

REAL PROPERTY, REAL PROBLEMS: EXPANDING ALASKA'S UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT¹

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ABSTRACT

Alaska's Unfair and Deceptive Acts and Practices (UDAP) statute was designed to provide broad, robust protections for everyday Alaskan consumers. Astonishingly, Alaska is one of only three states that does not protect Alaskans under its UDAP statute when they fall victim to fraudulent schemes involving real property. The Alaska Supreme Court has consistently upheld this interpretation of the UDAP statute by relying on precedent from over thirty years ago. At the same time, due to the COVID-19 pandemic, everyday Alaskans are more economically vulnerable than ever before, with the atmosphere being ripe for proliferation of fraudulent real property schemes. This Note argues that the court has misapplied precedent and must therefore reevaluate the statute's application to real property transactions, especially because the statute has been amended and strengthened since the court's original rulings. If it does not, because of the sheer importance of housing in everyday life, a significant portion of the population could face devastating consequences not only to their economic wellbeing but also to their safety, security, and livelihood.

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* J.D. Candidate, Duke University School of Law, 2022; B.A., University of Pennsylvania, 2015. I would like to thank Professor Jeremy Mullem and my peers in the Scholarly Writing Workshop who provided honest and practical feedback that helped make this Note possible. Thank you to the entirety of the *Alaska Law Review* for the masterful edits of this piece, especially to Executive Editor Natalie Howard and the Lead Editors for leading this Note's editing team. Finally, a special thank you to my incredible fiancée Liz Pecan for her constant support and love throughout law school and life.¹ While the official title of the statute is the Alaska Consumer Protection Act, the main section of the Act is the Alaska Unfair Trade Practices and Consumer Protection Act (UTPCPA). Some sources, including present-day Alaska Supreme Court cases, refer to the statute as the Unfair Trade Practices Act (UTPA). For consistency, this Note will predominantly refer to the Act as the UTPCPA.

I. INTRODUCTION

The biggest purchase most people make in their lifetimes is a new home.² Over the past spring and summer, home prices have grown faster than at any period in history, including the years leading up to the 2008 real estate crisis.³ Since the onset of the COVID-19 pandemic less than two years ago, median home list prices are up twenty-four percent nationwide, climbing to \$385,000 in June 2021.⁴

Alaska is not immune to this housing frenzy, with some real estate agents stating that they have never seen such high demand in forty years.⁵ Higher construction costs, limited housing supplies, and increased demand have led some properties to increase in cost by \$20,000, with purchasers offering as much as \$100,000 above list price for others.⁶

This chaos in the real estate industry has created a significant issue for Alaskans: the rise of real estate scams.⁷ The housing frenzy has led to an increase in activities like drive-by appraisals and mortgage originator pop-ups, two phenomena described as “shortcuts” of “the appropriate protocols and state statutes.”⁸ Nationwide, real estate wire fraud scams have cost some individuals as much as \$150,000, with the FBI reporting that such scams have cost consumers a total of more than \$26 billion over only the past three years.⁹

Beyond these fraud schemes and real estate scams, this market frenzy may eventually lead to an increase in land contracts and “rent to own” (RTO) agreements, both of which can cause significant financial hardship for low-income individuals.¹⁰ These scams are not new in Alaska. There have long been documented cases of low-income individuals forced out of their RTO homes, losing any equity they would have accumulated had they signed a traditional mortgage or deed of

2. Ramit Sethi, *It's the Biggest Purchase You'll Ever Make . . . Don't Mess It Up*, INTUIT (Aug. 17, 2011), <https://mint.intuit.com/blog/goals/the-surprising-numbers-behind-buying-a-house-082011/>.

3. Lance Lambert, *Home Prices are Rising Faster than Ever Before. See How Your State Is Doing*, FORTUNE (July 21, 2021), <https://fortune.com/2021/07/21/home-prices-rising-us-record-rate-2021-update/>.

