

BENJAMIN W. SPIESS

WORK ADDRESS	HOME ADDRESS
Landye Bennett Blumstein LLP 701 W. 8 th Ave., Suite 1100 Anchorage, AK 99501	1417 W. 25 th Ave. Unit B Anchorage, AK 99503

DESCRIPTION OF CURRENT PRACTICE

My legal practice covers the breadth of commercial real estate. In addition, to conventional practice, I also specialize in Alaska Native land and public lands law, and natural resource development.

My core practice is general commercial real estate: purchase and sales, leasing, condominiums, real estate finance, development and advising on all types of real estate investing entities and structures. A significant portion of this work involves representing Alaska clients in the Lower 48.

Examples of clients are an Anchorage-based investor in Class-A warehouse and logistics centers with assets across the United States. I lead our firm's representation of this client, and in the past five (5) years we have closed transactions worth more than \$300 million. Another key client is a nonprofit health care provider serving Southeast Alaska. I represent this client on all transactional matters, including real estate purchase and sales and development. A third representative client is a large, Alaska-based federal credit union which our firm represents on all manner of real estate finance across Alaska and the western United States.

A significant portion of my practice involves Alaska Native land and Alaska public lands law. The specialized practice area involves a combination of state, federal, and Native American law as well as natural resource law. I practice extensively advising clients on the federal 1971 Alaska Native Claims Settlement Act (ANCSA). I work extensively advising clients on the use and development of marine facilities and tidelands. A favorite specialty is working to protect Alaska Native archaeological and cultural resources under the Archaeological Resources Protection Act (ARPA) and the Native American Graves Protection and Repatriation Act (NAGRPA). Clients in this area include Alaska Native Corporations, Alaska Native tribes and villages, municipalities, and parties involved in natural resources development.

While much of this practice is uniquely Alaskan, it is rooted in real estate and, from my perspective, important knowledge to represent clients in rural Alaska.

In addition to my commercial real estate and Native and public lands work, I also have extensive experience in corporate law, including corporate governance and private company mergers and acquisitions. While this continues to be an active part of my practice, I have been practicing primarily as a real estate attorney since 2011.

A sampling of current projects illustrates my practice:

- 1) Representing buyer in \$21 million acquisition of an industrial warehouse property in Houston, Texas.
- 2) Representing buyer in a \$29.5 million acquisition of a logistics facility in Salt Lake City, Utah
- 3) Representing lender in \$9 million ground lease financing of a hotel property at Sea-Tac airport in Seattle, Washington.
- 4) Representing seller of two (2) commercial warehouse properties in Longmont, Colorado for \$19 million.
- 5) Representing owner of a contaminated commercial building in a tidelands area in sale to a municipality in Southeast Alaska.
- 6) Representing Alaska Native regional corporation in opposing the development of a large, surface gold mine near Nome, Alaska. The proposal involves surface mining of a state wetland and adjacent navigable, tidal waters and Native-owned uplands. This project has a complex permitting history and numerous stakeholders with varied goals.
- 7) Representing owner of a rural property in development of a 30-megawatt geothermal plant to power the proposed Graphite One mine near Nome, Alaska. Development will entail a complex permitting process, and, use of federal, state, and Alaska Native lands.
- 8) Representing landlord in development and leasing of an industrial project in Spartanburg County, South Carolina.
- 9) Representing lender in negotiating a Participation Agreement for equipment financing for an Alaska liquified natural gas project.
- 10) Representing Alaska Native corporation in effort to identify protected grave sites and cultural sites on corporation land in southcentral Alaska.
- 11) Representing Alaska Native village in renaming of geographic locations with culturally relevant place names in Prince William Sound Alaska.
- 12) Representing seller in sale of equity of a commercial lodge adjacent to Katmai National Park in King Salmon, Alaska.

This is a partial list of current projects, but it illustrates the scope and variety of my practice.

EDUCATIONAL BACKGROUND

Boston College Law School, Newton, Massachusetts – *Juris Doctor*, 2006

- Environmental Law Association

Middlebury College, Middlebury, Vermont – *Bachelor of Arts*, 1994

- Varsity Cross-County Running, 1990-1993

BAR MEMBERSHIPS AND DATES

Washington State Bar Association, October 2017 – Present

Alaska Bar Association, February 2011 – Present

Massachusetts Bar Association, October 2006-October 2011

EMPLOYMENT HISTORY

Landye, Bennett, Blumstein LLP, Anchorage, Alaska

- Partner, 2018 – Present

Stoel Rives LLP, Anchorage, Alaska

- Associate and Of Counsel, Corporate and Real Estate Practice Groups, October 2010 – May 2018

Bingham McCutchen LLP, Boston, Massachusetts

- Summer Associate, 2005
- Associate, Corporate and Real Estate Practice Groups, October 2006 – September 2010

Wachtell, Lipton, Rosen & Katz, New York, New York

- Summer Associate, 2004

SPEAKING ENGAGEMENTS

Recent Amendments to the Anchorage Zoning Code – Alaska Bar Real Estate Section, September 26, 2024

- Organizing and preparing a presentation, along with the Director the Municipality of Anchorage Planning Department, on the 2023 and 2024 changes to the Anchorage zoning code which is scheduled for September 26, 2024.
- Hours to date: 3

Alaska Real Property Case Law Update – Alaska Bar Real Estate Section – May 10, 2023

- Planned and organized this event and moderated the discussion.
- Approximate hours: 3

Alaska Real Property Case Law Update – Alaska Bar Real Estate Section – June 23, 2022

- Planned, organized and presented this case law update
- Approximate hours: 8

A Primer to Alaska Tidelands Leases – Alaska Association of Harbormasters and Port Administrators, October 29, 2021

- Prepared and delivered presentation on Alaska tidelands leasing. (See Attachment 2).
- Approximate hours: 8

Real Property Transfers in Alaska – Beyond the Warranty Deed and Quitclaim Deed – Alaska Bar Real Estate Section – October 23, 2018

- Prepared and delivered a presentation on alternative real estate transactions. (See Attachment 3).
- Approximate hours: 8

LEGAL PUBLICATIONS

Alaska Chapter – State-by-State Guide to Commercial Real Estate Leases – 2023 (See Attachment 4).

Alaska Supreme Court Upholds “As-Is” for Commercial Real Estate in Alaska – September 5, 2022. (See Attachment 5).

Alaska Sites with Offensive Word to be Renamed – March 3, 2022 and updated June 14, 2023. (See Attachment 6).

Proposed Changes Put Alaska Native Burial and Cultural Sites at Risk – October 6, 2021 and updated May 2, 2023. (See Attachment 7).

New BOMA Industrial Standard of Measurement – June 16, 2020. (See Attachment 8).

BAR ACTIVITIES

- Alaska Bar Association – Corporate Law Section, Member 2011 – present
- Alaska Bar Association – Real Estate Bar Section, Member since 2015 and co-chair since 2020

PROFESSIONAL RATINGS

2023 Alaska Business Legal Elite – Real Estate

TEACHING ACTIVITIES

See speaking engagements described above.

COMMUNITY SERVICE AND PRO BONO ACTIVITIES

Outer Coast College. Pro bono representation of Outer Coast College, a higher education institution in Sitka, Alaska founded in 2018. We provide general legal advice on matters such as governance, organization, and accreditation. 50 hours to date. June 2022-present.

Alaska Public Media. Pro bono representation of state public media organization on all legal matters. Approximately 300 hours. 2011-2018.

POLITICAL ACTIVITIES

None other than occasional participation in fundraising for municipal, state and national candidates for office.

OTHER MEMBERSHIPS

HONORS

Alaska Business Magazine – Alaska Legal Elite for Real Estate, 2024

ATTACHMENTS

Attachment 1 – Personal Biography from firm Website

Attachment 2 – Alaska Association of Harbor Administration Presentation – *Alaska Tidelands*

Attachment 3 – Alaska Real Estate Bar Section Presentation – *Real Property Transfers in Alaska Beyond the Warranty Deed*

Attachment 4 – Alaska Chapter – *State by State Guide to Commercial Real Estate Leases*

Attachment 5 – *Alaska Supreme Court Upholds “As-Is” for Commercial Real Estate in Alaska*

Attachment 6 – *Alaska Sites with Offensive Word to be Renamed*

Attachment 7 – *Proposed Changes Put Alaska Native Burial and Cultural Sites at Risk*

PERSONAL

I am the father of a 7-year-old son and 16-year-step son. Outside of my work, I coach skiing and soccer. I volunteer at my son’s elementary school. My personal interests are running, skiing, music, and photography.

Date of Birth: July 31, 1970

WRITTEN MATERIALS

One or more examples of the candidate’s written materials produced in speaking engagements, legal publications, bar activities or teaching activities should be submitted. If internet links are not supplied to online publications in the appropriate categories above, submit one or more examples of written materials as *separate* scanned documents.

ATTORNEYS

Benjamin W. Spiess

Partner

A member of the Washington and Alaska bars, Ben Spiess represents clients across the Pacific Northwest. Ben is a member of the real estate practice group. With a background in corporate law, he represents clients in all aspects of real estate transactions, including business formation, deal structuring, real estate purchase and sales, development, leasing, financing, business formation and structuring, mergers, equity and asset transactions, corporate reorganizations, and corporate governance.

Ben is experienced in structuring real estate investment partnerships, development joint ventures, syndications and all aspects of related securities law matters, including Rule 506 private placements. Ben also practices in the areas of land use and zoning, ANCSA, and public lands.

Ben is active in Arctic policy and development.



BENJAMIN W. SPIESS

office 907-276-5152

[CV](#)





My goal is excellence in analysis and advice tailored to the client's needs.

Ben is a mountain runner, cyclist, and certified U.S. Soccer Referee. He is also father to a school-aged Lego master builder, swimmer, and skier.

PRACTICES ▾

- Alaska Native Law, Corporate and Tribal
- Business Law
- Corporate and Business Organization Law
- Real Estate Development and Transactions

ADMITTED TO PRACTICE ▾

- Alaska
- Washington

EDUCATION ▾

- Boston College Law School, J.D., 2006
- Middlebury College, B.A., 1994

MEMBERSHIPS & RECOGNITION ▾

- Alaska Legal Elite

RESOURCES AUTHORED ▾

- Alaska Supreme Court Upholds “As-Is” for Commercial Real Estate in Alaska
09/05/22
- Alaska Sites with Offensive Word to be Renamed
03/03/22
- Proposed Changes Put Alaska Native Burial and Cultural Sites at Risk
10/06/21
- New BOMA Industrial Standard of Measurement
06/16/20

NEWS UPDATES ▾

- LBB Announces 3 New Partners
01/27/20

ADDITIONAL ▾

PUBLICATIONS

- State by State Guide to Commercial Leasing – Alaska – 2018
-



Simply Great Lawyers.

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A Primer to Alaska Tidelands Leases
Presentation to Alaska Association of Harbormasters and Port
Administrators, October 29, 2021

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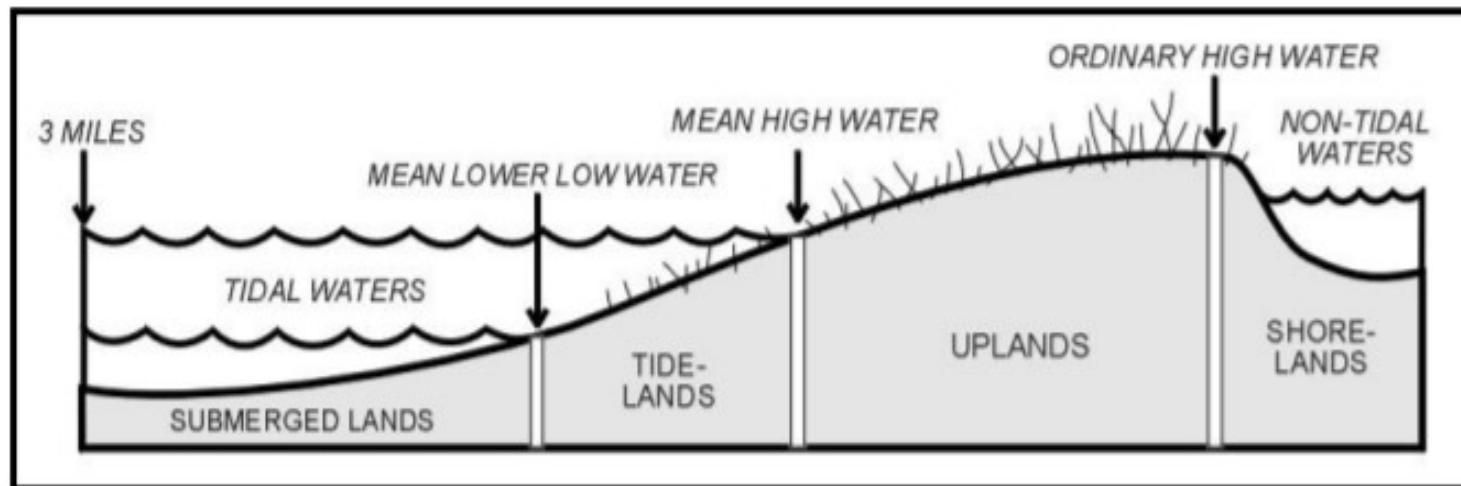
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Alaska Tideland Leases



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Who Owns Alaska's Tidelands and Shorelands?



Alaska Tideland Leases



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Who Owns Alaska's Tidelands and Shorelands?

- ❑ **"Uplands"** means land above the line of mean highwater.
 - Owned by the Upland Owner

- ❑ **"Tidelands"** are lands between mean high water and mean low water
 - Owned by the State of Alaska subject to an easement for public access
 - Tidelands may include marsh, mudflats, sand dunes, or other periodic tidal areas

- ❑ **"Submerged Lands"** are lands between mean low water and seaward a distance of 3 geographical miles. See the federal Submerged Lands Act of 1953
 - Owned by the State of Alaska
 - Subject to the rights of the public to navigation and use

- ❑ **"Shoreland"** means land belonging to the state which is covered by non-tidal water that is navigable under the laws of the US up to ordinary high-water mark. i.e., 'navigable waterways'.
 - Shorelands are owned by the State of Alaska subject to primary federal rights. **Not the subject of this presentation.**
 - *Riverbed land is "shoreland"*
 - *One whose property borders a stream or river is a "riparian landowner".*

Alaska Tidelands Leases



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Use of Public Lands is on a spectrum . . . The more durable or intrusive a use right, the higher the level of scrutiny

Generally Allowed Uses

As provided in 11 AAC 96.020
Travel across state lands
Aircraft Landing
Use of Watercraft
Hunting, Fishing, Subsistence
Recreational Gold

Permit/Authorization/Approval

Mineral Exploration & Mining
Placer Mining
Temporary Water Withdrawal
Commercial Recreation Activities
Weir
Floating Dock

Easements & Leases

Marine Access Facility
Aquatic Farm Site
Boat Launch
Utility Easement
Rights-of-Way

A tidelands lease is a lease is one of the most durable land grants available from the State of Alaska . . . And thus subject to a high level of scrutiny and review, including public notice, comment, and a finding of best interest.

Alaska Tidelands Leases



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When do you need a Tidelands Lease?

- ❑ Commercial Dock, Wharf, or Marine Facility
- ❑ Any occupancy of tidelands or submerged lands – such as a boat ramp or breakwater
- ❑ USACE 404 Permit – will require demonstration of actual or pending rights in the tideland. E.g., construction of a private dock to serve a recreational property.
- ❑ Aquatic Farming Lease **AS 38.05.083**
 - **Applications doubled in 2020**

Alaska Tidelands Leases



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Private, Non-Commercial Docks

- ❑ Private, non-commercial “floats” or “docks” may be placed in marine waters without a permit or other written authorization. See 11 AAC 96.020(a)(b). To qualify for this exemption, the dock must “not interfere with public access or another public use.”
- ❑ DNR’s practice is to only require a tidelands lease from commercial users of the shoreland. DNR has argued and the Alaska Supreme Court agrees, that commercial and non-commercial users are different and DNR may require private, commercial users to enter into leases because commercial users derive revenue from their exclusive use of State land. See *State v. Alaska Riverways, Inc.* (Alaska 2010)

Alaska Tidelands Leases



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Scope of Rights under a Tidelands lease

- **Rights of the Public:** If the commissioner issues a lease under (c) of this section, the right of access to the shoreland, tideland, or submerged land shall be nonexclusive in the lessee unless the commissioner grants the lessee the exclusive right to use the shoreland, tideland, or submerged land. **AS 38.05.075(d)**

Alaska Tidelands Leases



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Application for a Tidelands Lease: Applicant must pay for and arrange the following

- Survey:** Subject Tidelands must be surveyed before a lease is issued. AS 38.04.045(b). Requirement may be waived in a negotiated lease.
- Appraisal:** Land may not be leased unless appraised within two (2) years before the date of lease. **AS 38.05.840(a)**
- Legal Notice Publication:** Required to provide an opportunity to comment as well as notice to the local municipality, regional ANC and village ANC within 25 miles. **AS 38.05.945**
- Filing Fee**
- USGS Map Showing Location**
- Applicable Licenses**
- Development Plan:** Description of proposed use, development, access, power source and fuel storage, water source and waste disposal.

Alaska Tideland Leases

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Competitive Bidding at Public Auction or Private Negotiation?

- ❑ **Less than \$10,000:** If Fair Market Rent is less than \$10,000, the State can negotiate directly for a term of 10 years or less. AS 38.05.070(b)
- ❑ **Greater than \$10,000:** If rent is greater than \$10,000, Lease will be offered at auction to highest bidder. Term of up to 55 years. AS 38.05.070(c)
- ❑ **Only One Bidder:** If – after notice under AS 38.05.945 – the Department determines only one bidder has expressed interest – director may cancel the competitive auction and negotiate the lease. AS 38.05.070(d).
- ❑ **Uplands Owner:** Upland owner or lessee may be granted a preference right to a lease without competitive bid under AS 38.05.075(c). This known as a “non-competitive preference”. Where applicant is NOT the Upland owner, they need an agreement with the Upland owner permitting the use.

Alaska Tidelands Leases



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Lease Term

- ❑ **Less than \$10,000:** Term of not more than 10 years. AS 38.05.070(b). AS 38.05.070(b).
 - Not eligible for renewal

- ❑ **Greater than \$10,000:** Term of not more than 55 years. AS 38.05.070(c)

- ❑ **Renewal:** DNR may renew a lease if in good standing and in the best interest of the State. May be renewed only once for a term not greater than the term of the original lease. AS 38.05.070(e).

Alaska Tidelands Leases



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Rent

- ❑ **Fair Market Rent:** A lease may not be for less than the appraised market value and subject to adjustment every five (5) years. **AS 38.05.105(a)**

- ❑ **Appraisal:** Land may not be leased unless appraised within two (2) years before the date of lease. **AS 38.05.840(a)**

- ❑ **Responsibility of Applicant:** Applicant is responsible for providing an appraisal.

