

Revisor's notes. — Formerly AS 40.15.190. Renumbered in 1988.

NOTES TO DECISIONS

Quoted in *Kenai Peninsula Borough v. Kenai Peninsula Bd. of Realtors, Inc.*, Sup. Ct. Op. No. 2576 (File No. 6374), 652 P.2d 471 (1982); *State v. Weidner*, Sup. Ct. Op. No. 2788 (File Nos. 6220, 6240, 6272), 684 P.2d 103 (1984).

Chapter 17. Recording in Public Records.

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| <p>Section</p> <p>10. Place of recording and access to records</p> <p>20. Recording conveyances</p> <p>30. Formal requisites for recording</p> <p>35. Recording criteria</p> <p>40. Indexing</p> <p>50. Incorporation of master form</p> <p>60. Documents executed under former law</p> <p>70. Duties of recorder</p> | <p>Section</p> <p>80. Effect of recording on title and rights; constructive notice</p> <p>90. Conveyances and recorded documents as evidence</p> <p>100. Recording a reconveyance</p> <p>110. Classes of documents eligible for recording</p> <p>120. Recording memorandum of lease</p> <p>130. Action against recorder and state</p> <p>900. Definitions</p> |
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Effective date of chapter. — Section 44, ch. 161, SLA 1988, provides: "This Act takes effect January 1, 1989."

Legislative history reports. — For a sectional analysis and commentary on SB

304, from which ch. 161, SLA 1988, which enacted this chapter, derives, see Senate-House Joint Journal Supplement No. 7, May 15, 1987.

Sec. 40.17.010. Place of recording and access to records. (a) The Department of Natural Resources shall provide at each public office designated by the department

(1) the documents and indices or alternative document retrieval system of the recording district or districts served by that public office;

(2) a machine, device or system with which to retrieve stored documents;

(3) a means for making copies of recorded documents and a person authorized by the recorder to certify the copies;

(4) to the extent money is appropriated for the purpose, a machine, device, or system capable of rapidly transmitting a document eligible for recording to a recorder at one place of recording in the state, and a person to operate the machine, device, or system; if the department determines that it is not feasible to provide a machine, device, or system in an office serving a recording district, it shall provide for transmitting documents from the office by other expeditious means;

(5) instructions that explain to the public the formal requirements that a document must satisfy to be recorded.

(b) The department shall provide the staff and equipment to receive and record documents and to store them permanently.

(c) When rapid recording and retrieval and secure storage of documents can be provided for all recording districts with a single place of recording in the state, the recorder shall record the documents at a single place in the state designated by the department.

(d) The recorder shall provide reasonable public access during business hours to recorded documents, indices, and facilities provided for in this section. (§ 1 ch 161 SLA 1988)

Sec. 40.17.020. Recording conveyances. (a) A conveyance that is eligible for recording under AS 40.17.030 and 40.17.110 may be recorded only in the records of 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 recorded in the records of any district in which part of the land is located and an original or a certified copy may be recorded in the records of each other district in which part of the land is located. A certified copy so recorded has the same effect from the time it is recorded as though it were the original conveyance.

(b) A certified copy of a conveyance that is eligible for recording under AS 40.17.030 and 40.17.110 and that has been recorded or filed in a public recorder's office in another state or in the United States Bureau of Land Management may be recorded only in the records of a recording district where land affected by the conveyance is located. When so recorded, it has the same effect from the time it is recorded as though it were the original conveyance. (§ 1 ch 161 SLA 1988)

Sec. 40.17.030. Formal requisites for recording. (a) To be eligible for recording, a document must be

(1) legible or capable of being converted into legible form by a machine or device used in the recording office;

(2) capable of being copied by the method used in the recording office;

(3) accompanied by the proper fee for recording and include or be accompanied by information, stamps, certificates, taxes, or fees that under other laws are necessary to qualify the document for recording;

(4) accompanied by or include the information needed to index the document under regulations of the department;

(5) accompanied by or include the name and address of the person to whom the document is to be returned after recording; and

(6) accompanied by or include the mailing addresses of all persons named in the document who grant or acquire an interest under the document if it is a conveyance; this paragraph does not apply to a release of a security interest.

(b) A signature, acknowledgment, seal, or witness is required for a document to be eligible for recording only when required for the specific document by this chapter or by other law.

(c) A name, address, or other information required by this section shall be contained in the document that is to be recorded, or shall be recorded with the document.

