednesday that it is selling its Mrs. Smith's frozen pie division, barely a year after it bought it for \$80 million.

The company also is selling its British Elmham Quality Foods Ltd. business in an effort to better concentrate on its core U.S. business of jams, jellies and preserves. The price of the sales were not dis-

closed.

Buying Mrs. Smith's is SBI Brands, a business formed by former ConAgra Foods executive Scott Rahn, who helped ConAgra develop its Healthy Choice line of foods.

"We liked the Mrs. Smith's business. We think it has a good future," Smucker General Counsel Scott Ellcessor said. "We think Mr. Rahn will do a good job with it."

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HL: CONDO MANAGER CHARGED
SH: THOUSANDS ALLEGEDLY DIVERTED OVER 4 YEARS
DT: 11/23/95
DY: Thursday
SE: Business
PG: E1
ED: Final
LE: Short
BL: By HAL BERNTON
Daily News business reporter

LP: CORRECTIONS

Due to a mistake in a criminal court complaint, a story in Thursday's Business section about allegedly fraudulent billings by a condominium manager to one of his condo association clients gave the wrong federal agency involved. The agency was the Federal Housing Administration.

The Anchorage district attorney's office has charged Anchorage condo association manager Ronald Thornton with six felony counts of fraud, theft and falsifying business records. The criminal complaint charges that Thornton made about \$20,725 in unauthorized withdrawals from the Goldleaf Terracc Townhouse Association account and deposited them into his personal account. He then tried to hide those withdrawals by submitting fraudulent financial reports to the association, the complaint says. The charges stem from an ongoing investigation of the 47-year-old Thornton, who has managed the accounts of 17 other area homeowner associations. Anchorage police have seized "a great quantity" of financial records and computer tapes. Several of the associations have reported financial irregularities and additional charges may be filed, according to a filing in state Superior Court by Steve Elkins of the Anchorage Police Department. Thornton could not be reached for comment Wednesday. His attorney, Joe Josephson, said Thornton has received the complaint and a summons for a court appearance in December. He said Thornton "knows he has a lot of things to be responsible for" and wants to try to make up for any losses. Financial irregularities were uncovered when the Goldleaf townhouses were due for a paint job. Loren Taft, president of the townhouse association, said he looked for the money in January that was supposed to be in reserve to cover the painting. But the cash wasn't there, Taft said. An investigation found that Thornton, during a four-year period ending in 1995, made four fraudulent withdrawals that included billings for payments to the Alaska Housing Finance Corp. and Farmers Home Administration that were never made. The complaint also alleges that Thornton, meeting with Taft on Aug. 29, said he knew he had overbilled Goldleaf for about \$16,000 and promised to make good on the money within 30 days. Then on Oct. 16, Thornton again told Taft that he would take care of the missing money. "I want to make this right, and I will make it right," Thornton said in a tape-recorded conversation with Taft. "You know, that you will have your money. . . ."

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BUSINESS

ANCHORAGE DAILY NEWS
July 2, 1996

ANCHORAGE DAILY NEWS

SECTION D

Embezzlement nets five-year sentence

Condo association manager took at least \$423,500

By BRUCE MELZER
Daily News reporter

Condominium manager Ronald W. Thornton stood in court Monday, faced some of the people whose money he embezzled and said, "I do deserve time" in prison.

Superior Court Judge Milton Souter gave it to him: a five-year prison sentence.

Thornton had pleaded no contest to one felony count of theft. The owner of Frontier Management Inc. admitted in court filings that he embezzled at least \$423,610 from 17 Anchorage condominium associa-

tions he managed.

Thornton's thefts totaled \$570,200 from 10 associations in all, said assistant district attorney James Fayette. Given the discrepancy in those amounts, the judge Monday postponed setting restitution that Thornton must pay.

But the judge said he was pessimistic that the homeowners' associations will recoup much. "He's not going to be able to pay this off, short of winning the New York State lottery," Souter said.

"Until the day I die I will try to make restitution to the

associations. I'm sorry. I am truly sorry," Thornton told the 25 or so former clients who filled nearly every seat in the courtroom.

Thornton will be eligible for parole after 20 months, Fayette said.

Thornton was a well-liked, trusted manager who ran the day-to-day affairs and finances of condominium associations around town, his former clients say. A condo association collects dues each month from condominium owners in a de-



RON THORNTON / Anchorage Daily News
Ron Thornton is sentenced Monday to five years in state Superior Court.

Please see Page D-4, CONDO

CONDO: Judge gives 5-year sentence

Continued from Page D-1

velopment. The association decides how to spend the money — on landscaping, snow plowing, roof repairs, etc. — to benefit all the owners. Sometimes associations manage the money themselves; sometimes they hire professional managers like Thornton.

In Thornton's case, he often had the power to sign checks, and embezzled the money in part by writing checks for work never done and falsifying the financial reports he gave the associations, according to prosecutors and the victims.

Thornton's thefts were uncovered by Loren Taft, president of Goldleaf Terrace on Strawberry Road in South Anchorage. Taft started looking for money in a reserve account to paint the condo units. But the cash wasn't there.

Taft said when he inquired about the money, Thornton replied, "Don't worry, the funds will be there."

Taft went to the association's auditor. There he found out that even though the association has been audited each year, Thornton never passed those audits to the board.

As they cobbled together a financial picture, Taft and the auditor saw that money was missing. All told the association lost \$19,750 since January 1992, according to documents filed in court.

Knik Arms, downtown, got hit hardest of all. The condo claims Thornton took \$119,000, although Thornton estimated the amount at \$89,000, according to papers his lawyer filed in court.

Throughout it all, Thornton offered apologies but no excuses for his actions, he and his lawyer, Joe Josephson, said.

Thornton's story goes like this. In 1993, his wife left him for another man, according to papers Josephson filed.

Following that breakup, Thornton embarked on

path of self-destructive behavior, Josephson told the court. "It was inevitable that he be found out. I think he wanted to be found out, in a way," Josephson said.

Thornton took up with a woman and invested heavily in her businesses, paid her medical debts and took her on trips. All told, Thornton spent about \$350,000 on her and her companies, according to Josephson's documents.

Even Josephson said the woman, who is no longer with Thornton, didn't speak to the why of the crime.

"That's not a real excuse, that's just a soap opera."

Souler was incredulous. "I can understand \$25,000," the judge said, "But not 420,000-plus-dollars. This is not understandable."

Where is the money now? Fayette the prosecutor said Thornton had no assets that he or the police could find.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,)

Plaintiff,)

vs.)

RONALD W. THORNTON, (C-2))

DOB: 16 May 1948)

SSN: 219-48-4462)

AK ID/OL: 5016601)

ATN NO: 100640439)

Count I-III)

Court No. 3AN-S9 5-9015 Cr.)

FRONTIER MANAGEMENT, INC. (C-2))

ATN NO:)

Counts IV-VI)

Court No. 3AN-S9 5-9016 Cr.)

Defendants.)

