

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11180 SENATE JUDICIARY

# "ALASKA LIVING WILL DECLARATION"

I, \_\_\_\_\_  
(Name of Declarant)

of \_\_\_\_\_  
(Address of Declarant)

declare that if I should have an incurable or irreversible condition that will cause my death within a relatively short time, it is my desire that my life not be prolonged by administration of life-sustaining procedures. If my condition is terminal and I am unable to participate in decisions regarding my medical treatment, I direct my attending physician to withhold or withdraw procedures that merely prolong the dying process and are not necessary to my comfort or to alleviate pain.

I desire to include the following options.

(Please place your initials in the blank opposite the category desired.)

\_\_\_ I do desire that nutrition or hydration (food and water) be provided by gastric tube or intravenously if necessary.

\_\_\_ I do not desire that nutrition or hydration (food and water) be provided by gastric tube or intravenously if necessary.

\_\_\_ Other directives:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## ORGAN DONATION (OPTIONAL)

In the event of my death, I donate the following part(s) of my body for the purposes identified in AS 13.50.020:

### Tissue:

\_\_\_ Eyes  
\_\_\_ Bone and connective tissue  
\_\_\_ Skin  
\_\_\_ Heart  
\_\_\_ Other: \_\_\_\_\_

Limitations: \_\_\_\_\_

### Organ:

\_\_\_ Heart  
\_\_\_ Kidney(s)  
\_\_\_ Liver  
\_\_\_ Lung(s)  
\_\_\_ Pancreas  
\_\_\_ Other: \_\_\_\_\_

Signed this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Date of Birth)

\_\_\_\_\_  
(Social Security Number)

*Advance Directives—*

# **Putting your health care choices in writing**

*Make your own decisions about your health care.*

On December 1, 1991 new federal legislation went into effect requiring hospitals, nursing homes, and home health agencies to ask all adults (at the time of admission) if they have completed any "Advance Directives" and to tell them that they have the right to do so if they have not. Advance Directives are documents such as a Durable Power of Attorney, Living Will, or an Anatomical Gift Declaration. The Living Will and Anatomical Gift Declaration can be combined into a document known as "Alaska Living Will Declaration".

*What kinds of decisions need to be considered?*

National headlines and court cases have focused on difficult decisions families face when a loved one hasn't given Advance Directives. These decisions may include your preferences about withholding or removing life sustaining equipment and nutrition, or donating organs or tissue. Although we often think that these choices don't apply to young people, the Patient Self-Determination Act applies to all adults.

### *What is a Living Will?*

A Living Will is an Advance Directive which states the type of medical care you want (or do not want) if you become unable to make your own decisions. It is called a "Living Will" because it takes effect while you are still living. The Living Will goes into effect if you are unable to participate in decision making and your condition is considered to be incurable or irreversible and terminal within a "relatively short time".

### *What is a Durable Power of Attorney for Health Care?*

A Durable Attorney for Health Care is an Advance Directive which gives someone you trust the authority to make health care decisions on your behalf should you become unable to make them for yourself. It is called durable because it continues in effect if you should become unable to act in your own behalf. It is very important that the person you designate as your agent understand the health care decisions you would like to have made for you.

### *What is an Anatomical Gift Declaration?*

An Anatomical Gift Declaration allows a person to donate tissue or organs at the time of their death. It also allows a physician to carry out the appropriate procedures for removing and/or transplanting the designated organs or tissue. If a person has both a Living Will and an Anatomical Gift Declaration, the Anatomical Gift Declaration takes precedence until the donated organ(s) can be evaluated.

### *Do I need to have all three of these documents?*

The Living Will, Durable Power of Attorney, and Anatomical Gift Declaration are three distinctly different documents. Each person must decide which of these documents (described above) will assure that their specific wishes will be carried out.

### **What is the hospital's policy regarding Advance Directives?**

It is the hospital's policy to honor properly executed Advance Directives. If a patient's attending physician cannot carry out the patient's wishes, it is the responsibility of that physician to assist the patient and/or family in obtaining the services of another physician who can.

The hospital will not discriminate against any patient because of the content of their properly executed Advance directive or their lack of any of these documents.

### **What should I do with my Advance Directives after completing them?**

Keep the original documents in a safe place where a family member or your agent can easily retrieve them if necessary. Give copies to your agent, physician, attorney, family members, clergy member or anyone you want to know the decisions you have made for yourself.

### **Who may serve as a witness to my Advance Directives?**

Living Wills and Anatomical Gift Declarations can either be signed by two witnesses or by a notary. A Durable Power of Attorney must be notarized. These witnesses must be at least 18 years of age and cannot be related to you by blood or marriage. By hospital policy no hospital employee or attending physician can witness or notarize these documents.

### **Can I change my mind after I have executed an Advance Directive?**

You may change or cancel these documents at any time. Any change should be written, signed, and dated and copies should be given to your physician and to others who received your original documents.

If you wish to change an Advance Directive while you are in the hospital, you should notify your physician. Even without a change in writing, your wishes will be honored as long as you can communicate them to your care providers.

***What if I execute an Advance Directive in one State and am hospitalized in another?***

The laws in most States are similar to one another. Your Advance directives may be honored in another State. If you spend a great deal of time in a State other than the one where your Advance Directives were executed, you may wish to make sure that your documents adhere to the laws of both States.

***Who should I ask if I have questions?***

Questions about Advance Directives can be discussed with your physician, your pastor, your attorney, and/or members of your family. If you have questions while you are in the hospital, the staff of the Social Work Services Department is available to assist in answering those questions.

***Sample forms***

The sample forms provided are taken directly from the Alaska law. If you wish to make changes to these documents, please consult an attorney to ensure that your documents adhere to State law.

delegate of your physician of the continuing healthcare requirements following your discharge from the hospital.

- Examine and receive an explanation of your bill regardless of source of payment.
- Know which hospital rules and policies apply to your conduct while a patient.
- Have all patient's rights apply to the person who may have legal responsibility to make decisions regarding medical care on behalf of the patient.

#### **Patient Responsibilities**

**These responsibilities are presented to the patient in the spirit of mutual trust and respect:**

- The patient has the responsibility to provide accurate and complete information concerning present complaints, past illnesses, hospitalizations, medications and other matters relating to his/her health.
- The patient is responsible for reporting perceived risks in their care and unexpected changes in their condition to their responsible practitioner.
- The patient and family are responsible for asking questions when they do not understand what they have been told about the patient's care or what they are expected to do.

- The patient is responsible for following the treatment plan established by the physician, including the instructions of nurses and other health professionals as they carry out the physician's orders.
- The patient is responsible for keeping appointments and for notifying the hospital or physician when unable to do so.
- The patient is responsible for his/her actions should he/she refuse treatment or not follow the physician's orders.
- The patient is responsible for assuring that the financial obligations of hospital care are fulfilled as promptly as possible.
- The patient is responsible for following hospital policies and procedures.
- The patient is responsible for being considerate of the rights of other patients and hospital personnel.
- The patient is responsible for being careful with personal property and that of other persons in the hospital.

#### **Patient and Family Grievances**

The staff and management of BRH welcome your comments regarding our services and personnel. Our goal is to provide you with quality services and we need to know those things that you like and those things that are less than satisfactory in order to continually improve. BRH is committed to Continuous Quality Improvement. Your presentation of a concern or suggestion assists us to

improve our services and will, in no way jeopardize your future care at BRH. If you have immediate concerns, you are encouraged to communicate this to any of the following:

- The person providing you with the service
- The Department Manager or House Supervisor
- The Quality/Risk Manager, Barb Sharp at 463-8695 (in-house 8695).

If you feel your concern has not been addressed to your satisfaction, you may request a written response. You will receive a written response within 14 working days with the name of the hospital contact person, the investigation into the grievance, the results of the investigation and the completion date of your request.

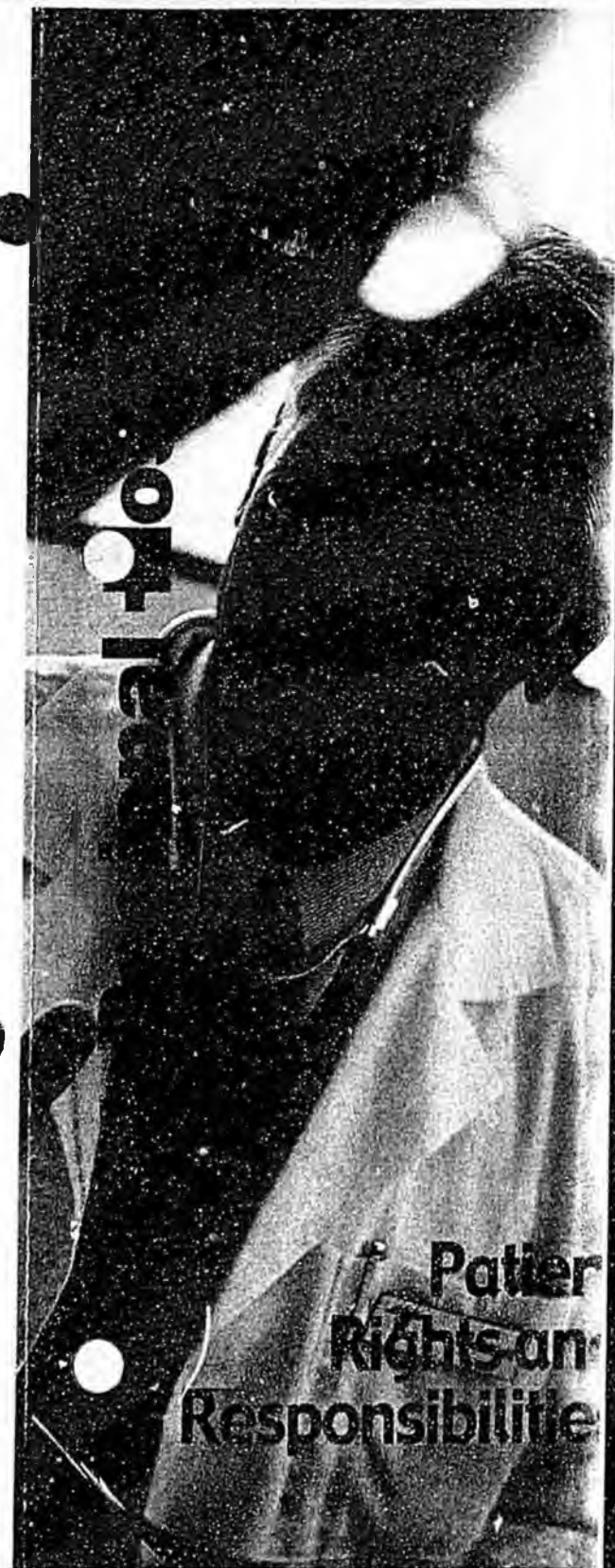
You also may address your concerns to: Administrator, Office of Health Facilities Licensing and Certification, Department of Health and Social Services, 4730 Business Park Blvd. Suite #18, Anchorage, Alaska 99503-7137 or phone 907-561-8081.

Medicare and Medicaid beneficiaries may contact the Beneficiary hotline at 1-800-445-6941

#### **Bartlett Regional Hospital**

3260 Hospital Drive, Juneau, Alaska 99801  
907-796-8900

Web site: [www.bartletthospital.org](http://www.bartletthospital.org)





# Patient Rights and Responsibilities

## Patient Rights

As a patient at Bartlett Regional Hospital you have the right to:

- Become informed of your rights as patient in advance of receiving care. You, the patient may appoint a representative to receive this information should you so desire.
- Exercise these rights without regard to sex or cultural, economic, educational or religious background or the source of payment for care.
- Considerate and respectful care, provided in a safe environment, free from all forms of abuse or harassment.
- Appropriate assessment and ongoing reassessment and management of pain.
- Remain free from seclusion or restraints of any form that are not medically necessary or are used as a means of coercion, discipline, convenience or retaliation by staff.
- Know the name of the physician who has primary responsibility for coordinating your care and the names and professional relationships of other physicians and healthcare providers

who will care for you.

- Receive information from your physician about your illness, course of treatment, outcomes of care (including unanticipated outcomes), and his/her prospects for recovery in terms that you can understand.
- Receive as much information about any proposed treatment or procedure as you may need in order to give informed consent or to refuse the course of treatment. Except in emergencies, this information:
  - a. Shall include a description of the procedure or treatment,
  - b. Shall include the medically significant risks involved in the treatment, alternate course of treatment or non-treatment and the risks involved in each and
  - c. Shall include the name of the person who will carry out the procedure or treatment.
- Participate in the development and implementations of your plan of care and actively participate in decisions regarding your medical care. To the extent permitted by law, this includes



the right to request and/or refuse treatment.

- Formulate advance directives regarding your healthcare, and have hospital staff and practitioners who provide care in the hospital comply with these directives (to the extent provided by state laws and regulations).
- Have a family member or representative of your choice notified promptly of your admission to the hospital.
- Have your personal physician notified promptly of your admission to the hospital.
- Privacy concerning your medical care program. Case discussion, consultation, examination and treatment are confidential and should be conducted discretely. You have the right

to be advised as to the reason for the presence of any individual involved in your healthcare.

- Confidential treatment of all communications and records pertaining your care and your stay in the hospital. Your written permission will be obtained before your medical record can be made available to anyone not directly concerned with your care.
- Access to information contained your medical record within a reasonable time frame.
- Reasonable responses to any reasonable request you may make for vice.
- Leave the hospital even against the advice of your physician.
- Reasonable continuity of care.
- Be advised of the hospital grievance process, should you wish to communicate a concern regarding the quality of the care you receive or if you feel that a determined discharge date is premature.
- Be advised if the hospital or your personal physician proposes to engage in or perform human experimentation affecting your care or treatment. You have the right to refuse to participate in such research projects.
- Be informed by your physician of



# DURABLE POWER OF ATTORNEY FOR HEALTH CARE

## Section 1. DESIGNATION OF AGENT

I \_\_\_\_\_ (Principal), residing

at \_\_\_\_\_  
Street Address City State Zip

hereby appoint: \_\_\_\_\_  
Name

\_\_\_\_\_  
Street Address City State Zip

Work Phone

Home Phone

as my agent with the powers set out below.

If the agent named above is unable or unwilling to serve or continue to serve, then I appoint the following agent(s) to serve with the same powers:

First Alternate:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Street Address City State

\_\_\_\_\_  
Work Phone Home Phone

Second Alternate:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Street Address City State

\_\_\_\_\_  
Work Phone Home Phone

## Section 2. STATEMENT OF POWERS

I hereby grant to my Agent named above full power and authority to make health care decisions on my behalf when I have been determined to be incapable of making an informed decision on my own behalf. My Agent is to have the same authority to make health care decisions for me as I would have had if I had the capacity to make them. My Agent's authority is effective as long as I am incapable of making an informed decision.

The powers of my Agent shall include, but not be limited to, the following:

a. To consent to, refuse, or withdraw consent to any or all types of medical care, treatment, surgical procedures, diagnostic procedures, medication and the use of mechanical or other procedures related to my health care.

This authorization specifically includes the power to consent to pain relieving medication agents for the relief of severe and intractable pain.

b. To request, review and receive any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records and to consent to the disclosure of this information.

c. To employ and/or discharge my health care providers.

d. To authorize my admission to or discharge (including transfer to another facility) from any hospital, nursing home, or other medical care facility.

e. To take any lawful actions that may be necessary to carry out these decisions, including the granting of releases of liability to medical providers.

**Section 3. ADDITIONAL PROVISIONS**

(Please initial one of the following:)

\_\_\_\_\_ I have executed a separate "Living Will."

\_\_\_\_\_ I have NOT executed a "Living Will."

**Section 4. NOTICE TO THIRD PARTIES**

Any third party who relies on the reasonable representations of my agent as to a matter relating to a power granted this power of attorney, will not incur any liability to me or to my heirs, assigns, or estate as a result of permitting my agent to exercise the authority granted by this power of attorney.

IN WITNESS WHEREOF, I have hereunto signed my name this day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
(Signature of Principal)

\*\*\*\*\*

STATE OF ALASKA     )  
  )ss  
\_\_\_\_ JUDICIAL DISTRICT)

The foregoing instrument, for the purposes stated therein, was signed, subscribed, sworn to and acknowledged before me by \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_, Alaska.

\_\_\_\_\_  
Signature of person taking acknowledgement                      Title or rank                      Serial number, if any; date commission expires

# "ALASKA LIVING WILL DECLARATION"

I, \_\_\_\_\_  
(Name of Declarant)

of \_\_\_\_\_  
(Address of Declarant)

declare that if I should have an incurable or irreversible condition that will cause my death within a relatively short time, it is my desire that my life not be prolonged by administration of life-sustaining procedures. If my condition is terminal and I am unable to participate in decisions regarding my medical treatment, I direct my attending physician to withhold or withdraw procedures that merely prolong the dying process and are not necessary to my comfort or to alleviate pain.

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\_\_\_\_\_ Other directives:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## ORGAN DONATION (OPTIONAL)

In the event of my death, I donate the following part(s) of my body for the purposes identified in AS 13.50.020:

### Tissue:

\_\_\_\_\_ Eyes  
\_\_\_\_\_ Bone and connective tissue  
\_\_\_\_\_ Skin  
\_\_\_\_\_ Heart  
\_\_\_\_\_ Other: \_\_\_\_\_

Limitations: \_\_\_\_\_

### Organ:

\_\_\_\_\_ Heart  
\_\_\_\_\_ Kidney(s)  
\_\_\_\_\_ Liver  
\_\_\_\_\_ Lung(s)  
\_\_\_\_\_ Pancreas  
\_\_\_\_\_ Other: \_\_\_\_\_

Signed this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Date of Birth)

\_\_\_\_\_  
(Social Security Number)



## PATIENT'S RIGHTS BARTLETT REGIONAL HOSPITAL

Bartlett Regional Hospital will abide by the following Patient's rights (as set forth in 7 AAC 12.890, 42 CFR Part 482; AS 18.05.040; AS 18.20.10)

While you are a patient at Bartlett Regional Hospital, we will do our best to respect your personal rights. You or your representative may expect:

1. Considerate and respectful care, that recognizes your dignity and individuality.
2. Protection of your right to privacy and confidentiality of information related to your medical care; including access to a telephone to make and receive confidential calls; and the ability to send or receive unopened correspondence.
3. Clear explanations of your condition, proposed treatments or procedures, the benefits or drawbacks of the proposed treatment, expected recuperation and the likelihood of success of treatments or procedures.
4. Willingness to let you and your family take the lead in decision making regarding your care and treatment.
5. A safe and secure setting free from abuse/ harassment.
6. Compliance with your request to refuse treatment or to have medically necessary and appropriate treatment provided.
7. Our compliance with your advance directives, per Alaska Law.
8. Freedom from any type of discrimination on the basis of age, race, color, sex, creed, national origin, martial status, sexual orientation or disability.
9. Access to protective services, from counseling to guardianship, to help you reach your maximum level of independence.
10. Access to an interpreter, your own of the hospitals.
11. Services of the hospital chaplain when you request them.
12. Assistance in obtaining financial aid or counseling, if needed.
13. Attentive, courteous response to any concerns or complaints you and your family may have.
14. Freedom from seclusion or restraints that are not medically necessary.
15. Access to the information contained in your medical record within a reasonable timeframe.
16. Upon request, information regarding services that are available in the hospital and their cost, including any costs for services or personal care items not covered by the facility's basic per diem rate or not covered under title XVII or Title XIX of the Social Security Act.
17. To have the rights of minors assured by prompt and consistent interpretation of patient rights to a patient or legal guardian.

