

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 86 / 2

10924 HOUSE LABOR & COMMERCE

Subject: HB 255 wage and hour bill requires your support! H-LC

Date: Mon, 14 Apr 2003 16:48:21 -0400

From: "Richard Dowd" <hr@alyeskaresort.com>

To: "Rep Norman Rokeberg" <Representative_Norman_Rokeberg@legis.state.ak.us>

Richard Dowd
PO Box 249
Girdwood, AK 99587

April 14, 2003

Dear Rep Rokeberg:

I am writing to urgently request your support of HB255.

The wage and hour legislation provided by this bill is critically important to Alyeska Resort. Current wage and hour law that mandates minimum salaries equal to 2.5 times the min wage for supervisory employees is onerous and unnecessary. The minimum wage increased from \$5.65 to \$7.15 increased employment costs to businesses by 26% for salaried supervisory employees because by law, they must be paid 2.5 times the minimum wage. Therefore, the annual minimum salary required by current regulations increased supervisors pay from \$14.12 per hour to \$17.87 per hour which equates to an increase from \$29,369 per year to \$37,169 per year.

Second, This bill allows for a voluntary flexible work hour plan for casual employees which is very important in our 24 x 7 industry. Currently union collective bargaining agreements allow such provisions, our employees ask for such provisions and our businesses demand such flexibility.

Third, by creating a new statute that allows for a workable training wage, we are able to more easily hire young, first-time and entry-level employees.

Thank you for your support.

Sincerely,

Richard Dowd

Subject: HB 255 wage and hour bill requires your support! H-LC

Date: Mon, 14 Apr 2003 16:56:36 -0400

From: "Luke Peroni" <lperoni@alyskaresort.com>

To: "Rep Norman Rokeberg" <Representative_Norman_Rokeberg@legis.state.ak.us>

Luke Peroni
box 249
Girdwood, AK 99587

April 14, 2003

Dear Rep Rokeberg:

I am writing to urgently request your support of HB255.

The wage and hour legislation provided by this bill is critically important to my business. Current wage and hour law that mandates minimum salaries equal to 2.5 times the min wage for supervisory employees is onerous and unnecessary. The minimum wage increased from \$5.65 to \$7.15 increased employment costs to businesses by 26% for salaried supervisory employees because by law, they must be paid 2.5 times the min wage. Therefore, the annual minimum salary required by current regulations increased supervisors pay from \$14.12 per hour to \$17.87 per hour which equates to an increase from \$29,369 per year to \$37,169 per year.

Second, This bill allows for a voluntary flexible work hour plan for casual employees which is very important in our 24 x 7 industry. Currently union collective bargaining agreements allow such provisions, our employees ask for such provisions and our businesses demand such flexibility.

Third, by creating a new statute that allows for a workable training wage we are able to more easily hire young, first-time and entry-level employees.

Thank you for your support.

Sincerely,

Luke J Peroni

HOUSE LABOR
& COMMERCE

COMMITTEE
PACKET
Index

April 14, 2003

1

HB 255

**Wages: Training/
Flex-Time Definitions**

2

HB 257

**Disclosures By Real
Estate Licensees**

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
LEGISLATIVE ETHICS COMMITTEE, MEMBER

website: <http://www.akrepublicans.org/rokeborg/>



INTERIM:
716 WEST 4TH AVENUE, SUITE 300
ANCHORAGE, AK 99501
PHONE: (907) 269-0117
FAX: (907) 269-0119

SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

SECTIONAL ANALYSIS HB 255

BY: Representative Norman Rokeberg

Title: An Act amending the Alaska Wage and Hour Act as it relates to flexible work hour plans, the provision of training wage, and the definition of certain terms; and repealing the exemption in the Act for the payment of minimum wages for learners.

- Section 1:** Redefines "executive capacity," "administrative capacity," and "professional capacity" to have the meaning found in the federal regulations. Currently these three terms are defined in the Alaska Administrative Code. This amendment references the federal definitions.
- Section 2:** Defines "supervisory capacity" for purposes of the overtime statute.
- Section 3:** Amends the requirements for voluntary flexible work to make it easier for an employer and employee to use such a plan. The employee and employer must have a signed written agreement.
- Section 4:** Creates a new statute allowing for training wages. An employer may pay a newly hired employee, who is less than 20 years old, \$5.15 an hour during the first 90 consecutive calendar days after initial employment.
- Section 5:** Repeals AS 23.10.070 (3), which allowed for learner wages lower than the minimum wage subject to the restrictions and for the periods of time that were fixed by the commissioner. The training wage provisions found in Section 4 are replacing this section.

MAR-21-2003 FRI 01:01 PM ANCH WAGE & HOUR

FAX NO. 1 907 269 4915

P. 01

FROM

(FRI) MAR 21 2003 12:56/ST. 12:56/NO. 6302843420 P 2
FAX NO. 1 907 269 4915 P. 01

ANCH WAGE & HOUR

ALASKA DEPARTMENT OF LABOR
WAGE AND HOUR ADMINISTRATION
(addresses for regional offices on back)

RECEIVED

2003 MAR 22 AM 12:45

WAGE & HOUR ADMINISTRATION-ANCH

EMPLOYER NAME OR DBA: (PLEASE PRINT) Powerhouse North, LLC/Powerhouse Gum DATE: 3-20-03

AUTHORIZED REPRESENTATIVE: (PLEASE PRINT) Kristi R. Wolf PHONE: (907) 277-4357 FAX: (907) 277-4940

ADDRESS: 202 E. Northern Lights Blvd CITY: Anchorage STATE: AK ZIP: 99503

I understand that the regulation 8 AAC 15.102 (on back of this form) and the following conditions apply to all flexible work hour plans:

1. This exemption is designed to provide employers some relief from overtime. In exchange, employees have the opportunity to work a full 40 hour workweek in a reduced number of days.
2. Flex plans are not intended to allow an employer to routinely schedule employees to work more than 40 hours per week.
3. Employee participation in this plan must be voluntary and cannot be a condition of employment.
4. An employee who occasionally works more than the daily/weekly hours specified in the plan as described below, must be paid overtime for the extra hours.
5. Failure to follow an approved plan creates an overtime liability for hours worked over 8 in a day and/or 40 straight time hours in a week. For example, an employee who regularly works more or less hours than outlined in the plan is due overtime for hours worked over 8 in a day and/or 40 straight time hours in a workweek.
6. Employers must keep copies of the approved plan on file signed and dated by each participating employee.
7. Plans are approved for a specific employer and may not be transferred to another employer.
8. NOTE: Variation from an approved plan may void the plan entirely.

THE FOLLOWING IS A DESCRIPTION OF THE EMPLOYER'S PROPOSED WORK SCHEDULE:

Due to our hours of operation, it is sometimes necessary for employees to cover other shifts. At no time, will any employee work in excess of 10 hours per day, or 40 hours per week without overtime compensation.

PLEASE NOTE: By signing, the employer acknowledges and accepts the conditions listed above

EMPLOYER'S AUTHORIZED SIGNATURE: *Kristi R. Wolf* TITLE: Gen. Mgr.-Co Owner

DATE APPROVED: [Blank] "STATE USE ONLY"

DATE DISAPPROVED: 3/21/03 AUTHORIZED REPRESENTATIVE: *Julie Trepoig*

?? TO BE SIGNED BY EMPLOYEE AFTER DEPARTMENT APPROVAL ??
?? Employee participation must be voluntary and uncoerced ??

EMPLOYEE NAME (PLEASE PRINT):

EMPLOYEE SIGNATURE: DATE:

(THU) APR 10 2003 11:51/ST. 11:50/NO. 6302843447 P 4

FROM

8 AAC 15.102. VOLUNTARY FLEXIBLE WORK HOUR PLANS.

(a) A request for an exemption for a voluntary flexible work hour plan established under AS 23.10.060(14) must be filed by the employer with a wage and hour administration office of the department.

This request must be in writing, and must include:

- (1) a statement that the employer and employee participating in the flexible work hour plan understand that work performed in excess of 10 hours in a day or in excess of 40 hours in a week must be compensated at the rate of one and one-half times the regular rate of pay;
- (2) a description of the flexible work hour plan;
- (3) a statement that the flexible work hour plan has not been made a condition of employment and that participation in the plan is voluntary; and
- (4) the original signature of the employer or authorized representative.

(b) The department will approve a voluntary flexible work hour plan that conforms to the requirements of this section and the provisions of AS 23.10.060(14). An approved plan constitutes the certificate required in AS 23.10.060(14)(B). The department will issue the certificate, or a notice of denial, within five working days after receipt of the plan. A certificate issued under this section takes effect on the day it is signed by the department's representative. A voluntary flexible work hour plan may not be instituted until the certificate takes effect. A notice of denial issued by the department under this section will include the specific reason for denial.

(c) An appeal of a notice of denial must be filed with the commissioner within 20 days after receipt of the notice of denial. The appeal must be in writing, and must set out the specific reasons upon which the appeal is based. The commissioner will grant or reject the appeal within 10 workdays after receipt of the appeal. The commissioner's decision is final.

(d) As part of the records required under AS 23.10.100, an employer must maintain a signed statement of voluntary participation of each employee participating in an approved voluntary flexible work hour plan.

(e) An employee may choose to participate in an approved voluntary flexible work hour plan at initial employment or at any other time during employment. Once an employee has chosen to participate in an approved voluntary flexible work hour plan, that employee is bound to do so, and may opt out of participation in the voluntary flexible work hour plan only from November 1, through December 31 each calendar year. Termination of an employee, regardless of the cause of termination, voids that employee's participation. An employee who is rehired by the employer must again choose to participate in the voluntary flexible work hour plan in order to be included in the approved plan. Nothing in this subsection prohibits the employer and employee from agreeing to the withdrawal of the employee from an approved plan at any time. (Eff. 9/28/85, Register 95)

Authority: AS 23.05.060, AS 23.10.060, AS 23.10.085, AS 23.10.100

Please mail or fax the flex plan application to the nearest Wage and Hour Office

Alaska Department of Labor
 Wage and Hour Administration
 Juneau Regional Office
 P.O. Box 20630
 Juneau, AK 99811
 Ph: (907) 465-4842
 Fax: (907) 465-3584

Alaska Department of Labor
 Wage and Hour Administration
 Anchorage Regional Office
 P.O. Box 107021
 Anchorage, AK 99510
 Ph: (907) 269-4900
 Fax: (907) 269-4915

Alaska Department of Labor
 Wage and Hour Administration
 Fairbanks Regional Office
 675 7th Avenue, Sta. J
 Fairbanks, AK 99701
 Ph: (907) 451-2886
 Fax: (907) 451-2885

Single mom, 3 kids, occasionally need to be gone for school conferences, kids illness or doctor's appts. I cannot start work until 9:00 due to taking the kids to school in the morning. I need to average 70 hours per pay period (2 week period) I now average 7 hours per day (except when gone as noted above). There are two workdays every other week that they are with their father. I need to be able to work additional hours (not to exceed 10 in any one day) during that time to make up for hours when I am gone.



ALASKA

April 10, 2003

Representative Norman Rokeberg
State Capitol Room 214
Juneau, Alaska 99801-1182

Subject: SUPPORT for HB 255 – Wage & Hour Improvement

Dear Representative Rokeberg,

Thank you for introducing House Bill 255 making several important improvements to the Wage and Hour Act. The bill clarifies the definition of a supervisory employee, streamlines the process for an employee/employer flexible work plan and provides for temporary training wages for young employees.

NFIB members have voted to support training wages for employees under 20 years of age during the first 90 days of employment. The Alaska minimum wage is now the highest in the nation at \$7.15 per hour. This would be a helpful option for employers to use to train entry level employees.

The Federal Labor Standards Act allows states to develop their own job-training wage for employees under age 20. Twenty-eight other states have sub-minimum wage provisions for persons under 20.

NFIB/Alaska supports passage of House Bill 255.

Thanks for all you do in support of small business.

Sincerely,

A handwritten signature in black ink, appearing to read "Thyes Shaub", is written over a horizontal line. The signature is stylized and cursive.

Thyes Shaub, NFIB Alaska Lobbyist

Subject: Wage & Hour Legislative Support is Needed - LC

Date: Wed, 09 Apr 2003 01:32:17 -0400

From: "Frank Rose" <fwr@alaskalm.com>

To: "Rep Norman Rokeberg" <Representative_Norman_Rokeberg@legis.state.ak.us>

Frank Rose
POB 72478
Fairbanks, AK 99707-2478

April 9, 2003

Dear Rep Rokeberg:

I would like to convey our support of the wage and hour legislative issues as outlined below. You will soon see legislation that deals with most of these issues

- We support the elimination of the CPI provision currently in the minimum wage law which increases the minimum wage annually commensurate with cost of living increases.
- We support the elimination of the 80/20 statute currently in place which requires that exempt employees, performing non exempt work greater than 20% of the time, are paid 2 ½ times the minimum wage.
- We support the modification of Alaska's training wage which currently allows an employer to pay the Federal Minimum wage of \$5.15 per hour to employees under the age of 17 who work less than 30 hours per week. The proposed modification changes this from 30 to 40 hours per week.
- We support the introduction of a tip credit provision which freezes the min wage at it's current hourly rate and allows employers to forgo future minimum wage increases in recognition of an employees' tips. The Hospitality Industry has been detrimentally impacted by legislation passed in the last several sessions Further eroding bottom line profits and has forced employers to reduce employee benefits and in many cases, lay off workers. Couple this with the two year economic downturn we have experienced, rising insurance costs (by as much as 30% in my case)and occupancy levels in my hotels that will not sustain a seasonal operation-- you have a sure formula for failure.