4. *Id.*

5. *High Demand, Low Supply – Alaska's Homeowners Are Cashing In*, ALASKA BUS. (June 1, 2021), <https://www.akbizmag.com/industry/real-estate-industry/high-demand-low-supply-alaskas-homeowners-are-cashing-in/>.

6. *Id.*

7. *Id.*

8. *Id.*

9. Annie Nova, *I Had Sent My Money to a Thief – Hackers Are Coming for Homebuyers. This Man Lost \$150,000*, CNBC (Oct. 7, 2019, 10:16 AM), <https://www.cnbc.com/2019/10/05/homebuyers-are-falling-for-this-scam-some-lose-their-life-savings.html>.

10. See *infra* Section IV.B.

trust.¹¹ Despite these troubling cases, within the past five years, a local newspaper in Wasilla republished an article titled “A New Approach to Affordable Housing” touting the benefits of RTO contracts for low-income individuals while ignoring many risks that can lead to ejection.¹² As RTO contracts may be promoted and utilized in Alaska in the midst of unusual levels of chaos in the real estate industry, low-income Alaskans are even more at risk of experiencing significant hardships.

Alaska, however, is one of only three states barring recovery under its Unfair and Deceptive Acts and Practices (UDAP) statute for victims of unfair or deceptive real property transactions.¹³ Consequently, those who would read and follow the seemingly innocuous article on “A New Approach to Affordable Housing” in Wasilla’s local newspaper¹⁴ could find themselves both without a home and without any of the protections Alaska’s UDAP statute provides to victims of other types of scams.¹⁵

The Alaska Unfair Trade Practices and Consumer Protection Act of 1970 (UTPCPA)¹⁶ states that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce are declared to be unlawful.”¹⁷ The UTPCPA then states that “‘unfair methods of competition’ and ‘unfair or deceptive acts’ include, *but are not limited to*” fifty-seven enumerated acts.¹⁸ The UTPCPA then states that this is a non-exhaustive list, as those outlined “do not limit the types of unlawful acts and practices actionable at common law or under other state statutes.”¹⁹

In spite of this statutory language, the Alaska Supreme Court has excluded the UTPCPA’s application to the sale of real property or to other real estate transactions for over thirty years.²⁰ In *State v. First National Bank*

11. See, e.g., Rosemary Shinohara, *Gone Sweet Home*, ANCHORAGE DAILY NEWS, Oct. 4, 2005, at A1 (noting that one Alaska resident had to move into a new residence after her monthly rent payment for her RTO property increased).

12. See MoneyTips, *A New Approach to Affordable Housing*, MAT-SU VALLEY FRONTIERSMAN (Mar. 20, 2018).

13. CAROLYN CARTER, NAT’L CONSUMER LAW CTR., CONSUMER PROTECTION IN THE STATES: A 50-STATE EVALUATION OF UNFAIR AND DECEPTIVE PRACTICES LAWS 26 (Mar. 2018).

14. MoneyTips, *supra* note 12.

15. See, e.g., Kate Giammarise, *Dravosburg Woman Files Rent-to-Own Complaint with State AG’s Office*, PITT. POST-GAZETTE (Nov. 16, 2016, 12:00 AM), <https://www.post-gazette.com/local/region/2016/11/16/Dravosburg-woman-files-rent-to-own-complaint-with-state-AG-s-office/stories/201611160035>.

16. 1970 Alaska Sess. Laws ch. 246.

17. ALASKA STAT. § 45.50.471(a) (2021).

18. *Id.* § 45.50.471(b) (emphasis added).

19. *Id.* § 45.50.471(c).