### **PATIENT AND FAMILY GRIEVANCE**

Patients and their families have the right to file a grievance regarding events occurring during their stay at BRH when a complaint is not mutually resolved. The Patient and Family Grievance Policy will be followed in the event of a grievance. In addition, you have the right to lodge a complaint with the Office of Health Facilities Licensing & Certification, Department of Health and Social Services, 4730 Business Park Blvd, Suite 18, Anchorage, Alaska 99503-7137, 907 561-8081. Your presentation of a complaint will not impact the future availability of care or services at BRH.

HB

29

**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/rokoberg/>



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716 WEST 4TH AVENUE, SUITE 300  
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PHONE: (907) 269-0117  
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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](mailto:Representative_Norman_Rokeberg@legis.state.ak.us)

**Memorandum**

To: Senator Ralph Seekins, Chair  
Senate Judiciary Committee

From: Representative Norman Rokeberg

A handwritten signature in black ink, appearing to read "Norman Rokeberg".

Date: April 15, 2004

Re: CSSSHB 29 (JUD) am

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This is a request for a Senate Judiciary Hearing next week for CSSSHB 29 (JUD) am. This is pending a referral from Senate Labor & Commerce. I will submit an updated bill packet with all of the requisite information when the bill has been referred.

If you have any questions, please contact my office.

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES



# Alaska State Legislature

THE HONORABLE SENATORS OF  
SENATE JUDICIARY

Please enter into the record my testimony to the \_\_\_\_\_  
committee name

committee on HB 29, dated 4/28/04  
bill/subject

I HAVE GRAVE CONCERNS ON THE ULTIMATE HARM HB 29  
WILL DO TO THE ALASKAN HOME BUYING & HOME SELLING PUBLIC.

1. The state of Alaska requires only 20 hours of education and the passing of a test to be licensed to write a contract, negotiate, etc. for the largest purchase or sale that usually anyone will make in their entire lives - the biggest financial decision. That in itself is a ludicrous amount of education required and already puts the public in jeopardy of responsibilities required by the Common Law of Agency.
2. Then, HB 29 abrogates the Common Law of Agency with the excuse that Agency is confusing (timing, of course, was just after Mehner practiced undisclosed dual agency and received a \$200k fine - before punitive damages. Prior to that agency was understood and there was no problem, but right after that decision, agency became very confusing to both the agents and the public. That is what the proponents of this bill would like you to believe). So, fiduciary duties created by the common law of agency are abrogated - ie diligence, confidentiality, obedience, loyalty, etc.
3. Then, HB 29 creates that buzzword Designated Agency - same as dual agency - just undisclosed. Oh, and if you didn't like that one, HB 29 also creates a neutral facilitator position.
4. Further, HB 29 limits the liability against brokerages and agents to actual damages (almost impossible to prove) and reduces recourse thru the legal system for the consumers.

A BILL THAT ABROGATES COMMON LAW OF AGENCY (REDUCING  
CONFIDENTIALITY, ACCOUNTABILITY, DILIGENCE, ETC, COUPLED  
WITH CONTINUED "UNDISCLOSED DUAL DESIGNATED

Signed: \_\_\_\_\_  
 Testifier AGENCY & LIMITATION OF LIABILITY FOR AGENTS  
 \_\_\_\_\_ - LINDA S. GARRISON IS BAD FOR  
 Representing (Optional) SELF THE CONSUMER,  
 Address P.O. Box 190727 Anchorage, AK  
 Phone No. (907)-272-8937 THANK-YOU.

# 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/>



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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](mailto:Representative_Norman_Rokeberg@legis.state.ak.us)

**Real Property Transactions/Licensees**  
Sponsor Statement for SCS CSSSHB 29 (L&C)  
Last Updated: April 28, 2004

### **“An Act relating to real estate licenses and real estate transactions; and providing for an effective date.”**

Alaskan consumers and our state's real estate industry have not been well served by the current agency provision of the real estate statute. Practical application of this statute is unworkable. SCS CSSSHB (L&C) has been proposed to address the problems created for the real estate licensees by the current statute and to provide consumers with protection and written information about the duties and obligations of a real estate licensee.

Working with an Agency Task Force, formed by the real estate industry, I have developed suggested changes to the statutes that would give real estate licensees some guidelines and standards for operating procedures. SCS CSSSHB 29 (L&C) is the product of their hard work.

The main changes to law contained in SCS CSSSHB 29 (L&C) are:

- Replacing agency with the types of relationships a licensee may have with a buyer and/or seller.
- Allowing a licensee to work with both the buyer and seller in the same transaction as a neutral licensee. This replaces “dual agency” and sets forth the duties of a neutral licensee explicitly.
- Specifying the duties owed by a real estate licensee in all relationships, as well as the duties owed by a licensee when representing an individual.
- Clarifying what acts do not constitute a conflict of interest.
- Allowing a buyer and seller to be represented by different licensees within the same office, without creating a dual agency transaction.
- Requiring a broker to adopt a written policy identifying and describing relationships into which their licensee may enter.
- Requiring the Real Estate Commission to adopt regulations that establish:
  - Guidelines to assist brokers in adopting their written policies.
  - A written consumer information pamphlet, to be paid for by the brokers, outlining the duties of the types of licensee relationships.

This legislation informs and protects consumers and assists the commerce of our state. This bill is fully endorsed by the real estate community.

Your positive consideration of this legislation is appreciated.

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSSSHB 29(L&C)  
 (H) Publish Date: 2/5/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
 Title Real Property Transactions/Licensees RDU Occupational Licensing (117)  
 Component Occupational Licensing  
 Sponsor Representative Rokeberg  
 Requester House Labor and Commerce Component No. 2360

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

SSHB 29 makes changes to practices conducted by real estate licensees. New funds are not required to implement these changes.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144  
 Division Occupational Licensing Date/Time 2/2/04 1:42 PM  
 Approved by: Edgar Blatchford, Commissioner Date 2/2/2004  
 Agency Department of Community & Economic Development

# LEGAL SERVICES

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

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

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 28, 2004

**SUBJECT:** Sectional summary of SCS CSSSHB 29(L&C)  
(Work Order No. 23-LS0189\C)

**TO:** Representative Norman Rokeberg  
Attn: Amanda

**FROM:** *TLB*  
Theresa L. Bannister  
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill, and the bill itself is the best statement of its contents.

**Section 1.** Provides legislative findings and intent for the bill.

**Section 2.** Authorizes the real estate commission to investigate and take administrative action when there is a violation of the new article proposed by this bill.

**Section 3.** Requires a licensee with a conflict to disclose the conflict to persons adversely affected by the conflict and their licensees and to confirm the conflict in writing to the persons or their licensees as soon as possible after identification of the conflict. Requires a licensee to advise the person verbally of the conflict and to begin any written statement of the conflict with certain words.

**Section 4.** Limits the application of AS 08.88.396 to acts that occur before the effective date of this new subsection.

**Section 5.** Removes AS 08.88.396 from the list of sections whose violation triggers a misdemeanor penalty.

**Section 6.** Establishes a new article relating to licensee relationships and duties.

Sec. 08.88.600. Identifies the types of relationships a licensee may have with parties to real estate transactions.

Sec. 08.88.605. Allows for a licensee to have different licensee relationships with a party in separate transactions if the licensee complies with the new article when establishing the relationships.

Sec. 08.88.610. Allows a licensee to obtain preauthorization to act as a neutral licensee. Requires a licensee to obtain written consent to act as a neutral licensee in certain circumstances before the licensee shows the real estate.

Sec. 08.88.615. Identifies the duties that a licensee owes to each person to whom the licensee provides specific assistance.

Sec. 08.88.620. Identifies the duties that a licensee owes to a person whom the licensee represents.

Sec. 08.88.625. With two exceptions, prohibits a licensee or a person to whom a licensee provides specific assistance from waiving the duties identified under secs. 08.88.615 and 08.88.620.

Sec. 08.88.630. Describes the duties that a licensee does not owe to a person.

Sec. 08.88.635. Describes certain acts that do not amount to adverse or detrimental acts by a licensee, to conflicts of interest for the licensee, or breaches of the duty of confidentiality by a licensee.

Sec. 08.88.640. Provides some guidelines for the designated licensee relationship. Limits the persons to whom the duties, obligations, and responsibilities of the relationship extend and to whom knowledge is imputed. Allows a broker to have different designated licensees working for different parties in the same transaction. Allows a designated licensee to represent or provide specific assistance to the same person in different transactions even though the person has a different interest in each transaction.

Sec. 08.88.645. Identifies the duties of a neutral licensee.

Sec. 08.88.650. States that a neutral licensee's knowledge or information about one client is not imputed to other clients or to other licensees working for the same broker.

Sec. 08.88.655. Establishes certain rules relating to the compensation received by a broker. Allows a broker to be compensated by any party to a transaction, by a third party, or by parties splitting the compensation. States that payment will not be construed as establishing a relationship. In specified circumstances requires a licensee to disclose which party is anticipated to compensate the brokers. Requires the contract to indicate who is compensating the brokers.

Sec. 08.88.660. Establishes when a licensee relationship begins and ends, the effect of termination on other contractual rights, and the licensee's duties after termination.

Sec. 08.88.665. States that a seller, buyer, lessor, or lessee is not liable for an act, error, or omission of a licensee that arises out of the licensee relationship, except in two

Representative Norman Rokeberg  
April 28, 2004  
Page 3

described circumstances.

Sec. 08.88.670. Establishes that, unless agreed to otherwise in writing, a seller, buyer, lessor, or lessee is not considered to know a fact known by the person's licensee unless the fact is actually known by the person. Establishes that, unless agreed to otherwise in writing, a licensee does not have knowledge or notice of a fact that is not actually known by the licensee.

Sec. 08.88.675. States that the new article abrogates the common law of agency in real estate transactions to the extent the common law is inconsistent with the new article.

Sec. 08.88.680. Prohibits a person from bringing an action against a neutral licensee for making a required or permitted disclosure. Addresses a plaintiff's remedy in a civil action against a licensee for failing to comply with the new article.

Sec. 08.88.685. Requires a broker to adopt a written policy identifying and describing the relationships the broker and the broker's licensees may engage in. Directs the real estate commission to adopt regulations relating to broker guidelines, the commission's pamphlet on licensee duties, and a broker's supervision of licensees. Requires brokers to produce and pay the production costs of the pamphlet.

Sec. 08.88.690. Establishes three exemptions from the article's signature requirements.

Sec. 08.88.695. Defines certain terms for the new article.

**Section 7.** Provides authority for the real estate commission to adopt regulations before the rest of the Act takes effect (because this section take effect before the rest of the Act; see bill sec. 9).

**Section 8.** Makes most of the bill effective January 1, 2005.

**Section 9.** Gives sec. 7 of this Act an immediate effective date.

If I may be of further assistance, please advise.

TLB:mdr  
04-198.mdr

*Alaska Stat. § 34.70.010-§34.7.200*

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\*\*\* CURRENT THRU ALL 2003 SESSIONS \*\*\*

\*\* ANNOTATIONS CURRENT THRU OPINIONS DECIDED AS OF JANUARY 20, 2004 \*\*

TITLE 34. PROPERTY  
CHAPTER 70. DISCLOSURES IN RESIDENTIAL REAL PROPERTY TRANSFERS

**GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION**

*Alaska Stat. § 34.70.010 (2004)*

Sec. 34.70.010. Disclosures in residential real property transfers

Before the transferee of an interest in residential real property makes a written offer, the transferor shall deliver by mail or in person a completed written disclosure statement in the form established under AS 34.70.050. Delivery to the spouse of the transferee constitutes delivery to the transferee unless the transferor and the transferee agree otherwise before the delivery.

**HISTORY:** (§ 1 ch 115 SLA 1992)

*Alaska Stat. § 34.70.020 (2004)*

Sec. 34.70.020. Termination of offer

If a disclosure statement or material amendment is delivered to the transferee after the transferee has made a written offer, the transferee may terminate the offer by delivering a written notice of termination to the transferor or the transferor's agent within three days after the disclosure statement or amendment is delivered in person or within six days after the disclosure statement or amendment is delivered by deposit in the mail.

**HISTORY:** (§ 1 ch 115 SLA 1992)

*Alaska Stat. § 34.70.030 (2004)*

Sec. 34.70.030. Liability after disclosure

A transferor is not liable for a defect or other condition in the real property or the real property interest being transferred if the transferor discloses the existence of the defect or condition in the disclosure statement.

**HISTORY:** (§ 1 ch 115 SLA 1992)

Alaska Stat. § 34.70.040 (2004)

Sec. 34.70.040. Subsequent events and approximations

(a) If information in a disclosure statement becomes inaccurate as a result of an act or agreement after the disclosure statement is delivered to the transferee, the resulting inaccuracy does not violate this chapter and the transferor is required to deliver an amendment for the disclosure statement to the transferee.

(b) If an item that is required in the disclosure statement is unknown or is unavailable to the transferor, and if the transferor or the transferor's agent has made a reasonable effort to ascertain the information, the transferor may insert an approximation of the information. The approximation must be reasonable, clearly identified as an approximation, based on the best information available to the transferor or the transferor's agent, and not used to avoid the requirements of this chapter.

**HISTORY:** (§ 1 ch 115 SLA 1992)

Alaska Stat. § 34.70.050 (2004)

Sec. 34.70.050. Form of disclosure statement

The Real Estate Commission established under AS 08.88.011 shall establish the form of the disclosure statement required by AS 34.70.010. The disclosure statement must include a provision that notifies transferees

(1) that they are responsible for determining whether a person who has been convicted of a sex offense resides in the vicinity of the property that is the subject of the transferee's potential real estate transaction;

(2) where information about the location of convicted sex offenders can be obtained; and

(3) that they are responsible for determining whether, in the vicinity of the property that is the subject of the transferee's potential real estate transaction, there is an agricultural facility or agricultural operation that might produce odor, fumes, dust, blowing snow, smoke, burning, vibrations, noise, insects, rodents, the operation of machinery including aircraft, and other inconveniences or discomforts as a result of lawful agricultural operations.

**HISTORY:** (§ 1 ch 115 SLA 1992; am § 54 ch 45 SLA 1998; am § 4 ch 28 SLA 2001)

Alaska Stat. § 34.70.060 (2004)

Sec. 34.70.060. Good faith

A person who makes a disclosure or performs an act under this chapter shall do so in good faith.

**HISTORY:** (§ 1 ch 115 SLA 1992)

Alaska Stat. § 34.70.070 (2004)

Sec. 34.70.070. Effect on other required disclosures

The requirements of this chapter do not affect other obligations for disclosure required by law.

**HISTORY:** (§ 1 ch 115 SLA 1992)

Alaska Stat. § 34.70.080 (2004)

Sec. 34.70.080. Written amendment

An amendment to a disclosure statement must be in writing.

**HISTORY:** (§ 1 ch 115 SLA 1992)

Alaska Stat. § 34.70.090 (2004)

Sec. 34.70.090. Failure to comply

(a) A transfer that is subject to this chapter is not invalidated solely because a person fails to comply with this chapter.

(b) A person who negligently violates this chapter or fails to perform a duty required by this chapter is liable to the transferee for the amount of the actual damages suffered by the transferee as a result of the violation or failure.

(c) A person who wilfully violates this chapter or fails to perform a duty required by this chapter is liable to the transferee for up to three times the actual damages suffered by the transferee as a result of the violation or failure.

(d) In addition to the damages allowed under (b) or (c) of this section, a court may also award the transferee costs and attorney fees to the extent allowed under the rules of court.

**HISTORY:** (§ 1 ch 115 SLA 1992)

Alaska Stat. § 34.70.110 (2004)

Sec. 34.70.110. Waiver by agreement

This chapter does not apply to the transfer of an interest in residential real property if the transferor and transferee agree in writing that the transfer will not be covered under this chapter.

**HISTORY:** (§ 1 ch 115 SLA 1992)

Alaska Stat. § 34.70.120 (2004)

Sec. 34.70.120. Exemption for first sales

This chapter does not apply to the transfer of an interest in residential real property if the transfer is the first transfer of the property and if the property has never been occupied.

**HISTORY:** (§ 1 ch 115 SLA 1992)

Alaska Stat. § 34.70.200 (2004)

Sec. 34.70.200. Definitions

In this chapter,

(1) "disclosure statement" means the disclosure statement required by AS 34.70.010;

(2) "real property" includes a unit in real property subject to AS 34.07 or AS 34.08;

(3) "residential real property" means real property whose primary purpose is to provide a single-family dwelling, or two single-family dwellings in one building;

(4) "transfer" means transfers by sale, exchange, installment land sale contract, lease with an option to purchase, other option to purchase, or a ground lease coupled with improvements.

**HISTORY:** (§ 1 ch 115 SLA 1992)

**State of Alaska**  
**Residential Real Property Transfer Disclosure Statement**

Prepared in compliance with Alaska Statute (AS) 34.70.010 - 34.70.200

**General Information**

AS 34.70.010 requires that before the Transferee/Buyer (hereafter referred to as **Buyer**) of an interest in residential real property makes a written offer, the Transferor/Seller (hereafter referred to as **Seller**) must deliver a completed written disclosure form. This disclosure statement is in compliance with AS 34.70.010. It concerns the residential real property\* located in the \_\_\_\_\_ Recording District, \_\_\_\_\_ Judicial District, State of Alaska.

Legal Description: \_\_\_\_\_

Property Address/City/Other: \_\_\_\_\_

\* Residential real property means any single family dwelling, or two single family dwelling units under one roof, or any individual unit in a multi-unit structure or common interest ownership community whose primary purpose is to provide housing. AS 34.70.200(2) and (3).

AS 34.70.040(b) provides that if an item that must be completed in the disclosure statement is unknown or is unavailable to the Seller, and if the Seller or Seller's agent has made a reasonable effort to ascertain the information, the Seller may make an approximation based on the best information available to the Seller or Seller's agent. It must be reasonable, clearly labeled as an approximation, and not used to avoid the disclosure requirements of AS 34.70.010 - AS 34.70.200.

All disclosures made in this statement are required to be made in good faith (AS 34.70.060). The Seller is required to disclose defects or other conditions in the real property or the real property interest being transferred. To comply, disclosure need not include a search of the public records, nor does it require a professional inspection of the property.

If the information supplied in this disclosure statement becomes inaccurate as a result of an act or agreement after the disclosure statement is delivered to the Buyer, the Seller is required to deliver an amendment to the disclosure statement to the Buyer. An addendum/amendment form for that purpose may be attached to this disclosure statement.