Alaska's Hospitality Industry is the second largest private sector employer in the state where 78% of our employees are Alaskans. We request your support of these critical wage and hour statutory changes to assure the economic well-being of Alaska's Hospitality Industry.

Sincerely,

Frank W. Rose, President-Alaska Lodging Mgt., Inc.

Subject: Wage & Hour Legislative Support is Needed - LC

Date: Thu, 03 Apr 2003 16:35:25 -0500

From: "Luke Peroni" <lpeorni@alyseskaresort.com>

To: "Rep Norman Rokeberg" <Representative_Norman_Rokeberg@legis.state.ak.us>

Luke Peroni
Bcx 249
girdwood, AK 99587

April 3, 2003

Dear Rep Rokeberg:

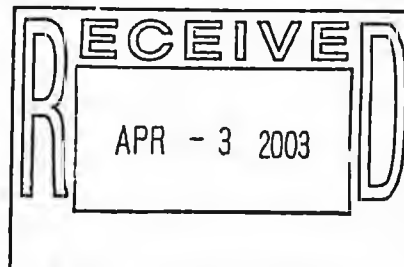
I would like to convey our support of the wage and hour legislative issues as outlined below.

- We support the elimination of the CPI provision currently in the minimum wage law which increases the minimum wage annually commensurate with cost of living increases.
- We support the elimination of the 80/20 statute currently in place which requires that exempt employees, performing non exempt work greater than 20% of the time, are paid 2 ½ times the minimum wage.
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The Hospitality Industry has been detrimentally impacted by legislation passed in the last several sessions Further eroding bottom line profits and has forced employers to reduce employee benefits and in many cases, lay off workers. Alaska's Hospitality Industry is the second largest private sector employer in the state where 78% of our employees are Alaskans. We request your support of these critical wage and hour statutory changes to assure the economic well-being of Alaska's Hospitality Industry.

Sincerely,

Luke Peroni F&B Director Alyeska Resort



Subject: Wage & Hour Legislative Support is Needed - LC

Date: Thu, 03 Apr 2003 14:31:08 -0500

From: "Meghan Popely" <cfladmin@ptialaska.net>

To: "Rep Norman Rokeberg" <Representative_Norman_Rokeberg@legis.state.ak.us>

Meghan Popely
800 Venetia Way
Ketchikan, AK 99901

April 3, 2003

Dear Rep Rokeberg:

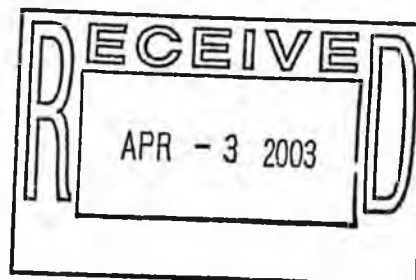
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The Hospitality Industry has been detrimentally impacted by legislation passed in the last several sessions Further eroding bottom line profits and has forced employers to reduce employee benefits and in many cases, lay off workers. Alaska's Hospitality Industry is the second largest private sector employer in the state where 78% of our employees are Alaskans. We request your support of these critical wage and hour statutory changes to assure the economic well-being of Alaska's Hospitality Industry.

Sincerely,

Meghan L. Popely



Subject: Wage & Hour Legislative Support is Needed - LC

Date: Wed, 02 Apr 2003 21:28:55 -0500

From: "Jay Sutherland" <jsutherland@wendys.alaska.com>

To: "Rep Norman Rokeberg" <Representative_Norman_Rokeberg@legis.state.ak.us>

Jay Sutherland
2601 Blueberry Road
Anchorage, AK 99503

April 2, 2003

Dear Rep Rokeberg:

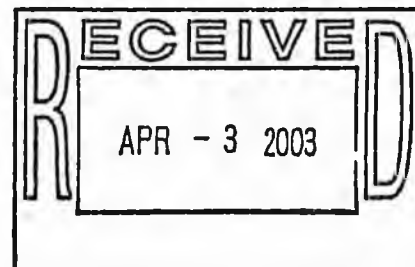
I would like to convey our support of the wage and hour legislative issues as outlined below.

- We support the elimination of the CPI provision currently in the minimum wage law which increases the minimum wage annually commensurate with cost of living increases.
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The Hospitality Industry has been detrimentally impacted by legislation passed in the last several sessions Further eroding bottom line profits and has forced employers to reduce employee benefits and in many cases, lay off workers. Alaska's Hospitality Industry is the second largest private sector employer in the state where 78% of our employees are Alaskans. We request your support of these critical wage and hour statutory changes to assure the economic well-being of Alaska's Hospitality Industry.

Sincerely,

Jay W. Sutherland



Subject: Wage & Hour Legislative Support is Needed - LC

Date: Wed, 02 Apr 2003 23:05:55 -0500

From: "John Wilson" <jetjsr@acsalaska.net>

To: "Rep Norman Rokeberg" <Representative_Norman_Rokeberg@legis.state.ak.us>

John Wilson
10400 hampton dr
anchorage, AK 99507

April 2, 2003

Dear Rep Rokeberg:

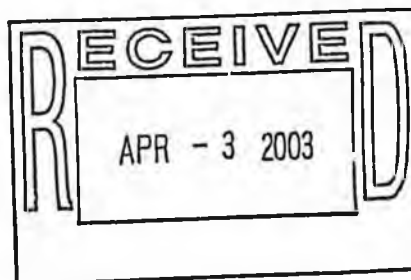
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The Hospitality Industry has been detrimentally impacted by legislation passed in the last several sessions Further eroding bottom line profits and has forced employers to reduce employee benefits and in many cases, lay off workers. Alaska's Hospitality Industry is the second largest private sector employer in the state where 78% of our employees are Alaskans. We request your support of these critical wage and hour statutory changes to assure the economic well-being of Alaska's Hospitality Industry.

Sincerely,

John F Wilson



Subject: Wage & Hour Legislative Support is Needed - LC

Date: Wed, 02 Apr 2003 14:54:23 -0500

From: "Amey Armachain" <aarmachain@4aha.org>

To: "Rep Norman Rokeberg" <Representative_Norman_Rokeberg@legis.state.ak.us>

Amey Armachain
330 East 4th Avenue, Suite 201
Anchorage, AK 99501

April 2, 2003

Dear Rep Rokeberg:

On behalf of the Alaska Hospitality Alliance I would like to convey our support of the wage and hour legislative issues as outlined below.

- We support the elimination of the CPI provision currently in the minimum wage law which increases the minimum wage annually commensurate with cost of living increases.
- We support the elimination of the 80/20 statute currently in place which requires that exempt employees, performing non exempt work greater than 20% of the time, are paid 2 ½ times the minimum wage.
- We support the modification of Alaska's training wage which currently allows an employer to pay the Federal Minimum wage of \$5.15 per hour to employees under the age of 17 who work less than 30 hours per week. The proposed modification changes this from 30 to 40 hours per week.
- We support the introduction of a tip credit provision which freezes the min wage at it's current hourly rate and allows employers to forgo future minimum wage increases in recognition of an employees' tips.

The Hospitality Industry has been detrimentally impacted by legislation passed in the last several sessions further eroding bottom line profits and has forced employers to reduce employee benefits and in many cases, lay off workers. Alaska's Hospitality Industry is the second largest private sector employer in the state where 78% of our employees are Alaskans. We request your support of these critical wage and hour statutory changes to assure the economic well-being of Alaska's Hospitality Industry.

Sincerely,

Amey Armachain

Subject: HB 255

Date: Thu, 10 Apr 2003 19:52:47 -0800

From: "Roark and Deborah" <roark@xyz.net>

To: <representative_norman_rokeberg@legis.state.ak.us>

CC: <lindaa@gci.net>

April 10, 2003

Representative Rokeberg,

I thank you for introducing HB 255 regarding wage and hour reform. As a small business owner these are very important issues to me and I am in complete support of the bill.

I would also like to ask for your support of the house version of SB 175 regarding recreational liability reform. This is a much needed piece of legislation for the tourism industry state wide.

Thank you for your hard work in Juneau.

HB

257

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 10, 2003

FURTHER REFERRALS: Judiciary

Date of Committee Action: April 14, 2003

The LABOR AND COMMERCE Committee considered:

HB 257

HOUSE BILL NO. 257

DISCLOSURES BY REAL ESTATE LICENSEES

"An Act relating to the disclosure requirements for real estate licensees, to disciplinary action against real estate licensees, to private actions against real estate licensees, and to real estate licensee agency relationships, fiduciary duties, and other duties; and providing for an effective date."

Recommends it be replaced with HCS or CS for _____ (_____)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of
Abbrev
for
Depts.:

- ADM
- CED
- COR
- CRT
- EED
- DEC
- DFG
- GOV
- HSS
- LEG
- LAW
- LWF
- MVA
- DNR
- DPS
- REV
- DOT
- UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
CED				✓

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	LYNN			X	
	GATTO				
	CRAWFORD			X	
	GUTTENBERG			X	
	DAHLSTROM			X	
	ROKEBERG	✓			
Chair:	ANDERSON			X	
Chair:	ANDERSON			X	

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 257
() Publish Date: _____

Revision Date/Time (Note if correction): _____
Title Disclosures By Real Estate Licensees
Sponsor Representative Rokeberg
Requester House Labor & Commerce
Dept. Affected: DCED
BRU Occupational Licensing (117)
Component Occupational Licensing
Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	------------	------------	------------	------------	------------	------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 257 amends disclosure requirements for real estate licensees. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Administrative Manager Phone 907-465-2144
Division Occupational Licensing Date/Time 4/14/03 2:08 PM
Approved by: Edgar Blatchford, Commissioner Date 4/14/2003
Agency Department of Community & Economic Development

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
LEGISLATIVE ETHICS COMMITTEE, MEMBER

website: <http://www.akrepublicans.org/rokeberg/>



INTERIM:
716 WEST 4TH AVENUE, SUITE 300
ANCHORAGE, AK 99501
PHONE: (907) 269-0117
FAX: (907) 269-0119

SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

SPONSOR STATEMENT FOR HB 257

BY: Representative Norman Rokeberg

Title: An Act relating to the disclosure requirements for real estate licensees, to disciplinary action against real estate licensees, to private actions against real estate licensees, and to real estate licensee agency relationships, fiduciary duties, and other duties; and providing for an effective date.

HB 257 makes several improvements to Alaska's real estate laws.

Commercial Real Estate Transactions

HB 257 exempts commercial real estate licensees from certain disclosure requirements. The purpose of the disclosure requirements in AS 08.88.896 is to provide consumer protection to those people who may not be familiar with their legal responsibilities and rely in part on real estate licensees for advice when buying and selling real estate. Commercial real estate practitioners should be exempt from these requirements because of the level of sophistication and knowledge typical of parties to commercial real estate transactions. Parties to commercial transactions do not need this protection and the disclosure requirements do not reflect the standards of practice in commercial real estate.

HB 257 also provides that in those cases where the commercial transaction is exempt from the disclosure requirements, and the real estate licensee is representing both the buyer and seller (or both lessor and lessee), the common law principles of agency do not apply. Instead, the licensee shall act with honesty, fairness and good faith when representing both parties.

AS 08.88.396

In addition to the commercial real estate licensees' exemption, HB 257 makes several other changes to the disclosure statute. First, all references to a real estate "agent" have been replaced with real estate "licensee." This is to conform with the rest of the real estate statutes which use the term "licensee." Second, references to lessors and lessees have been added to the statute to reflect that the disclosure statute also applies to real estate lease transactions. Finally, subsection (g) clarifies that a failure to disclose or obtain written consent as required by the statute does not give rise to a private cause of action, but can result in a disciplinary action against the licensee. However, in cases of fraud, misrepresentation or deceit a person can bring an action against the real estate surety fund for damages.

I encourage your support of this legislation.

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
LEGISLATIVE ETHICS COMMITTEE, MEMBER

website: <http://www.akrepublicans.org/rokeberg/>



INTERIM:
716 WEST 4TH AVENUE, SUITE 300
ANCHORAGE, AK 99501
PHONE: (907) 269-0117
FAX: (907) 269-0119

SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

SECTIONAL ANALYSIS FOR HB 257

BY: Representative Norman Rokeberg

Title: An Act relating to the disclosure requirements for real estate licensees, to disciplinary action against real estate licensees, to private actions against real estate licensees, and to real estate licensee agency relationships, fiduciary duties, and other duties; and providing for an effective date.

Section 1: Legislative findings and intent.

Section 2: Adds the disclosure statute (AS 08.88.396) to the list of actions that the Real Estate Commission can discipline a real estate licensee for violating. Also makes several grammatical corrections.

Section 3: Changes "agent" to "real estate licensee." Adds references to lessor and lessee. Corrects misspelling of "acknowledgment."

Section 4: Changes "agent" to "real estate licensee." Adds references to lessor and lessee.

Section 5: Changes "agent" to "real estate licensee." Adds references to lessor and lessee.

Section 6: AS 08.88.396(e): Exempts certain commercial real estate transactions from the disclosure statute.

AS 08.88.396(f): For those transactions exempt under (e), common law principles of agency do not apply and licensee must act with honesty, fairness and good faith when representing both parties.