- ❑ **Bonding:** Bond may be required to ensure removal of improvements

Alaska Tideland Leases



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Time-Frame – Get Ready to be Patient

1. Application received, serialized and copied
2. In-House and agency review.....30 days
3. Preliminary Decision.....30 days
4. .945 Notice Letter (AS 38.05.945(c)).....30 days
5. .945 Public Notice (newspaper ad)(AS 38.05.945(b)).....30 days
6. Survey and Appraisal (11 AAC 58.400-.410).....60 days
7. Final Decision.....10 days
8. .945 Notice Letters (if competitive offerings).....30 days
9. .945 public notice (if competitive).....30 days
10. Lease Offering.....10 day

There is a backlog, especially due to State budget cuts. Nothing moves quickly.

There may be other requirements – for example, if the land is within an organized borough, the survey plat must be approved by the local platting authority.

Alaska Tidelands Leases



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- **Sublease:** Under AS 38.05.095, Sublease of a Tidelands lease is permissible with approval of DNR. Approval may involve further agency review and public notice.
- **Assignment:** Assignment of a Tidelands lease is permissible with approval of DNR. Assignee must meet the statutory requirements of the lease.

Alaska Tideland Leases



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- **Renewal:** Director may renew a lease upon expiration if the lease is in good standing, and the lease renewal is determined to be in the best interests of the state. AS 38.05.070(e).
- **Expiration and Reclamation:** Under AS 38.05.090, all lease sites must be restored to a “good and marketable condition” within 120 days after termination
 - all personal property within 30 days after termination (ASTs)
 - all buildings and fixtures, including gravel pads and USTs
 - Or – the Improvements may be sold by the Lessee

Alaska Tidelands Leases



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Who are you going to be dealing with?

- State of Alaska:** Generally, Tidelands Leases are administered by State Dept, of Natural Resources, Division of Mining Land and Water (DMLW)
- Local Cities:** Cities have a right to conveyance of all land seaward, including all tidelands and submerged lands. **AS 38.05.820.**
- Other Agencies – US Army Corps of Engineers?**
 - **404 Permit:** Application requires showing of title in tidelands
- If dealing with a municipality then generally under the control of the city Planning Department.

Alaska Tidelands Leases



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City/Borough of Sitka

- ❑ Municipal Ordinances – Chapter 18.16 Tideland Lease Procedure
- ❑ Jurisdiction under Planning and Community Development Department and approval by the City Assembly.
- ❑ City Discretion: Rent, Term, Use
 - Rent could be based on value of improvements, tariffs
 - Sitka bases rent on a % of assessed value. E.g., 4.5% of \$200,000 floating dock = \$9,000 per year. Recent Unalaska lease at 10% of assessed value = \$57,000 per year.

Alaska Tidelands Leases



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City/Borough of Sitka

- ❑ Municipal Ordinances – Chapter 18.16 Tideland Lease Procedure
- ❑ Jurisdiction under Planning and Community Development Department and approval by the City Assembly.
- ❑ Process *is different* from the State.
 - In Sitka, Step 1 is request to Assembly for decision to Lease
 - Step 2: Deposit
 - Step 3: Plat
 - Step 4: Evaluation of Preferences
 - Step 5: Advisory vote of the Voters

Alaska Tidelands Leases



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- ❑ Consistent with regional plans. For example – Land classified as Waterfront Development Land may be more suitable for an adjacent tidelands lease for commercial purposes.

Alaska Tidelands Leases



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Miscellaneous Issues

- **Riparian Landowner & Riparian Rights:** One whose property borders on a stream, river, or waterway is known as a “riparian landowner”. See. *State v. Alaska Riverways* (Alaska 2010)
- **Reliction:** The emergence of existing soil either due to water receding or the ground rising, generally due to seismic activity or *glacio-isostatic uplift*. Same as accretion and is treated as an addition to the Uplands parcel.
- **Erosion:** Reduces the size of the Upland and increases the size of the Tidelands Lease.

Alaska Tidelands Leases



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Miscellaneous Issues - Continued

- **Accretion:** Accretion (addition to the Uplands parcel) reduces the size of the tidelands lease
- **Reliction:** The emergence of existing soil either due to water receding or the ground rising, generally due to seismic activity or *glacio-isostatic uplift*. Same as accretion and is treated as an addition to the Uplands parcel.
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Alaska Tidelands Leases



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Miscellaneous Issues - Continued

How do the Statutes Work:

- **Alaska Lands Act:** Alaska Lands Act governs the use and disposition of State lands.
- **Submerged Lands Act (43 USCA 1301 et seq.)(1953)** A federal law which granted title to all natural resources within 3 miles of a state's coastline. Title II recognizes the rights and claims by states to lands and resources beneath navigable waters within historic boundaries. Title III preserves control of seabed and resources of the Outer Continental Shelf beyond state boundary to the federal government.

Alaska Tidelands Leases



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A Primer to Alaska Tidelands Leases
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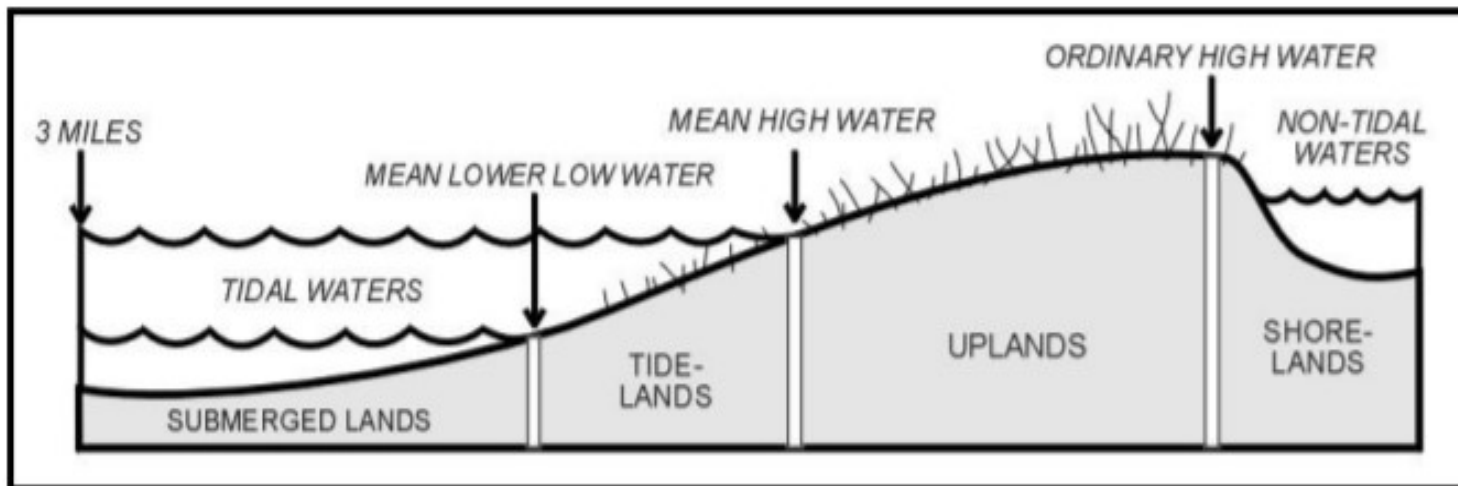
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Alaska Tideland Leases



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Who Owns Alaska's Tidelands and Shorelands?



Alaska Tideland Leases



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Use of Watercraft
Hunting, Fishing, Subsistence
Recreational Gold

Permit/Authorization/Approval

Mineral Exploration & Mining
Placer Mining
Temporary Water Withdrawal
Commercial Recreation Activities
Weir
Floating Dock

Easements & Leases

Marine Access Facility
Aquatic Farm Site
Boat Launch
Utility Easement
Rights-of-Way

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Alaska Tidelands Leases



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Private, Non-Commercial Docks

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Alaska Tidelands Leases



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- Filing Fee**
- USGS Map Showing Location**
- Applicable Licenses**
- Development Plan:** Description of proposed use, development, access, power source and fuel storage, water source and waste disposal.

Alaska Tideland Leases

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Competitive Bidding at Public Auction or Private Negotiation?

- ❑ **Less than \$10,000:** If Fair Market Rent is less than \$10,000, the State can negotiate directly for a term of 10 years or less. AS 38.05.070(b)
- ❑ **Greater than \$10,000:** If rent is greater than \$10,000, Lease will be offered at auction to highest bidder. Term of up to 55 years. AS 38.05.070(c)
- ❑ **Only One Bidder:** If – after notice under AS 38.05.945 – the Department determines only one bidder has expressed interest – director may cancel the competitive auction and negotiate the lease. AS 38.05.070(d).
- ❑ **Uplands Owner:** Upland owner or lessee may be granted a preference right to a lease without competitive bid under AS 38.05.075(c). This known as a “non-competitive preference”. Where applicant is NOT the Upland owner, they need an agreement with the Upland owner permitting the use.

Alaska Tidelands Leases



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Lease Term

- ❑ **Less than \$10,000:** Term of not more than 10 years. AS 38.05.070(b). AS 38.05.070(b).
 - Not eligible for renewal

- ❑ **Greater than \$10,000:** Term of not more than 55 years. AS 38.05.070(c)

- ❑ **Renewal:** DNR may renew a lease if in good standing and in the best interest of the State. May be renewed only once for a term not greater than the term of the original lease. AS 38.05.070(e).

Alaska Tidelands Leases



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Rent

- Fair Market Rent:** A lease may not be for less than the appraised market value and subject to adjustment every five (5) years. **AS 38.05.105(a)**

- Appraisal:** Land may not be leased unless appraised within two (2) years before the date of lease. **AS 38.05.840(a)**

- Responsibility of Applicant:** Applicant is responsible for providing an appraisal.

- Bonding:** Bond may be required to ensure removal of improvements

Alaska Tideland Leases



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Time-Frame – Get Ready to be Patient

1. Application received, serialized and copied
2. In-House and agency review.....30 days
3. Preliminary Decision.....30 days
4. .945 Notice Letter (AS 38.05.945(c)).....30 days
5. .945 Public Notice (newspaper ad)(AS 38.05.945(b)).....30 days
6. Survey and Appraisal (11 AAC 58.400-.410).....60 days
7. Final Decision.....10 days
8. .945 Notice Letters (if competitive offerings).....30 days
9. .945 public notice (if competitive).....30 days
10. Lease Offering.....10 day

There is a backlog, especially due to State budget cuts. Nothing moves quickly.

There may be other requirements – for example, if the land is within an organized borough, the survey plat must be approved by the local platting authority.

Alaska Tidelands Leases



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- **Sublease:** Under AS 38.05.095, Sublease of a Tidelands lease is permissible with approval of DNR. Approval may involve further agency review and public notice.
- **Assignment:** Assignment of a Tidelands lease is permissible with approval of DNR. Assignee must meet the statutory requirements of the lease.

Alaska Tideland Leases



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- **Renewal:** Director may renew a lease upon expiration if the lease is in good standing, and the lease renewal is determined to be in the best interests of the state. AS 38.05.070(e).
- **Expiration and Reclamation:** Under AS 38.05.090, all lease sites must be restored to a “good and marketable condition” within 120 days after termination
 - all personal property within 30 days after termination (ASTs)
 - all buildings and fixtures, including gravel pads and USTs
 - Or – the Improvements may be sold by the Lessee

Alaska Tidelands Leases



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Who are you going to be dealing with?

- State of Alaska:** Generally, Tidelands Leases are administered by State Dept, of Natural Resources, Division of Mining Land and Water (DMLW)
- Local Cities:** Cities have a right to conveyance of all land seaward, including all tidelands and submerged lands. **AS 38.05.820.**
- Other Agencies – US Army Corps of Engineers?**
 - **404 Permit:** Application requires showing of title in tidelands
- If dealing with a municipality then generally under the control of the city Planning Department.

Alaska Tidelands Leases



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City/Borough of Sitka

- ❑ Municipal Ordinances – Chapter 18.16 Tideland Lease Procedure
- ❑ Jurisdiction under Planning and Community Development Department and approval by the City Assembly.
- ❑ City Discretion: Rent, Term, Use
 - Rent could be based on value of improvements, tariffs
 - Sitka bases rent on a % of assessed value. E.g., 4.5% of \$200,000 floating dock = \$9,000 per year. Recent Unalaska lease at 10% of assessed value = \$57,000 per year.

Alaska Tidelands Leases



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City/Borough of Sitka

- ❑ Municipal Ordinances – Chapter 18.16 Tideland Lease Procedure
- ❑ Jurisdiction under Planning and Community Development Department and approval by the City Assembly.
- ❑ Process *is different* from the State.
 - In Sitka, Step 1 is request to Assembly for decision to Lease
 - Step 2: Deposit
 - Step 3: Plat
 - Step 4: Evaluation of Preferences
 - Step 5: Advisory vote of the Voters

Alaska Tidelands Leases



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City/Borough of Sitka

- ❑ City Discretion: Rent, Term, Use
 - Rent could be based on value of improvements, tariffs
 - Sitka bases rent on a % of assessed value. E.g., 4.5% of \$200,000 floating dock = \$9,000 per year. Recent Unalaska lease at 10% of assessed value = \$57,000 per year.

- ❑ Consistent with regional plans. For example – Land classified as Waterfront Development Land may be more suitable for an adjacent tidelands lease for commercial purposes.

Alaska Tidelands Leases



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Miscellaneous Issues

- **Riparian Landowner & Riparian Rights:** One whose property borders on a stream, river, or waterway is known as a “riparian landowner”. See. *State v. Alaska Riverways* (Alaska 2010)
- **Reliction:** The emergence of existing soil either due to water receding or the ground rising, generally due to seismic activity or *glacio-isostatic uplift*. Same as accretion and is treated as an addition to the Uplands parcel.
- **Erosion:** Reduces the size of the Upland and increases the size of the Tidelands Lease.

Alaska Tidelands Leases



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Miscellaneous Issues - Continued

- **Accretion:** Accretion (addition to the Uplands parcel) reduces the size of the tidelands lease
- **Reliction:** The emergence of existing soil either due to water receding or the ground rising, generally due to seismic activity or *glacio-isostatic uplift*. Same as accretion and is treated as an addition to the Uplands parcel.
- **Erosion:** Reduces the size of the Upland and increases the size of the Tidelands Lease.

Alaska Tidelands Leases



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Miscellaneous Issues - Continued

How do the Statutes Work:

- **Alaska Lands Act:** Alaska Lands Act governs the use and disposition of State lands.
- **Submerged Lands Act (43 USCA 1301 et seq.)(1953)** A federal law which granted title to all natural resources within 3 miles of a state's coastline. Title II recognizes the rights and claims by states to lands and resources beneath navigable waters within historic boundaries. Title III preserves control of seabed and resources of the Outer Continental Shelf beyond state boundary to the federal government.

Alaska Tidelands Leases



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Real Property Transfers in Alaska: Beyond the Warranty Deed and Quitclaim Deed

Part IV: Other Conveyance Models – Benjamin W. Spiess, Landye Bennett Blumstein LLP

1. Why Consider Alternative Transfers of Real Property?
2. Transfer of LLC Membership Interest
3. Installment Land Contracts
4. Options to Purchase and Lease Options
5. Ground Lease



1. Why Consider Alternative Transfers of Real Property?

The typical purchase and sale assumes buyer and seller have the perfect property and the time and money to close.

Reality is that every deal has an issue: the property may be impaired, the buyer may lack sufficient funds, the seller may have a tax problem, the land may need to be cleaned-up, permitted or rezoned for buyer's intended use, or perhaps a third party has consent rights.

Alternative structures allow buyers and sellers to meet alternative goals.

2. Transfer of LLC Interests – What is It?

Most commercial real estate is owned via an entity: a corporation, a partnership, or an LLC. For investors and a growing number of businesses, LLCs are the preferred model.

Acquiring the membership interest of the LLC changes ownership of the property-owning entity without changing the record owner.

3. Transfer of LLC Interests – Pros

- A. Transfer Taxes. Some jurisdictions (not Alaska) impose transfer taxes on the conveyance of title to real estate. Structuring the transaction as an entity sale may mitigate or reduce the amount of transfer taxes.
- B. Title Insurance Costs. In some cases, the purchaser of interests in a property-owning entity can succeed to the entity's existing title insurance policy and avoid purchasing a new policy. If so, the buyer should consider getting a title report to determine whether there are any new matters of record and getting an ALTA "Non Imputation Endorsement" which removes standard insurance policy language which provides the insurance company is not liable for matters known to the insured party.

When a new party purchases the buyer's interest, they cannot know what the seller may have known. A Non-Imputation Endorsement limits exceptions to those shown on the face of the document.

- C. Avoidance of Consent Requirements. Transfer by deed may require certain third-party consents, such as:
- A ground lessor or lessee if the property is ground leased
 - A lender if the mortgage is not being released
 - A municipality or other authority that has issued approvals or permits
 - Contracts related to the property

Note: Leases and finance documents, such as a deed of trust, frequently contain restrictions on the sale of equity of by tenant's and borrowers.

- D. Assumption of Mortgage Obligation. If buyer wishes to assume the seller's bank loan, acquiring ownership of the borrower (land-owner) LLC may help facilitate this. The parties may wish to do a loan assumption to

avoid time-consuming and expensive loan origination process and take advantage of seller's financing terms such as interest rate.

- E. FIRPTA Rules. Under the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA), in a sale of U.S. real estate by a foreign seller, purchasers must withhold 15% of the sales price to ensure taxable by the seller is paid. Where the seller is a multi-member LLC taxed as a partnership, the parties may not need to withhold for FIRPTA purposes.



4. Transfer of LLC Interests – Cons

- A. Assumption of Liability. The purchaser of LLC membership interest succeeds to all existing liabilities of the LLC entity. This may be mitigated by the fact that many properties are owned by single purpose entities whose sole asset is the subject property. If so, the target LLC would have a limited business history and any liabilities relate to the target property.
- B. Due Diligence. In addition to due diligence of the property, a buyer should conduct due diligence of the entity's financial statements, books and public records to determine potential liabilities. Buyers should also negotiate for robust warranties to guard against hidden liabilities. Reps and warranties include both those regarding the LLC and standard real estate representations found in a purchase and sale agreement for the property owned by the LLC.
- C. Tax Liabilities. In an entity acquisition, the buyer assumes the entity's tax liabilities which could be significant. Many real estate-owning LLCs are disregarded entities for tax purposes. But, even disregarded entities can have entity-level tax liabilities such as federal and state employment taxes and property taxes.

5. Transfer of LLC Interests – Considerations

- A. Partial Entity Sale: A sale of a share of the LLC membership interest can allow a partial sale of the property, permitting a solo owner to take on a partner and get liquidity, or it could permit one or more LLC members to sell and allow the remaining members to get new partners. A partial sale raises different issues for a buyer, including understanding requirements under the LLC operating agreement, obtaining consents from non-selling members, buyer's role in LLC management post-closing, and the right and obligation of the buyer as a new member. If the seller is a 100% owner, sale of a partial interest may require negotiating the terms of the new joint venture. If buyer acquires a minority interest, buyer may get seller's rights and obligations but may be unable to negotiate any other terms.
- B. Scope and Complexity: Acquisition of 100% of the membership interest of a single member LLC whose sole asset is a piece of real estate is a relatively simple transaction. Due diligence is highly similar to that when buying property outright.

Acquiring an interest in LLC's with multiple properties, multiple businesses or a long, diverse operating history can be a complex transaction and more than most real estate investors are expecting. Acquisitions of this magnitude may require investigation of tax matters, employee benefits, labor and employment, corporate governance, and financial matters.

