ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 SJUD 12586

Professional Liability Insurance only covers damages caused by the negligence of the insured consultant relative to the accepted professional standard of care. Nationally, the accepted professional standard of care is "the ordinary and reasonable care required and established by expert testimony of what a reasonable and prudent professional would have done under the same or similar circumstances at the same time in the same locality."

Any firm, either through ignorance or otherwise, may assume a greater responsibility or higher standard of care, but professional liability insurance (PLI) will not cover the additional liability.

Without PLI insurance, consultants who accept onerous indemnifications and uninsurable standards are seldom capable of honoring them, and those who accede to broad, uninsurable contractual liability requirements do so at great peril to their livelihoods. For this reason, most consultants pay close attention to indemnification clauses in contracts, and spend considerable time attempting to negotiate fair and insurable terms.

At USKH Inc., we spend at least 100 hours per year of Principal time battling draconian indemnification language. There are currently 426 licensed architect/engineer corporations in Alaska. If only one quarter (25%) of them spend as much time as we do, the cumulative impact exceeds 10,000 hours of professional time per Year! Adding in the time spent by insurance companies and their legal departments, the total cost to the pubic is dramatic. At the current average billing rate for Principal level architects and engineers of about $150/hour, the wasted potential of A/E firms struggling with unfair indemnification language may exceed $1,500,000 per year. These costs are eventually passed on to the public. There is no free lunch.

Paradoxically, consultants who truly understand risk are in the best position to help the Owner's project proceed smoothly, yet typically these professionals refuse to sign onerous indemnification clauses. This leaves the Owner with consultants who are motivated to be overly conservative and employ costly "defensive design" techniques to limit their risk or somehow make themselves "judgment proof". With one-sided indemnification clauses, not only does the cost of A/E services increase but the quality of service may be reduced. It is a double whammy.

The party with the most to gain from a project is the Owner and the equitable distribution of risk should acknowledge these factors. Design professionals do not have deep pockets and should not be expected to assume all risks.

Fair practice requires that the Consultant should be responsible for their negligence, the Public Agency should be responsible for their negligence, and if there is joint negligence then the liability should be shared. Either way, the indemnification should be limited to exclude unrelated third party events.

This question of indemnification has been addressed by the State of Alaska Department of Transportation (ADOT) whose language has been adopted by many boroughs and agencies throughout Alaska for decades. HB-151 standardizes the ADOT approach. Even though the precise ADOT language is less than perfect, it is an excellent model to emulate. The language of HB -151 retains the true essence and spirit of the current ADOT language.

Thank you for your efforts on behalf of the professional architects, engineers, and land surveyors, and the general public in Alaska. HB-151 is important legislation that will benefit all Alaskans.

Sincerely,
USKH, Inc.

James A. Huettl, AIA
Chairman of the Board
Chief Executive Officer

MARSH

LeAnne Boldenow
Vice President

Marsh USA Inc.
1031 West 4th Avenue, Suite 400
PO Box 107502
Anchorage, AK 99510
907 276 5617 Fax 907 276 6292
leanne.boldenow@marsh.com
www.marsh.com

March 05, 2007

Representative Craig Johnson
State Capital, Room 126
Juneau, AK 99801-1182

Subject: House Bill 151
Design Professional Contractual Language

Dear Representative Johnson

I am writing to support the efforts of the HB 151 in direct alignment with Alaska Design Professional Council (APDC). I am a member of the APDC Contract Task Force Committee. As an insurance broker representing more than thirty (30) Design Professional Firms over the past ten (10) years, I have continually reviewed poorly written uninsurable contracts released by public agencies.

It is common for onerous indemnification clauses within contracts to require the design consultant to take on liabilities that are not their typical responsibility in the design aspect of the project. Insurance can generally cover liabilities that are TORT Law and would be the firm's responsibility even if a contract was not in place. Examples of a poorly written contract language that I identify for a design professional firm are:

- "Defend the public agency for any and all claims." Design professionals insurance will provide defense when the negligent act, error or omission of the consultant's work is identified as culpable. It is typical to see a contract that does not tie the liability to negligent acts, errors or omissions.
- Reference to the design professional consultant as a "contractor", which could hold the firm to a higher standard of care to include guarantee, warranty or certification of work. Design professional standard of care is not guaranteed, warranted or certified. A design consultant's work is intellectual property vs. an actual structure that is the final work product of a contractor construction firm.
- Giving the public agency ownership of the design teams drawings and documents. As design firm provides a professional service to their clients, not a product. A design professional intent is to protect against unauthorized reuse of their drawings and specifications by others.

I believe many public agencies attempt to write one contract that fits all aspects of a building project. As referenced above, when a contract is written for a general contracting construction firm it requires broader liability that is outside the standard of care of a design professional consultant. It is unfortunate these incorrectly written indemnification clauses in contracts are

forced on the design professional consultants' all around the State. The release of such a poorly written contract requires a design professional consultant firm's to make a risk management decision to determine if they want to take on the liabilities outside their insurance program. There are also firms out there that do not have a full understanding of the risk they are taking undertaking with such poorly written onerous contract.

I support this bill and commend you for your support and action. Please feel free to contact me with any additional questions or concerns. Thank you for your efforts on the design professional's behalf around the State.

Sincerely,

LeAnne Boldenow, CIC
Vice President

Cc: Boyd Moganthaler, APDC Contract Task Force

Alaska Professional Design Council • PO Box 100515 • Anchorage AK 99510-0515

HB 151 Comment Letter

March 5, 2007

Representative Craig Johnson
Chair, House Resources Committee
Alaska State Legislature
State Capitol, Room 126
Juneau, AK 99801-1182

Re: House Bill 151 — Indemnification

Dear Representative Johnson:

On behalf of the Alaska Professional Design Council (APDC), I am writing to express our support of House Bill 151 and to the need for this legislation.

The Alaska Professional Design Council (APDC) is a consortium of professional societies representing architects, engineers, land surveyors, landscape architects and other design professionals. Our ten member organizations have a combined membership of over 1,500 and represent approximately 5,000 licensed professionals. APDC addresses issues of concern to the various design professions through workshops, seminars, ad-hoc committees, standing committees, and governmental task forces. APDC also receives sustaining member support from 30 Architectural and Engineering firms throughout Alaska.

Presently, public agencies in Alaska have a wide variety of indemnification requirements. This bill will standardize indemnification requirements for all Public Agencies in Alaska, make the Architects/Engineers and other professionals responsible for their "negligent acts, errors or emissions", make each financially responsible for their own liabilities, fairly apportion joint liabilities on a comparative fault basis, and defines Public Agency for purposes of this bill.

The Alaska Department of Transportation & Public Facilities (DOT/PF) has language that is generally appropriate for contract indemnification purposes. HB 151 through legislation is requiring the use of indemnification contract clauses that are in place with DOT/PF and to be consistent with all Public Agencies.

Professional Services Contracts establish the basic framework between a project owner and a design company for design services associated with a particular project. In recent years, owners of some projects, generally government and quasi-government agencies, have required designers to assume additional liability, beyond the consultant's own negligence. The net effect of this action is to reduce agency risk by insulating the agency from its own negligence. This increases the liability insurance costs to the designers and creates a contract which is not fully insurable, or in some cases asks the designers to assume liability for which no insurance is available. APDC supports legislation that would prescribe indemnification language that is uniform for all state government agencies and assigns, and that requires each party to be financially responsible for their own liabilities and to fairly apportion joint liabilities on a comparative fault basis.

APDC encourages the House of Representatives to move HB 151 forward and enact this important legislation.

Thank you for considering APDC's position on this important issue.

Sincerely,
Alaska Professional Design Council

Robert J Lang

Rob Lang, P.E.
President

AMC ENGINEERS

March 5, 2007

Representative Craig Johnson
State Capitol, Room 126
Juneau, AK 99801-1182

Via email to Rep_Craig_Johnson@legis.state.ak.us

RE: HB-151 Indemnification Provisions in Professional Contracts

SUBJ: Please Pass HB-151; Indemnification Reform is essential

Dear Representative Johnson:

Standardization of fair and balanced indemnification requirements in public contracts is long overdue and urgently needed. The public has much to gain by the indemnification standardization offered by HB-151, and much to lose if the status quo is maintained.

No single term in a professional services contract has more impact than indemnification. A fair and balanced indemnification requirement sets a positive tone for the project that follows, and the opposite is also true. One sided indemnification provisions that add large uninsurable risks for a consultant create an awkward environment that is adverse, defensive, more expensive and less creative. Ultimately, uninsurable indemnification requirements drive good professionals from the marketplace.

Good project development and design requires very collaborative effort between owner and designer, and a great deal of effort by both parties. A professional services contract that nurtures qualities of mutual respect, fairness, open communications and the free and open exchange of ideas is the first and perhaps the most important step in establishing a cooperative relationship and a successful outcome. A contract that chills this relationship between designer and owner leads to mediocrity at best, and sets a stage for disappointment and confrontation.

Public agencies hold enormous coercive and situational power, simply by the very nature of their control of rather large design and construction budgets. Consequently, contracting public agencies are in a position to impose unfair conditions in their agreements that violate what most would concider ethical business practices and fundamental fairness. In Alaska today, some agencies demand absolution from all liability and loss, except for loss resulting from the "Owner's gross negligence or willful misconduct." This exception is virtually impossible to prove, so the consultant is effectively responsible for everything, even acts of the public agency and others completely out of the consultant's control.

Professional Liability Insurance only covers damages caused by the negligence of the insured consultant relative to the accepted professional standard of care. Nationally, the accepted professional standard of care is "the ordinary and reasonable care required and established by expert testimony of what a reasonable and prudent professional would have done under the same or similar circumstances at the same time in the same locality."

Any firm, either through ignorance or otherwise, may assume a greater responsibility or higher standard of care, but professional liability insurance (PLI) will not cover the additional liability.

Adams, Morgenthaler and Company, Inc.
701 East Tudor Road • Suite 250 • Anchorage, AK 99503
fax 907-257-9191 • info@ame-engineers.com • phone 907-257-9100

Without PLI insurance, consultants who accept onerous indemnifications and uninsurable standards are seldom capable of honoring them, and those who accede to broad, uninsurable contractual liability requirements do so at great peril to their livelihoods. For this reason, most consultants pay close attention to indemnification clauses in contracts, and spend considerable time attempting to negotiate fair and insurable terms.

At AMC Engineers, we spend at least 100 hours per year of Principal time battling draconian indemnification language. There are currently 426 licensed architect/engineer corporations in Alaska. If only one quarter (25%) of them spend as much time as we do, the cumulative impact exceeds 10,000 hours of professional time per year! Adding in the time spent by insurance companies and their legal departments, the total cost to the public is dramatic. At the current average billing rate for Principal level architects and engineers of about $150/hour, the wasted potential of A/E firms struggling with unfair indemnification language may exceed $1,500,000 per year. These costs are eventually passed on to the public. There is no free lunch.