**Exemption for First Sale:** Under AS 34.70.120, the first transfer of an interest in residential real property that has never been occupied is exempt from the requirement for the Seller to complete the Disclosure Statement.

**Waiver by Agreement:** Under AS 34.70.110, completion of this disclosure statement may be waived when transferring an interest in residential real property if the Seller and Buyer agree in writing. Signing this waiver does not affect other obligations for disclosure.

**Violation or Failure to Comply:** A person who negligently violates or fails to perform a duty required by AS 34.70.010 - AS 34.70.200 is liable to the Buyer for actual damages suffered by the Buyer as a result of the violation or failure. If the person willfully violates or fails to perform a duty required by AS 34.70.010 - AS 34.70.200, the Seller is liable to the Buyer for up to three times the actual damages. In addition to the damages, a court may also award the Buyer costs and attorney fees to the extent allowed under the rules of court.

Seller's Initials \_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Date

\_\_\_\_\_  
Property Address

\_\_\_\_\_  
Buyer's Initials

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Date



**Documentation:** Check the documents for the subject property that the seller has available for review:

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Current Engineer/Property Inspection Report(s) completed within the last 24 months | <input type="checkbox"/> Written Agreements with Adjacent Property Owners | <input type="checkbox"/> Party Wall Agreement        |
| <input type="checkbox"/> Preliminary Title Report   | <input type="checkbox"/> Energy Rating Certificate                        | <input type="checkbox"/> Lease/Rental Agreement      |
| <input type="checkbox"/> As-Built Survey  | <input type="checkbox"/> Resale Certificate                               | <input type="checkbox"/> Soils Test                  |
|   | <input type="checkbox"/> Water Rights Certificate                         | <input type="checkbox"/> Well Log and Water Tests    |
|   | <input type="checkbox"/> Deed Restrictions                                | <input type="checkbox"/> Hazardous Materials Test(s) |
|   | <input type="checkbox"/> Subdivision Covenants/Restrictions               | <input type="checkbox"/> Other _____                 |
|   |   | <input type="checkbox"/> Other _____                 |

**Additional Information:**

Supply information for the following items:

Yes No

➤ **Drainage:**

- ◆ Are you aware of ever having any water in the crawl space, basement, or lower level? .....  Yes  No  
 If Yes, how has the problem been resolved?  
 Sump Pump(s)    Curtain Drain    Rain Gutter Extension    Other \_\_\_\_\_  
 When was problem resolved? \_\_\_\_\_  
 Location of each sump pump: \_\_\_\_\_  
 To where does the water drain after it leaves the sump pump? \_\_\_\_\_  
 If gutters, where do downspouts discharge? \_\_\_\_\_
- ◆ Is there a floor drain in the structure, including garage? .....  Yes  No  
 If Yes, where is it located and where does it drain to? \_\_\_\_\_

➤ **Roof or Other Leakage:**

- Type:  Asphalt/Composition Shingle    Cedar Shake    Built-up    Metal    Other \_\_\_\_\_  
 Age: \_\_\_\_\_ years.
- ◆ Are you aware of any ice damming on the roof? .....  Yes  No  
 If Yes, provide location. \_\_\_\_\_
  - ◆ Are you aware of any water leaking into the home? i.e., windows, lights, fireplace, etc.....  Yes  No  
 If Yes, provide location. \_\_\_\_\_

➤ **Fireplace and/or Woodstove:** Date chimneys last cleaned? \_\_\_\_\_ Who cleaned? \_\_\_\_\_

➤ **Heating System(s):**

- Mark all types that apply:  Hot Water Baseboard    Forced Air    Radiant Heat    Electrical Heat  
 Wood Stove    Other \_\_\_\_\_
- Age: \_\_\_\_\_ years.   Last Cleaned: \_\_\_\_\_   Last Inspected: \_\_\_\_\_
- Source:  Natural Gas    Electric    Propane Tank    Wood    Coal  
 Oil with \_\_\_\_\_ gallon storage which is  Buried    Above Ground    Other \_\_\_\_\_
- Age of Tank? \_\_\_\_\_ years

➤ **Hot Water Heater:**

Age: \_\_\_\_\_ years.   Capacity: \_\_\_\_\_ gallons.   Type:  Gas    Electric    Other \_\_\_\_\_

➤ **Water Supply:**

Type:  Public    Private    Community    Cistern    Other \_\_\_\_\_

- ◆ Have you had any problems with your water supply?.....  Yes  No  
 If Private: Well Depth: \_\_\_\_\_ feet. Flow Rate: \_\_\_\_\_ gallons per minute.
- ◆ Has the water supply been tested in the past 12 months? .....  Yes  No  
 If Yes, attach all documentation from all tests.
- ◆ Has the well failed while you have owned the property? .....  Yes  No
- ◆ Have you ever had a well pump problem or failure?.....  Yes  No
- ◆ Do you supply water to, or receive water from others?.....  Yes  No  
 If Yes, is there a recorded agreement?.....  Yes  No
- ◆ Do you have a water rights certificate for this property?.....  Yes  No

Seller's Initials \_\_\_\_\_ Date \_\_\_\_\_ Property Address \_\_\_\_\_ Buyer's Initials \_\_\_\_\_ Date \_\_\_\_\_

**Additional Information (Continued):**

➤ **Sewerage System:**

**Yes**      **No**

Type:     Public     Private     Community     Other \_\_\_\_\_

• Does your sewerage system have a lift station?.....      

If Private:     Septic Tank     Holding Tank     Other: \_\_\_\_\_

Drainfield System:     Bed     Trench     Mound     Pit     Crib     Other \_\_\_\_\_

Innovative Sewerage System:     Intermittent Sand Filter     Biocycle     Recirculating Upflow Filter  
 Secondary sewage treatment plant     Other \_\_\_\_\_

Location of sewerage system: \_\_\_\_\_

• Has the sewerage system failed while you owned the property?.....         
 If Yes, explain: \_\_\_\_\_

• Have you had any work maintenance or inspections done on the sewerage system during your ownership?.....         
 If Yes, explain: \_\_\_\_\_

Approval Source (and date if known): \_\_\_\_\_

• Are you aware of any abandoned sewage systems, leachfields, cribs, etc. on the property?.....      

➤ **Freeze-ups:**

• Have you had any frozen water lines, sewer lines, drains, or heating systems?.....      

➤ **Average Annual Utility Costs:**

Gas	\$ _____	Company/Source: _____
Electric	\$ _____	Company/Source: _____
Oil	\$ _____ /Gallons: _____	Company/Source: _____
Propane	\$ _____	Company/Source: _____
Wood	\$ _____	Company/Source: _____
Coal	\$ _____	Company/Source: _____
Water	\$ _____	Company/Source: _____
Sewer	\$ _____	Company/Source: _____
Refuse	\$ _____	Company/Source: _____
Other	\$ _____ \$ _____	Company/Source: _____

To the best of your knowledge, are you aware of any of the following conditions with respect to the subject property? If answer is "Yes," indicate the relevant item number and explain the condition on the Addendum/Amendment(s) To The Disclosure Statement.

➤ **Title:**

**Yes**      **No**

1. Do you know of any existing, pending, or potential legal action(s) concerning the property? .....
2. Do you know of any street or utility improvements planned that will affect the property?.....
3. Road maintenance provided by? \_\_\_\_\_
4. Is the property currently rented or leased? .....         
 If Yes, expiration date: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_
5. Is there a homeowner's association (HOA) for the property? .....         
 If Yes, HOA name: \_\_\_\_\_ HOA Telephone: \_\_\_\_\_  
 Mandatory     Voluntary     Inactive    Dues Amount: \$ \_\_\_\_\_

➤ **Setbacks/Restrictions:**

6. Have you been notified of any proposed zoning changes for the property?.....
7. Are you aware of features of the property shared in common with adjoining property owners, such as walls, fences, and driveways, whose use or responsibility for maintenance may affect the property?.....
8. Are there subdivision conditions, covenants, or restrictions? .....
9. Are you aware of any violations of building codes, zoning, setback requirements, or subdivision covenants on this property?.....
10. Are you aware of any nonconforming uses of this property?.....
11. Are you aware of any borough, city, deed, or private restrictions on the use of the property?.....
12. Are you aware of any variances being applied for, or granted, on this property?.....
13. Are you aware of any easements on the property? .....

**Additional Information (Continued):**

➤ **Encroachments:**

Yes      No

14. Does anything on your property encroach (extend) onto your neighbor's property? .....
15. Does anything on your neighbor's property encroach onto your property? .....

➤ **Environmental Concerns:**

16. Are you aware of any substances, materials, or products that may be an environmental hazard such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, and contaminated soil or water on the subject property? .....
17. Are you aware of any underground storage tanks on this property? Number of tanks: \_\_\_\_\_ .....
18. Are you aware if the property is in an avalanche zone and/or flood plain? .....
19. Are you aware of any damage to the property or any of the structures from flood, landslide, avalanche, high winds, fire, earthquake, or other natural causes? .....
20. Have you ever filed an insurance claim for any environmental damage to the property? .....
21. Are you aware of a waste disposal site or a gravel pit within a one-mile radius of the property? .....

➤ **Soil Stability:**

22. Are you aware of any grading, excavation or filling on the property or any portion of the property? .....
23. Are you aware of any permafrost or other soil problems which have caused settling, slippage, sliding, or heaving? .....
24. Are you aware of any flooding, drainage, or grading problems that affect this property? .....

➤ **Construction, Improvements/Remodel:**

25. Have you remodeled, made any room additions, structural modifications or improvements? .....
- If Yes, please describe. Was the work performed with necessary permits in compliance with building codes? .....
- Was a final inspection performed? .....
26. Has a fire ever occurred in the structure? .....

➤ **Pest Control or Wood Destroying Organisms:**

27. Are you aware of any termites, ants, insects, squirrels, vermin, rodents, etc. in the structure? .....
- a. If Yes, what type? \_\_\_\_\_
- b. If Yes, where? \_\_\_\_\_
28. Has there been damage in the past resulting from termites, ants, insects, squirrels, rodents, etc. in the structure? .....
- a. If Yes, when? \_\_\_\_\_
- b. If Yes, what type? \_\_\_\_\_
- c. If Yes, where? \_\_\_\_\_
- d. If Yes, describe what was done to resolve the problem: \_\_\_\_\_

➤ **Other:**

29. **Pets**
- a. Have there been any pets/animals in the house? .....
- b. If Yes, what kind? \_\_\_\_\_
30. **Noise**
- a. Are you aware of any noise or sound disturbances that affect the property, including but not limited to, airplanes, trains, dogs, traffic, race tracks, neighbors, etc.? .....
- b. If Yes, explain: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

I/We have completed this disclosure statement according to AS 34.70.010 - AS 34.70.200 and these instructions, and the statements are made in good faith and are true and correct to the best of my/our knowledge as of the date signed. I/We authorize any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated transfer of the property or interest in the property.

Seller: \_\_\_\_\_

Date: \_\_\_\_\_

Seller: \_\_\_\_\_

Date: \_\_\_\_\_

### Buyer's Notice and Receipt of Copy

**Transferee (Buyer) Awareness Notice:** Under AS 34.70.050, Transferee (Buyer) is independently responsible for determining whether a person who has been convicted of a sex offense resides in the vicinity of the property that is the subject of the Transferee's (Buyer's) potential real estate transaction. This information is available at the following locations: Alaska State Trooper Posts, Municipal Police Departments, and on the State of Alaska Information Center Internet site: [www.state.ak.us](http://www.state.ak.us), under Hot Topics for the "Registry/Sex Offenders."

**Transferee (Buyer) Awareness Notice:** Under AS 34.70.050, Transferee (Buyer) is independently responsible for determining whether, in the vicinity of the property that is the subject of the transferee's potential real estate transaction, there is an agricultural facility or agricultural operation that might produce odor, fumes, dust, blowing snow, smoke, burning, vibrations, noise, insects, rodents, the operation of machinery including aircraft, and other inconveniences or discomforts as a result of lawful agricultural operations.

The Buyer is urged to inspect the property carefully and to have the property inspected by an expert. Buyer understands that there are aspects of the property of which the Seller may not have knowledge and that this disclosure statement does not encompass those aspects. Buyer also acknowledges that he/she has read and received a signed copy of this statement from the Seller or the Seller's agent.

Buyer: \_\_\_\_\_

Date: \_\_\_\_\_

Buyer: \_\_\_\_\_

Date: \_\_\_\_\_

Seller's Initials \_\_\_\_\_ Date \_\_\_\_\_

Property Address \_\_\_\_\_

Buyer's Initials \_\_\_\_\_ Date \_\_\_\_\_



# Exemption For First Sale

Legal Description: \_\_\_\_\_

Property Address/City: \_\_\_\_\_

Under AS 34.70.120, the first transfer of an interest in residential real property that has never been occupied is exempt from the requirement for the Seller to complete the Disclosure Statement.

Buyer may wish to obtain inspections of the property and seek other professional advice.

★ ★ ★ ★ ★ ★ ★ ★

**Transferee (Buyer) Awareness Notice:** Under AS 34.70.050, Transferee (Buyer) is independently responsible for determining whether a person who has been convicted of a sex offense resides in the vicinity of the property that is the subject of the Transferee's (Buyer's) potential real estate transaction. This information is available at the following locations: Alaska State Trooper Posts, Municipal Police Departments, and on the State of Alaska Information Center Internet site: [www.state.ak.us](http://www.state.ak.us), under Hot Topics for the "Registry/Sex Offenders."

★ ★ ★ ★ ★ ★ ★ ★

**Transferee (Buyer) Awareness Notice:** Under AS 34.70.050, Transferee (Buyer) is independently responsible for determining whether, in the vicinity of the property that is the subject of the transferee's potential real estate transaction, there is an agricultural facility or agricultural operation that might produce odor, fumes, dust, blowing snow, smoke, burning, vibrations, noise, insects, rodents, the operation of machinery including aircraft, and other inconveniences or discomforts as a result of lawful agricultural operations.

★ ★ ★ ★ ★ ★ ★ ★

I certify that this is the first transfer of an interest in the property identified above and that the property has not been occupied before this transfer of interest.

Seller: \_\_\_\_\_

Date: \_\_\_\_\_

Seller: \_\_\_\_\_

Date: \_\_\_\_\_

Buyer: \_\_\_\_\_

Date: \_\_\_\_\_

Buyer: \_\_\_\_\_

Date: \_\_\_\_\_

Seller's Initials \_\_\_\_\_ / Date \_\_\_\_\_

Property Address \_\_\_\_\_

Buyer's Initials \_\_\_\_\_ / Date \_\_\_\_\_

# Waiver By Agreement

AS 34.70.110

Legal Description: \_\_\_\_\_

Property Address/City: \_\_\_\_\_

Under AS 34.70.110, completion of this disclosure statement may be waived when transferring an interest in residential real property if the Seller and Buyer agree in writing.

Parties may wish to obtain professional advice and/or inspection of the property.

\*\*\*\*\*

**Transferee (Buyer) Awareness Notice:** Under AS 34.70.050, Transferee (Buyer) is independently responsible for determining whether a person who has been convicted of a sex offense resides in the vicinity of the property that is the subject of the Transferee's (Buyer's) potential real estate transaction. This information is available at the following locations: Alaska State Trooper Posts, Municipal Police Departments, and on the State of Alaska Information Center Internet site: [www.state.ak.us](http://www.state.ak.us), under Hot Topics for the "Registry/Sex Offenders."

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**Transferee (Buyer) Awareness Notice:** Under AS 34.70.050, Transferee (Buyer) is independently responsible for determining whether, in the vicinity of the property that is the subject of the transferee's potential real estate transaction, there is an agricultural facility or agricultural operation that might produce odor, fumes, dust, blowing snow, smoke, burning, vibrations, noise, insects, rodents, the operation of machinery including aircraft, and other inconveniences or discomforts as a result of lawful agricultural operations.

\*\*\*\*\*

By law, completion of this disclosure statement may be waived when transferring an interest in residential real property if the Transferor (Seller) and the Transferee (Buyer) agree in writing. If both parties agree to waive the requirement to complete this disclosure statement, please sign below.

Seller: \_\_\_\_\_

Date: \_\_\_\_\_

Seller: \_\_\_\_\_

Date: \_\_\_\_\_

Buyer: \_\_\_\_\_

Date: \_\_\_\_\_

Buyer: \_\_\_\_\_

Date: \_\_\_\_\_

Seller's Initials

Date

Property Address

Buyer's Initials

Date

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## Your rights when dealing with a real estate licensee.

Adopted by the (date)

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Alaska Real Estate Commission

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The real estate industry has a significant effect on the economy of Alaska; therefore it is in the best interest of the public to put into law the relationships between real estate licensees and people who wish to use their services.

This brochure describes your legal rights in dealing with a real estate licensee. Please read it carefully before signing it or any document.

First, a definition for specific assistance:

*Includes but is not limited to, a) asking questions regarding confidential information for a real estate transaction; b) showing property selected for your specific needs or desires; c) preparing a written offer; d) entering into a personal services contract.*

*Specific assistance does not include: a) hosting an open house; b) casual conversation regarding real estate; c) receiving calls and electronic inquires on the licensee's advertisements; d) providing information regarding a piece of real estate; e) setting an initial appointment to show a piece of property; f) receiving unsolicited information from a buyer or lessee before or after disclosure of a real estate relationship.*

### Duties owed to you by the licensee in all relationships:

Unless additional duties are agreed to by you and the licensee in a written, signed document, and regardless of the type of licensee relationship, a licensee owes the following duties to each person to whom the licensee provides specific assistance

- 1 The exercise of reasonable skill and care
- 2 Honest and good faith dealing
- 3 The presentation of all written offers and other written communication in a timely manner. This is regardless if the real estate is subject to an existing contract, or if the person is already a party to an existing contract
- 4 Except as provided elsewhere in the law, the disclosure of all material information known by the licensee and not apparent or readily ascertainable to you regarding the physical condition of real estate if the information substantially adversely affects the real estate or your ability to perform your obligations in the real estate transaction or if the information would materially impair or defeat the purpose of the real estate transaction. *This disclosure requirement does not require the licensee to disclose a fact or suspicion that the real estate or neighboring real estate is or was the site of a murder, suicide, or other death, rape or other sexual crime, assault or other violent crime, burglary, illegal drug activity, gang-related activity, political activity, religious activity, anticipated development, alleged supernatural activity, or another act, occurrence, or use that*

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does not adversely affect the physical condition or title to the real estate. These disclosure requirements may not be considered to imply a duty to investigate a matter that the licensee has not agreed to investigate.

- 5 Accounting in a timely manner for all money and other property received from or on your behalf
- 6 Before the licensee provides specific assistance, they must obtain from you a signed document that discloses your relationship with that licensee
- 7 In addition to the above document, the licensee must provide you, when you sign an offer in a real estate transaction, a written statement that states who the licensee represents. That statement must be written in the contract.

**Duties owed by the licensee when they are representing you:**

Unless you both agree to additional duties in writing, the licensee who represents you, owes you the following duties. And they may not waive these duties to you.

