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STATUTES AND CODES PRINCIPALLY RELIED UPON

FORCIBLE ENTRY AND DETAINER

AS 09.45.090. Unlawful holding by force.

The following are **cases** of unlawful holding by force within the meaning of AS 09.45.060 - 09.45.160:

(1) when the tenant or person in possession of a premises fails or refuses to pay the rent due on the lease or agreement under which the tenant or person holds, or deliver up the possession of the premises for 10 days after demand made in writing for the possession;

(2) when, after a notice to quit as provided in AS 09.45.060 - 09.45.160, a person continues in the possession of the premises at the expiration of the time limited in the lease or agreement under which that person holds, or contrary to a condition or covenant in the lease or agreement, or without a written lease or agreement;

(3) when after a notice to terminate the tenancy **as** provided; in this title with reference to termination of estate at will or by sufferance, a person continues in possession of the premises after expiration of the time for determining the tenancy.

EJECTMENT

As 09.45.530. 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.

COOPERATION BY HOUSING AUTHORITIES

AS 18.55.110. Cooperation with and aid of federal government.

The authority may do all things necessary or desirable to cooperate or act as agent for the federal government, or to secure financial aid for housing projects for veterans of World War II and other citizens of the state, provided that those projects may not be undertaken unless an acute shortage of housing exists. With respect to those projects, the authority may not be subject to limitations, restrictions, or requirements of other laws, except those relating to land acquisition, prescribing or limiting the procedure or- action to be taken in the development or administration of any buildings, prw=rty, public works, undertakings, or projects of municipal or public corporations or agencies of the state.

JmZISDICTION OF DISTRICT COURT

AS 22.15.030. Civil jurisdiction.

(a) The district court has jurisdiction of civil cases . . . as follows:

(6) for the recovery of the possession of premises in the manner provided under AS 09.45.070 - 09.45.160 when the value of the arrears and damage to the property does not exceed \$35,000;

AS 22.15.050. Actions not within civil jurisdiction.

The jurisdiction of the district courts does not extend to

(1) an action in which the title to real property is in question;

(2) an action for false imprisonment, libel, slander, malicious prosecution, actions of an equitable nature (except as otherwise provided by law), or actions in which the state is a defendant.

UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

As 34.03.100. Landlord to maintain fit premises.

(c) The landlord and tenant of a one- or two- family residence may agree in writing that the tenant perform the landlord's duties specified in (a) (4), (5), (6), and (7). They may also agree in writing that the tenant perform specified repairs, maintenance tasks, alterations, and remodeling. Agreements are allowed under this subsection only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord. (As of 1992).

MEIOA TERMINATION

24 C.F.R. 5905.446. Termination of MHO agreement.

(a) Termination upon breach. (1) In the event the homebuyer fails to comply with any of the obligations under the MHO agreement, the IHA may terminate the MHO agreement by written notice to the homebuyer, enforced by eviction procedures applicable to landlord-tenant relationships. Foreclosure is an inappropriate method for enforcing termination of the homeownership agreement, which constitutes a lease (with an option to purchase). The homebuyer is a lessee during the term of the agreement and acquires no equitable interest in the home until the option to purchase is exercised.

U.S. HOUSING ACT

42 U.S.C. 1437bb. Mutual help homeownership opportunity program.

(e) Mutual help and occupancy agreement

(4) Homeownership opportunities

The Indian housing authority shall afford the family an opportunity to purchase the dwelling under a lease-purchase, mortgage, or loan agreement with the Indian housing authority or any other qualified entity, if the Indian housing authority determines (in **accordance** with objective standards and procedures established by the Secretary after consultation with Indian housing authorities) that the family is able to meet the obligations of homeownership.

STATEMENT OF ISSUES

May the District Court exercise jurisdiction over forcible entry and detainer proceedings relating to a lease with an unexercised option to purchase?

STATEMENT OF THE CASE

Petitioner Dana Kopanuk leased a home in AVCP RHA's Mountain Village Mutual Help project pursuant to a Mutual Help and Occupancy Agreement. (¹¹MHOA^W). [Ext. 1521. The lease agreement contains an option to purchase which has not been exercised. [Ext. 361. In mid-1991, Mr. Kopanuk stopped paying under the lease, which resulted in termination of the MHOA. EExc. 33-341. Mr. Kopanuk picked up final Notice to Quit in March, 1992. [Ext. 341. He then left Mountain Village, without responding to the termination or advising AVCP RHA of his absence. [Ext. 341. Neighbors reported that the home was being used as a "party house." [Ext. 341. The failure to pay and the absence from the home constituted material violations of the parties' MHOA. [Ext. 151-1901.

Given the lack of response from Mr. Kopanuk, in August 1992 AVCP RHA filed forcible entry and detainer action (IIFEDII) . Complaint. Mr. Kopanuk was served in Bethel September 4, notifying him of the hearing set for September 23, 1992. Return of Summons. Once all parties were present in court, Mr. Kopanuk asked the housing authority for a "grace period." [Ext. 48-87, Exhibit A, p. 21. A recess was convened to discuss settlement. [Ext. 341. During the recess, Mr. Kopanuk explained that he had left Mountain Village to care for his sick father in Hooper Bay. [Ext. 341. He

agreed that he would pay-up and move back to Mountain Village within 30 days or relinquish the home. [Ext. 11 . The parties' agreement was entered on the record and documented in a conditional Order of Possession, which was intended to have no effect if Mr. Kopanuk complied within the grace period. [Ext. 1-31.

AVCP RHA worked with Mr. Kopanuk to obtain fulfillment of the settlement conditions, but was unable to reach him after a November 25, 1992 telephone conversation. [Ext. 35-361. In that conversation, AVCP RHA informed Mr. Kopanuk that by staying in Bethel, and not re-occupying the home as required by the parties' agreement and court order, he would lose the home. [Ext. 351. It appeared that he conceded the point. [Ext. 351. In December 1992, AVCP RHA followed up with a formal letter, sent to the last Bethel address Mr. Kopanuk had provided. [Ext. 35; Exhibit C thereto]. The letter was returned unclaimed the following month. [Ext. 351. AVCP RHA focused on obtaining a voluntary move-out of Mr. Kopanuk's adult son, who said he needed more time to move out of the Mountain Village home and to find a place to live. [Ext. 361.

By April 1993, Mr. Kopanuk was apparently living in Pilot Station, several miles upriver from Mountain Village. [Ext. 33-37, Exhibit G1; [Ext. 431. At that time he wrote the Mountain Village traditional council (not AVCP RHA) to advise that he would not be

¹ Several parts of Mr. Kopanuk's Excerpt of the Record are not numbered, including Exhibits to the Affidavit of Eva Nash (Ext. 33-37). These unnumbered excerpts are cited using their original "Exhibit" designation. The Mutual Help and Occupancy Agreement has been separately excerpted and numbered by Respondent for ease of reference. [Ext. 151 - 1901.

returning to Mountain Village until 6 months after the 1993 fishing season. [Ext. 33-37, Exhibit G]. Soon afterward, it became clear that Mr. Kopanuk's son was refusing to move-out, contrary to his earlier agreement with AVCP RHA. [Ext. 361. As AVCP RHA prepared to move forward to enforce the Order of Possession, Mr. Kopanuk filed motions in the Trial Court repudiating the September 1992 settlement agreement and alleging lack of jurisdiction. [Ext. 51. In an affidavit, he stated that he had not complied with the parties' settlement because of personal reasons not disclosed to AVCP RHA or the court during the September hearing.* [Ext. 421. He confirmed that he did not intend to re-occupy the home for another year. [Ext. 43, Ext. 33-37, Exhibit G].

Mr. Kopanuk states two grounds for contending that the District Court lacked subject matter jurisdiction to enter the September 24, 1992 Order. The first is a claim that he developed an equitable interest by performing under the lease for 9 years. Pet. Br. at 12-15. Second, Mr. Kopanuk maintains that the MHOA unambiguously represents an installment sale, not a lease with option to purchase as provided by federal law, 24 C.F.R. 5905.446. Pet. Br. at 15-25. Mr. Kopanuk asserts that if the MHOA is a sale agreement, the District Court lacked jurisdiction, not because he owned the home or had agreed to purchase it, but because he was like an owner. Pet. Br. at 22.

² The reasons were his fiancée was too sick to leave Bethel, he had enrolled his children in Bethel schools, and he planned a wedding for January 1993. [Ext. 42). All of these reasons must have been removed around the beginning of 1993, when Mr. Kopanuk moved to Pilot Station. [Ext. 33-37, Exhibit G].

Under Alaska law, the only question which precludes District Court jurisdiction over FED proceedings is one of title. Mr. Kopanuk has not questioned AVCP RHA's title: he did not exercise the MHOA's purchase option, nor claim any other facts sufficient to establish ownership of the home, equitable or otherwise. Mr. Kopanuk's desire to extend the lease, thereby preserving a contingent opportunity to purchase, is not the same as a claim to ownership or title. The District Court possessed jurisdiction to hear the FED action, and to enter an Order documenting the parties' settlement agreement.

STANDARD OF REVIEW

Whether the MHOA is enforceable in District Court through FED action is a question of law, to be reviewed de novo.

ARGUMENT

- I. THE DISTRICT COURT MAY DETERMINE ALL ISSUES RAISED BY FED PROCEEDINGS, INCLUDING EQUITABLE ISSUES, PROVIDED THAT TITLE IS NOT IN QUESTION.

Mr. Kopanuk takes the position that the existence of an "equitable interest" or equitable defenses disables the District Court from hearing an FED action. This position is not supported by this Court's decisions or the applicable statutes.