Paradoxically, consultants who truly understand risk are in the best position to help the Owner's project proceed smoothly, yet typically these professionals refuse to sign onerous indemnification clauses. This leaves the Owner with consultants who are motivated to be overly conservative and employ costly "defensive design" techniques to limit their risk or somehow make themselves "judgment proof". With one-sided indemnification clauses, not only does the cost of A/E services increase but the quality of service may be reduced. It's a double whammy.

The party with the most to gain from a project is the Owner and the equitable distribution of risk should acknowledge these factors. Design professionals do not have deep pockets and should not be expected to assume all risks.

Fair practice requires that the Consultant should be responsible for their negligence, the Public Agency should be responsible for their negligence, and if there is joint negligence then the liability should be shared. Either way, the indemnification should be limited to exclude unrelated third party events.

This question of indemnification has been addressed by the State of Alaska Department of Transportation (ADOT), whose language has been adopted by many boroughs and agencies throughout Alaska for decades. HB-151 standardizes the ADOT approach. Even though the precise ADOT language is less than perfect, it is an excellent model to emulate. The language of HB151 retains the true essence and spirit of the current ADOT language.

Thank you for your efforts on behalf of the professional architects, engineers, and land surveyors, and the general public in Alaska. HB-151 is important legislation that will benefit all Alaskans.

Sincerely,

AMC ENGINEERS

3/5/07

Boyd Morgenthaler, P.E.
President

NORTECH

ENVIRONMENTAL ENGINEERING, HEALTH & SAFETY
Anchorage: 206 E. Fireweed Ln, Suite 200, 99503 907.222.2445 Fax: 222.0915
Juneau: 119 Seward Street #10, 99801, 907.586.6813 Fax: 586-6819
Fairbanks: 2400 College Rd, 99709 907.452.5688 Fax: 452.5694
info@nortechengr.com www.nortechengr.com

March 2, 2007

Representative Craig Johnson
Chair, House Resources Committee
Alaska State Legislature
State Capitol, Room 126
Juneau, AK 99801-1182

Re: House Bill 151 — Indemnification

Dear Representative Johnson:

On behalf of myself and ***NORTECH***, I am writing to express our support of House Bill 151 and to the need for this legislation.

Presently, public agencies in Alaska have a wide variety of indemnification requirements. This bill will standardize indemnification requirements for all Public Agencies in Alaska, make the Architects/Engineers and other professionals responsible for their "negligent acts, errors or emissions", make each financially responsible for their own liabilities, fairly apportion joint liabilities on a comparative fault basis, and defines Public Agency for purposes of this bill.

The Alaska Department of Transportation & Public Facilities (DOT/PF) has language that is generally appropriate for contract indemnification purposes. HB 151 through legislation is requiring the use of indemnification contract clauses that are in place with DOT/PF and to be consistent with all Public Agencies.

Professional Services Contracts establish the basic framework between a project owner and a design company for design services associated with a particular project. In recent years, owners of some projects, generally government and quasi-government agencies, have required designers to assume additional liability, beyond the consultant's own negligence. The net effect of this action is to reduce agency risk by insulating the agency from its own negligence. This increases the liability insurance costs to the designers and creates a contract which is not fully insurable, or in some cases asks the designers to assume liability for which no insurance is available. ***NORTECH*** supports legislation that would prescribe indemnification language that is uniform for all state government agencies and assigns, and that requires each party to be financially responsible for their own liabilities and to fairly apportion joint liabilities on a comparative fault basis.

We encourage the House of Representatives to move HB 151 forward and enact this important legislation. Thank you for considering our position on this important issue.

Sincerely,

John Hargesheimer, PE, CIH.
President

March 2, 2007

Representative Craig Johnson
State Capitol, Room 126
Juneau, Alaska 99801-1182

RE: HB151

Dear Representative Johnson:

Thank you for your time and efforts for introducing HB151 to the Legislature. A base line of understanding of indemnification is crucial to the community of Alaskan Architects and Engineers and all the various public agencies that utilize those professional services. Currently I believe there is a great deal of misunderstanding among public agencies and an increasing trend to attempt to contractually transfer undue and uninsurable responsibilities to the private sector.

There are industry standard contracts available in the marketplace that have achieved significant scrutiny and mutual acceptance by representatives of Owners, Project Managers, Architects, Engineers and Contractors, all involved in the Construction Industry and these have been time tested in courts of law. Never-the-less we are finding more and more public agencies developing their own contract form and we are seeing an increasing effort to escape their own liability and pass it on to the design professionals. Often times the language is so onerous that it extends our liability far beyond that which we can obtain professional liability insurance. This ultimately defeats their end goal because most design professionals are small businesses with limited resources. If the professional is not covered by insurance then the agency is left with no security or means of resource to cover an unfortunate liability. At best, they will capture what limited resources the firm may have and likely drive them out of business whereas with an equitable contract there may have been insurance available (which is required in all public contracts I have seen). So, the irony is that the agencies mandate the professional purchase liability insurance at great cost and then force them to sign a contract with an indemnification clause that may be specifically excluded in the insurance coverage.

ARCHITECTURE
PLANNING
INTERIORS
DEVELOPMENT

101 WEST BENSON
SUITE 306
ANCHORAGE, AK 99503

(907) 561-5643
(907) 562-3213-FAX

Fundamentally the State should support fairness and equity in public contracts such that the parties to the contract are responsible for their actions. HB151 will help ensure that equitable treatment will prevail.

I welcome any questions or support I may offer in this pursuit.

Sincerely,
ECI/Hyer, Inc.

Terry K. Hyer, AIA

TH/snf

HYER

EHS ALASKA INCORPORATED

March 2, 2007

Representative Craig Johnson
State Capitol, Room 126
Juneau, AK 99801-1182

RE: HB151

Dear Representative Johnson;

I am writing in support of House Bill 151 whose purpose is to bring equity to the question of Indemnification and Hold Harmless clauses that state agencies, quasi public agencies, municipalities and other political subdivisions use.

What this bill seeks to remedy is the situation where the consultant will be held to defend an owner unless the alleged liability is based upon the sole negligence of that owner. This is uninsurable by the Consultant, and few if any of Alaska's design professionals have the financial resources to self insure this risk.

Fair practice should be implemented here. The consultant should be responsible for his negligence, the owner responsible for their negligence, and if there is joint negligence then the liability should be shared. Either way, the indemnification should be limited to exclude unrelated third party events.

As a small, employee owned Alaskan business I can tell you that we are not in a financial position to take on full liability and hold harmless the state agencies that we wish to work for. Nor will our insurance company permit it.

This bill, modeled on the language use by the State of Alaska DOT, seeks to do just that.

I urge your support for this bill.

Sincerely,
EHS-Alaska, Inc.

Robert A. French, P.E.
Principal-in-Charge

11901 BUSINESS BLVD., SUITE 208 • EAGLE RIVER, AK 99577-7701 • (907) 694-1383 FAX (907) 694-1382
WEBSITE www.ehs-alaska.com • E-MAIL ehsak@ehs-alaska.com

TNH
TRYCK NYMAN HAYES, INC.

911 West Eighth Avenue
Anchorage, Alaska 99501
907.279.0543 • 888.779.0543
Fax: 907.278.7679
Email: tedt@tnh-inc.com

March 2, 2007

Representative Craig Johnson
State Capitol, Room 126
Juneau, Alaska 99801-1182

Re: House Bill No. 151

Dear Representative Johnson:

I wanted to express my thanks to you for sponsoring HB 151, a very important piece of legislation which, if enacted, will be instrumental in ensuring the future viability of our firm. As you know, Tryck Nyman Hayes, Inc. is one of the oldest (54 years) and largest of the locally owned engineering firms in Alaska. In the past few years, we have seen a dramatic increase in litigation related to public projects, which is often unrelated to the soundness of our work but we seem to be frequently drawn in and have to spend scarce resources to defend ourselves.

One of the most disconcerting recent developments is that public agencies are increasingly attempting to transfer their liability in such situations to their design consultants through new indemnification language. In the past year we have seen new and often unfair language proposed in contracts from several State entities which do not use the contract model generated by ADOT&PF. In addition, we are now seeing such language in proposed contracts from local government entities which also are not using the ADOT model. We are not able to obtain insurance for much of this transferred liability, thus requiring us to either walk away from the contract or risk the future of our firm by assuming risk for which we are not covered by insurance and could not financially defend if called upon to do so.

It is my opinion that this situation, if left unchecked, will effectively eliminate many local A/E firms in Alaska, thus reducing competition and increasing costs in the State. Your legislation is extremely important to the future of our industry in Alaska.

Sincerely,

Ted B. Trueblood, P.E.

President

March 1, 2007

Representative Craig Johnson
Alaska State legislature
House of Representatives
Juneau, Alaska

RE: HB 151, Indemnification for Professional Services Contracts

Dear Craig:

We would like to express our support of prescribing uniform contract indemnification language for all state agencies within the state of Alaska. We have experienced first hand difficulties in conducting negotiations of contracts which contain uninsurable contract clauses.

Several state agencies have recently issued contracts which have been found to be uninsurable. When a contract cannot be insured, should a claim arise the state ends up without restitution and a local business will very likely end up liquidated.

A uniform state-wide professional services contract will save the state and the industry time and resources and is just plain good business practice. There are industry standard contracts available that have been tested nationally and locally and have withstood scrutiny from both sides of the table.

We urge the legislature to hear and ultimately to pass HB 151, to provide a fair and equitable business climate within the State of Alaska.

Sincerely,
ECI/Hyer, Inc.

Terry Hyer
Brian Meissner
Mary G. Knopf

HYER

ARCHITECTURE
PLANNING
INTERIORS
DEVELOPMENT

101 WEST BENSON
SUITE 308
ANCHORAGE, AK 99503

(907) 561-5543
(907) 562-3213-FAX

From: John Crittenden [jcrittenden@architectsalaska.com]

Sent: Friday, March 02, 2007 4:44 PM

To: Rep. Craig Johnson

Subject: HB 151

Representative Johnson

I support this contract language. It will help to clarify responsibilities, and to clarify how indemnification clauses are supposed to work. Many contracting agencies attempt to put in clauses that try to avoid any responsibility for errors on the part of the contracting agency. This is a goose and gander issue. Please try to get this passed.

John Crittenden

John Crittenden AIA, Principal

Architects Alaska®
An Alaskan Corporation

900 West Fifth Ave., Suite 403
Anchorage, Alaska 99501-2029
Ph # (907) 272-3567
Fax # (907) 277-1732

jcrittenden@architectsalaska.com

www.architectsalaska.com

AIA Alaska

A Chapter of the American Institute of Architects

February 26, 2007

Craig Johnson
Representative
State Capitol, Room 126
Juneau, AK 99801-1182

RE: HB151 - INDEMNITY CLAUSE IN PUBLIC CONTRACTS

Dear Representative Johnson,

AIA Alaska, A Chapter of The American Institute of Architects met on February 21, 2007 in Juneau, Alaska and agreed to support the proposed legislation (HB151) that you introduced that next day. Many architects that are members of the AIA are affected by the lack of standardized requirements of indemnification in A/E Contracts.