6. Land Sale and Installment Contracts – What is It?

An installment land contract is a type of contract for the purchase and sale of real property in which the seller provides financing to the buyer without a third-party lender. The contract between buyer and seller sets forth payment terms and deed delivery obligations. The buyer takes equitable title to the property and has the right of possession and use while making the installment payments to the seller. The seller retains legal title as security until the purchaser fully repays the loan at which point the seller records a deed transferring legal title to the buyer.

7. Land Sale and Installment Contracts – Pros

- A. Flexibility. An installment land contract can create flexibility to buy and sell property, allowing parties to cut out third-party lenders and set their own terms for down payment, interest, and repayment.
- B. Buyers with Limited Funds or Poor Credit. An installment land contract allows a buyer with limited funds or with poor credit who cannot qualify for traditional financing to purchase property.
- C. Down Payment. An installment land contract allows a buyer to purchase with low (or no) down payment.
- D. Impaired Property. An installment land contract allows a seller to sell property that lenders may not willing to finance such as property in flood zones or properties with title flaws or zoning or permitting issues.
- E. Poor Market Conditions. An installment land contract can permit sales in poor market conditions
- F. Lower Costs. By avoiding conventional bank lending requirements (and related costs) such as title reviews, land surveys or title insurance, an installment land contract may be lower cost.
- G. Tax Advantages. Seller can avoid paying capital gains tax on the sale as taxable income is spread over many years.

8. Land Sale and Installment Contracts – Cons

- A. Foreclosure. A buyer under an installment land contract may not be protected by foreclosure statutes as with a mortgage or deed of trust. A seller may not be able to use statutory remedies to eject a difficult buyer.
- B. Ownership. While the contract is pending the seller is deemed the owner, responsible for taxes, repairs and maintenance.
- C. Risks of Non-Payment. An installment land contract to sell to a buyer with impaired credit inherently contains risk of non-payment.
- D. Title Risk to Buyer. One risk to buyer is the inability of the seller to provide good title at the end of the contract. For example, a judgment creditor of seller could place a lien on the property or the property could become subject to a divorce or probate proceedings.

9. Land Sale and Installment Contracts – Considerations

- A. Recording. The deed conveying the property does not get passed to the buyer until final payment has been made. However, the parties can record the installment land contract and can get an owner's title insurance policy insuring purchaser's equitable interest under the contract.
- B. Equitable Title and Forfeiture in Default. Under installment land contracts, Buyers acquire equitable interest in the subject property; forfeiture provisions in installment contracts which provide that a buyer / tenant forfeits all amounts paid in the event of a breach of contract are likely not enforceable in Alaska. See *Cozzetti v. Madrid*, WL 6395739 (Alaska 2017); *Moran v. Holman*, 501 P.2d 769, 771 (Alaska 1972); and *William v. DeLay*, 395 P.2d 839, 846 (Alaska 1964).
- C. Rare. Installment land contracts are less common than in the past.

10. Options to Purchase and Lease Options – What is It?

An Option to Purchase is a contract under which an owner of real property gives a potential buyer the right to purchase the property at a certain price within a specified time.

A Lease Option is a contract under which an owner of real property gives a tenant the right to purchase at the end of a lease. Lease payments are generally applied toward the purchase price

11. Options to Purchase and Lease Options – Pro

- A. Time. An option to purchase gives an optionee time to consider whether or not to invest in a piece of property with risk of losing property to another party.
- B. Cost. An option to purchase gives a potential buyer control over the property for less money down than under a conventional purchase and sale agreement.
- C. Flexibility. An option to purchase gives an investor time and flexibility: (i) to obtain entitlements for the property regarding land use or other matters; (ii) to get options or purchase rights for adjacent lands; or (iii) to enter the property and conduct due diligence.
- D. Expanded Pool of Buyers. For sellers, a lease option expands the pool of buyers to persons who may not have sufficient funds for a downpayment.
- E. Appreciation. Since the purchase price in a lease option is agreed at signing, buyer can reduce risk of excessive appreciation pending closing.

12. Options to Purchase and Lease Options – Con

- A. Ownership. Neither a purchase option nor a lease option puts the potential buyer in title. Until the optionee owns the property their rights to occupy, modify, improve, or develop the property are limited.
- B. Performance. For seller in a lease option, there is always the risk that the buyer/tenant will not be able to perform and acquire the property. Meanwhile, lease options are often long-term contracts. If the buyer/tenant fails to close, the seller has tied up their property for no purpose.
- C. Flexibility. The lease option gives power and flexibility to the buyer. Sellers typically accept lease options only when they are having difficulty selling a property.

13. Options to Purchase and Lease Options – Considerations

- A. Statute of Frauds. An option is a conveyance of real estate that must meet all the requirements of the statute of frauds, including a written agreement and a description of the property to be purchased.
- B. Recording a Memorandum of Option. Because an option is an interest in land, the optionee should record the option or a memorandum of option to provide constructive notice to the third parties and establish priority over later conveyances or encumbrances. Beware that recorded notices of options can become burdens on title if the optionee does not exercise their option and the owner wishes to sell to a different party. Title companies may be reluctant to remove options as exceptions without a recorded release.
- C. Drafting the Option: Well-drafted options contain: (i) specific notice procedures and time periods; (ii) risk of loss provisions; (iii) tax, maintenance and operations provisions; (iv) a definite purchase price or a specific mechanism to determine purchase price; and (v) provisions for closing the purchase and sale, including allocation of expenses and prorations. Otherwise, option agreements are ripe for disputes. The more detailed the option is the more effective it will be.
- D. Distinguish from an Installment Contract. Under an option, an optionee has only contractual rights and, unlike an installment contract, acquires no equitable interest in the property. See *Kopanuk v. AVCP Regional Housing Authority*, 902 P.2d 813 (Alaska 1995).

14. Grounds Leases – What is It?

Ground leases are long-term leases, typically 30 to 100 years, where the tenant controls the property, pays taxes, insurance and operating expenses, and the tenant develops and owns the improvements. A ground lease is net to the landlord who retains ownership of the underlying fee interest.

15. Ground Leases – Pros

A. Owner/Landlord. For the owner, a ground lease has several advantages over a sale:

- Owner/landlord retains a reversionary interest in the property and improvements built by tenant
- A ground lease is a low-cost way for an owner/landlord to get the benefit of developed property
- Owner/landlord gets a steady stream of income as opposed to a large sale price subject to capital gain tax
- Owner/landlord is entirely passive but gets the benefit of income and property development

B. Tenant. For a tenant, a ground lease has several advantages over purchasing fee interest in the property, including:

- A ground lease (as opposed to fee purchase) substantially reduces Tenant's front-end development costs
- Tenant can deduct rent as a business operating expense against income, and usually rents are less than mortgage payments for a property purchase. In sum, it can be cheaper to rent than own
- Tenant protected from downturns in the real estate market

16. Ground Leases – Cons

A. Owner/Lessor. For the owner/lessor the ground lease has several issues:

- Under most leases the owner/landlord has little or no control over development and use of the land
- The ground lease may contain restrictions preventing the owner from borrowing against its fee interest during the lease term
- If landlord allow its fee interest to be secured by tenant financing, owner/landlord could lose their property in foreclosure.
- Under a ground lease, the owner/landlord gives up almost all control over the property and is bound by the lease terms. If Landlord negotiated a bad deal, for example rents are too low, landlord may be stuck.

B. Tenant. For the tenant, the ground lease has several potential problems:

- The total costs for ground leasing property are usually higher in the long term than if the tenant purchases the property outright.
- The tenant often has less flexibility over the development, use and operation of the property because of restrictions contained in the ground lease.
- The tenant may have difficulty financing or refinancing the ground lease because of limitations contained in the ground lease which could make development difficult and limit tenant's ability to take equity out of the project.
- Tenant's leasehold interest under the ground lease is a "diminishing asset" because the value and marketability of the project diminishes as the end of the lease term nears.
- If tenant wants to sell, the market for their leasehold interest may be limited.

17. Ground Leases – Considerations

- A. Owner/Landlord. For a landlord/owner, entering into a ground lease is a lot like selling the property. The lease should contain provisions dealing with changes over time such as: options to extend, early termination, rent adjustment, options for owner to purchase tenant's leasehold interest and options for tenant to purchase landlord's fee interest, and landlord rights to review and consent to tenant's development, financing, and subleasing of the property.
- B. Tenant. For a tenant, entering into a ground lease is a lot like purchasing the property. Tenant should conduct due diligence similar to that of a potential buyer. The tenant should attempt to get all landlord approvals early in the ground lease process and minimize the landlord's role thereafter.
- C. 1031 Exchange. A leasehold interest is considered "like kind" to other real estate for the purposes of a 1031 exchange provided the leasehold interest has a remaining term of 30 years or more (including options and renewal periods). See Reg. § 1.1031(a)-1(c)(2).
- D. Title Insurance. Both the owner/landlord and tenant can obtain title insurance for their respective interests. Special endorsements for items such as eviction and relocation costs are available.

18. Questions?



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ALASKA

Benjamin W. Spiess

Landye Bennett Blumstein LLP

OVERVIEW: For current Alaska Statutes (AS), legislative information, and bill tracking, go to <https://www.akleg.gov/basis/Home/BillsandLaws>. For the Alaska Administrative Code (AAC), go to <https://www.akleg.gov/basis/aac.asp#1.05>. For the rules of civil procedure, go to www.courts.alaska.gov/rules/. For general information about Alaska, go to www.state.ak.us.

Rules for construction of leases: Alaska courts apply a two-step analysis in determining the meaning of lease terms. First, the courts look at the language of the lease and extrinsic evidence to determine whether the lease is ambiguous. If the lease is unambiguous, it is construed solely according to its written terms. If the lease is ambiguous, the courts attempt to determine the reasonable expectations of the parties using three principles. First, ambiguities are construed against the party that supplied the language. Second, ambiguities are construed against the lessor. Third, a construction that permits the continued performance of a lease is favored. *Rockstad v. Global Finance & Investment Co., Inc.*, 41 P.3d 583, 586–87 (Alaska 2002).

The following topics are outside the scope of this chapter: agricultural leases, common interest ownership act, environmental liability under leases, harbor and navigational leases, mineral leases, oil and gas leases, pipeline right-of-way leases, recreational facilities development leases, tidelands, timberlands, submerged lands.

TOPIC	CITATION	STATUTE	COMMENTARY
Acknowledgments	AS §§09.63.050 through 09.63.130		Uniform Recognition of Acknowledgments Act
Action on Agreement to Sell Real Estate	AS §09.10.053*	<i>Contract actions to be brought in three years.</i> Unless the action is commenced within three years, a person may not bring an action upon a contract or liability, express or implied, except as provided in AS 09.10.040, or as otherwise provided by law, or, except if the provisions of this section are waived by contract.	This section applies to suits to foreclose a mortgage. <i>Dworkin v. First Nat'l Bank</i> , 444 P.2d 777 (Alaska 1968).
Actions Against Landowner by Invitees, Licensees, and Trespassers	AS §09.10.030*	<i>Actions to recover real property.</i> (a) Except as provided in (b) of this section, a person may not bring an action for the recovery of real property or for the recovery of the possession of it unless the action is commenced within 10 years. An action may not be maintained under this subsection for the recovery unless it appears that the plaintiff, an ancestor, a predecessor, or the grantor of the plaintiff was seized or possessed of the premises in question within 10 years before the commencement of the	This section applies to adverse possession actions where the claim is not under color of title. Where the adverse claim is under color of

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action.

(b) An action may be brought at any time by a person who was seized or possessed of the real property in question at some time before the commencement of the action or whose grantor or predecessor was seized or possessed of the real property in question at some time before commencement of the action, and whose ownership interest in the real property is recorded under AS 40.17, in order to

- (1) quiet title to that real property; or
- (2) eject a person from that real property.

title, AS §09.45.052 applies. *See also* AS §09.45.020, covering boundary disputes. This recently amended statute makes it more difficult for a “squatter” to claim property by adverse possession by adding a requirement to AS §09.45.052 that an adverse claimant under AS §09.10.030 is not entitled to a conclusive presumption of title unless the claimant has a good faith but mistaken belief that the property claimed is within the boundaries of adjacent property owned by the adverse claimant.

AS
§09.10.07
0*

Actions for torts, for injury to personal property, for certain statutory liabilities, and against peace officers and coroners to be brought in two years. (a) Except as otherwise provided by law, a person may not bring an action (1) for libel, slander, assault, battery, seduction, or false imprisonment, (2) for personal injury or death, or injury to the rights of another not arising on contract and not specifically provided otherwise; (3) for taking, detaining, or injuring personal property, including an action for its specific recovery; (4) upon a statute for a forfeiture or penalty to the state; or (5) upon a liability created by statute, other than a penalty or forfeiture; unless the action is commenced within two years of the accrual of the

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cause of action.

* * *

AS
§09.10.23
0* *Certain actions relating to real property.* A person may not bring an action for the determination of a right or claim to or interest in real property unless commenced within the limitations provided for actions for the recovery of the possession of real property. However, a person may not bring an action to set aside, cancel, annul, or otherwise affect a patent to land issued by this state or the United States, or to compel a person claiming or holding under a patent to convey the land described in the patent or a portion of the land to the plaintiff in the action, or to hold the land in trust for or to the use and benefit of the plaintiff, or on account of any matter, thing, or transaction that was had, done, suffered, or transpired before the date of the patent unless the action is commenced within 10 years from the date of the patent. In an action upon a new promise, fraud, or mistake, the running of the time within which an action may be commenced starts from the making of the new promise or the discovery of the fraud or mistake. This section does not bar an equitable owner in possession of real property from defending possession by means of the equitable title. The right of an equitable owner to defend possession in an action or by complaint for injunction is not barred by lapse of time while an action for the possession of the real property is not barred by the provisions of this chapter.

AS
§05.45.01
0* *Limitation on actions arising from skiing.* Notwithstanding any other provision of law, a person may not bring an action against a ski area operator for an injury resulting from an inherent danger and risk of skiing.

Alienage AS
§13.12.11
1* *Alienage.* An individual is not disqualified to take as an heir because the individual or another individual through whom the individual claims is or has been an alien.

Arbitration— AS
Uniform §§09.43.0
Arbitration Act 10 to
09.43.180

Public policy in Alaska favors arbitration. *Harold's Trucking v. Kelsey*, 584 P.2d 1128 (Alaska 1978) (“This is consistent with the strong public policy favoring

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<p>Assignments of Rents</p>	<p>AS §34.40.010*</p>	<p><i>Invalidity generally.</i> Except as provided in AS 34.40.110, a conveyance or assignment, in writing or otherwise, of an estate or interest in land, or in goods, or things in action, or of rents or profits issuing from them or a charge upon land, goods, or things in action, or upon the rents or profits from them, made with the intent to hinder, delay, or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts, or demands, or a bond or other evidence of debt given, action commenced, decree or judgment suffered, with the like intent, as against the persons so hindered, delayed, or defrauded is void.</p>	<p>arbitration...”). AS §34.40.110 restricts transfer of trust interests.</p>
<p>Attorneys' Fees</p>	<p>AS §09.60.010*</p>	<p><i>Costs and attorney fees allowed prevailing party.</i> (a) The supreme court shall determine by rule or order the costs, if any, that may be allowed a prevailing party in a civil action. Unless specifically authorized by statute or by agreement between the parties, attorney fees may not be awarded to a party in a civil action for personal injury, death, or property damage related to or arising out of fault, as defined in AS 09.17.900, unless the civil action is contested without trial, or fully contested as determined by the court.</p>	<p>Alaska follows the “English Rule” of prevailing party attorneys' fees in most civil actions. Many leases provide for actual attorneys' fees for the prevailing party. If the lease makes no provision for attorneys' fees, fees will be determined by Alaska Civil Rule 82. The Rule is intended to provide only a partial recovery of attorneys' fees to the prevailing party; thus, a provision specifying actual attorneys' fees should be considered in a lease.</p>

* * *

Alaska **ATTORNEY'S FEES**
 Civil Rule 82* (a) *Allowance to Prevailing Party.* Except as otherwise provided by law or agreed to by the parties,

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the prevailing party in a civil case shall be awarded attorney's fees calculated under this rule.

(b) *Amount of Award.*

(1) The court shall adhere to the following schedule in fixing the award of attorney's fees to a party recovering a money judgment in a case:

	Judgment and, If Awarded, Prejudgme nt Interest	Conteste d With Trial	Conteste d Without Trial	Non- Conteste d
Firs t	\$25,000	20%	18%	10%
Nex t	\$75,000	10%	8%	3%
Nex t	\$400,000	10%	6%	2%
Ove r	\$500,000	10%	2%	1%

(2) In cases in which the prevailing party recovers no money judgment, the court shall award the prevailing party in a case which goes to trial 30 percent of the prevailing party's reasonable actual attorney's fees which were necessarily incurred, and shall award the prevailing party in a case resolved without trial 20 percent of its actual attorney's fees which were necessarily incurred. The actual fees shall include fees for legal work customarily performed by an attorney but which was delegated to and performed by an investigator, paralegal or law clerk.

(3) The court may vary an attorney's fee award calculated under subparagraph (b)(1) or (2) of this rule if, upon consideration of the factors listed below, the court determines a variation is warranted:

- (A) the complexity of the litigation;
- (B) the length of trial;
- (C) the reasonableness of the attorneys' hourly rates and the number of hours expended;
- (D) the reasonableness of the number of attorneys used;
- (E) the attorneys' efforts to minimize fees;
- (F) the reasonableness of the claims and defenses pursued by each side;
- (G) vexatious or bad faith conduct;
- (H) the relationship between the amount of work performed and the significance of the matters at stake;
- (I) the extent to which a given fee award may be so onerous to the non-prevailing party that it would deter

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similarly situated litigants from the voluntary use of the courts;

(J) the extent to which the fees incurred by the prevailing party suggest that they had been influenced by considerations apart from the case at bar, such as a desire to discourage claims by others against the prevailing party or its insurer; and

(K) other equitable factors deemed relevant.

If the court varies an award, the court shall explain the reasons for the variation.

(4) Upon entry of judgment by default, the plaintiff may recover an award calculated under subparagraph (b)(1) or its reasonable actual fees which were necessarily incurred, whichever is less. Actual fees include fees for legal work performed by an investigator, paralegal, or law clerk, as provided in subparagraph (b)(2).

(c) *Motions for Attorney's Fees.* A motion is required for an award of attorney's fees under this rule or pursuant to contract, statute, regulation, or law. The motion must be filed within 10 days after the date shown in the clerk's certificate of distribution on the judgment as defined by Civil Rule 58.1. Failure to move for attorney's fees within 10 days, or such additional time as the court may allow, shall be construed as a waiver of the party's right to recover attorney's fees. A motion for attorney's fees in a default case must specify actual fees.

(d) *Determination of Award.* Attorney's fees upon entry of judgment by default may be determined by the clerk. In all other matters the court shall determine attorney's fees.

[AS §09.60.010](f)

Effect of Rule. The allowance of attorney's fees by the court in conformance with this rule shall not be construed as fixing the fees between attorney and client.