- 1 Not taking action that they know is adverse or detrimental to your interest
- 2 Disclosure of a conflict of interest to you in a timely manner (Note: a conflict of interest is not showing you real estate not owned by you, or listing competing properties, the representation of more than one person by the same licensee or by different licensees working for the same broker; showing a property that you are interested in to others; acting as a neutral licensee; disclosing confidential information to the licensee's broker for the purpose of seeking advice or assistance)
- 3 Advising you to obtain expert advice on a matter that relates to the real estate transaction that is beyond their expertise
- 4 Not disclosing confidential information from or about you without your written consent, except under subpoena or another court order, even after termination of the relationship with you
- 5 If you are the seller or lessor, unless you agree in writing, making good faith and continuous efforts to find a buyer or lessee for the property, except that the licensee is not required to seek additional offers while the property is subject to an existing contract
- 6 If you are a buyer or lessee, unless you otherwise agreed to in writing, making a good faith and continuous effort to find real estate to buy or lease, except that the licensee is not obligated to seek additional property for you while you are a party to an existing contract or are they obligated to show you property for which there is not a written agreement to pay the licensee

I have read and acknowledge the above paragraph: \_\_\_\_\_ / \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

(Continued on page 3)

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**Duties not owed by the licensee:**

Unless otherwise agreed, a real estate licensee does not owe a duty to a person with whom the licensee has establish a license relationship to:

- 1 Conduct an independent inspection of the real estate that is the subject of your relationship
- 2 Conduct and independent investigation of a person's financial condition
- 3 Independently verify the accuracy or completeness of a statement made by a party to a real estate the transaction or by a person reasonably believed by the license to be reliable

*I have read and acknowledge the above paragraph:* \_\_\_\_\_ / \_\_\_\_\_  
*Date:* \_\_\_\_\_ *Time:* \_\_\_\_\_

**Designated licensee relationship:**

A broker may have a different designated licensee working for the seller or lessor, and for the buyer or lessee in the same real estate transaction without creating dual agency or a conflict of interest. Unless the broker is a designated licensee, the relationship established between you and designated licensee does not extend to the broker. The extent of the relationship between the designated licensee must be disclosed to you in the real estate transaction.

**Duties of a neutral licensee:**

Unless additional duties are agreed to in a written document signed by the neutral licensee and all parties, the duties of a neutral licensee (*when one licensee is working with both sides in the transaction*) are limited to the duties already established for a licensee and the following duties:

- 1 Not to take action that the neutral licensee knows is adverse or detrimental to the parties to the transaction or to whom the neutral licensee provides services
- 2 To disclose a conflict of interest in a timely manner
- 3 To advise all parties to obtain expert advice on a matter relating to the transaction that is beyond their expertise
- 4 Not to disclose without written consent confidential information to another party to whom the licensee is providing specific assistance (except under a subpoena or another court order, even after the relationship terminates)
- 5 Not to disclose without the consent of the person to whom the information relates, that someone is willing to pay more, or sell for less, or accept financing terms other than what is offered. A neutral licensee does not violate their duties if, with written consent, engages in the following conduct in a good faith effort to assist in reaching final agreement in a real estate transaction: a) analyzing, providing information on, or reporting on the merits of the transaction to each party;

(Continued on page 4)

(Continued from page 3)

b) discussing the price, terms, or conditions that each party would or should offer or accept; or c) suggesting compromises in the parties respective bargaining positions.]

In a neutral licensee relationship, the knowledge of information of the licensee about one client is not imputed to other clients or to other licensees who work for the same broker.

*I have read and acknowledge the above paragraphs:* \_\_\_\_\_ / \_\_\_\_\_  
*Date:* \_\_\_\_\_ *Time:* \_\_\_\_\_

**Compensation:**

A broker may be compensated by any party to a transaction, by a third party, or by one or more of the parties to the transaction splitting or sharing the commission. Compensation does not establish a relationship between the broker and the party who pays. Licensees must inform all parties to a transaction who is paying within the real estate contract.

**Duration of the relationship:**

A licensee's relationship with you begins when they provide specific assistance and continues until the earliest of the following events:

- 1 They complete the specific assistance
- 2 The relationship terms that you agreed to terminates
- 3 You and the licensee terminate by mutual agreement
- 4 One party gives notice to the other party terminating the relationship

The termination does not affect other contractual rights of the parties. And, except as otherwise agreed to in writing, after termination the licensee still has the duties for accounting for all money and other property received during the relationship and not disclosing confidential information.

**Vicarious liability:**

You are not liable for an act, error, or omission of a licensee that arises out of the licensee relationship unless you participated or authorized the act, error or omission and then only to the extent of the participation or authorizations and, except to the extent that you benefited for the act, error, or omission, and the court determines that it is highly probable that the person claiming damages would be unable to enforce a judgment against the licensee.

**Imputed knowledge and notice:**

Unless otherwise you agree in writing, you are not considered to have knowledge or notice of a fact known by a licensee of the other party, and conversely unless otherwise agreed to in writing, the licensee does not have knowledge or notice of a fact

(Continued on page 5)

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that is not actually known by the licensee.

**Causes of action:**

No one can bring an action against a neutral licensee for making a disclosure that is required or permitted by law. In a civil action for the failure of a licensee to comply with the provisions of these laws, the plaintiff's remedy is limited to the recovery of actual damages. You may still take any other action or pursue any other remedy to which you may be entitled under law.

**Policies, guidelines, and requirements:**

A broker must have a written policy that identifies and describes the relationships in which the broker and the licensees who work for them, practice. The broker has the policy available to the Real Estate Commission and to the public upon request.

**Exemption:**

When a licensee proceeds specific assistance to a governmental agency or to a corporation that issues publicly traded securities, the licensee is exempt from obtaining signatures called for within this law.

I hereby acknowledge receiving and reading this pamphlet on the type of relationships I may have with a real estate licensee (including a broker).

I understand and acknowledge that \_\_\_\_\_  
(licensee) of \_\_\_\_\_ (agency) will  
be working with me as a \_\_\_\_\_, until and  
unless the relationship is terminated or the status changes by prior  
mutual agreement.

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

THE  
L·A·W  
OF REAL ESTATE  
AGENCY

*This pamphlet describes your legal rights in dealing with a real estate broker or salesperson. Please read it carefully before signing any documents.*

THE FOLLOWING IS ONLY A BRIEF SUMMARY OF THE ATTACHED LAW:

**SECTION 1. DEFINITIONS.** Defines the specific terms used in the law.

**SECTION 2. RELATIONSHIPS BETWEEN LICENSEES AND THE PUBLIC.** States that a licensee who works with a buyer or tenant represents that buyer or tenant — unless the licensee is the listing agent, a seller's sub-agent, a dual agent, the seller personally or the parties agree otherwise. Also states that in a transaction involving two different licensees affiliated with the same broker, the broker is a dual agent and each licensee solely represents his or her client — unless the parties agree in writing that both licensees are dual agents.

**SECTION 3. DUTIES OF A LICENSEE GENERALLY.** Prescribes the duties that are owed by all licensees, regardless of who the licensee represents. Requires disclosure of the licensee's agency relationship in a specific transaction.

**SECTION 4. DUTIES OF A SELLER'S AGENT.** Prescribes the additional duties of a licensee representing the seller or landlord only.

**SECTION 5. DUTIES OF A BUYER'S AGENT.** Prescribes the additional duties of a licensee representing the buyer or tenant only.

**SECTION 6. DUTIES OF A DUAL AGENT.** Prescribes the additional duties of a licensee representing both parties in the same transaction, and requires the written consent of both parties to the licensee acting as a dual agent.

**SECTION 7. DURATION OF AGENCY RELATIONSHIP.** Describes when an agency relationship begins and ends. Provides that the duties of accounting and confidentiality continue after the termination of an agency relationship.

**SECTION 8. COMPENSATION.** Allows brokers to share compensation with cooperating brokers. States that payment of compensation does not necessarily establish an agency relationship. Allows brokers to receive compensation from more than one party in a transaction with the parties' consent.

**SECTION 9. VICARIOUS LIABILITY.** Eliminates the common law liability of a party for the conduct of the party's agent or sub-agent, unless the agent or sub-agent is insolvent. Also limits the liability of a broker for the conduct of a sub-agent associated with a different broker.

**SECTION 10. IMPUTED KNOWLEDGE AND NOTICE.** Eliminates the common law rule that notice to or knowledge of an agent constitutes notice to or knowledge of the principal.

**SECTION 11. INTERPRETATION.** This law replaces the fiduciary duties owed by an agent to a principal under the common law, to the extent that it conflicts with the common law.

# SECTION ONE

## 18.86.010. DEFINITIONS.

Unless the context clearly requires otherwise, the definitions in this chapter apply throughout this chapter.

"Agency relationship" means the agency relationship created under this chapter or by written agreement between a licensee and a buyer and/or seller relating to the performance of real estate brokerage services by the licensee.

(2) "Agent" means a licensee who has entered into an agency relationship with a buyer or seller.

(3) "Business opportunity" means and includes a business, business opportunity, and goodwill of an existing business, or any one or combination thereof.

(4) "Buyer" means an actual or prospective purchaser in a real estate transaction, or an actual or prospective tenant in a real estate rental or lease transaction, as applicable.

(5) "Buyer's agent" means a licensee who has entered into an agency relationship with only the buyer in a real estate transaction, and includes sub-agents engaged by a buyer's agent.

(6) "Confidential information" means information from or concerning a principal of a licensee that:

- (a) Was acquired by the licensee during the course of an agency relationship with the principal;
- (b) The principal reasonably expects to be kept confidential;
- (c) The principal has not disclosed or authorized to be disclosed to third parties;
- (d) Would, if disclosed, operate to the detriment of the principal; and
- (e) The principal personally would not be obligated to disclose to the other party.

(7) "Dual agent" means a licensee who has entered into an agency relationship with both the buyer and seller in the same transaction.

(8) "Licensee" means a real estate broker, associate real estate broker, or real estate salesperson, as those terms are defined in Chapter 18.85 RCW.

(9) "Material fact" means information that substantially adversely affects the value of the property or a party's ability to perform its obligations in a real estate transaction, or operates to materially impair or defeat the purpose of the transaction. The fact or suspicion that the property, or any neighboring property, is or was the site of a murder, suicide or other death, rape or other sex crime, assault or other violent crime, robbery or burglary, illegal drug activity, gang-related activity, political or religious activity, or other act, occurrence, or use not adversely affecting the physical condition of or title to the property is not a material fact.

(10) "Principal" means a buyer or a seller who has entered into an agency relationship with a licensee.

(11) "Real estate brokerage services" means the rendering of services for which a real estate license is required under Chapter 18.85

"Real estate transaction" or "transaction" means an actual or prospective transaction involving a purchase, sale, option, or exchange of any interest in real property or a business opportunity, or a lease or rental of real property. For purposes of this chapter, a prospective transaction does not exist until a written offer has been signed by at least one of the parties.

(13) "Seller" means an actual or prospective seller in a real estate transaction, or an actual or prospective landlord in a real estate rental or lease transaction, as applicable.

(14) "Seller's agent" means a licensee who has entered into an agency relationship with only the seller in a real estate transaction, and includes sub-agents engaged by a seller's agent.

(15) "Sub-agent" means a licensee who is engaged to act on behalf of a principal by the principal's agent where the principal has authorized the agent in writing to appoint sub-agents. ■

# SECTION TWO

## 18.86.020. AGENCY RELATIONSHIP.

(1) A licensee who performs real estate brokerage services for a buyer is a buyer's agent unless the:

- (a) Licensee has entered into a written agency agreement with the seller, in which case the licensee is a seller's agent;
- (b) Licensee has entered into a sub-agency agreement with the seller's agent, in which case the licensee is a seller's agent;
- (c) Licensee has entered into a written agency agreement with both parties, in which case the licensee is a dual agent;
- (d) Licensee is the seller or one of the sellers; or
- (e) Parties agree otherwise in writing after the licensee has complied with RCW 18.86.030(1)(f).

(2) In a transaction in which different licensees affiliated with the same broker represent different parties, the broker is a dual agent, and must obtain the written consent of both parties as required under RCW 18.86.060. In such a case, each licensee shall solely represent the party with whom the licensee has an agency relationship, unless all parties agree in writing that both licensees are dual agents.

(3) A licensee may work with a party in separate transactions pursuant to different relationships, including, but not limited to, representing a party in one transaction and at the same time not representing that party in a different transaction involving that party, if the licensee complies with this chapter in establishing the relationships for each transaction. ■

# SECTION THREE

## 18.86.030. DUTIES OF A LICENSEE.

(1) Regardless of whether the licensee is an agent, a licensee owes to all parties to whom the licensee renders real estate brokerage services the following duties, which may not be waived:

- (a) To exercise reasonable skill and care;
- (b) To deal honestly and in good faith;
- (c) To present all written offers, written notices and other written communications to and from either party in a timely manner, regardless of whether the property is subject to an existing contract for sale or the buyer is already a party to an existing contract to purchase;
- (d) To disclose all existing material facts known by the licensee and not apparent or readily ascertainable to a party; provided that this subsection shall not be construed to imply any duty to investigate matters that the licensee has not agreed to investigate;
- (e) To account in a timely manner for all money and property received from or on behalf of either party;
- (f) To provide a pamphlet on the law of real estate agency in the

form prescribed in RCW 18.86.120 to all parties to whom the licensee renders real estate brokerage services, before the party signs an agency agreement with the licensee, signs an offer in a real estate transaction handled by the licensee, consents to dual agency, or waives any rights, under RCW 18.86.020(1)(e), 18.86.040(1)(e), 18.86.050(1)(e), or 18.86.060(2)(e) or (f) whichever occurs earliest; and

disclose in writing to all parties to whom the licensee renders real estate brokerage services, before the party signs an offer in a real estate transaction handled by the licensee, whether the licensee represents the buyer, the seller, both parties, or neither party. The disclosure shall be set forth in a separate paragraph entitled "Agency Disclosure" in the agreement between the buyer and seller or in a separate written document entitled "Agency Disclosure."

(2) Unless otherwise agreed, a licensee owes no duty to conduct an independent inspection of the property or to conduct an independent investigation of either party's financial condition, and owes no duty to independently verify the accuracy or completeness of any statement made by either party or by any source reasonably believed by the licensee to be reliable. ■

## SECTION FOUR

### 18.86.040. SELLER'S AGENT — DUTIES.

(1) Unless additional duties are agreed to in writing and signed by a seller's agent, the duties of a seller's agent are limited to those set forth in RCW 18.86.030 and the following, which may not be waived except as expressly set forth in (e) of this subsection:

- (a) To be loyal to the seller by taking no action that is adverse or detrimental to the seller's interest in a transaction;
- (b) To timely disclose to the seller any conflicts of interest;
- (c) To advise the seller to seek expert advice on matters relating to the transaction that are beyond the agent's expertise;
- (d) Not to disclose any confidential information from or about the seller, except under subpoena or court order, even after termination of the agency relationship; and
- (e) Unless otherwise agreed to in writing after the seller's agent has complied with RCW 18.86.030(1)(f), to make a good faith and continuous effort to find a buyer for the property; except that a seller's agent is not obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale.

(2)

- (a) The showing of properties not owned by the seller to prospective buyers or the listing of competing properties for sale by a seller's agent does not in and of itself breach the duty of loyalty to the seller or create a conflict of interest.
- (b) The representation of more than one seller by different licensees affiliated with the same broker in competing transactions involving the same buyer does not in and of itself breach the duty of loyalty to the sellers or create a conflict of interest. ■

## SECTION FIVE

### 18.86.050. BUYER'S AGENT — DUTIES.

(1) Unless additional duties are agreed to in writing signed by a buyer's agent, the duties of a buyer's agent are limited to those set forth in RCW 18.86.030 and the following, which may not be waived except as expressly set forth in (e) of this subsection:

- (a) To be loyal to the buyer by taking no action that is adverse or detrimental to the buyer's interest in a transaction;
- (b) To timely disclose to the buyer any conflicts of interest;
- (c) To advise the buyer to seek expert advice on matters relating to the transaction that are beyond the agent's expertise;
- (d) Not to disclose any confidential information from or about the buyer, except under subpoena or court order, even after termination of the agency relationship; and
- (e) Unless otherwise agreed to in writing after the buyer's agent has complied with RCW 18.86.030(1)(f) of this act, to make a good faith and continuous effort to find a property for the buyer; except that a buyer's agent is not obligated to: (i) Seek additional properties to purchase while the buyer is a party to an existing contract to purchase; or (ii) show properties as to which there is no written agreement to pay compensation to the buyer's agent.

(2)

- (a) The showing of property in which a buyer is interested to other prospective buyers by a buyer's agent does not in and of itself breach the duty of loyalty to the buyer or create a conflict of interest.
- (b) The representation of more than one buyer by different licensees affiliated with the same broker in competing transactions involving the same property does not in and of itself breach the duty of loyalty to the buyers or create a conflict of interest. ■

## SECTION SIX

### 18.86.060. DUAL AGENT — DUTIES.

(1) Notwithstanding any other provisions of this chapter, a licensee may act as a dual agent only with the written consent of both parties to the transaction after the dual agent has complied with RCW 18.86.030 (1) (f), which consent must include a statement of the terms of compensation.

(2) Unless additional duties are agreed to in writing signed by a dual agent, the duties of a dual agent are limited to those set forth in RCW 18.86.030 and the following, which may not be waived except as expressly set forth in (e) and (f) of this subsection:

- (a) To take no action that is adverse or detrimental to either party's interest in a transaction;
- (b) To timely disclose to both parties any conflicts of interest;
- (c) To advise both parties to seek expert advice on matters relating to the transaction that are beyond the dual agent's expertise;
- (d) Not to disclose any confidential information from or about either party, except under subpoena or court order, even after termination of the agency relationship;
- (e) Unless otherwise agreed to in writing after the dual agent has complied with RCW 18.86.030 (1)(f), to make a good faith and continuous effort to find a buyer for the property; except that a dual agent is not obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale; and

(f) Unless otherwise agreed to in writing after the dual agent has complied with RCW 18.86.030 (1)(f), to make a good faith and continuous effort to find a property for the buyer; except that a dual agent is not obligated to: (i) Seek additional properties to purchase while the buyer is a party to an existing contract to purchase; or (ii) show properties as to which there is no written agreement to pay compensation to the dual agent.

- (a) The showing of properties not owned by the seller to prospective buyers or the listing of competing properties for sale by a dual agent does not in and of itself constitute action that is adverse or detrimental to the seller or create a conflict of interest.
- (b) The representation of more than one seller by different licensees affiliated with the same broker in competing transactions involving the same buyer does not in and of itself constitute action that is adverse or detrimental to the sellers or create a conflict of interest.