20. *Alaska Tr., LLC v. Bachmeier*, 332 P.3d 1, 5–6 (Alaska 2014).

of *Anchorage*,²¹ the court held that the enumerated prohibited practices concerned only consumer goods and services.²² Relying on the maxim of ejusdem generis, the court reasoned that real property “f[ell] outside” of the enumerated goods and services in the UTPCPA.²³ Since then, courts have “merely followed *First National Bank’s* holding” in excluding real estate transactions from the UTPCPA.²⁴

The court still does not apply the UTPCPA to real property cases, even though the Alaska legislature expanded the UTPCPA’s definition of goods and services in 2004 to include “goods or services provided in connection with . . . a transaction involving an indebtedness secured by the borrower’s residence.”²⁵ Even with this new language, courts continue to require that the transaction involve a good or service, categories the court still does not believe include real property.²⁶ In 2007, the Alaska legislature again amended the UTPCPA to address real property transactions when it added protections against certain violations of the Mortgage Lending Regulations Act.²⁷ The Alaska Supreme Court, however, has held that the UTPCPA does not apply to many transactions involving real property, even within the mortgage context.²⁸

Buying a home is the largest investment that most consumers will make in their lifetimes.²⁹ For those who instead choose to rent a home over buying, the median rent for an average family in Alaska is \$1,200, a higher amount than in forty-four other states.³⁰ Because of the significant money at stake when renting or buying, scam artists search for new ways to defraud consumers in real estate transactions, whether through buying low-cost property and reselling it at an artificially inflated price with minimal improvements (“property flipping”), foreclosure rescue, or sale

21. 660 P.2d 406 (Alaska 1982).

22. *Id.* at 412-13.

23. Ejusdem generis is the maxim that “[w]hen particular words are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” *Id.* at 413 (citation omitted).

24. *Bachmeier*, 332 P.3d at 10 (Bolger, J., dissenting) (citation omitted).

25. Act Effective July 1, 2004, § 9, 2004 Alaska Sess. Laws ch. 55 (codified at ALASKA STAT. § 45.50.561(a)(9) (2021)).

26. *Bachmeier*, 332 P.3d at 7.

27. § 8, 2007 Alaska Sess. Laws ch. 50 (codified at ALASKA STAT. § 45.50.471(b)(52) (2021)).

28. *See Bachmeier*, 332 P.3d at 5 (holding that the UTPCPA does not apply to a nonjudicial foreclosure for a deed of trust).

29. CARTER, *supra* note 13, at 26.

30. Frank Olito & Shayanne Gal, *Here’s What the Average American Family of Four Spends on Rent in Every State*, BUS. INSIDER (June 10, 2019, 11:22 PM), <https://www.businessinsider.in/heres-what-the-average-american-family-of-four-spends-on-rent-in-every-state/articleshow/69731246.cms>. Median rent costs are higher only in California, the District of Columbia, Hawaii, Maryland, and New Jersey. *Id.*

of land contracts.³¹ The UTPCPA covers none of these deceptive schemes, leaving everyday Alaskans at risk when they make the largest investment of their lives.

Furthermore, Alaskans are more at risk because Alaska has been hit particularly hard by the COVID-19 pandemic. Of states in the Northwest,³² Alaska lost 7.3% of nonfarm payrolls in the first quarter of 2021, only 0.1% less than Oregon which saw the largest losses of any state in the region.³³ In that quarter alone, 23,100 Alaskans lost their jobs.³⁴

The lack of consistent and reliable income could have a significant effect on Alaska's housing market. While there were not sizable foreclosures in the fourth quarter of 2020, this likely resulted from the foreclosure moratorium and forbearance provisions of the Coronavirus Aid, Relief, and Economic Security (CARES) Act protecting homeowners.³⁵ These provisions of the CARES Act are particularly relevant to Alaskans, as roughly sixty-three percent are homeowners.³⁶

If Alaskan homeowners requested forbearance in March or April when the pandemic began, however, their protections have ended.³⁷ The foreclosure moratorium has ended as well, and the effect was immediate.³⁸ National foreclosures increased twenty-seven percent from the preceding month once the moratorium ended and increased sixty percent from the prior year.³⁹ Alaskans may soon face a wave of foreclosures and scams designed either to prevent foreclosures or profit unscrupulously from them, as such scams tend to spike when individuals face economic difficulties.⁴⁰ Given the current state of the law, affected

31. CARTER, *supra* note 13, at 26; FBI - Federal Bureau of Investigation, *Illegal Property Flipping*, YOUTUBE (May 18, 2011), <https://youtu.be/hsOUl818MD8>.