Common Interest Communities AS §§34.08.010 through 34.08.995

The Uniform Common Interest Ownership Act (UCIOA). Common interest communities created before January 1, 1986 may be subject to the

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Horizontal Property Regimes Act, AS Chapter 34.07, rather than the Uniform Common Interest Ownership Act (UCIOA), AS Chapter 34.08. However, certain sections of the UCIOA apply to common interest communities created before January 1, 1986. *See* AS §34.08.040 and .110. Leasehold common interest communities are addressed in AS §34.08.140. Termination of the lease of a declarant is addressed in AS §34.08.360. *See also* AS §§34.07.010 through 34.07.460, The Horizontal Property Regimes Act. The Alaska Community Property Act. Alaska is *not* a community property state. However, spouses may elect to classify property as community

Community Property

AS §34.77.03 0*

Classification of property of spouses.
(a) Except for property that is classified otherwise in this chapter, property of spouses is community property under this chapter only to the extent provided in a community property agreement or a community property trust.
(b) If a community property agreement provides that all property acquired by either or both spouses during the marriage is community property, the property of the spouses acquired during the marriage and after the determination date is presumed to be community

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property.

(c) A spouse has a present undivided one-half interest in community property.

(d) If the community property agreement provides that all property acquired by either or both spouses during the marriage is community property, income earned or accrued by a spouse or attributable to property of a spouse during marriage and after the determination date is community property.

(e) Community property transferred to a trust remains community property.

(f) Whether or not the community property agreement provides that all property acquired by either or both spouses during the marriage is community property, property that is owned by a spouse at the time of a marriage but before the determination date is not community property except to the extent otherwise expressly provided in the community property agreement.

(g) Whether or not the community property agreement provides that all property acquired by either or both spouses during the marriage is community property, and except to the extent otherwise expressly provided in the community property agreement or by the settlors in a community property trust, property acquired by a spouse during marriage and after the determination date is individual property if acquired

(1) by gift or a disposition at death made by a third person to the spouse and not to both spouses;

(2) in exchange for or with the proceeds of other individual property of the spouse;

(3) from appreciation or income of the spouse's individual property except to the extent that the income or appreciation is classified as community property under AS 34.77.130;

(4) by a decree, community property agreement, written consent, or reclassification under AS 34.77.060(b) designating it as the individual property of the spouse;

(5) as a recovery for damage to property under AS 34.77.140, except as specifically provided otherwise in a decree, community property agreement, community property trust, or written consent;

(6) as a recovery for personal injury, except for the amount of the recovery attributable to expenses paid or otherwise satisfied from community property; or

(7) as a transfer to a community property trust and declared by the trust to be the individual property of the spouse.

property in a community property agreement or community property trust. *See also* AS §34.77.090, community property agreement; AS §34.77.100, community property trust.

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(h) Appreciation and income of property transferred to a community property trust is community property if declared in the trust to be community property.

(i) Community property held by a community property trust or another trust remains community property of the spouses if distributed to the spouses.

(j) Except as provided otherwise in this chapter, this chapter does not alter the classification and ownership rights of property acquired before or during the marriage.

AS

§34.77.04

0*

Management and control of property of spouses.

(a) A spouse acting alone may manage and control

(1) that spouse's property that is not community property;

(2) except as provided in (c) of this section, community property held in that spouse's name alone or not held in the name of either spouse;

(3) a policy of insurance if that spouse is designated as the owner on the records of the issuer of the policy;

(4) the rights of an employee under an arrangement for deferred employment benefits that accrue as a result of that spouse's employment;

(5) a claim for relief vested in that spouse by other law;

(6) community property held in the names of both spouses in the alternative, including using the names of both spouses with the word "or."

(b) Spouses may not manage and control community property held in the names of both spouses other than in the alternative unless they act together.

(c) The right to manage and control community property that is transferred to a trust, including property that is community property under the trust, is determined by the terms of the trust.

(d) The right to manage and control community property does not determine the classification of property of the spouses and does not rebut the presumption of AS 34.77.030(b).

(e) The right to manage and control community property does not permit gifts of the property, except to the extent provided in AS 34.77.050.

(f) Except to the extent otherwise expressly provided in a community property agreement or a community property trust, the right to manage and control the property of spouses is not affected by this chapter if the property is acquired before the determination date.

(g) A court may appoint a conservator or guardian to exercise a disabled spouse's right to manage and control community property.

AS

Obligations of spouses.

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§34.77.07

0*

* * *

[AS §34.77.070(f) through (h)]

(f) This chapter does not alter the relationship between spouses and their creditors with respect to property or an obligation in existence before the determination date.

(g) A writing that is signed by a creditor and that reduces a creditor's rights under this section is binding on the creditor.

(h) A provision of a community property agreement or a community property trust does not adversely affect the interest of a creditor unless the creditor has actual knowledge of the provision when the obligation to the creditor is incurred. The effect of this subsection may not be varied by a community property agreement or a community property trust.

* * *

AS

§34.77.08

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Protection of bona fide purchasers dealing with spouses.

(a) Notice of the existence of a community property agreement, a community property trust, a marriage, or the termination of a marriage does not affect the status of a purchaser as a bona fide purchaser.

(b) Community property purchased by a bona fide purchaser from a spouse having the right to manage and control the property under AS 34.77.040 is acquired free of any claim of the other spouse. The effect of this subsection may not be varied by a community property agreement or a community property trust.

(c) In this section,

(1) “bona fide purchaser” means a purchaser of property for value who has not knowingly been a party to fraud or illegality affecting the interest of the spouses or other parties to the transaction, does not have notice of an adverse claim by a spouse, and has acted in the transaction in good faith; in this paragraph, a purchaser gives “value” for property if the property is acquired

(A) in return for a binding commitment to extend credit;

(B) as security for or in total or partial satisfaction of a preexisting claim;

(C) by accepting delivery under a preexisting contract for purchase; or

(D) in return for other consideration sufficient to support a contract;

(2) “purchaser” means a person who acquires

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	property by sale, lease, discount, negotiation, mortgage, pledge, or lien, or otherwise deals with property in a voluntary transaction other than making a gift.	
AS	<i>Forms of holding property.</i>	<i>See also AS</i>
§34.77.11	(a) Spouses may hold community property in a form that designates the holders of it by the words “(name of one spouse) or (name of other spouse) as community property.” Community property held in this form is subject to AS 34.77.040(a)(6).	§34.77.150, treatment of certain property at death of spouse; AS
0*	(b) Spouses may hold community property in a form that designates the holder of it by the words “(name of one spouse) and (name of other spouse) as community property.” Community property held in this form is subject to AS 34.77.040(b).	§34.77.155, division of community property at death.
	(c) A spouse may hold individual property in a form that designates the holder of it by the words “(name of spouse) as individual property.” Individual property held in this form is subject to AS 34.77.040(a)(1).	
	(d) Spouses may hold property in any other form permitted by law, including a concurrent form or a form that provides for survivorship ownership. <i>[Repealed, §46 ch 45 SLA 2013.]</i>	
	(e) If the words “survivorship community property” are used instead of the words “community property” in the form described in (a) or (b) of this section, the community property is survivorship community property. On the death of a spouse, the ownership rights of that spouse in survivorship community property vest solely in the surviving spouse by nontestamentary disposition at death. The first deceased spouse does not have a right of disposition at death of any interest in survivorship community property. Holding community property in a form described in (a) or (b) of this section does not by itself establish survivorship ownership between the spouses for the property held in that form.	
AS	<i>Mixed property.</i>	
§34.77.13	(a) Except as provided otherwise in AS 34.77.110, mixing community property with property having another classification reclassifies the other property as community property unless the component of the mixed property that is not community property can be traced.	
0*	(b) If a community property agreement provides that all property acquired by either or both spouses during marriage is community property, application by one spouse of substantial labor, effort, inventiveness, physical skill, intellectual skill, creativity, or managerial activity on individual property of the other	

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- AS
§34.77.90
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- spouse creates community property attributable to the application if
- (1) reasonable compensation is not received for the application; and
 - (2) substantial appreciation of the individual property of the other spouse results from the application.
- Definitions.*
- In this chapter,
- (1) “acquire” in relation to property includes obtaining reductions of indebtedness on encumbered property and obtaining a lien on or a security interest in property;
 - (2) “appreciation” means a realized or unrealized increase in the value of property;
 - (3) “community property” means property owned jointly by both spouses under a community property agreement or a community property trust;
 - (4) “community property agreement” means an agreement that complies with AS 34.77.090;
 - (5) “community property trust” means an express trust that complies with AS 34.77.100;
 - (6) “decree” means a judgment or other order of a court;
 - (7) “determination date” means the later of
 - (A) marriage;
 - (B) the effective date of a community property agreement or a community property trust; or
 - (C) May 23, 1998;

* * *

[AS §34.77.900(11) through (17)]

- (11) “held” means the registration, recordation, or filing by a person in a public office in the name of the person of a document of title to property, or the issuance in the person's name of a writing that customarily operates as a document of title to the property;
- (12) “income” means dividends, interest, and net rents and other net returns attributable to investment, rental, licensing, or other use of property unless attributable to a return of capital or to appreciation;
- (13) “management and control” means the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, institute or defend a civil action regarding, or otherwise deal with property as if the property is the property of an unmarried person;
- (14) “notice” of a fact means a knowledge of it, receipt of a notification of it, or reason to know that it exists from the facts and circumstances known to the

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person;
(15) “presume” or a “presumption” means the imposition on the person against whom the presumption or presumed fact is directed of the burden of proving that the nonexistence of the presumed fact is more probable than its existence;
(16) “property” means an interest, present or future, legal or equitable, vested or contingent, in real or personal property;
(17) “written waiver” means a document signed by a person against whose interests it is sought to be enforced.

Condemnation AS
§§09.55.2
40 through
09.55.460
and
Alaska
Civil Rule
72

The power of eminent domain may be exercised when the taking is for a public use and a showing of authority and necessity has been made. The condemnee is entitled to just compensation. An expedited procedure or “quick take” set forth in AS §§09.55.420 through 09.55.450 allows the state or a municipality to acquire title immediately by filing a declaration of taking and depositing estimated just compensation with the court. The power of eminent domain is restricted so as to not be used to acquire private property

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from a private person for the purpose of transferring title to the property to another private person for economic development purposes. AS §09.55.240(d).

Condominium
Leaseholds

AS
§34.08.14
0*

Leasehold common interest communities.

- (a) If the expiration or termination of a lease or a memorandum of the lease will terminate the common interest community or reduce its size, the lease or a memorandum of the lease must be recorded. In a condominium or planned community, the lessor of each lease described in this subsection shall sign the declaration. The declaration must state
- (1) the recording data for the lease or a summary of the complete lease;
 - (2) the date on which the lease is scheduled to expire;
 - (3) a legally sufficient description of the real estate subject to the lease;
 - (4) any right of the unit owners to redeem the reversion and the manner in which the rights may be exercised, or a statement that the unit owners do not have a right to redeem the reversion;
 - (5) any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that the unit owners do not have the right to remove improvements after the expiration or termination of the lease; and
 - (6) any right of the unit owners to renew the lease and the conditions of the renewal, or a statement that the unit owners do not have the right to renew the lease.
- (b) After the declaration for a leasehold condominium or leasehold planned community is recorded, and a plat or plan that is part of the declaration is filed and recorded, neither the lessor nor the successor in interest of the lessor may terminate the leasehold interest of a unit owner who makes timely payment of a unit owner's share of the rent and otherwise complies with the covenants that, if violated, would entitle the lessor to terminate the lease. The leasehold interest of a unit owner in a condominium or planned community is not affected by the failure of any other person to pay rent or fulfill a covenant.
- (c) The acquisition of the leasehold interest of a unit

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		owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired. (d) If the expiration or termination of a lease decreases the number of units in a common interest community, the allocated interests must be reallocated under AS 34.08.740(a) as if the units had been taken by eminent domain. The reallocation must be confirmed by an amendment to the declaration prepared, executed, and recorded by the association of unit owners; a plat or plan that accompanies the amendment must be filed and recorded with the amendment.	
Conflicts of Interest—Legislature	AS §24.60.040*	<i>Contracts or leases.</i> (a) A legislator or legislative employee, or a member of the immediate family of a legislator or legislative employee, may not be a party to or have an interest in a state contract or lease unless the contract or lease is let under AS 36.30 (State Procurement Code) or, for agencies that are not subject to AS 36.30, under similar procedures, or the total annual amount of the state contract or lease is \$5,000 or less, or is a standardized contract or lease that was developed under publicly established guidelines and is generally available to the public at large, members of a profession, occupation, or group. A person has an interest in a state contract or lease under this section if the person receives direct or indirect financial benefits. A legislator or legislative employee who participates in, or who knows or reasonably should know that a family member is participating in, a state contract or lease that has an annual value of \$5,000 or more shall disclose the participation to the committee by the date required under AS 24.60.105. The committee shall promptly forward the disclosure to the appropriate house for inclusion in the journal, and the presiding officer shall cause the disclosure to be published in the journal or in the supplemental journal not later than the next regularly scheduled publication of ethics disclosures. The legislator or legislative employee shall also disclose the renegotiation of a state contract or lease if the original had to be disclosed under this section or if, as a result of renegotiation, disclosure is required under this section. The disclosure must state the amount of the contract or lease and the name of the state agency issuing the contract or lease and must identify the procedures under which the contract or lease was issued. If the disclosure concerns a contract or lease in	This statute covers state contracts and leases. AS §24.60.050 covers state programs and loans.

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		which a family member of the discloser is participating, the disclosure must identify the relationship between the participant and the discloser.
		(b) This section does not apply to a contract or lease issued under a state program or loan that is subject to AS 24.60.050. A grant that results in a contract but that is not subject to AS 24.60.050 is subject to this section.
		(c) In this section, “direct or indirect financial benefits” means income, profits, or other financial benefits under a state contract, without regard to whether the income, profits, or other financial benefits ensue to the person as a partner, shareholder, investor, agent, employee, consultant, or joint venturer of the contractor.
Conflicts of Interest—Public Official	AS §39.52.150*	<i>Improper influence in state grants, contracts, leases, or loans.</i>
		(a) A public officer, or an immediate family member, may not attempt to acquire, receive, apply for, be a party to, or have a personal or financial interest in a state grant, contract, lease, or loan if the public officer may take or withhold official action that affects the award, execution, or administration of the state grant, contract, lease, or loan.
		(b) The prohibition in (a) of this section does not apply to a state grant, contract, or lease competitively solicited unless the officer
		(1) is employed by the administrative unit awarding the grant, contract, or lease or is employed by the administrative unit for which the grant, contract, or lease is let; or
		(2) takes official action with respect to the award, execution, or administration of the grant, contract, or lease.
		(c) The prohibition in (a) of this section does not apply to a state loan if
		(1) the public officer does not take or withhold official action that affects the award, execution, or administration of the loan held by the officer, or an immediate family member;
		(2) the loan is generally available to members of the public; and
		(3) the loan is subject to fixed eligibility standards.
		(d) A public officer shall report in writing to the designated supervisor a personal or financial interest held by the officer, or an immediate family member, in a state grant, contract, lease, or loan that is awarded, executed, or administered by the agency the officer serves.
Covenant of		No applicable statute.
		A covenant of

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Good Faith and
Fair Dealing

good faith and fair dealing is implied in every contract in Alaska. *Guin v. Ha*, 591 P.2d 1281 (Alaska 1979).

Discrimination
in Leasing

AS
§18.80.20
0*

Purpose.

(a) It is determined and declared as a matter of legislative finding that discrimination against an inhabitant of the state because of race, religion, color, national origin, age, sex, physical or mental disability, marital status, changes in marital status, pregnancy, or parenthood is a matter of public concern and that this discrimination not only threatens the rights and privileges of the inhabitants of the state but also menaces the institutions of the state and threatens peace, order, health, safety, and general welfare of the state and its inhabitants.

(b) Therefore, it is the policy of the state and the purpose of this chapter to eliminate and prevent discrimination in employment, in credit and financing practices, in places of public accommodation, in the sale, lease, or rental of real property because of race, religion, color, national origin, sex, age, physical or mental disability, marital status, changes in marital status, pregnancy or parenthood. It is also the policy of the state to encourage and enable physically and mentally disabled persons to participate fully in the social and economic life of the state and to engage in remunerative employment. It is not the purpose of this chapter to supersede laws pertaining to child labor, the age of majority, or other age restrictions or requirements.

For interesting discussions of a landlord's right to refuse to rent a residential unit to an unmarried couple for religious reasons, see *Swanner v. Anchorage Equal Rights Comm'n*, 874 P.2d 274 (Alaska 1994), *cert. denied*, 513 U.S. 979 (1994), and *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134 (9th Cir. 2000), *cert. denied*, 531 U.S. 1143 (2001), both holding that discrimination based on marital status was impermissible despite the landlord's religious beliefs. See also AS §18.80.230, unlawful practices in places of public accommodation.

AS
§18.80.24
0*

Unlawful practices in the sale or rental of real property.

It is unlawful for the owner, lessee, manager, or other person having the right to sell, lease, or rent real property

(1) to refuse to sell, lease, or rent the real property to a person because of sex, marital status, changes in marital status, pregnancy, race, religion, physical or mental disability, color, or national origin; however,

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nothing in this paragraph prohibits the sale, lease, or rental of classes of real property commonly known as housing for “singles” or “married couples” only;

(2) to discriminate against a person because of sex, marital status, changes in marital status, pregnancy, race, religion, physical or mental disability, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of real property; however, nothing in this paragraph prohibits the sale, lease, or rental of classes of real property commonly known as housing for “singles” or “married couples” only;

(3) to make a written or oral inquiry or record of the sex, marital status, changes in marital status, race, religion, physical or mental disability, color, or national origin of a person seeking to buy, lease, or rent real property;

(4) to offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or sources in connection therewith because of a person's sex, marital status, changes in marital status, pregnancy, race, religion, physical or mental disability, color, national origin, or age;

(5) to represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to refuse to allow a person to inspect real property because of the race, religion, physical or mental disability, color, national origin, age, sex, marital status, change in marital status, or pregnancy of that person or of any person associated with that person;

(6) to engage in blockbusting;

(7) to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of real property that indicates any preference, limitation, or discrimination based on race, color, religion, physical or mental disability, sex, or national origin, or an intention to make the preference, limitation, or discrimination.

Ejectment

AS
§09.45.63
0*

Actions for recovery of real property. A person who has a legal estate in real property and has a present right to the possession of the property may bring an action to recover the possession of the property with damages for withholding it; however, recovery of possession from a tenant shall be made under AS 09.45.060—09.45.160.

This statute describes an action that may be brought by a tenant not in possession against an adverse

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Electronic Transactions	AS §§09.80.010 through 09.80.195		possessor. A tenant in possession must bring a quiet title action under AS §09.45.010. The statutes pertaining to recovery of possession from a tenant (AS §§09.45.060 – 09.45.160) are set forth below under “Landlord's Remedies.”
Enforcement of Judgments	AS §§09.30.200 through 09.30.270 AS §§09.30.100 through 09.30.180		Uniform Electronic Transactions Act
Foreign Ownership		No applicable statute.	Uniform Enforcement of Foreign Judgments Act Uniform Foreign Money-Judgments Recognition Act <i>See AS §§10.06.705 through 10.06.788 for statutes applicable to foreign corporations.</i> <i>See AS §§10.20.455 through 10.20.615 for statutes applicable to foreign nonprofit corporations.</i> <i>See AS §§10.50.600 through</i>

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10.50.720 for statutes applicable to foreign limited liability companies.