AS 08.88.396(g): Failure to make a disclosure or obtain written consent required by this statute does not give a person a cause of action against the licensee for the failure. An action can be brought against the Real Estate Surety Fund in cases of fraud, misrepresentation or deceit, if there are damages.

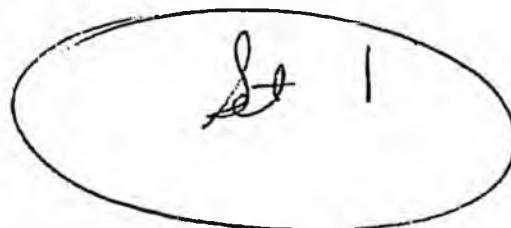
Section 7: (a) The provisions of this Act apply to a real estate transaction that occurs before, on or after the effective date of this Act.

(b) As 08.88.396(g) applies to an action pending in a court in the state in which a final judgment has not been rendered before the effective date of this Act.

Section 8: This Act takes effect immediately.

Bond, Stephens & Johnson, Inc.

Fax



To: c/o Heather Nobrega
Attn: Rep. Norm Rokeberg

From: Chris Stephens, CCIM

Fax: 907-465-~~6848~~
2040

Fax: 907-786-7326

Phone: 907-243-1454

Phone: 907-786-7305

Date: 4/11/2003

Pages: *

Subject: Agency Forms Samples

Notes:

Dear Representative Rokeberg:

Attached are the agency disclosure forms that our attorney drafted for us after the court ruling on agency. As you can see, they are very comprehensive because they are our attorney's effort to meet all of the requirements of the judge's ruling. They are also very awkward to work with.

I will be sending you a statement on the proposed House Bill No. 257.

Sincerely,

Chris Stephens, CCIM

* 1st set 17 pages
2nd set 16 pages
3rd set 17 pages

TABLE OF CONTENTS

- Form No. 1 --- Disclosure of Seller/Landlord Representation**
- Form No. 2 --- Disclosure of Buyer/Tenant Representation**
- Form No. 3 --- Consensual Dual Agency Agreement**
- Form No. 4 --- Exclusive Listing Agreement for Sale and Lease**
- Form No. 5 --- Single Party Listing Agreement for Sale and Lease**
- Form No. 6 --- Agency Agreement for Buyers and Tenants**
- Form No. 7 --- Compensation Agreement**
- Form No. 8 --- Undisclosed Principal Addendum to Agency Agreement by Buyers and Sellers**
- Form No. 9 --- Assignment of Purchase and Sale Agreement and Leases by Broker to its Undisclosed Principal**
- Form No.10 --- Revised Disclosure**
- Form No.11 --- Disclaimer of Representations by Company/Agent (Without Acknowledgment)**
- Form No.12 --- Disclaimer of Representations by Company/Agent (With Acknowledgment)**

© Bond, Stephens & Johnson, Inc. 2003

Bond, Stephens & Johnson, Inc., Commercial Real Estate Services
3000 "A" Street, Suite 200, Anchorage, AK 99503
Ph 907-563-7733 Fax 907-561-8929
Email bsj@bsjalaska.com www.bsjalaska.com

**BOND, STEPHENS & JOHNSON, INC.
DISCLOSURE OF SELLER/LANDLORD REPRESENTATION**

Disclosure

Pursuant to AS 08.88.396(a)(1), the Company Bond, Stephens & Johnson, Inc., through its Agent, _____, hereby discloses to the Buyer/Tenant, _____, of the following-described real property ("Property"), that it represents the Seller/Landlord, _____, in seeking a sale/lease of the following Property:

BOND, STEPHENS & JOHNSON, INC., an
Alaska Corporation

Dated: _____, 20

By: _____
_____, Agent

Acknowledgment

I (we) hereby acknowledge (a) that such disclosure occurred before Company/Agent began to provide specific assistance to me (us) or my (our) agent with respect to such Property and (b) that Company/Agent represent only Seller/Landlord and not me (us).

Buyer/Tenant:

Dated: _____, 20

By: _____
_____, Buyer

Buyer/Tenant:

Dated: _____, 20

By: _____
_____, Buyer

**BOND, STEPHENS & JOHNSON, INC.
DISCLOSURE OF BUYER/TENANT REPRESENTATION**

Disclosure

Pursuant to AS 08.88.396(b)(1), the Company Bond, Stephens & Johnson, Inc., through its Agent, _____, hereby discloses to the Seller/Landlord, _____, of the following-described real property ("Property"), that it represents the Buyer/Tenant, _____, in seeking a sale/lease of the following Property:

BOND, STEPHENS & JOHNSON, INC., an
Alaska Corporation

Dated: _____, 20

By: _____
_____, Agent

Acknowledgment

I (we) hereby acknowledge (a) that such disclosure of representation of Buyer/Tenant (i) occurred at the time of initial contact between Company/Agent and me (us) or my (our) agent with respect to such Property and (ii) was confirmed by this writing as soon as reasonably possible after such initial contact, and (b) that Company/Agent represent only Buyer/Tenant and not me (us). and not me (us).

Dated: _____, 20

Seller/Landlord:
By: _____
_____, Seller/Landlord

Its:

Dated: _____, 20

Seller/Landlord:
By: _____
_____, Seller/Landlord

Its:

BOND, STEPHENS & JOHNSON, INC.
CONSENSUAL DUAL AGENCY AGREEMENT

Seller/Landlord: _____

Buyer/Tenant: _____

Company: Bond, Stephens & Johnson, Inc., through its Agent, _____

Seller/Landlord's Property:

[Property Description]

1. Consensual Dual Agency Representation.

Pursuant to AS 08.88.396(c), Seller/Landlord and Buyer/Tenant hereby acknowledge, consent and agree to Company/Agent becoming **dual agents** of Seller/Landlord and Buyer/Tenant for their sale-purchase/lease of Seller/Landlord's Property.

2. Anticipatory Consensual Dual Agency Representation.

If only Seller/Landlord (Buyer/Tenant) executes this Agreement, it hereby gives its unconditional consent to Broker to enter into a **dual agency** with any Buyer/Tenant (Seller/Landlord) on the terms of this Agreement by (i) having such Buyer/Tenant (Seller/Landlord) execute this Agreement and (ii) delivering a copy of the fully executed Agreement to all of the resulting parties to this Agreement. The **dual agency** allowed by this Agreement shall not commence until such delivery occurs.

3. Dual Agent's Role.

Because Company/Agent will be acting as a **dual agent** for **both** Seller/Landlord and Buyer/Tenant in this transaction, Company/Agent will use their best efforts to remain impartial to Seller/Landlord and Buyer/Tenant. In such **dual agency** role, Company/Agent may obtain information which, if disclosed, could harm the bargaining position of the client who provided that information to them. As a result, Company/Agent shall have no duty to disclose, and not be liable for refusing or failing to disclose, information which, in the reasonable discretion of Company/Agent, might harm Seller/Landlord's or Buyer/Tenant's bargaining position to the benefit of the other. Nothing contained herein shall relieve Company or

Agent from their obligation to disclose to Buyer/Tenant material defects in the physical condition of Seller/Landlord's Property that are then actually known to Company/Agent, but Company/Agent shall have no obligation to independently investigate or inspect for any such defects or retain any contractor or professional to do so.

Seller/Landlord's and Buyer/Tenant's Roles.

Seller/Landlord and Buyer/Tenant shall each have the responsibility to make its own independent investigations and inspections of Seller/Landlord's Property and to make independent decisions as to what price/rent and other material terms and conditions are to be included in any sale-purchase/lease agreement between them. Seller/Landlord and Buyer/Tenant have each been advised to seek competent independent legal counsel to assist them in their determinations (a) as to whether to enter into this Agreement and (b) the terms and conditions of any sale-purchase/lease agreement between them. Seller/Landlord and Buyer/Tenant have each either consulted with competent independent legal counsel with respect to such matters or knowingly and voluntarily waived their respective rights and opportunities to do so. Seller/Landlord and Buyer/Tenant acknowledge that they, and not Company or Agent, have a duty to carefully negotiate, draft, read and fully understand any purchase-sale/lease agreement to assure that it accurately sets forth the price/rent and other material terms and conditions which each of them wants included in such agreement and it is in their individual best interests.

4. Specific Things That Company/Agent *cannot and will not do.*

- a. Disclose confidential information that they may know about Seller/Landlord and/or Buyer/Tenant (*e.g.* motivation to sell/buy/lease, price/rent/other material terms or conditions, negotiation strategy, etc.) without written permission of the client to whom they owe such confidence.
- b. Disclose the price/rent or other material terms or conditions Seller/Landlord would accept other than the listing price/rent or other material terms and conditions without written permission of Seller/Landlord.
- c. Disclose the price/rent or other material terms or conditions Buyer/Tenant is willing to offer other than the offered price/rent or other material terms and conditions without written permission of Buyer/Tenant.
- d. Recommend or suggest the price/rent or other materials terms and conditions Buyer/Tenant should accept, offer or counteroffer.

- e. Recommend or suggest the price/rent or other material terms and conditions Seller/Landlord should accept, offer or counteroffer.

5. **Specific Things That Company/Agent *can and will do.***

- a. Treat Seller/Landlord and Buyer/Tenant neutrally, fairly and honestly.
- b. Provide information about Seller/Landlord's Property to Buyer/Tenant.
- c. Respond to Buyer/Tenant's questions about Seller/Landlord's Property to the best of their knowledge.
- d. Disclose to Buyer/Tenant all known material defects (if any) in the physical condition of Seller/Landlord's Property (without assuming any independent duty to find any such defects).
- e. Explain local real estate terms, procedures and practices.
- f. Explain closing costs and procedures.
- g. Provide information about comparable properties, so Seller/Landlord and Buyer/Tenant may make an independent educated decision on what price/rent and other material terms to accept, offer or counteroffer.
- h. Assist with preparing purchase-sale/lease agreements and addenda and amendments thereto.
- i. Work diligently to facilitate the sale-purchase/lease.

6. **General.**

- a. In the event that Seller/Landlord and Buyer/Tenant do not enter into an agreement for the sale-purchase/lease of Seller/Landlord's Property or any such agreement does not close by the closing date set forth in such agreement, Company/Agent may terminate such **dual agency** and this Agreement unilaterally by giving written notice thereof to Seller/Landlord and Buyer/Tenant.
- b. If any provision of this Agreement contradicts or conflicts with any earlier

oral or written agreements or any other documents or instruments in any way, such provision of this Agreement shall control.

- c. As used in this Agreement, the term "Agent" includes all brokers, associate brokers and agents employed by or associated with Company, including those at any of the Company's branch offices and the Agent that executed this Agreement on behalf of the Company.

Seller/Landlord and Buyer/Tenant (a) understand the limitations of Company/Agent's dual agency role and the consequential legal disadvantages to them of such dual agency, and (b) have nevertheless independently determined that the benefits of entering into a transaction with Company/Agent acting as dual agents for them outweighs the possible prejudicial effects of such limitations.

The only commission or other compensation that will be paid to Company/Agent is a commission equal to % of the gross sales/lease price that will be paid by .

This is a legally binding consensual Dual Agency agreement pursuant to Alaska Statute 08.88.396. By their signatures below, Seller/Landlord and Buyer/Tenant agree that Company/ Agent may act as their Dual Agents in this transaction on the terms of this Agreement notwithstanding any contrary or inconsistent principles of agency or other applicable law. This Agreement is incorporated by reference into any resulting sale-purchase/lease agreement between Seller/Landlord and Buyer/Tenant.

Signatures on next page.

BOND, STEPHENS & JOHNSON, INC.
EXCLUSIVE LISTING AGREEMENT FOR SALE AND LEASE

This listing agreement ("Agreement") is by and between: (a) _____ ("Seller/Landlord"), a(n) _____, and (b) Bond, Stephens & Johnson, Inc. ("Broker"), an Alaska corporation.

1. Seller/Landlord hereby grants to Broker the exclusive right to sell or lease the real property ("Property") shown or described in the term sheet ("Term Sheet") attached as Exhibit A (incorporated by reference) on the terms and conditions stated in the Term Sheet (or as otherwise subsequently agreed to by Seller/Landlord) for the _____ (_____) -day period commencing on _____, 20____ ("Term"). In the event the Property is removed from the market due to the acceptance by Seller/Landlord of an offer to purchase or lease the Property during the Term, and the sale or lease is not consummated for any reason, then if and when the Property is put back on the market the Term shall be extended for a period of time equal to the number of days that the Property was removed from the market.

2. Seller/Landlord shall pay Broker a commission ("Commission") in accordance with Broker's Schedule of Sale and Lease Commissions ("Schedule") attached as Exhibit A (incorporated by reference) if, during the Term or the Tail Period (defined in Section 4): (a) the Property is sold or leased to a purchaser or tenant procured by Broker, Seller/Landlord or any other person or entity; (b) a purchaser or tenant is procured by Broker, Seller/Landlord, or any other person or entity who is ready, willing and able to purchase or lease the Property on the (i) terms and conditions stated in the Term Sheet or (ii) on any other terms and conditions acceptable to Seller/Landlord; (c) any contract for the sale or lease of the Property is entered into by Seller/Landlord; or (d) if Seller/Landlord is a corporation, partnership, limited liability company, trust or other business entity, a controlling interest in such entity is transferred in lieu of a sale or lease of the Property. If an earnest money or similar deposit made by a prospective purchaser or tenant is forfeited, in addition to any other Commission rights Broker has pursuant to this Agreement, Broker shall be entitled to a Commission of one-half (1/2) of such deposit.