Search Warrant 3AN-95-156 SW ✓

Search Warrant 3AN-95-188 SW ✓

Search Warrant 3AN-95-1036 SW ✓

State of Alaska, Third District

NOV 22 1995

Clerk of the Third Court

COMPLAINT

VRA CERTIFICATION

I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any offense unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COUNT I

SCHEME TO DEFRAUD
AS 11.46.600(a)(1)

COUNT II

THEFT IN THE SECOND DEGREE
AS 11.46.130(a)(1)

COUNT III

FALSIFYING BUSINESS RECORDS
AS 11.46.630(a)(1), (a)(2) or (a)(3)

COUNT IV

SCHEME TO DEFRAUD
AS 11.46.600(a)(1)

COUNT V

THEFT IN THE SECOND DEGREE
AS 11.46.130(a)(1)

TREAT AS ORIGINAL

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COUNT VI
FALSIFYING BUSINESS RECORDS
AS 11.46.630(a)(1), (a)(2) or (a)(3)

THE COMPLAINANT CHARGES:

COUNT I

That between January 1992 and January 1995, at or near Anchorage, in the Third Judicial District, State of Alaska, Ronald W. Thornton did unlawfully engage in conduct constituting a scheme to defraud five or more persons or to obtain property or services from five or more persons by false or fraudulent pretense, representation or promise and obtained property or services in accordance with the scheme.

All of which is a class B felony offense being contrary to and in violation of AS 11.46.600(a)(1) and against the peace and dignity of the State of Alaska.

COUNT II

That between January 1992 and January 1995, at or near Anchorage, in the Third Judicial District, State of Alaska, Ronald W. Thornton, unlawfully and with intent to deprive another of property or to appropriate property of another to himself or a third person, did obtain property of Goldleaf Terrace Townhouse Association having a value of \$500.00 or more.

All of which is a class C felony offense being contrary to and in violation of AS 11.46.130(a)(1) and against the peace and dignity of the State of Alaska.

COUNT III

That between January 1992 and January 1995, at or near Anchorage, in the Third Judicial District, State of Alaska, Ronald W. Thornton with intent to defraud, did unlawfully make or cause

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1 a false entry in the business records of an enterprise, or did
 2 alter, erase, obliterate, delete, remove, or destroy a true entry
 3 in the business records of an enterprise, or did omit to make a
 4 true entry in the business records of an enterprise in violation
 5 of a duty to do so which he knew to be imposed upon him by law or
 6 by the nature of his position.

7 All of which is a class C felony offense being contrary
 8 to and in violation of AS 11.46.630(a)(1), (a)(2) or (a)(3) and
 9 against the peace and dignity of the State of Alaska.

10 COUNT IV

11 That between January 1992 and January 1995, at or near
 12 Anchorage, in the Third Judicial District, State of Alaska,
 13 Frontier Management Inc., acting through its agent, did unlawfully
 14 engage in conduct constituting a scheme to defraud five or more
 15 persons or to obtain property or services from five or more
 16 persons by false or fraudulent pretense, representation or promise
 17 and obtained property or services in accordance with the scheme.

18 All of which is a class B felony offense being contrary
 19 to and in violation of AS 11.46.600(a)(1) and against the peace
 20 and dignity of the State of Alaska.

21 COUNT V

22 That between January 1992 and January 1995, at or near
 23 Anchorage, in the Third Judicial District, State of Alaska,
 24 Frontier Management Inc., acting through its agent, unlawfully and
 25 with intent to deprive another of property or to appropriate
 26 property of another to itself or a third person, did obtain
 property of Goldleaf Terrace Townhouse Association having a value
 of \$500.00 or more.

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 2 to and in violation of AS 11.46.130(a)(1) and against the peace
 3 and dignity of the State of Alaska.

4 COUNT VI

5 That between January 1992 and January 1995, at or near
 6 Anchorage, in the Third Judicial District, State of Alaska,
 7 Frontier Management Inc., acting through its agent, with intent to
 8 defraud, did unlawfully make or cause a false entry in the
 9 business records of an enterprise, or did alter, erase,
 10 obliterate, delete, remove, or destroy a true entry in the
 11 business records of an enterprise, or did omit to make a true
 12 entry in the business records of an enterprise in violation of a
 13 duty to do so which it knew to be imposed upon it by law or by the
 14 nature of its position.

15 All of which is a class C felony offense being contrary
 16 to and in violation of AS 11.46.630(a)(1), (a)(2) or (a)(3) and
 17 against the peace and dignity of the State of Alaska.

18 This Complaint is based on my investigation and review
 19 of partial police report prepared under APD Case No.95-35212 which
 20 discloses the following:

21 Defendant Ronald Thornton is an incorporator and
 22 President of defendant corporation Frontier Management Inc.
 23 Frontier Management Inc., is incorporated in the State of Alaska,
 24 with offices located at 3701 East Tudor, Suite 105, Anchorage,
 25 Frontier Management holds a Municipality of Anchorage business
 26 license which lists property management as its primary business
 activity. Frontier Management provides property management

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1 services for approximately nineteen Anchorage area condominium and
2 homeowners' associations.

3 One such association which contracted for property
4 management services from Frontier Management Inc., was Goldleaf
5 Terrace Townhouse Association [hereafter, "Goldleaf"]. Goldleaf
6 represents approximately 40 homeowners residing in a condominium
7 complex in the Sand Lake area of Anchorage.

8 Loren Taft has served as the President of Goldleaf since
9 1980. Goldleaf has contracted for property management services
10 from Frontier Management Inc. since 1978. Goldleaf authorized
11 defendant Thornton, acting on behalf of Frontier Management Inc.,
12 to sign for transactions and to withdraw funds from Goldleaf's
13 accounts for property management services and expenses. Thornton
14 and Frontier Management Inc. were required to make a financial
15 accounting and provide Goldleaf with a report at Goldleaf's
16 monthly meetings.

17 On 3 March 1995, Taft reported to APD that he had
18 noticed certain discrepancies in the reports provided by the
19 defendant. He told APD that when he asked defendant Thornton
20 about the discrepancies, Thornton said, "When the money is needed,
21 it will be there". Taft told APD that he thought that that answer
22 was suspicious, so he engaged an accountant to audit Goldleaf's
23 finances.

24 Taft learned that, between January 1992 and January
25 1995, defendant Thornton had made approximately \$20,725.00 in
26 unauthorized withdrawals from Goldleaf's accounts and deposited
the funds into his personal account. Taft reported that none of
these questioned withdrawals were for legitimate, authorized

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1 association expenses. Additionally, Taft stated that none of the
 2 questioned expenses were ever reported to Goldleaf in the monthly
 3 financial statements provided by Frontier Management, Inc. Thus,
 4 Taft concluded that the defendants maintained two sets of books,
 5 with one set intended to be provided to Goldleaf. Taft concluded
 6 that all financial reports provided to Goldleaf between January
 7 1992 and January 1995 were fraudulent. Until Taft noted the
 8 discrepancies in early 1995, none of the homeowners were aware of
 9 the true state of affairs regarding their association's finances.

10 Taft reported that the defendants made numerous
 11 withdrawals for payment of "building maintenance". Taft reported
 12 that Goldleaf does not have any buildings to maintain, other than
 13 the individual townhouses, which are the individual homeowners'
 14 responsibility. All such withdrawals on Goldleaf's account were
 15 unauthorized.

16 Taft reported that the defendants had made numerous
 17 charges for "snow removal". The defendants never contracted with
 18 Goldleaf to provide snow removal service. Goldleaf engages
 19 another contractor for snow removal who bills Goldleaf separately.
 20 Thus, all such charges were unauthorized.