In 1968, the legislature granted the District Court the power to determine FED actions for the possession of real property. AS 22.15.030(a) (6). Only two restrictions on the District Court's power now exist. The first restriction, the \$50,000 cap on the amount in controversy, is inapplicable because AVCP FU-IA's claim for unpaid rent was less than \$2,000. The second limitation is that

title to the property not be placed in question. AS 22.15.050(1).

In one unreported District Court decision cited by Mr. Kopanuk, a third limitation was mentioned as dispositive: a purported inability of the District Court to hear "cases of an equitable nature II based on AS 22.15.050(2). Tlinait-Haida Regional Housincr Authority v. Jackson, lKA-87-18 CI (1st District April 26, 1988); [Ext. 94-112, Exhibit 3 at 211 and see also Cook Inlet Housins Authority v. Viera, 3 AN 82-8734 CI (3rd District July 28, 1983). [Ext. 94-112, Exhibit 41. Until 1993, it was unclear whether FED proceedings were equitable or legal in nature. As a result, in reaching his 1988 decision in Jackson, Judge Schultz believed that any FED which raised equitable issues could not be decided by the District Court. Pet. Br. 26.

This Court addressed the character of FED proceedings last year. Vinson v. Hamilton, 854 P.2d 733, 737 (Alaska 1993). To determine the availability of jury trial, the Court analyzed the history of the FED action, and concluded that FED actions are essentially equitable in nature. Id. Accordingly, under Vinson it is now evident that AS 22.15.050(2) does not limit the FED powers of the District Court. The statutory power to hear FED proceedings simultaneously grants power to hear an equitable action. Alaska Statute 22.15.050(12) is not applicable to this appeal, and did not divest the District Court of jurisdiction or the power to hear issues relating to an MHOA.³

³ Similarly, another statutory argument raised by Mr. Kopanuk has even less merit. He argues for the first time that the coverage provision of Alaska's Uniform Residential Landlord Tenant

In this appeal, Mr. Kopanuk must therefore rely on AS 22.15.050(1), which reserves to the Superior Court any action "in which the title to real property is in question." Mr. Kopanuk's brief largely avoids this issue, except with respect to the contention that the MHOA is a purchase contract. (Section II, below). As presented by Mr. Kopanuk, even the latter argument fails to establish an issue of title.

A. FOR ALASKA LAW TO PRECLUDE DISTRICT COURT EVICTION, TITLE MUST BE SQUARELY AND CLEARLY IN DISPUTE.

Judge Curda and Judge Steinkruger properly held that Mr. Kopanuk's claims did not question AVCP RI-IA's title, because he did not exercise nor attempt to exercise the MHOA's purchase option. The conclusions of the trial court and intermediate appellate court accord with this Court's prior decisions.

The term "title" under AS 22.15.050(1) means "ownership." Behrens v. Medical and Surgical Clinic, 531 P.2d 1252, 1260 (Alaska 1975). A dispute over a leasehold estate, regardless of its duration, does not involve title. u. at 1252. Decisions construing AS 22.15.050(2) have required the occupant to state a claim to title, or to validly question the owner's title. See, e-s. Steil v. Dessmore, 3 Alaska 392 (1907) (defendant claimed competing title to plaintiff's property); Johnson v. Robinson, 637 P.2d 1051 (Alaska 1981) (defendant alleged plaintiff's deed was

Act (I'URLTA") limits the District Court's power. Pet. Br. at 11, citing AS 34.03.330(b) (2). URLTA is not a jurisdictional statute. The District Court's jurisdiction is granted by AS 22.15.030(a) (6) and AS 09.45.070, provisions which are not dependent on URLTA coverage.

invalid, and that defendant held a superior claim to title).

The issue was discussed at length in Stephens v. Hammersley, 550 P.2d 1268 (Alaska 1976), where the court concluded that foreclosure of a lien on real property did not place title in question. The Court explained the purpose and limitation of the title limitation:

The original reason for this type of jurisdictional limitation was to prevent the complex and intricate questions which frequently arise in a title dispute from being decided by a court presided over by a person who was not learned in the law. As applied to the district courts of this state however, the distinction is an anachronism, since a district court judge must be licensed to practice law in Alaska. In light of the legal qualifications of present district court judges, however, we do not believe that the legislature intended that district court lack jurisdiction under AS 22.15.050(1) unless, from the pleadings and the issues actually contested, title to property is clearly in issue.

Emphasis supplied.

On rehearing, the court emphasized that absent clear intent by the legislature to limit the District Court's power, the court would follow the language of AS 22.15.030. 552 P.2d 652, 654 (Alaska 1976).

An earlier decision which similarly read the title exception narrowly is Modrok v. Marshall, 523 P.2d 172 (Alaska 1974). The Court scrutinized the defendant's title allegations to determine whether the trial court properly exercised FED jurisdiction. The plaintiffs were record owners who sought to evict a former owner of the property. The former owner admitted deeding his interest to his former spouse, who sold it to plaintiffs. However, he argued that his former wife's fraud against him invalidated the

plaintiffs' deed, and precluded FED action. The Court ruled that the former owner had not asserted a valid claim versus the owners of the property, and that FED proceedings were proper. *Id.* at 174.

The inclusion of complex or contingent rights in a lease does not convert the action into one involving title. *m, e.a. Schaible*, 531 P.2d at 1260. Nor does the inclusion of **an** option to purchase in a lease create a question of title. An unexercised option affords only **a** method of acquisition and not **a** present interest in land. *Richardson v. Hardwick*, 106 U.S. 252; 27 L.Ed. 145 (1882) ("the option contract, of itself, did not vest [the optionee] with any interest or estate in the lands").

The mere addition of **an** option to a **lease** agreement does not prevent use of FED action for enforcement. *Hackford v. Snow*, 657 P.2d 1271 (Utah 1982) (**absent** exercise of **option**, FED would have been appropriate to terminate lease with option to purchase); *Rairdon v. Dwver*, 598 A.2d 444 (Me. 1991) (lessees who had not exercised option were evicted by owner **via** FED procedure); *Chapman v. Brokaw*, 588 N.E.2d 462 (Ill. App. 1992); *Accord, Jones v. Kelley*, 616 P.2d 1215 (Or. App. 1980) (lease option terminated through FED proceedings) **and** *State v. Kansas City*, 701 P.2d 1314, 1330-31 (Kan 1985), and &AS 45.01.201(37)(A) ("the inclusion of an option to purchase does not of itself make the lease one intended for security").

The rule is no different in this jurisdiction. In *Currinrton v. Johnson*, 685 P.2d 73, 79 (Alaska 1984), the tenants' lease granted an option to purchase. The tenants exercised the option.

However, due to contract disputes the owner refused to accept the exercise. The Court ruled that the tenant could not be evicted by FED, explaining that the lessees may have become equitable owners by exercising a valid purchase option contained in their lease. "Under the doctrine of equitable conversion, they became equitable owners of the property when they exercised their option." L L s e e also, Miners' and Merchants' Bank v. Brice, 5 Alaska 418, 420 (D. Alaska 1915) (tenant may obtain equitable title by exercising an option to purchase). The cases cited by the Court held that equitable conversion occurred only when a "contract for the sale of real property becomes binding on the parties," Harrison v. Rice, 510 P.2d 633, 635 (Nev. 1973), and where the sale agreement contained "unconditional promises to buy and sell property." Smith v. Tang, 412 P.2d 697 (Az. 1966).

Occupants under a lease with an option to purchase are lessees until the option is exercised, because until the option is exercised they are not unconditionally bound to purchase. They are tenants, not equitable owners. Any lease dispute is resolvable in District Court, unless and until the purchase option is exercised.

B. MR. KOPANUK HAS OFFERED NO ON-POINT AUTHORITY TO ESTABLISH THAT AN LEASE-OPTIONEE MAY PLACE TITLE IN QUESTION WITHOUT EXERCISING THE OPTION.

As will be discussed in more detail below, the MHOA details the contingent method by which the lessee may achieve ownership and become a "Homeowner." The contingencies relate both to the lessee's ability and willingness to become an owner, and require the formality of written notice to the housing authority. 24 C.F.R.

8905.440(d). Mr. Kopanuk does not claim that he was either able or willing to become the owner of the home at the time of the Trial Court proceedings, or that he properly exercised the option.

Instead, Mr. Kopanuk alleges attainment of an equitable interest by virtue of caring for the home, living in it, and making monthly payments. All of this conduct is a requirement of contract performance, and is part of the lease arrangement. It cannot serve as a basis for circumventing contract terms. Mr. Kopanuk never claimed to have built improvements on the property, or to have taken other action inconsistent with the MHOA's lease terms.

1. **The principles governing equitable enforcement of land sales contracts do not establish Mr. Kopanuk's alleged equitable interest.**

To support his claim of equitable interest, Mr. Kopanuk equates his position to that of a purchaser who has invested substantial sums under a partially performed installment contract to purchase land. He refers to precedent discussing the equitable power of a court to decline strict enforcement of a forfeiture clause against a purchaser in breach. Williams v. Delav, 395 P.2d 839, 940 (Alaska 1964); Strack v. Miller, 645 P.2d 184, 186-187 (Alaska 1982); City of Valdez v. Valdez Development Comnanv, 523 p.2d 177, 182 (Alaska 1974); and Moran v. Holman, 501 P.2d 769, 771 (Alaska 1972). See also Curry v. Tucker, 616 P.2d 8, 14 (Alaska 1964) and Alaska Placer Comoany v. Lee, 455 P.2d 218 (Alaska 1969). Each of these cases involved owner-financed sales contracts; transactions where the buyer agreed to buy real property by paying the owner the price in installments of principal and interest, in

exchange for title. As discussed below in Section II, the MHOA is not an owner-financed purchase agreement, and thus these equitable forfeiture cases are inapposite.