Formalities of Execution	AS §34.25.010*	<i>Validation of defective acknowledgments.</i> A defective and informal acknowledgment of a deed, contract, lease, power of attorney, mortgage, or other instrument for the conveyance of real property, or an interest in real property, or pertaining to a right, title, or interest in real property, made in good faith, whether the acknowledgment is taken by or before a clerk, deputy clerk, or judge of a federal, state, or territorial court of record, or a commissioner, notary public, or other person authorized to administer oaths, is validated and declared sufficient in law as to acknowledgment, if no suit is filed in a court of record in the judicial district in which the real property affected by the instrument is located within 10 years from the date of the instrument, or the acknowledgment, to have the instrument set aside, altered, changed, or reformed.
	AS §10.06.025*	<i>Contracts or conveyances binding domestic and foreign corporations.</i> (a) A contract or conveyance made in the name of the corporation that is authorized or ratified by the board, or is done within the scope of the authority, actual or apparent, conferred by the board or within the agency power of the officers executing it, except as the board's authority is limited by law, binds the corporation, and the corporation acquires rights under the contract, whether the contract is executed or is wholly or in part executory. (b) This section applies to contracts and conveyances made by foreign corporations in this state and to conveyances by foreign corporations of real property situated in this state.
	AS §10.06.930*	<i>Corporate seal as evidence.</i> The presence of a corporate seal on a writing purporting to be executed by authority of a corporation shall be prima facie evidence that the writing was executed with the authority of the corporation.
	AS §09.63.010*	<i>Oath, affirmation, and acknowledgment.</i> The following persons may take an oath, affirmation, or acknowledgment in the state: (1) a justice, judge, or magistrate of a court of the State of Alaska or of the United States; (2) a clerk or deputy clerk of a court of the State of Alaska or of the United States;

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		(3) a notary public; (4) a United States postmaster; (5) a commissioned officer under AS 09.63.050(4); (6) a municipal clerk carrying out the clerk's duties under AS 29.20.380. (7) the lieutenant governor when carrying out the lieutenant governor's duties under AS 24.05.160; (8) the presiding officer of each legislative house when carrying out the officer's duties under AS 24.05.170.	
	AS §09.63.03 0*	<i>Notarization.</i> (a) When a document is required by law to be notarized, the person who executes the document shall sign and swear to or affirm it before an officer authorized by law to take the person's oath or affirmation and the officer shall certify on the document that it was signed and sworn to or affirmed before the officer. (b) The certificate required by this section may be in substantially the following form: Subscribed and sworn to or affirmed before me at _____ on _____ (date). _____ Signature of Officer _____ Title of Officer (c) If the document is sworn to or affirmed before a notary public of the state, the notary public shall (1) affix on the document the (A) notary public's official signature and official seal; and (B) date of expiration of the notary public's commission; and (2) comply with AS 44.50.060—44.50.065 and other applicable law.	Note: Alaska does not have counties. Acknowledgments indicate the Judicial District in which the notarial act took place. AS §§44.50.060 through 44.50.073 describe the duties of a notary public, the requirement for oaths to be given in the notary's presence, the notary's obligation to require identification, and the requirements applicable to the notarial seal or stamp.
	AS §09.25.09 5*	<i>Effect of private seals and scrolls.</i> Private seals and scrolls as a substitute for seals are abolished. They are not required to an instrument, but when used their effect remains unchanged.	
Fraudulent Conveyances	AS §34.40.01 0*	<i>Invalidity generally.</i> Except as provided in AS 34.40.110, a conveyance or assignment, in writing or otherwise, of an estate or interest in land, or in goods, or things in action, or of rents or profits issuing from them or a charge upon land, goods, or things in action, or upon the rents or profits from them, made with the intent to hinder, delay, or defraud creditors or	Restrictions on the transfers of trust interests are covered in AS §34.40.110.

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- other persons of their lawful suits, damages, forfeitures, debts, or demands, or a bond or other evidence of debt given, action commenced, decree or judgment suffered, with the like intent, as against the persons so hindered, delayed, or defrauded is void.
- AS
§34.40.02
0* *Invalidity as against purchasers.* A conveyance of an interest in land, or the rents or profits of it, or a charge upon land or upon the rents and profits thereof, that is made or created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the land, rents, or profits, as against these purchasers, is void.
- AS
§34.40.03
0* *Purchasers with notice.* A conveyance or charge is not considered fraudulent in favor of a subsequent purchaser who has actual or legal notice of it at the time of the purchase, unless it appears that the grantee in the conveyance, or person to be benefited by the charge, was privy to the fraud intended.
- AS
§34.40.04
0* *Invalidating effect of provision for revocation, determination, or alteration.* A conveyance or charge of or upon an estate or interest in land containing a provision for the revocation, determination, or alteration of the estate or interest, or a part of it, at the will of the grantor, is void as against subsequent purchasers from the grantor for a valuable consideration of an estate or interest liable to be revoked or determined, although the estate or interest is not expressly revoked, determined, or altered by the grantor by virtue of the power reserved or expressed in a prior conveyance or charge.
- AS
§34.40.05
0* *Conveyance in exercise of power to revoke and reconvey.* Where a power to revoke a conveyance of land, or the rents and profits from it, and to reconvey the land or the rents and profits is given to a person other than the grantor in the conveyance, and the person subsequently conveys the land, rents, or profits to a purchaser for a valuable consideration, the subsequent conveyance is valid in the same manner and to the same extent as if the power of revocation were recited in it and the intent to revoke the former conveyance expressly declared.
- AS
§34.40.06
0* *Conveyance before accrual of right to execute power of revocation.* If a conveyance to a purchaser under either AS 34.40.040 or 34.40.050 is made before the person making the conveyance is entitled to execute the power of revocation, it nevertheless is valid from the time the power of revocation actually vests in the person, in the same manner and to the same extent as if then made.
- AS *Requirement of writing for grant or assignment of*

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	§34.40.07 0*	<i>trust.</i> A grant or assignment of an existing trust in land, goods, or things in action, unless the grant or assignment is in writing, subscribed by the person making it, or a lawfully authorized agent of the person, is void.	
	AS §34.40.08 0*	<i>Invalidity against heirs, successors, representatives, or assigns.</i> A conveyance, charge, instrument, or proceeding declared by law to be void as against the creditors, purchasers, or mortgagees is equally void as against the heirs, successors, personal representatives, or assigns of the creditors, purchasers, or mortgagees.	
	AS §34.40.09 0*	<i>Fraudulent intent question of fact.</i> The question of fraudulent intent in a case arising under the provisions of this chapter is a question of fact, and not of law.	
	AS §34.40.10 0*	<i>When title of purchaser for value not affected.</i> The provisions of AS 34.40.010 and 34.40.070-34.40.130 may not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration unless it appears that the purchaser had previous notice of the fraudulent intent of the purchaser's immediate grantor, or of the fraud rendering void the title of the grantor.	
	AS §34.40.12 0*	<i>"Land" and "estate and interest in land" defined.</i> The term "land" as used in this chapter shall be construed as coextensive in meaning with "lands, tenements, and hereditaments," and the term "estate and interest in land" shall be construed to embrace every interest, freehold, and chattel, legal and equitable, present and future, vested and contingent in land as defined in this section.	
	AS §34.40.13 0*	<i>"Conveyance" defined.</i> The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing except a last will and testament, of whatever form and by whatever name it may be known in law, by which an estate or interest in land is created, aliened, assigned, or surrendered.	
Freedom of Information Act	AS §40.25.11 0*	<i>Public records open to inspection and copying; fees.</i> (a) Unless specifically provided otherwise, the public records of all public agencies are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of the fee established under this section or AS 40.25.115 a certified copy of the public record.	AS §40.25.115 covers electronic services and products. Exceptions to the right to inspect public records are listed in AS §40.25.120. Definitions of terms are in AS §40.25.220 (<i>i.e.</i> ,

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“electronic services and products”; “public agency”; “public records”).

* * *

Government
Leases

AS
§36.30.08
0*

Leases.

(a) The department shall lease space for the use of the state or an agency wherever it is necessary and feasible, subject to compliance with the requirements of this chapter. A lease may not provide for a period of occupancy greater than 40 years. An agency requiring office, warehouse, or other space shall lease the space through the department.

[AS §§36.30.080(c)-(f)]

(c) If the department, the Board of Regents of the University of Alaska, the legislative council, or the supreme court intends to enter into or renew a lease of real property with an annual rent to the department, University of Alaska, legislative council, or supreme court that is anticipated to exceed \$500,000, or with total lease payments that exceed \$2,500,000 for the full term of the lease, including any renewal options that are defined in the lease, the department, the Board of Regents, the legislative council, or supreme court shall provide notice to the legislature. The notice must include the anticipated annual lease obligation amount and the total lease payments for the full term of the lease. The department, the Board of Regents, the legislative council, and the supreme court may not enter into or renew a lease of real property

(1) requiring notice under this subsection unless the proposed lease or renewal of a lease has been approved by the legislature by law; an appropriation for the rent payable during the initial period of the lease or the initial period of lease renewal constitutes approval of the proposed lease or renewal of a lease for purposes of this paragraph;

(2) under this subsection if the total of all optional renewal periods provided for in the lease exceeds the original term of the lease exclusive of the total period of all renewal options.

(d) When the department is evaluating proposals for a lease of space, the department shall consider, in addition to lease costs, the life cycle costs, function, indoor environment, public convenience, planning, design, appearance, and location of the proposed

In AS Chapter 36.30, “the department” means the Alaska Department of Administration. *See also* AS §24.60.040 set forth in “Conflicts of Interest—Legislature.”

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building.

(e) When the department is considering leasing space, the department should consider whether leasing is likely to be the least costly means to provide the space.

(f) When the department is acquiring leased space of 3,000 square feet or less, the department may procure the leased space using the procedures for small procurements under AS 36.30.320, providing public notice is given to prospective offerors in the market area.

AS

§36.30.08

3*

Lease extensions authorized.

(a) Notwithstanding any other provision of this chapter, the department, the Board of Regents of the University of Alaska, the legislative council, or the court system may extend a real property lease that is entered into under this chapter for up to 10 years if a minimum cost savings of at least 10 percent below the market rental value of the real property at the time of the extension would be achieved on the rent due under the lease. The market rental value must be established by a real estate broker's opinion of the rental value or by an appraisal of the rental value.

* * *

AS

§36.30.08

5*

Lease-purchase agreements.

(a) To perform its duties and statutory functions, the department, the Board of Regents of the University of Alaska, the legislative council, or the supreme court may enter into lease-purchase agreements for real property. The department, the Board of Regents, the legislative council, or the supreme court may enter into a lease-purchase agreement only if the department, the Board of Regents, the legislative council, or the supreme court is the lessee under the agreement.

(b) When evaluating proposals to acquire or improve real property under a lease-purchase agreement, the department, the Board of Regents, the legislative council, or the supreme court shall consider

(1) in addition to lease costs, the life cycle costs, function, indoor environment, public convenience, planning, design, appearance, and location of the real property proposed for acquisition or improvement; and

(2) whether acquisition or improvement of the real property by lease-purchase agreement is likely to be the least costly means to provide the space.

(c) A lease-purchase agreement

(1) may not provide for a period of occupancy under the full term of the lease-purchase agreement that is

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- greater than 40 years;
- (2) must provide that lease payments made by the department, the Board of Regents, the legislative council, or the supreme court are subject to annual appropriation.
- (d) If the department, Board of Regents, legislative council, or supreme court intends to enter into or renew a lease-purchase agreement for real property, the department, Board of Regents, legislative council, or supreme court shall provide notice to the legislature. The notice must include the
 - (1) anticipated total construction, acquisition, or other costs of the project;
 - (2) anticipated annual amount of the rental obligation;and
 - (3) total lease payments for the full term of the lease-purchase agreement.
- (e) The department, the Board of Regents, the legislative council, or the supreme court may not enter into a lease-purchase agreement to acquire or improve real property unless the agreement has been approved by the legislature by law.
- (f) The provisions of (d) and (e) of this section do not apply to a lease-purchase agreement
 - (1) related to the refinancing of an outstanding balance owing on an existing lease-purchase agreement; or
 - (2) by the University of Alaska if the lease-purchase agreement is secured by student fees or university receipts as defined in AS 14.40.491.
- (g) In this section,
 - (1) “full term of the lease-purchase agreement” includes all renewal options that are defined within the lease-purchase agreement;
 - (2) “lease-purchase agreement” includes a lease-financing agreement.

AS
§36.30.72
0* *Joint use or lease of facilities and equipment.* A public procurement unit may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit or an external procurement activity under the terms agreed upon between the parties.

AS
§§38.05.0
05 through
38.05.990
Alaska Land Act

Provisions regarding the leasing of state land, including tidelands and submerged land, are set forth in

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the Alaska Land Act. The Act addresses leasing procedures, rent adjustment, administrative review, required written findings, public notice, appeal processes, improvements, subleases, rights of secured parties, and preference rights. Land owned by the Board of Regents of the University of Alaska is not subject to this chapter. State leases are generally for a 55-year term. State leases are generally put up for public auction, although there are numerous exceptions. The agency has rather broad discretion. (Statutes in this section refer to the commissioner of the Department of Natural Resources. AS §38.05.035 refers to the director of the former Division

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AS
§02.15.09
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of Land within the Department of Natural Resources. The Department of Natural Resources has been reorganized and the Division of Land is now part of the Division of Mining, Land, and Water.) Regulations concerning leases of state land can be found in 11 AAC, Chapter 58.
See AS §02.15.090 for special provisions regarding leases of state-owned and state-controlled airport and air navigation facilities, including private plane tie-downs and concessions for supplying goods and services at an airport. In this statute, “department” refers to the Department of Transportation and Public Facilities.
Note: An administrative regulation

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requiring that all airport terminal leases contain an indemnity provision was invalid to the extent that it required airport lessees to indemnify the state for the state's own negligence in the operation, maintenance, or design of taxiways or runways. *State v. Korean Air Lines Co.*, 776 P.2d 315 (Alaska 1989). In 2001, AS §02.15.090 was amended to require that all aviation-related leases contain a provision requiring that the parties to the lease reimburse each other according to the principles of comparative fault.

AS §18.26.210* *State requirements [medical facilities].* A medical facility that has been monetarily supported, in any manner whatsoever, by the (Alaska Medical Authority) authority is subject to any state requirements relating to public buildings, structures, grounds, works, or improvements, any requirement of competitive bidding or other restriction imposed on the procedure for award of contracts, or the lease, sale, or other disposition of property of the authority.

AS §38.35.010 through AS Alaska Right-of-Way Leasing Act

See AS §§38.35.010 through 38.35.260 for

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§38.35.26
0*

special provisions regarding leasing of state-owned rights-of-way for oil and natural gas pipelines. *See* 11 AAC 80 for pipeline right-of-way leasing.

Guaranty—
Statute of
Frauds

AS
§09.25.01
0*

Statute of frauds.

(a) In the following cases and under the following conditions an agreement, promise, or undertaking is unenforceable unless it or some note or memorandum of it is in writing and subscribed by the party charged or by an agent of that party:

* * *

(3) a special promise to answer for the debt of another;

* * *

Holding Over

AS
§§09.45.0
60 through
09.45.160*

Statutes are set forth at *Landlord's Remedies*, below.

See also AS §09.45.630: "... recovery of possession from a tenant shall be under AS §§09.45.060–09.45.160."

Indemnification

See AS §38.35.120(a)(13) for an indemnity provision pertaining to the lease of state-owned rights-of-way for oil and natural gas pipelines. Note: An administrative regulation requiring that all airport terminal leases contain an indemnity provision was invalid to the extent that it

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required airport lessees to indemnify the state for the state's own negligence in the operation, maintenance, or design of taxiways or runways. *State v. Korean Air Lines Co.*, 776 P.2d 315 (Alaska 1989). AS §21.36.260 addresses the proof of mailing and method of mailing a required notice.

Insurance

AS
§21.36.22
0*

Notice of cancellation.

* * *

[AS §21.36.220(b)]

(b) An insurer may not exercise its right to cancel a policy of business or commercial insurance unless a written notice of cancellation is mailed to the named insured as required by AS 21.36.260 and to the agent or broker of record at least 60 days before the effective date of cancellation. However, if cancellation is for nonpayment of premium, or for failure or refusal of the insured to provide the information necessary to confirm exposure or necessary to determine the policy premium, the notice shall be mailed to the named insured as required by AS 21.36.260 and to the agent or broker of record at least 20 days before the effective date of cancellation. If cancellation is (1) for conviction of the insured of a crime having as one of its necessary elements an act increasing a hazard insured against, or (2) for discovery of fraud or material misrepresentation made by the insured or a representative of the insured in obtaining the insurance or by the insured in pursuing a claim under the policy, the notice shall be mailed to the named insured as required by AS 21.36.260 and to the agent or broker of record at least 10 days before the effective date of cancellation.

* * *

[AS §21.36.220(e)]

(e) A notice of cancellation of insurance required to be given under this section must include or be

Subsection (c) of AS §21.36.220

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		accompanied by a statement of the reason for the cancellation.	concerns the insurer's obligation to return or credit any unearned premiums.
Insurance— Notice of Changes in Premium or Coverage	AS §21.36.23 5*	<i>Notice of premium or coverage changes upon renewal.</i> (a) ... [I]f the renewal premium is increased more than 10 percent for a reason other than an increase in coverage or exposure base, or if after renewal there will be a material restriction or reduction in coverage not specifically requested by the insured, written notice shall be mailed to the insured and to the agent or broker of record as required by AS 21.36.260 * * * [AS §§21.36.235(a)(2) and (b)] (2) at least 45 days before expiration of a business or commercial policy. (b) If notice before expiration of the policy is not given as required by (a) of this section, the existing policy shall continue until the insurer provides notice for the time period required by (a) of this section for that policy. * * *	AS §21.36.260 addresses the proof of mailing and method of mailing a required notice.
Interest	AS §45.45.01 0*	<i>Legal rate of interest.</i> [AS §§45.45.010(a) and (b)] (a) The rate of interest in the state is 10.5 percent a year and no more on money after it is due except as provided in (b) of this section. (b) Interest may not be charged by express agreement of the parties in a contract or loan commitment that is more than the greater of 10 percent or five percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District on the day on which the contract or loan commitment is made. A contract or loan commitment in which the principal amount exceeds \$25,000 is exempt from the limitation of this subsection. * * * [AS §§45.45.010(h)] (h) If the limitations on interest rates provided for in this section are inconsistent with the provisions of any other statute covering maximum interest, service charges, or discount rates, then the provisions of the other statute prevail.	Prejudgment interest on a money judgment is covered in Alaska Civil Rule 58.2.
Landlord's Lien		No applicable statute.	Although distraint for rent has been abolished for

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Landlord's Remedies	AS §09.45.010*	<i>Action to quiet title.</i> A person in possession of real property, or a tenant of that person, may bring an action against another who claims an adverse estate or interest in the property for the purpose of determining the claim.	residential leases, it may be available as a common law remedy if it has not been waived in a commercial lease. <i>See Murray v. Feight</i> , 741 P.2d 1148 (Alaska 1987), for a brief discussion of a common law landlord's lien. <i>See also</i> Shane J. Osowski, <i>Alaska Distress Law in the Commercial Context: Ancient Relic or Functional Remedy?</i> , 10 Alaska L. Rev. 33 (1993).
	AS §09.45.060*	<i>Prohibition of use of force for entry on realty.</i> A person may not enter upon any land, tenement, or other real property except in cases where entry is given by law. In those cases, the entry may not be made with force but only in a peaceable manner.	AS §09.45.010 is based on an Oregon statute. AS §09.45.010 may be used by a party in possession of the property to quiet title or to remove a cloud. A party who is not in possession should use AS §09.45.630.
	AS §09.45.070*	<i>Action for forcible entry or detention.</i> (a) When a forcible entry is made upon a premises, or when an entry is made in a peaceable manner and the possession is held by force, the person entitled to the	AS §09.45.060 is based on an Oregon statute.