21 Taft reported that the defendants billed Goldleaf in
 22 November and December 1993 and in October 1994 for "changes to
 23 homeowners' regulations". Taft reported that this work was never
 24 contracted for or completed, and thus, the charges were
 25 unauthorized.

26 Taft reported numerous instances of billing for payments
 to the Alaska Housing Finance Corporation and the Farmers' Home
 Administration which were never made.

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1 Taft totaled the amount of fraudulent withdrawals from
2 Goldleaf's account as follows:

3	1992	\$3,650.50
4	1993	\$5,645.00
5	1994	\$10,470.00
6	<u>1995</u>	<u>\$975.00</u>
7	Total	\$20,740.50

8 During the course of this investigation, your affiant
9 applied for and was granted search warrants authorizing
10 surreptitious interception and recording of conversations between
11 Taft and defendant Thornton.

12 On 29 August 1995, Taft engaged defendant Thornton in a
13 face-to-face conversation. Thornton told Taft that he knew he had
14 "overbilled" Goldleaf. He estimated the amount of overbilling at
15 \$16,000 and promised Taft that he would "make good on it". He
16 told Taft that he hoped to repay the "majority of it" within
17 thirty days.

18 On 16 October 1995, Taft engaged defendant Thornton in
19 another such conversation. Thornton said:

20 RT: [...] I want to make this right and I
21 will make it right, you know, that you will
22 have your money and, you know, go from .. go
from there in reference to that.

23 LT: uh...

24 RT: ...I don't want legal problems, you
25 don't want legal problems, I mean it's
26 ridiculous to ... to _____ it out and, you
know, I've admitted that I've overbilled you
and

LT: yeah...

RT: ...I'll take care of it.

DISTRICT ATTORNEY, STATE OF ALASKA
310 K STREET, SUITE 920
ANCHORAGE, ALASKA 99501
(907) 269-6300

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Bail Information

Defendant Thornton is 47 years old. He has no criminal convictions of which your affiant is aware.

The court should be aware that your affiant has seized a great quantity of financial records and computer backup tapes from Frontier Management, Inc., pursuant to search warrant. Many of those records pertain to finances of seventeen other homeowners' associations for which the defendants had contracted to provide property management services. Several of those associations have reported irregularities in their finances which were discovered only after they were notified of the pending Goldleaf investigation. The court should be aware that investigation regarding those associations is ongoing, and the filing of additional charges against the defendants is a possibility.

Your affiant is informed that defendant Thornton has retained an Anchorage attorney to represent him in this case. Your affiant respectfully requests a summons.

DATED this 22 day of November, 1995, at Anchorage, Alaska.

By: Steve Elkins
Steve Elkins
Anchorage Police Department

SUBSCRIBED AND SWORN to before me this 22 day of November, 1995 at Anchorage, Alaska.

[Signature]
Judge/Magistrate

JF:pk

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,)
)
 Plaintiff,)
 vs.)
)
 RONALD W. THORNTON, (C-2))
 DOB: 16 May 1948)
 SSN: 219-48-4462)
 AK ID/OL: 5016601)
 ATN NO: 100640439)
 Count I-III)
)
 Defendant.)

FILED IN OPEN COURT

Date: 3/11/96

Court No. JAN-S95-9015 Cr.

Search Warrant JAN-95-156 SW
Search Warrant JAN-95-188 SW
Search Warrant JAN-95-1036 SW

INFORMATION REPLACING COMPLAINT

VRA CERTIFICATION

I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any offense unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

THEFT IN THE FIRST DEGREE
AS 11.46.120(a)

THE DISTRICT ATTORNEY CHARGES:

That between January 1992 and January 1995, at or near Anchorage, in the Third Judicial District, State of Alaska, Ronald W. Thornton did unlawfully commit theft by taking property belonging to those listed below, of a value of \$25,000 or more:

DISTRICT ATTORNEY, STATE OF ALASKA
310 K STREET, SUITE 520
ANCHORAGE, ALASKA 99501
(907) 269-6300



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- 1) North View Condominium Association
- 2) Parkdale West Condominium Association
- 3) Fairweather Condominium Association
- 4) Country Lake Estates Homeowner's Association
- 5) West Bluff, Inc.
- 6) Goldleaf Terrace Townhouse Association

All of which is a Class B Felony being contrary to and in violation of AS 11.46.120(a) and against the peace and dignity of the State of Alaska.

DATED this 11th day of March, 1996, at Anchorage, Alaska.

BRUCE M. BOTELHO
ATTORNEY GENERAL

KENNETH J. GOLDMAN
DISTRICT ATTORNEY

By: James Fayette
James Fayette
Assistant District Attorney

DISTRICT ATTORNEY, STATE OF ALASKA
310 K STREET, SUITE 520
ANCHORAGE, ALASKA 99501
(907) 269-6300

Sec. 08.01.025. Public members.

A public member of a board may not:

- (1) be engaged in the occupation that the board regulates;
- (2) be associated by legal contract with a member of the occupation that the board regulates except as a consumer of the services provided by a practitioner of the occupation; or
- (3) have a direct financial interest in the occupation that the board regulates.

Sec. 08.01.065. Establishment of fees.

(a) Except for business licenses, the department shall adopt regulations that establish the amount and manner of payment of application fees, examination fees, license fees, registration fees, permit fees, investigation fees, and all other fees as appropriate for the occupations covered by this chapter.

(b) [Repealed, sec. 4 ch 34 SLA 1992].

(c) The department shall establish fee levels under (a) of this section so that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation. The department shall annually review each fee level to determine whether the regulatory costs of each occupation are approximately equal to fee collections related to that occupation. If the review indicates that an occupation's fee collections and regulatory costs are not approximately equal, the department shall calculate fee adjustments and adopt regulations under (a) of this section to implement the adjustments. In January of each year, the department shall report on all fee levels and revisions for the previous year under this subsection to the office of management and budget. If a board regulates an occupation covered by this chapter, the department shall consider the board's recommendations concerning the occupation's fee levels and regulatory costs before revising fee schedules to comply with this subsection. In this subsection, "regulatory costs" means costs of the department that are attributable to regulation of an occupation plus

(1) all expenses of the board that regulates the occupation if the board regulates only one occupation;

(2) the expenses of a board that are attributable to the occupation if the board regulates more than one occupation.

(d) The license fee for a business license is set by AS 43.70.030(a). The department shall adopt regulations that establish the manner of payment of the license fee.

(e) [Repealed, sec. 28 ch 90 SLA 1991].

Sec. 08.01.075. Disciplinary powers of boards.

- (a) A board may take the following disciplinary actions, singly or in combination:
- (1) permanently revoke a license;
 - (2) suspend a license for a specified period;
 - (3) censure or reprimand a licensee;
 - (4) impose limitations or conditions on the professional practice of a licensee;
 - (5) require a licensee to submit to peer review;
 - (6) impose requirements for remedial professional education to correct deficiencies in the education, training, and skill of the licensee;
 - (7) impose probation requiring a licensee to report regularly to the board on matters related to the grounds for probation;
 - (8) impose a civil fine not to exceed \$5,000.
- (b) A board may withdraw probationary status if the deficiencies that required the sanction are remedied.
- (c) A board may summarily suspend a licensee from the practice of the profession before a final hearing is held or during an appeal if the board finds that the licensee poses a clear and immediate danger to the public health and safety. A person is entitled to a hearing before the board to appeal the summary suspension within seven days after the order of suspension is issued. A person may appeal an adverse decision of the board on an appeal of a summary suspension to a court of competent jurisdiction.
- (d) A board may reinstate a suspended or revoked license if, after a hearing, the board finds that the applicant is able to practice the profession with skill and safety.
- (e) A board may accept the voluntary surrender of a license. A license may not be returned unless the board determines that the licensee is competent to resume practice and the licensee pays the appropriate renewal fee.
- (f) A board shall seek consistency in the application of disciplinary sanctions. A board shall explain a significant departure from prior decisions involving similar facts in the order imposing the sanction.