The decisions provide a helpful contrast, however, by illustrating a standard method of enforcing contracts equitably. First, the cases show that where sale contracts are concerned, performance is not considered substantial unless payments of 88 percent to 2/3 of the purchase price have been paid, with significant downpayments or the making of substantial improvements on the property. Curry, 616 P.2d 8. Second, before courts decline to apply a forfeiture clause, they determine whether forfeiture of the buyer's investment would penalize the buyer entirely out of proportion to his breach. The final question is whether both parties can be made whole, with each receiving the benefit they bargained for under the purchase contract.

Assuming all requirements are met, the remedy is a 30 - 90 day grace period to give the purchaser an opportunity to pay-off the contract, thereby terminating the parties' relationship and vesting each party with the benefit of their original bargain. m., Valdez, 523 at 177. Conversely, forfeiture is ordered if the above conditions are not met or found, and the purchaser consequently loses his entire investment. Curry,, 616 P.2d 8; Alaska Placer Comoany v. Lee, 455 P.2d 218.

In a lease-option agreement like the MHOA, the above-described analysis has limited applicability. Delinquent participants are often unable to make monthly payments, much less pay the option

price. A grace period for paying the full option price is typically not the lessee's requested relief.' More often, the lessee who has breached the MHOA for several months offers little in the way of prompt cure or reliable assurance of cure.

Second, with a lease arrangement, dispossession does not create a forfeiture. With a lease, monthly payments **are** made as consideration for the right to occupy and possess the property, not to attain part of the fee estate. A terminated lessee does not lose or forfeit an investment in the fee when the lease ends. As will be discussed below, a Mutual Help participant's monthly **payment** does not constitute a payment on the cost of building the home, a payment of price or interest, or a payment toward exercise of the purchase option. Because the monthly payment is rent, not a credit toward purchase, the loss upon termination is not a "forfeiture" within the meaning of the above-cited cases.

Third, the MHOA is not a sale for a price, and although eventual sale is a possibility, there are other significant purposes behind the program. The bargain involves more than an exchange of money for property. By law, Mutual Help housing is built to meet community needs, as evidenced by a local shortage of housing for low-income village residents. 24 C.F.R.

Occasionally, a Mutual Help lessee will prefer to exercise the option rather than continue under the MHOA. For some families, exercising the purchase option avoids the primary occupancy obligation, income-based rent increases, or the simple annoyance of dealing with a landlord. Because the housing authority receives no benefit from avoiding exercise of the option, it is unlikely that such exercise would be rejected, either before, during, or shortly after an FED **hearing**.

5905.220(b) (2) (i), 5905.301, 5905.305, §905.407, AS 18.55.995. Because the program is needs-based, it requires the qualifying low-income family to occupy the home. The program is not intended to provide a property holding for absent villagers. While Mr. Kopanuk's house stood empty and padlocked, wait-listed applicants for Mountain Village housing continued to live in substandard, overcrowded homes or other undesirable conditions. See, e.s., 24 C.F.R. §905.305 (describing federal preference requirements, wait list, and prioritization of need). Moreover, absenteeism generally increases the risk of neglect and casualty, as well as disturbances, and the likelihood that a federally subsidized housing unit will be used as a hotel by persons unrestricted by Mutual Help limitations. The housing authority has no means of effectively controlling non-parties at a distance, or protecting the community from deleterious conditions. See, e.a., Taylor v. Gill Street Investment& 743 P.2d 345 (Alaska 1987) (tenant's disturbances incurable). In considering the nature of the MHOA bargain, courts of equity must consider that the housing authority's goal is not profit-based, and public interests other than the contingent eventuality of a Homebuyer exercising the purchase option are served by the housing.

Significantly, applying equitable principles in the installment contract cases terminated the relationship between the litigants, one way or the other. The owners were not made worse off than before their bargain -- they received return of the property or payment of the full purchase price. In the lease

context, a grace period for compliance can only extend, not terminate the parties' relationship. If it does, the tenant's temporary court-ordered compliance gives no assurance that compliance will continue consistently in the future. Mr. Kopanuk's own actions illustrate that a grace period, however equitable, will not guarantee nor predict future compliance.

This is not to say that the District Court should be precluded from ordering grace periods in FED proceedings; rather, it points out the substantial differences between an agreement where the occupant committed to obtain title, and seeks to immediately complete that promise, versus an occupant who only committed to lease the premises and desires to continue the lease after substantial breaches of the occupancy bargain.

Even in contracts where the owner has agreed to sell and the occupant has agreed to buy, this Court has acknowledged the compliance interests of landowners, as well as the importance of enforcing contracts fairly:

To refuse to enforce a forfeiture provision under these extreme circumstances would as a matter of policy be unsound. It would encourage unscrupulous purchasers to delay performance until the very eve of trial, all the while secure in their knowledge that they may recover the property at **any** time by tendering "adequate compensation." Vendors, on the other hand, would have no means of ensuring that the agreed upon payments would be made in a timely manner. Such an imbalance in the parties relative abilities to guarantee performance would be fundamentally unfair.

Curry v. Tucker, 616 P.2d at 14.

Mr. Kopanuk's proposal is to permit an effective "redemption"^{tt} through the delay caused by ejectment proceedings. This approach

would create an unbalanced enforcement mechanism, and permit occupants to breach their agreement with little consequence. Mr. Kopanuk has offered no reason why such treatment is needed: the issues in the present case were not complex, Mr. Kopanuk did not hold equitable title, and was not prejudiced by the FED proceedings.

Ironically, Mr. Kopanuk's authorities offered for analogy establish that he was justly treated by the District Court. Mr. Kopanuk received precisely the equitable remedy he argues a land purchaser would have received, but on substantially less foundation. Mr. Kopanuk invested no payments on the purchase price, and forfeited nothing beyond a right of possession which he did not intend to exercise for over a year, and an unexercised purchase option which he did not seek to perform. Despite a lengthy grace period (September 23 - November 25, 1994), he still showed scant willingness to comply with Mutual Help program requirements, and did not comply within 30 x 90 days or 6 months of his settlement. The purchase cases do not require a court of equity to provide relief additional to that granted by the Trial Court.

Mr. Kopanuk's argument assumes that FED proceedings prevent the District Court from fashioning equitable remedies. The law is to the contrary. A finding that the MHOA is a lease does not prevent the District Court from exercising the rule against inequitable forfeiture. Dillinsham Commercial Co. Inc. v. Wears, 641 P.2d 1, 7 (Alaska 1982) (lessor unsuccessfully attempted to

forfeit a lessee's purchase option after a & ~~minima~~ lease violation) . In an FED hearing, the District Court may exercise the equitable power to refrain from enforcing an inequitable termination, to allow a continuance, or to provide a grace period for lessee compliance or **an** opportunity to exercise the purchase option, as the court deems appropriate under the circumstances. However, the court cannot be expected to provide any remedy except dispossession for lessees who are unwilling or unable to comply with the terms of their occupancy agreement.

2. **Condemnation principles are irrelevant, except to the extent that they confirm the lack of any vested interest in land prior to the exercise of an option.**

In further support of his equitable interest theory, Mr. Kopanuk suggests that if an interest **can** be valued under condemnation principles, it should not be divested through FED action. Pet. Br. at 12. If this argument were accepted, few FED actions would be proper, **because** even **leases** without purchase options create interests compensable in condemnation proceedings. The suggested test is meritless.

Mr. Kopanuk's cases confirm that title questions are virtually irrelevant in condemnation valuation. Although holding that an option right may have money value, the cases affirm the view that an unexercised purchase option vests no estate in land for the optionee. Spokane School Dist. No. 81 v. Parzybok, 633 P.2d 1324, 1327, 1329 (Wa. 1981); County of San Diego v. Miller, 532 P.2d 139, 142 (Cal. 1975). In the latter decision, the court acknowledged that the tenant had no claim to title by virtue of the option:

We do not dispute the technical correctness of the . . . conclusion that -- applying traditional common law concepts of property -- the option creates in the optionee no estate as such in the land.

The decisions further confirm that an option has value only so long as it has not been lost through breach. A tenant whose lease has been terminated before the government's taking has nothing of value to condemn. a, u, Spokane School Dist. No. 81 633 P.2d at 1329 (for tenant - optionee to recover, must be in good standing under lease).

II. THE MHOA IS A LEASE, NOT A CONTRACT FOR THE SALE OF LAND.

Mr. Kopanuk asserts that the MHOA is a contract for the sale of land, which places title to the property in question under AS 22.15.050(1). Conceding that he was never bound to buy, Mr. Kopanuk nonetheless maintains that he should be granted the protections of a vendee.

A. THE MHOA'S LANGUAGE AND EFFECT IS THAT OF A LEASE.

Taken individually or as a whole, the provisions and substantive obligations of the MHOA are those of a lease. The lease character of the MHOA is specific. The MHOA sets a "lease term" [Ext. 159, §3.2]; requires the participant to allow inspection of the home during the "lease term" [Ext. 163, §S.1(f)1; restricts subletting [Ext. 164, 55.4(b)]; refers to the onset of the "lease term" [Ext. 169, §7.3(a)1; and describes termination of the "lease term" [Ext. 125, 959.2 and 9.31.