AIA members participated with others belonging to APDC (Alaska Professional Design Council) last Wednesday and Thursday in speaking with our representatives and other influential members of the legislature about this issue and our support of your introduced bill. There are too many government agencies that have one sided provisions that are hostile to A/E firms, and cost of business is driven up by the unnecessary and wasted hours of fighting a one sided indemnification contract clause. This bill will standardize indemnification requirements for all Public Agencies in Alaska, and save thousands of dollars as well as make each party financially responsible for their own liabilities.

We hope that our support of this legislation helps to ensure its passage into law and make the lives of our member firms more equitable in sharing risk with its public clients. Our architectural and engineering professionals are willing to be responsible for their "negligent acts, errors and omissions", however to take on the entire burden of liability in contracting limits the willingness to contract with public agencies that write unfair indemnification requirements.

Your insight and support of this issue is appreciated by our profession as well as those of others in the professional design community of Alaska.

Sincerely,

Garrett H. Maupin, AIA/CCS
AIA Alaska Chapter President

P.O. Box 103563
Anchorage, Alaska 99510-3563
907-276-2834
www.aiask.org

HB

163

Cindy Smith

From: Sen. Hollis French
Sent: Monday, March 31, 2008 9:22 AM
To: Cindy Smith
Subject: FW: HB 163 - Real Property Foreclosures

From: Kenneth D. Albertsen [mailto:Kenneth@AlaskaRealEstateLaw.com]
Sent: Friday, March 28, 2008 6:24 PM
To: Sen. Hollis French
Cc: Sen. Bill Wielechowski; Sen. Charlie Huggins; Sen. Gene Therriault; Sen. Lesil McGuire
Subject: HB 163 - Real Property Foreclosures

Dear Senators:

I am an attorney in private practice in Palmer, Alaska, specializing in real estate law including foreclosures. I am writing to you because of my grave concerns about one of the proposed changes contained in HB 163.

Section 2 of HB 163 proposes to add new subsections (b) and (c) to AS 09.35.140 to require internet advertising of foreclosure sales. The general idea of allowing internet advertising is not objectionable, but requiring internet publishing is objectionable on the terms proposed in HB 163. The criteria set forth in subsection (c) to qualify a website for the proposed internet publishing are problematic in that only one website meets the criteria set forth in (c)(3), (4), (5) and (6). That one website is www.alaskatrustee.com which is the website of attorneys Stephen Routh and Richard Crabtree. The way that the criteria are structured, no other website would be able to qualify for quite some time (possibly years), if ever. If this bill becomes legislation, the legislature will have instituted an advertising monopoly for that one website. Such a monopoly would enable Routh & Crabtree to charge whatever they want for internet advertising in order for anyone else to conduct a foreclosure. This would result in unnecessarily increasing the total costs to any client who needs to have a foreclosure conducted. Increasing the costs to the client would also unnecessarily increase the costs for a defaulting property owner to cure their defaults, thereby making it even more difficult for someone already experiencing financial hardship to stop the foreclosure and retain their property. It could even result in Routh & Crabtree obtaining an effective monopoly on conducting foreclosures in Alaska since they would be able to set the advertising costs high enough to price any other attorney out of competition. I have discussed this with several other attorneys who do foreclosures, and to us it appears that the sole purpose of Section 2 of HB 163 is to line the coffers of Routh & Crabtree. The proposed internet advertising requirement is a bad idea. Please delete Section 2 of HB 163.

Little, if any, benefit would accrue to the public or to the defaulting property owner by requiring internet publishing. In 15 years of practicing law in Alaska, I have found that in the overwhelming number of cases the defaulting property owner acquires knowledge of the foreclosure via certified mailing of the Notice of Default (which is already required by statute), and prospective purchasers acquire knowledge of the foreclosure via newspaper publication of the Notice of Sale (which is also already required by statute). Prospective purchasers of foreclosure property seem to have no difficulty obtaining the information they need from the ads published in accordance with the existing publication requirement. Accordingly, no one would materially benefit from requiring internet publishing on these terms other then Routh & Crabtree, all at the expense of other lawyers, their clients, lenders, and the unfortunate souls who are losing their property through foreclosure. I repeat, the proposed internet advertising requirement is a bad idea. Please delete Section 2 of HB 163.

On a positive note, I am very glad to see the proposed deletion of the "Post Office" posting requirement in 09.35.140(1). This deletion is necessary since many U.S. Post Offices no longer accept documents for posting and some have gone so far as to tell my assistant that it is a violation of federal law to post there. In the recent past this has put us in the difficult position of arguably violating federal law to comply with state law posting requirements. The proposed "Post Office" posting deletion set forth in Section 1 of HB 163 is necessary and welcomed. Please ensure that it is implemented.

Feel free to contact me if you have any questions concerning my comments.

Kenneth D. Albertson, Esq.
Post Office Box 4368
Palmer, Alaska 99645
Telephone: (907) 746-4466
Facsimile: (907) 746-7700
E-mail: Kenneth@AlaskaRealEstateLaw.com

3/31/2008

Cindy Smith

From: Sen. Hollis French
Sent: Wednesday, March 26, 2008 9:46 AM
To: Cindy Smith
Subject: FW: HB 163 - Real Property Foreclosures

From: Dennis Fenerty [mailto:FenertyD@groheggers.com]
Sent: Wednesday, March 26, 2008 9:44 AM
To: Sen. Hollis French
Cc: Sen. Bill Wielechowski; Sen. Charlie Huggins; Sen. Gene Therriault; Sen. Lesil McGuire
Subject: HB 163 - Real Property Foreclosures

Chairman French,

After testifying at the Senate Judiciary Committee Hearing on this Bill today, you invited me to send you a note suggesting language to amend HB 163 to correct the problem I see. As I testified, this is a good Bill and it should be passed into law. But the qualifications for operators of websites to publish foreclosure notices establish a monopoly in favor of the Anchorage Daily News (and perhaps the web site owned by Stephan Routh) to the exclusion of other newspapers of general circulation. ADN is already among the more expensive newspapers in which to run newspaper ads and they often require that you run a newspaper ad before they will accept your ad for internet publication. If ADN is the only host website that qualifies, that will force those who wish to advertise foreclosure notices to use ADN for their newspaper ads if they want access to ADN's website and this will cause greater advertising expenses. For properties outside of Anchorage, this will effectively force the publication of foreclosure notices in both the local newspaper and the Anchorage Daily News thus doubling the costs of publication.

The legislature has already decided that a newspaper is large enough to host newspaper ads if it is a "newspaper of general circulation" as defined in AS 09.35.140 (the section this Bill is amending). This requires a circulation of 500 copies (or 10% of the population) in the Judicial District where the property is located. The purpose of the internet publication requirement should be fulfilled if the entity operating the website satisfies the same test.

To accomplish this requirement I propose that you amend the Bill as follows:

Amend Section 2 of the Bill, adding new subsections to AS 09.35.140, subpart (c) (3) (at line 31 of page 2 of the Bill, line 1 of page 3 of the Bill), to read:

> "be used primarily to advertise real property under foreclosure or be operated by a newspaper **[strike to end of this subsection and replace with]** of general circulation as defined in subsection (a) (2) of this section, in which case the newspaper's website need not satisfy the requirements of subsection (c) (5) of this section".

Please let me know if you have any questions. Thank you for considering my testimony.

Dennis Fenerty

Dennis G. Fenerty
fenertyd@groheggers.com
Groh Eggers, LLC
2600 Cordova Street, Ste. 110
Anchorage, AK 99503
907-562-6474 (phone)

907-562-6044 (fax)

Cindy Smith

From: Sen. Hollis French

Sent: Wednesday, March 26, 2008 9:47 PM

To: Cindy Smith

Subject: FW: Comments from Michael Price re CS for House Bill No. 163

For the bill file.

From: Mike Price [mailto:MPrice@matsutitle.com]
Sent: Wednesday, March 26, 2008 10:04 AM
To: Sen. Hollis French; Sen. Charlie Huggins; Sen. Lesil McGuire; Sen. Gene Therriault; Sen. Bill Wielechowski
Cc: Sen. Lyda Green
Subject: Comments from Michael Price re CS for House Bill No. 163

Dear Senators. Thank you for allowing me to speak to my concerns regarding the HB 163 yesterday to the Judiciary Committee. As a 35-year real estate attorney and the owner of both Mat Su Title Insurance in Wasilla and Fidelity Title Agency in Anchorage, I think this bill has two very serious flaws which do not warrant passage into law. One could result in unnecessary litigation and hardship to Alaskans and the other would create legislatively an unfair economic windfall to the person pushing passage of the bill by creating a monopolistic or sole source revenue stream.

First, as I indicated there are conservatively more than 100,000 deeds of trust in existence now that contractually provide that the borrower has until the time of sale to cure the arrearage and stop the sale. Why would this legislature in a time of housing credit distress, where thousands of Alaskans will find themselves in foreclosure, make it harder on the borrower to cure? The only justification proposed for this provision is to help attorneys conducting the sale and their outside lenders to not be pressed "at the last minute" to tell the borrower how much is owed so they cure. The lenders are in the business of loaning money and accounting for the balance owed but apparently do not want to be bothered at the last minute by Alaskans wanting to rescue their homes from the foreclosure sale. The lender agreed to these contracts, the borrowers relied on their lender's promise; so why would the legislature make foreclosures easier for the lender and more difficult for Alaskans? I also think to change the contractual provisions by subsequent statute change violates the ex post facto limitations of the Alaskan and U.S. Constitutions. Please reject the amendment found on Page 4, line 5, modifying AS 34.20.070.

Second, I want to again go on record strenuously opposing the bill's limitation on what web sites can be used for Internet advertisement of foreclosure sales. Creating this fifth level of notice (the statutes already require personal mail, posting of the property, posting in three public places and publication in papers of general circulation) is not objectionable per se. What is however objectionable is the statutory requirements for the actual web page. These qualifications are so strenuous that it appears only ***ONE*** private web site will qualify, that of Stephan Routh, the bills primary advocate! Has anyone asked that question? Do we know how many private sites exist before the Senate passes such a law? By cleverly demanding the site is in existence for one year and have 5,000 hits a month, no other private individual can or ever will be able to establish a new, start-up competitive site. Assume that only 2% of the outstanding deeds of trust go into foreclosure over the next two years that would be approximately 5000 foreclosures and that the web host charged $200 per posting that would mean your bill will not only add $1,000,000.00 to the costs to the borrower, but will be a huge economic benefit to the web site owner or owners.