Sec. 21.66.310. Rebates prohibited.

(a) A title insurer, or officer, employee, attorney, or title insurance limited producer of a title insurer, may not pay, allow, or give or offer to pay, allow, or give, directly or indirectly, as an inducement to obtaining a title insurance business, a rebate, reduction, or abatement of a rate or charge made incident to the issuance of the title insurance, a special favor or advantage, money consideration, or other inducement. A charge made incident to the issuance of the insurance is construed to include, without limitation, escrow, settlement, and closing charges.

(b) An insured named in a title insurance policy or any other person directly or indirectly connected with the transaction involving the issuance of a title insurance policy, including, but not limited to a mortgage lender, real estate broker, builder, or attorney, or an officer, employee, agent, representative, or solicitor of a mortgage lender, real estate broker, builder, attorney, or other person, may not knowingly receive or accept, directly or indirectly, a rebate, reduction, or abatement of a charge or premium or a special favor or advantage, or a monetary consideration or inducement.

(c) Nothing in this section prohibits

(1) the payment of fees for services actually rendered as a result of a title insurance transaction; or

(2) the payment of a commission to a legally appointed title insurance limited producer who issues the policy of title insurance.

Sec. 23.20.526. Exclusions from definition of "employment".

(a) In this chapter, unless the context otherwise requires, "employment" does not include

(1) domestic service in a private home, except as provided in AS 23.20.525(a)(15);

(2) newsboys' services in selling or distributing newspapers on the street or from house to house;

(3) service not in the course of the employing unit's trade or business performed in a calendar quarter by an individual, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employing unit to perform the service; an individual is here considered to be regularly employed to perform service not in the course of an employing unit's trade or business during a calendar quarter only if the individual performs the service for some portion of the day on each of some 24 days during the quarter or during the preceding calendar quarter;

(4) service performed by an individual in the employ of the individual's

(A) son, daughter, or spouse;

(B) parent or legal guardian if the individual was under the age of 21 years and a full-time student during eight of the last 12 months and intends to resume full-time student status within the next four months; and

(C) mother or father if the service is performed by a child under the age of 18;

(5) service with respect to which unemployment insurance is payable under an unemployment insurance program established by an Act of Congress;

(6) service performed in the employ of a foreign government including service as a consular or other officer or employee or a nondiplomatic representative;

(7) service performed in the employ of an instrumentality wholly owned by a foreign government if

(A) the service is of a character similar to that performed in foreign countries by employees of the United States government or its instrumentalities; and

(B) the department finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and its instrumentalities;

(8) service performed by an insurance agent, insurance solicitor, a real estate broker, a real estate salesman, or a securities salesman to the extent the person is compensated by commission, unless the service is required to be covered under the Federal Unemployment Tax Act as amended;

(9) notwithstanding AS 23.20.525(a)(11), service performed by an officer or member of the crew of an American vessel on or in connection with the vessel, if the operating office, from which the operations of the vessel operating on navigable waters inside or inside and outside the United States are ordinarily and regularly supervised, managed, directed, and controlled, is outside this state;

(10) service performed on or in connection with a vessel not an American vessel by an individual if the individual performed service on and in connection with the vessel when outside the United States;

(11) service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from

the contributions imposed by this chapter, except that to the extent that the Congress of the United States permits states to require an instrumentality of the United States to make payments into an unemployment fund under a state employment security law, all of the provisions of this chapter apply to the instrumentalities, and to service performed for the instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and service; however, if this state is not certified for any year by the Secretary of Labor under 26 U.S.C. 3304(c) (Federal Unemployment Tax Act, Internal Revenue Code), the payments required of the instrumentalities with respect to the year shall be refunded by the department from the fund in the same manner and within the same period as is provided in AS 23.20.225 with respect to contributions erroneously collected;

(12) service performed in the employ of another state, or political subdivision of another state, or an instrumentality of another state or political subdivision which is wholly owned by another state or its political subdivision, or a service performed in the employ of an instrumentality of another state or its political subdivisions to the extent that the instrumentality is, with respect to the service, exempt under the Constitution of the United States from the tax imposed by 26 U.S.C. 3301 (Federal Unemployment Tax Act, Internal Revenue Code);

(13) service performed in the employ of an international organization;

(14) service covered by an election approved by the agency charged with the administration of any other state or federal employment security law, in accordance with an arrangement under AS 23.20.090(a) during the effective period of the election;

(15) service performed by an individual in agricultural labor, except as provided in AS 23.20.525(a)(16); the term "agricultural labor" means remunerated service

(A) on a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(B) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of the service is performed on a farm;

(C) in connection with the production or harvesting of any commodity defined as an agricultural commodity in 12 U.S.C. 1141j (sec. 15(g), Agricultural Marketing Act), as amended, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(D) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if the operator produced more than one-half of the commodity with respect to which the service is performed except as stated in (b) of this section;

(E) in the employ of a group of operators of farms, or a cooperative organization of which the operators are members, in the performance of service described

in (D) of this paragraph, but only if the operators produced more than one-half of the commodity with respect to which the service is performed;

(F) on a farm operated for profit if the service is not in the course of the employer's trade or business;

(16) service performed after December 31, 1971, by nurses, technicians, and other professional employees of hospitals no part of the net earnings of which inures to the benefit of a private shareholder or individual, unless the service is required to be covered under the Federal Unemployment Tax Act;

(17) service performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of that boat under which

(A) that individual does not receive any cash remuneration except as provided in (B) of this paragraph;

(B) that individual receives a share of the boat's, or the boats' in the case of a fishing operation involving more than one boat, catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of that catch; and

(C) the amount of that individual's share depends on the amount of the boat's, or the boats' in the case of a fishing operation involving more than one boat, catch of fish or other forms of aquatic animal life; but only if the operating crew of that boat, or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat, is normally made up of fewer than 10 individuals;

(18) service performed as a prospective or impaneled juror in a court;

(19) service performed for a corporation by an employee of the corporation if

(A) the corporation is incorporated under AS 10.06;

(B) the corporation is not a government corporation; and

(C) the employee is an executive officer of the corporation;

(20) service performed by an individual who drives a taxicab whose compensation and written contractual arrangements are as described in AS 23.10.055(13);

(21) service of an individual who

(A) directly sells or solicits the sale of consumer products, for resale or otherwise, personally to a prospective consumer in the home or otherwise than in a permanent retail establishment; a sale or solicitation by telephone, mail, other telecommunications method, or other nonpersonal method does not satisfy the requirement of this subparagraph;

(B) is compensated solely by

(i) commissions on sales or other remuneration directly related to sales or sales performance; or

(ii) a profit represented by the difference between the wholesale cost of the product to the seller and the final sale price to the consumer; and

(C) performs under a written contract with the person for whom the service is performed that provides, notwithstanding AS 23.20.395(a), that the individual is not an employee for purposes of this chapter or for federal or state tax purposes.