1. List of standard tenant obligations.

The tenants' obligations with respect to the home, visitors and neighbors are typical of leases generally. Section 5.4 of the

MHOA lists tenant obligations which are equivalent to obligations imposed by landlord tenant statutes. a. AS 34.03.120. Section 5.4 requires the Mutual Help occupant to abide by housing authority regulations, to observe code provisions affecting health and safety, to keep the home clean and safe, to dispose of all waste in a sanitary and safe manner, to use all components of the home in a reasonable manner, to refrain from damaging the premises, disturbing the peace, or engaging in illegal or other activities detrimental to the community, and to promote the decent, safe and sanitary condition of the Project.

2. **Housing Authority's power to calculate and unilaterally increase monthly chargee.**

The monthly payments required under the MHOA are typical of low-income public housing leases. Unlike payments on installment contracts, the monthly charges are not fixed in advance and may fluctuate substantially over time.

Under Mutual Help, the monthly charge is dependent on income levels, but is subject to a minimum charge regardless of income, known as the Administration Charge. The Homebuyer pays the higher of 15 percent of the Homebuyer's adjusted household income or the Administration Charge. The Administration Charge is calculated by reference to the housing authority's Mutual Help overhead cost, and increases in the housing authority's discretion over time. See 24 C.F.R. 5905.427(c). At the time of Mr. Kopanuk's move-in, the Administration Charge was \$35.00. At the time of his breach of the MHOA, the charge was \$75.00, and at the time of the 1992 hearing,

it was \$90.00 per month. [Ext. 140-1441.]

If the Homebuyer pays more than the Administration Charge, the excess is credited to the Monthly Equity Payments Account (^{1t}MEPA^{1@}). The MEPA serves as a forced savings account. The Homebuyer can elect to spend the MEPA on exercising the purchase option, or he can withdraw the balance, with interest, upon termination. [Ext. 1661. The MEPA assures that all lessees pay the same percentage of their income **as** rent, but permits higher earners to benefit from their own efforts by accruing a MEPA balance. MEPA accounts have no analogy in property sales agreements.

3. Counseling and inspections.

Consistent with a rental agreement, the Homebuyer is required to participate in regular Housing Authority counseling and inspections. 24 C.F.R. 8905.425(e); [Ext. 1801. Some Homebuyers find this obligation onerous, and Alaska Legal Services has argued on behalf of one Mountain Village client that inspections are burdensome violations of privacy. Counseling generally relates to the care of the home, budgeting, and any other problems identified in inspections or Homebuyer performance. & [Ext. 341; 24 C.F.R. 5905.453.

4. Income reporting and **verification;** family composition.

To ensure that monthly payments are determined accurately, the

¹ Although Mr. Kopanuk cites cases which hold that a nominal rent may indicate a sale transaction disguised as a lease, Pet. Br. at 14, he does not suggest that his \$90.00 monthly payments were ¹⁸nominal.^N In accordance with the program, payments represented not less than 15 percent of his income, and possibly more.

Homebuyer must regularly report and verify his family's income. Any new household member must be reported, along with any increase in family income. New occupants can increase household income simply because of their Alaska Permanent Fund Dividend. The Homebuyer must obtain approval to admit extended family members to the home, unless they are his children, his or his wife's aged or widowed parents, or persons providing live-in care to family members. [Ext. 1641.

5. No subletting or assignment.

The Homebuyer must occupy the home personally, as his "primary place of residence," and may not sublet the home without the housing authority's consent. 24 C.F.R. 5905.416; 5905.428(f)(2) (i), 5905.449(c) (i), [Ext. 164, §5.4(a)]. Consent is granted only under specific conditions consistent with the requirement of primary residency. 24 C.F.R. §905.416. Neither the MHOA nor its accounts can be assigned without consent. [Ext. 1671.

6. Housing authority's power to perform work and rehabilitation.

The housing authority retains the right to take over maintenance responsibilities and to charge a Homebuyer who fails to perform maintenance or the supplying of utilities. 24 C.F.R. 5905.428. The housing authority may perform rehabilitation, and modernization work on the home at its option, when HUD funds are available. 24 C.F.R. 5905.600. The housing authority's plan to perform thousands of dollars of Comprehensive Grant work on each Mountain Village home [Ext. 1-12, Exhibit A] is inconsistent with a vendor/vendee relationship.

7. No changes or alterations without approval.

The participant cannot make changes to the unit without the housing authority's consent. M Y improvements made by the Homebuyer remain the property of the housing authority, and are not credited at termination. [Ext. 1651.

8. Taxes and insurance.

The housing authority **pays** all payments in lieu of taxes. The housing authority also obtains fire and casualty insurance. The Homebuyer is not entitled to any insurance proceeds in the event of casualty. [Ext. 1801. The housing authority determines whether the home shall be rebuilt or repaired, and may keep the proceeds and decline to rebuild the home over the Homebuyer's objection.

9. Express, detailed provisions for termination.

The power of 30-day termination is fully reserved to both MHOA parties. Termination is mentioned frequently as the clear alternative to achieving the homeownership opportunity. [Ext. 159, 53.21; [Ext. 161, 54.1(c)]; and [Ext. 175, 59.11. It is also addressed independently, in detail. [Ext. 163, §§.1(d) and 85.2(b)]; [Ext. 164, §5.2(c)1; [Ext. 165, 55.51; [Ext. 167, 56.61; [Ext. 175-177, 59.1-9.51; and [Ext. 180-181, 811.31. The MHOA describes termination in concrete, practical terms, not as an unlikely contingency: it specifies that the Homebuyer can be charged the cost of "putting the Home in satisfactory condition for the next occupant" [Ext. 1631; that any improvements made are not credited [Ext. 1651; that the cost of unperformed maintenance is estimated and charged [Ext. 1771; and that any abandoned property

left on site is disposed of by the housing authority [Ext. 1771. The MHOA describes in particular detail how any new option price will be computed for the "subsequent Homebuyer." [Ext. 1691. See ~~also~~ Ext. 169, 1681 (referring to the Homebuyer who is the "first" occupant), and [Ext. 1751 (successorship). This attention to detail is consistent with a lease with option to purchase: the likelihood of termination is real, and the lessee may never be able or willing to exercise the purchase option.

The participant's unfettered ability to terminate the relationship is equally clear. Such termination is effective on 30-days notice of termination. [Ext. 1751. This right is critical for Homebuyers like Mr. Kopanuk who may decide to leave the village for personal reasons, who may find more attractive housing or employment elsewhere, or who are dissatisfied with the housing program generally.

B. THE MHOA EXPLICITLY PROVIDES THAT PURCHASE DOES NOT OCCUR UNTIL SPECIFIC POWERS ARE EXERCISED BY THE HOMEBUYER.

The MHOA provides that the Homebuyer must take specific action in order to convert the lease into a purchase contract. The optional nature of the purchase right is demonstrated by the use of the word "opportunity" on the signature page. [Ext. 1521. The language of the option itself reflects this contingent and voluntary character: "the Homebuyer may at his option purchase the home." [Ext. 168, S7.11.

In the 25th year, the cost of exercising the purchase price is zero, but the Homebuyer may still opt not to take title. Federal regulations specify that the lessee may always choose not

to purchase. 57 Fed. Reg. 28,247 (June 24, 1992) (discussing 5905.440, explaining that even when the Homebuyer's accounts add up to an amount sufficient to exercise the purchase option, the Homebuyer may choose to remain a Homebuyer, move out, or be converted to the authority's Low-Rent program). The lessee's power of termination under S9.3, and the optional nature of purchase continue throughout the lease term. [Ext. 1751.

Mr. Kopanuk contends that he would have been bound to buy the home under specific circumstances; circumstances which he does not contend apply in the present case. The 1976 MHOA form optimistically contemplated that an IHA would have funding to administer a financing program, and stated that when a Homebuyer showed sufficient wherewithal to qualify for such financing, the housing authority could require purchase. However, the goal was easier said than done, and well before Mr. Kopanuk's MHOA was terminated, HUD regulations cancelled this provision. This change was documented in 24 C.F.R. 5905.440 (June 1990):

If the IH.A offers IHA homeownership financing... and has funds available for that purpose, [and] determines that the homebuyer is eligible, the IHA shall notify the homebuyer that IHA homeownership financing is available to enable the homebuyer to purchase the home, if the homebuyer wishes to do so and, that if the homebuyer chooses not to purchase the home at that time, all the rights of a homebuyer shall continue...1^t

As a matter of law, AVCP RHA could not have required Mr. Kopanuk to purchase the home at any time pertinent to this case. Nor did AVCP RI-IA have funds to offer a financing program.

The benefit of not binding the Homebuyer to exercise the purchase option can be substantial. For example, a higher income

Homebuyer may develop a substantial MEPA balance which permits him to buy the home through the option. Nonetheless, he may choose to stay a lessee and keep his options open. Rather than spend the MEPA, he can wait. The purchase price continues to drop, and the MEPA remains available to spend on other property or activities at termination. [Ext. 1701. In the meantime, the home is eligible to receive modernization monies from HUD and the housing authority. The structure of the program thus ensures that a Homebuyer who is clearly able to take title must still be willing to become the home's owner.

The MHOA's terms establish that the consequences of exercising the purchase option are substantial. The agreement terminates. 24 C.F.R. 5905.440(a). The Homebuyer must assume the obligation for obtaining fire and casualty insurance and paying any taxes. If he obtains the home through a loan, he becomes contractually indebted for the entire purchase price plus interest. The homeowner can no longer walk away from the home on 30-days' notice. All other benefits of record ownership accrue -- such as income tax deductions, and avoiding the housing authority's income reporting and inspection requirements. The Homebuyer can give the home away, sublet it, alter its structure, and take any other actions not inconsistent with his financing arrangement, if any.