- (4)
- (a) The showing of property in which a buyer is interested to other prospective buyers or the presentation of additional offers to purchase property while the property is subject to a transaction by a dual agent does not in and of itself constitute action that is adverse or detrimental to the buyer or create a conflict of interest.
- (b) The representation of more than one buyer by different licensees affiliated with the same broker in competing transactions involving the same property does not in and of itself constitute action that is adverse or detrimental to the buyers or create a conflict of interest. ■

## SECTION SEVEN

### 18.86.070. DURATION OF AGENCY RELATIONSHIP.

(1) The agency relationships set forth in this chapter commence at the time that the licensee undertakes to provide real estate brokerage services to a principal and continue until the earliest of the following:

- (a) Completion of performance by the licensee;
- (b) Expiration of the term agreed upon by the parties; or
- (c) Termination of the relationship by mutual agreement of the parties; or
- (d) Termination of the relationship by notice from either party to the other. However, such a termination does not affect the contractual rights of either party.

(2) Except as otherwise agreed to in writing, a licensee owes no further duty after termination of the agency relationship, other than the duties of:

- (a) Accounting for all moneys and property received during the relationship; and
- (b) Not disclosing confidential information. ■

## SECTION EIGHT

### 18.86.080. COMPENSATION.

In any real estate transaction, the broker's compensation may be paid by the seller, the buyer, a third party, or by sharing the compensation between brokers.

(2) An agreement to pay or payment of compensation does not establish an agency relationship between the party who paid the compensation and the licensee.

(3) A seller may agree that a seller's agent may share with another broker the compensation paid by the seller.

(4) A buyer may agree that a buyer's agent may share with another broker the compensation paid by the buyer.

(5) A broker may be compensated by more than one party for real estate brokerage services in a real estate transaction, if those parties consent in writing at or before the time of signing an offer in the transaction.

(6) A buyer's agent or dual agent may receive compensation based on the purchase price without breaching any duty to the buyer.

(7) Nothing contained in this chapter negates the requirement that an agreement authorizing or employing a licensee to sell or purchase real estate for compensation or a commission be in writing and signed by the seller or buyer. ■

## SECTION NINE

### 18.86.090. VICARIOUS LIABILITY.

(1) A principal is not liable for an act, error, or omission by an agent or sub-agent of the principal arising out of an agency relationship:

- (a) Unless the principal participated in or authorized the act, error, or omission; or
- (b) Except to the extent that: (i) The principal benefited from the act, error, or omission; and (ii) the court determines that it is highly probable that the claimant would be unable to enforce a judgment against the agent or sub-agent.

(2) A licensee is not liable for an act, error, or omission of a subagent under this chapter, unless the licensee participated in or authorized the act, error, or omission. This subsection does not limit the liability of a real estate broker for an act, error, or omission by an associate real estate broker or real estate salesperson licensed to that broker. ■

## SECTION TEN

### 18.86.100. IMPUTED KNOWLEDGE AND NOTICE.

(1) Unless otherwise agreed to in writing, a principal does not have knowledge or notice of any facts known by an agent or sub-agent of the principal that are not actually known by the principal.

(2) Unless otherwise agreed to in writing, a licensee does not have knowledge or notice of any facts known by a sub-agent that are not actually known by the licensee. This subsection does not limit the knowledge imputed to a real estate broker of any facts known by an associate real estate broker or real estate salesperson licensed to such broker. ■

## SECTION ELEVEN

### 18.86.110. APPLICATION.

This chapter supersedes only the duties of the parties under the common law, including fiduciary duties of an agent to a principal, to the extent inconsistent with this chapter. The common law continues to apply to the parties in all other respects. This chapter does not affect the duties of a licensee while engaging in the authorized or unauthorized practice of law as determined by the courts of this state. This chapter shall be construed broadly. ■



REALTOR ®

ALASKA ASSOCIATION OF REALTORS, INC.  
741 Sesame Street, Suite 100 • Anchorage, Alaska 99503  
Telephone 907-563-7133 • Fax 907-563-8478

February 3, 2004

The Honorable Norm Rokeberg  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99801

RE: House Bill 29, relating to real estate licensee and real estate transactions

Dear Representative Rokeberg,

The Alaska Association of REALTORS and the following member Boards;  
Anchorage Board of REALTORS  
Greater Fairbanks Board of REALTORS  
Kachemak Board of REALTORS  
Kenai Peninsula Board of REALTORS  
Kodiak Board of REALTORS  
Southeast Board of REALTORS  
Valley Board of REALTORS

supports House Bill 29, which would update the agency statute to conform to current real estate business practices.

The Association is in favor of this proposed legislation that would standardize the disclosure form that is used by real estate licensees statewide. It would define specific duties of licensees that are not currently in the statute, giving the consumers clearer expectations and guidelines.

The Alaska Association of REALTORS encourages the passage of House Bill 29.

Sincerely,

Kathryn Clark  
President





ALASKA ASSOCIATION OF REALTORS, INC.  
741 Sesame Street, Suite 100 • Anchorage, Alaska 99503  
Telephone 907-563-7133 • Fax 907-563-8478

February 3, 2004

The Honorable Tom Anderson  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99801

RE: House Bill 29, relating to real estate licensee and real estate transactions

Dear Representative Anderson,

The Alaska Association of REALTORS with over 1,100 members statewide supports House Bill 29, which would update the agency statute to conform to current real estate business practices.

The Association is in favor of this proposed legislation that would standardize the disclosure form that is used by real estate licensees statewide. It would define specific duties of licensees that are not currently in the statute, giving the consumers clearer expectations and guidelines.

The Alaska Association of REALTORS encourages the passage of House Bill 29.

Sincerely,

Kathryn Clark  
President

Cc; Representative Norm Rokeberg





# ANCHORAGE BOARD OF REALTORS, INC.

REALTOR® *The Voice for Real Estate™* In Anchorage

741 Sesame Street  
Suite #100  
Anchorage, Alaska 99503  
(907) 561-2338  
(907) 563-8476 Fax

Tuesday, February 10, 2004

The Honorable Lesil McGuire  
Chairwoman, Judiciary Committee  
Alaska House of Representatives  
State Capitol Building  
Juneau AK. 99801

RE: House Bill 29, relating to real estate licensees and real estate transactions.

Dear Chairwoman McGuire,

The Anchorage Board of Realtors Supports HB 29, which would update the agency statute to conform to current real estate business practices.

This legislation will standardize the disclosure forms and requirements through out the state.

Agents in all over the state would be required to use the same format for disclosure of duties to the parties involved in a real estate transaction.

This will give the public more protection in real estate transactions, by providing clearer expectations and guidelines.

The Anchorage Board of Realtors, Board of Directors unanimously encourages passage of House Bill 29.

Please feel free to contact me should you have further questions.

Sincerely

Eva Loken  
President

- cc: The Honorable Tom Anderson
- The Honorable Les Gara
- The Honorable Max Gruenberg
- The Honorable Jim Hulm
- The Honorable Dan Ogg
- The Honorable Norm Rokeberg
- The Honorable Ralph Samuels





Prudential Vista Real Estate  
4241 B Street  
Anchorage, AK 99503  
Bus 907 562-6464  
Fax 907 562-5485  
www.alaskahousenunters.com

Representative Tom Anderson  
State Capitol, Room 432  
Juneau, AK 99801-1182

Dear Representative Anderson,

I am writing to you in support of HB 29. I have been in the real estate industry over 20 years and have seen the agency laws change from traditional agency where all brokers in the transaction represent the seller and the buyer is left with no representation at all to buyer, seller, and dual agency. Although that was a step in the right direction for the consumer, the way the law was written required a very cumbersome ritual for the real estate salesperson to go through and it was a law that was little understood by both the salesperson and the client. Most times the client would sign documents after having agency explained by the salesman as just another document that must be signed to complete the transaction. They did not care about agency as such unless there was a problem, then they hired an attorney and tried to unravel the contract any way they could and agency was a weak link that they could fall back on. We have never acted as agents in the sense of the definition, "acting on behalf of another." To do that would be more like acting as an attorney in fact, which broker typically does not allow their salespeople to do.

HB 29 was created over many hours by many people looking for a way to complete a transaction being fair to the parties and leaving less liability for the parties on the table. Attorneys have a hard time understanding that in a real estate transaction, both parties can win. There does not have to be an adversarial position between the buyer and seller to conclude a successful transaction. HB 29 builds on this concept by allowing the salesperson to act as a buyer licensee, seller licensee or neutral licensee. The salesperson's job is to help a buyer and a seller close a transaction that both parties have agreed to.

I ask that you and our other legislators heartily support this bill to passage early in the 2004 session.

Sincerely,

A handwritten signature in cursive script, appearing to read "D Wood".

Denny Wood, ABR, CRS, GRI  
Sales Manager, Associate Broker  
President Elect Alaska Association of Realtors



POWELL REALTY INC.  
GMAC REAL ESTATE®

February 1, 2004

Representative Norman Rokeberg  
State Capital Building  
Juneau, Alaska 99801

Re: HB 29,

Dear Representative Rokeberg,

Please convey to the House Labor and Commerce members that I am personally supportive of the current version of HB 29. It is my opinion that the current bill will not only protect the public but provide more education to the public, with the state mandated brochure explaining representation issues.

A handwritten signature in cursive script that reads "Ruth Blackwell". The signature is written in black ink and is positioned above the typed name and address.

Ruth Blackwell, Associate Broker  
Powell Realty, GMAC  
9040 Glacier Highway  
Juneau, Alaska 99801



**Subject: RE: Be it resolved**

**Date:** Wed, 04 Feb 2004 13:05:26 -0900

**From:** PeggyAnn McConnochie <peggyann@gci.net>

**To:** "Shawn C. Paul" <shawn@alaska.com>

**CC:** Sandy Eherenman <seherenman@alaskarealtors.com>, Amanda\_Wilson@legis.state.ak.us,  
Dave Feeken <dfeeken@alaska.net>

Thank you.

-----Original Message-----

From: Shawn C. Paul [<mailto:shawn@alaska.com>]

Sent: Wednesday, February 04, 2004 11:45 AM

To: PeggyAnn McConnochie

Subject: Be it resolved

On behalf of the Southeast Board of Realtors and it's governing board I offer our strong support for HB 29. A thorough examination of agency law in Alaska has been long overdue. We feel this provides a much greater level consumer protection and clarifies what has been heretofore an unwieldy law which expert and layman alike had trouble understanding. We ask that the members of the Labor and Commerce Committee of the Alaska State Legislature stand with us in supporting this bill to their colleagues in both houses. We have asked statewide leadership to represent us in answering any questions that may arise. If there are specific colleagues which the members would like us to ask for support from in the Southeast districts we would be happy to do that as well.

Respectfully,  
Shawn C. Paul  
SEBR President

**Subject: Letter of Support HB 29**

**Date:** Mon, 19 Jan 2004 20:17:14 -0900

**From:** "David Feeken" <dfeeken@alaska.net>

**To:** "Amanda Wilson" <amanda\_wilson@legis.state.ak.us>, "wendy mulder" <wendym@gci.net>

**Honorable Representative Norman Rokeberg:**

**RE: Substitute HB 29**

**This proposed legislation will modernize and bring the statute in line with current real estate business practices in this state and throughout the nation.**

**The current statute was put in place in 1990 in response to the public's demand for buyer representation. Prior to 1990, due to common law and common business practice all real estate licensees represented the seller, and the seller was responsible for the actions of all licensees in the transaction. The buyers had no representation in the transaction. The seller knew that the licensee was working on their behalf; but few buyers understood that they were not represented or worse thought the licensee was representing them. The buyers wanted representation, and the seller did not want to be responsible for the actions of the licensee working with the buyer. This practice was called Subagency. Subagency is not allowed in most MLS systems today. The current statute simply informs the seller and the listing agent that the buyers' agent is representing the buyer, and the potential of dual agency when the listing brokerage firm is facilitating the purchase with the buyer.**

**The industry and the public, through education have grown in the last 13 years. The proposed legislation will standardize the disclosure requirements and provide a relationship disclosure form that will be used statewide by all licensees. The public and licensee will have written in statute, the basic duties and responsibilities of all licensees throughout the state. This will protect the public, giving the consuming public clear expectations and guidelines.**

**The proposed legislation will also require brokers to have clear office policies in place as guides to all agents within their offices. These policies will spell out the way all representation will be done, and the procedures used to protect the**

**confidentiality of the transaction. The proposed legislation will require the policy be available for the public to view, in order to make informed decisions when choosing a licensee.**

**Our goal with this legislation is to make the industry consistent throughout the state, enabling the consuming public to make knowledgeable, informed decisions, and provide a more efficient way for licensees to provide services to the public.**

**The proposed legislation will standardize the disclosure form that is used statewide by all licensees. The public will see the duties and responsibilities of a licensee or broker before looking at properties or giving confidential information. The proposed legislation defines specific duties of licensees that are not current in statute, therefore giving the consuming public clear expectations and guidelines.**

**Proposed legislation gives brokers the option of using designated agency to prevent dual agency. When the listing agent is a different person than the buyers' agent within the same firm, the broker can designate an agent representing the seller and a different agent representing the buyer. Neutral Agency (Dual Agency) would only occur when the listing agent is facilitating the transaction with the buyer. Most brokerage firms currently have firewalls in place to control confidential information.**

**The members of our legislative committee would be happy to meet with you to answer your questions and address any concerns you may have with this legislation.**

**Sincerely,**

**Dave Feeken**

**907-283-5888 O 907-252-0348 Cell**

**Industry Issues, Chairman**

**Legislative Committee, Chairman**

**Prudential**

Prudential Vista Real Estate  
4241 B Street  
Anchorage, AK 99503  
Bus 907 562-6464  
Fax 907 562-5485  
[www.alaskahousehunters.com](http://www.alaskahousehunters.com)

Representative Norm Rokeberg  
State Capitol, Room 214  
Juneau, AK 99801-1182

Dear Representative Rokeberg,

I am writing to you in support of HB 29. I have been in the real estate industry over 20 years and have seen the agency laws change from traditional agency where all brokers in the transaction represent the seller and the buyer is left with no representation at all to buyer, seller, and dual agency. Although that was a step in the right direction for the consumer, the way the law was written required a very cumbersome ritual for the real estate salesperson to go through and it was a law that was little understood by both the salesperson and the client. Most times the client would sign documents after having agency explained by the salesman as just another document that must be signed to complete the transaction. They did not care about agency as such unless there was a problem, then they hired an attorney and tried to unravel the contract any way they could and agency was a weak link that they could fall back on. We have never acted as agents in the sense of the definition, "acting on behalf of another." To do that would be more like acting as an attorney in fact, which broker typically does not allow their salespeople to do.

HB 29 was created over many hours by many people looking for a way to complete a transaction being fair to the parties and leaving less liability for the parties on the table. Attorneys have a hard time understanding that in a real estate transaction, both parties can win. There does not have to be an adversarial position between the buyer and seller to conclude a successful transaction. HB 29 builds on this concept by allowing the salesperson to act as a buyer licensee, seller licensee or neutral licensee. The salesperson's job is to help a buyer and a seller close a transaction that both parties have agreed to.

I ask that you and our other legislators heartily support this bill to passage early in the 2004 session.

Sincerely,

A handwritten signature in cursive script, appearing to read "Denny Wood".

Denny Wood, ABR, CRS, GRI  
Sales Manager, Associate Broker  
President Elect Alaska Association of Realtors



*Above  
the  
Crowd!*

Gene DuVal  
REALTOR®

February 3, 2004

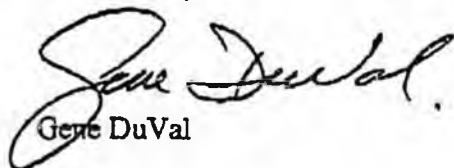
To Chairman Anderson,

I have carefully reviewed the Sponsor Substitute for House Bill Number 29, "an Act relating to real estate licensees and real estate transactions; and providing for an effective date."

I am a Real Estate member of the Alaska Association of Realtors, and an Associate Broker real estate licensee in Alaska. I believe this Act would offer needed protection to the public, and significantly simplify the process of explaining and documenting agency representation by licensees to the public.

I urge you to support it. Feel free to contact me via phone, fax, or e-mail for comments or inquires.

Best wishes,

  
Gene DuVal

**RE/MAX** Associates of Fairbanks

529 5th Avenue, Suite #200  
Fairbanks, Alaska 99701  
Office: (907) 452-4363  
Fax: (907) 452-1499  
E-mail: duval@gcl.net  
www.geneduval.com

Each Office Independently Owned and Operated





Gene Duval  
REALTOR®

February 17, 2004

Dear Representative Lesil McGuire,

I have carefully reviewed the Sponsor Substitute for House Bill Number 29, "an Act relating to real estate transactions," sponsored by Representative Rokeberg.

I am a member of the Alaska Association of Realtors, and an Associate Broker real estate licensee in Alaska. I believe this Bill would offer needed protection to the public since it clearly defines and determines when and in what manner licensees must disclose agency to clients/customers. It also significantly simplifies the process of explaining and documenting agency representation to the public.

I urge you to support it. Feel free to contact me via phone, fax, or e-mail for comments or inquiries.

Best wishes,



Gene DuVal

**RE/MAX** Associates of Fairbanks

529 5th Avenue, Suite #200  
Fairbanks, Alaska 99701  
Office: (907) 452-4363  
Fax: (907) 452-1499  
e-mail: duval@gci.net  
www.geneduval.com

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January 19, 2004

The Honorable Norman Rokeberg  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99801

Dear Representative Rokeberg;

House Bill 29 is probably the most important piece of legislation affecting the real estate brokerage industry in over a decade. It is supported almost unanimously by REALTORS®, the Alaska Real Estate Commission and real estate licensees throughout the State. I also support this legislation.

The present statutes regarding real estate licensee disclosure of duties and responsibilities became effective in January of 1991. There has been only minor modification to the laws since then and the way real estate is transacted has changed considerably. Most other states have modified their laws to reflect these changes but Alaska has not.


In June of 2002 the Alaska Association of REALTORS® formed a Task Force, of which I was a member, to address this situation. After over a year of extensive research, review and debate along with the input and consultation of the Alaska Real Estate Commission, a consensus was reached. The result is HB 29 along with some Regulation changes that have been approved and are in the process of being adopted.

This legislation will benefit the public as well as the industry in that it more clearly and concisely defines the duties, responsibilities and disclosures of all the parties to a real estate transaction.

Again, I support HB 29 and would be glad to try to answer any questions you or any of your colleagues may have.

Thank you for your efforts and thank you for serving in the Legislature. I understand and appreciate the sacrifice you have to make.

Sincerely,

  
Mark Korting, President

**RE/MAX** of alaska, inc.  
2600 cordova street, suite 100  
anchorage, alaska 99503  
phone: (907) 276-2761

**HB**

**31**

**HJR**

**5**

# Alaska State Legislature

Co-Chair  
House Finance Committee  
Subcommittee Chair  
Environmental Conservation  
Courts

During Session:  
State Capitol  
Juneau, AK 99801-1182  
(907) 465-3424  
Fax (907) 465-3793

In Ketchikan:  
50 Front Street, Suite 203  
Ketchikan, AK 99901  
(907) 247-4672  
Fax (907) 225-8546

*Representative William K. Williams*

## MEMORANDUM

To: Senator Ralph Seekins, Chairman  
Senate Judiciary Committee

From: Representative Bill Williams

Date: February 6<sup>th</sup>, 2004

Subject: Request for Hearing

I respectfully request that HB 31, "An Act relating to initiative and referendum petitions; and providing for an effective date", and its companion resolution, HJR 5, "Proposing an amendment to the Constitution of the State of Alaska relating to initiative and referendum petitions", be scheduled for a hearing in the Senate Judiciary Committee.