The bill sponsor yesterday amended the bill to add Anchorage Daily News as the only paper with circulation of over 50,000 as another web site. The Legislature should not create a source of income to just one or two persons or entities! For that matter I doubt that anyone has even asked the ADN if it would host such a site! Regardless, if the current statute allows any paper of general circulation to give proper notice (even for litigation summons), why limit the web page to only that of the largest paper in the State? Why would the Legislature punish entities like the Journal of Commerce, Fairbanks Daily News Miner, the Frontiersman, etc.? Further, not once has any member of the legislature publicly inquired of qualifying web sited what they would charge for use of his site and would he allow every attorney to access it? Again, why would the legislature make it more expensive to conduct a foreclosure especially by creating a monopoly? I know you do not intend this but this is the practical impact of

the bills unnecessarily harsh criteria of a web site. I would suggest that anyone should be allowed to host a web page. That result is preferable to anointing a chosen few.

Several Senators mentioned the purpose is to increase bidders. Having foreclosed as an attorney through two economic downturns, I found that when values return, bidders will be plentiful. Just like the normal real estate market, there are not many buyers now and similarly there are not many bidders either. This is a function of values, not that people who want to bid are not aware of the sale. When there is a great deal, multiple bidders show up and bid the property up.

Lastly, this bill has been amended at the last minute without seeking any other input from other newspapers, lenders, AHFC, etc. I would beg this committee to reflect on these comments, and either hold the bill to next year when more scrutiny can be placed on internet advertising and the bill's impact on existing contracts or eliminates both of those provisions for now and pass the rest of the bill out. Please do not create a requirement that the thousands of foreclosures that will occur over the next five years have to advertise on only two private web sites!

Cindy Smith

From: Sen. Hollis French
Sent: Wednesday, March 12, 2008 9:23 AM
To: Cindy Smith
Subject: FW: HB 163

Please place this in the bill file

From: Stephen Routh [mailto:srouth@rcalaska.com]
Sent: Thursday, March 06, 2008 6:01 PM
To: Sen. Hollis French; Sen. Bill Wielechowski
Subject: HB 163

Dear Chairman French and Senator Wielechowski;

Thank you for allowing me the opportunity to testify before the Senate Judiciary Committee yesterday.

Although there were comments made about most of the bill by Mr. Dan Nicholson, it seemed that most of the concerns were raised by witnesses Denis Fenerty and Sabrina Fernandez and involved Section 2. Both Denis and Sabrina identified themselves as attorneys with websites that they feared would not qualify as legal notice providers under the proposed legislation.

Section 2 was drafted to aid borrowers and lenders by making sure that "public" auctions are really available to the public. I believe in its present format it does just that.

Under existing law the notice of the sale is given ***only*** by:

1. Publishing it in a newspaper, and
2. Posting it at three public places, and
3. Mailing it to the borrower and junior lienors.

To qualify as a newspaper to publish these notices, existing law (AS 09.35.140) requires that the paper:

1. Has at least 500 subscribers (or 10% of the population), and
2. Be published close to the place of the auction, and
3. Is published in newspaper format, and
4. Is at least weekly for at least 50 weeks each year, and
5. Has a USPS 2d class mailing permit, and
6. Is not published primarily to distribute advertising, and
7. Is not aimed primarily at a particular professional or occupational group

It is apparent that the drafters of 09.35.140 wished to insure that to qualify as a source of this critical information, an entity would have to have substance and credibility. That's why they placed so many requirements to qualify.

Section 2 attempts to do the same thing. It opens to the door to internet providers to publish foreclosure notices, but only if they follow strict requirements to ensure that the goal of reaching the widest audience is met. Thus, the proposed legislation mandates that the site:

a. **"Be available to any person".** As in print requirements above, the site cannot be aimed at any particular group.
b. **"Be completely free to the public"; "not require a subscription".** This makes sure that the site cannot charge prospective bidders for access, and furthers the goal of reaching the widest audience.
c. **"Be used primarily to advertise real property under foreclosure".** This helps ensure that to reach these sites, you are not ported through other sites to get there. We all have had the experience of having to drill down through layers of irrelevant web pages, to get to the area we wanted to see. No one wants to battle through obnoxious real estate sales ads, clothing commercials, etc., to view legal notices. This section should help prevent that.
d. **"have been in continuous operation for more than one year".** The year requirement tracks the time requirement implied in the print statute, and gives the site some history.
e. **"have a viewership of at least 5,000 different visitors each month".** This tracks the print subscription requirement. The "500 subscribers" requirement for newspapers was enacted years ago. Unlike a newspaper subscription, the web site access will be totally free to the public so there would be no financial barrier to access qualifying sites. In our view, it seems that requiring a site to have only 5000 visits a month is not onerous. Please note that:
    a. Alaska's population now exceeds 660,000.
    b. The Anchorage Daily News circulation exceeds 70,000 daily and 89,000 Sundays. If a paper delivery is equated to a "visit", that's the equivalent of over 1,800,000 visits per month. ***The 5000 monthly visits proposed by Section 2 is .00027% of the Anchorage Daily News's monthly visits.*** It is hard to see how 5000 visits can be construed as burdensome or onerous.
f. **"have an office in the state".** This tracks the print requirement that a newspaper be published close to the place of sale. It ensures a local presence to improve access to correct mistakes, etc.

One objection I heard was that there might be no site that would qualify. But that is addressed in Section 2 (at line 24)-***"Giving notice under this subsection is not required unless there is an Internet website that qualifies under (c) of this section."***

It is noteworthy that the only objections to this section have come from a sometimes-

bidder who apparently extracts deeds from distressed homeowners, and two attorneys who feel they will not be able to use their own sites to advertise. Notably ***there have been no objections from borrowers groups, financial institutions, or real estate professionals***. To the contrary, ***your file contains numerous letters of support.*** That is because they view this bill, including Section 2, as timely and necessary. They understand that the entire process benefits by being open, transparent, and efficient. It furthers no public purpose to hide foreclosure notices in newspapers of scant publication, nor secrete them in unknown and un-findable web sites with no real circulation. The goal should be wide, open, transparent, and visible publication in both print and internet publications.

It is beyond dispute that broadening the notice of the foreclosure auction to encourage bidders to attend and bid directly benefits everyone involved. The property owner gets a chance to realize any equity in the property. The lender does not have to take the property into its portfolio. The higher the bid goes, the more the borrower will realize.

My suggestion to the attorneys who complained is make their sites compliant, rather than attack the process. If they wish to profit from publishing legal print notices, start a newspaper. If they wish to profit from internet publications, they should get their websites compliant with these reasonable requirements. I suspect that their websites now meet most, if not all, of the proposed requirements. I also suspect that most newspapers in Alaska can, perhaps with some minor adjustments, qualify their web sites. Even if these attorneys are unwilling or incapable of creating compliant websites, others will surely step into the void. ***The proposed requirements are not onerous.***

I am an owner of a website, USA-Foreclosure.com, that publishes foreclosure information. It does not publish legal notices. I'm not sure if it will seek qualification if Section 2 becomes law. It is a free site, and operates for the sole purpose of widening the group of potential bidders at foreclosure auctions. It operates as a public service, and has no income, although this could change in the future. It does, however, directly impact foreclosure auctions throughout the West by increasing the group of bidders at foreclosure auctions. My experience with this web site has led me to firmly believe that publishing foreclosure sale information on the internet is a critical component of a fair, open, and transparent foreclosure process.

I hope this helps on these issues. I remain open to discuss at any time.

Regards,

Stephen

Stephen Routh
ROUTH CRABTREE OLSEN, PS
907 229 3350

Reference: HB 163

SHORT TITLE: PROPERTY FORECLOSURES AND EXECUTIONS
BILL VERSION: CSHB 163(JUD)

SPONSOR(s): REPRESENTATIVE(s) RAMRAS

TITLE: "An Act relating to real property foreclosures, to the sale of property on execution, and to deeds of trust."

From:
Dan Nicholson
6605 Notting Hill Drive
Anchorage, AK 99504
(907) 222-2433 / cell (907)223-8088 / fax (907) 223-8088
Email: diesel_dann@yahoo.com

To:
Alaska Senate Judiciary Committee
Senator Hollis French, Chairman

Dear Senator French,

I would like to thank you and your committee for allowing me to testify telephonically during last Wednesday's hearing. At your request I am submitting my thoughts and concerns about HB 163, with the hope that the legislature will adopt the following recommendations into the next revision of the statutes which relate to all forms of real estate foreclosures – whether by non-judicial trustee sale, judicial mortgage foreclosure, sale on execution, or municipal tax collection sales.

First I will offer general comments regarding the need for revisions to the foreclosure statutes and my thoughts on a few areas of concern about problems with the present version of HB 163, currently under consideration for adoption. Following this I will discuss specific sections of HB 163 that I feel need to be revised, as well as other statutes not presently covered within HB 163.

General Discussion.

Today our nation is on the verge of a recession, and many Alaskan property owners are stretched thin financially for a variety of reasons – not solely due to the current sub-prime mortgage lending crisis. When property owners can't pay their bills their creditors foreclose and sell their homes and properties in order to be made whole.

While I fully support the need for foreclosures, there are a number of procedural inequities that tend to favor the interests of the creditor over the debtor in the various statutory foreclosure processes within Alaska. Those processes include the sale of real property on execution and redemption (AS 9.35.010 – 330), judgment on foreclosure of lien (judicial mortgage foreclosure

(AS 09.45.170-220), non-judicial Trustee foreclosure sale (AS 34.20.070 – 135), and Real Property Tax Collection / foreclosure AS (29.45.320 – 480).

Regardless of the reasons for the forced sale of someone's real estate or the statutory method of its sale, Alaska statutes should provide fair treatment and uniformity of due process that equitably benefits both the property owner and his creditors. Thus all of the several above listed statutory real estate foreclosure procedures, to the maximum extent possible, should follow identical or similar procedures and time periods for notices, sale / of the property, and distribution of the proceeds of any sale. I'm advocating for both the fair and equitable repayment of debts owed, as well as the return to the property owner of his remaining equity collected as a result of a property's sale in the form of excess sale proceeds after distribution to pay his creditors.

I strongly believe that there currently is no statutory provision requiring accountability of trustees for unclaimed excess funds within their trust accounts. Trustee sales are governed by statute, and are thus a public process. Thus Trustees must be held accountable to the public for all sale and excess proceeds held within their trust accounts, and at some point in time required to divest any unclaimed excess proceeds held in trust to the care of a public agency, such as the courts or the Department of Revenue unclaimed property program, consistent with existing presumed abandoned / unclaimed property statutes.

