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February 14, 1992

663-92-0324

465-2398

Adding default condition
to debt instruments

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You asked whether it would be permissible to add as a condition of default on debt instruments (promissory notes, etc.) that the full amount of the debt would become immediately due and payable if the debtor permanently leaves the State of Alaska. 1/ You have asked specifically whether this might be incorporated into notes with respect to loans from the Commercial Fishing Revolving Loan Fund, for which borrowers are required to meet a residency test. At first blush it might seem a practicable condition, making it easier to ensure repayment of the loan. On further review, however, our conclusion is that adding such a provision would offend the constitutionally-guaranteed right to travel.

The Supreme Court of the United States has repeatedly found that the right to travel between the 50 states is a fundamental right, even though not specifically enumerated in the Constitution. In a leading case the Court said:

This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which un-reasonably burden or restrict movement. "[T]he right [to travel] finds no explicit mention in the Constitution. The reason, it has been suggested, is that a right so elementary was

1/ An immediate issue relative to enforcing such a provision arises: Who is to determine the "permanency" of a move? If the debtor were to insist he intended to return to Alaska in the future, the condition could not be invoked.

conceived from the beginning to be a necessary concomitant of the stronger Union the Consti-tution created."

Shapiro v. Thompson, 394 U.S. 618, 629-30 (1969) (quoting from **United States v. Guest**, 383 U.S. 745, 758 (1966)).

Not only is the state precluded from interfering with the rights of citizens to travel unimpeded throughout the states, "the right of interstate travel is constitutionally protected . . . and is assertable against private as well as governmental interfer- ence." **Griffin v. Breckenridge**, 403 U.S. 88, 105 (1971) (citations omitted). Thus, even though no statute or regulation is involved, the condition affects the right to travel and would be impermissible no matter who might seek to impose it.

The effect of adding this condition to loan documents would be to place a weighty burden on most who might seek to move from Alaska while still owing on a state loan. Most people in that situation would effectively find themselves held hostage by the loan. We view this as an impermissible burden directly affecting the right to travel.

The right to travel, more specifically the right to interstate migration, has been found to be a fundamental right by the Alaska Supreme Court. **Hicklin v. Orbeck**, 565 P.2d 159 (Alaska 1977), *rev'd on other grounds*, 437 U.S. 518 (1978). As a fundamental right, any obstacle to its exercise is subject to strict scrut-iny to determine whether a compelling state interest is furthered and whether it is the least restrictive means of achieving that interest. Here we are not looking at a statute, but merely a policy. The policy, however, would be subject to the same balanc-ing test, and it would most likely fail to pass constitutional muster. See, e.g., **Zobel v. Williams**, 619 P.2d 448 (Alaska 1980), *prob. juris. noted*, 450 U.S. 908 (1981), *rev'd on other grounds*, 457 U.S. 55 (1982) (Brennan, J., concurring); **Thomas v. Bailey**, 595 P.2d 1 (Alaska 1979) (Rabinowitz, J., concurring).

Thus, we conclude that it would be an unconstitutional infringement of the right to travel if the department added as a condition of default on a loan the borrower's moving from the State of Alaska.