Attached is the following documentation:

Sponsor Statement  
HB 31  
HJR 5  
Sectional Summaries from Legislative Counsel  
Fiscal Notes from Division of Elections  
Article XI of the Alaska State Constitution  
Excerpts from the Minutes of the Alaska Constitutional Convention  
A memo written by a member of my staff that should help you negotiate the 20 minutes  
Charts with data on signatures gathered in support of initiatives in recent years  
Excerpts from the NCSL's 2002 Report on Initiatives and Referendums  
Testimony from Dick Bishop in support of HB 31/HJR 5  
Letter from Steve Borell in support of HB 31/HJR 5  
Letter from Michael and Michelle Citti opposing HB 31/HJR 5

If you have any questions or need more information, feel free to contact me or my aide, Tim Barry. Thank you for your attention to this important matter.

# Alaska State Legislature

Co-Chair

House Finance Committee

Subcommittee Chair

Environmental Conservation

Courts

During Session:  
State Capitol  
Juneau, AK 99801-1182  
(907) 465-3424  
Fax (907) 465-3793

In Ketchikan:  
50 Front Street, Suite 203  
Ketchikan, AK 99901  
(907) 247-4672  
Fax (907) 225-8546

*Representative William K. Williams*

## **Sponsor Statement for HB 31/ HJR 5 Initiative and Referendum Petitions**

### **“An Act relating to initiative and referendum petitions; and providing for an effective date”**

House Bill 31 and House Joint Resolution 5 (“HB 31/ HJR 5”) were introduced to encourage broad, statewide support for the idea contained within an initiative before it gets on the ballot. By including voters from all parts of Alaska in the process, the legislation promotes awareness of initiatives to people throughout the state.

The legislation supports the letter and spirit of Article XI, Section 3, of the Alaska Constitution, which requires initiative sponsors to obtain a minimum of one signature from residents of at least two-thirds of the House Districts in the State of Alaska (27 districts). HB 31 and HJR 5 propose that initiative sponsors gather signatures from residents of at least three-quarters of House Districts (30 districts). The legislation also proposes that the total number of signatures in each of those districts amount to at least seven percent of the number of people who voted in the most recent election in that district. It does not change the constitution’s requirement that the total number of signatures statewide in support of an initiative or petition amount to at least ten percent of the number of people who voted in the most recent election. The legislation would put a proposed constitutional amendment on the ballot, leaving it to the people of the state to decide if these changes are warranted.

*Contact: Tim Barry, Aide to Representative Bill Williams, at (907) 465-2812*

## **Additional Information for the Sponsor Statement for HB 31/ HJR 5 Initiative and Referendum Petitions**

### **THIS BILL CARRIES OUT THE INTENT OF THE FRAMERS OF ALASKA'S CONSTITUTION**

The Framers of Alaska's Constitution spoke about wanting to ensure that no particular part of the state could get an Initiative on the Ballot without some support from throughout the State – that's why they included a geographic distribution requirement in the Constitution.

HB31/HJR5 work to achieve the goals of the Framers, by adjusting the Constitution to reflect changes in Alaska since the Constitution was written. In 1956, there were three areas of the state with roughly equivalent populations (Southeast, Fairbanks/Interior and Anchorage); now there is one dominant community.

Also, communication and technology have changed radically since the Constitution was written. It is much easier now to send signature books around the state and gather support for an issue.

### **THE NCSL SUPPORTS THIS KIND OF A REQUIREMENT**

The National Conference of State Legislators published a report last year which urges States to adopt a geographic distribution requirement for Initiative Petition signatures, like the one proposed in this legislation. As this report says, there have been problems in other states with excessive and frivolous Initiatives making it difficult for legislatures to do their work.

### **THIS LAW WOULD NOT CREATE AN UNDUE HARDSHIP FOR INITIATIVE SPONSORS**

#### **IN FACT, THIS LAW WOULD EXPORT DEMOCRACY TO ALL AREAS OF THE STATE**

Data from the Division of Elections show that initiative supporters in recent years would not have had to work too hard to have met the requirements of HB31/HJR5. Among the ten initiatives that have been on the ballot since 1998, sponsors would have had to gather an average of 935 additional valid signatures to comply with this law. On these ten petitions, sponsors gathered an average of 40,148 total signatures. In fact, the proposed legislation only requires signature gatherers to get signatures from as few as 2.4 and at the most 6.4 percent of registered voters in each district.

Currently, most Initiatives are getting on the ballot without any substantial support from many areas of the state. For example, an average of only 59 voters from Ketchikan, Alaska's 4<sup>th</sup> largest city, signed each of the petitions for the last ten initiatives to reach the ballot. That's 9/10ths of 1 percent of the number of people who voted in the most recent election.

### **THE BILL HAS WIDESPREAD SUPPORT FROM PEOPLE AND GROUPS AROUND THE STATE**

The fiscal note is \$1,500 – the cost to the Division of Elections of printing an additional page in the election pamphlet next fall for the Constitutional Amendment Vote.

The legislation is supported by the Alaska Outdoor Council, the Alaska Miners' Association, the Alaska League of Women Voters and the Alaska State Chamber of Commerce.

# LEGAL SERVICES

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

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

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 3, 2003

**SUBJECT:** Initiative and Referendum Petitions  
(HB 31, Work Order No. 23-LS0201A)

**TO:** Representative Bill Williams  
Attn: Tim Barry

**FROM:** Kathryn L. Kurtz *KK*  
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

**Section 1.** Changes the statutory signature requirements for filing an initiative petition with the lieutenant governor. Requires that the petition be signed by residents of at least three-fourths of the house districts in the state (an increase from two-thirds), and requires that the number of signatures from voters in each of those house districts be equal to at least seven percent of the number of people who voted in that district in the preceding general election.

**Section 2.** Makes the same changes as in section one to the corresponding statute relating to referenda.

**Section 3.** Makes the act effective only if a constitutional amendment to the same effect is passed by the voters at the 2004 general election.

**Section 4.** Makes the act effective the same date as the constitutional amendment, if the act takes effect.

KLK:lmb  
03-059.lmb

# LEGAL SERVICES

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

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

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

February 5, 2003

**SUBJECT:** Initiative and Referendum Petitions (HJR 5)  
(Work Order No. 23-LS0202)

**TO:** Representative Bill Williams  
Attn: Tim Barry

**FROM:** Kathryn L. Kurtz *KLK*  
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

**Section 1.** Proposes amending Article XI, sec. 3 of the Constitution of the State of Alaska to impose more stringent signature requirements for initiative and referendum petitions. As amended, the constitution would require that a petition be signed by residents of at least three-fourths of the house districts in the state (an increase from two-thirds), and that the number of signatures from voters in each of those house districts be equal to at least seven percent of the number of people who voted in that district in the preceding general election.

**Section 2.** Specifies that the proposed amendment be placed before the voters at the next general election.

KLK:med  
03-102.med

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB31  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: OOG  
 Title An Act relating to Initiatives BRU Elections  
 Component Elections  
 Sponsor Representative Williams  
 Requester House State Affairs Component No. 21

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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)

The division would be able to create a spreadsheet using information from VREMS and official election returns to calculate the new district percentage requirements of the bill. This would require minimal staff time. A report would be created showing district by district numbers and percentages. This in-house report would not have an additional fiscal impact on the division.

Prepared by: Lauri Allred Phone 465-5347  
 Division Division of Elections Date/Time 2/28/03 9:54 AM  
 Approved by: Linda J. Perez, Director Date 2/28/2003  
 Agency Office of the Governor, Administrative Services

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HJR5  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: OOG  
 Title Constitutional Amendment relating to BRU Elections  
initiative and referendum petitions Component Elections  
 Sponsor Representative Williams  
 Requester House State Affairs Component No. 21

**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		1.5				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>1.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		1.5				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>1.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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)  
 This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. If this measure requires the printing of an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by: Lauri Allred Phone 465-5347  
 Division: Division of Elections Date/Time 2/28/03 9:53 AM  
 Approved by: Linda J. Perez, Director Date 2/28/2003  
 Agency: Office of the Governor, Administrative Services

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

**ARTICLE XI**

or joint administration of any functions or powers, may be made by any local government with any other local government, with the State, or with the United States, unless otherwise provided by law or charter. A city may transfer to the borough in which it is located any of its powers or functions unless prohibited by law or charter, and may in like manner revoke the transfer.

§ 14. **Local Government Agency.** An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities, collect and publish local government information, and perform other duties prescribed by law.

§ 15. **Special Service Districts.** Special service districts existing at the time a borough is organized shall be integrated with the government of the borough as provided by law.

**ARTICLE XI  
Initiative, Referendum, and Recall**

Sec.

1. Initiative and Referendum.
2. Application.
3. Petition.
4. Initiative Election.
5. Referendum Election.
6. Enactment.
7. Restrictions.
8. Recall.

§ 1. **Initiative and Referendum.** The people may propose and enact laws by the initiative, and approve or reject acts of the legislature by the referendum.

§ 2. **Application.** An initiative or referendum is proposed by an application containing the bill to be initiated or the act to be referred. The application shall be signed by not less than one hundred qualified voters as sponsors, and shall be filed with the lieutenant governor. If he finds it in proper form he shall so certify. Denial of certification shall be subject to judicial review. [Amendment approved August 25, 1970 - Effective October 10, 1970]

§ 3. **Petition.** After certification of the application, a petition containing a summary of the subject matter shall be prepared by the lieutenant governor for circulation by the sponsors. If signed by qualified voters, equal in number to ten per cent of those who voted in the preceding general election and resident in at least two-thirds of the house districts of the State, it may be filed with the lieutenant governor. [Amendment approved August 25, 1970 - Effective October 10, 1970; Amendment approved November 3, 1998 - Effective January 3, 1999]

§ 4. **Initiative Election.** An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred- twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void. [Amendment approved August 25,

1970 - Effective C

§ 5. **Referendum** petition may be file after adjournment at which the act wa governor shall pr proposition summ place them on the wide election held eighty days after a sion. [Amendme 1970 - Effective C

§ 6. **Enactment.** cast on the propo the initiated measu ty of the votes cas the rejection of an The lieutenant g election returns. effective ninety da subject to veto, an the legislature wit tive date. It may An act rejected by days after certific dures for the initi be prescribed by la August 25, 1970 1970]

§ 7. **Restriction** be used to dedic peal appropriator jurisdiction of cou or enact local or s erendum shall no of revenue, to app cial legislation, or immediate preser health, or safety.

**ARTICLE XII**

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1970 - Effective October 10, 1970]

§ 5. Referendum Election. A referendum petition may be filed only within ninety days after adjournment of the legislative session at which the act was passed. The lieutenant governor shall prepare a ballot title and proposition summarizing the act and shall place them on the ballot for the first state-wide election held more than one hundred-eighty days after adjournment of that session. [Amendment approved August 25, 1970 - Effective October 10, 1970]

§ 6. Enactment. If a majority of the votes cast on the proposition favor its adoption, the initiated measure is enacted. If a majority of the votes cast on the proposition favor the rejection of an act referred, it is rejected. The lieutenant governor shall certify the election returns. An initiated law becomes effective ninety days after certification, is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time. An act rejected by referendum is void thirty days after certification. Additional procedures for the initiative and referendum may be prescribed by law. [Amendment approved August 25, 1970 - Effective October 10, 1970]

§ 7. Restrictions. The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. The referendum shall not be applied to dedications of revenue, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health, or safety.

§ 8. Recall. All elected public officials in the State, except judicial officers, are subject to recall by the voters of the State or political subdivision from which elected. Procedures and grounds for recall shall be prescribed by the legislature.

**ARTICLE XII  
General Provisions**

Sec.

1. State Boundaries.
2. Intergovernmental Relations.
3. Office of Profit.
4. Disqualification for Disloyalty.
5. Oath of Office.
6. Merit System.
7. Retirement Systems.
8. Residual Power.
9. Provisions Self-Executing.
10. Interpretation.
11. Law-Making Power.
12. Disclaimer and Agreement.
13. Consent to Act of Admission.
14. Approval of Federal Amendment to Statehood Act Affecting an Interest of the State Under that Act.

§ 1. State Boundaries. The State of Alaska shall consist of all the territory, together with the territorial waters appurtenant thereto, included in the Territory of Alaska upon the date of ratification of this constitution by the people of Alaska.

## MEMORANDUM

TO: Members of the Senate Judiciary Committee  
FROM: Tim Barry, Aide to Representative Bill Williams  
RE: HB31/HJR5 Constitutional Convention Minutes  
DATE: 02/06/04

Attached are excerpts from the Alaska Constitutional Convention regarding the Initiative process. I pulled these minutes from the Department of Law's website. Delegates spent the better part of two and a half days at the Convention discussing the issues of Initiative and Referendum. I have read through all of this discussion, and have pulled out what I consider to be the most relevant parts of it. It is long, but helpful in understanding the thinking of the delegates on the issue.

### Comments of interest:

Taylor, p.4: Talks about the fact that they designed the Article to try to protect the state from pressure groups.

Taylor, p.10: Talks about local legislation and the concept of limiting the number of signatures from one area.

Taylor, p.26: Talks about the discussion the committee had regarding geographical signature requirements, decided against them.

Pages 24 to 29: Discussion among delegates regarding geographical signature requirements, and the vote in favor of 2/3rds.

### Page-by-Page synopsis:

Pages 1,2: Collins reads across proposed Initiative language (Note the top of Page 2, where it says the initiative can not be used "for special or local laws that are of interest to only one group of people or people in only one portion of the state.")

Pages 2,3: Taylor – history in other states, how Committee came up with plan, why Initiative is good

Page 4: Taylor – influence of pressure groups, need for Initiative system

Page 5: Taylor, Egan - Referendums

Page 6: Taylor, Egan – Appropriations not allowed

Page 7: Taylor, Davis - Governor can't veto Initiative; Can't amend Constitution

Page 8: Taylor, McLaughlin - Need ten sponsors, 8% of voters to get on ballot; A.G. approves language; Emergency acts

Pages 8,9: Hinckel - Why 10 petition sponsors are needed; Taylor – that's a safeguard

Page 9: Taylor, Buckalew - Bonding; what other states do

Page 10: Taylor – Signatures from various parts of state

Page 11: Barr – do we need an Initiative process?; Why 8% statewide? Taylor – It's a good number

Page 12: Smith – Problems California had, benefits of Initiative; V. Rivers, Hinckel – Referendum to reverse Legislative act; Emergency Acts

Page 13: Taylor - Percent of voters' signatures needed, other states  
Page 14: Marston - speech urging Initiative process  
Page 15: Taylor, Coghill - speeches supporting Initiative  
Page 16: McNealy - opposes Initiative process; Kilcher - history; Metcalf - support Initiative  
Page 17: Barr - we need initiative, can't trust legislators. Lobbyists, crackpots. Opposes initiative  
Page 18: McCutcheon - supports;  
Page 19: Buckalew - opposes; Hurley - supports; Gray - suggest increasing from 8 to 10%; Johnson - move increase from 8 to 15%;  
Page 20: Sundborg - that's high; Marston - average elsewhere is 8%  
Page 21: V. Rivers, Taylor - 15% too high; Marston, Hurley - 8% good; Boswell - 15% good  
Page 22: Londborg - 15% good  
Page 23: Hilscher - 85 good; Hinckel, McNealy - 15% good; Vote - 15% wins, 25 to 23.  
Page 24: Johnson - motion requiring 2/3rds of precincts; Marston - it's needed  
Page 25: Londborg - 2/3rds is good  
Page 26: Johnson - amend to "2/3rds of election districts"; Smith - opposed; Taylor, Hinckel - opposed, should leave it to legislature; Cooper - support; Londborg - Missouri, with 5% of 2/3rds of districts, is harder;  
Page 27: Hermann - oppose, leave it to legislature; Sundborg - good idea to require statewide signatures, support 2/3rds; Buckalew - Oppose, leave it to legislature; Smith - support  
Page 28: Johnson - 2/3rds is a good safeguard  
Page 29: Kilcher - Could legislature require more signatures? Johnson - No; Kilcher - I think legislature can make changes, so I support; Vote - 2/3rds passes (38 to 13)  
Pages 30-32: Taylor moves to change 15% statewide requirement to 10%; discussion of this idea, comparisons to other states, Vote, 10% passes (29 to 21)  
Pages 33-34: V. Rivers moves to change from 2/3rds of districts to 1/2 of districts. Discussion, Kilcher says the legislature can change it later to increase signature requirements. Vote, motion fails (26 to 26)  
Page 35: McNealy moves Reconsideration of vote to drop 15% statewide to 10%  
Page 36: Marston - 15% is too high; Buckalew, Boswell - support 15%  
Page 37: V. Rivers, Cooper - what the numbers mean; Vote - 10% passes (27 to 23)  
Page 38: Londborg moves to require 3% of voters in each of 2/3rds of districts, talks about need to get enough statewide support  
Page 39: Hurley, V. Rivers - opposed, there are enough safeguards  
Page 40: Vote - 3% fails (17 to 31)

ALASKA CONSTITUTIONAL CONVENTION  
December 16<sup>th</sup>, 1955  
THIRTY-NINTH DAY

.....

COLLINS: We have submitted that to you, a committee report. It was okayed by the seven members of this Committee. Yet perhaps there was some individual feeling of members that their idea was not properly expressed in this report, and it was decided to place this report back to the Convention for the consideration of each individual member here for a full expression of his opinion, and we want to hear his opinion, and the committee itself will not feel bad about any amendment that is germane to the principles that are set forth in this report. I would like to have the different articles, I would like to read the comments of the Committee. Perhaps it might give some enlightenment into the questions that you would ask about that report. It will take very little time. Now on the commentary of the Committee on the Article of Initiative, Referendum and Recall.

"(Section 1 Initiative) The initiative is the power of the people to initiate laws themselves and to provide for a referendum on such laws without action by the legislature. This section reserves the authority of the people to initiate laws by petition and vote of the people directly.

(Section 2 Referendum) This section permits the people to require that laws passed by the Legislature be referred to a vote of the people before taking effect. This power is known as the Referendum.

(Section 3 Procedure) Many constitutions, in the states which make provision for the use of the initiative and referendum, contain a great degree of detail relating to the exercise of the initiative and referendum. This section permits the legislature to provide by law for some details, but provides that the Legislature may not restrict the substantive rights guaranteed in Section 4, nor to require procedures more difficult than provided in Section 4.

(Section 4 Petition, ballot title; election; vote required) This section sets forth certain substantive provisions and minimum procedures affecting the exercise of the initiative and referendum. To prevent waste of money on elections for laws that are unconstitutional, sponsors are required to submit a proposed law to the Attorney General for certification of its constitutionality, subject to court review, prior to the circulation of petitions. The provision is intended to stop, at the initial stage, the circulation of petitions for laws that would, even if approved by the voters, result in expensive court action.