My recommendations to your committee are based on the above principles – not self-enrichment. What is my own interest in this legislation? I am an Alaskan citizen, living at the same address in Anchorage since April, 1984. I retired from the US Air Force in 1989 after 27.5 years as a Lieutenant Colonel. I have been Commander of multi-national military units and a high staff officer several military headquarters, including Alaskan Air Command. I'm also highly decorated, earning the Silver Star while flying rescue helicopters in Viet Nam. I created and managed North Star Landscaping and several other businesses before retiring from daily employment. I have been a real estate investor with emphasis on foreclosure real estate since 1995. I have purchased six properties at both Trustee foreclosure sales and tax foreclosure sales. Additionally, after an attorney hired by a friend to foreclose on a Deed of Trust failed to perform and the foreclosure had to be re-started from the beginning, I acted as Substitute Trustee - completing the foreclosure action under the direction of law firms and title companies, which were consulted as needed. I also have personally owned property that was foreclosed on, and later re-acquired through statutorily authorized redemption / repurchase processes. So I understand and have been personally involved with all aspects of foreclosures, while not being a full-time foreclosure professional such as Mr. Routh, who drafted HB 163.

When I served as the Trustee of a Deed of Trust foreclosure I asked two different title companies and two law firms specializing in real estate foreclosures (including Routh Crabtree) how the distribution of excess Trustee sale proceeds were being handled, since there is no guidance contained in the current Alaska statutes. None of the persons contacted could or would discuss the topic with any specificity. It appeared to be a subject to be evaded and not discussed. All answers were vague and generally unresponsive. My reason for asking them about excess proceeds was to learn how to deal with excess proceeds, should my Trustee sane generate any

excess funds. Fortunately, there were no bidders at my sale, and the Beneficiary was awarded the property secured by the Deed of Trust for the amount of the auction's opening credit bid.

I have since considered this reluctance to discuss excess proceeds by professional companies that either advise Trustees or provide Trustee services. My conclusion is this:
Junior lienholders and property owners assume that their investment and any remaining equity is wiped out by the foreclosure. Also the foreclosed property owners are ignorant of the possibility for excess proceeds and their rights to claim them after the auction. As a result, the Trustees pay the foreclosing lender from the funds in their trust account. Aftee that the excess proceeds simply remain in the Trustee's trust account unclaimed - possibly accumulating interest in the Trustee's trust account for many years. In the absence of any direction to divest these excess proceeds, and after many years remaining unclaimed, there exists great potential for their misappropriation by the Trustees. There is no accountability by the Trustees holding these excess proceeds. No wonder nobody would talk to me about excess proceeds . . . they're a potential trust fund Bonanza! Consider the huge accumulation of collected from hundreds of foreclosures over many years that must be sitting unclaimed in Mr. Routh's interest bearing trust accounts right now. I will recommend changes to close this unconscionable gap by statutory regulation of excess proceeds.

I would like to briefly address the origin of House Bill 163. In reviewing the history of this bill, I note that HB 163 is framed from the perspective of its drafter, Stephen D. Routh, an Anchorage Attorney who is the President, 50% Director, and co-owner of Routh Crabtree, APC (http://www.rcalaska.com). This website boasts: "Our firm conducts more non-judicial foreclosures in Alaska, Washington, Oregon, Idaho, California and Montana than any other firm or trustee." His firm has also done hundreds of judicial foreclosures and lawsuits on the note.

Mr Routh has also created a separate affiliated company, Alaska Trustee LLC, as its 100% owner (http://www.alaskatrustee.com), to perform foreclosure Trustee services. These two firms are also affiliated partners with two sister Bellingham, Washington firms, Routh Crabtree Olsen, PS and Northwest Trustee Services, Inc.

Additionally, Stephen Routh is the Registered Agent and Co-organizer / Manager of **USA-Foreclosure.com LLC**, an internet services provider, registered as Alaska entity # 102343 with the Alaska Dept. of Corporations. I performed a "whois" internet search (at www.domainname.com) to determine the registered ownership of USA-Foreclosure.com. Routh, Crabtree Olsen of Belleview, WA is the Registrant and Stephen D. Routh is the Administrative Contact for this website, which was created May 13, 2005. Interestingly, the "Properties to be Auctioned" links on both the Routh Crabtree and Alaska Trustee LLC websites (links above) re-direct the viewer to the www.USA-Foreclosure.com. Mr. Routh's affiliate website. USA-Foreclosure.com currently displays 429 foreclosure properties available online in Alaska and a total of 11,190 foreclosure properties in eleven states including Alaska, Arizona, California, Idaho, Montana, Nevada, Ohio, Oregon, Tennessee, Texas, and Washington. As an indicator of business volume at this site there is a link to view all 960 new property listings added in the last 10 days. All foreclosure listing data on this site is provided electronically by participating foreclosure trustees, attorney firms, and loan servicers. All Alaska foreclosures, including those not being foreclosed by Routh Crabtree / Alaska Trustee, would be required to be

advertised on this site if HB 163 becomes law. To my knowledge there is no other qualifying website in existence that can compete with USA-Foreclosure.com. This sure seems like big revenue generator for Mr. Routh.

This information is relevant to the Alaska Legislature and this discussion for two reasons: First, following my testimony last week, Mr. Routh flatly denied the truth to the Committee that he had personal knowledge of USA-Foreclosure.com LLC, and his association with this internet website business, after I had brought it to the Committee's attention. Mr Routh clearly misled the Committee by making this strong denial of his involvement with his commercial foreclosure website. Apparently he had not previously been forthright in advising the legislature of his involvement in this commercial website venture while crafting and submitting draft legislation that would require internet notice on a commercial foreclosures website. It is my belief that only USA-Foreclosure.com would be able to qualify to publish internet foreclosure notices under the qualifying criteria that he proposed in HB 163. To my knowledge, no other website but his meets the qualification criteria that he has established in HB 163.

While I have no disagreement with many or Mr. Routh's proposals, I feel that any revision of Alaska's foreclosure laws must have a wider public input than the perspective of Mr. Routh and the several attorneys and a lender that have testified during hearings on this bill. There are far more unheard interests than these few professional foreclosure and mortgage financing specialists who have expressed their opinions. Missing are the voices of homeowners and taxpayers being foreclosed on, and that all-important group of unconventional investors who are the primary market for purchasing foreclosed properties at required public auctions. Without their competitive bidding at public auctions there would be no excess proceeds to pay off both the foreclosing lenders and junior creditors, or the sale funds to return portions of the homeowner's equity to them. In this regard adequate notice and advertising is essential to a fair foreclosure process. I hope that the Legislature will take a balanced view toward this legislation, and not simply rubberstamp Mr. Routh's profit-oriented proposals. His draft legislation clearly benefits his firm's bottom line by minimizing litigation and building his internet business to the exclusion of other competition. I also think his recommendations concerning notice and distribution of excess proceeds require further clarification and direction to foreclosing Trustees.

Sincerely,

Daniel A. Nicholson

Comments Specific to HB 163 and Changes to Other Foreclosure-related Statutes

Recommendation:

1. **Page 1, lines 1 and 2:**
The bill's title should be changed to include "Real Property Tax Foreclosure"

Justification:
Adding tax foreclosures into this bill is discussed at the end of this document.

2. *** Section 1. AS 09.35.140 is amended to read:**

Recommendation, Page 1, Sec. 09.35.140, lines #8 - 11:
A definition of a "public place" is required. Specific public posting places should be suggested in the statute.

Justification: Does a grocery store bulletin board or a notice tacked on the Great Alaskan Bush Company restroom door considered a public place? I say not. While places like these can be considered public places, neither is under the control of a government entity. Most grocery / department stores remove posted notices from their bulletin boards weekly, negating the possibility of postings remaining accessible to the public for the full duration of the statutory noticing period.

I recognize that many rural areas of Alaska might be hard pressed to find three public posting locations within five miles of the sale's location. Yet flexibility and posting standards must be established to provide clear guidance to all who are responsible for posting notices. I would recommend that Federal, State, Borough, Municipal government or tribal government buildings be specified in the statute. These could include city halls, public libraries, public schools offices, post offices, and Federal or State court houses.

Regardless of all other public posting places, there always needs to be at least one "anchor location", such as a court house or court annex, that is mandatory within each judicial district. Consistency of posting at one designated site in each judicial district, even if outside of the five mile criteria from the sale site, is essential - so all citizens are informed of a single reliable site within their local area where they can locate and read every notice published and posted. It shall be a duty of the clerk of this facility to maintain the bulletin board or posting system, removing obsolete notices and posting all new ones for public access.

I do not support deletion of posting at the nearest US Post Office, as the post office is a public quasi-governmental facility. Some post offices do permit posting, such as the bulletin board in the rear entrance area of the Sunshine Mall Post Office in Anchorage. It is not inside the customer service area of this Post Office, but required foreclosure legal notices are regularly posted here. Post Offices should become optional posting sites, if available.

3. * Sec. 2. AS 09.35.140 is amended by adding new subsection to read:

Recommendation – Page 2, Line #19 – Page 3, Line # 5:
Delete the requirement to post foreclosure notices on a commercial website. An internet site should be an optional posting option, in addition to any list of "public posting places."

Justification:
This section as drafted requires mandatory posting of foreclosure notices on a qualifying commercial website (if available). There are very few commercial websites that specialize in posting legal notices, and none to my knowledge that cover Alaska foreclosure notices. Most of existing legal notices websites are regional in nature, and are affiliated with a newspaper syndication that compiles paid newspaper notices, such as the Utah Press Association (www.arcasearch.com).

Proposed qualifying requirements for this commercial foreclosures website are so limiting that only the USA-Foreclosure.com website owned by Mr. Routh (the drafter if this HB 163) would currently qualify to meet the criteria established in this section of HB163. Furthermore, USA-Foreclosure.com is not currently configured to post legal notices without some modification. Rather, this website is created to display properties for sale at upcoming foreclosure sales, complete with photos and minimal information about each property. Currently USA-Foreclosure.com is a Multiple Listing Service (MLS) for foreclosure properties – not a legal notices posting site. Trustee sales are searched there by state, sale date, and zip code.

It is customary for the person posting required foreclosure notices and the newspaper publisher to execute an affidavit attesting to the facts of each posting / publication. With a website there is no way to verify either the posting or the dates that the notice remained posted, as such an affidavit is not available online.