Attachment 1 to the MHOA sets out the specific provisions required for purchase under IHA financing. [Ext. 185-1901. These financing provisions, which offer more homeowner protections than a standard loan, still vary significantly from the pre-purchase

provisions of the MHOA. The Homeowner agrees to pay a principal purchase price. This debt may be accelerated at the option of the housing authority upon the Homeowner's breach [Ext. 1851; the debt is binding on the Homeowner's heirs; he must maintain Reserves and pay Monthly Mortgage Servicing Charges, as well as monthly debt service amounts. He may "prepay" the debt owed; his monthly payments directly reduce the principal balance; he is a named insured on the insurance and receives any insurance proceeds exceeding the amount of his debt. The housing authority can "foreclose" on the nsecurity^t in the event of breach, and must deliver a satisfaction of debt upon payment in full. [Ext. 185-1901. These obligations and benefits reflect a new agreement and substantial changes in the parties' relationship after purchase and in-house financing.

1. **The Option Price is not a "Prepayment" of monthly charges.**

Mr. Kopanuk alleges a power to 'prepay' his obligations by paying the option price stated on the purchase price schedule. The MHOA refers to the concept of "prepayment" only in Attachment 1, which states conditions applicable after the Homebuyer becomes a Homeowner by purchasing the home though IHA financing. [Ext. 1851. Since the term is used only after purchase, its usage undermines Mr. Kopanuk's argument.

Moreover, the Homebuyer cannot "prepay" monthly payments. As described above, monthly payments change, fluctuating according to the housing authority's overhead, the Homebuyer's income, and other factors. Nothing in the MHOA permits a Homebuyer to "pre-pay" the

monthly charge. For example, even if the Homebuyer paid 12 Administration Charges in advance, that would not prevent the Housing Authority from raising the Administration Charge or increasing his charges according to increased income. Only exercising the purchase option terminates the obligation to make monthly payments, and prevents the monthly payment from fluctuating according to income changes or AVCP RHA's housing operations expense.

Nor could there be a prepayment when there is no existing obligation. The obligation to pay exists only so long as the Homebuyer elects to remain in the program as a lessee. Thus, the Homebuyer alone determines how long the "obligation"^{tt} to pay monthly payments will last. Only when the purchase option is exercised does any obligation become fixed, in accordance with the Purchase Price Schedule. 24 C.F.R. 5905.440(b) (2).

2. **Monthly Payments do not reduce the purchase price of the home.**

The monthly payments are not payments of the option price. First, there is no relationship between the amount of the monthly payment and the amount by which the option price drops each month. Nor does a failure to pay the monthly payment keep the option price from dropping.⁶ The option price shrinks as a function of time

⁶ A homebuyer in arrears is disabled from exercising the purchase option because he is not in good standing. Should he pay all monthly payments owed, he can then exercise the option as of that date. In the meantime, his delinquency does not affect the payment schedule which is the same for all Homebuyers with the same house in the same project. Similarly, when a Homebuyer is out of occupancy because of fire or casualty, AVCP RHA does not suspend the Purchase Price schedule, which keeps dropping even though the

alone, and is wholly divorced from the monthly payment obligation.

The only money which is applied toward the purchase price of the home is the cash supplied by the Homebuyer when he exercises the purchase option. For Homebuyers who have made payments in excess of the Administration Charge, and who exercise the option, the MEPA is applied to the purchase price. However, since the MEPA amount is not applied unless the Homebuyer chooses to buy, the development of a MEPA balance does not constitute pre-payment.

If the price for exercising the option were related in any way to the Homebuyer's monthly payment, the relationship would be obvious. If Mr. Kopanuk's argument were correct, for example, immediately upon signing the MHOA, he could have paid \$10,500 to own the home outright. ($\$35.00 \text{ Administration Charge} \times 12 \text{ months} \times 25 \text{ years} = \$10,500$). In fact, the cost of exercising the option far exceeded that amount, at over \$100,000.

3. Taking title **ie optional** even when the **Option** price **drops to zero in the 25th year.**

Mr. Kopanuk states that the option is extinguished in the 25th year, because Purchase Price schedule and the cost of exercising the option drops to zero. Pet. Br. 21. According to petitioner, this is abnormal because "in a true option agreement, the purchase price is not paid until after the option is exercised." Although this aspect of the Mutual Help program is unusual, it does not eliminate the voluntary and contingent nature of achieving ownership.

Homebuyer is making no payments and owes no payments.

Again, the **Mutual** Help regulations make clear that the Homebuyer still has the option of not taking title. **24** C.F.R. 5905.440(d). This recognizes that ownership is not desirable in every case. The housing authority and HUD have programs where zero-income occupants pay zero rent. For some Homebuyers, switching to no-rent programs will be more beneficial than assuming the full cost of upkeeping a village home and paying taxes and insurance. **See 24** C.F.R. 5905.458. Elders who would otherwise qualify for needs-based programs **may have** other good reason for not becoming owners of valuable assets.

c. **NEITHER? IEMAITENANCR RESPONSIBILITY NOR URLTA CONVERT THE MHOA INTO AN INSTALLKENT SALE.**

Mr. Kopanuk submits that the maintenance responsibility imposed by the MHOA is impermissible under the Uniform Residential Landlord Tenant Act ("URLTA"). In citing URLTA, Mr. Kopanuk omits the language which authorized the type of arrangement required by the MHOA:

The landlord and tenant of a one- or two- family residence **may** agree in writing that the tenant perform the landlord's duties specified [above]. They may **also agree** in writing that the tenant perform specified repairs, maintenance tasks, alterations and remodeling. Agreements are allowed under this subsection only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

As 34.03.100(c) (1992).

The MHOA and the Mutual Help regulations show that the maintenance responsibility is not an Wevasion^N by the landlord. **24** C.F.R. §905.428 requires the housing authority to undertake any repairs that threaten, the life, health, or safety of the occupants or

property damage. [Ext. 1641. While the housing authority generally charges for performing such work, the charge essentially adds-back the effective discount which is granted on the expectation that the Homebuyer will perform maintenance. That is, under Mutual Help the Homebuyer's monthly payment is lower because the Homebuyers, not the housing authority are generally performing maintenance work. As a result the Homebuyer pays a lower monthly payment to the housing authority -- capped at 15 percent of his income -- than is permitted under the Low-Rent program, where tenants pay 30 percent of their income as rent and the housing authority performs all maintenance and replacements.

Even if the MHOA were in violation of URLTA, this would not require enforcement by ejectment action. Pet. Br. at 19. FED proceedings apply to more than URLTA-covered leases: they apply to all leases and similar "agreements," with or without compliance with URLTA. As 09.45.090.

D. THE LAND CONTRIBUTION FROM 'I'RE ANCSA VILLAGE CORPORATION IS NOT A "DOWNPAYMENT"

The Mutual Help program requires a "Contribution"^{tt} as a condition of admission. Mr. Kopanuk cites this aspect of the program as consistent with a sale agreement, and offers Quisley v. CaDolonao, 383 N.Y.S.2d 936 (1976) for the proposition that an optionee's payment of a "nonrefundable downpayment of a sizable sum," accompanied by "nominal rent" converts a lease arrangement into a sales contract. Pet. Br. 14. In the present case, the Contribution fails to establish Mr. Kopanuk's claim because the Contribution (1) was not provided by him; (2) was not of a sizable amount as

required by his authority; and (3) would not be "forfeited" by him in favor of AVCP RHA at termination.

The Mountain Village ANCSA corporation donated the land for AVCP RHA's project. [Ext. 154-1551. This was the only contribution required for the Project. In other words, Mr. Kopanuk provided no self-help work, money donation, or materials contribution. The MHOA specifies that the Homebuyer has only a contingent interest in any tribal land contribution to the project, and that the contribution is "unrefundable". [Ext. 158, 52.5(c)]; [Ext. 166, §6.1(c)1.

The land was not contributed on Mr. Kopanuk's individual behalf, as he suggests by alleging for the first time, that he is a shareholder of the Mountain Village ANCSA corporation. Pet. Br. at 18, n. 12. The benefit of the village's donation was never limited to its shareholders, and as a matter of law, the donation could not have been restricted in such fashion, in 1982 or now. At the time of the Project's development, non-Native, non-Indian applicants could qualify for the program on the same footing as a shareholder of the village corporation. Only after 1988 legislation did Congress authorize Indian Housing Authorities to limit the benefits of Mutual Help housing to Alaska Natives and Indians. 24 C.F.R. 5905.115(c); 5905.416(a) (1) (ii). HUD has never authorized Indian Housing Authorities to limit admission to Alaska Natives (to the exclusion of "outside^w Indians), to enrolled members of the particular village; or to shareholders of local ANCSA corporations. 24 C.F.R. 5905.102 (definition of l¹Indian^{tu}!;

5905.165(c)(4)) (prohibiting tribal preferences).

The value attributed to the land contribution (\$1,500) is not the "sizable" downpayment described in Quicrlev, 24 C.F.R. §905.240(a). In puisley, the downpayment was \$10,000 on a \$47,000 purchase price -- one fifth of the purchase price. See also Jameson v. Wurtz, 396 P.2d 68. To compare, the cost of exercising the purchase option exceeded \$100,000 in 1982.