If the legislature adopts a measure that is the subject of the initiative, the measure does not have to be submitted to the people.

Additional details of procedure may be provided by the legislature subject to the limits imposed by this section. The procedure outlined has the advantage of brevity while insuring the substantive rights to the people.

(Section 5 Restrictions) The exercise of the initiative is a fundamental right of the people, but special interest groups should not be permitted to unduly hamper the operation of the government. The restrictions in Section 5 will prevent the abuses and problems that have sometimes arisen in the states permitting initiative and referendum. Neither the initiative nor referendum can be used with regard to emergency legislation, appropriations, or measures earmarking taxes and other revenues, or for special or local laws that are of interest to only one group of people or people in only one portion of the state.

(Section 6 Recall) The right of the people to remove elected officials is preserved. The Legislature is directed to provide the methods to be used.

Commentary on the Article on Amendment and Revision

(Section 1 Methods) This section outlines three methods by which the constitution may be amended or revised. By action of two separate legislatures directly; (2) by action of one legislature and referral to the people; and (3) by constitutional convention.

(Section 2 Proposals by Legislature) The Legislature, by a two-thirds vote, may submit a proposed amendment to a vote at a general election. Use of general election is intended to insure a substantial vote on the question.

An alternate method is provided which permits the legislature, by a two-thirds vote, to submit a proposed amendment to the next legislature, but not to a succeeding session of the same legislature. If the second legislature adopts the amendment by a two-thirds vote it becomes part of the constitution without referring it to a vote of the people.

(Section 3 Constitutional Convention) The legislature is empowered to call a convention, but if the legislature does not provide for a convention each ten years, the question is submitted to the people at the following general election.

The legislature is authorized to prescribe the procedures and powers of a convention; but if it does not make such provisions, the law calling this convention will be followed insofar as practical."

That is the commentary on the articles which your Committee has put before you in the substitute report. Now on December 4, to settle the line of the Committee itself, we have drafted this as short as possible, as plain as possible, and if there is any amendments to come forth, the Committee will have no feeling. We have seven on our Committee and the Committee will answer the questions that might be put forth to members of this Committee.

CHAIRMAN R. RIVERS: Mr. Victor Rivers.

V. RIVERS: I would like to direct a question to Mr. Collins. Mr. Collins, there seems to be some difference of opinion as to whether or not the principle of the initiative and the referendum is a desirable and necessary one. I would like to have the comments or through you the comments of your Committee as to whether or not you feel the use of the initiative and referendum in any way circumscribes the idea of republican form of government, and if so is the principle of the initiative and referendum a desirable one for inclusion in the constitution as your Committee sees it.

COLLINS: I tried to infer that the draft that submitted this report would come to one thought on the matter, and I think we got together on that, and to prevent a minority report, and I think the Committee itself is pretty well satisfied with this report as presented. Now to give the individual thought of the members on this, we spent hours on it, and I don't think that the Convention would gain a great deal by that, but it would take up a lot of time. This is plain English language and to the point, and Mr. Taylor is the Vice Chairman of that. If you wish to make an explanation, Mr. Taylor, I would be glad for you to.

TAYLOR: Mr. Rivers, I might say we, the Committee, went into the historical background of the initiative and referendum. North Dakota was the first state to adopt the initiative and referendum so as to reserve to the people the power of initiating laws or either accepting or rejecting laws that have been passed by the legislature. Now, in our deliberations, I believe that we went through the laws, the constitutions of various states that have the initiative and referendum of which there are 19, and it was between about 1898 and 1928, I believe it was, that the states, practically all of the states that now have the initiative and referendum adopted the same. And in reviewing the history of the use of the referendum, I think the Committee members had differences of opinion as to whether or not the initiative and referendum should be included in the constitution. Although it has not been used a great deal in the last few years in some of the states that did use it before, the initiative and referendum is there and it serves a useful purpose in this way that the legislature does know that the people have reserved to them the right to initiate legislation and the right to pass upon legislation that has been passed by the legislature, so that ultimately they can, if they deem fit, can guide the legislature or guide the lawmaking in certain particulars. Now in practically all the states that have the initiative and referendum there are certain limitations put upon the matters that can be

acted upon by those measures. Now appropriations are not subject to the initiative or the referendum. Some states made a great mistake by not restricting the initiative measures and allowed pressure groups to gather great numbers of signatures to a petition and that petition would require the expenditure of large amounts of money, perhaps a great deal more than the state could possibly afford and sometimes they would also initiate some legislation to raise money, a revenue measure and then directed that the proceeds of that measure would be utilized for a particular purpose. In other words, it took the making of revenue measures and expenditure of the funds away from the legislature and in some instances the governmental functions and governmental institutions suffered a great deal. And it was necessary within as short a time as possible to undo the damage that has been done. Now in this present proposal the Committee returned it, and I might say as Mr. Collins, our Chairman has said, that this does constitute, you may say, the compromise thought of the Committee. We were several weeks. We had differences of opinion. Some of the members of the Committee thought that all the details of the proposal, or all the details of the matter, should be spelled out to the minute degree, and others felt that they should have the bare outline of granting the right to reserve powers to the people and then letting the legislature set up the machinery for implementing, so we have included in this proposal the least number of details that we could. Now of course our first sections there is the right of the people.

V. RIVERS: May I ask a question. Before I go into the sections I was trying to determine, I think it is absolutely essential before we include anything in the constitution or in the laws that we determine three things: first, the desirability; second, the need; and third, the workability. Now I have gathered from what you said that your Committee considers the initiative and referendum desirable in the constitution.

TAYLOR: Well, I think on the matter that we have it in here now it is, because it is in a way that it cannot do any harm. It cannot interfere with the appropriations or raising of revenue. It cannot affect the disbursements of state funds.

V. RIVERS: Could I ask this? You say it cannot do any harm. Is it good and is it actually needed in this particular approach?

TAYLOR: I might say, Mr. Rivers, I went into that quite carefully. I find out that all initiative and referendum bills, or states that adopted that method of direct legislation, there has been none since 1928. Some of those states have attempted to repeal that provision of their constitution, and others have used it little if any. Now there was quite a fine treatise on that subject by a professor of political science and he reviewed the history of the initiative and referendum in Oregon over a period of ten years, 1938-1948. He took the measures one by one which had been either initiated or which had been referred, and when he summed up his opinion after a very long study and a thorough study of the proposition, he said in all probability the legislature would have done the same things that the initiative and referendum accomplished. Of course, now we know in some states the exercise of the initiative and referendum was perhaps warranted by one act maybe that it put through. One of them was in California. The Civil Service Act for state employees was put through by means of the initiative measure. The legislature had been importuned for year after year for civil service status of the employees, and it was only in that way that they finally got it. Of course, if the proper safeguards are not put around the type of legislation that can be initiated by the people. As I said before, they can do a lot of harm. There was one in California that within a year they found out it was bankrupting the state, and they had to get out another initiative and do away with the first one. Colorado had the same experience, and the State of Washington, because they were levying taxes under those bills and directing where these taxes were going, and the State of Washington in a period of about eighteen months found themselves with not only losing a 60,000,000 dollar surplus that it had in the treasury but also 120,000,000 dollars in the hole. Colorado was about the same way.

V. RIVERS: With certain safeguards the Committee considers it useful and desirable. Now what about the workability? Do you figure it is workable in a territory like Alaska, of this size and widespread population? I would like some comments on that.

TAYLOR: We took that into consideration, Mr. Rivers, in drawing this up. I might say in our initiative we have left a small percentage of the voters who voted for the governor in the previous election for the amount necessary to initiate a petition. So then I might say in another way that we have tried to protect the

voters and state from pressure groups is the fact that before a petition can be circulated, ten sponsors of that petition must have it up and submit it to the attorney general not only as certifying as to whether the proposition is set out properly on the ballot but also as to its constitutionality, and if he does not give that certificate as to its constitutionality and the proper setting out of the ballot on that, they cannot circulate it and that will overcome the arguments against the initiative and referendum. In some states due to the fact that pressure groups could get the required signatures and they could file it with the secretary of state regardless of whether it had the proper designation of the matter that was to be acted on, regardless of the constitutionality of it, even if it did pass, the court could throw it out, so we have that for safeguards.

V. RIVERS: Your Committee, I assume, thinks it is workable for the Territory in its present form?

TAYLOR: I believe it would.

V. RIVERS: One other question, on the basis of the general application of this act, before we go into detail, do you think that in our Organic Act it says, "We shall have a republican form of government." Does this in any way circumscribe the idea the republican form of government which is legislation through the elected representative rather than direct from the people?

TAYLOR: I know that argument has been advanced. It might be the exception that if our republican form of government did perhaps fall down, that the general public will have a vast interest in it with their reserve powers, if the powers to exercise, if the right to exercise that power is restricted to certain things, I don't believe it is a departure from our republican form of government.

JOHNSON: Mr. Chairman, may I address a question to Mr. Taylor? In this connection, Mr. Taylor, it is my understanding from looking at Committee Proposal No. 5 that the Committee on Legislation recommended that we hold meetings of the legislature each year. Now with the legislature meeting that frequently, do you think it is still necessary to have some safeguards such as this as you propose, or would there be a sufficient check on the legislative procedure meeting once a year?

TAYLOR: I believe it would be, Mr. Johnson, in this way. It might be some very badly needed legislation but which the legislature would refuse to act upon. I could see a number of reasons which we don't have to elaborate on that but there might be some pressure groups. Well, if that was the case, and the people had the right to initiate this legislation they could possibly cure the ills that were existing by reason of the legislature not working.

JOHNSON: Don't you think these so-called pressure groups might exercise just as much influence on the legislature?

TAYLOR: Absolutely they might, but if the legislature did not act, after the legislature adjourned at any time in the future, then they could initiate the legislation which the legislature had refused maybe even if they had been petitioned, not initiative petition but other petitions.

EGAN: Mr. Chairman, may I address a question to Mr. Taylor?

CHAIRMAN R. RIVERS: You may, Mr. Egan.

EGAN: Mr. Taylor, in the article on Direct Legislation, Section 1, it says, "The people reserve the power by petition to propose laws and to enact or reject such laws at the polls." Now the reading of that section would imply that the people through the power of the initiative would not have the right to reject any laws that they themselves had not already put on the books, in that order.

TAYLOR: That would come under Section 2, Mr. Egan. That is the referendum, after a law is passed, then they could by a petition have a vote upon that.

EGAN: My question was, Mr. Taylor, that under this particular provision of the initiative with relation to the initiative power of the people, they could not attempt to reject a law that was already on the books. They could only attempt to reject a law that had been passed by the initiative provision.

TAYLOR: That is right, that would be the only thing, now I think in that first section, Mr. Egan, is the fact that they can petition, they file this petition. It then is referred to the people, and the people can reject it or adopt it.

EGAN: Then, Mr. Taylor, if a law is passed by the people through the use of the proposed initiative when would the law become a law?

TAYLOR: In 120 days I believe we have in here no, 90 days, and any referendum petition would necessarily have to be filed with the secretary of state within the 90 days after the law is enacted.

EGAN: Where does it say that?

TAYLOR: Page 2, line 6. The first part of the word "referendum" starts at the end of that line. Referendum petitions shall be filed within 90 days after adjournment of the legislative session at which the measure was passed."

EGAN: That does not say that is when the law will become enacted through the initiative. It just says that is when they shall be filed.

TAYLOR: If that is filed, that suspends them, but it does not suspend an emergency act. If there is an emergency clause upon a bill, the referendum is not operable.

EGAN: In Section 5 it says, "Neither the initiative nor referendum may be used as a means of making or defeating appropriations of public funds or earmarking of revenues nor for local or special legislation." But it says nothing in there denying the people the right to go to the polls and do away with a particular tax, say, that had been levied by the legislature. Did you mean that the people could, through the use of the initiative, go to the polls and nullify any act that they might so choose? I am thinking if that is true what might happen in some cases where a certain appropriation had been made but you would not be voting against the appropriation, but if the people went to the polls, if there was not some restriction there, and did away with the tax measure that the legislature had deemed absolutely necessary to provide the revenues, it could cause chaos until that situation was corrected.

TAYLOR: If the use of those moneys was so imperative, Mr. Egan, I think the legislature could very easily attach an emergency measure on that and take it out of the provisions of the referendum.

EGAN: Could the legislature do that or would it be necessary to add some wording in Section 5 in order to be certain that through the action of the general public at the polls that they might do away with enough revenue that would cripple some program that they had no intention of crippling?

TAYLOR: I don't believe they would have the right to take away revenue unless they could show some methods of raising the same amount of revenue from different matters. As your question states, it might be to clarify this matter that if we could amend this to show, to carry out the intent you ask, that it could not impair the revenue structure that had been passed by the legislature.

CHAIRMAN R. RIVERS: Mr. Doogan.

DOOGAN: I would like to ask Mr. Taylor a question. I would like to carry Mr. Egan's thought just a little bit further, Mr. Taylor, and I would like to carry it where one legislature has imposed, say the property tax and then another legislature comes along and abolishes that property tax. I notice according to your Section 1 and Section 5 that I don't consider that there is anything in there that would allow the people either, through the initiative, to oppose the abolishing of that property tax by the legislature.

TAYLOR: Not unless it indirectly affected the appropriations.

DAVIS: I would like to ask some questions of Mr. Taylor. Would you refer to the last sentence of Section 4 on line 19 of the proposal, "No law passed by the initiative may be vetoed by the Governor nor amended or repealed by the legislature for a period of three years." As I read that, it is possible to infer there that the governor might have a right to veto such a law after three years, and I wonder if that is what you intended or if you meant that the governor would have no right to veto it at all, but the legislature might have a right to amend or repeal after three years?

TAYLOR: I think Mr. Davis that all legislatures, the governor must veto a bill within a certain number of days, and he couldn't wait for another year and the legislature for a period of three years would not be able to repeal that law by an act of the legislature, but there would be nothing to prevent the people, if they felt that the act that they had initiated was wrong, why they can then by the appropriate petition can repeal it.

.....

DAVIS: It isn't your intention in any event, that the governor shall have any right to veto any matter that is initiative?

TAYLOR: No, sir. It is only the people that can do it and the legislature after three years.

DAVIS: Well, as long as I'm on my feet, then let me ask a question on a couple of other sections about the same place. Section 5, line 24. has to do with restrictions on the use of the initiative. It says that the initiative may not be used for various things including, "as a means of making or defeating appropriations of public funds or earmarking of revenues nor for local or special legislation." Now I take it that what you intended there was rather than defeating or earmarking of revenues, that the initiative may not earmark revenues?

TAYLOR: They cannot.

DAVIS: That was your intention?

TAYLOR: That is right.

DAVIS: It was suggested in conversations among some of us this morning that it might be possible since you have listed various things that cannot be initiated and have not included an amendment of the constitution, that it might be inferred that then one could amend the constitution by initiative. It was also argued along that line that since you have along with this put in a bill concerning amendments to the constitution, which does not include an initiative procedure, that the Committee did not intend that the constitution should be amended by initiative.

TAYLOR: We have specifically excluded that, Mr. Davis. We felt that the initiative was not the proper way to amend the constitution. We took a shorter and perhaps a less expensive way of amending the constitution.

DAVIS: The reason then that you have not included the amending of the constitution in this Section 5 among the things which the initiative may not do is the fact that you have covered that subject in the section on the amendment of the constitution?

TAYLOR: That is right.

MCLAUGHLIN: I have a question, Mr. Taylor. Regarding your attention to Section 4, the first two sentences: "Prior to general circulation, an initiative petition shall be signed by ten qualified electors as sponsors and have the constitutionality certified by the Attorney General. Certification shall be reviewable by the courts." First, sir, is that provision found in any one of the 19 states that have initiative and referendum?

TAYLOR: No, I think this is the first one I have run across. We felt that should be to prevent, you might say cycloramic groups from, putting these petitions out, and we know it has been done in many states. We put that on there and the attorney general passed on it, but they have the right to go to the courts to test the validity of the petition that they are going to get out.

MCLAUGHLIN: May I ask another question? Mr. Taylor, assuming that ten electors get together and present this petition to the attorney general and the attorney general makes a ruling that the act sought to be certified is constitutional, does that preclude the courts thereafter from finding it unconstitutional?

TAYLOR: I think any interested taxpayer could have it reviewed, and I think whether the certification was unfavorable or favorable, I think that an interested taxpayer could review that.

MCLAUGHLIN: Mr. Taylor, would there be more of a saving to the government if it were required that the eight per cent sign the petition before they submit it to the attorney general rather than having any ten persons submit it to the attorney general for an opinion? Would the government suffer any loss if it required the eight per cent of the total voters to secure the petition before they present it to the attorney general?

TAYLOR: Mr. McLaughlin, in this particular instance we went over all the states that have the initiative and referendum and some of them require considerable percentage of the number of votes that were cast for the governor at the preceding election, and this eight per cent that we arbitrarily set was put at that figure. It is low, it is among the lowest. Because of the size of the Territory, the limited population in proportion of the size, we felt an eight per cent after it is certified as to its constitutionality is okay and also that the ballot is properly described.

MCLAUGHLIN: Had the Committee discussed how many states in the Union authorized their highest appellate courts to give advisory opinions on constitutionality where the question hasn't arisen?

TAYLOR: I don't know. Some of them were referred to the secretary of state who no doubt, we felt would certify the question to the attorney general for an opinion. Unless the secretary of state was an attorney he would be a little hard put to pass upon the constitutionality, but I suppose he would do that through the attorney general of the state.

CHAIRMAN R. RIVERS: Point of clarification. This says the attorney general shall pass upon that.

TAYLOR: That is right in here, but a lot of states have said just the secretary of state, so we put it the attorney general who is the law officer of the state and he passes on it without having to go to somebody else.

MCLAUGHLIN: Did the Committee consider how long normally, assuming that this process went into immediate operation, how long it would take for the supreme court of Alaska or the superior court, after an appeal from the superior court, to determine the constitutionality of an abstract question presented by ten citizens?

TAYLOR: Well, it might take some little time. It might be given a priority, like if it was something that affected the entire electorate of the state.

MCLAUGHLIN: Mr. Taylor, may I inquire of you personally if it's proper, in your experience in determination of constitutionality of questions presented and appealed to the highest courts of any states, what is the average time lapse from the time the question is first presented until the time it is determined?

TAYLOR: I would say if it went through the superior court, the supreme court would take at least six months.

MCLAUGHLIN: That would be under extremely ideal conditions.

TAYLOR: That would be without any particular brakes being put on it.

MCLAUGHLIN: What is the meaning in Section 5, last sentence, "Emergency acts are not subject to referendum." What are emergency acts?

TAYLOR: Well, if an act that has passed the legislature and is of such a nature that the legislature feels that it should be passed immediately, they can, by two-thirds majority, declare that an emergency exists and that law shall become effective immediately upon its passage and approval, which means that as soon as the governor signed it, that became a law of the state.

MCLAUGHLIN: Could you tell me offhand, Mr. Taylor, how many of the acts of the Territorial legislature normally are emergencies? What percentage?

TAYLOR: It would be a guess, but I would say half or more of them are declared emergency legislation.