32. The Northwest region consists of Alaska, Washington, Oregon, and Idaho. 1ST QUARTER 2021 U.S. DEP'T HOUS. & URB. DEV. PD&R REG'L REP.: REGION 10, at 1 (2021) [hereinafter HUD REPORT 1Q2021].

33. *Id.* at 3.

34. *Id.*

35. 4TH QUARTER 2020 U.S. OFF. OF THE COMPTROLLER OF THE CURRENCY MORTG. METRICS REP., at 2 (2021) [hereinafter MORTG. METRICS REP. 4Q20]; Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, §§ 4022(b)(2), 4022(c)(2) (2020) (codified at 15 U.S.C. § 9056).

36. U.S. CENSUS BUREAU, HOUS. VACANCIES & HOMEOWNERSHIP ANN. STAT., tbl.15 (2019), <https://www.census.gov/housing/hvs/data/ann19ind.html>.

37. See MORTG. METRICS REP. 4Q20, *supra* note 35, at 2 ("Under the CARES Act, customer relief and forbearance can extend up to 18 months.").

38. August 2021 U.S. Foreclosure Activity Rises Following the End of the Foreclosure Moratorium, ATTOM (Sept. 9, 2021), <https://www.attomdata.com/news/market-trends/foreclosures/attom-august-2021-u-s-foreclosure-market-report/>.

39. *Id.*

40. See Heather K. Way & Lucy Wood, *Contracts for Deed: Charting Risks and New Paths for Advocacy*, 23 J. AFFORDABLE HOUS. & CMTY. DEV. L. 37, 39 (2014) (noting that land contracts target homebuyers who are shut out of traditional

Alaskans will have no recourse under the UTPCPA.

This Note argues that the UTPCPA should, through proper statutory interpretation, apply to unfair or deceptive acts related to real estate transactions. Part II begins with a general overview of the historical origins of UDAP statutes nationwide as well as the development of Alaska's UDAP statute, the UTPCPA. Part III evaluates how the UTPCPA should apply to transactions involving real property, including residential leases, through statutory analysis. It concludes that the 2004 and 2007 amendments to the UTPCPA weaken the court's original precedent set thirty years ago in *First National Bank* because they severely erode the court's reliance on *eiusdem generis*.⁴¹ Finally, Part IV argues that the significant and increasing threat of real property scams, coupled with the economic crisis stemming from the COVID-19 pandemic, create an alarming urgency for the court to properly interpret the UTPCPA to apply to real property transactions. If the court fails to correct precedent, the Alaska legislature should amend the UTPCPA to explicitly include real property transactions. If both fail to act, Alaskans will suffer large financial losses without adequate legal recourse to recover.

II. BACKGROUND

Consumer protection law dates back to 1201 from the "Writ of Deceit," the precursor to the present-day tort of misrepresentation.⁴² Throughout its evolution before the twentieth century, the Writ provided "a remedy for many wrongs which we should now regard as breaches of contract, such as false warranties in the sale of goods."⁴³ This was essentially a merger of tort and contract law because, even if a party engaged in active deceit, "courts generally limited the action to direct transactions between the plaintiff and the defendant," otherwise known as a contract between the parties.⁴⁴

Tort law on its own was ineffective because a plaintiff had to show the defendant's intent to deceive in fraud claims, a "particularly difficult" task.⁴⁵ Contract law failed in that businesses could make false advertising claims without consequence because such practices never created a contract between the business and the consumer.⁴⁶ The remedies available

financing due to lower incomes).

41. *State v. First Nat'l Bank of Anchorage*, 660 P.2d 406 (Alaska 1982).