3. In the event that an option or refusal right to purchase or lease the Property is granted during the Term or the Tail Period, Seller/Landlord shall pay Broker a Commission in accordance with the Schedule based upon the price paid for the option or refusal right or for any extensions thereof upon receipt by Seller/Landlord of any such payment(s). In the event that such option or refusal right is exercised during the Term, the Tail Period or at any time thereafter, Seller/Landlord shall also pay Broker a Commission on the gross sale or lease price of the Property in accordance with the Schedule. However, to the extent that

Seller/Landlord's Initials:

all or part of the price paid for the option, refusal right or any extension thereof is applied to the sale or lease price of the Property, then any Commission previously paid by Seller/Landlord to Broker on account of such option or refusal right or any extension thereof shall be credited against the Commission payable to Broker on account of the exercise of that option or refusal right.

4. Seller/Landlord shall pay Broker a Commission in accordance with the Schedule if, within one (1) year after the expiration of the Term ("Tail Period"), the Property is sold or leased to, or Seller/Landlord enters into a contract, option or refusal right for the sale or lease of the Property with, any person or entity (including his/her/its successors, assigns or affiliates) with whom Broker has negotiated or otherwise communicated with respect to the Property (either directly or indirectly through another broker or agent) or by or to whom the Property has been inspected or shown prior to the expiration of the Term.

5. Seller/Landlord shall (a) cooperate and deal fairly and in good faith with Broker in seeking a sale or lease of the Property on terms and conditions at least as favorable to Seller/Landlord in the aggregate as those listed in the Term Sheet and (b) refer immediately to Broker all persons or entities interested in purchasing or leasing the Property. All negotiations for the sale or lease of Property shall be handled by and through Broker. Broker is exclusively authorized to market and advertise the Property for sale or lease by such means as, in Broker's sole discretion, would facilitate a sale or lease of the Property. Seller/Landlord and its legal counsel shall be solely responsible for drafting and/or determining the legal sufficiency of all offer, acceptance, contract, conveyance and other documents and instruments relating to any sale/purchase or lease transaction contemplated by this Agreement.

6. Seller/Landlord shall disclose to Broker in writing and to all prospective purchasers or lessees of the Property any and all information which Seller/Landlord knows or has within its custody, control or possession regarding the following matters affecting the Property: (a) present and future zoning, building and land use restrictions; (b) environmental matters, including, without limitation, the presence and location of underground storage tanks, petroleum products, asbestos, PCBs and other toxic, hazardous or extremely hazardous or toxic substances located in, on, or about the Property; (c) physical defects and hazards in and soils conditions in, on or about the Property; (d) whether the Property is or may be situated in a flood zone; and (e) any other information which a prudent buyer/tenant would reasonably consider in making its decision to buy/lease the Property. Broker is authorized to disclose all such information to prospective purchasers or tenants.

Seller/Landlord's Initials:

7. Seller/Landlord represents and warrants to Broker that, except as may be set forth in the Term Sheet: (a) Seller/Landlord holds good, marketable and unencumbered fee simple title to the Property; and (b) that no person or entity who has an ownership interest in the Property is a foreign person as defined in the Foreign Investment in Real Property Tax Act (commonly known as "FIRPTA").

8. Broker is irrevocably authorized: (a) to deduct its Commission from any deposits, payments or other funds, including proceeds of sale or lease payments, paid by a purchaser or tenant in connection with any transaction contemplated by this Agreement. Seller/Landlord hereby irrevocably assigns such deposits, payments and funds to Broker to the extent necessary to pay such Commission; and (b) to order on behalf of Seller/Landlord and in its name a preliminary commitment from a local title insurer to issue title insurance on the Property or other form of title report, which Seller/Landlord shall pay for.

9. Each signator to this Agreement represents and warrants: (a) that he or she has full authority to execute and deliver this Agreement on behalf of the party which he/she purportedly represents; and (b) that this Agreement binds such party and is valid and fully enforceable against such party in accordance with its terms.

10. Seller/Landlord shall defend, indemnify and hold harmless Broker and its agents, shareholders, directors and employees from and against any obligations, liabilities, demands, claims, fees and costs suffered or incurred by any of them, that arise out of, result from, are based upon or are caused by, in whole or in part, directly or indirectly, any acts or omissions of Seller/Landlord or any person for whom Seller/Landlord is legally responsible, including, without limitation, all acts and omissions in any way relating to erroneous disclosures or partial or complete failures to disclose required information regarding physical conditions or defects in or environmental contamination affecting the Property or any adjacent or nearby properties.

11. As used in this Agreement and its Exhibits, (a) the term "lease" shall also include subleases and sub-subleases; (b) the term "tenant" shall also include subtenants and sub-subtenants and their respective successors and assigns; and (c) the term "purchaser" shall also include purchaser's successors and assigns.

12. This Agreement (a) is fully integrated; (b) constitutes the entire agreement between Seller/Landlord and Broker with respect to its subject matter; and (c) supersedes all prior discussions, negotiations, promises, understandings and agreements with respect thereto, whether oral or written. No amendment, novation, supplementation, termination or rescission of this Agreement shall be valid or enforceable unless made in writing and executed and delivered by both Seller/Landlord and Broker. This Agreement shall not be

Seller/Landlord's Initials:

Term Sheet

- 1. Property Description:

- 2. Authority to Submit to MLS Listing? Yes No
- 3. Authorized to place sign on Property? Yes No
- 4. For Sales:
 - a. Price:

 - b. Payment Terms:

- 5. For Leases:
 - a. Rent:

 - b. Term:

- 6. Other Terms/Conditions:

(Supplement as necessary)

Seller/Landlord's Initials:

Exclusive Listing Agreement for Sale & Lease
© Bond, Stephens & Johnson, Inc. 2002

Page 5 of 8
BSJ Form No. 4, 12/02 ed.

Bond, Stephens & Johnson, Inc., Commercial Real Estate Services
3000 "A" Street, Suite 200, Anchorage, AK 99503
Ph 907-563-7733 Fax 907-561-8929
Email bsj@bsjalaska.com www.bsjalaska.com

Exhibit A**Bond, Stephens & Johnson, Inc.
Schedule of Sale and Lease Commissions
For Listing Agreement for Sellers and Landlords****A. SALES:**

1. For sales of improved real properties, the Commission shall be six percent of the gross sales price. For sales of unimproved real property, the Commission shall be ten percent of the gross sales price. The gross sales price shall include any and all monetary consideration and the fair market value of all non-monetary consideration in whatever form paid or given by or on behalf of the purchaser to Seller or its designee(s) for or with respect to the Property, including but not limited to the assumption or release of existing liabilities. . For purposes of this Schedule, the Property is deemed to be improved unimproved (deemed to be unimproved if unchecked).
2. The Commission shall be paid upon the earlier to occur of: (a) the closing of the transaction; (b) when the sales price is paid (for installment sales, the entire commission is due with the down payment); (c) Seller's failure or refusal to close the transaction; or (d) when provided in the Term Sheet or otherwise.

B. LEASES:

For leases the Commission shall be six percent of the aggregate gross rent for the original term, without reductions, deductions, credits or offsets, payable in its entirety upon the execution of the lease, subject to the following:

1. *Month to Month Tenancy.* The minimum Commission for a month to month tenancy, tenancy at will, or any tenancy which is not reduced to a written lease between a tenant and Landlord shall be equal to 50 % of the first month's base rent or \$1,000, whichever is greater. The Commission shall be payable upon occupancy. In the event such a tenant subsequently executes a written lease with Landlord, either directly or with the assistance of Broker or any other person or entity, within 24 months from the date of initial occupancy, then Broker shall receive a Commission with respect to such lease in accordance with the provisions of paragraph B above.

Seller/Landlord's Initials:

2. *Extension, Renewal or New Lease.* If the lease term is effectively renewed or extended, in accordance with the terms of an option, refusal right, new lease, substitute lease or otherwise, then Landlord shall pay Broker a Commission at one-half of the commission rate provided in Section B of this Schedule based on the aggregate gross rent payable during the extended or renewed lease term for the existing space, without deduction, credit, reduction or set-off. If additional space is leased during the initial, renewed or extended term, Landlord shall pay Broker a Commission at the commission rate provided in Section B of this Schedule based on the aggregate gross rent for the additional space payable during the extended or renewed lease term, without deduction, credit, reduction or set-off. Such Commission shall be earned and payable at the time the extended or renewed term commences for the existing space and at the time of agreement for any additional space.
3. *Purchase of Property by Tenant.* If a tenant, its successors or assignees, or any agent, officer, employee, principal, partner, member, director, manager or shareholder of such tenant or its successors or assigns purchases the Property during (a) the term of the lease, (b) any extension or renewal thereof, or (c) within 180 days after the expiration thereof, then a Commission shall be paid to Broker in accordance with the provisions of Section A above; provided however, that there shall be a credit against such Commission in the amount of the Commission previously paid to Broker for the portion of the purchaser's lease term which is cancelled by reason of such sale. In no event shall such credit exceed the amount of such sales Commission.
4. *Percentage Rent.* If a lease for which a Commission is payable hereunder contains a percentage rent or similar clause, Seller/Landlord shall pay a Commission on the percentage rent or similar payment payable by the tenant at the Commission rate in Section B above applicable to the period of the lease term for which the percentage rent or similar payment is payable. This Commission shall be payable to Broker within 15 days after the tenant's payment of the percentage rent or similar payment for such period. Notwithstanding the foregoing, at the end of the third full lease year Landlord shall pay Broker a Commission on the percentage rent or similar payment for the remainder of the original term of the lease. For the purpose of calculating this Commission, the percentage rent or similar payment for each remaining year of the term of the lease shall be deemed to be the same amount as the percentage rent or similar payment payable for the third full lease year.

Seller/Landlord's Initials:

- 5. *Ground Lease.* If a lease is a ground lease, the Commission shall not exceed what the Commission would be for a sale of the Property at a price equal to the value of the Property used to compute the Property rental rate or, if no such value was used, the then fair market value of the Property.

The provisions hereof are subject to the terms and provisions of any Term Sheet or other agreement to which this Schedule may be attached and which is executed by the parties hereto.

In the event Seller/Landlord fails to make Commission payments to Broker within the time limits set forth herein, then from the date due until paid the delinquent amount shall bear interest at the legal rate set forth in AS 45.45.010 or the maximum legal interest rate chargeable on such amount in Alaska, whichever is less. If Broker is required to pursue legal action against Seller/Landlord to collect any Commission due it, Broker shall be entitled to also recover from Seller/Landlord the reasonable actual attorneys' fees and costs it incurs in such pursuit.

Seller/Landlord's Initials:

Bond, Stephens & Johnson, Inc.

Fax

To: c/o Heather Nobrega **From:** Chris Stephens, CCIM
Attn: Rep. Norm Rokeberg

Fax: 907-465-~~6848~~ **Fax:** 907-786-7326
2040

Phone: 907-243-1454 **Phone:** 907-786-7305

Date: 4/11/2003 **Pages:** *

Subject: Agency Forms Samples

Notes:

Dear Representative Rokeberg:

Attached are the agency disclosure forms that our attorney drafted for us after the court ruling on agency. As you can see, they are very comprehensive because they are our attorney's effort to meet all of the requirements of the judge's ruling. They are also very awkward to work with.

I will be sending you a statement on the proposed House Bill No. 257.

Sincerely,

Chris Stephens, CCIM

* 1st set 17 pages
2nd set 16 pages
3rd set 17 pages

**BOND, STEPHENS & JOHNSON, INC. SINGLE-PARTY
LISTING AGREEMENT FOR SALE AND LEASE**

This listing agreement ("Agreement") is by and between: (a) _____ ("Seller/Landlord"), a(n) _____, and (b) Bond, Stephens & Johnson, Inc. ("Broker"), an Alaska corporation.

1. Seller/Landlord hereby grants to Broker the exclusive right to sell or lease the real property ("Property") shown or described in the term sheet ("Term Sheet") attached as Exhibit A (incorporated by reference) on the terms and conditions stated in the Term Sheet (or as otherwise subsequently agreed to by Seller/Landlord) only to the prospective buyer/tenant identified in the attached Exhibit B. Broker's right to sell or lease the Property shall be for the _____ (_____) day period commencing on _____, 20____ ("Term"). In the event the Property is removed from the market due to the acceptance by Seller/Landlord of an offer to purchase or lease the Property during the Term, and the sale or lease is not consummated for any reason, then if and when the Property is put back on the market the Term shall be extended for a period of time equal to the number of days that the Property was removed from the market.

2. Seller/Landlord shall pay Broker a commission ("Commission") in accordance with Broker's Schedule of Sale and Lease Commissions ("Schedule") attached as Exhibit A (incorporated by reference) if, during the Term or the Tail Period (defined in Section 4): (a) the Property is sold or leased to a purchaser or tenant procured by Broker, Seller/Landlord or any other person or entity; (b) a purchaser or tenant is procured by Broker, Seller/Landlord, or any other person or entity who is ready, willing and able to purchase or lease the Property on the (i) terms and conditions stated in the Term Sheet or (ii) on any other terms and conditions acceptable to Seller/Landlord; (c) any contract for the sale or lease of the Property is entered into by Seller/Landlord; or (d) if Seller/Landlord is a corporation, partnership, limited liability company, trust or other business entity, a controlling interest in such entity is transferred in lieu of a sale or lease of the Property. If an earnest money or similar deposit made by a prospective purchaser or tenant is forfeited, in addition to any other Commission rights Broker has pursuant to this Agreement, Broker shall be entitled to a Commission of one-half (1/2) of such deposit.