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AS §09.45.090*
premises may maintain an action to recover the possession.
Unlawful holding by force.

* * *

[AS §§09.45.090(b) and (c)]

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

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

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

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

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

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

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

(E) a tenancy based upon an estate at will terminates, and the tenant or person in possession

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continues in possession of the premises; or
(F) a person in possession continues in possession of the premises
(i) at the expiration of the time limited in the lease or agreement under which that person holds; or
(ii) without a written lease or agreement and without the consent of the landlord;

or

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

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

AS
§09.45.10
0*

Notice to quit.

(a) Except where service of written notice is made under AS 09.45.090(a)(1) or (b)(1), or except when notice to quit is not required by AS 09.45.090(a)(3) or (b)(3), a person entitled to the premises who seeks to recover possession of the premises may not commence and maintain an action to recover possession of premises under AS 09.45.060-09.45.160 unless the person first gives a notice to quit to the person in possession.

(b) To recover possession of premises after a tenant or person in possession has failed or refused to pay rent due, service of the written notice required by AS 34.03.220(b) or of a demand in writing for possession of the premises.

(1) constitutes notice to quit, and service of a separate notice to quit is not required; and

(2) satisfies the requirements of (c) of this section and AS 34.03.310(c).

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

(1) delivered to the tenant or person;

(2) left at the premises in case of absence from the premises; or

(3) sent by registered or certified mail.

AS
§09.45.10
5*

Content of notice to quit. Notice to quit served upon the tenant or person in possession must

(1) state

AS §§34.03.220 and 34.03.310, mentioned in AS §09.45.100(b), are part of the Uniform Residential Landlord and Tenant Act and do not apply to commercial leases.

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

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

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

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

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

AS §09.45.110* *Time when action to recover possession may be brought.* An action for the recovery of the possession of the premises may be commenced on or after the date the tenant or person in possession unlawfully holds possession of the dwelling unit or rental premises by force, as determined under AS 09.45.090.

AS §09.45.120* *Summons and continuance.* Summons in actions for forcible entry and detainer shall be served not less than two days before the date of trial. A continuance may not be granted for a longer period than two days unless the defendant applying for the continuance gives an undertaking to the adverse party, with sureties approved by the court conditioned to the payment of the rent that may accrue if judgment is rendered against the defendant.

AS §09.45.130* *Action against persons paying rent in advance.* The service of a notice to quit upon a tenant or person in possession does not authorize an action to be maintained against the tenant or person for the possession of the premises until the expiration of the period for which that tenant or person may have paid rent for the premises in advance. To authorize an action against a tenant or person in possession who has paid rent in advance, a notice must be given at least 10 days before the date the rent is due again in case of a month-to-month tenancy or at least three days before in the case of a week-to-week tenancy.

AS §09.45.15 *Inquiry into merits of title.* In an action to recover the possession on the land, tenement, or other real

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0*	property where the entry is forcible or when the possession is unlawfully held by force, there shall be no inquiry into the merits of the title. Three years' quiet possession of the premises immediately preceding the commencement of the action by the party in possession or those under whom the party holds may be pleaded in bar thereof unless the estate of the party in the premises is ended.	
AS §09.45.16 0*	<i>Actions for possession of realty.</i> In an action to recover the possession of real property as provided in AS 09.45.630, notice to quit, when necessary, may be given as prescribed in AS 09.45.060—09.45.160, and nothing in AS 09.45.060—09.45.160 shall be construed so as to prevent such an action being maintained for the recovery of the possession.	AS 09.45.135, regarding an action against tenant occupying premises abated as nuisance. This statute states that: “In an action under AS 09.45.060—09.45.160 against a tenant or person in possession of premises for which an order of abatement has been entered under AS 09.50.210(a), a certified copy of the order of abatement is prima facie evidence of unlawful holding of the premises by force by a person who remains on the premises.”
AS §09.45.69 0*	<i>Failure to pay rent.</i> Unless otherwise provided in the lease, a landlord has a right to re-enter leased premises when a tenant fails to pay rent, and may bring action to recover the possession of the premises and the action is equivalent to a demand of the rent. If, at any time before judgment, the lessee or a successor in interest pays the amount of rent in arrears with interest and costs of the action and performs the other covenants or agreements, the lessee or successor	AS §09.45.690 may give a landlord the option of bringing an action for forcible entry and detainer under AS

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is entitled to continue in possession unless otherwise provided in the lease.

§09.45.070 or pursuing a self-help remedy absent a lease provision to the contrary and provided re-entry is made peaceably. *Klosterman v. Hickel Inv. Co.*, 821 P.2d 118 (Alaska 1991). It is recommended that a landlord include in the lease the express right to re-enter. *Acceleration of Rent*. Alaska courts will uphold rent acceleration only when a lease expressly provides for acceleration upon default and re-entry or termination. *Klosterman v. Hickel Inv. Co.*, 821 P.2d 118 (Alaska 1991).

AS §09.45.740* *Right of action for waste*. If a guardian, tenant for life or years, or tenant in common of real property commits waste on the property, a person injured by the waste may bring an action for damages for the injury. In an action for waste there may be judgment for treble damages. Where the plaintiff has a reversionary interest and the injury due to waste equals or exceeds the value of the interest held by the one committing the waste, or the waste is committed with malice, judgment may be for forfeiture of the estate and eviction.

Mechanic's Lien AS §34.35.050* *Lien for labor or materials furnished*. A person has a lien, only to the extent provided under this chapter, to secure the payment of the contract price if the person (1) performs labor upon real property at the request of

See AS §34.35.120 for definitions, particularly, the

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the owner or the agent of the owner for the construction, alteration, or repair of a building or improvement;
(2) is a trustee of an employee benefit trust for the benefit of individuals performing labor on the building or improvement and has a direct contract with the owner or the agent of the owner for direct payments into the trust;
(3) furnishes materials that are delivered to real property under a contract with the owner or the agent of the owner that are incorporated in the construction, alteration, or repair of a building or improvement;
(4) furnishes equipment that is delivered to and used upon real property under a contract with the owner or the agent of the owner for the construction, alteration, or repair of a building or improvement;
(5) performs services under a contract with the owner or the agent of the owner in connection with the preparation of plans, surveys, or architectural or engineering plans or drawings for the construction, alteration, or repair of a building or improvement, whether or not actually implemented on that property; or
(6) is a general contractor.

definitions of “completion,” “give notice,” “individual,” “owner,” and “potential lien claimant.” While AS §34.35.050 has been set forth in full, several other sections of the mechanic's lien law (AS §34.35.050 through AS §34.35.120) have not been summarized due to their length and complexity. Reference should be made to the full statutes for application to a particular fact situation. In general, if a notice of completion is not recorded by the owner, or if a claimant has properly recorded a notice of right to lien, a claim of lien must be recorded within 120 days after completion of the work or within 120 days after the claimant ceases to furnish materials, equipment, or labor. If a notice

AS §34.35.06
8* *Time periods for claiming liens.*
[See the summary of this statute in the “Commentary” column.]

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AS §34.35.07 1*	<i>Notice of completion.</i> [See the summary of this statute in the “Commentary” column.]	of completion is recorded by the owner, a claimant who has not given a notice of right to lien has 15 days thereafter to record a claim of lien. <i>See also</i> AS §34.35.070, claim of lien; AS §34.35.072 bonds; AS §34.35.080 duration of lien; AS §34.35.120 definitions. A property owner may record a verified notice of completion. At least five days before recording the notice of completion, the owner must give notice to all claimants who have given a notice of right to lien or a stop-lending notice to the owner. Notice must be given to a lender 10 days before recording the notice of completion. A notice of completion should not be recorded prior to completion. In general, the land surrounding the
AS §34.35.05 5*	<i>Land subject to lien.</i> (a) The land upon which a building or other improvement described in AS 34.35.050 is	

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constructed, together with a convenient space about the building or other improvement or so much as is required for the convenient use and occupation of it (to be determined by the judgment of the court at the time of the foreclosure of the lien), and the mine on which the work is performed or for which the material is furnished is also subject to the lien created by AS 34.35.050—34.35.120 if, at the time the work is started or the materials for the building or other improvements are first furnished, the land belongs to the person who causes the building or other improvement to be constructed, altered, or repaired.

improvement can be subjected to a mechanic's lien. However, in the case of a leasehold estate, this rule may not apply. A lessor would be well-advised to post a notice of non-responsibility.

(b) If the person owns less than a fee simple estate in the land, then only the interest of the person in it is subject to the lien.

(c) If the interest is a leasehold interest, and the holder forfeits the rights of the holder to it, the purchaser of the building or improvement and leasehold term, or so much of it as remains unexpired at a sale under AS 34.35.050—34.35.120 is considered to be the assignee of the leasehold term, and may pay the lessor all arrears of rent or other money and costs due under the lease.

(d) If the lessor regains possession of the land and property, or obtains judgment for the possession of it before the commencement of the construction, alteration, or repair of the building or other improvement, the purchaser may only remove the building or other improvement within 30 days after the purchase, and the owner of the land shall receive the rent due payable out of the proceeds of the sale, according to the terms of the lease, down to the time of the removal.

AS *Notice of nonresponsibility.*

§34.35.06 (a) A building or improvement mentioned in AS
5* 34.35.050 constructed with the knowledge of the owner of the land or the person having or claiming an interest in the land is considered to be constructed at the instance of the owner or person having or claiming the interest.

(b) The interest owned or claimed is subject to a lien recorded under AS 34.35.050—34.35.120, unless (1) the owner or person having or claiming an interest in the land gives notice within three days after the owner or other person obtains knowledge of the construction, alteration, or repair that the owner or other person will not be responsible for it, by posting a notice to that effect in writing in some conspicuous place upon the land or upon the building or other improvement located on the land;

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- (2) the notice is signed by the owner or person having or claiming an interest in the land in the presence of two attesting witnesses or acknowledged by the owner or other person before a notary public;
- (3) the posting of notice is attested to by a witness; and
- (4) an attested or notarized copy of the notice is recorded with the recorder of the recording district in which the land, building, or other improvement is located within three days after the posting of the notice.

AS
§34.35.11
7* *Waiver of lien rights.*
[See the summary of this statute in the “Commentary” column.]

A written waiver of lien rights or stop-lending notice requires no consideration, but may not relate to labor or materials furnished after the date the waiver is signed. A natural person who actually performs work as an employee of an owner or contractor cannot waive the right to claim a lien. Some attorneys do not use the statutory form because its format tends to cause confusion and its length causes unnecessary recording expense. For example, the principal often fails to check one of the boxes establishing the effective date of

Power of Attorney—Uniform Statutory Form Powers of Attorney Act.

AS
§13.26.64
5

Statutory form power of attorney.
A person who wishes to designate another as agent by a power of attorney may execute a statutory power of attorney set out in substantially the following form:
**GENERAL POWER OF ATTORNEY
THE POWERS GRANTED FROM THE
PRINCIPAL TO THE AGENT OR AGENTS IN
THE FOLLOWING DOCUMENT ARE VERY
BROAD. THEY MAY INCLUDE THE POWER TO
DISPOSE, SELL, CONVEY, AND ENCUMBER
YOUR REAL AND PERSONAL PROPERTY, AND
THE POWER TO MAKE YOUR HEALTH CARE
DECISIONS. ACCORDINGLY, THE FOLLOWING
DOCUMENT SHOULD ONLY BE USED AFTER
CAREFUL CONSIDERATION. IF YOU HAVE
ANY QUESTIONS ABOUT THIS DOCUMENT,
YOU SHOULD SEEK COMPETENT ADVICE.**

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YOU MAY REVOKE THIS POWER OF ATTORNEY AT ANY TIME. Pursuant to AS 13.26.600, 13.26.625-13.26.640, and 13.26.655-13.26.695 I, (Name of principal), of (Address of principal), do hereby appoint (Name and address of agent or agents), my agent(s) to act as indicated below in my name, place, and stead in any way which I myself could do, if I were personally present, with respect to the following matters, as each of them is defined in AS 13.26.665, to the full extent that I am permitted by law to act through an agent: MARK THE BOXES BELOW TO INDICATE THE POWERS YOU WANT TO GIVE YOUR AGENT OR AGENTS. MARK THE BOX FOR "YES" THAT IS OPPOSITE A CATEGORY BELOW TO GIVE YOUR AGENT OR AGENTS THE POWER IN THAT CATEGORY. IF YOU DO NOT MARK A BOX OPPOSITE A CATEGORY, YOUR AGENT OR AGENTS WILL NOT HAVE THE POWER IN THAT CATEGORY.

the power of attorney or one of the boxes indicating how a subsequent disability will affect the power of attorney. While AS §13.26.660 attempts to resolve some of these problems, a different form of power of attorney might avoid the problems in the first place. A shorter form is permitted by AS §13.26.670, set forth below.

- | | YES |
|--|--------------------------|
| (A) real estate transactions | <input type="checkbox"/> |
| (B) transactions involving tangible personal property, chattels, and goods | <input type="checkbox"/> |
| (C) bonds, shares, and commodities transactions | <input type="checkbox"/> |
| (D) banking transactions | <input type="checkbox"/> |
| (E) business operating transactions | <input type="checkbox"/> |
| (F) insurance transactions | <input type="checkbox"/> |
| (G) estate transactions | <input type="checkbox"/> |
| (H) retirement plans | <input type="checkbox"/> |
| (I) claims and litigation | <input type="checkbox"/> |
| (J) personal relationships and affairs | <input type="checkbox"/> |
| (K) benefits from government programs and civil or military service | <input type="checkbox"/> |
| (L) records, reports, and statements | <input type="checkbox"/> |
| (M) voter registration and absentee ballot requests | <input type="checkbox"/> |
| (N) all other matters, including those specified as follows: | <input type="checkbox"/> |

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

The agent or agents you have appointed WILL NOT have the power to do any of the following acts UNLESS you MARK the box opposite that category:
() create, amend, revoke, or terminate an inter vivos

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trust;

make a gift, subject to the limitations of AS 13.26.665(q) and any special instructions in this power of attorney;

create or change a beneficiary designation;

revoke a transfer on death deed made under AS 13.48;

create or change rights of survivorship;

delegate authority granted under the power of attorney;

waive the principals right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;

exercise fiduciary powers that the principal has authority to delegate.

IF YOU HAVE APPOINTED MORE THAN ONE AGENT, MARK ONE OF THE FOLLOWING:

Each agent may exercise the powers conferred separately, without the consent of any other agent.

All agents shall exercise the powers conferred jointly, with the consent of all other agents.

TO INDICATE WHEN THIS DOCUMENT SHALL BECOME EFFECTIVE, MARK ONE OF THE FOLLOWING:

This document shall become effective upon the date of my signature.

This document shall become effective upon the date of my incapacity and shall not otherwise be affected by my incapacity.

IF YOU HAVE INDICATED THAT THIS DOCUMENT SHALL BECOME EFFECTIVE ON THE DATE OF YOUR SIGNATURE, MARK ONE OF THE FOLLOWING:

This document shall not be affected by my subsequent incapacity.

This document shall be revoked by my subsequent incapacity.

IF YOU HAVE INDICATED THAT THIS DOCUMENT SHALL BECOME EFFECTIVE UPON THE DATE OF YOUR SIGNATURE AND WANT TO LIMIT THE TERM OF THIS DOCUMENT, COMPLETE THE FOLLOWING:

This document shall only continue in effect for _____

years from the date of my signature.

NOTICE OF REVOCATION OF THE POWERS GRANTED IN THIS DOCUMENT

You may revoke one or more of the powers granted in this document. Unless otherwise provided in this document, you may revoke a specific power granted in this power of attorney by completing a special

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power of attorney that includes the specific power in this document that you want to revoke. Unless otherwise provided in this document, you may revoke all the powers granted in this power of attorney by completing a subsequent power of attorney.

NOTICE TO THIRD PARTIES

A third party who relies on the reasonable representations of an agent as to a matter relating to a power granted by a properly executed statutory power of attorney does not incur any liability to the principal or to the principal's heirs, assigns, or estate as a result of permitting the agent to exercise the authority granted by the power of attorney. A third party who fails to honor a properly executed statutory form power of attorney may be liable to the principal, the agent, the principal's heirs, assigns, or estate for a civil penalty, plus damages, costs, and fees associated with the failure to comply with the statutory form power of attorney. If the power of attorney is one which becomes effective upon the incapacity of the principal, the incapacity of the principal is established by an affidavit, as required by law.

IN WITNESS WHEREOF, I have hereunto signed my name this ____ day of _____, ____.

Signature of Principal

Acknowledged before me at _____ on _____.

Signature of Officer or Notary

AS
§13.26.65
0*

Additional optional provisions to statutory form power of attorney.

Each of the following provisions may be included in a statutory form power of attorney:

* * *

[(1) YOU MAY DESIGNATE AN ALTERNATE AGENT. ANY ALTERNATE YOU DESIGNATE WILL BE ABLE TO EXERCISE THE SAME POWERS AS THE AGENT(S) YOU NAMED AT THE BEGINNING OF THIS DOCUMENT. IF YOU WISH TO DESIGNATE AN ALTERNATE OR ALTERNATES, COMPLETE THE FOLLOWING: If the agent(s) named at the beginning of this document is unable or unwilling to serve or continue to serve, then I appoint the following agent to serve

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with the same powers:

First alternate or successor agent

(Name and address of alternate)

Second alternate or successor agent

(Name and address of alternate)

(2) YOU MAY NOMINATE A GUARDIAN OR CONSERVATOR. IF YOU WISH TO NOMINATE A GUARDIAN OR CONSERVATOR, COMPLETE THE FOLLOWING:

In the event that a court decides that it is necessary to appoint a guardian or conservator for me, I hereby nominate (Name and address of person nominated) to be considered by the court for appointment to serve as my guardian or conservator, or in any similar representative capacity.

AS *Completion of statutory form power of attorney.*

§13.26.65 [Repealed, January 1, 2017. (b) Special provisions
5* and limitations may be imposed on the statutory form power of attorney only if they conform to the requirements of AS 13.26.670.