(b) Notwithstanding any other provision of this section, the provisions of (a)(15)(D) and (E) of this section are not applicable to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(c) In (a)(15) of this section, "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(d) For the purposes of AS 23.20.525(a)(4) - (6) and (14), the term "employment" does not apply to service performed

(1) by a duly ordained, commissioned, or licensed minister of a church in the exercise of the person's ministry or by a member of a religious order in the exercise of duties required by the order;

(2) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving the rehabilitation or remunerative work;

(3) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or any agency of a state or political subdivision of the state, by an individual receiving work relief or work training;

(4) for a state hospital by an inmate of a prison or correctional institution;

(5) in the employ of a school, college, or university, if the service is performed by a student who is enrolled and is regularly attending classes at the school, college, or university;

(6) by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at the institution, which combines academic instruction with work experience, if the service is an integral part of the program, and the institution has so certified to the employer, except that this paragraph does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(7) in the employ of a hospital, if the service is performed by a patient of the hospital, as defined in AS 23.20.520;

(8) in the employ of the state or a political subdivision of the state if the service is performed by an individual in the exercise of duties

(A) as a "public official" as defined in AS 39.50.200(a), any other elected official, the fiscal analyst of the legislative finance division, the legislative auditor of the legislative audit division, the executive director of the Legislative Affairs Agency, and the directors of the divisions within the Legislative Affairs Agency;

(B) as a member of the Alaska Army National Guard or Alaska Air National Guard or Alaska Naval Militia; or

(C) as an employee serving on only a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;

(9) in the employ of

(A) a church or a convention or association of churches; or

(B) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or a convention or association of churches.

Sec. 34.08.600. Escrow of deposits.

A deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement under AS 34.08.520(c) must be placed in escrow and held either in this state or in the state where the unit is located in an account designated solely for that purpose by a licensed title insurance company, an attorney, a licensed real estate broker, an independent bonded escrow company, or an institution whose accounts are insured by a governmental agency or instrumentality until

- (1) delivered to the declarant at closing;
- (2) delivered to the declarant because of the purchaser's default under a contract to purchase the unit; or
- (3) refunded to the purchaser.

Sec. 34.55.044. Definitions.

In this chapter, unless the context otherwise requires,

- (1) "department" means Department of Commerce and Economic Development;
- (2) "disposition" includes sale, lease, assignment, award by lottery, or any other transaction concerning a subdivision, if undertaken for gain or profit;
- (3) "offer" includes every inducement, solicitation, or attempt to encourage a person to acquire an interest in land, if undertaken for gain or profit;
- (4) "person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of them having a joint or common interest, or any other legal or commercial entity;
- (5) "purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land;
- (6) "subdivider" means an owner of subdivided land who offers it for disposition or the principal agent of an inactive owner;
- (7) "subdivision" and "subdivided land" mean land that is divided or is proposed to be divided for the purpose of disposition into two or more lots, parcels, units, or interests and also includes any land whether contiguous or not if two or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale; if the land is contiguous or is known, designated, or advertised as a common unit or by a common name, the land shall be presumed, without regard to the number of lots covered by each individual offering, as being offered for disposition as part of a common promotional plan.

Sec. 45.63.080. Exemptions.

This chapter does not apply to a sale or attempted sale

(1) of a security regulated under AS 45.55 or a security that is exempted by AS 45.55.900 from regulation under AS 45.55;

(2) by a person registered with the United States Securities and Exchange Commission when acting within the scope of the person's Securities and Exchange Commission license;

(3) by an issuer, or a subsidiary of an issuer, of a class of securities that is

(A) subject to 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934); and

(B) either registered under 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934) or exempt from registration under 15 U.S.C. 78l(g)(2)(A) - (C) or (E) - (H);

(4) by a real estate broker, associate real estate broker, or real estate salesman licensed under AS 08.88 and acting in a capacity covered by the license;

(5) by a person who has a certificate of registration under AS 08.18 to operate as a contractor and is acting in a capacity covered by the certificate of registration;

(6) by an embalmer or funeral director licensed under AS 08.42 and acting in a capacity covered by the license;

(7) by an insurance agent, general agent, broker, solicitor, or adjuster licensed under AS 21.27 and acting in a capacity covered by the license;

(8) by a person who is primarily soliciting the sale of a subscription to, or advertising in, a newspaper of general circulation;

(9) by a charitable organization or paid solicitor if the organization or solicitor is registered to make charitable solicitations under AS 45.68 and is acting in a capacity that is covered by the registration;

(10) by a person who is primarily soliciting the sale of a magazine, periodical, sound recording, book, or membership in a book or record club

(A) where the club provides the buyer with a form that the buyer may use to instruct the club not to ship the offered merchandise; and

(B) that is regulated by the Federal Trade Commission as a negative option plan under 16 CFR 425;

(11) of services provided by a cable television system operating under a franchise issued by a municipality;

(12) by a person who is soliciting for a business, or for an affiliate of a business, that is regulated by the Alaska Public Utilities Commission;

(13) by a person whose solicitation is solely for telephone answering services provided by the person or the person's employer;

(14) of property from a mail order catalog that is published on a regular, periodic basis and that describes or pictures the items for sale and prominently provides the specific price of each item;

(15) by a supervised financial institution or the parent, subsidiary, or affiliate of a supervised financial institution; in this paragraph, "supervised financial institution" means a commercial bank, savings bank, mutual savings bank, trust company, savings and loan association, credit union, industrial loan company, personal property broker, consumer finance lender, commercial finance lender, or other financial institution if the financial institution is subject to regulation by this state or the United States;

(16) by an insurer or the parent, subsidiary, or affiliate of an insurer;

(17) by a person who solicits a sale by a contact by telephonic means without intending to complete the sales presentation during the contact, who does not complete the sales presentation during the contact, and who only completes the sales presentation at a later meeting in person, unless at the later meeting the solicitor attempts to collect payment for property or services delivered before the later meeting;

(18) of an item of personal property, including a food product, that is made by hand by an individual, if the sale or attempted sale of the item is made by the individual who made the item; in this paragraph, "made by hand" includes the use of ordinary household devices if the majority of the value of the item is added by the labor of the individual.

DEPT. OF ENVIRONMENTAL CONSERVATION

Division of Air and Water Quality
Watershed Management
610 University Avenue
Fairbanks, AK 99709-3643

Director's Office: (907) 465-5260
Fairbanks Office: (907) 451-2360
Fax: (907) 451-2187
File: 475.45.007

March 5, 1997

Senator Norman Rokeberg
State Capitol Building
Room 110
Juneau, AK 99801-1182

Re: Red Dog and Ikalukrok Creeks Reclassification

Dear Senator Rokeberg:

The Department of Environmental Conservation is pleased to send you a copy of the Amendments to 18 AAC 70.050(b), Classification of State Waters, which include the Department's recent decision on some segments of Red Dog and Ikalukrok Creeks. These regulations were adopted by the Department on February 11, 1997, and filed by the Lieutenant Governor on February 26, 1997. They take effect on March 28, 1997.

These changes to the water quality regulations, 18 AAC 70.050(b), reclassify specific segments of Red Dog Creek, its tributaries, and Ikalukrok Creek, near the Red Dog Mine, in the DeLong Mountains in Northwest Alaska, and are based on natural creek conditions and public input.