(d) The recorder shall prescribe the style, size, form, and quality that a plat, plan, or survey map must satisfy for filing and recording under this chapter. (§ 1 ch 161 SLA 1988)

Sec. 40.17.035. Recording criteria. When determining whether a document may be recorded, the recorder

(1) may not consider whether the contents of the document are legally sufficient to achieve the purposes of the document;

(2) may not reject a document because the document

(A) does not satisfy the current requirements for recording, if the document satisfied the requirements for recording that existed at the time the document was executed;

(B) serves more than one purpose;

(C) does not state the name of the recording district, if the name is given to the recorder at the time the document is offered for recording, or if the name is contained in a cover letter accompanying the document;

(D) references an attached exhibit that is not labelled;

(E) is a certified copy of an official document that creates an interest in real property and that is from a governmental office in this or another state; or

(3) may not require that a document that serves more than one purpose be recorded separately for each of the purposes; this paragraph does not prevent the multiple recording of the document if the person offering the document requests that the document be recorded for more than one of its purposes. (§ 2 ch 83 SLA 1988)

Revisor's notes. — Formerly AS 34.15.343. Renumbered in 1989.

Cross references. — For legislative findings, see sec. 1, ch. 83, SLA 1988.

Sec. 40.17.040. Indexing. (a) The recorder shall maintain an index system for recorded documents in the manner prescribed by regulations adopted by the department. The system shall be designed so the public may find documents by names of grantors and grantees, and the system may include other means for locating the documents.

(b) The declaration for a common interest community under AS 34.08 shall be indexed in the grantee's index in the name of the common interest community and the association and in the grantor's index in the name of each person executing the declaration. (§ 1 ch 161 SLA 1988)

Sec. 40.17.050. Incorporation of master form. A recorded master form, or a numbered paragraph of it, may be incorporated by reference in a recorded document by referring to the form by its recording information and the number of the paragraph to be incorporated. The reference has the same effect as if the master form or the numbered paragraph were reproduced in full in the record at the place where the reference to the form or paragraph is made. (§ 1 ch 161 SLA 1988)

Sec. 40.17.060. Documents executed under former law. If a document included under AS 40.17.110(b) or (c) was executed in accordance with the law in effect at the time the document was executed, the document remains recordable regardless of later amendments to the law changing the manner in which that document is to be executed. (§ 1 ch 161 SLA 1988)

Sec. 40.17.070. Duties of recorder. (a) The recorder shall promptly record all documents presented that are recordable under AS 40.17.020, 40.17.030, and 40.17.110.

(b) The recorder shall maintain in the central recording office a daily log and index for recorded documents.

(c) As a document is recorded, the recorder shall indicate on or attach to each document the date, hour, and minute of recording, enter that information and a consecutive serial number in a daily log of documents without delay in the order in which the documents are received, and note the serial number on the document.

(d) If a document presented for recording is reviewed and rejected for recording, the recorder shall indicate on or attach to the document the date, hour, and minute of rejection and a citation of the statute requiring rejection. If the document is later determined to be recordable in the form in which it was earlier presented to the recorder, later recording does not relate back to the time and date of rejection. Recording is effective when the document is accepted for recording, regardless of the cause of the rejection.

(e) The recorder shall promptly copy recorded documents and place them in permanent records and shall note the recording information at the entry of each document in the daily log.

(f) Promptly after recording a document, the recorder shall make the index entries required in this chapter and in the regulations of the department.

(g) After recording, the recorder shall return the document to the person who presented it or a person designated by the person who presented it.

(h) The recorder shall certify copies and provide a certified copy of a recorded document to a person who tenders the proper fee.

(i) The recorder is not required to record part of a document if the part is identified and preceded by the words "From Previously Re-

corded Master Form—Do Not Record” and the recorded part contains a reference to the master form’s recording information. (§ 1 ch 161 SLA 1988)

Sec. 40.17.080. Effect of recording on title and rights; constructive notice. (a) Subject to (c) and (d) of this section, from the time a document is recorded in the records of the recording district in which land affected by it is located, the recorded document is constructive notice of the contents of the document to subsequent purchasers and holders of a security interest in the same property or a part of the property.

(b) A conveyance of real property in the state, other than a lease for a term of less than one year, is void as against a subsequent innocent purchaser in good faith for valuable consideration of the property or a part of the property whose conveyance is first recorded. An unrecorded conveyance is valid as between the parties to it and as against one who has actual notice of it. In this subsection, “purchaser” includes a holder of a consensual interest in real property that secures payment or performance of an obligation.

(c) The recording of an assignment of a security interest is not in itself notice to the debtor. The debtor may pay the assignor unless the debtor has actual notice of the assignment.