3. In the event that an option or refusal right to purchase or lease the Property is granted during the Term or the Tail Period, Seller/Landlord shall pay Broker a Commission in accordance with the Schedule based upon the price paid for the option or refusal right or for any extensions thereof upon receipt by Seller/Landlord of any such payment(s). In the event that such option or refusal right is exercised during the Term, the Tail Period or at any time thereafter, Seller/Landlord shall also pay Broker a Commission on the gross sale or lease price of the Property in accordance with the Schedule. However, to the extent that all or part of the price paid for the option, refusal right or any extension thereof is applied

Seller/Landlord's Initials:

to the sale or lease price of the Property, then any Commission previously paid by Seller/Landlord to Broker on account of such option or refusal right or any extension thereof shall be credited against the Commission payable to Broker on account of the exercise of that option or refusal right.

4. Seller/Landlord shall pay Broker a Commission in accordance with the Schedule If, within one (1) year after the expiration of the Term ("Tail Period"), the Property is sold or leased to, or Seller/Landlord enters into a contract, option or refusal right for the sale or lease of the Property with, any person or entity (including his/her/its successors, assigns or affiliates) with whom Broker has negotiated or otherwise communicated with respect to the Property (either directly or indirectly through another broker or agent) or by or to whom the Property has been inspected or shown prior to the expiration of the Term.

5. Seller/Landlord shall (a) cooperate and deal fairly and in good faith with Broker in seeking a sale or lease of the Property on terms and conditions at least as favorable to Seller/Landlord in the aggregate as those listed in the Term Sheet and (b) refer immediately to Broker all persons or entities interested in purchasing or leasing the Property. All negotiations for the sale or lease of Property shall be handled by and through Broker. Broker is exclusively authorized to market and advertise the Property for sale or lease by such means as, in Broker's sole discretion, would facilitate a sale or lease of the Property. Seller/Landlord and its legal counsel shall be solely responsible for drafting and/or determining the legal sufficiency of all offer, acceptance, contract, conveyance and other documents and instruments relating to any sale/purchase or lease transaction contemplated by this Agreement.

6. Seller/Landlord shall disclose to Broker in writing and to all prospective purchasers or lessees of the Property any and all information which Seller/Landlord knows or has within its custody, control or possession regarding the following matters affecting the Property: (a) present and future zoning, building and land use restrictions; (b) environmental matters, including, without limitation, the presence and location of underground storage tanks, petroleum products, asbestos, PCBs and other toxic, hazardous or extremely hazardous or toxic substances located in, on, or about the Property; (c) physical defects and hazards in and soils conditions in, on or about the Property; (d) whether the Property is or may be situated in a flood zone; and (e) any other information which a prudent buyer/tenant would reasonably consider in making its decision to buy/lease the Property. Broker is authorized to disclose all such information to the prospective buyer/tenant identified in the attached Exhibit B.

7. Seller/Landlord represents and warrants to Broker that, except as may be set forth in the Term Sheet: (a) Seller/Landlord holds good, marketable and unencumbered fee simple title to the Property; and (b) that no person or entity who has an ownership interest

Seller/Landlord's Initials:

in the Property is a foreign person as defined in the Foreign Investment in Real Property Tax Act (commonly known as "FIRPTA").

8. Broker is irrevocably authorized: (a) to deduct its Commission from any deposits, payments or other funds, including proceeds of sale or lease payments, paid by a purchaser or tenant in connection with any transaction contemplated by this Agreement. Seller/Landlord hereby irrevocably assigns such deposits, payments and funds to Broker to the extent necessary to pay such Commission; and (b) to order on behalf of Seller/Landlord and in its name a preliminary commitment from a local title insurer to issue title insurance on the Property or other form of title report, which Seller/Landlord shall pay for.

9. Each signator to this Agreement represents and warrants: (a) that he or she has full authority to execute and deliver this Agreement on behalf of the party which he/she purportedly represents; and (b) that this Agreement binds such party and is valid and fully enforceable against such party in accordance with its terms.

10. Seller/Landlord shall defend, indemnify and hold harmless Broker and its agents, shareholders, directors and employees from and against any obligations, liabilities, demands, claims, fees and costs suffered or incurred by any of them, that arise out of, result from, are based upon or are caused by, in whole or in part, directly or indirectly, any acts or omissions of Seller/Landlord or any person for whom Seller/Landlord is legally responsible, including, without limitation, all acts and omissions in any way relating to erroneous disclosures or partial or complete failures to disclose required information regarding physical conditions or defects in or environmental contamination affecting the Property or any adjacent or nearby properties.

11. As used in this Agreement and its Exhibits, (a) the term "lease" shall also include subleases and sub-subleases; (b) the term "tenant" shall also include subtenants and sub-subtenants and their respective successors and assigns; and (c) the term "purchaser" shall also include purchaser's successors and assigns.

12. This Agreement (a) is fully integrated; (b) constitutes the entire agreement between Seller/Landlord and Broker with respect to its subject matter; and (c) supersedes all prior discussions, negotiations, promises, understandings and agreements with respect thereto, whether oral or written. No amendment, novation, supplementation, termination or rescission of this Agreement shall be valid or enforceable unless made in writing and executed and delivered by both Seller/Landlord and Broker. This Agreement shall not be construed against its drafter. This Agreement shall be binding upon, and shall benefit, the heirs, successors and assignees of the parties. This Agreement and the respective rights and obligations of the parties hereunder shall be construed and interpreted as a contract under the laws of the State of Alaska, without regard to its conflicts of law principles. If a question, dispute or requirement for interpretation or construction should arise with respect

Seller/Landlord's Initials

Term Sheet

- 1. Property Description:

- 2. For Sales:
 - a. Price:

 - b. Payment Terms:

- 3. For Leases:
 - a. Rent:

 - b. Term:

- 4. Other Terms/Conditions:

(Supplement as necessary)

Seller/Landlord's Initials:

Exhibit A

Bond, Stephens & Johnson, Inc.
Schedule of Sale and Lease Commissions
For Single Party Listing Agreement for Sellers and Landlords

A. SALES:

1. For sales of improved real properties, the Commission shall be six percent of the gross sales price. For sales of unimproved real property, the Commission shall be ten percent of the gross sales price. The gross sales price shall include any and all monetary consideration and the fair market value of all non-monetary consideration in whatever form paid or given by or on behalf of the purchaser to Seller or its designee(s) for or with respect to the Property, including but not limited to the assumption or release of existing liabilities. For purposes of this Schedule, the Property is deemed to be improved unimproved (deemed to be unimproved if unchecked).

2. The Commission shall be paid upon the earlier to occur of: (a) the closing of the transaction; (b) when the sales price is paid (for installment sales, the entire commission is due with the down payment); (c) Seller's failure or refusal to close the transaction; or (d) when provided in the Term Sheet or otherwise.

B. LEASES:

For leases the Commission shall be six percent of the aggregate gross rent for the original term, without reductions, deductions, credits or offsets, payable in its entirety upon the execution of the lease, subject to the following:

1. *Month to Month Tenancy.* The minimum Commission for a month to month tenancy, tenancy at will, or any tenancy which is not reduced to a written lease between a tenant and Landlord shall be equal to 50 % of the first month's base rent or \$1,000, whichever is greater. The Commission shall be payable upon occupancy. In the event such a tenant subsequently executes a written lease with Landlord, either directly or with the assistance of Broker or any other person or entity, within 24 months from the date of initial occupancy, then Broker shall receive a Commission with respect to such lease in accordance with the provisions of paragraph B above.

2. *Extension, Renewal or New Lease.* If the lease term is effectively renewed or extended, in accordance with the terms of an option, refusal right, new lease, substitute lease or otherwise, then Landlord shall pay Broker a Commission at one-half of the

Seller/Landlord's Initials:

commission rate provided in Section B of this Schedule based on the aggregate gross rent payable during the extended or renewed lease term for the existing space, without deduction, credit, reduction or set-off. If additional space is leased during the initial, renewed or extended term, Landlord shall pay Broker a Commission at the commission rate provided in Section B of this Schedule based on the aggregate gross rent for the additional space payable during the extended or renewed lease term, without deduction, credit, reduction or set-off. Such Commission shall be earned and payable at the time the extended or renewed term commences for the existing space and at the time of agreement for any additional space.

3. *Purchase of Property by Tenant.* If a tenant, its successors or assignees, or any agent, officer, employee, principal, partner, member, director, manager or shareholder of such tenant or its successors or assigns purchases the Property during (a) the term of the lease, (b) any extension or renewal thereof, or (c) within 180 days after the expiration thereof, then a Commission shall be paid to Broker in accordance with the provisions of Section A above; provided however, that there shall be a credit against such Commission in the amount of the Commission previously paid to Broker for the portion of the purchaser's lease term which is cancelled by reason of such sale. In no event shall such credit exceed the amount of such sales Commission.

4. *Percentage Rent.* If a lease for which a Commission is payable hereunder contains a percentage rent or similar clause, Seller/Landlord shall pay a Commission on the percentage rent or similar payment payable by the tenant at the Commission rate in Section B above applicable to the period of the lease term for which the percentage rent or similar payment is payable. This Commission shall be payable to Broker within 15 days after the tenant's payment of the percentage rent or similar payment for such period. Notwithstanding the foregoing, at the end of the third full lease year Landlord shall pay Broker a Commission on the percentage rent or similar payment for the remainder of the original term of the lease. For the purpose of calculating this Commission, the percentage rent or similar payment for each remaining year of the term of the lease shall be deemed to be the same amount as the percentage rent or similar payment payable for the third full lease year.

5. *Ground Lease.* If a lease is a ground lease, the Commission shall not exceed what the Commission would be for a sale of the Property at a price equal to the value of the Property used to compute the Property rental rate or, if no such value was used, the then fair market value of the Property.

The provisions hereof are subject to the terms and provisions of any Term Sheet or other

Seller/Landlord's Initials:

agreement to which this Schedule may be attached and which is executed by the parties hereto.

In the event Seller/Landlord fails to make Commission payments to Broker within the time limits set forth herein, then from the date due until paid the delinquent amount shall bear interest at the legal rate set forth in AS 45.45.010 or the maximum legal interest rate chargeable on such amount in Alaska, whichever is less. If Broker is required to pursue legal action against Seller/Landlord to collect any Commission due it, Broker shall be entitled to also recover from Seller/Landlord the reasonable actual attorneys' fees and costs it incurs in such pursuit.

Seller/Landlord's Initials:

Single Party Listing Agreement for Sale & Lease
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Page 8 of 9
BSJ Form No. 5, 12/02 ed.

Bond, Stephens & Johnson, Inc., Commercial Real Estate Services
3000 "A" Street, Suite 200, Anchorage, AK 99503
Ph 907-563-7733 Fax 907-561-8929
Email bsj@bsjalaska.com www.bsjalaska.com

Exhibit B

Identity of Buyer/Tenant for Single-Party Listing Agreement

Name: _____

Seller/Landlord:

, Seller/Landlord

Dated: _____, 20

Company:

BOND, STEPHENS & JOHNSON, INC.,
an Alaska corporation

By: _____
, Agent

Dated: _____, 20

Seller/Landlord's Initials:

BOND, STEPHENS & JOHNSON, INC.
AGENCY AGREEMENT FOR BUYERS AND TENANTS

This agency agreement ("Agreement") is by and between: (a) Bond, Stephens & Johnson, Inc. ("Broker"), an Alaska corporation, the address of which is 3000 "A" Street, Suite 200, Anchorage, Alaska 99503; and (b) ("Buyer/Tenant"), a(n) _____, the address of whom/which is _____.

1. Appointment of Agent. Buyer/Tenant hereby appoints Broker as its exclusive agent for the Term (defined in paragraph 2 below) to procure a purchase or lease of suitable real property on its behalf on the terms and conditions stated in the term sheet ("Term Sheet") incorporated by reference in this Agreement.

2. Term of Agency. The term of this agency ("Term") shall commence on the effective date hereof and, subject to the Tail Period (defined in paragraph 6 below), terminate _____ (_____) days thereafter.

3. Broker's Obligations. Broker shall make diligent and good faith effort to (a) locate, evaluate and advise Buyer/Tenant on a suitable property for Buyer/Tenant, (b) negotiate with a prospective seller or lessor on behalf of Buyer/Tenant to purchase or lease such property, and (c) assist Buyer/Tenant in closing the transaction.

4. Buyer/Tenant's Obligations. Buyer/Tenant shall (a) make a diligent and good faith effort to cooperate with Broker in evaluating, inspecting and making a prompt determination on whether to purchase or lease any property procured by Broker which meets the requirements set forth in the Term Sheet and (b) at its expense, obtain legal counsel to draft, review and advise it on all legal documentation required for the transaction.