4. * Sec. 2. AS 09.35.142 is amended by adding new subsection to read:

Recommendation:
Delete all references to qualifying commercial internet sites. I do not recommend requiring a commercial foreclosures website for posting notices. Other "free" internet options currently exist where Alaska foreclosure notices can be found. These notices are published online free of charge by the same Alaska newspapers that currently publish required foreclosures classified ads legal notices. While every newspaper does not include every foreclosure notice in every part of the state, some of the following newspapers, foreclosure notices are distributed statewide or can be found in libraries or purchased by subscription. Those Alaskan newspapers which publish free online legal notices (including foreclosure notices) include:

Alaska Journal of Commerce Anchorage / Statewide)
(http://www.legalnotice.org/pl/alaskajournal/landing1.aspx)

Anchorage Daily News Anchorage / Statewide)
(http://www.legalnotice.org/pl/adn/landing1.aspx)

Alaska Star (Eagle River / Chugiak)
(http://classifieds.alaskastar.com/classifieds-bin/classifieds?)
Juneau Empire (SE Alaska)
(http://class.juneauempire.com/classifieds-bin/classifieds?tp=Juneau%20Classifieds&temp_type=browse&classification=Services)

Peninsula Clarion (Kenai Peninsula)
(http://www.legalnotice.org/pl/peninsulaclarion/landing1.aspx)

Ketchikan Daily News (SE Alaska)
(http://classifieds.ketchikandailynews.com/classSearch.php?category_id=10&acTst=Grr)

The Nome Nugget (Nome area)
(http://www.nomenugget.net/) Legals are on page 15

There is one more possibility to consider: Construct a public notices website on the State of Alaska website. AS 44.62.175. Alaska Online Public Notice System, requires state agencies to post public notices on the state's Online Public Notices webpage.
(http://notes4.state.ak.us/pn/pubnotic.nsf/?Open)

Notices required to be posted here for public notice include:

Notices of proposed actions

Notices of required state agency meetings

Notices of solicitations to bid

Notices of state agency requests for proposals

Executive and administrative orders issued by the Governor

Written delegations of authority made by the Governor or head of a principal department

The text or a summary of a regulation or order of repeal of a regulation

And much more. . . .

I have contacted several personnel in the Lieutanant Governor's office and the state website Tech Services and Webmaster's offices concerning the use of this state internet public notices system for the purposes of posting required foreclosure notices online. The consensus was that it would not be hard to establish such a function if the political will would make the

paradigm shift to allow postings foreclosures on the state's official online public notices system.

My personal recommendation would be to create a separate and parallel website to the official Online Public Notice System that would become a required posting point for all required foreclosure notices. This online foreclosure notices website could be justified as being nothing more than the electronic equivalent of the standard courthouse notices bulletin board, but it is easily located and accessed from anywhere in the world by all citizens. It is an improvement over posted and published notices because there would be no geographic or timing (publication dates) access limitations. Such a single online posting site is also an improvement over the HB 163 proposal, which permits notices to be posted on multiple commercial websites. Potential investors and the general public will be much better informed if all foreclosure notices can be found in a single place. This online posting website could be created to function virtually automatically, and would be relatively easy to set up from a programming standpoint.

Trustees and others responsible for publicly noticing foreclosure actions would log onto this web forum by establishing an online account, providing their identification and contact information, and create a username and password. Each new account would have to be authenticated by the account's creator by email, before posting to the site. Posters would complete a fillable format that includes certain elements of information such as recording information, date of notice of default, sale date, Trustee contact information, street address, etc. Each notice might remain posted online until a specified time after the scheduled sale date. If the sale is completed and the date is not updated, the notice drops off the website automatically. Before the sale date the notice creator could be prompted periodically, to update the posted notice for any changes or delays in the sale. The website could also be programmed to produce a certified affidavit of posting for the Trustee's records. This system could either be free or self-supporting fee based with credit card or PayPal payments.

5. * Sec. 2. AS 34.20.070(b) is amended to read:

Recommendation:
Page 3, line 15-16: I concur with the text change to 90 days from three months.

Justification:

A specific number of days is more precise, minimizing potential disputes.

Recommendation:

Page 3, Line 24: Add new subparagraph (9) as follows:
(9) the following statement: Claims for excess proceeds of the sale will be processed according to their priority as specified by AS 34.20.080 (f). Any person claiming an interest in the surplus from the sale, if any, other than the property owner or his successor in interest as of the date of the sale, must file a claim within 60 days after the sale.

Justification:
See justification below at **Page 7, Lines 29 and 30, Subparagraphs (f)(3):**

Recommendation:

Page #3, line 25-26: I do not agree with shortening the time for a Trustor to stop the default by two days. The statute should remain unchanged or be shortened only to the close of business on the day before the scheduled sale.

Justification:

Trustors in foreclosure should have the maximum amount of time possible under the law to resolve their financial problems. It is not a major problem for the Trustee to stop or postpone a foreclosure if the Trustee or his agent is presented the proper amount of money at the courthouse before the sale is completed. I would support the notion of the Trustor presenting sufficient cash or equivalent to either the Trustee or the Trustee's attorney before close of business on the day before the sale. Any postponement of the sale would extend the Trustor's period for this payment accordingly.

*** Sec. 5. AS 34.20.070(c) is amended to read:**

Recommendation:

Page 4, Lines 5-6: Concur with use of proper term "trustor" vice "GRANTOR"

Justification:

" Trustor" is the terminology used in the Deed of Trust that grants the Trustee the "power of sale". "Grantor" is a term used by the Recorder of Deeds' office when recording the Deed of Trust.

Recommendation:

Page 4, Lines 6-8 - Change to read as follows:
(2) the successor in interest to the **trustor** [GRANTOR] whose interest appears of record or of whose interest the trustee or the beneficiary has actual notice[, or who is in **actual physical** possession of the property];

Justification:
Delete last ten words of above subparagraph (2). They are redundant with the following subparagraph (3).

*** Sec. 6. AS 34.20.070 is amended by adding new subsections to read:**

Recommendation:

Page 4, Lines 3, Section(c) (e) (f) (g) thru first half of Line 31:
Concur with proposed text.

Recommendation:

Page 4, last half of line 31 – Page 5, Line 3, Section (g):
Delete one year ripening period requirement in its entirety, based on prima facie evidence that the trustee complied with (f) of this section by executing the affidavit prescribed in the previous sentence. If a ripening period is necessary, make it as short as possible – 6 months maximum, to relieve the Trustee from the burden of potential litigation ASAP.

Justification: Stated above.

Recommendation:

Page 5, Line 4 Section (h) thru Page 6, Line 10 - Sections (i) (j) (k) (l) (m)

Concur with proposed text.

*** Sec. 7. AS 34.20.080(a) is amended to read:**

Recommendation:

Page 6, Lines 13-14 – Section (a):

Concur with proposed text.

Page 6, Lines 17-21– Section (a)(1):

Recommendation: Delete this amended text. Keep the current statute intact.

Justification:
This proposed addition creates a situation where bidders in distant locations may be bidding against other distant bidders or against live bidders with funds at the court house. I believe it creates the potential an unfair bidding situation where collusion between the trustee and a remote and favored bidder could exist unbeknownst to other qualified bidders. Also all

bidders would not be on a level playing field with remote bidders who the trustee is dealing with by phone, computer, etc. outside of and perhaps in advance of bidding at the courthouse. Even if the Trustee maintains a fair bidding environment, the perception among attending bidders would be an unfair and biased bidding environment, not an open arm's length auction. Because of the potential for abuse, the Trustee could be subject to claims of unfair dealing, collusion, bid rigging, etc. and could be subject to a lawsuit or reversal of a sale. This could require re-advertising and conducting an entirely new foreclosure process and sale. The proposed procedure creates more problems than it solves. A distant bidder can arrange for a proxy bidder to attend a sale and bid on his behalf. This procedure is aberrant to the foreclosure normal foreclosure bidding process as it is practiced at nearly all courthouses across the nation.

*** Sec. 8. AS 34.20.080(b) is amended to read:**

Recommendation:

Page 6, Lines 25 – 30 Section (b):
Concur with proposed text.

*** Sec. 9. AS 34.20.080(e) is amended to read:**

Recommendation:

Page 6, Lines 1 – 11 - Section (e):

Concur with proposed text.

*** Sec. 10. AS 34.20.080 is amended by adding new subsections to read:**

Recommendation:

Page 7, Line 13 thru Line 29, Subparagraphs (f) (1) (2) (3):

Concur with proposed text.

Recommendation:

Page 7, Lines 29 and 30, Subparagraphs (f)(3):

Delete text: [whose interest appears of record at the time of the foreclosure sale]

Justification:
The trustor is entitled to all excess sale proceeds after the beneficiary and all other higher priority lienholders of record at the time of the sale have been paid what they are due. The trustor's claim remains valid until all excess sale proceeds have been disbursed to him, at some time after disbursement to pay these higher priority claimaints.

During this time the trustor may be trying to establish a new life – possibly living in new housing or living with relatives in another state, perhaps seeking employment, and definitely experiencing serious financial hardships, and being hounded by his unsecured creditors while awaiting disbursment of any excess proceeds. The proposed text of this Section fails to set any time periods for all other creditors to claim their respective portion of the sale proceeds in order of priority. Thus it maybe a relatively long time until the trustor receives his excess proceeds entitlement.

The trustor must be allowed to make financial decisions and transactions that he feels are best for him during pre-sale and post-sale periods until he is allowed to claim any excess proceeds. He might have to exchange his claim for excess proceeds for satisfaction of his most pressing needs in re-establishing his new post-foreclosure life – whether they be cash, shelter, transportation, or medical treatment. The trustor may need to enter into such transactions with his successor in interest (in his remaining equity - the excess proceeds) after the sale is already completed, but before receiving his proceeds entitlement. There is no valid reason why this statute needs to be structured to prohibit him from transferring all or part of his entitlement to the excess proceeds at any time before or after the sale. This transfer could be accomplished by either a quitclaim deed or an assignment of interest document that is recorded at any time before actual disbursement of the trustor's portion of excess proceeds. Do not hamstring the trustor's financial decisions and options by requiring his successor in interest to have a recorded interest before the sale. During testimony before the Senate Judiciary Committee Mr. Routh strongly opposed this view on the basis that such transfer of interest would constitute "equity skimming". Nothing could be farther from the truth, as long as the trustor receives "fair value" in exchange for his equity. Excess proceeds are the trustor's equity, and he should be entitled to use it to his best advantage without any statutory restrictions other than an authenticated assignment of claim document, recorded before disbursment.

Recommendation:
Amend Sec. 10. AS 34.20.080 by adding new subparagraph (f) (4) to establish time limits by which multiple Deed or Trust beneficiaries and lienholders with recorded interests may claim their excess sale proceeds in order or priority. I recommend 60 days after the sale for all parties with superior interest to the trustor or his successor in interest to submit claims for their excess proceeds. After 60 days their right to make a claim is forever barred and the remaining excess proceeds may be claimed by the Trustor or his successor in interest. A notice to claim excess proceeds would be added to the Notice of Default for noticing of all parties with potential claims.

Justification:
Since all parties of interest are served notice by certified mail and also receive constructive notice of the foreclosure through posting and newspaper publication of notices, there is no reason why their respective claim periods should not be very short, since they are all paid in order of recording priority.

The notice of default that all interested parties, including the trustor, receive should contain a statement that all parties of interest shall claim any entitlement to excess sale proceeds in accordance with AS 34.20.080 (f) (4). Then this section should specify the required claim period for each priority claim. After the expiration of these statutory claims periods any claims, other than by the trustor, would be forever barred. The Trustor would then be entitled to claim all remaining excess proceeds. I recommend that all claims superior to the trustor must be received by the trustee not later than 60 days after the sale date. After that they are barred from making a claim, and the remainder shall belong to the trustor. The trustee may pay recorded claims during this 60 day period according to their priority.