(d) A recorded option or agreement to enter into a contract in the future ceases to be constructive notice for any purpose

(1) when six months have elapsed after the date of recording of the option or agreement, if the recorded option or agreement contains no expiration date;

(2) when 30 days have elapsed after the expiration date of the option or agreement, if the recorded option or agreement contains an expiration date. (§ 1 ch 161 SLA 1988)

Sec. 40.17.090. Conveyances and recorded documents as evidence. (a) A conveyance that is acknowledged, proven, or certified under AS 34.15.150 — 34.15.250 is admissible as evidence of the conveyance without further proof.

(b) An acknowledged and recorded signed document relating to title to real property creates presumptions with respect to title that

(1) the document is genuine and was executed as the voluntary act of the person purporting to execute it;

(2) the person executing the document and the person on whose behalf it is executed are the persons they are purported to be and the person executing it was neither incompetent nor a minor at any relevant time;

(3) delivery of the document occurred notwithstanding a lapse of time between dates on the document and the date of recording;

(4) any necessary consideration was given;

(5) the grantee, transferee, or beneficiary of an interest created or claimed by the document acted in good faith at all relevant times up to and including the time of the recording;

(6) a person purporting to act as an agent, attorney in fact under a recorded power of attorney or authority, officer of an organization, or in a fiduciary or official capacity, held the position the person purported to hold, acted within the scope of the person's authority, and in the case of an organization, the authorization satisfied all requirements of law; and in the case of an agent, acted for a principal who was neither incompetent nor a minor at any relevant time and who had not revoked the agency;

(7) if the document purports to be executed in accordance with or to be a final determination in a judicial or administrative proceeding, or to be executed under a power of eminent domain, the court, official body, or condemnor acted within its jurisdiction and all steps required for the execution of the title document were taken;

(8) the recitals and other statements of fact in a conveyance are true if the matter stated is relevant to the purpose of the document;

(9) the persons named in, signing, or acknowledging the document and persons named in, signing, or acknowledging another related document in a chain of title are identical, if the persons appear in those documents under identical names, or under variants of the names, including inclusion, exclusion, or use of

(A) commonly recognized abbreviations, contractions, initials, or colloquial or other equivalents;

(B) first or middle names or initials;

(C) simple transpositions that produce substantially similar pronunciations;

(D) articles or prepositions in names or titles;

(E) descriptions of entities as corporations, companies, or abbreviations or contractions of either; or

(F) name suffixes, such as "Senior" or "Junior", unless other information appears of record indicating that they are different persons; and

(10) all other requirements for the execution, delivery and validity of the document have been satisfied.

(c) The presumptions stated in (b) of this section arise even if the document purports only to release a claim or convey an interest of the person executing it or of the person on whose behalf it is executed.

(d) Facts stated in a recorded certificate of a public official in affidavit form or under the seal of the official's office and derived from information or documents obtained or kept by the official as part of official duties are presumed to be true.

(e) If presumptions created by this section are inconsistent, the presumption applies that is founded upon weightier consideration of pol-

icy and logic. If these considerations are of equal weight, neither presumption applies. (§ 1 ch 161 SLA 1988)

Sec. 40.17.100. Recording a reconveyance. When the parties to a recorded conveyance absolute in its terms intend it to serve only as security for repayment of a debt, the conveyance is absolute as to all persons who rely upon it in good faith and for value before a reconveyance is recorded. (§ 1 ch 161 SLA 1988)

Sec. 40.17.110. Classes of documents eligible for recording. (a) A signed document listed in (b) of this section or included under (c) of this section that meets the requisites for recording under AS 40.17.030 may be recorded.

(b) The recorder may record

(1) a conveyance acknowledged or proven under AS 34.15.150 - 34.15.250 or a certified copy of the conveyance if recording the copy is permitted by AS 40.17.020;

(2) an acknowledged or proven power of attorney or other instrument granting or revoking a power to act as agent or attorney for another person;

(3) a contract for the sale or purchase of real property, when acknowledged or proven by all parties to the contract;

(4) an option for the purchase of real property when it is acknowledged by the person granting the option;

(5) a certificate of a public official or an affidavit of a person that may affect the title to or any interest in real property in the state that is described in the certificate or affidavit, stating facts relating to age, sex, birth, death, capacity, relationship, family history, heirship, names, identity of parties, marital status, possession or adverse possession, adverse use, residence, service in the armed forces, conflicts and ambiguities in description of land in recorded instruments, and the happening of a condition or event that may terminate an estate or interest; a certificate or affidavit recorded under this section must contain the recording information of a recorded document referred to in it;

(6) an instrument by which a real property security agreement is subordinated or waived as to priority;

(7) a document creating a condition, covenant, restriction, or reservation relating to rights in real property;

(8) an assignment of all or part of a security interest in real property;