5. Commission.

Payable by Buyer/Tenant. Buyer/Tenant shall pay Broker a commission ("Commission") in accordance with Broker's Schedule of Sale and Lease Commissions ("Schedule") attached as Exhibit A (incorporated by reference) if, during the Term or the Tail Period (defined in Section 6): (a) a seller/landlord is procured by Broker, Buyer/Tenant or any affiliate, or any other person or entity who is ready, willing and able to sell or lease any property to Buyer/Tenant or any affiliate on the terms and conditions stated in the Term Sheet or on any other terms and conditions acceptable to Buyer/Tenant or any affiliate; (b) any contract for the purchase or lease of any property is entered into by Buyer/Tenant or any affiliate thereof on the terms and conditions stated in the Term Sheet or on any other terms and conditions acceptable to Buyer/Tenant or any affiliate; or (c) Buyer/Tenant or any affiliate purchases or leases any property on the terms and conditions

stated in the Term Sheet or any other terms and conditions acceptable to Buyer/Tenant or any affiliate.

Pavable by Seller/Landlord. Broker shall make a reasonable effort to persuade each prospective seller/landlord to agree to pay Broker a Commission for procuring Buyer/Tenant for such seller/landlord. If Broker cannot persuade a seller/landlord who is willing to sell/lease property to Buyer/Tenant on terms acceptable to Buyer/Tenant to agree to pay Broker a Commission, Buyer/Tenant shall either: (a) pay Broker the Commission; or (b) neither purchase/lease, nor allow any affiliate to purchase/lease, any property from such seller/landlord. The Commission shall be computed and become due and owing as if it were originally to be paid by Buyer/Tenant, regardless of whether the foregoing box is checked.

6. Tail Period. If within one (1) year after the expiration of the Term ("Tail Period"), Buyer/Tenant purchases or leases, or enters into any contract, option or refusal right to purchase or lease, any property (a) from any person, entity (including his/her/its successors, assigns or affiliates) with whom Broker has negotiated or otherwise communicated on behalf of Buyer/Tenant or (b) which has been inspected or shown to Buyer/Tenant prior to the expiration of the Term, then Buyer/Tenant shall pay Broker the Commission provided for in Paragraph 5(b).

7. Authority. Each signator to this Agreement represents and warrants: (a) that he or she has full authority to execute and deliver this Agreement on behalf of the party which he/she purportedly represents; and (b) that this Agreement (i) binds such party and (ii) is valid and fully enforceable against such party in accordance with its terms.

8. Indemnity/Release. Buyer/Tenant hereby: (a) discharges and releases Broker and its agents, shareholders, directors and employees (with prejudice) from all obligations, liabilities, claims, fees and costs they may hereafter owe or have to Buyer/Tenant which in any way arise out of, result from, are based upon or are caused by, in whole or in part, directly or indirectly, their failure to discover, or obtain required disclosures from any seller/landlord of any physical defects or conditions or any environmental contamination affecting any real property the Buyer/Tenant may purchase/lease as a result of Broker's efforts under this Agreement or any adjacent or nearby properties; and (b) agrees to defend, indemnify and hold them harmless from and against any and all obligations, liabilities, demands, claims, fees and costs, which they may owe to any third person that in any way arise out of, result from, are based upon or are caused by, in whole or in part, directly or indirectly, (i) any such defects, conditions or contamination or (ii) acts or omissions by Buyer/Tenant or any person for whom Buyer/Tenant is legally responsible with respect to any property of any seller/landlord or any adjacent or nearby property.

9. General. This Agreement is fully integrated; constitutes the entire agreement between Buyer/Tenant and Broker with respect to its subject matter; and supersedes all prior discussions, negotiations, promises, understandings and agreements with respect thereto, whether oral or written. This Agreement shall not be construed against the

drafter. Each party has read, understands and agreed to be bound by this Agreement after consultation with competent independent legal counsel or after having voluntarily and knowingly waived the right to consult with such counsel. No amendment, novation, supplementation, termination or rescission of this Agreement shall be valid or enforceable unless made in writing and executed and delivered by both Buyer/Tenant and Broker. This Agreement shall be binding upon, and shall benefit, the heirs, successors and assignees of the parties. This Agreement and the respective rights and obligations of the parties hereunder shall be construed and interpreted as a contract under the laws of the State of Alaska, without regard to its conflicts of law principles. If a question, dispute or requirement for interpretation or construction should arise with respect to this Agreement, the jurisdiction and venue therefore shall lie exclusively with the courts for the Third Judicial District for the State of Alaska, at Anchorage, Alaska, or, alternatively, with the United States District Court for the District of Alaska, at Anchorage, Alaska, unless a nonwaivable federal or Alaska state law should require to the contrary. In the event any provision of this Agreement shall be deemed to be void or unenforceable based on any controlling state or federal law, the remaining provisions shall be unaffected thereby, such provision shall be deemed modified to the minimum extent necessary to make it valid and enforceable, and such provision shall be enforced as so modified.

10. Definitions. As used in this Agreement and its Exhibits, (a) the term "lease" shall also include subleases and sub-subleases; (b) the term "lessor" shall also include sublessors, sub-sublessors and their respective successors and assigns and entities which they respectively control; and (c) the terms "seller," and "Other Clients" shall also include their respective successors and assigns and entities which they respectively control.

Company:
 BOND, STEPHENS & JOHNSON, INC.,
 an Alaska corporation

Buyer/Tenant:

 , Buyer

By: _____
 , Agent

Dated: _____, 20

Dated: _____, 20

 , Buyer

Dated: _____, 20

Term Sheet

1. Property Requirements:

2. For Purchases:

a. Price:

b. Payment Terms:

3. For Leases:

a. Rent:

b. Term:

4. Other Terms/Conditions:

(Supplement as necessary)

Exhibit A

Bond, Stephens & Johnson, Inc.
Schedule of Sale and Lease Commissions
For Agency Agreement for Buyers and Tenants

A. SALES:

1. For purchases of Improved real properties, the Commission shall be six percent of the gross sales price. For purchases of unimproved real property, the Commission shall be ten percent of the gross sales price. The gross sales price shall include any and all monetary consideration and the fair market value of all non-monetary consideration in whatever form paid or given by or on behalf of the Buyer to the seller or its designee(s) for or with respect to the property, including but not limited to the assumption or release of existing liabilities. For purposes of this Schedule, the Property is deemed to be Improved unimproved (deemed to be unimproved if unchecked).

2. The Commission shall be paid upon the earlier to occur of: (a) the closing of the transaction; (b) when the sales price is paid (for installment sales, the entire commission is due with the down payment); (c) Buyer's failure or refusal to close the transaction; or (d) when provided in the Term Sheet or otherwise.

B. LEASES:

For leases the Commission shall be six percent of the aggregate gross rent for the original term, without reductions, deductions, credits or offsets, payable in its entirety upon the execution of the lease, subject to the following:

1. *Month to Month Tenancy.* The minimum Commission for a month to month tenancy, tenancy at will, or any tenancy which is not reduced to a written lease between Tenant and a landlord shall be equal to 50% of the first month's base rent or \$1,000, whichever is greater. The Commission shall be payable upon occupancy. In the event Tenant subsequently executes a written lease with a landlord, either directly or with the assistance of Broker or any other person or entity, within 24 months from the date of initial occupancy, then Broker shall receive a Commission with respect to such lease in accordance with the provisions of paragraph B above.

2. *Extension, Renewal or New Lease.* If the lease term is effectively renewed or extended, in accordance with the terms of an option, refusal right, new lease, substitute lease or otherwise, then Tenant shall pay Broker a Commission at one-half of the commission rate provided in Section B of this Schedule based upon the aggregate gross rent payable during the extended or renewed lease term for the existing space, without deduction, credit, reduction or set-off. If additional space is leased during the initial, renewed or extended term, Landlord shall pay Broker a Commission at the commission

rate provided in Section B of this Schedule based on the aggregate gross rent for the additional space, without deduction, credit, reduction or set-off. Such Commission shall be earned and payable at the time the extended or renewed term commences for the existing space.

3. *Purchase of Property by Tenant.* If Tenant, its successors or assignees, or any agent, officer, employee, principal, partner, member, director, manager or shareholder of Tenant or its successors or assigns purchases the Property during (a) the term of the lease or any substitute or new lease, (b) any extension or renewal thereof, or (c) within 180 days after the expiration thereof, then a Commission shall be paid to Broker in accordance with the provisions of Section A above; provided however, that there shall be a credit against such Commission in the amount of the Commission previously paid to Broker for the portion of the purchaser's lease term which is cancelled by reason of such sale. In no event shall such credit exceed the amount of such sales Commission.

4. *Percentage Rent.* If a lease for which a Commission is payable hereunder contains a percentage rent or similar clause, Tenant shall pay a Commission on the percentage rent or similar payment payable by Tenant at the Commission rate in Section B above applicable to the period of the lease term for which the percentage rent or similar payment is payable.

This Commission shall be payable to Broker within 15 days after Tenant's payment of the percentage rent or similar payment for such period. Notwithstanding the foregoing, at the end of the third full lease year, Tenant shall pay Broker a Commission on the percentage rent or similar payment for the remainder of the lease term. For the purpose of calculating this Commission, the percentage rent or similar payment for each remaining year of the term of the lease shall be deemed to be the same amount as the percentage rent or similar payment payable for the third full lease year.

5. *Ground Lease.* If a lease is a ground lease, the Commission shall not exceed what the Commission would be for a sale of the property at a price equal to the value of the property used to compute the property rental rate or, if no such value was used, the then fair market value of the property.

The provisions hereof are subject to the terms and provisions of any Term Sheet or other agreement to which this Schedule may be attached and which is executed by the parties hereto.

In the event Buyer/Tenant fails to make Commission payments to Broker within the time limits set forth herein, then from the date due until paid the delinquent amount shall bear interest at the legal rate set forth in AS 45.45.010 or the maximum legal interest rate chargeable on such amount in Alaska, whichever is less. If Broker is required to pursue legal action against Buyer/Tenant to collect any Commission due it, Broker shall be entitled to also recover from Buyer/Tenant the reasonable actual attorneys' fees and costs it incurs in such pursuit.

**BOND, STEPHENS & JOHNSON, INC.
COMPENSATION AGREEMENT**

This compensation agreement ("Agreement") is by and between: (a) ("Seller/Landlord"), a(n) _____, and (b) Bond, Stephens & Johnson, Inc. ("Broker"), an Alaska corporation.

1. The Buyer/Tenant identified below has granted Broker the exclusive right to procure Buyer's/Tenant's purchase/lease of the Seller's/Landlord's real property ("Property") described below with the understanding that Seller/Landlord will pay Broker's commission ("Commission") on the transaction. Seller/Landlord has agreed to pay Broker a Commission at the rate provided in the attached Exhibit A ("Schedule") if, during the Term or within one (1) year after the expiration of the Term ("Tail Period"), the Property is sold or leased to Buyer/Tenant or any affiliate thereof or a contract for such sale or lease is entered into that Seller/Landlord is legally obligated to perform but does not perform. If an earnest money or similar deposit made by Buyer/Tenant is forfeited to Seller/Landlord by Buyer/Tenant or any affiliate thereof, in addition to any other Commission rights Broker has pursuant to this Agreement, Seller/Landlord shall pay Broker a Commission equal to one-half (1/2) of such deposit. In the event that an option or refusal right to purchase or lease the Property is granted by Seller/Landlord to Buyer/Tenant or any affiliate thereof during the Term or the Tail Period, Seller/Landlord shall pay Broker a Commission in accordance with the Schedule based upon the purchase price in the option or refusal right, regardless of whether or when the option or refusal right is exercised.

Property Description: _____

Buyer/Tenant is an undisclosed principal.

OR

Buyer/Tenant's name is:

2. Notwithstanding that Seller/Landlord has committed to pay Broker's Commission, Broker is:

The agent for Buyer/Tenant only and not the agent for Seller/Landlord or the dual agent for Seller/Landlord and Buyer/Tenant. As such, Broker owes Seller/Landlord no fiduciary or other special duties and may recommend and procure a purchase/lease of other properties by Buyer/Tenant.

OR

Dual agent for Seller/Landlord and Buyer/Tenant. As such, Brokers duties are as described in the attached Dual Agency Agreement.

Exhibit A**Bond, Stephens & Johnson, Inc.
Commission Schedule
For Compensation Agreement****A. SALES:**

1. For sales of improved real properties, the Commission shall be six percent of the gross sales price. For sales of unimproved real property, the Commission shall be ten percent of the gross sales price. The gross sales price shall include any and all monetary consideration and the fair market value of all non-monetary consideration in whatever form paid or given by or on behalf of the purchaser to Seller or its designee(s) for or with respect to the Property, including but not limited to the assumption or release of existing liabilities. For purposes of this Schedule, the Property is deemed to be improved unimproved (deemed to be unimproved if unchecked).
2. The Commission shall be paid upon the earlier to occur of: (a) the closing of the transaction; (b) when the sales price is paid (for installment sales, the entire commission is due with the down payment); (c) Seller's failure or refusal to close the transaction; or (d) when provided in the Term Sheet or otherwise.