AS *Applicability of provisions of statutory form power of attorney.*

§13.26.66
0* In the instrument set out in AS 13.26.645—13.26.650,
(1) if the principal has appointed more than one person to act as agent and failed to mark whether the agents may act “jointly” or “severally,” the agents are required to act jointly;
(2) if the principal has failed to indicate when the instrument shall become effective, the instrument shall become effective upon the date of the principal's signature;
(3) if the principal has indicated that the instrument shall become effective upon the date of the principal's signature or has failed to indicate when the instrument shall become effective and has failed to indicate the effect of the principal's subsequent incapacity on the instrument, the instrument shall be revoked by the subsequent incapacity of the principal;
(4) if the principal has failed to indicate a specific term for the instrument, the instrument shall continue in effect until revoked.

AS *Validity of modified statutory form power of attorney.*

§13.26.67
0 A power of attorney that satisfies the requirements of AS 13.26.645-13.26.665 is not prevented from being a statutory form power of attorney by the fact that it also contains additional language that
(1) eliminates from the power of attorney one or more

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of the powers enumerated in one or more of the subsections of AS 13.26.665 with respect to a section of the statutory form power of attorney that is not eliminated by the principal;

(2) supplements one or more of the powers enumerated in one or more of the subsections of AS 13.26.665 with respect to a section of the statutory form power of attorney that is not eliminated by the principal by specifically listing additional powers of the agent;

(3) makes an additional provision that is not substantially inconsistent with the other provisions of the statutory form power of attorney; or

(4) relieves an agent of liability for breach of duty under AS 13.26.610, except to the extent the provision

(A) relieves the agent of liability for breach of duty committed dishonestly, with an improper motive, or with reckless indifference to the purposes of the power of attorney or the best interest of the principal; or

(B) was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

AS
§13.26.67
5*

When statutory form power of attorney is not affected by incapacity of principal.

(a) The subsequent incapacity of a principal does not revoke or terminate the authority of an agent who acts under a power of attorney in a writing executed by a principal if the writing contains the words “This power of attorney shall become effective upon the incapacity of the principal,” or contain the words “This power of attorney shall not be affected by the subsequent incapacity of the principal,” or words substantially similar showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent incapacity or uncertainty as to whether the principal is dead or alive.

(b) An act done by an agent under a power granted in a power of attorney under AS 13.26.645—13.26.665 during a period of incapacity or uncertainty as to whether the principal is dead or alive has the same effect and enures to the benefit of and binds a principal and the principal's distributees, devisees, legatees, and personal representatives as if there were no incapacity of the principal. If a conservator is later appointed for the principal, during the continuance of the appointment the agent is accountable to the conservator as well as to the principal.. The

The statutory form of power of attorney, set forth in AS §13.26.645, also provides an option to specify that the power of attorney shall remain in effect upon, or shall take effect upon, the disability of the principal.

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AS §13.26.68 0*	<p>conservator has the same power to revoke, suspend, or terminate the power of attorney that the principal would have if there was no incapacity of the principal.</p> <p><i>Provisions applicable to statutory form power of attorney.</i></p> <p>(a) For purposes of AS 13.26.645—13.26.665, (1) the incapacity of a principal shall be established by affidavit stating that the principal is unable to manage property or business affairs because the principal</p> <p style="padding-left: 20px;">(A) has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance, and this impairment is the result of mental illness, mental deficiency, physical illness, physical disability, advanced age, use of drugs, chronic intoxication, or other similar medical or psychological reason, to such an extent that the principal is unable to manage the principal's property or affairs; or</p> <p style="padding-left: 20px;">(B) is</p> <p style="padding-left: 40px;">(i) missing;</p> <p style="padding-left: 40px;">(ii) detained, including incarcerated in a penal system; or</p> <p style="padding-left: 40px;">(iii) outside the United States and unable to return; and if the incapacity is based on (1)(A) of this subsection, two physicians or similarly qualified medical professionals who have personally examined the principal shall sign the affidavit; however, the affidavit may be signed by only one physician or similarly qualified medical professional if only one physician or similarly qualified medical professional is available and the affidavit executed by the person states that only one physician or similarly qualified medical professional is available.</p> <p>(b) A third party who relies on the reasonable representations of an agent designated under AS 13.26.645—13.26.670 as to a matter relating to a power granted by a properly executed statutory form power of attorney does not incur a liability to the principal or the principal's heirs, assigns, or estate as a result of permitting the agent to exercise the authority granted by the power of attorney.</p> <p>(c) [<i>Repealed, §28 ch 50 SLA 2016.</i>]</p>	<p>An agent authorized to act for a principal under a statutory form power of attorney may not bring suit as a pro se litigant in the principal's stead. The unlicensed, in-court representation of another is considered “engaging in the practice of law” and, thus, is prohibited by Alaska's statute proscribing the unlicensed “practice of law” (AS §08.08.210(a)). <i>Christiansen v. Melinda</i>, 857 P.2d 345 (Alaska 1993).</p>
AS §13.26.62 5*	<p><i>Powers of attorney not revoked until notice of death or disability.</i></p> <p>(a) The death or incapacity of a principal who has executed a power of attorney in writing does not revoke or terminate the agency as to the agent or other person who, without actual knowledge of the death or incapacity of the principal, acts in good faith under</p>	

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the power of attorney. Action so taken, unless otherwise invalid or unenforceable, binds the principal and the heirs, devisees, and personal representatives of the principal.

(b) An affidavit executed by the agent stating that the agent did not have, at the time of doing an act under the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death or incapacity is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power of attorney at that time. If the exercise of the power requires execution and delivery of an instrument that is recordable, the affidavit when authenticated for record is likewise recordable.

(c) A special power of attorney created before September 4, 1988 shall be construed to grant the agent the powers set out in that special power of attorney.

AS
§13.26.63

Powers of attorney held by public home care providers.

0* (a) A public home care provider may not accept a designation as agent by general or special power of attorney for an individual to whom the provider furnishes services unless the designation is held jointly with another individual who is not a public home care provider.

(b) In this section, “public home care provider” has the meaning given in AS 47.05.017(c).

AS
§13.26.34

Interpretation of provisions in statutory form power of attorney.

4* (a) In a statutory form power of attorney, the language conferring general authority with respect to real estate transactions shall be construed to mean that, as to an estate or interest in land of the principal, whether in the state or elsewhere, the principal authorizes the agent to

(1) accept as a gift or as security for a loan, demand, buy, lease, receive, or otherwise acquire either ownership or possession of any estate or interest in land;

(2) sell, exchange, convey, quitclaim, release, surrender, mortgage, encumber, partition or consent to the partitioning, grant options concerning, lease or sublet, or otherwise to dispose of, an estate or interest in land;

(3) release in whole or in part, assign the whole or a part of, satisfy in whole or in part, and enforce a mortgage, encumbrance, lien, or other claim to land that exists, or is claimed to exist, in favor of the

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principal;

(4) do any act of management or of conservation with respect to an estate or interest in land owned, or claimed to be owned, by the principal, including by way of illustration, but not of restriction, power to insure against any casualty, liability, or loss, obtain or regain possession or protect the estate or interest, pay, compromise, or contest taxes or assessments, or apply for refunds in connection with a payment, compromise, or tax, purchase supplies, hire assistance of labor, and make repairs or alterations in the structures or land;

(5) use, develop, modify, alter, replace, remove, erect, or install structures or other improvements on land in which the principal has, or claims to have, an estate or interest;

(6) demand, receive, or obtain money or any other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of an interest in land or of one or more of the transactions enumerated in this subsection; conserve, invest, disburse, or use anything so received for purposes enumerated in this subsection; and reimburse the agent for an expenditure properly made in the execution of the powers conferred by the statutory form power of attorney;

* * *

[AS §§13.26.344(a)(8)-(12)]

(8) agree and contract, in any manner, and with any person and on any terms that the agent may select, for the accomplishment of any of the purposes enumerated in this subsection, and perform, rescind, reform, release, or modify an agreement or contract made by or on behalf of the principal;

(9) execute, acknowledge, seal, and deliver a deed, mortgage, lease, notice, check, or other instrument that the agent considers useful for the accomplishment of any of the purposes enumerated in this subsection;

(10) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to, a claim existing in favor of, or against, the principal based on or involving a real estate transaction or intervene in any related action;

(11) hire, discharge, and compensate an attorney, accountant, expert witness, or assistant when the agent considers that action to be desirable for the proper execution of a power described in this subsection, and for the keeping of records about that action; and

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(12) do any other act or acts that the principal can do through an agent with respect to any estate or interest in land.

* * *

Property Affidavits	AS §09.35.13 0*	<p><i>Third party claims.</i> If property levied upon is claimed by a third person as the person's property by an affidavit of title to the property, or right to the possession of the property and the ground of the title or right, stating the value of the property, and delivered to the person making the levy, that person shall release the property. However, the plaintiff, on demand of the person, may give the person an undertaking executed by two sufficient sureties in a sum equal to double the value of the property levied upon. The undertaking shall be in favor of and shall indemnify the third person against loss, liability, damages, and costs, by reason of the taking or sale of the property by the person.</p>	<p>This statute describes the procedure whereby a landlord or tenant claiming title or a possessory interest may resist an attempt to execute on the property by a creditor having a claim against a third party.</p> <p>A real estate license is required for leasing real estate and for property management. <i>See</i> AS §08.88.900 for exceptions. Effective January 1, 2005, a licensed real estate agent/broker is restricted from acting in a dual agency role unless the parties in the transaction agree otherwise in writing. <i>See</i> AS §§08.88.391 through 08.88.401, and AS §§08.88.600 through 08.88.685. <i>See also</i> AS</p>
Real Estate Brokers	AS §08.88.16 1*	<p><i>License required.</i></p> <p>Unless licensed as a real estate broker, associate real estate broker, or real estate salesperson in this state, a person may not, except as otherwise provided in this chapter,</p> <p>(1) sell, exchange, rent, lease, auction, or purchase real estate;</p> <p>(2) list real estate for sale, exchange, rent, lease, auction, or purchase;</p> <p>(3) collect rent for the use of real estate or collect fees for property management;</p> <p>(4) practice, or negotiate for a contract to practice, property management;</p>	<p><i>License required.</i></p> <p>Unless licensed as a real estate broker, associate real estate broker, or real estate salesperson in this state, a person may not, except as otherwise provided in this chapter,</p> <p>(1) sell, exchange, rent, lease, auction, or purchase real estate;</p> <p>(2) list real estate for sale, exchange, rent, lease, auction, or purchase;</p> <p>(3) collect rent for the use of real estate or collect fees for property management;</p> <p>(4) practice, or negotiate for a contract to practice, property management;</p>

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§08.88.690 for exemptions; AS §08.88.695 for definitions.

* * *

[AS §§08.88.161(7) through (11)]
(7) as a business, buy, sell, or deal in
 (A) options in real estate; or
 (B) options in improvements to real estate;
(8) assist in or direct the procuring of prospective buyers and sellers of real estate, communicate with prospective buyers and sellers of real estate, or assist in the negotiation of a transaction that results or is calculated to result in the sale, exchange, rent, lease, auction, or purchase of real estate;
(9) accept or pay a fee for the performance of any of the activities listed in this section except as otherwise specifically provided in this chapter;
(10) hold out to the public as being engaged in the business of doing any of the things listed in this section; or
(11) attempt or offer to do any of the things listed in this section.

AS
§08.88.40
5*

Preparation of documents. Notwithstanding AS 08.08, a person licensed as a real estate broker, associate real estate broker, or real estate salesperson under this chapter may prepare real property contracts, earnest money agreements, leases, and other documents related to real property if the documents are prepared by the person in the course of the person's work as a licensed real estate broker, associate real estate broker, or real estate salesperson under this chapter.

AS Chapter 08.08 addresses the licensing of attorneys.

Recording

AS
§40.17.02
0*

Recording conveyances. (a) A conveyance that is eligible for recording under AS 40.17.030 and 40.17.110 may be offered for recording only in the recording district in which land affected by the conveyance is located. If land affected by the conveyance is located in more than one recording district, an original conveyance may be offered for recording in the recording district in which part of the land is located and an original or a certified copy may be offered for recording in each other recording district in which part of the land is located. A certified copy recorded has the same effect from the time it is recorded as though it were the original conveyance. AS §40.17.020(b) is omitted.

AS §40.17.030 is discussed below.

AS
§40.17.030*

Formal requisites for recording.
(a) Except as provided in (b), (c) and (e) of this section, to be eligible for recording, a document must

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- (1) contain original signatures;
 - (2) be legible or capable of being converted into legible form by a machine or device used in the recording office;
 - (3) be capable of being copied by the method used in the recording office;
 - (4) contain a title reflecting the overall intent of the document;
 - (5) contain the information needed to index the document under regulations of the department;
 - (6) contain a book and page reference or serial number reference if the document amends, corrects, extends, modifies, assigns, or releases a document previously recorded in this state;
 - (7) contain the name and address of a person to whom the document may be returned after recording;
 - (8) if it is a deed, contain the mailing addresses of all persons named in the document who grant or acquire an interest under the document;
 - (9) contain the name of the recording district in which it is to be recorded; and
 - (10) be accompanied by the applicable recording fee set by regulation; if the document is to be recorded for multiple purposes, it must be accompanied by the applicable fee for each of the multiple purposes.
- (b) To be eligible for recording, a certified copy of an official document from a governmental office need only meet the requirements of (a)(2), (7), (9), and (10) of this section.
- (c) To be eligible for recording, an exact or fully conformed copy of an original document must be accompanied by an affidavit of the person offering the document. The affidavit must meet the requirements of (a) of this section and must state that
- (1) the exact or fully conformed copy was received by the person in the course of the transaction;
 - (2) the original is not in the person's possession; and
 - (3) the instrument offered for recordation is an exact or fully conformed copy.
- (d) The recorder shall prescribe the style, size, form, and quality that a document, plat, plan, or survey map must satisfy for filing and recording under this chapter.
- (e) A recording fee may not be charged to record a public recreational use easement under AS 34.17.100, and, notwithstanding (a)(10) of this section, the easement shall be eligible for recording.

11 AAC
06.040*

**PREREQUISITES FOR RECORDING
DOCUMENTS.**

- a) An original document or an electronic document is

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entitled to be recorded if

- (1) it is of the type identified in AS 40.17.110;
- (2) it is in compliance with AS 40.17.030;
- (3) it meets one of the following format requirements, except that a UCC fixture statement recorded in a recording district need not conform to these requirements:
 - (A) it contains margins and a font size that conform to the following minimum requirements:
 - (i) at least two inches of blank space across the top of the first page of the document;
 - (ii) at least one-inch margins on the remainder of the first page and on all other pages of the document;
 - (iii) type size no smaller than 10-point font;
 - (B) for original documents only, it is a nonstandard document and is accompanied by an additional fee for nonstandard documents as set out in 11 AAC 05.010(a)(14); for purposes of this subparagraph, a document
 - (i) is a nonstandard document if it does not substantially meet the margin requirements in (A)(i) and (ii) of this paragraph, but meets all other requirements to be eligible for recording; and
 - (ii) does not substantially meet the margin requirements in (A)(i) and (ii) of this paragraph if a substantial portion of the document exceeds those requirements, or if any portion of the document exceeds those requirements by more than one-half inch;
- (4) it is accompanied by the fee for recording set out in 11 AAC 05.010(a)(14);
- (5) it contains a title reflecting the overall intent of the document;
- (6) the information required for indexing is in English;
- (7) for a document on which a legal description is present, that description is complete enough that a particular parcel can be geographically located and identified; a legal description is sufficient for purposes of recording if it contains, at a minimum, a section, township, range, and meridian designation of the parcel or, in the case of subdivided property, the
 - (A) lot and block of the parcel; and
 - (B) subdivision name or plat number of the parcel;
- (8) it contains the legibly printed or typed names of all parties required to be indexed;
- (9) it contains the recording book and page or serial number information of the original document that any amendment, correction, extension, modification, assignment, or release, partial or full, affects;

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- (10) it is submitted on opaque white paper stock not larger than $8\frac{1}{2} \times 14$ inches, or, if the document is a plat of survey, subdivision plat, or record of survey, is submitted on biaxially oriented polyester film that does not exceed 32×36 inches; the biaxially oriented polyester film used must be of archive quality; for documents authorized to be submitted by electronic means, the electronic version of the document must appear to comply substantially with this requirement;
 - (11) it contains original signatures except that a UCC fixture statement recorded in a recording district on or after August 23, 2001 may be submitted without an original signature of the debtor;
 - (12) it contains the name of the recording district in which it is to be entered into the public record; and
 - (13) in the case of an electronic document, it is a document that is authorized to be submitted electronically, it is submitted electronically by a person with authority to submit electronic documents under (g) of this section, and it otherwise complies with AS 40.17, the requirements of this chapter, and the *Memorandum of Agreement Regarding Electronic Recording* signed in accordance with (g) of this section.
- (b) A certified copy of a document is entitled to be recorded if the certified copy complies with AS 40.17.030(b).
- (c) An original document that is otherwise recordable on its own may not be submitted as an attachment to any other document.
- (d) Repealed 1/17/90.
- (e) It is the responsibility of the person submitting a document for recording to ensure that the prerequisites for recording as established by this section and by statute are met.
- (f) If the document submitted for recordation is a plat of survey, subdivision plat, or record of survey, it becomes the property of the state after recording.
- (g) Upon execution of the department's form *Memorandum of Agreement Regarding Electronic Recording*, Version 1 (07/2009), which is adopted by reference, the following persons may submit documents electronically for recording with a district recorder that accepts electronic recordings, so long as the original documents and the electronic documents comply with the requirements of AS 40.17, this chapter, and the *Memorandum of Agreement*:
- (1) an attorney licensed in the state;
 - (2) a bank, savings and loan association, savings bank, or credit union doing business under laws of the

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- United States or the state;
- (3) a federally chartered lending institution, a federal government-sponsored entity, an instrumentality of the federal government, or a person approved as a mortgagee by the United States to make federally insured loans;
- (4) a person authorized to make regulated loans in the state;
- (5) a title insurance company or title insurance agent authorized to do business in the state;
- (6) an agency of the state;
- (7) municipalities, boroughs, cities, or towns within the state;
- (8) a provider of electronic document recording services who is authorized to do business in the state.

AS *Recording memorandum of lease.*

§40.17.12 (a) Recording a memorandum of lease substantially
0* complying with (b) of this section has the same effect as recording the lease.

(b) A memorandum of lease is a document signed by the lessor and lessee and containing a reference to an unrecorded lease, sublease, or agreement to lease or sublease, and supplying at least the following information:

- (1) the names of the parties;
- (2) addresses of the parties set out in the lease;
- (3) the date of the lease;
- (4) a description of the real property leased or subleased;
- (5) the commencement and termination dates of the lease if fixed and, if not fixed, the method by which the dates are to be fixed; and
- (6) a statement of the conditions upon which a party may exercise a right to extend or renew the lease or to exercise a right to purchase or refuse to purchase the real property or part of it.

11 AAC
05.010*

Fees.

(a) Non-refundable fees to apply for authorizations, and fees to obtain publications or services from the department, are as follows:

Note: The Recorder's Office is part of the Alaska Department of Natural Resources.