MCLAUGHLIN: How many states in their initiative and referendum proposals provide that emergency acts are exempted?

TAYLOR: Most of them.

CHAIRMAN R. RIVERS: Mr. Hinckel.

HINCKEL: I would like to answer one of the questions Mr. McLaughlin asked of Mr. Taylor which I think was answered incorrectly. He asked if there were any state that had such a provision as this small number of people asking for certification, sponsoring, and this will not be the first state to have it. The State of Massachusetts has it, and the object of it in the article that I read regarding that, aside from the fact I knew it to be a fact, was that it would prevent people, prevent one person from circulating a petition which would have no real value and possibly be unconstitutional at the same time, and bothering people with getting this thing circulated and signed and presented and causing nothing but trouble, and if it was done this way it would eliminate that and also it would prevent the circulation of petitions in a secret manner that as soon as the petition was submitted to the attorney general, why it would become a public matter and it has considerable advantage in my opinion. I was the person on the Committee that suggested it be included and our advisory group concurred. They thought it a very good idea. He asked another question that I wanted to answer too, but I can't think right now.

TAYLOR: Mr. Speaker, I am glad Mr. Hinckel brought that up. He might have misunderstood me. I said this was one of the lower. Some are ten, some are fifteen, some twenty per cent. I think the higher brackets make it impossible.

CHAIRMAN R. RIVERS: Mr. Hinckel was talking about the ten sponsors, Mr. Taylor, and pointing out that Massachusetts requires a certain number of sponsors before the petition is circulated.

TAYLOR: Oh yes, that is right. I did not mean to say none of them have it. None of them I knew of at the time. We were putting a safeguard around people being importuned by these groups who wanted signatures and they had to get quite a number of them, and if it was an unconstitutional proposition they were advancing or if they did not have the proposition properly set out on the ballot, they could not circulate it.

CHAIRMAN R. RIVERS: The point is clear now. Mr. White.

WHITE: I would like to direct a question to the Chairman of the Committee on Direct Legislation.

TAYLOR: I am not the Chairman, but Mr. Collins has asked me.

WHITE: In that case, Mr. Taylor, referring again to Section 5, it says that the referendum may not be used as a means of making appropriations of public funds. Could that be construed as saying that the legislature could not put to the people by a referendum, a bond issue proposition?

TAYLOR: No. They could approve the bond, but I think they could possibly require a bond but they could not direct where the money went to.

WHITE: In passing a bond issue it is inherent under the situation that appropriation of public funds must subsequently be made to retire the bonds. It would seem to me that in the sense of this section it would forbid the legislature from putting bond issues to the public referendum.

CHAIRMAN R. RIVERS: Bonding would be to borrow, Mr. White. Appropriating would be taking money presently available.

TAYLOR: It would be pledging the credit of the state. I doubt very much whether a bond issue could possibly be because the bond issue would necessarily have to be for a particular purpose. Now in many of the states the provisions in regard to initiative and referendum do not apply to any moneys of the state for the purpose of carrying on the function of government. The universities, school systems, orphan homes, penitentiaries, those are all exempt because those are functions of the government that have to be carried on, so they don't get, you might say, some chance of trying to nullify those institutions by cutting off appropriations for them, and that is the reason that the safeguard is put in here, the same as it is in practically all the states.

BUCKALEW: Mr. Taylor, is it not true that only 19 states have adopted this?

TAYLOR: I believe that is all there is at the present time.

BUCKALEW: Is it also not true that the last state to adopt such measures was some 30 years ago?

TAYLOR: 1928 I believe it was.

BUCKALEW: Do you know what state?

TAYLOR: No I don't. Practically all of the initiative referendum was adopted in a period around 20 years, between 1898 and 1918 was the time they were in popular favor of the states at that time.

DOOGAN: I would like to ask Mr. Taylor, you provided for the initiative and referendum, but don't you feel that the power that is left to the people as provided by this article is only in what you might call minor lawmaking?

TAYLOR: No, I would not think so.

DOOGAN: The reason I point that out is that you allow no initiative or referendum for raising money. You don't allow them to prevent the legislature at times, as they have done, to stop them from removing some of the taxes that they have already applied, when it might be felt by the people that the legislature was subject to a great deal of pressure to do so, and consequently my particular feeling is that what is left for the people to do is very minor legislation, and something that would hardly be worth their while to go into anyhow.

TAYLOR: What particular part of this proposal, Mr. Doogan, are you referring to?

DOOGAN: Section 1 and Section 5 which seem to me to be most of the meat of the proposal as it is.

TAYLOR: Well, there is a lot of local legislation, like if the legislature, or some people up here wanted to have money appropriated by the legislature to put another bridge across the Chena River, and they got an initiative addition out, that would not be acted upon because it is strictly expenditure of money for local

purposes. That would only apply to particular subjects or particular people or particular areas, so then they would not be allowed to circulate petitions.

CHAIRMAN R. RIVERS: Mrs. Sweeney.

SWEENEY: I would like to ask Mr. Taylor a question. On Section 4, the last line on page 1 and going to the top of page 2 it provides that you will have eight per cent of the number of votes cast for governor in the preceding general election, at which the governor was elected. I am wondering if your Committee considered the possibility of a restriction in there similar to the one that is in the model constitution requiring that only a certain percentage of those signatures can come from a certain district. That is, that the petition must represent a large area rather than a restricted area.

TAYLOR: We did talk that over. We gave it consideration. We felt that with the geographical limitations of the state of Alaska, we felt that in view of the size of Alaska, the geographical size of it in proportion to the population, that if we put a limitation upon the number of voters that could come from any political subdivision or of any particular area, that it would make it very difficult up here by reason of the great sparsely populated areas, we did not hold that up. We felt it would make it very difficult if 25 per cent of, say 25 or 30 per cent of the petitions had to be from one division or one part of a division. Well, you could go in there and get those all right, but it is so difficult to circulate those petitions in the outlying precincts.

SWEENEY: On the other hand, I feel that, if just speaking of divisions now, if one division, for instance the Southeast, had a bit of legislation they wanted passed, they could get the eight per cent of the votes very easily and yet we would be imposing, if the legislature then passed whatever it was we wanted, we would be imposing our will on the whole of Alaska, and it seems to me that a portion should be required to come from another division, perhaps a third or even half from another section.

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TAYLOR: Mr. Chairman, I would like to answer Mrs. Sweeney's question in this way. Although as she states the eight per cent of the voters, of the number of voters that cast their votes for the governor at the previous election was secured in one division, that does not make it a law because that then is submitted, if they get the sufficient number of signatures on there, then it is submitted to the entire electorate and then it can be defeated by the voters of other divisions or political subdivisions whichever they might be, because the entire electorate then votes upon what eight per cent of the electorate initiated.

CHAIRMAN R. RIVERS: Mr. McNealy.

MCNEALY: I would like to ask Mr. Taylor a question. As I understand it, Mr. Taylor, there are two procedures to put into effect on the initiative. One is written in the bill here, and the other form is for the people to petition the legislature by initiative to enact certain laws. I was wondering if your Committee had considered the one I just mentioned by the people petitioning the legislature to enact laws rather than taking it direct as set out in the bill.

TAYLOR: I think the right of the people to petition the legislature is one of our rights as guaranteed us by the Constitution and requires no special law for that purpose. We can all petition the legislature.

CHAIRMAN R. RIVERS: Mr. Barr.

BARR: I would like to ask Mr. Taylor two or three questions on the initiative. I can see for the recall and referendum, but the initiative seems to me to be a very cumbersome and unnecessary procedure. Will you please convince me that it is necessary. And I would like to point out to you as a member of the legislature, over 200 bills were introduced, and many of them were introduced by request. It is a very easy matter to ask a member of the legislature to introduce a bill. Why is this cumbersome procedure necessary?

TAYLOR: Well, this is not for the legislature to do it. This is to have the questions submitted to the voters as to whether that becomes a law or not -- to vote on it.

BARR: Providing the legislature does not pass the act before that time?

TAYLOR: Yes.

BARR: In other words, if the legislature refuses to act, then it goes for a referendum. Well, in our present form of government the people elect the legislators to represent them, and I have never known a case where they did not do what they thought the people wanted. I don't think they ever would.

TAYLOR: Did you read the history of the State of California and the Southern Pacific Railroad, Mr. Barr?

BARR: You mean some special group wanted something done?

TAYLOR: And they got it.

BARR: Don't you believe that with all these restrictions even, that it is still easy to have a petition signed and that any special group could have a petition of this sort signed very easily and submitted?

TAYLOR: I think eight per cent of the voters would be quite a sizeable petition, especially if say 15,000 votes were cast for the governor in the governor's election, this last one we had 27,000 votes. It would take eight per cent of those 27,000 votes that were cast for a particular man. How many were cast for the candidates that were running for governor, the entire election for governor?

CHAIRMAN R. RIVERS: Did we have an election for governor?

TAYLOR: I mean if we did.

BARR: Mr. Taylor, eight per cent would take a large number of petitioners. If there was some little group in one town who wanted something on some question, something that was Territorial wide, such as fish traps, statehood or groups representing one type of school against another type of school, don't you think eight per cent would be a fairly small number of petitioners?

TAYLOR: I do not believe it would be a very small number, and then another thing, Mr. Barr, carrying your arguments further, you say a small group in a particular locality that wanted something, they are barred because that would be local legislation.

BARR: That is what I pointed out. But I am speaking of something now that is Territorial wide, some question, and there are a large group of people on both sides of the question, and eight per cent would not be many signatures.

TAYLOR: No, that is only to say whether an election is going to be held, Mr. Barr. I don't think we should put undue restrictions upon having an election because then the whole electorate has got to come out and say whether or not that proposition is going to prevail or whether it is to go down in defeat.

CHAIRMAN R. RIVERS: Mr. Smith.

SMITH: I would like to call attention to the fact that we have had a perfect illustration here of the fact that in considering any proposal, or section by section, we are apt to see only the section before us and not take into consideration that every preceding section may also affect those following. Now I refer specifically to the fact that Section 1 and Section 5 have been said to be the meat of this proposal. Actually Section 3 is fully as significant as any of the others. Section 3 says, "The legislature shall prescribe the procedures to be followed in the exercise of the powers of initiative and referendum, subject to the specific authority reserved herein." Now going back to the questions raised several times as to the percentage of the number of votes required to initiate a measure and the fact that they might all originate in one certain district, we

have left the power with the legislature to provide that those signatures may be required within the various districts, may require that they may be scattered throughout the various districts.

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SMITH: Mr. Chairman, there are a lot of questions that have been brought up, and I am just going to touch on some of them very briefly. Referring back to the survey of Oregon's experience, the report states that the measures initiated were on the whole not much better or worse than the products of the legislature. The people of Oregon had been considerably burdened with decisions on all manner of measures, some of them nuisance proposals that kept reappearing time after time. The people were not notably better educated politically than before. However, they had exercised their responsibility in a fairly conservative manner. They had been rather free to alter the structure of the government, had not been financially irresponsible and had been rather conservative on policies in the general field of public welfare. Now I think Mr. Victor Rivers brought up a question as to whether, if the initiative were included in the constitution we would then have a republican form of government. I think it would take a constitutional lawyer to answer that question, but I imagine that the people in the states who do have this provision feel they do have a republican form of government. We go back to the question as to the accomplishments of the initiative and referendum which have been covered to a certain extent. I go back, possibly because it is more realistic to me, to the fact that Washington and Oregon for many years tried to get their legislatures to eliminate fish traps with no success. Through the initiative measure they were both successful. Now Mr. Barr's suggestion that it would be easy to get the legislature to take action if they were asked goes back to the fact that California again tried for years to get their state legislature to set up a civil service system. They were unsuccessful. Through the initiative right the people of California instituted a civil service system. Now I believe Mr. Doogan asked a question. I am not sure. Someone brought up the point -- I believe it was Mr. Davis that the right of the initiative as outlined here might be construed as allowing the people to amend the constitution. I would call your attention to Section 1 which is preceded by the word "initiative" and following, "The people reserve the power by petition to propose laws and to enact or reject such laws at the polls." And I don't think that could be construed as amendments to the constitution.

V. RIVERS: Do you yield for a question, Mr. Smith? In your study of Oregon, did you find that by referendum the people of Oregon had defeated a statewide sales tax seven times?

SMITH: Yes, now that you call it to mind, I do very distinctly.

V. RIVERS: Do you also believe that if we had this clause in here which says, "emergency action not be subject to referendum", that we would eliminate practically nine-tenths of all the acts of the legislature including such as things as sales tax if it carried that clause?

SMITH: I have had considerable worry over that fact, Mr. Rivers, and I think it is a thing which is very open to question.

V. RIVERS: Do you believe that if we have the initiative and referendum in the constitution it will make it more palatable from the point of view of some of the legislators or senators in Congress for approving this act?

SMITH: That is one of the chief reasons why I support very strongly the inclusion of the initiative process in the constitution, even though it is not used, it is there. I think that the legislators, if they know it is there, they will be very careful in ignoring the will of the people.

V. RIVERS: Do you believe that approval of the act subject to referendum, any of those emergency acts shall not be subject to referendum, could be covered by a different clause such as the acts that are necessary for the immediate preservation of the public peace, health, safety, etc., would that be better than just saying those that carry an emergency clause?

SMITH: I feel it would, Mr. Rivers.

CHAIRMAN R. RIVERS: Mr. Hinckel.

HINCKEL: I would like to speak on that subject. We had numerous drafts of this article and among them we had somewhere the wording I thought was better, and it is quite possible that in trying to condense it that we went a little too far, and some of the things we originally had written in the article and took out in condensing may have to be put back in. Mr. McNealy asked a question which has been incorrectly answered. He asked had we considered the indirect method of putting through a bill, and you will notice that on lines 13 and 14, page 2, that it says that these conditions shall exist, "unless the legislature enacts the measure initiated during the session." So we did include the indirect method of approach which we thought was the economical way to do it.

CHAIRMAN R. RIVERS: Mr. Hellenthal.

HELLENTHAL: A question of Mr. Taylor. Mr. Taylor, is it not possible that the California fiasco where the legislature was dominated by the railroad could have been due to the fact that the California Legislature as then constituted was not truly representative of the people?

TAYLOR: That is entirely possible, Mr. Hellenthal.

HELLENTHAL: Is it not possible that some of the domination of the Alaska Territorial Legislature in ancient times might have been due to the fact that it also was not representative of the people?

TAYLOR: That is true.

LONDBORG: Mr. Chairman, may I direct a question to Mr. Taylor? According to statistics I believe the other states require from eight to fifteen per cent of the qualified electorate to initiate. Is that not true?

TAYLOR: They have different ways. I think the majority of them that have it there is a percentage of the votes cast for the governorship at the previous election.

LONDBORG: The votes cast? I was referring to the report where it said that eight to fifteen per cent of the qualified electorate, and I wanted to have it clarified. Here we have eight per cent of the votes cast which would be a considerable lower percentage of the qualified electorate than eight per cent. I thought we might have that open for consideration.

TAYLOR: That would be the number of votes cast for the governorship, not the particular man who won the race.

LONDBORG: That would still be a considerable amount less than eight per cent of the qualified electorate, and I am wondering if other states do have it reading the governor.

TAYLOR: There is quite a few of them who have it. I might state why that is, because it's ordinary, there might be instances where three people would be running for the governorship, usually it is two. Most people who go to the polls would vote for one of those two candidates for governor so they take the combined vote for governor and then eight per cent if it is in the law or fifteen per cent if it is in the law. Now there is one state I think that has only five per cent.

LONDBORG: I see that. That is eight per cent of the total number of votes cast, but I was wondering about that if the states used that or if they used the percentage of qualified electors as was referred. Perhaps the PAS report was in error on that.

CHAIRMAN R. RIVERS: Mr. Fischer, could you throw some light on that?

V. FISCHER: I might read from the Hawaiian Manual. "Six states require a number of signatures to be based on previous vote for governor. Two states require number of signatures to be based on previous vote for supreme court justice. One state requires number of signatures to be based on previous vote for secretary of state, one state requires number of signatures to be based on state office which receives the highest vote at previous election, and then a few leave it up to the legislature to determine and two states specify in the constitution the exact number of signatures required."

LONDBORG: They did not give the percentages at all there, did they?

V. FISCHER: Yes, they do. Arizona ten per cent based on governor; Arkansas eight per cent on governor; California eight per cent on governor. Eight per cent is the most common.

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MARSTON: I am going to make a speech in favor of the initiative, referendum and recall which has not been made yet, and you have made up your minds practically here without the thing being properly presented, and don't let for one minute, gentlemen and ladies, this kind of talk you heard make up your minds on so vital a piece of legislation. Delegates who make a remark about "this foolish piece of work", I think it is unbecoming to this audience and this group of people to talk that way about a thing so fundamental as we have here. If you don't trust the people I don't know where you are going. That means if you vote down the initiative, referendum and recall you do not trust the people, and the people are the people, and that is the only reason we are here, and if you can't trust them I would hesitate to go back home before your committees and talk to them. I think the passage of the initiative, referendum and recall will sell a lot of these constitutions. When a man says "I don't like that", you can say "You have a right." The people themselves can go into the courts of the land to have your word made law by a certain procedure. I hope that we pass the initiative, referendum and recall, and I hope we never have the occasion to use it. I think it is a great thing to have it in the hands of the people, and you will notice that the Western states are the ones that passed and used the initiative, referendum and recall, and we are Western and Northern, the same kind of people. We are explosive people. We like to express ourselves, and I can see miners back in the camps thinking over things that have not been right, and fishermen in their little boats wondering why. Now they can say, "We can correct that thing", and though they never use it is a great healthy thing to have in the hands of the people. It has been used in some 15 states, and they have it in their constitutions. It is constitutional, fundamental law, and I hope that you people keep an open mind here and don't let this talking on here affect you because it is vital. You are sent here with a great duty to carry out the wishes of the people back home, and if you turn down this kind of legislation you are going to be in for a lot of embarrassment and a lot of criticism, and I don't like the way it has been carried on here. This Committee was not in agreement that made this document, and it was said so here, and I think all the members of the Committee should be heard on this before you make up your minds. I am for the initiative, referendum and recall, and I hope that you people open your minds again which you had it practically closed up here and were ready to close off by a certain group of people here, and think very seriously on this matter. It is fundamental law and I am going to ask the Chair right now to call on the rest of the Committee that worked on this direct legislation. That is all I have to say.

CHAIRMAN R. RIVERS: Committee members and others may be heard. Mr. Cross.

CROSS: I have been thinking quite seriously on this. I made up my mind that if you can't trust your legislature this cumbersome machinery is not going to help it very much, and I don't think we are going to help matters by taking a more cumbersome way of deciding things. We are here to set up machinery for legislation. And if we can't set up machinery that will work, I doubt very much if we can find any other way of doing it.

CHAIRMAN R. RIVERS: Mr. Taylor.

TAYLOR: Mr. Chairman, I agree with Colonel Marston. I believe he has stated it perhaps more eloquently than I can, about the desirability of having the initiative and referendum. I can not go along with Mr. Cross's statement that if the legislature.