B. LEASES:

For leases the Commission shall be six percent of the aggregate gross rent for the original term, without reductions, deductions, credits or offsets, payable in its entirety upon the execution of the lease, subject to the following:

1. *Month to Month Tenancy.* The minimum Commission for a month to month tenancy, tenancy at will, or any tenancy which is not reduced to a written lease between a tenant and Landlord shall be equal to 50% of the first month's base rent or \$1,000, whichever is greater. The Commission shall be payable upon occupancy. In the event such a tenant subsequently executes a written lease with Landlord, either directly or with the assistance of Broker or any other person or entity, within 24 months from the date of initial occupancy, then Broker shall receive a Commission with respect to such lease in accordance with the provisions of paragraph B above.
2. *Extension, Renewal or New Lease.* If the lease term is effectively renewed or extended, in accordance with the terms of an option, refusal right, new lease,

Seller/Landlord's Initials:

substitute lease or otherwise, then Landlord shall pay Broker a Commission at one-half of the commission rate provided in Section B of this Schedule based on the aggregate gross rent payable during the extended or renewed lease term for the existing space, without deduction, credit, reduction or set-off. If additional space is leased during the initial, renewed or extended term, Landlord shall pay Broker a Commission at the commission rate provided in Section B of this Schedule based on the aggregate gross rent for the additional space payable during the extended or renewed lease term, without deduction, credit, reduction or set-off. Such Commission shall be earned and payable at the time the extended or renewed term commences for the existing space and at the time of agreement for any additional space.

3. *Purchase of Property by Tenant.* If a tenant, its successors or assignees, or any agent, officer, employee, principal, partner, member, director, manager or shareholder of such tenant or its successors or assigns purchases the Property during (a) the term of the lease, (b) any extension or renewal thereof, or (c) within 180 days after the expiration thereof, then a Commission shall be paid to Broker in accordance with the provisions of Section A above; provided however, that there shall be a credit against such Commission in the amount of the Commission previously paid to Broker for the portion of the purchaser's lease term which is cancelled by reason of such sale. In no event shall such credit exceed the amount of such sales Commission.
4. *Percentage Rent.* If a lease for which a Commission is payable hereunder contains a percentage rent or similar clause, Seller/Landlord shall pay a Commission on the percentage rent or similar payment payable by the tenant at the Commission rate in Section B above applicable to the period of the lease term for which the percentage rent or similar payment is payable. This Commission shall be payable to Broker within 15 days after the tenant's payment of the percentage rent or similar payment for such period. Notwithstanding the foregoing, at the end of the third full lease year Landlord shall pay Broker a Commission on the percentage rent or similar payment for the remainder of the original term of the lease. For the purpose of calculating this Commission, the percentage rent or similar payment for each remaining year of the term of the lease shall be deemed to be the same amount as the percentage rent or similar payment payable for the third full lease year.
5. *Ground Lease.* If a lease is a ground lease, the Commission shall not exceed what the Commission would be for a sale of the Property at a price equal to the

Seller/Landlord's Initials:

value of the Property used to compute the Property rental rate or, if no such value was used, the then fair market value of the Property.

The provisions hereof are subject to the terms and provisions of any Term Sheet or other agreement to which this Schedule may be attached and which is executed by the parties hereto.

In the event Seller/Landlord fails to make Commission payments to Broker within the time limits set forth herein, then from the date due until paid the delinquent amount shall bear interest at the legal rate set forth in AS 45.45.010 or the maximum legal interest rate chargeable on such amount in Alaska, whichever is less. If Broker is required to pursue legal action against Seller/Landlord to collect any Commission due it, Broker shall be entitled to also recover from Seller/Landlord the reasonable actual attorneys' fees and costs it incurs in such pursuit.

Seller/Landlord's Initials:

**BOND, STEPHENS & JOHNSON, INC.
UNDISCLOSED PRINCIPAL ADDENDUM TO
AGENCY AGREEMENT BY BUYERS AND SELLERS**

This addendum ("Addendum") is by and between: (a) Bond, Stephens & Johnson, Inc. ("Broker"), an Alaska corporation, the address of which is 3000 "A" Street, Suite 200, Anchorage, Alaska 99503; and (b) _____ ("Buyer/Tenant"), a(n) _____, the address of whom/which is _____.

1. *Amendment to Agency Agreement.* This Addendum is an amendment to the Bond, Stephens & Johnson, Inc. Agency Agreement for Buyers and Tenants ("Agency Agreement") between Broker and Buyer/ Tenant of on or about even date herewith.

2. *Undisclosed Principal.* Buyer/Tenant wishes to remain an undisclosed principal for purposes of Broker's efforts to procure a purchase or lease suitable real property on its behalf on the terms and conditions stated in the Agency Agreement. As a result, Broker shall not disclose the identity of Buyer/Tenant to any prospective seller/landlord of real estate without Buyer's/Tenant's prior consent.

3. *Formation of Sale/Purchase Agreement or Lease.* If and when Broker negotiates a purchase or lease of suitable real property on behalf of Buyer/Tenant on the terms and conditions stated in the Agency Agreement, Broker shall enter into a sale/purchase agreement or lease on such terms and conditions as the agent for an undisclosed principal, which Buyer/Tenant hereby authorizes and grants Broker a special power of attorney to do on its behalf. Such agreement or lease shall (i) identify Broker as the agent for an undisclosed principal to whom (which) the agreement or lease will be assigned and (ii) provide that Broker shall be unconditionally released from all obligations and liabilities thereunder upon such undisclosed principal assuming the agreement or lease.

4. *Assignment of Sale/Purchase Agreement or Lease.* Promptly following Broker's execution of such sale/purchase agreement or lease on behalf of Buyer/Tenant and, in any event before the closing of any purchase by Buyer or occupancy of the premises by Tenant: (a) Broker shall assign all of its right, title and interest in and to such agreement or lease to Buyer/Tenant without warranty, representation or recourse; and (b) Buyer/Tenant shall (i) unconditionally and irrevocably accept such assignment and assume all of Broker's obligations and liabilities under such agreement or lease and (ii) notify the seller/landlord that it is the undisclosed principal and the real party in interest with respect to such agreement or lease.

5. *Earnest Money/Security Deposits.* Buyer/Tenant shall timely provide Broker with sufficient unrestricted funds to make all earnest money and security deposits required to be _____
Buyer/Tenant's Initials:

**BOND, STEPHENS & JOHNSON, INC.
ASSIGNMENT OF PURCHASE AND SALE AGREEMENT AND LEASES BY BROKER
TO ITS UNDISCLOSED PRINCIPAL**

For good, valuable and sufficient consideration received, Bond, Stephens & Johnson, Inc. ("Broker"), an Alaska corporation, hereby assigns, without representation, warranty, covenant or recourse, to ("Undisclosed Principal"), a(n) , all of Broker's right, title and interest in, to and under that certain written Purchase and Sale Agreement, dated , 20 , between Broker and , which Broker entered into at the direction, with the approval and for the benefit of Undisclosed Principal, as its agent, to purchase the following described real estate:

Recording District, Judicial District, State of Alaska, and all improvements, buildings and structures located thereon and appurtenances thereto.

Undisclosed Principal, rather than Broker, was at all times the real party in interest in, to and under such Purchase and Sale Agreement, and the purpose of this Agreement is to confirm its status as such.

Undisclosed Principal hereby (a) accepts such assignment, (b) assumes and agrees to fully, faithfully and timely perform and satisfy all of Broker's obligations and liabilities under and with respect to such Purchase and Sale Agreement, and (c) agrees to defend, indemnify and hold harmless Broker with respect to all such obligations and liabilities.

Effective Date: , 20 .

Broker:
BOND, STEPHENS & JOHNSON, INC., an
Alaska Corporation

By: _____
, Its Agent

**BOND, STEPHENS & JOHNSON, INC.
REVISED DISCLOSURE**

Pursuant to AS 08.88.396(d), the Company, Bond, Stephens & Johnson, Inc., through its Agent, _____, hereby make the following revised disclosure(s) to Seller/Landlord, _____, and Buyer/Tenant, _____, in response to a change that has made a prior disclosure by it required by AS 08.88.396 incomplete, misleading or inaccurate:

Company:

BOND, STEPHENS & JOHNSON, INC.,
an Alaska corporation

By:

, Agent

Dated: _____, 20

BOND, STEPHENS & JOHNSON, INC.
DISCLAIMER OF REPRESENTATIONS BY COMPANY/AGENT
(Without Acknowledgment)

, the Seller/Landlord, and , Buyer/Tenant, are negotiating for the sale and purchase of the following-described real property ("Property"): _____.
, the Company, , and , the Agent, have provided professional real estate services in connection with such negotiations.

To avoid any future dispute as to what statements, representations, warranties, inducements, promises or assurances, oral or written, express or implied, (collectively "Representations") have been made by Company or Agent on which Seller/Landlord and Buyer/Tenant have reasonably relied in negotiating such sale and purchase of the Property, Company and Agent hereby deny and disclaim any and all Representations with regard to the Property, including any Representations made by Seller/Landlord pursuant to AS 34.70.090 or any other applicable law, except for those expressly set forth in the attached Exhibit A (if any). Seller/Landlord and Buyer/Tenant have no right to rely on any other Representations by Company or Agent in entering into any agreement for the sale and purchase of the Property.

Dated this ____ day of , 20 .

Company:
BOND, STEPHENS & JOHNSON, INC.,
an Alaska corporation

Agent:

By: _____

, Agent

Its:

Dated: , 20

Dated: , 20

EXHIBIT A
To
DISCLAIMER OF REPRESENTATIONS BY COMPANY/AGENT
(Without Acknowledgment)

_____ [Company's Representations re Property]

**BOND, STEPHENS & JOHNSON, INC.
DISCLAIMER OF REPRESENTATIONS BY COMPANY/AGENT
(With Acknowledgment)**

Disclaimer

(“Seller/Landlord”) and (“Buyer/Tenant”) hereby acknowledge, represent and warrant to and for the benefit of , the Company, and , the Agent, that Company and Agent have made no statements, representations, warranties, inducements, promises or assurances, express or implied, oral or written, (collectively “Representations”) with respect to the following-described real property (“Property”) on which Seller/Landlord or Buyer/Tenant have relied in selling or buying the Property, except for those expressly set forth in the attached Exhibit A (if any):

Acknowledgment

Seller/Landlord and Buyer/Tenant acknowledge and agree: (a) that the Representations made in any disclosure statement pertaining to the Property delivered by Seller/Landlord or Company or Agent to Buyer/Tenant pursuant to AS 34.70.010 or any other applicable law were made solely by Seller/Landlord and not by Company or Agent, except for those expressly set forth in the attached Exhibit A (if any); (b) that Company and Agent are not legally obligated or liable to Seller/Landlord or Buyer/Tenant for any such Representations or the accuracy or completeness of them; and (c) accept and acknowledge this disclaimer.

Dated this day of , 20 .

SELLER/LANDLORD:

, Seller/Landlord

Dated: _____, 20

, Seller/Landlord

Dated: _____, 20

BUYER/TENANT:

, Buyer/Tenant

Dated: _____, 20

, Buyer/Tenant

Dated: _____, 20

**EXHIBIT A
To
DISCLAIMER OF REPRESENTATIONS BY COMPANY/AGENT**

[Company's Representations re Property]



BOND, STEPHENS & JOHNSON
COMMERCIAL REAL ESTATE SERVICES

April 14, 2003

Representative Norman Rokeberg
Alaska Legislature
State Capitol, Room 214
Juneau, AK 99801-1182

Re: House Bill No. 257 regarding agency for real estate licensees.

Dear Representative Rokeberg,

I am writing to urge passage of House Bill 257. As President of Bond, Stephens & Johnson, Inc., the state's largest commercial real estate brokerage company, and as a seasoned commercial real estate broker in Alaska, I can attest to serious flaws in the current agency law. I strongly believe House Bill 257 will correct the situation. Let me elaborate.

Agency law, as recently defined by a residential real estate court ruling, is totally unworkable for commercial real estate brokerage. In instances of dual agency the current agency law makes it impossible for commercial real estate brokers to do our job. The required disclosure forms are outside the norm for commercial real estate, are cumbersome, unworkable and cause additional costs. Furthermore, the law's application to commercial real estate is unnecessary.

The current law's serious hindrance to commercial real estate transactions is harmful to the business sector of our economy and consumers. House Bill 257 corrects these problems with only minor changes to the existing law.

More specifically, regarding dual agency:

- When there is dual agency, the current law prohibits an agent from providing advice to the parties in the transaction.
- Dual agency occurs when there is one agent in a transaction that has an established relationship with the both parties, or when there are two agents from the same brokerage company in a transaction, one with the listing and the other with the buyer/tenant. This creates the absurd restriction where if an agent in my company brings the buyer/tenant to one of my listing we have to declare dual agency, but if an agent from another company brings the buyer/tenant there is not dual agency.
- Commercial transactions tend to have a high proportion of transactions that are dual agency. In 2002, 45 percent of my company's transactions were dual agency; I believe this is about average for commercial real estate in Alaska. The industry-wide high proportion of dual agency transaction is due to several factors:

- Alaska's small economy and business sector, in terms of people and companies, means that commercial brokers conduct many transactions with established clients on both sides of a transaction.
- Because of the complexity of commercial properties commercial brokers tend to sell/lease their own listings or find buyers/tenants through agents in their own company.
- Businesses and investors engage commercial brokerage services for our expertise, which is essential to completing commercial transactions. But under the current law, in about half the transactions because there is dual agency, it is illegal to provide our clients that expertise relative to price and terms- the heart of the transaction. We have to be silent observers. In other words, the law will not allow commercial brokers to do the job they were hired to do. That is ridiculous. It is almost impossible to believe that such an Alice-in-Wonderland situation exists, but it does.
- An example. I was recently in a transaction where I listed a large property for sale for an estate. The heirs have no commercial real estate experience and relied heavily on my expertise. Several offers were received, two from agents outside my company and one from an agent in my company. When I met with the sellers to determine which offer to move forward with, I provided an analysis of the advantages and disadvantages of each offer. But, with the offer from an agent in my company, the law requires that I remain silent and provide no assistance.
- Without brokers' expertise it is more difficult to complete transactions. This is not only harmful to brokers and their clients, but is also harmful to our economy and consumers.
- We simply cannot conduct business under these circumstances.