We are enclosing a copy of the final Use Attainability Analysis which explains and justifies these reclassifications. This final document includes the research, public hearing findings, written comments, and our response to them. The supplemental document, "Red Dog Use Attainability Analysis, Aquatic Life Component." by Phyllis Weber Scannell, Alaska Department of Fish and Game, was sent to you previously.

We appreciate your interest and input into the extensive public process which occurred. Please let us know if you would like any further information about this reclassification.

Sincerely,



Joyce Beelman
Team Leader
Red Dog Reclassification

JB/rg (K:\AWQ\AIRWATER\RDGRPL2.LTR)

Enclosures: Table 18 AAC 70.050 (b), Adopted February 11, 1997; Final Use Attainability Analysis

cc: Pete McGee, ADEC/Fairbanks Cam Leonard, AG/Fairbanks Susan Bralcy, ADEC/Juneau
Mike Conway, ADEC/Juneau Al Ewing, ADEC/Juneau Billie Wilson, ADEC/Juneau
Joe Ferguson, ADEC/Juneau Sally Brough, USEPA/ Seattle
Phyllis Weber Scannell, ADF&G/Fairbanks Charlotte MacCay, Cominco Alaska, Inc./Anchorage

**DEPARTMENT OF
ENVIRONMENTAL CONSERVATION**



18 AAC 70

WATER QUALITY STANDARDS

•

Amendments Effective March 28, 1997

**Tony Knowles
Governor**

**Michele Brown
Commissioner**

18 AAC 70.050(b)		LATITUDE LONGITUDE **	LOCATION	DESIGNATED USE CLASS	REACH OF WATER AFFECTED
WATERSHED TYPE/NAME	NUMBER*				
(1) Amy Creek	19040509	65°32'30"N 148°26'55"W	Near Livengood	(1)(A)(i) (1)(A)(iii) (1)(A)(iv) (1)(B)(ii) (1)(C)	Headwaters of Amy Creek to its confluence with Livengood Creek
(2) Chena River	19040506	64°47'45"N 147°54'45"W	Near Fairbanks	(1)(A)(ii) (1)(A)(iii) (1)(A)(iv) (1)(B) (1)(C)	Confluence of Chena River and Chena Slough to the confluence of Chena River and Tanana River
(3) Connie Creek	19050404	68°04'04"N 162°49'09"W	Near Red Dog Mine	(1)(A)(iv) (1)(B)(i)*** (1)(B)(ii)**** (1)(C)	Tributary of Middle Fork Red Dog Creek
(4) Franklin Creek	19040509	65°33'07"N 148°30'08" W	Near Livengood	(1)(A)(iv)	Headwaters of Franklin Creek to Hess Creek Dam/reservoir diversion ditch
(5) Gertrude Creek	19040509	65°32'05"N 148°30'05"W	Near Livengood	(1)(A)(i) (1)(A)(iv) (1)(B)(ii) (1)(C)	Headwaters of Gertrude Creek to its confluence with Livengood Creek

18 AAC 70.050(b)		LATITUDE LONGITUDE **	LOCATION	DESIGNATED USE CLASS	REACH OF WATER AFFECTED
WATERSHED TYPE/NAME	NUMBER*				
(6) Heine Creek	19040509	65°33'60"N 148°25'12"W	Near Livengood	(1)(A)(iv) (1)(C)	Headwaters of Heine Creek to Hess Creek Dam/reservoir diversion ditch
(7) Hilltop Creek	19050404	68°03'47"N 162°49'12"W	Near Red Dog Mine	(1)(A)(iv) (1)(B)(ii)****	Tributary of Middle Fork Red Dog Creek
(8) Ikalukrok Creek	19050404	67°53'26"N 163°37'18"W	Near Red Dog Mine	(1)(A)(iv) (1)(B)(i)*** (1)(B)(ii) (1)(C)	Confluence with Red Dog Creek to confluence with the Wulik River
(9) Isabell Creek (Upper)	19040509	65°32'22"N 148°31'10"W	Near Livengood	(1)(A)(iv)	Headwaters of Isabell Creek to Hess Creek Dam road crossing
(10) Isabell Creek (Diversion)	19040509	65°34'35"N 148°23'26"W	Near Livengood	(1)(A)(iv) (1)(C)	Hess Creek Dam road crossing to Hess Creek Dam/reservoir diversion ditch
(11) Lillian Creek	19040509	65°30'40"N 148°34'23"W	Near Livengood	(1)(A)(iv)	Headwaters of Lillian Creek to its confluence with Livengood Creek
(12) Lucille Creek	19040509	65°32'25"N 148°27'25"W	Near Livengood	(1)(A)(iv)	Headwaters of Lucille Creek to its confluence with Livengood Creek

18 AAC 70.050(b) WATERSHED		LATITUDE LONGITUDE **	LOCATION	DESIGNATED USE CLASS	REACH OF WATER AFFECTED
TYPE/NAME	NUMBER*				
(13) Nolan Creek and all its tributaries excluding Acme Creek	19C 10501	67°27'35"N 150°14'49"W	Near Wiseman	(1)(A)(iv)	Headwaters of Nolan Creek to its confluence with Wiseman Creek, and from the headwaters of each tributary of Nolan Creek to its confluence with Nolan Creek excluding Acme Creek
(14) Olive Creek (Upper)	19040509	65°29'27"N 148°30'08"W	Near Livengood	(1)(A)(iv)	Headwaters of Olive Creek to 1.5 miles above its confluence with the Tolovana River
(15) Olive Creek (Lower)	19040509	65°28'18"N 148°30'53"W	Near Livengood	(1)(A)(i) (1)(A)(iii) (1)(A)(iv) (1)(B)(i) (1)(B)(ii) (1)(C)	1.5 miles above the confluence with the Tolovana River to its confluence with the Tolovana River
(16) Rachael Creek	19050404	68°03'47"N 162°49'12"W	Near Red Dog Mine	(1)(A)(iv) (1)(B)(i)*** (1)(B)(ii)**** (1)(C)	Tributary of Middle Fork Red Dog Creek
(17) Ready Bullion Creek	19040509	65°29'43"N 148°35'30"W	Near Livengood	(1)(A)(i) (1)(A)(iii) (1)(A)(iv) (1)(B)(ii) (1)(C)	Headwaters of Ready Bullion Creek to its confluence with Livengood Creek

18 AAC 70.050(b)		LATITUDE LONGITUDE **	LOCATION	DESIGNATED USE CLASS	REACH OF WATER AFFECTED
WATERSHED TYPE/NAME	NUMBER*				
(18) Red Dog Creek (Main Stem)	19050404	68°05'23"N 162°56'48"W	Near Red Dog Mine	(1)(A)(iv) (1)(B)(i)*** (1)(B)(ii) (1)(C)	Confluence with North Fork Red Dog Creek to confluence with Ikalukrok Creek
(19) Red Dog Creek (Upper Middle Fork)	19050404	68°04'32"N 162°51'21"W	Near Red Dog Mine	(1)(A)(iv)	Headwaters to terminus of the Red Dog Mine Water Management System
(20) Red Dog Creek (Lower Middle Fork)	19050404	68°05'02"N 162°53'04"W	Near Red Dog Mine	(1)(A)(iv) (1)(B)(i)*** (1)(B)(ii)****	Terminus of the Red Dog Mine Water Management System to confluence with North Fork Red Dog Creek
(21) Ruth Creek	19040509	65°31'26"N 148°32'30"W	Near Livengood	(1)(A)(iv)	Headwaters of Ruth Creek to its confluence with Livengood Creek
(22) Shelly Creek	19050404	68°04'19"N 162°49'26"W	Near Red Dog Mine	(1)(A)(iv) (1)(B)(i)*** (1)(B)(ii)**** (1)(C)	Tributary of Middle Fork Red Dog Creek
(23) Steel Creek	19040509	65°28'12"N 148°24'50"W	Near Livengood	(1)(A)(i) (1)(A)(iii) (1)(A)(iv) (1)(B)(ii) (1)(C)	Headwaters of Steel Creek to its confluence with the Tolovana River