(9) a release of lien or security interest in real property;

(10) an exact or fully conformed copy of a document that is otherwise recordable under this section, when the person offering the document attaches to it an affidavit that

(A) the exact or fully conformed copy was received by the person in the course of the transaction;

(B) the original is not in the person's possession; and

(C) the instrument offered for recordation is an exact or fully conformed copy;

(11) a conveyance from the United States of an interest in real property in the state;

(12) a certified copy of a petition in bankruptcy;

(13) a notice of an action previously filed and pending in a court of the state or the United States affecting title to real property in the state, if the notice contains the case number assigned by the court and a description of the property affected in the recording district;

(14) notice of an action for divorce, separate maintenance, annulment, or dissolution of marriage previously filed and pending in a court of any state or the United States affecting title to real property in this state, if the notice contains the case number assigned by the court;

(15) notice of a pending judicial proceeding to compel recording or indexing, if the notice contains the case number assigned by the court;

(16) a certified copy of a judgment decree or order of a court of a state in an action for divorce, separate maintenance, annulment, or dissolution of marriage requiring the execution of a conveyance of real property in this state;

(17) a list of real property granted by a governmental entity to the state, a municipality, or a corporation;

(18) a conveyance executed by an officer of the state by authority of law in the state;

(19) a notice limiting future advances under a recorded security agreement;

(20) a certified copy of a judgment or decree of a court of the state or of a court of record of the United States or a certified copy of a satisfaction of judgment or decree;

(21) a certificate of attachment or an order or proceeding of record discharging attachment;

(22) a condemnation order;

(23) a declaration of taking;

(24) a copy of the record of the meeting of a cemetery association;

(25) a cooperative contract;

(26) a list of persons whose cooperative contracts have been terminated;

(27) a letter of conservatorship;

(28) an employee's lien for failure to make payments to a benefit fund;

(29) an employment security contributions lien;

(30) a verified workers' compensation lien;

(31) a mining claim, location, or lease;

- (32) a grubstake contract;
- (33) a mining assessment work affidavit;
- (34) a notice to contribute or forfeit an interest in a mining claim;
- (35) a subdivision plat;
- (36) a signed and sworn-to certificate of limited partnership and a signed and sworn-to amendment to a certificate of limited partnership;
- (37) a declaration or amendments to a declaration under AS 34.07 or AS 34.08, an instrument by which property may be removed from the provisions of AS 34.07 or AS 34.08, and an instrument affecting property controlled by AS 34.07 or AS 34.08; a declaration under AS 34.08 may not be recorded unless it satisfies the requirements of AS 34.08.090(b);
- (38) a survey map and floor plan for a building under AS 34.07, or a plat or plan for a common interest community under AS 34.08;
- (39) a substitution of trustee under a deed of trust, or other person having a power of sale under a real property security agreement, when executed and acknowledged by all the beneficiaries;
- (40) notice and affidavits required in default and sale under a deed of trust;
- (41) a notice of right to mechanics' or materialmen's lien;
- (42) an attested or notarized copy of a notice of nonresponsibility for construction, alteration, or repair;
- (43) an acknowledgment of right to mechanics' or materialmen's lien;
- (44) a verified claim of lien under AS 34.35;
- (45) a verified notice of completion of a building or improvement;
- (46) a bond guaranteeing payment of the sum recovered on a mechanics' or materialmen's lien;
- (47) a notice extending a mechanics' or materialmen's lien;
- (48) a state tax lien;
- (49) a federal tax lien;
- (50) an instrument transferring a water appropriation or a certified copy of it;
- (51) a financing statement covering goods that are or are to become fixtures to real property described in the financing statement; if the debtor does not have an interest of record in the real property, the financing statement must show the name of the record owner of the real property;
- (52) an assignment of rent;
- (53) a memorandum of lease as described in AS 40.17.120(b);
- (54) a state highway right-of-way map;
- (55) an armed forces report of separation;
- (56) a document amending or correcting a recorded document listed in this section if the amending or correcting document is executed by the same parties who executed the original document;

(57) a master form that can be incorporated by reference in documents later recorded;

(58) a unitization agreement under AS 31.05.110; and

(59) any other document that creates or affects an interest in real property.