With a mandatory excess funds statement added to the notice of default before the sale there should be no requirement for the trustee to expend effort notifying any of the parties with recorded interests, including the trustor, of their possible to claim any possible excess proceeds. Such an added statement might read as follows, as subparagraph AS 34.20.070(b)(9):

Claims for excess proceeds of the sale will be processed according to their priority as specified by AS 34.20.080 (f). Any person claiming an interest in the surplus from the sale, if any, other than the property owner or his successor in interest as of the date of the sale, must file a claim within 60 days after the sale.

Amend Sec. 10. AS 34.20.080 by adding new subparagraphs (g) (1) and (2). Redesignate draft paragraph (g) as subparagraph (h):

(g) The Trustee shall receive claims and make distributions of excess sale proceeds according to priority of claims as established in AS 34.20.080(f). The Trustee shall make a detailed accounting for all excess proceeds received and disbursed, and shall create a Report of Sale that summarizes the disposition of all excess proceeds and the justification by which all disbursements are made. Not later than 120 days after the sale the Trustee shall submit all unclaimed excess proceeds along with the Report of Sale to the Clerk of the Superior Court.

(1) When excess proceeds of a sale belonging to the trustor or his successor in interest remain unclaimed 90 days after the sale date, the trustee shall deposit all funds and the Report of Sale into the court not later than 120 days after the sale date.

(2) The court shall hold all excess sale proceeds for disbursement to entitled claimants. The court may order the proceeds to be invested in securities bearing interest for the benefit of the persons entitled to the proceeds.

Justification:

Current statutes do not instruct trustees of non-judicial foreclosure sales how to handle and disburse excess trustee sale proceeds. Trustees are not required to deposit sale proceeds funds into trust accounts or to purge their trust accounts of unclaimed excess proceeds when they remain unclaimed after a reasonable holding / claims disbursement period.

As a result of this situation there may possibly exist many trust accounts from past foreclosure sales that contain large amounts of unclaimed excess proceeds, lying accumulated over a period of many years. This unsatisfactory possibility, combined with the total lack of any statutory accountability or government oversight requirement, may lead to potential abuse and misappropriation of accumulated unclaimed excess proceeds.

While a trustee sale is not a judicial foreclosure, and is not conducted under the oversight of the court, the court system is the most suitable agency to take custody and management responsibility of excess proceeds after a reasonable holding period for their disbursement by the trustee. Beyond a reasonable time, such as 90 days after the sale date, the trustee needs to achieve finality with each foreclosure case, including holding of trust account funds, and relinquish funds management to the court in order to move forward with his other business affairs. Trustees should not be perpetual keepers of unclaimed sale proceeds. This change provides consistent management and custody of excess sale proceeds as prescribed for execution, and mortgage foreclosures by suit on the real estate note, under AS 09.45.550 This change provides some consistency between the handling of excess sale proceeds between the several foreclosure procedures.

Recommendation:
Subparagraph AS 34.20.080 (g). Redesignate draft paragraph (g) as subparagraph (h)

Justification:
Renumbering (g) to (h) allows insertion of the above subparagraph concerning transfer of excess sale proceeds to court custody. Context of added paragraph (g) fits better there.

Recommendation:

Page 7, Line 7(g) thru Page 8, Subparagraph (i), Line 20
Concur with proposed text.

*** Sec. 11. AS 34.20.120(a) is amended to read:**

Concur with proposed text

*** Sec. 12. AS 34.20.120(b) is amended to read:**

Concur with proposed text

*** Sec. 13. AS 34.20 is amended by adding a new section to read:**

Recommendation:

A trustee's performance bond is not necessary. Do not adopt this requirement.

Justification:

Current statutes do not require a performance bond. Foreclosures have apparently been done for many years without bonding trustees. This requirement places a costly and unnecessary financial burden on the person or business who might do only one or a few foreclosures. The possibility for abuse of funds by a trustee is virtually eliminated by the requirement to create a Report of Sale and to transfer excess proceeds to court custody. These added requirements create sufficient safeguards and accountability over trust account funds. (See my above recommendation where these requirements are added). I have served as a foreclosure trustee and the process was not too difficult, complex, legal, or tempting for me to successfully complete with the aid and advice of an attorney and a title company as required.

AS 29.45.480. Proceeds of Tax Sale is amended and renumbered to read:

(b) If tax-foreclosed real property that has been held by a municipality for less than 10 years after the close of the redemption period and never designated for a public purpose is sold at a tax-foreclosure sale, the former record owner is entitled to the portion of the proceeds of the sale that exceeds the amount of unpaid taxes, the amount equal to taxes that would have been assessed and levied after foreclosure if the property had continued in private ownership, penalty, interest, and costs to the municipality of foreclosing and selling the property, and costs to the municipality of maintaining and managing the property that exceed amounts received by the municipality for the use of the property. If the proceeds of the sale of tax-foreclosed property exceed the total of unpaid and delinquent taxes, penalty, interest, and costs, the municipality shall provide the former

owner of the property written notice advising of the amount of the excess and the manner in which a claim for the balance of the proceeds may be submitted. Notice is sufficient under this subsection if mailed to the former record owner at the last address of record of the former record owner.

(c) On presentation of a proper claim, the municipality shall remit the excess to the former record owner. A claim for the excess filed after six months of the date of sale is forever barred for creditors of the former property owner. Excess proceeds shall be retained for the benefit of the former property owner for two years. After that time excess proceeds shall be transferred to the court for custody.

(d) The court shall hold all excess sale proceeds for disbursement to entitled claimants. The court may order the proceeds to be invested in securities bearing interest for the benefit of the persons entitled to the proceeds.

Justification:

This change terminates the escheat of excess proceeds (property owner's equity) after six months, allowing the former property owner to claim his funds after that date. Six months is a very short time and is not consistent with the management and custody of excess sale proceeds as prescribed for execution and mortgage foreclosures by suit on the real estate note under AS 09.45.550 This change provides some consistence between the handling of excess sale proceeds between the various foreclosure procedures.

Representative Jay Ramras
Chair, House Judiciary
House Labor & Commerce
House Oil & Gas
House Military & Veteran Affairs
1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 452-1146

Alaska State Legislature

While in Session
State Capitol, Room 118
Juneau, Alaska 99801-1182
(907) 465- 3004
Fax: 465-2070
Toll Free: (877) 465-3004

House District 10

House of Representatives

Memo

To: Senator Hollis French
Chairman Senate Judiciary Committee

From: Representative Jay Ramras

Date: January 17, 2008

Re: CSHB163(JUD) – Property Foreclosures and Executions

Attachments to this memo please find the following documents for Friday's hearing:

- Sponsor Statement
- CSHB 163(JUD) (25-LS0630\O)
- Sectional version \O
- Fiscal Notes
  - LAW – 0
  - REVENUE - 0
- Bill History
- CSHB163(L&C) 25-LS0630\L
- HB 163 25-LS0630\A
- Support

Thank you.

Representative_Jay_Ramras@legis.state.ak.us

Representative Jay Ramras
Chair, House Judiciary
House Labor & Commerce
House Oil & Gas
House Military & Veteran Affairs
1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 452-1146

Alaska State Legislature

While in Session
State Capitol, Room 118
Juneau, Alaska 99801-1182
(907) 465- 3004
Fax: 465-2070
Toll Free: (877) 465-3004

House District 10

House of Representatives

Memo

To: Senator Hollis French
Chairman Senate Judiciary Committee

From: Representative Jay Ramras

Date: May 7, 2007

Re: Re: HB163 PROPERTY FORECLOSURES AND EXECUTIONS

Please consider this memorandum as a request for the Senate Judiciary Committee to hear HB163. Accompanying this memo are the following documents:

- Sponsor Statement
- CSHB163(JUD) 25-LS0630\O
- Sectional
- Fiscal Notes
  - LAW – 0
  - REVENUE – 0
- Bill History
- CSHB163(L&C) 25-LS0630\L
- HB163 25-LS0630\A
- Support

Representative_Jay_Ramras@legis.state.ak.us

Alaska State Legislature

Session:
State Capitol, Room 118
Juneau, Alaska 99801-1182
Ph: (907) 465-3004
Fax: (907) 465-2070
Toll Free: (877) 465-3004

Interim:
1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
Ph: (907) 452-1088
Fax: (907) 452-1146
Toll Free: (877) 465-3004

Representative Jay Ramras
House District 10

Chair, House Judiciary Committee • Member, House Labor & Commerce Committee • Member, House Oil & Gas Committee • Member, House Military & Veteran Affairs Committee

Changes from HB 163 version \O to version \N

P.2, L.31 - AS 09.35.140(c)(3) was amended to include newspapers that have a circulation of over 50,000 copies of each issue as qualified Internet websites non which foreclosure notices may be published.

P. 6, L. 31 – P. 7, L. 3 AS 34.20.080(a)(1) was amended so that the trustee must bring an action under AS 22.10.020(g) to establish procedures for accepting bids on the Internet.

P. 10, L. 14 -19 – New Section AS 34.20.125 Trustee bond required. All references to the Department of Commerce, Community, and Economic Development were removed, pursuant to discussions with DCCED and DOL. This is a matter of private contract and the bonding requirements will be overseen by the title insurance companies, who will not issue title insurance without the bond in place.

E-Mail Representative_Jay_Ramras@legis.state.ak.us

Alaska State Legislature

Session:
State Capitol, Room 118
Juneau, Alaska 99801-1182
Ph: (907) 465-3004
Fax: (907) 465-2070
Toll Free: (877) 465-3004

Interim:
1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
Ph: (907) 452-1088
Fax: (907) 452-1146
Toll Free: (877) 465-3004

Representative Jay Ramras
House District 10

Chair, House Judiciary Committee • Member, House Labor & Commerce Committee • Member, House Oil & Gas Committee • Member, House Military & Veteran Affairs Committee

Sectional HB 163 Property Foreclosures and Executions

Section 1. AS 09.35.140 is amended –Removes the U.S. Post Office as a posting requirement.

Section 2. Amends AS 09.35.140 to add a new subsection. Adds a new section to AS 09.35 (execution on property) to require the notice of the execution sale of real property also be noticed on an Internet website. Also, Describes the requirements that the Internet website must meet to qualify, and the Internet notice requirement for a non judicial foreclosure.

Section 3. Amends AS 09.35.142 to allow an Internet website owner to bring a court action to establish that the website qualifies under AS 09.35.140(b)

Section 4. Amends AS 34.20.070(b) to adjust to 90 days the minimum length of time that must elapse between recording a notice of default on a deed of trust and holding the foreclosure sale. Sets a limit of two days (before a foreclosure sale) when certain defaults on a deed of trust may be cured by a specific payment.