Finally, and most significantly for purposes of equitable principles, the contribution made by Mr. Kopanuk's ANCSA corporation would not be forfeited at termination. In the case of a downpayment made in a failed sales transaction, the seller keeps the downpayment as his own. In contrast, AVCP RHA simply re-releases the home to a qualifying "Subsequent Homebuyer." Thus, AVCP RHA gains nothing, and Mr. Kopanuk loses no vested interest, by virtue of the transferred Contribution.

E. THE WORDS USED IN THE MHOA ARE CONSISTENT WITHN A LEASE WITH OPTION TO PURCHASE, NOT WITH A SALE.

Mr. Kopanuk's main reason for calling the MHOA a sales agreement is the use of the term "Homebuyer." This term is defined specifically to mean the signatory of the MHOA I^twho has not yet achieved homeownership." [Ext. 1531. Mr. Kopanuk's status as a Homebuyer thus establishes that he is not the owner of the home. The l'buyer" component of the term is clearly intended to reflect the fact that the lessee receives an option to purchase. It does not establish that the Homebuyer is bound to buy. So long as there is no binding obligation to buy, the parties' relationship is properly described as a lease.

If the term Homebuyer is applied literally in accordance with its contractual definition, sample MHOA sentences would read:

The term of the [signatory who has not achieved homeownership]'s lease under this Agreement commence on the first day of the calendar month. [Ext. 1591

The [signatory who has not achieved ownership] shall pay to the IHA during the term of the lease a monthly payment. [Ext. 1611

Even if the participant misunderstood the meaning of the word "Homebuyer," the term "lease" is unequivocal, and is consistent with the contract as a whole.

Mr. Kopanuk contends that the mere use of the terms "purchase," "amortize," "equity" and "equity" permits an interpretation that the contract is unambiguously a purchase agreement. But the context of these terms, as well as their conditional nature, must also be considered. The term "equity," for example, is used to describe accounts which the Homebuyer can receive back at termination or spend on the home's purchase, at his option. The ease with which the Homebuyer may terminate and withdraw his "equity" shows that the provision is inconsistent with a sale contract. In a sale contract, the secured parties' interest must be foreclosed or liquidated to determine whether the Homebuyer receives "equity" or its opposite -- a deficiency. Obviously, in the Mutual Help context, the Homebuyer is not subject to a deficiency or the vicissitudes of market value.

Mr. Kopanuk states that the MHOA permitted him to develop maintenance credits as well, an indication of "equity." Pet. Br at 20, n-15. HUD never approved a "maintenance schedule" as

required by this out-of-date MHOA provision, and AVCP RHA has never applied one. The regulation was deleted in 1984. 49 Fed. Reg. 21,476, 21,491. The revisions to the 1976 MHOA form (Notice PIH 91-46, issued November 7, 1991) delete the provision entirely. More importantly, analysis of the MHOA shows that the effect of adopting a Maintenance Credit was to allocate some of the MEPA account to HUD, and some to the Homebuyer, at termination. &, [Ext. 176, 59.4(c)]. By not implementing the "credit," AVCP RHA permits the Homebuyer to receive & of the MEPA, not just part of it, at termination. A credit formerly used to determine the amount of termination refund to HUD does not establish an equitable interest in the Homebuyer.

Mr. Kopanuk recommends Judge Fuld's reasoning in Viera, which concluded that the MHOA is more than a lease because the term "eviction" is not used. Rather than describe court enforcement proceedings, the MHOA uses standard lease terminology in referring to termination.ⁿ This is the same term used by state landlord tenant statutes. See, ,m, AS 34.03.160, 220, 230, 260.' A reasonable Homebuyer would understand the term to mean severance of all MHOA rights, including occupancy. As a drafting matter, the word "termination" is preferred because it is neutral, and can be used to cover mutual, involuntary and voluntary severances of the contract. The term "eviction" has a one-sided use only. Heavy-

⁷ URLTA uses the term "eviction" in only one section, relating to limitations on the right to terminate mobile home park dwellers. This anomaly was added in 1976, two years after the main provisions of URLTA were adopted.

handed drafting should not be deemed a pre-condition of balanced contract interpretation.

The term "rent," although not found in the MHOA, is found in federal regulations and statutes. a, e-~~u~~, 49 Fed. Reg. 21,476, 21,485 (citing 1984 version of 24 C.F.R. 5913.101 covering Mutual Help II rent¹ determinations). The absence of terms such as "eviction," "court," or "FED proceedings" does not assist contract interpretation. If missing language were persuasive evidence, it is notable that Mr. Kopanuk's terms -- "downpayment^v", "prepayment", "title", "ejectment," "foreclosure^I", or "redemption" -- are likewise omitted from the contract.

F. MR. ROPANOK'S INTENT DOES NOT VARY THE PLAIN MEANING OF THE CONTRACT.

Eight months after the Order of Possession was entered, Mr. Kopanuk submitted an affidavit stating his belief that under the MHOA, he was like a homeowner. His affidavit confirms that he did not believe he had bought the home, owned the home, or was bound to purchase it. The stated basis for his belief is the length of time he lived in the home, and not the MHOA or its terms. [Exc. 391.

A party's subjective intent cannot vary unambiguous provisions of a contract. The MHOA provides specifically that a Homebuyer does not become a Homeowner until exercise of the option right. One may subjectively believe that having an option right is similar to being an actual purchaser, but a subjective misunderstanding of law will not defeat jurisdiction. Through granting the option right, and other protections found typically in HUD-subsidized

housing, the MHOA provides desirable benefits above and beyond a typical landlord tenant relationship (Pet. Br. at 23). But, not only were such benefits not at issue in the present case, they would not have raised a question of title in any event.

AVCP RHA was not required to submit evidence of its subjective contract understanding. Pet. Br. at 22. The parties' intent is identified clearly in the MHOA itself, where AVCP RHA stated its intent to develop a Mutual Help program in compliance with HUD requirements, and the parties acknowledged that Mr. Kopanuk was admitted to participate in such program. [Ext. 1521.

(3. **APPLYING ADHESION CONTRACT PRINCIPLES DOES NOT CHANGE THE NATURE OF THE MHOA.**

Mr. Kopanuk cites authorities from insurance and the commercial sector to argue that any ambiguity in the MHOA should be construed against AVCP RHA and its drafter, HUD. Mr. Kopanuk also cites Judge Schultz's comments in the ~~Jackson~~ case to suggest that HUD did not fairly draw the occupancy agreement used in HUD's Turnkey III program. That Judge Schultz reached the opposite conclusion with respect to the MHOA, four years later, is barely acknowledged. ~~Smith v. Tlinsit-Haida Housins Authority~~, IKE-91-539 CI (1st District May 5, 1992).

Adhesion concepts are inapplicable for several reasons. First, the concept is applied to prevent surprise and to enforce the reasonable expectations of contracting parties. Because the MHOA itself states repeatedly that it is a terminable lease, enforcement via FED is reasonable. In contrast, treating the contract as one for sale, and permitting housing authorities to obtain judgments

against terminated Homebuyers for the unpaid price, would indeed be a major contradiction of the MHOA's language and intent.

Nor would adopting Mr. Kopanuk's view result in a balanced interpretation of a contract which already contains numerous elements unilaterally favoring the Homebuyer. For example, each of the MHOA elements cited by Mr. Kopanuk as constituting indicia of sale are in fact designed to assist and benefit the Mutual Help participant. The MEPA is a benefit to a high-earning Homebuyer. The fact that the option price declines with time favors only the participant, since it does not represent value received by the housing authority. The reduction has no business justification and is clearly designed to provide the low-income occupant with a real opportunity to buy the home. The granting of generous, arguably artificial benefits within a contract should not require the contract to be construed acrainst the granting party.

Mr. Kopanuk points to no ambiguity within the MHOA to construe against AVCP RHA or HUD. The termination provisions of the contract, for example, are precise and understandable, as is the option provision and the attached sample promissory note. Rather than point out contract terms which are confusing, or which favor his interpretation, Mr. Kopanuk recommends that the "plain language of the MHOA should mean what it says without regard to subtle and contradictory nuances." Pet. Br. at 23. Taking this advice, the MHOA provides a terminable lease containing a contingent opportunity to purchase, consistent with the purposes the MHOA serves under the housing regulations. Undeniably, the MHOA offers

more than a standard lease from the private sector. But that factor does not make it something other than a lease, nor does it convert the MHOA into a contract for sale.