18 AAC 70.050(b)		LATITUDE LONGITUDE **	LOCATION	DESIGNATED USE CLASS	REACH OF WATER AFFECTED
WATERSHED TYPE/NAME	NUMBER*				
(24) Sulfur Creek	19050404	68°04'32"N 162°50'15"W	Near Red Dog Mine	(1)(A)(iv) (1)(B)(i)*** (1)(B)(ii)**** (1)(C)	Tributary of Middle Fork Red Dog Creek
(25) Wonder Creek	19040509	65°33'33"N 148°27'21"W	Near Livengood	(1)(A)(iv) (1)(C)	Headwaters of Wonder Creek to Hess Creek Dam/reservoir diversion ditch

* Watershed numbers refer to watersheds established by the United States Department of Interior, Geological Survey "Hydrologic Unit Map - 1987 State of Alaska," adopted by reference. This document is for sale by the United States Geological Survey, Fairbanks, Alaska 99701; Denver, Colorado 80225; or Reston, Virginia 22092. This document is on file in the Lieutenant Governor's Office and may be seen at the department's Anchorage, Fairbanks, and Juneau offices.

** River latitudes and longitudes are set at the downstream end of the affected river reach.

*** Protected for contact recreation, wading only.

**** Protected for secondary recreation, except fishing.

(In effect before 7/28/59; am 5/24/70, register 34; am 8/28/71, Register 39; am 10/22/72, Register 44; am 8/12/73, Register 47; am 2/2/79, Register 69; am 9/22/84, register 91; am 1/7/87, Register 100; am 11/30/89, Register 112; am 1/4/95, Register 133; am 3/28/97, Register 141)

Authority: AS 46.03.020 AS 46.03.070
AS 46.03.050 AS 46.03.080

Red Dog and Ikalukrok Creeks

Use Attainability Analysis

by

Joyce Beelman

Alaska Department of Environmental Conservation

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and
IKALUKROK CREEK

Use Attainability Analysis

Introduction

The Alaska Department of Environmental Conservation (ADEC) became actively involved with regulation in Red Dog and Ikalukrok Creeks in the early 1980's when the Red Dog Mine was in its initial planning stages. At that time, baseline water quality sampling results for metals concentrations in these streams were noted¹². In 1982, ADEC Commissioner Neve wrote to Cominco Alaska Inc. (Cominco) suggesting the company pursue reclassification, "since background data show that natural contamination precludes some uses." However, Commissioner Neve also suggested that the process might be simplified in the near future, so the company postponed the action (Appendix B).

After many years of working with ADEC's classification of all streams to the highest use, Cominco asserts that permitting and compliance issues cannot be appropriately addressed unless the streams are classified according to the 1975 existing and attainable uses.

Cominco requests the removal of the uses listed in this Use Attainability Analysis (UAA) as provided under 40 CFR 131.10(g) and under 18 AAC 70.055(c), which states "*An interested person may petition the department for the adoption or repeal of a classification of state waters*".^{2,31} Cominco requests the removal of these uses on the basis that these uses never existed, and because high naturally occurring metals concentrations in Red Dog and Ikalukrok Creeks preclude attainability of these uses for these water bodies.¹⁰

Purpose

This Use Attainability Analysis has been developed in response to Cominco's request to remove certain protected water quality uses, as identified in the Alaska Water Quality Standard regulations,² from some segments of Red Dog and Ikalukrok Creeks. Cominco requests these use removals because the company would like to establish the correct baseline classification for these water bodies. This reclassification to the appropriate existing and attainable uses would clarify application of the water quality standards for permitting and compliance purposes. Cominco requests these use removals (water supply, recreation and aquatic life), because the company does not believe these uses have existed in the past (since November 28, 1975)³¹, currently exist, or are attainable, due to reasons such as the high naturally occurring metals concentrations. This UAA, along with the Alaska Department of Fish and Game (ADF&G) supplemental document³⁵, assesses the physical, chemical, biological, and economic factors supporting reclassification.

Authority

A Use Attainability Analysis (UAA) is a structured scientific assessment of the factors affecting the attainment of uses specified in Section 101(a)(2) of the Clean Water Act, which states "... wherever attainable, provide water quality for the protection and propagation of fish, shellfish and wildlife and for recreation in and on the water . . .,"³¹ (the "fishable/swimmable" uses).

The factors to be considered in such an analysis include the physical, chemical, biological and economic use removal criteria described in United States Environmental Protection Agency (USEPA) Water Quality Standards Regulation (40 CFR 131.10 (g)(1-6))³¹. The six factors to be considered are:

- Factor 1 Naturally occurring pollutant concentrations prevent the attainment of the use.
- Factor 2 Natural, ephemeral, intermittent, or low-flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met.
- Factor 3 Human-caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place.
- Factor 4 Dams, diversions, or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original conditions or to operate such modification in a way that would result in the attainment of the use.
- Factor 5 Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, low depth, pools, riffles, and the like, unrelated to [chemical] water quality, preclude attainment of aquatic life protection uses.
- Factor 6 Controls more stringent than those required by sections 301(b)(1)(A) and (B) and 306 of the Act would result in the substantial and widespread economic and social impact.

A Use Attainability Analysis is required to remove protected uses of a water body. In the preamble to the Water Quality Standards regulations in the Federal Register (48 CFR 51401), a UAA is further defined as containing a water body survey and assessment, a wasteload allocation, and economic analysis, if appropriate.³¹

"Existing uses" are defined in federal regulation 40 C.F.R.131.3 as those uses actually attained in the water body on or after November 28, 1975. Existing uses may not be considered for removal, regardless of the water quality.

Any reclassification of waters to remove uses, must protect all downstream uses.

Authority (cont.)

Existing data may be used to develop the Use Attainability Analysis. (Both historical, pre-mining data and new information on undisturbed drainages were used to develop this UAA.)

If a use is found to be nonexistent, then the Alaska Department of Environmental Conservation (ADEC) determines if the nonexistent use is "attainable." "Attainable" at a minimum, means the protected use is attainable using permit limits for point sources and best management practices for nonpoint sources.³¹

State authority, 18 AAC 70.055, Procedure for Reclassification², describes the circumstances and required procedures to reclassify state waters (remove protected uses). Before amending 18 AAC 70.050, Classification of State Waters, to reclassify state water, the Department must conduct at least one public hearing and otherwise comply with 40 C.F.R. Part 131, as amended effective December 8, 1983³¹, and other applicable state and federal statutes and regulations.