Section 5. Amends AS 34.20.070(c) requires that possession be actual possession where possession is required for certain persons to be entitled to receive a notice of default for foreclosure sale.

Section 6. Adds new subsection to AS 34.20.070 (foreclosure by trustee).

Proposed 34.20.070(e) establishes when a person who holds a lien or non-possessory property interest that can be inferred from an inspection of the property is entitled to receive a notice of default for a foreclosure sale.

Proposed 34.20.070(f) allows a trustee additional time (after recording) to deliver the notice of default when the trustee delivers the notice personally to the property or to an occupant of the property. Allows the trustee to place the notice on the property or as close as practicable to the property under certain conditions.

Proposed sec 34.20.070(g) states that an affidavit signed by a trustee or another person who delivered notice personally under sec. 34.20.070(f) is prima facie evidence that the trustee complied with sec. 34.20.070(f). Establishes a conclusive presumption

(as evidenced by the affidavit) after one year unless a court action is filed within the year to challenge the foreclosure for failure to comply with sec. 34.20.070(f)

Proposed sec. 34.20.070(h) establishes how a trustee may satisfy the notice requirements for a person known by the trustee to be deceased and for whom the trustee or the deed of trust beneficiary knows a personal representative has been appointed.

Proposed sec. 34.20.070(i) establishes how a trustee may satisfy the notice requirements for a person known by the trustee to be deceased and for whom the trustee or the deed of trust beneficiary know that a personal representative has been appointed for the deceased person.

Proposed sec. 34.20.070(j) states that an heir or devisee of a deceased person must challenge a foreclosure sale within three months if alleging non-receipt of notice and if the trustee gave notice as required by (h) – (i).

Proposed sec. 34.20.070(k) describes the persons who may bring a court action to enjoin a foreclosure sale.

Proposed sec. 34.20.070(l) states that when a court injunction action meets certain conditions, a court may impose conditions that it considers appropriate to protect the deed of trust beneficiary.

Proposed sec. 34.20.070(m) defines certain terms for AS 34.20.070

Section 7. AS 34.20.080(a) is amended to require that the proceeds from a foreclosure sale are placed in escrow until disbursed. Allows a trustee to accept foreclosure bids by telephone, the Internet, and electronic mail if certain conditions are met.

Section 8. Amends AS 34.20.080(b) Allowing the attorney or other agent of the trustee to conduct the sale. Additionally, allows the trustee to set reasonable rules for the conduct of the sale. Adds language that conforms the deed delivery requirements to the new provision in sec. 34.20.070(g) allowing the trustee to rescind the sale under certain circumstances.

Section 9. Amends AS 34.20.080(e) Limiting the postponement of a foreclosure sale to not more than 12 months unless a new notice of sale is given. Establishes that postponement for up to 12 months does not provide a basis for challenging the validity of the foreclosure because of how long the foreclosure has been pending.

Section 10. Adds a new subsections to AS 34.20.080(foreclosure sale).

Proposed sec. 34.20.080(f) indicates how any cash proceeds of the sale are to be distributed after delivery of a deed.

Proposed sec. 34.20.080(g) allows a trustee to withhold delivery of the deed for up to five days, prohibits the trustee from issuing the deed under certain conditions, and describes what the trustee must do when rescinding the sale.

Proposed sec. 34.20.080(h) allows the trustee to reschedule a rescinded sale, establishes a minimum time that must elapse after the rescinded sale before the new sale may be held, and establishes the notice procedure that the trustee must follow for the rescheduled sale.

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Proposed sec. 34.20.080(i) establishes that if a sale is not rescinded it completely terminates the rights of the trust deed grantor of the property.

Section 11. AS 34.20.120(a) is amended. Allowing the attorneys for the beneficiaries or their successors in interest to execute and acknowledge the substitution of a trustee for certain trust needs.

Section 12. AS 34.20.120(b) is amended. Adding a requirement to the contents of a trustee substitution for the situation when the substitution is executed by the attorneys for the beneficiaries or their successors in interest.

Section 13. Adds a new section AS 34.20.125(a) requiring a trustee to provide a surety bond before performing trustee duties under a deed of trust foreclosure.

AS 34.20.125(b) requires the bond to be terminable at any time by the surety by complying with certain requirements, indicates when the bond terminates, and indicates that the surety is not liable after termination for more than the face amount of the bond. States that a revision of the amount of the bond is not cumulative.

AS 34.20.125(c) requires a trustee to file evidence of a bond each year with the Department of Commerce, Community, and Economic Development. Requires the department to verify that the evidence is satisfactory, keep an updated list of bonded trustees, and make the evidence and the list available to the public. Allows the department to charge the trustee a reasonable fee for the verification and maintenance of records.

AS 34.20.125(d) exempts certain persons from the bonding requirements.

AS 34.20.125(f) defines "department" in this section to mean the Department of Commerce, Community, and Economic Development

E-Mail Representative_Jay_Ramras@legis.state.ak.us

First American
Title Insurance Company

BRYAN S. MERRELL
REGIONAL COUNSEL

March 12, 2007

Re: Senate Bill 18 *"An Act relating to property foreclosures and executions; and amending Rule 65, Alaska Rules of Civil Procedure."*

House Bill 163 *"An Act relating to real property foreclosures, executions, and deeds of trust."*

To Whom It May Concern:

This letter is written in support of Senate Bill 18 and its companion bill, HB 163, relating to Deeds of Trust and Foreclosures.

I am Regional Counsel for First American Title Insurance Company. First American is the leading title insurer in the United States, and here in Alaska. I am an 18-year member of the Alaska Bar, and a former long time resident of Alaska. In my capacity as an in-house attorney for First American, I have had many occasions to be involved in non-judicial foreclosure related issues and controversies, as First American has produced title insurance products related to such foreclosures, and acted as trustee in many cases as well.

SB 18/HB 163 would clarify a large number of issues relative to non-judicial foreclosure actions. It would fill in gaps in the current statutes relative to procedure. It would clarify issues which Alaska Supreme Court opinions over the years have made unclear. The result of passage of the bill would be a clearer pattern of conduct for the parties to the foreclosure, which should result in less litigation and higher bidding for the properties involved in the process. I urge your yes vote for the bill, and would be happy to answer any questions you may have regarding it.

Very truly yours,

FIRST AMERICAN TITLE INSURANCE CO.

Bryan S. Merrell
Regional Counsel

2101 Fourth Avenue, Suite 800, Seattle, WA 98121
TEL 206.728.0400 • TOLL FREE 800.526.7544 • DIRECT 206.448.6281
bmerrell@firstam.com • www.firstam.com

AlaskaUSA
Federal Credit Union

March 12, 2007

Mr. Stephen Routh
Routh & Crabtree, APC
3000 A Street, Suite 200
Anchorage, AK 99503

Re: Senate Bill 18 – "An Act relating to property foreclosures and executions; and amending Rule 65, Alaska Rules of Civil Procedure."
House Bill 163 – "An Act related to real property foreclosures, executions, and deeds of trust."

Dear Mr. Routh:

Thank you for alerting us to this legislation. We think the changes proposed in the above-referenced bills are well thought out, necessary, and will benefit borrowers, financial institutions, and title agents.

We are pleased to support this legislation.

Sincerely,

William B. Eckhardt
President

P.O. Box 196613 • Anchorage, Alaska 99519-6613
Phone (907) 563-4567 • (800) 525-9094 outside Anchorage • (800) 742-7084 TTY/Hearing Impaired • www.alaskausa.org

March 12, 2007

Stephen Routh
Routh Crabtree, apc
3000 A Street Suite 200
Anchorage, AK 99503

Re: Senate Bill 18 "An Act relating to property foreclosures and executions; and amending Rule 65, Alaska Rules of Civil Procedure."

House Bill 163 "An Act relating to real property foreclosures, executions, and deeds of trust."

Dear Stephen:

Wells Fargo is pleased to support this bill. It will benefit all parties to the foreclosure process including borrowers, lenders, trustees, and title agents. We believe that the changes are timely, necessary, and well-conceived.

Thanks again for bringing this bill to our attention. We are pleased to support it.

Sincerely,

Richard Strutz
Regional President

Alaska Mortgage Bankers Association
P.O. Box 9-2691
Anchorage, Alaska 99503

March 9, 2007

Re: Senate Bill 18 ***"An Act relating to property foreclosures and executions; and amending Rule 65, Alaska Rules of Civil Procedure."***

House Bill 163 ***"An Act relating to real property foreclosures, executions, and deeds of trust."***

Stephen Routh
Routh Crabtree, apc
3000 A Street Suite 200
Anchorage, AK 99503

Dear Stephen;

The Alaska Mortgage Bankers Association is pleased to support this bill. We believe it will benefit borrowers, lenders, title agents, and trustees alike. The changes proposed are well-thought out, timely, and necessary. They also enjoy wide support among the real estate community.

Thanks as well for explaining the bill at our meeting on February 15, 2007. We appreciated your presentation, as well as answering questions directly from our members.

Thanks again for bringing this bill to our attention. We are pleased to support it.

Sincerely,

Kevin M. Breeland

Kevin M. Breeland
President
Alaska Mortgage Bankers Association
P.O. Box 9-2691
Anchorage, Alaska 99509-2691
907-222-8823 direct
907-743-9623 fax
breelandk@residentialmtg.com
www.akmba.org

Kirk Wickersham
280 W. 34th Ave.
Anchorage, Alaska 99503

561-3726

February 10, 2007

Re: SB 18

Dear Members of the Legislature,

I am a real estate lawyer, real estate broker and title insurance licensee.

I have had the opportunity to review SB 18, which updates the provisions of Alaska's foreclosure law.

The most outstanding provision is the requirement for publication on the Internet. This will improve dissemination of the sale information to the general public, and thus it should increase the number of bids above the offset bid.

Bids above the offset bid are in everyone's interest. The debtor receives the net proceeds of the sale. The lender does not have to take title, renovate and market the property. And the successful bidder is obviously happy.

I encourage you to adopt this bill. It is my understanding that, if adopted, this bill will become a model for legislation in other states. Please contact me if you have any questions.

Sincerely,

Kirk Wickersham

ALASKA CREDIT UNION LEAGUE

March 21, 2007

Stephen Routh
Routh Crabtree, apc
3000 A Street Suite 200
Anchorage, AK 99503

Re: Senate Bill 18 -An Act relating to property foreclosures and executions; and amending Rule 65, Alaska Rules of Civil Procedure.

House Bill 163 -An Act relating to real property foreclosures, executions, and deeds of trust.

Dear Mr. Routh:

Thank you for alerting us to this legislation. We think the changes proposed in the bill are well thought-out, necessary, and will benefit borrowers, financial institutions, and title agents.

We are pleased to support this legislation.

Sincerely,

Robert M. Teachworth
President