42. Victor E. Schwartz & Cary Silverman, *Common-Sense Construction of Consumer Protection Acts*, 54 U. KAN. L. REV. 1, 6-7 (2005).

43. *Id.* (citation omitted).

44. *See id.* at 6-7.

45. *Id.*

46. *Id.*

were simply “inadequate to protect consumers in some situations.”⁴⁷ They were merely reactive: individuals and governments could not stop obviously fraudulent practices until actual injury occurred.⁴⁸ At this point, caveat emptor reigned supreme: the burden lay with the consumer.⁴⁹ This notion of “caveat emptor” began to subside in America only at the beginning of the twentieth century and led to American consumers finally receiving their first ex ante consumer protections in 1914.⁵⁰

A. The FTC Act and the Origin of State UDAP Statutes

Congress passed the Federal Trade Commission Act (“FTC Act”) in 1914.⁵¹ The FTC Act created the Federal Trade Commission (FTC) and empowered it to “prevent persons, partnerships, or corporations . . . from using unfair methods of competition in or affecting commerce.”⁵² The language of the original act targeted anti-competitive practices, demonstrating Congress’s antitrust concerns at the time.⁵³ It was not until the Wheeler-Lea Act of 1938⁵⁴ that the FTC Act broadened from an antitrust statute to a consumer protection statute.⁵⁵ In addition to unfair methods of competition, “unfair or deceptive acts or practices” were now unlawful.⁵⁶

Congress specifically chose not to define what constituted an unfair practice.⁵⁷ Members believed that a list of such activities would evolve over time.⁵⁸ Adopting a definition would be “an endless task” that would be “practically impossible.”⁵⁹ Congress therefore decided to “leave it to the commission to determine what practices were unfair.”⁶⁰

47. *Id.*

48. *Id.*

49. Ryan P. O’Quinn & Thomas Watterson, Note, *Fair Is Fair – Reshaping Alaska’s Unfair Trade Practices and Consumer Protection Act*, 28 ALASKA L. REV. 295, 297 (2011).

50. Schwartz & Silverman, *supra* note 42, at 6 n.11, 7.

51. Federal Trade Commission Act, Pub. L. No. 63-203, 38 Stat. 717 (1914) (codified as amended at 15 U.S.C. §§ 41-58).

52. 15 U.S.C. § 45(a)(2).

53. Schwartz & Silverman, *supra* note 42, at 7-8.

54. Federal Trade Commission Act Amendments of 1938 (Wheeler-Lea Act), Pub. L. No. 75-447, 52 Stat. 111 (1938).

55. *See id.* § 3 (codified as amended at 15 U.S.C. § 45(a)(1)) (expanding the scope of the original FTC Act to include consumer protection measures).

56. *Id.*

57. *See* H.R. REP. NO. 63-1142, at 19 (1914) (Conf. Rep.).

58. *Id.*

59. *Id.*

60. Schwartz & Silverman, *supra* note 42, at 8 (quoting S. REP. NO. 597, at 13 (1914)).

While Congress bestowed great authority and discretion to the FTC to protect against unfair and deceptive practices, the Act did not create a private right of action.⁶¹ For this reason, all fifty states, the District of Columbia, and multiple United States territories have passed at least one statute to protect consumers in the marketplace.⁶² Because many of them model their language from the FTC Act's prohibition of "unfair or deceptive acts or practices,"⁶³ many commentators refer to them as UDAP statutes or "Little FTC Acts."⁶⁴

UDAP statutes create state and private damage actions that allow consumers to seek redress after harm suffered due to unfair or deceptive acts.⁶⁵ The consumer must bring forth a UDAP claim if the state chooses not to do so, and courts should generally interpret UDAP statutes broadly, resolving doubts in favor of the harmed consumer.⁶⁶ Many UDAP statutes provide attorneys' fees and punitive, treble, or minimum damage awards, further incentivizing consumers to bring claims.⁶⁷ Finally, courts across the country should liberally construe definitions in UDAP statutes "in light of the remedial purpose to protect the public."⁶⁸