Public hearings were held in the nearest potentially affected villages, Kivalina and Noatak, on May 13, 1996 (Appendix E). A workshop to inform the public of the proposed water quality standard regulation changes was held prior to each public hearing. Additionally, state representatives presented this information at a meeting in Juneau to the Sierra Club Legal Defense Fund, and at a meeting in Kotzebue to the NANA Regional Corporation Board of Directors in April 1996, and at a public meeting in Kotzebue on May 14, 1996.

Alaska Water Quality Standards Protected Uses

Alaska Water Quality Standard regulations (18 AAC 70.020(a)(1))² list the following protected water uses for fresh water bodies:

- (A) Water Supply including (i) drinking, culinary, and food processing; (ii) agriculture, including irrigation and stock watering; (iii) aquaculture, (iv) industrial;
- (B) Water Recreation including (i) contact recreation, (ii) secondary recreation;
- (C) Growth and propagation of fish, shellfish, other aquatic life and wildlife.

Problem Identification

The State of Alaska, in its original adoption of the Alaska Water Quality Standard regulations, 18 AAC 70, classified all Alaskan water bodies for protection of all the above uses. Since that time 16 water bodies, listed in 18 AAC 70.050, have been reclassified.² Red Dog and Ikalukrok Creeks are presently classified to protect all uses, even though these water bodies have naturally high levels of metals toxic to humans and aquatic life, which may preclude the existence and attainment of some of these protected uses.

Site Description and Background Information^{10,12 & 30}

Red Dog and Ikalukrok Creeks are located near the Arctic Circle in the DeLong Mountains of the Western Brooks Range, approximately 50 miles inland from the Chukchi Sea at approximately 68°4'00" North Latitude, 162° 50'00" West Longitude, in Northwest Alaska. (Figure 1, Location Map).

The area is within the Northwest Arctic Borough of Alaska. In general, the geomorphology of the area is characterized by moderately sloping hills and broad stream valleys. The entire area is underlain by continuous permafrost, greater than 60 feet thick. Gentle, poorly defined surface undulations are caused by patterned ground, old drainage channels, thaw lakes, and other snow and ice-related depositional, erosional or permafrost-related features. The area is treeless; vegetation consisting primarily of cotton-grass tussock tundra, low shrub lands, and herbaceous meadows.³⁰ As is typical of arctic regions, the area experiences extremes in both temperature and daylight hours throughout the year.

Red Dog and Ikalukrok Creeks are intermittent streams, frozen from late October to late May. Open water temperatures range from 0.2° to 17° Centigrade. Creek discharges are dependent on snow melt and rainfall. Red Dog Creek drains approximately 25 square miles. Discharge rates range from less than 0.1 cubic feet per second (cfs) to greater than 100 cfs. Ikalukrok Creek, which drains approximately 125 square miles below its confluence with Red Dog Creek, has flows ranging from 15 - 800 cfs. Springs have been identified in Ikalukrok Creek.

The stream bed of Red Dog Creek consists of gravel, cobbles, rocks and a few boulders. Creek widths range from 10 to 30 feet, depths from 0.1 to 1.7 feet. Ikalukrok Creek's stream bed also consists of gravel, cobble and rocks; widths range from 12 to 130 feet, depth from 1 to 4 feet.

Dolly Varden, Arctic grayling, and other fish species are found in Ikalukrok and Red Dog Creeks, as far upstream as Station 20 in Main Stem Red Dog Creek, near its confluence with North Fork Red Dog Creek (Figure 3). Winter distribution of fish is limited to Ikalukrok Creek, below its confluence with Dudd Creek, due to poor water quality, low pH, low dissolved oxygen, and frozen conditions beyond this location.^{25,26,27 & 34}

Population

The nearest downstream village is Kivalina, population of approximately 300, located at the mouth of the Wulik River on a barrier beach of the Chukchi Sea. The Wulik River drainage area is used for subsistence hunting, fishing and berry-picking by nearby villagers²⁴.

Chronology of Mining Activity¹⁰

Middle Fork Red Dog Creek flows through an area underlain by a world class zinc deposit known as the "Red Dog Deposit." This deposit is currently being mined by Cominco on land owned by NANA Regional Corporation. It was the notable discoloration of Middle Fork Red Dog Creek which first attracted miners to the area and it is this history which provides initial baseline evidence of the natural poor water quality of Red Dog and Ikalukrok Creeks.

Chronology of Mining Activity (cont.)

As early as 1968, the potential of the Red Dog deposit was recognized by Bob Baker, a prospector and bush pilot of Kotzebue, Alaska. While flying over the area, Baker noticed a deep rusty alteration zone along a creek face and subsequent staining in the waters of Middle Fork Red Dog Creek. He brought this to the attention of Irving Tailleir of the United States Geological Survey (USGS), who was mapping the geology of the DeLong Mountain Quadrangle which includes the area surrounding the creeks. Tailleir visited the site and collected rock and stream sediment samples. Test results of the samples showed significant mineral exploration potential and this finding was formally announced in a USGS press release in the fall of 1975. Further exploration of the area was conducted by Cominco to delineate what is considered to be one of the highest grade zinc deposits in the world. The mineralization is believed to have been deposited hundreds of millions of years ago and was exposed at the surface as a result of a series of tectonic and erosional events. In recent times, geologically speaking, the deposit has been one of the more significant determining influences on the water quality of Red Dog Creek and downstream drainages.

The reddish-orange staining observed in the Red Dog Creek bed was primarily due to the chemical and mechanical weathering of oxidized metal-sulfide bearing rock. In particular, the exposed surfaces of the Red Dog ore body are appreciably oxidized. The oxidation of metal sulfides produces metal sulfates. Zinc and iron sulfates from the Red Dog ore body, which are created by this process, are water soluble and are flushed from the host rock during precipitation or snow melt events. Surface water drains over the ore body carrying zinc, lead, cadmium, iron and other metals into Red Dog Creek. The elevated levels of metals, particularly dissolved metals, in Red Dog Creek and the downstream drainage can be toxic to aquatic and human life.

An Environmental Impact Statement (EIS) for the Red Dog Mine Project by the USEPA³⁰ summarized the significance of this on stream quality as follows:

"The waters of Red Dog Creek are atypical of most undeveloped Arctic streams because of the toxic concentrations of dissolved elements that enter the main stem of the creek (Middle Fork) as it flows through the highly mineralized ore body. . . . The (Middle Fork) has high concentrations of cadmium, lead, zinc, and iron. This water also has decreased levels of dissolved oxygen and alkalinity, and increased levels of turbidity, suspended solids, and sulfate. The pH turns slightly acidic, and water type changes from calcium bicarbonate to a mixture of calcium-magnesium bicarbonate and magnesium-sodium sulfate water. Dilution from North and South Fork waters improves the water quality of (Red Dog Creek) further downstream, but (Middle Fork) Red Dog Creek adversely affects the water quality of Ikalukrok Creek below their confluence."

NOTE: The EIS identifies all of Red Dog Creek, except the North and South Forks, as the Main Stem Red Dog Creek. ADEC in this document identifies the section of Red Dog Creek which passes through the ore body as Middle Fork Red Dog Creek; and the section of Red Dog Creek from its confluence with North Fork Red Dog Creek to its confluence with Ikalukrok Creek, as the Main Stem Red Dog Creek. (Figure 3: Red Dog and Ikalukrok Creeks Map)