(c) A document specifically permitted or required to be recorded by another law of the state or made recordable by regulation of the department may be recorded. (§ 1 ch 161 SLA 1988)

Sec. 40.17.120. Recording memorandum of lease. (a) Recording a memorandum of lease substantially 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. (§ 1 ch 161 SLA 1988)

Sec. 40.17.130. Action against recorder and state. If the recorder fails to record and index a document properly, the recorder may be compelled to record and index the document properly by an action filed in the superior court. (§ 1 ch 161 SLA 1988)

Sec. 40.17.900. Definitions. In this chapter

(1) "acceptance" means the determination by the recorder that a document is recordable under this chapter accompanied by marking an identifying code on the document and entering the document in a daily log;

(2) "certified copy" means a copy of a document certified as correct by the custodian or other person authorized to make the certification;

(3) "conveyance" means a transfer of an interest in real property other than by will or operation of law;

(4) "department" means the Department of Natural Resources;

(5) "document" means a writing, plat, plan, or map, and includes information in a form, such as electronic, mechanical, or magnetic storage; microfilm; or electronic data transmission signals, that can be

converted into legible writing, plat, plan, or map form by a machine or device;

(6) "place of recording" means a place designated by the department where documents recordable under this chapter are recorded;

(7) "record" means the acceptance of a document by the recorder that the recorder has determined is recordable under this chapter and that is presented for recording in the place of recording designated for the recording district where affected property is located whether or not the place of recording is in that district, and whether or not under applicable law the recorder is directed to record the document;

(8) "recorder" means the commissioner of the department or the commissioner's designee;

(9) "recording district" means a part of the state designated a recording district under AS 44.37.025; and

(10) "recording information" means information needed to find a document in the public records such as book and page, document number, electronic retrieval code, or other specific information. (§ 1 ch 161 SLA 1988)

Chapter 18. Preservation of Public Records.

[Repealed, § 3 ch 191 SLA 1970.]

Chapter 19. Recording Federal Liens.

Section

10. Applicability

20. Place of recording

30. Execution of notices and certificates

Section

40. Duties of recorder

50. Uniformity of application and construction

Effective date of chapter. — Section 44, ch. 161, SLA 1988, provides: "This Act takes effect January 1, 1989."

Legislative history reports. — For a sectional analysis and commentary on SB

304, from which ch. 161, SLA 1988, which enacted this chapter, derives, see Senate-House Joint Journal Supplement No. 7, May 15, 1987.

Sec. 40.19.010. Applicability. The provisions of this chapter apply to federal tax liens and to other federal liens notice of which under an Act of Congress or a regulation adopted under the authority of an Act of Congress is required or permitted to be filed or recorded in the same manner as a notice of federal tax lien. (§ 38 ch 161 SLA 1988)

Sec. 19.05.060. Sale of obsolete equipment and material. The department may sell, exchange, or otherwise dispose of obsolete machinery, equipment, and material no longer needed, required, or useful for construction or maintenance purposes. Money derived from the sale of the property shall be credited to the funds from which the purchase was originally made. (§ 3 art IV title IV ch 152 SLA 1957)

Opinions of attorney general. — Although there is no specific grant of authority to the Department of Transportation and Public Facilities to transfer highways to a municipality, the power to effectuate such a transfer may be considered as implicit through the operation of AS 19.05.010, 19.05.040, 19.05.070, 19.10.020 and this section. January 1, 1987 Op. Att'y Gen.

Sec. 19.05.070. Vacating and disposing of land and rights in land. (a) The department may vacate land, or part of it, or rights in land acquired for highway purposes, by executing and filing a deed in the appropriate recording district. Upon filing, title to the vacated land or interest in land inures to the owners of the adjacent real property in the manner and proportion considered equitable by the commissioner and set out in the deed.

(b) If the department determines that land or rights in land acquired by the department are no longer necessary for highway purposes the department may

(1) transfer the land or rights in land to the Department of Natural Resources for disposal; or

(2) sell, contract to sell, lease, or exchange land or rights in land according to terms, standards, and conditions established by the commissioner.

(c) Proceeds received from disposal of land or rights in land as authorized by this section shall be credited to the funds from which the purchase of the land was made originally. (§ 4 art IV title IV ch 152 SLA 1957; am § 4 ch 35 SLA 1971)

Opinions of attorney general. — Although there is no specific grant of authority to the Department of Transportation and Public Facilities to transfer highways to a municipality, the power to effectuate such a transfer may be considered as implicit through the operation of AS 19.05.010, 19.05.040, 19.05.060, 19.10.020 and this section. January 1, 1987 Op. Att'y Gen.

Article 2. Acquisition of Property.

- Section**
- 80. Acquisition of land, rights-of-way, and materials by purchase or eminent domain
 - 90. Declaration of taking
 - 100. Acquisition of excess land
 - 110. Authority to condemn or acquire

- Section**
- publicly owned property for the purpose of exchange
 - 120. Authority to purchase property for the purpose of exchange
 - 122. Utility corridor for extension of the Alaska Railroad