III. MR. KOPANDK'S CASE ADTBORITIES ARE DISTINGUISHABLE ON VARIOUS GROUNDS.

A. THE ONLY CASE CITEO BY MR. KOPANDR RELATING TO AN MHOA IS BASED ON AN OUT-OF-DATE **LEGAL** ANALYSIS.

Mr. Kopanuk cites several cases for the proposition that his position is the better or the prevailing rule. The majority of courts reviewing the issues, including five Alaska Superior Court judges sitting in the District or Superior Court, have determined that the MHOA is a lease, not an installment sale. Smith v. Tlinuit-Haida, **1KE** 91-539 CI (1st District May 5, 1992); Bering Straits Housins Authority v. Kulowivi (2d District at Nome, Order JULY 28, 1993); Conner River Basin Regional Housina Authority v. Ben John, 3GL-93-19 Civ., (3rd Dt. March 29, 1994) (Judge Anderson, ruling from the bench); Judge Curda in the trial court, and Judge Steinkruger on appeal to the Superior Court in this action. Mr. Kopanuk's heavy reliance on the 1983 Viera case is unwarranted.⁸

Viera should be disregarded because the District Court misapplied important principles. The case shows that the decision is based on the fact that the MHOA is complex and provides more

⁸ The facts of the unpublished Lew v. Borchardt-Weir, (Dist. Ct. March 20, 1991) 3-AN-91-1752 CI, opinion are fully distinguishable. [Ext. 134-1381. A real property transaction which involves a promissory note, installment payments, and issuance of a bill of sale, even if the parties call the transaction a "lease," places title in question. The opinion does not deal with a true option agreement or with a lease.

benefits than a standard lease. The court erroneously believed that adding unusual benefits and obligations to a residential lease prevented its termination in FED; even if the added benefits did not create a title question and the agreement was not a sale contract. The court based this conclusion on AS 09.45.630, which the court construed as a limitation on FED actions. In fact, AS 09.45.630 is a limitation on ejectment proceedings, not FED actions. The ejectment statute was amended in 1974 to state that "recovery of possession from a tenant shall be made under AS 09.45.060 et seq." The amendment was part of Alaska's adoption of URLTA, and has been construed to reflect a "mandate" for using FED procedures to evict tenants;^v Schaible at 1260 at n. 31. In other words, persons holding under an URLTA covered lease must be evicted by FED and not ejected. But this did not mean the converse -- that any occupant not covered by URLTA had to be ejected, or that a residential lease with additional benefits (such as an option to purchase) could be terminated only through ejectment. AS 09.45.090 (authorizing FED's for forcible entry **or** detainer problems which arise after breach, termination, or expiration of a "lease or agreement") .

Further, the court noted that a lease with option was "too complex" for a District Court to handle as an FED. That contention was explicitly rejected by this court several years before. Schaible v. Fairbanks Medical and Surgical Clinic, 531 P.2d 1252, 1260 (Alaska 1975); Thrift Shoe, Inc. v. Alaska Mutual Savings Bank, 398 P.2d 657, 660 (Alaska 1965). The nature of the

obligations imposed by a MHOA virtually guarantee that **claims** brought to the court will be less complex than issues raised by many commercial leases.

Finally, the Viera court also appeared to believe that "equitable defenses" could not be heard in FED proceedings, even though he did not determine that the Homebuyer was a purchaser in the true sense. Again, this conclusion was likely based on AS 22.15.030(a) (2) which does not limit FED proceedings. *Supra*, at 5-6.

B. CASES INVOLVING TBB TUBNKBY III PROGRAM ARE NOT ON POINT.

Mr. Kopanuk cites two cases relating to a different, older HUD housing program, known as Turnkey III. Tlinicrit-Haida Regional Housing Authority v. Jackson, 1 KA-87-18 CI (1st Dist. April 26, 1988) and Cuyahoga Metropolitan Housing Authority v. Watkins, 491 N.E.2d 701 (Ohio App. 1984).

The Turnkey III Program involved an agreement ("IIHOOA") and program requirements which have long since been disfavored by Indian Housing Authorities and HUD. One major difference in Turnkey III was that by making even minimal monthly payments, a Turnkey III participant established "equity" credits toward the purchase price. Portions of each monthly payment were placed in certain accounts which accumulated over time. 24 C.F.R. 5905.513, 5905.517 (Nonroutine Maintenance Reserve and the Earned Home Payments Account). One of these credits was determined by the estimated value of the Homebuyer's routine maintenance efforts. 24 C.F.R. 8905.517(a). These accounts, their method of pay-out and

their accrual were substantially more complex than the accounts described in the MHOA. Turnkey III also contained a built-in surprise: a Homebuyer could make very large payments based on 30 percent of income, yet come no closer to exercising the purchase option than a neighbor who paid the lowest charge. 24 C.F.R. §905.513(c). Nor would the participant be reimbursed any of the excess payment at termination. The excess was spent on the housing authority's operations expense. &g, e.cr., 55 Fed. Reg. 24,736 (1990) (explaining disadvantages of Turnkey III and why conversion to Mutual Help should be considered).

In the Mutual Help program, in contrast, there are no EHPA or NRMR accounts, and the preconditions of exercising the purchase option are clear. A Homebuyer who pays more than \$90 per month because of higher annual income builds-up a fully refundable balance in the MEPA. The accrual is solely a function of money paid, and is not "sweat equity" or accrued credit based on work required to be performed on the home.

In addressing the HOOA, and lacking any HUD regulation establishing that the HOOA was a lease-option agreement, see 24 C.F.R. 9905.529, the Cuvahoua court applied specific state statutes not adopted in Alaska. The Ohio Legislature had created a bright-line test for deciding when an installment sale contract became a subject of foreclosure rather than FED. The legislature had also determined and defined what constituted an "installment sales contract." The Ohio Appellate court was confined by these statutes in reaching its decision on the HOOA. The dissent noted the harsh

result of foreclosure, and the possibility of a substantial judgment against the participant -- something *not* contemplated by the HOOA. 491 N.E.2d at 709.

Alaska's foreclosure and mortgage laws differ substantially from Ohio/s. No Alaska authority prevents the District Court from deciding what the MHOA is, **or** how it should be equitably enforced, simply because it contains provisions which are more beneficial than standard leases.

c. **AS A PROPHYLACTIC RULE DESIGNED TO PREVENT SHARP DEALINGS AND THE AVOIDANCE OF FORECLOSURE REQUIREMENTS, THE KATUSAS RULE IS NOT APPLICABLE TO MUTUAL HELP.**

Mr. Kopanuk cites Kansas cases which treat leases containing installment payment requirements as sales contracts. The Kansas line of authorities arose as a result of an express concern over sharp vendor dealings:

The bench and bar of this state have long been familiar with a form of real-estate contract . . . in which the [owner-vendor] names a price at which he will sell the property and names a specified amount to be paid monthly, and in which he agrees to let the latter into possession upon condition that if the monthly payments are made until their aggregate sum amounts to the specified purchase price, the property shall be conveyed to the latter; but if the tenant-vendee fails in his monthly payments then whatever amounts he shall have paid are to be considered merely as rent for the premises and he shall have not interest in the property and may be removed therefore as in forcible detainer. There are many clever, even devious, contracts to this effect, and the sum of judicial dealing with them in this and other courts may be stated to this effect: if the down payment by the tenant-vendee has been negligible, and his monthly payments have been but few or have only been paid irregularly, to the manifest loss of the owner-vendor, the contract will be ordinarily enforced by its terms...

Emphasis supplied.

The "Kansas Option" is an agreement driven by a sales motive

and an agreed-upon, predetermined purchase price. m, e.a. Letzis v. RUDert, 495 P.2d 955 (Kan. 1972). Every significant aspect of the occupancy relationship is determined by the price the owner places on the fee estate. As discussed in Section II(A) (2) above, the monthly payment under the Mutual Help program is determined by entirely different considerations.

In Kansas, the court's goal is to take certain cases out of FED in favor of "equitable foreclosure" proceedings. Once a court determines that the transaction has been substantially performed, termination is pursued as an "equitable foreclosure." Presumably, this is a process where the defaulting purchaser receives any property value in excess of his total debt. Again, this procedure is senseless in the MHOA context. Because the Mutual Help participant has never bound himself to buy, and has paid nothing on the purchase price, imputing either the benefits of investment or the losses due to market depreciation (assuming that market value could ever be determined) is inappropriate. The housing authority cannot sell the home on the market or at a foreclosure sale,⁹ making it impossible to determine the defaulting purchaser's "equity" in the home following termination.

More fundamentally, the Kansas courts' reluctance to permit avoidance of foreclosure proceedings is yet another expression of

⁹ Any disposition of housing authority property must be in compliance with 24 C.F.R. §905.921 - 937, the housing authorities' Annual Contributions Contract with HUD, and the Cooperation Agreement with local government. Mutual Help housing stock is not freely alienable by the housing authority, outside of a sale to a qualifying original, successor, or subsequent Homebuyer.

concern over unfair vendor dealings. These concepts have no application against a public corporation which provides housing in accordance with federally subsidized national Indian housing programs. Neither the housing authority nor HUD can profit from evicting a Homebuyer, and therefore there is no inducement to act in bad faith. At best, by terminating the agreement the housing authority stops its continuing losses (or community harms) by transferring the home to another needy family, on virtually identical terms as the first. No profit motive or other incentive is present to induce sharp dealings or false cloaking of a sales transaction as a lease. z, Quicrlev v. Caoolonao, 383 N.Y.S.2d 936; McGalliard v. Liberty Leasing Co. of Alaska, Inc., 534 P.2d 528 (Alaska 1975), overruled & Western Enterprises v. Arctic Office Machines, 667 P.2d 1232 (Alaska 1983) ("cloaked" sale transaction which violated usury limitations).

The MHOA is a widely used document, applied by housing authorities across the nation. It is not a disguised attempt to inequitably take advantage of lessees. Instead, it offers a realistic opportunity to exercise purchase rights under specific circumstances, in a manner which carefully balances the unique needs of qualifying low-income families, who would otherwise lack any opportunity to purchase habitable homes in the marketplace.

IV. THE PARTIES TO THE MHOA INTENDED TO COMPLY WITH ALL REASONABLE HUD REGULATIONS AND REQUIREMENTS FOR THE MUTUAL HELP PROGRAM, INCLUDING THE REQUIREMENT OF LEASE ENFORCEMENT PROCEDURES.

HUD regulations specify that the MHOA is a lease with an option to purchase, and that participants obtain no equitable

interest in the home unless and until they exercise the purchase option. 24 C.F.R. 5905.446. Mr. Kopanuk urges the court to disregard the regulation because it does not pre-empt contrary state law. Preemption is beside the point. The contract by its terms demonstrates the parties' intent to follow all reasonable HUD requirements, and from the outset of the program HUD has required the MHOA to be enforced through FED or other state landlord tenant proceedings. This position comports fully with HUD's characterization of the MHOA as a terminable lease, within the MHOA itself. [Ext. 1591.