B. Passage and Provisions of Alaska's UDAP Statute

In 1964, the National Conference of Commissioners of Uniform State Laws released the Uniform Deceptive Trade Practices Act ("Model Act").⁶⁹ The Model Act was designed to update state law for the new era of consumer protection by removing the common law's undue restrictions and by providing a framework of how private parties could remedy the harm of businesses or individuals' deceptive trade practices.⁷⁰

Alaska based its own UDAP statute, the Unfair Trade Practices and Consumer Protection Act (UTPCPA),⁷¹ on the Model Act.⁷² The original

61. CAROLYN L. CARTER ET AL., NAT'L CONSUMER L. CTR., UNFAIR AND DECEPTIVE ACTS AND PRACTICES ch.1, § 2 (8th ed. 2012).

62. *Id.* at ch. 1, § 1.

63. 15 U.S.C. § 45(a)(1).

64. CARTER ET AL., *supra* note 61, at ch. 1, § 1.

65. Only Puerto Rico does not authorize private damage actions. *Id.* at app. A.

66. *Id.* at ch. 2, § 1.3.

67. *Id.* at ch. 1, § 2.

68. *Id.*

69. UNIF. DECEPTIVE TRADE PRACS. ACT (amended 1966), (UNIF. L. COMM'N 1964). The Model Act was amended in 1966 to include authorizing courts to award reasonable attorneys' fees to prevailing plaintiffs. *Id.*

70. *Id.* prefatory note at 2.

71. ALASKA STAT. §§ 45.50.471-.561 (2021).

72. Compare, e.g., *id.* § 45.50.471(b)(8) (making it a violation when "advertising goods or services with intent not to sell them as advertised"), with UNIF. DECEPTIVE TRADE PRACTICES ACT § 2(a)(9) (making it a violation when one "advertises goods

Alaska UTPCPA enumerated thirteen unlawful actions,⁷³ along with a “catch all” provision allowing consumers to bring charges under the UTPCPA that these enumerated “unfair or deceptive acts or practices” did not specifically address.⁷⁴ The Alaska legislature passed the UTPCPA to “provide Alaska with a consumer protection law which can adequately deal with the many and complex problems involved in a rapidly expanding economy.”⁷⁵ The law is also pro-consumer because it provides harmed consumers a “substantially lower [burden of proof] than the burden in related actions such as breach of contract or common law fraud.”⁷⁶

Since passing the original UTPCPA, the legislature has only broadened the statute’s protections. The legislature first amended the UTPCPA in 1974, adding an additional seven enumerated prohibitions and guidelines for courts interpreting the statute.⁷⁷ One such guideline is for courts to give “due consideration and great weight” to interpretations of the FTC Act.⁷⁸ The Alaska legislature has since extended the enumerated unlawful acts to fifty-seven specific violations,⁷⁹ and the “catch all” provision from the original UTPCPA remains.⁸⁰

The UTPCPA is generally considered to include “strong prohibitions of unfair or deceptive acts.”⁸¹ The National Consumer Law Center granted the UTPCPA a “strong” rating in thirteen of eighteen factors it used in analyzing the strengths of all fifty states’ UDAP statutes.⁸² The UTPCPA providing plaintiffs the ability to recover the greater of three times their actual damages or \$500 was one of these pro-consumer

or services with intent not to sell them as advertised”).

73. These focused on fraudulent transfer of goods (1); deceptive acts that would cause confusion of the item’s source or origin (2-3); multiple types of misrepresentations the seller made to the buyer (5-6); false advertising (8-9); and other protections against misleading statements, fraud, and deception (10-13). § 45.50.471(1)-(13), 1970 Alaska Sess. Laws ch. 246.

74. *Id.* § 45.50.471(b).

75. Judiciary Committee Report on HCSCS for Sen. Bill No. 352, ALASKA H. JOURNAL SUPP. 6-10, 2d Sess., at 3 (1970) [hereinafter 1970 Judiciary Report].