Regarding disclosure forms

- They are voluminous. I have provided you copies of the agency forms our attorney drafted so that we could meet the requirements of the current court ruling on agency. You can see the amount of paperwork we are dealing with in meeting just this one requirement of the current law. When we provide these forms to our clients to sign their eyes glaze over.
- The parties to commercial transactions are businesses and investors doing business transactions; they are not consumers buying a home. They know they are doing business transactions, and if they want to have their own broker, will do so. They don't need to be reminded of this by a form we have to ask them to sign.
- These disclosure forms can significantly slow down a transaction.
 - Many national companies' representatives refuse to accept the forms because they can not sign them without approval from their corporate law department in some far-away city.
 - Many individual business owners and investors have the same reaction and want their attorney to review them, because that is business practice.
- Attorney review of the forms only adds time and additional cost to completing a transaction.
- The law requires that when there is dual agency we must obtain each party's written agreement before we even show the property. Many of our clients are out-of-state corporate real estate officers with busy travel schedules who are difficult to contact. To

have to contact both parties for permission in advance to show their property in instances of dual agency unnecessarily delays and complicates the marketing process.

- The parties in a commercial real estate transaction don't care who the other parties are, they just want them to be financially qualified. If there are parties they will not sell to, (such as fast food competitors), they tell us up front and we won't show those competitors the property. Plus the competitor knows they can not buy from another competitor and don't even ask to see their properties.
- Managing and tracking the required paper work is becoming a monumental task.

Testimony that these requirements of the law are unnecessary is on the record. During the 22 years I have been a broker, I am not aware of a single instance when agency related issues have been part of a commercial real estate dispute anywhere in Alaska. If there have been any, they have been few. I am confident that was also the case prior to my entering the profession.

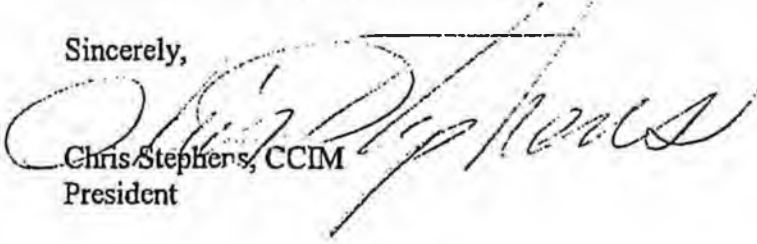
I am concerned that legislators understand the significant difference between commercial and residential real estate. I hope this letter helps you and your colleagues understand that commercial real estate is a unique business with its own special needs that are totally unlike residential real estate.

This difference is highlighted by the following true story. We once had a secretary who had worked for many years in a residential real estate office before coming to work for my company. After a few months with us, I asked how she found commercial real estate compared to residential real estate. The only similarity, she answered, was they both had real estate in their name.

We have a state law that is seriously flawed as it applies to commercial real estate. It serves no purpose to the public good. The law is a major hindrance to the conduct of necessary business and must be changed. House Bill 257 does this in a simple, straight-forward manner.

Again I urge in the strongest possible manner for the legislature to pass House Bill 257. It is in the best interest of consumers, businesses, and our economy.

Sincerely,



Chris Stephens, CCIM
President



U.S. Department of Labor

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U.S. Department of Labor

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Proposal to Strengthen Overtime Protection Summary of Proposed Changes

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Minimum Salary Level Increased: Under current rules, an employee earning only \$155 a week can qualify as a "white collar" employee not entitled to overtime pay. The Department's proposal would raise this minimum salary to \$425 a week—an increase of \$270 a week and the largest increase since the Fair Labor Standards Act was passed by Congress in 1938. The proposed changes would guarantee overtime to:

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- An employee working 50 hours per week managing a restaurant for \$15,600 per year.
- A worker putting in 60 hours a week managing a department store for \$18,000 per year.
- An employee working 42 hours a week supervising a machine shop for \$17,000 per year.

About I

Other .

Duties Tests Rely on "Primary Duty": The proposed rule retains the current "short test" reliance on an employee's primary duty. The proposal would eliminate the long-inactive "long test" rule restricting exempt employees from devoting more than 20% of time in a workweek performing non-exempt duties.

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- **Executive Duties:** The proposed executive duties test has three requirements: managing the enterprise; directing the work of two or more employees; and having authority to hire or fire (or such recommendations are given particular weight).
- **Administrative Duties:** The proposal would replace the "discretion and independent judgment" test, which has been the subject of confusion and litigation, with a new test that employees must hold a "position of responsibility."
- **Professional Duties:** The proposal recognizes as exempt "learned professionals" certain employees who gain equivalent knowledge and skills through a combination of job experience, military training, attending a technical school or attending community college.

Employees Treated More Equitably: The Department proposes to allow deductions from the salary of exempt employees for full-day absences taken for disciplinary reasons, such as sexual harassment or workplace violence. Currently, only hourly workers' wages are subject to such deductions. The proposal retains the "salary basis" rule prohibiting deductions from exempt salary for partial-day absences.

Impact of Proposed Changes

1.3 Million Additional Low-Wage Workers Gain Overtime Protections: Increasing the minimum salary level will automatically guarantee overtime to 1.3 million additional low-wage workers.

Overtime Protections Strengthened for Additional 10.7 Million Hourly Workers: Updating the duties tests will make entitlement to overtime more certain for 10.7 million workers.

Enhance Economic Growth: Reducing regulatory red tape and litigation costs will free up resources and stimulate economic growth.

Rules Easier to Apply and Enforce: Bringing the rules into the 21st century and clarifying the outdated regulatory language will help employees understand their rights and ensure they receive their hard-earned pay. Employers will be better able to understand their obligations and comply with the law. The Labor Department will be equipped to more vigorously enforce the law.

#

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U.S. Department of Labor

**U.S. Department of Labor Proposal to
 Strengthen Overtime Protection**

Side-By-Side Comparison

The following charts compare the current requirements for exemption from the Fair Labor Standards Act as an executive, administrative, professional, computer or outside sales employee with the regulations proposed by the Department of Labor.

Executive Employees

	Current Long Test	Current Short Test	Proposed Standard Test
Salary	\$155 per week	\$250 per week	\$425 per week
Duties	<p>Primary duty of the management of the enterprise or a recognized department or subdivision.</p> <p>Customarily and regularly directs the work of two or more other employees.</p> <p>Has authority to hire or fire other employees (or recommendations as to hiring, firing, promotion or other change of status of other employees are given particular weight).</p>	<p>Primary duty of the management of the enterprise or a recognized department or subdivision.</p> <p>Customarily and regularly directs the work of two or more other employees.</p>	<p>Primary duty of the management of the enterprise or a recognized department or subdivision.</p> <p>Customarily and regularly directs the work of two or more other employees.</p> <p>Has authority to hire or fire other employees (or recommendations as to hiring, firing, promotion or other change of status of other employees are given particular weight).</p>

Customarily and regularly exercises discretionary powers.

Does not devote more than 20 percent (40 percent in retail or service establishments) of time to activities that are not directly and closely related to exempt work.

Administrative Employees

	Current Long Test	Current Short Test	Proposed Standard Test
Salary	\$155 per week	\$250 per week	\$425 per week
Duties	<p>Primary duty of performing office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers.</p> <p>Customarily and regularly exercises discretion and independent judgment.</p> <p>Regularly and directly assists a proprietor, or exempt executive or administrative employee; or performs specialized or technical work requiring special knowledge under only general supervision; or executes special assignments under only general supervision.</p> <p>Does not devote more than 20 percent (40 percent in retail or service establishments) of time to activities that are not directly and closely related to</p>	<p>Primary duty of performing office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers.</p> <p>Customarily and regularly exercises discretion and independent judgment.</p>	<p>Primary duty of performing office or non-manual work directly related to the management or general business operations of the employer or the employer's customers.</p> <p>Holds a "position of responsibility" with the employer, defined as either (1) performing work of substantial importance or (2) performing work requiring a high level of skill or training.</p>

exempt work.

Learned Professional Employees

	Current Long Test	Current Short Test	Proposed Standard Test
Salary	\$170 per week	\$250 per week	\$425 per week
Duties	<p>Primary duty of performing work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.</p> <p>Consistently exercises discretion and judgment.</p> <p>Performs work that is predominantly intellectual and varied in character and is of such character that the output produced or result accomplished cannot be standardized in relation to a given period of time.</p> <p>Does not devote more than 20 percent of time to activities that are not an essential part of and necessarily incident to exempt work.</p>	<p>Primary duty of performing work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.</p> <p>Consistently exercises discretion and judgment.</p>	<p>Primary duty of performing office or non-manual work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, but which also may be acquired by alternative means such as an equivalent combination of intellectual instruction and work experience.</p>

Creative Professional Employees

	Current Long Test	Current Short Test	Proposed Standard Test
Salary	\$170 per week	\$250 per week	\$425 per week
Duties	<p>Primary duty of performing work that is original and creative in character in a recognized field of artistic endeavor, and the result of which depends primarily on the invention, imagination, or talent of the employee.</p> <p>Consistently exercises discretion and judgment.</p> <p>Performs work that is predominantly intellectual and varied in character and is of such character that the output produced or result accomplished cannot be standardized in relation to a given period of time.</p> <p>Does not devote more than 20 percent of time to activities that are not directly and closely related to exempt work.</p>	Performs work requiring invention, imagination, or talent in a recognized field of artistic endeavor.	Primary duty of performing work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Computer Employees

	Current Long Test	Current Short Test	Section 13(a)(17) Test	Proposed Standard Test
Salary	\$170 per week	\$250 per week	\$27.63 an hour	\$425 per week <i>or</i> \$27.63 an hour
Duties	Primary duty of performing work requiring theoretical and practical application of	Primary duty of performing work requiring theoretical and practical	Primary duty of (A) application of systems analysis techniques and procedures, including	Primary duty of (A) application of systems analysis techniques and procedures, including

<p>highly-specialized knowledge in computer systems analysis, programming, and software engineering.</p> <p>Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field.</p> <p>Consistently exercises discretion and judgment.</p> <p>Performs work that is predominantly intellectual and varied in character and is of such character that the output produced or result accomplished cannot be standardized in relation to a given period of time.</p> <p>Does not devote more than 20 percent of time to activities that are not directly and closely related to exempt work.</p>	<p>application of highly-specialized knowledge in computer systems analysis, programming, and software engineering.</p> <p>Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field.</p> <p>Consistently exercises discretion and judgment.</p>	<p>consulting with users, to determine hardware, software or system functional applications; <i>or</i> (B) design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; <i>or</i> (C) design, documentation, testing, creation or modification of computer programs related to machine operating systems; <i>or</i> (D) a combination of duties described in (A), (B) and (C), the performance of which requires the same level of skills.</p> <p>Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field.</p>	<p>consulting with users, to determine hardware, software or system functional applications; <i>or</i> (B) design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; <i>or</i> (C) design, documentation, testing, creation or modification of computer programs related to machine operating systems; <i>or</i> (D) a combination of duties described in (A), (B) and (C), the performance of which requires the same level of skills.</p> <p>Employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field.</p>
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Outside Sales Employees

	Current Long Test	Current Short Test	Proposed Standard Test
Salary	None required.	None required.	None required.
Duties	<p>Employed for the purpose of and customarily and regularly engaged away from the employer's place of business in making sales; or in obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer.</p> <p>Does not devote more than 20 percent of the hours worked by nonexempt employees of the employer to activities that are not incidental to and in conjunction with the employee's own outside sales or solicitations.</p>	No separate "short" test.	<p>Primary duty of making sales; or of obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer.</p> <p>Customarily and regularly engaged away from the employer's place or places of business.</p>

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Subject: Wage & Hour Legislative Support is Needed - LC

Date: Fri, 11 Apr 2003 13:40:57 -0400

From: "David Fickes" <d.ofak@gci.net>

To: "Rep Norman Rokeberg" <Representative_Norman_Rokeberg@legis.state.ak.us>

David Fickes
Rudakof Cr # 102
Anchorage, AK 99508

April 11, 2003

Dear Rep Rokeberg:

I would like to convey our support of the wage and hour legislative issues as outlined below.

- We support the elimination of the CPI provision currently in the minimum wage law which increases the minimum wage annually commensurate with cost of living increases.
- We support the elimination of the 80/20 statute currently in place which requires that exempt employees, performing non exempt work greater than 20% of the time, are paid 2 ½ times the minimum wage.
- We support the modification of Alaska's training wage which currently allows an employer to pay the Federal Minimum wage of \$5.15 per hour to employees under the age of 17 who work less than 30 hours per week. The proposed modification changes this from 30 to 40 hours per week.
- We support the introduction of a tip credit provision which freezes the min wage at it's current hourly rate and allows employers to forgo future minimum wage increases in recognition of an employees' tips.

The Hospitality Industry has been detrimentally impacted by legislation passed in the last several sessions Further eroding bottom line profits and has forced employers to reduce employee benefits and in many cases, lay off workers. Alaska's Hospitality Industry is the second largest private sector employer in the state where 78% of our employees are Alaskans. We request your support of these critical wage and hour statutory changes to assure the economic well-being of Alaska's Hospitality Industry.

Sincerely,

David Fickes