* * *

[11 AAC 05.010(a)(6)(A), (D), (E) and (I)]

(6) surface leasing

(A) application for private right-of-way or easement, \$100;

* * *

(D) application for renewal or extension of lease,

11 AAC
05.010(a)(6)(L)
concerns
application for a remote
recreational

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\$100, except as provided in (L) of this paragraph; cabin site lease.
 (E) application for sublease or assignment of lease,
 \$100, or \$200 if the sublessee or assignee is a
 corporation;

* * *

(I) lease amendment, including major amendment
 to lease development plan, \$100;

* * *

[11 AAC 05.010(a)(14)(A) through (C)]

(14) recorder's office

(A) recording first page of a document, \$20;
 (B) recording second and each subsequent page of
 the same document, \$5;
 (C) indexing, each name or location over six, \$2;

* * *

[11 AAC 05.010(a)(14)(G) through (I)]

(G) certifying copies, \$5 each document;
 (H) conforming copies, \$2 each document;
 (I) photocopies of recorded documents,
 (i) \$1.25 for first page; and
 (ii) \$.25 for each additional page of the same
 document;

* * *

Rule Against AS
 Perpetuities §§34.27.0
 51 to
 34.27.100*

The common law rule against perpetuities is superseded by the cited statutes, which provide that a power of appointment must be exercised or terminated within 1,000 years of its creation.

Security Interests in Rents No applicable statute.

See the Uniform Commercial Code.

Statute of AS
 Frauds §09.25.04
 0

Rules for construing real estate descriptions.
 The following are the rules for construing the descriptive part of a conveyance of real property when the construction is doubtful and there are no other sufficient circumstances to determine it:
 (1) Where there are certain definite and ascertained particulars in the description, the addition of others which are indefinite, unknown, or false does not frustrate the conveyance, but it is to be construed by

The Alaska Supreme Court declined to apply the promissory estoppel exception of the Restatement (Second) of

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those particulars if they constitute a sufficient description to ascertain its application:

(2) when permanent and visible or ascertained boundaries or monuments are inconsistent with the measurement, either of lines, angles, or surfaces, the boundaries or monuments are paramount:

(3) between different measurements which are inconsistent with each other, that of angles is paramount to that of surfaces, and that of lines paramount to both:

(4) when a road or stream of water not navigable is the boundary, the rights of the grantor to the middle of the road or the thread of the stream are included in the conveyance, except where the road or bed of the stream is held under another title:

(5) when tidewater is the boundary, the rights of the grantor to low-water mark are included in the conveyance:

(6) when the description refers to a map and that reference is inconsistent with other particulars, it controls them if it appears that the parties acted with reference to the map; otherwise the map is subordinate to other definite and ascertained particulars.

Contracts §139 to a real estate lease in which the purported oral agreement is ambiguous as to terms. *Valdez Fisheries Dev. Ass'n, Inc. v. Alyeska Pipeline Service Co.*, 45 P.3d 657 (Alaska 2002).

AS
§09.25.01
0*

Statute of Frauds.

[AS §§09.25.010(a)(1) through (4)]

(a) In the following cases and under the following conditions an agreement, promise, or undertaking is unenforceable unless it or some note or memorandum of it is in writing and subscribed by the party charged or by an agent of that party:

- (1) an agreement that by its terms is not to be performed within a year from the making of it;
- (2) an agreement the performance of which is not to be completed by the end of a lifetime; this provision includes a contract to bequeath property or make a testamentary disposition of any kind, a contract to assign or an assignment, with or without consideration to the promisor, of a life or health or accident insurance policy, or a promise, with or without consideration to the promisor, to name a beneficiary of that type of policy; but this provision does not include an insurer's promise to issue a policy of insurance, or any promise or assignment with respect to a policy of industrial life or health or accident insurance;
- (3) a special promise to answer for the debt of another;
- (4) an agreement by an executor or administrator to pay the debts of the testator or intestate out of the

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personal estate of the executor or administrator;

* * *

[AS §§09.25.010(a)(6) through (8)]

(6) an agreement for leasing for a longer period than one year, or for the sale of real property, or of any interest in real property, or to charge or encumber real property;

(7) an agreement concerning real property made by an agent of the party sought to be charged unless the authority of the agent is in writing;

(8) an agreement authorizing or employing an agent or broker to sell or purchase real estate for compensation or commission; however, if the note or memorandum of the agreement is in writing, subscribed by the party to be charged or by a lawfully authorized agent, contains a description of the property sufficient for identification, authorizes or employs the agent or broker named in it to sell the property, and expresses with reasonable certainty the amount of the commission or compensation to be paid the agent or broker, the agreement of authorization or employment is not unenforceable for failure to state a consideration;

* * *

[AS §09.25.010(a)(12)]

(12) an agreement to pay compensation for services rendered in negotiating a loan, effecting the procurement of a business opportunity, or the purchase and sale of a business, its good will, inventory, fixtures, or an interest in it, including a majority of the voting stock interest in a corporation and including the creating of a partnership interest, other than an agreement to pay compensation to an auctioneer or an attorney at law;

* * *

[AS §09.25.010(b)]

(b) No estate or interest in real property, other than a lease for a term not exceeding one year, nor any trust or power concerning the property may be created, transferred, or declared, otherwise than by operation of law, or by a conveyance or other instrument in writing subscribed by the party creating, transferring, or declaring it or by that party's agent under written authority and executed with the formalities that are required by law. If the estate or interest in real property is created, transferred, or declared to a nonresident alien or for the benefit of a nonresident alien, the instrument shall so state and shall contain the name and address of the alien. This subsection does not affect the power of a testator in the

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AS §09.25.02 0*	disposition of real property by will, nor prevent a trust's arising or being extinguished by implication or operation of law, nor affect the power of a court to compel specific performance of an agreement in relation to the property. <i>Exceptions to statute of frauds.</i> A contract, promise, or agreement that is subject to AS 09.25.010, that does not satisfy the requirements of that section, but that is otherwise valid is enforceable if [AS §§09.25.020(1) through (4)] (1) there has been full performance on one side accepted by the other in accordance with the contract; or (2) there is a memorandum that would satisfy the requirements of AS 09.25.010 except for error or omission in the recital of past events; (3) there is a memorandum that would satisfy the requirements of AS 09.25.010 except for error or omission that could be corrected by reformation if it occurred in a formal contract; (4) the party against whom enforcement is sought admits, voluntarily or involuntarily, in pleadings or at any other stage of this or any other action or proceeding the making of an agreement; * * *	<i>See AS §38.04.045 for subdivision of lands leased from the state. Alaska does not have a state sales tax or personal income tax. Corporations are subject to the Alaska Net Income Tax Act, AS §§43.20.011-.350. With respect to tax liens, see Cool Homes, Inc. v. Fairbanks N. Star Borough, 860 P.2d 1248 (Alaska 1993).</i>
Subdivisions— Application to Leased Lands	No applicable statute.	
Taxation		

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Tenancy—At Will and Holdovers			For applicability of municipal property taxes to leasehold interests, <i>see</i> AS §29.45.030. <i>See</i> “Holding Over.”
Termination of Tenancies	AS §09.45.690*	<i>Failure to pay rent.</i> Unless otherwise provided in the lease, a landlord has a right to re-enter leased premises when a tenant fails to pay rent, and may bring action to recover the possession of the premises and the action is equivalent to a demand of the rent. If, at any time before judgment, the lessee or a successor in interest pays the amount of rent in arrears with interest and costs of the action and performs the other covenants or agreements, the lessee or successor is entitled to continue in possession unless otherwise provided in the lease.	<i>See</i> “Landlord's Remedies,” Commentary Absent a special agreement of the parties, a lease can be terminated prematurely only by judicial decree in an action brought under AS §09.45.690. An action for forcible entry and detainer does not bring about a termination of a lease. <i>Klinger v. Peterson</i> , 486 P.2d 373 (Alaska 1971). Note: The ability of a petroleum refiner or distributor to terminate the lease of a dealer may be subject to limitations imposed by the Alaska Gasoline Products Leasing Act, AS §§45.50.800 through 45.50.850, as well as the

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Waiver of Jury
Trial

No applicable statute.

Petroleum
Marketing
Practices Act,
15 USC §§2801
et seq.
In a forcible
entry and
detainer hearing,
there is no right
to a jury trial.
Vinson v.
Hamilton, 854
P.2d 733
(Alaska 1993)
(case involved a
residential
lease).
AS
§45.50.810(a)(2
) , which applies
only to leases
between a
petroleum
refiner or
distributor and a
dealer, prohibits
requiring the
lessee to waive
the right to a
jury trial.

Waste and
Nuisance

AS
§09.10.05
0*

Certain property actions to be brought in six years.
Unless the action is commenced within six years, a
person may not bring an action for waste or trespass
upon real property.

AS
§09.45.74
0*

Right of action for waste. If a guardian, tenant for life
or years, or tenant in common of real property
commits waste on the property, a person injured by
the waste may bring an action for damages for the
injury. In an action for waste there may be judgment
for treble damages. Where the plaintiff has a
reversionary interest and the injury due to waste
equals or exceeds the value of the interest held by the
one committing the waste, or the waste is committed
with malice, judgment may be for forfeiture of the
estate and eviction.

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RESOURCES

Alaska Supreme Court Upholds “As-Is” for Commercial Real Estate in Alaska

Published 9/5/2022.

Commercial real estate buyers who skimp on due diligence cannot shift liability for that mistake to their seller, according to a December 2021 opinion from the Alaska Supreme Court.

In *Gavora, Inc. v. City of Fairbanks*, the Court ruled unanimously that the seller of a Fairbanks shopping mall had no duty to disclose the environmental condition of the property to a buyer even when the seller knew of potential contamination. The buyer, the Court highlighted, purchased the property ‘As-Is.’

The opinion is a caution to real estate investors that they must undertake their own due diligence. After closing, ‘As-Is’ clauses offer strong protection to sellers from liability.

The buyer – Gavora, Inc. – was an experienced commercial real estate investor and tenant under a ground lease with the City of Fairbanks. In 2002, Gavora exercised an option to purchase and the City sold to Gavora. Seven (7) years later, the State of Alaska notified Gavora and the City that they were potentially liable for

groundwater contamination from a dry cleaner at the property. In a subsequent enforcement action, the federal court found the City 55% and Gavora 45% liable.

Gavora sued the City in state court claiming misrepresentation, fraud, breach of contract, and breach of the implied covenant of good faith and fair dealing.

Gavora also claimed that the City, in selling the property, breached a fiduciary duty to disclose the environmental contamination.

The City knew of potential contamination but never advised Gavora. Meanwhile, Gavora skipped environmental due diligence and did not obtain a Phase I environmental report before Closing.

Gavora argued that the purchase agreement's "As-Is" clause did not absolve the City from liability, and that the City should have disclosed the risk of contamination. Gavora claimed the City had a fiduciary duty to disclose a known material fact during a business transaction, and failure to do so rendered the City liable as if it had affirmatively misrepresented the property's condition.

The Court disagreed. Rejecting Gavora's claim of a heightened disclosure duty, the Court held that no special relationship of trust or any fiduciary duty existed between buyer and seller. A duty to disclose information or to correct the other party's mistaken belief could arise in a joint venture, but no duties exist "when parties to a real estate contract are represented by real estate professionals in an arm's length commercial transaction that contains an 'As-Is' clause."

Next, the court rejected any implied duty to disclose under the covenant of good faith and fair dealing, which is included in all Alaska contracts as a matter of law. The purpose of the covenant of good faith and fair dealing is to prevent "each party from doing anything that will injure the right of the other to receive the benefits of the agreement. But the covenant's purpose is to effectuate the reasonable expectations of the parties, not to alter or add terms to the contract." Importantly, the Court noted the covenant does not contain a duty to disclose in these circumstances: the covenant "will not create a duty where one does not exist."

According to the Court there is no "free-floating disclosure duty arising solely un-

der an implied covenant.” This ruling follows established Alaska law, that an implied duty cannot overrule or contradict an express provision.

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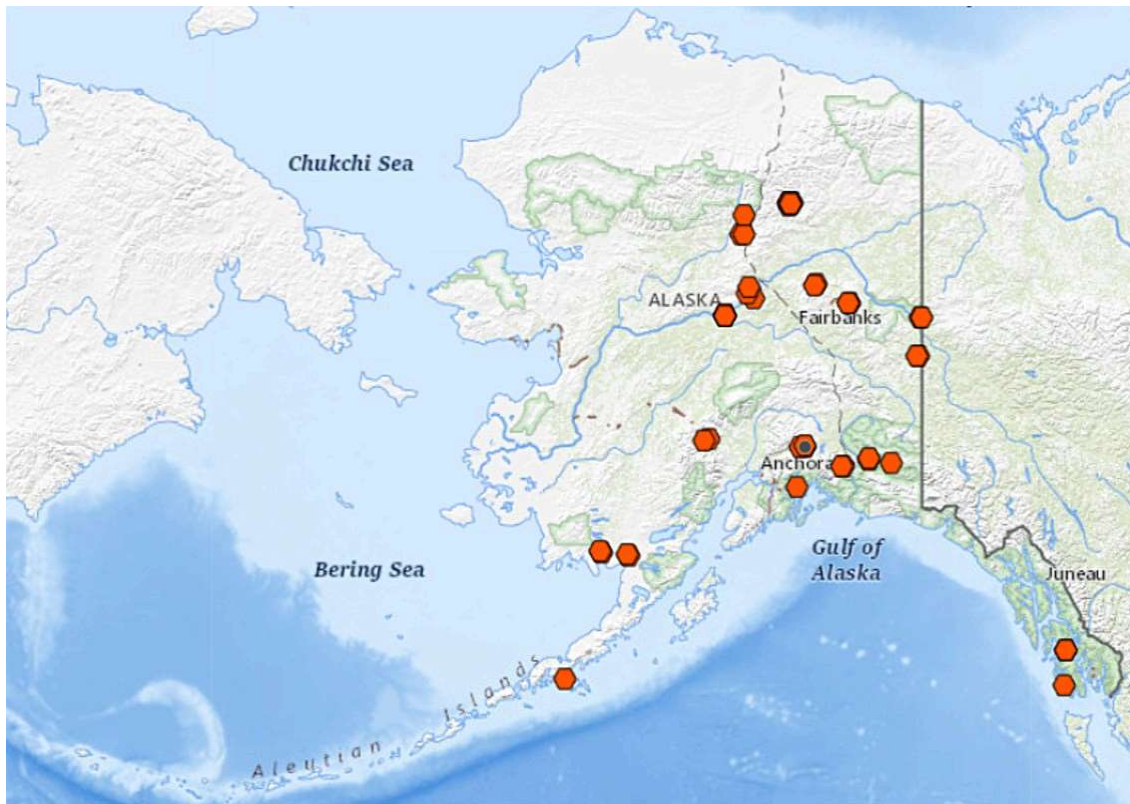


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RESOURCES

Alaska Sites with Offensive Word to be Renamed

Published 3/3/2022. Modified 06/14/2023.



The U.S. Department of the Interior (“Interior”) will replace names for 28 geographic sites in the Alaska that contain the word “squaw.”

The 28 Alaska sites are among 660 sites nationwide identified in a February 23 notice from Interior’s Derogatory Names Task Force to be renamed. The notice follows a November 2021 order from Interior Secretary Haaland declaring the word “squaw” derogatory and initiating removal of the word from federal use. Here is [the Secretary of the Interior’s order](#), as well as [the list of sites to be renamed](#).

For each location, the task force developed five alternative replacement names based on nearby geographic features.

For example, there are four “Squaw Creeks” in the Matanuska-Susitna Borough – one (a tributary of Caribou Creek near Chickaloon) has five replacement names which are “Sheep Mountain,” “Fortress Ridge,” “Syncline Mountain,” “Belanger Pass,” “Tahneta Pass”. The replacement name will only replace the modifier “Squaw,” so, for example, if “Tahneta Pass” is chosen, the creek would be renamed “Tahneta Creek”.

The federal Board on Geographic Names (BGN), made up of representatives from federal agencies, was established in 1947 to maintain consistent geographic name usage throughout the federal government. BGN’s guiding principle is to approve names in present-day local usage. However, an exception may arise if the present name is derogatory to a racial or ethnic group, gender, or religious group. The BGN will not approve a name determined derogatory by the Secretary.

“Squaw” is not the first derogatory word identified by an Interior Secretary. In 1962, Secretary Stewart Udall identified a term for “African-Americans” as derogatory and directed BGN to eliminate its use. In 1974, a pejorative term for “Japanese” was eliminated and replaced.

As to her decision, Secretary Haaland wrote: “[t]he time has come to recognize that the term “squaw” is no less derogatory than others which have been identified and should also be erased from the National landscape and forever replaced.”

The task force will engage in tribal consultation regarding the name changes.

Three virtual meetings are planned in March, and written comments due by April

24. The task force will consider additional proposed candidate names and relevant comments received as part of the tribal consultation process.

For more information or assistance on commenting on the proposed name changes or other matters, please contact [Ben Spiess](#).

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RESOURCES

Proposed Changes Put Alaska Native Burial and Cultural Sites at Risk

Published 10/6/2021. Modified 05/02/2023.

New rules proposed by the U.S. Department of the Interior eliminate certain obligations of federal officials to notify local Alaska Native villages and tribes when burial sites and related objects are found on federal land.

The federal Native American Graves Protection and Repatriation Act (“NAGPRA”) is the keystone of protection for Native American remains and related sacred and cultural objects found on federal lands. Under current regulations, federal officials must notify an affiliated tribe within three days after such cultural items are discovered.^[1]

The proposed regulations remove this requirement such that a federal official does not need to notify and begin consultation with an affiliated tribe unless (i) the federal official determines further excavation is necessary^[2]; or (ii) the cultural items are being disposed of.^[3] The practical effect of this revision is that a federal official can take a variety of actions with respect to the cultural items without notifying or consulting the lineal descendants or affiliated tribe. This includes determining whether and how to cover and stabilize the cultural items; evaluating the need for further excavation; and certifying that a ground-disturbing activity in the area may resume.^[4]

This change has important implications for tribes with cultural, historical, or archaeological sites on federal land. The effect of this change is particularly acute for Alaska Native villages and tribes because over 60% of the land in Alaska is federal land.^[5] By delaying the notification and consultation requirements, the proposed changes remove tribal input from the early decision-making stages.

The proposed change to the notification rule is among a series of changes being proposed by the Dept. of the Interior. A copy of the proposed draft regulations can be found [here](#). Although Interior is not currently soliciting input, tribes and other interested individuals will have an opportunity to comment on the proposed regulations when the Department issues a proposed rulemaking for public comment. The Department has indicated that it intends to issue its proposed rulemaking for public comment before the end of 2021.

[1] 43 C.F.R. § 10.4(iii), (iv).

[2] Draft Regulations for Consultation § 10.6(b).

[3] Draft Regulations for Consultation § 10.7(d).

[4] See Draft Regulations for Consultation § 10.5 (c), (d), (e).

[5] Cong. Rsch. Serv., R42346, Federal Land Ownership: Overview and Data 19 (2020). Although the proposed revisions retain the notice and consultation requirements for cultural items encountered on tribal lands, much of the land in Alaska is not considered to be Tribal Land as defined by NAGPRA. See 25 U.S.C. § 3001(15).

PRACTICES

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