The Mountain Village Project would not exist without HUD's program creation, concurrence, funding and assistance. Not surprisingly, HUD is repeatedly identified in the MHOA as a source of funding, administrative regulations, program requirements, and discretionary approvals. HUD is mentioned over 30 times in the 40 pages of the MHOA. Aside from a single reference to housing authority "regulations" and two references to the Indian Civil Rights Act, at 25, 31 (11.61, the legal references in the MHOA pertain to HUD requirements. [Ext. 185, n. 11.

The first page of the MHOA states that it is a form required to be used under federal "Indian Housing Regulations (24 C.F.R. Part 805).ⁿ [Ext. 1511. The signatory page specifies that the IHA will develop a project "in compliance with HUD requirements." [Ext. 1521. The contract provides that the project may be cancelled at HUD's election. [Ext. 1811. In addition:

I-IUD approves the IHA's budget. [Ext. 1531

HUD approves whether the Homebuyer can have any financial or work contribution returned. [Ext. 1571]

HUD approves any statement relating to amounts credited as contributions to the project. [Ext. 1601]

HUD approves income-based monthly payments. [Ext. 1611]

HUD's requirements for construction and design govern whenever the Homebuyer adds or alters the home. [Ext. 1651]

Any monies needed to be drawn against IHA reserves must be requisitioned from HUD. [Ext. 1661]

HUD approves any investment of reserve accounts by the IHA. [Ext. 1661]

HUD approves collection sources when the IHA debits the Homebuyers' debt reserves below zero for purposes of alleviating a life or safety problem in the home.

HUD must approve any assignment mortgage or pledge of any right in the agreement. [Ext. 1671]

HUD authorizes contingencies to be included in the Total Development Cost of the project (used to determine Purchase Price schedule). [Ext. 1681]

HUD approves any Mortgage the Homebuyer may give to the IHA upon becoming a homeowner. [Ext. 1731]

HUD determines the amount of insurance a homeowner shall obtain after conveyance under IHA financing.

HUD determines the insurance required to be carried by the IHA. [Ext. 1801]

HUD decides any dispute between the housing authority and the Homebuyer over whether the home should be rebuilt after fire or casualty.

HUD regulations decide how often income shall be verified. [Ext. 1811]

Mr. Kopanuk's conclusion that HUD's requirements are irrelevant to the parties' agreement is mistaken. Pet. Br. at 31. Clearly, the parties intended to abide by all reasonable HUD regulations consistent with their agreement and the housing

authority's regulatory and contractual obligations.

The incorporation by reference of HUD requirements is beneficial to program participants. Regulatory changes and clarifications enhance the program and improve its delivery: for example, the successorship regulation has improved over time; (comnarf: [Ext. 178, 510.21 with 24 C.F.R. §905.449; MEPA accounts can now be used by Homebuyers to make approved alterations (compare [Ext. 165, 85.51 with 24 C.F.R. 9905.428(g); and the ability to convert the home in-place to the Low-Rent program, as appropriate, has also been confirmed and detailed in recent regulations. 24 C.F.R. 58905.455, 458. The latter provisions benefit indigent Homebuyers as well as elderly or disabled Homebuyers who can no longer perform maintenance as required by the MHOA. Prior to the regulations changes, the main option was lease termination.

HUD's adoption of 24 C.F.R. 9905.446 is not a nretroactiveⁿ change in law or a contract modification.¹⁰ HUD has always required housing authorities across the nation to terminate MHOA's by landlord tenant proceedings, and District Courts in Alaska have routinely permitted FEDS of Mutual Help leases. Only Viera speaks to the contrary.

¹⁰ 49 Fed. Reg. 21,476, 21,482 (1984) (Mutual Help program is covered by 42 U.S.C. 1437n restrictions, relating to units "available for leasing," because Mutual Help involves leasing homes under a lease-purchase agreement); 51 Fed. Reg. 26,504, 26,512 (1986) (referring to MHOA as lease with option to purchase); 53 Fed. Reg. 33,216, 33,221, 33,255 (1988) (describing MHOA as lease with option to purchase); 53 Fed. Reg. 37,494, 37,497 (1988) (family leases MH home until it qualifies for financing or pays purchase price); 54 Fed. Reg. 34,616 (1989) (referring to MHOA as a lease-purchase contract).

v. FOR PURPOSES OF THE MUTUAL HELP PROGRAM, FEDERAL AND STATE LAWS SHOULD BE CONSTRUED CONSISTENTLY WITH THEIR COMMON PURPOSES.

Mr. Kopanuk makes the circular argument that HUD's regulation should be disregarded because it abrogates state law. As discussed above, there is no Alaska law or reported case inconsistent with 24 C.F.R. §905.446. Moreover, Mr. Kopanuk's cases reflect judicial attempts to reconcile state and federal laws on the same subject, whenever possible.

The housing authority's statutory mission is to obtain housing funds from HUD on the same footing as reservation housing authorities. The Alaska Legislature sought to maximize its ability to obtain federal funding for rural housing through forming IHA's. Consequently, the statutes require authorities to do all things "necessary or desirable to cooperate with or act as agent for the federal government." AS 18.55.110; applicable to Regional Native Housing Authorities through AS 18.55.996 (b). The legislature further provided that housing authorities should not be "subject to limitations, restrictions or requirements of other laws" in cooperating with or acting as an agent for the federal government. Id., and see also 1982 Inf. Op. Att'y Gen. (June 8; J66-22-82A) at 4; 1985 Inf. Op. Att'y Gen. (July 24; 366-499-85) (noting close relationship between the federal government and Alaska Housing Authorities created pursuant to AS 18.55.996). Given this background, state law should be interpreted in a manner consistent with federal housing laws.

Congress has required HUD to provide low-income housing in the

form of 'Ia lease-purchase, mortgage, or **loan** agreement." Title II, United States Housing Act, 5202(e) (41, 42 U.S.C. §1437bb(e) (4). By requiring use of landlord tenant proceedings, 24 C.F.R. 5905.446 follows Congress' mandate **of** providing a lease-purchase agreement. This intent is consistent with universal principles of real property law, an important factor for a program which exists in many jurisdictions. **Mortgages and** purchase contracts **are** subject to a myriad of legal enforcement mechanisms across the nation, and HUD's selection of a lease vehicle **was a** sensible method of ensuring roughly equal treatment of the MHOA in all jurisdictions.

The use of timely eviction procedures is consistent with the purpose of the FED remedy, the nature of the Mutual Help program, and the housing authority's public purposes. As a public entity the housing authority and HUD must balance the interests of all Homebuyers against the interests of the few individuals who fail to meet program requirements. HUD has balanced these interests by providing a number of tenant-favorable protections in the MHOA as well as the regulations. These prevent a participant from being evicted without first receiving ample notice; grant him the opportunity to comply with a plan of action; grant him an additional notice period and opportunity to cure if he fails to comply with the plan; urges him to contact the representative of his choice, including the tribal government, to respond to the termination notice, and provides a grievance opportunity. 24 C.F.R. 9905.340, 446, [Ext. 1751. Once all these tasks are completed by the housing authority (or are excused, as in Mr.

Kopanuk's case, for his failure to respond) it may resort to judicial enforcement. Alaska's FED procedure grants the Homebuyer the opportunity to respond, to obtain representation, to attempt cure, to request a continuance, and to appear in court and present any defenses to the eviction or to request other relief. If this is "administrative convenience," it is not unjust, improper, or against any public policy. Pet. Br. at 35, n. 30.

The Mutual Help program involves the expenditure of limited public funds for thousands of low-income residents across the country. The prompt nature of FED hearings conserves finite resources, since ejectment proceedings are "slow and complex," and more expensive than FED actions. Vinson, 854 P.2d at 737. Typically, noncomplying occupants are judgment-proof, meaning that delay in obtaining possession results in substantial nonrecoverable losses to the housing authority. Moreover, community harms caused by MHOA noncompliance -- bootlegging, domestic violence, neglect or abuse of the home, abandonment, partying, fire and health hazards -- mandate prompt action not available in ejectment proceedings. 24 C.F.R. 5905.340 (excusing grievance procedures for criminal activity). Because legal costs, vacant units, and occupancy violations increase IHA operating costs and are detrimental to the Project and the surrounding community, effective judicial enforcement mechanisms are essential to program operation.

CONCLUSION

Lengthy ejectment actions are unnecessary in a lease dispute where the main issues involve the occupant's compliance with basic

obligations such as payment, occupancy, and quiet enjoyment. In determining that ejectment proceedings are unwarranted, the Superior Courts have properly determined that the District Court is the appropriate court for making these determinations.

This state has invited the federal government to fund its housing needs. As Mr. Kopanuk notes, Mutual Help housing has been a substantial vehicle for providing housing in the villages, as well as some urban settings. By providing Mutual Help housing, Congress fulfills its trust obligations to Alaska Natives. Mr. Kopanuk has presented no controlling authority requiring this jurisdiction to reject reasonable regulations and policies of HUD, which carry-out the express intent of Congress. The District Court has subject matter jurisdiction to decide possession issues in the Mutual Help program, so long as the lessee has not exercised the purchase option.

Respectfully submitted this 4th day of January, 1995.

BIRCH, HORTON, BITTNER & CHEROT



Kim Dunn

ATTORNEYS FOR RESPONDENT