76. O’Quinn & Watterson, *supra* note 49, at 312.

77. *W. Star Trucks, Inc. v. Big Iron Equip. Serv., Inc.*, 101 P.3d 1047, 1053 (Alaska 2004).

78. ALASKA STAT. § 45.50.545; 15 U.S.C. § 45(a)(1) (“Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared illegal.”).

79. ALASKA STAT. § 45.50.471(b)(1)-(57).

80. *See id.* § 45.50.471(b)-(c) (“The terms ‘unfair methods of competition’ and ‘unfair or deceptive acts or practices’ include, *but are not limited to*, the following acts”) (emphasis added).

81. CARTER, *supra* note 13, at 53.

82. *See id.* at 5.

factors.⁸³ The UTPCPA also mandating that prevailing plaintiffs be awarded costs and full attorneys' fees was another factor.⁸⁴

Furthermore, plaintiffs have a low burden to prevail on a UTPCPA claim. They first need to establish a prima facie case which requires "(1) that the defendant is engaged in trade or commerce; and (2) that in the conduct of trade or commerce, an unfair act or practice has occurred."⁸⁵ An act is deceptive or unfair "if it has the capacity or tendency to deceive."⁸⁶ A plaintiff may prove an unfair or deceptive act even if no injury results or if there was no intent to deceive.⁸⁷ If an act or practice could be interpreted in a misleading way, then it is unfair or deceptive.⁸⁸

C. Early State Precedents

Alaska's UTPCPA faced its first and most consequential challenge⁸⁹ in *State v. O'Neill Investigations, Inc.*⁹⁰ There, the Attorney General filed a complaint against O'Neill Investigations, a debt collector, for making "wide-ranging false and deceptive misrepresentations in attempting to collect monies from alleged debtors or their spouses."⁹¹ O'Neill argued that the civil provisions of the UTPCPA that would provide monetary relief for the State or the wronged consumer were "penal" in nature and should therefore be strictly construed.⁹² The court rejected O'Neill's argument.⁹³ In fact, the court said that "remedial civil statutes" like the UTPCPA should be "accorded a liberal construction."⁹⁴

O'Neill next argued that the statute was unconstitutionally vague in its language prohibiting "unfair methods of competition and unfair or deceptive acts and practices."⁹⁵ The court disagreed, holding that the language was not vague because the UTPCPA explicitly stated that the section should be interpreted by giving "due consideration and great

83. ALASKA STAT. § 45.50.531(a) (2021).

84. *Id.* § 45.50.537(a).

85. *State v. O'Neill Investigations, Inc.*, 609 P.2d 520, 534 (Alaska 1980).

86. *Id.* (citation omitted).

87. *Id.* at 534–35.

88. *Id.* at 535.

89. The appellee's arguments, if successful, would have essentially eliminated the entire UTPCPA. *See id.* at 523 ("This appeal requires us to decide whether the Alaska [UTPCPA] . . . stands as a sentinel against unethical and unscrupulous conduct on the part of independent debt collection businesses operating in this state.").

90. 609 P.2d 520 (Alaska 1980).

91. *Id.* at 524.

92. *Id.* at 528 n.20.

93. *Id.* at 528.

94. *Id.*

95. *Id.* at 531, 534.

weight” to interpretations of the FTC Act.⁹⁶ In this case, the plaintiffs could recover because the defendant, a business with the principal purpose of collecting debts, violated portions of the Fair Debt Collection Practices Act (FDCPA), an expansion of the FTC Act.⁹⁷ Consequently, the UTPCPA remained a constitutionally sound statute through which consumers could seek relief against unfair or deceptive acts.

Two years later, the court ruled on its first UTPCPA case involving real property transactions. In *State v. First National Bank of Anchorage*,⁹⁸ a land developer knew that plots of land he was selling had frequently flooded in the past.⁹⁹ He made five representations to purchasers that flooding would not be an issue, none of which were true.¹⁰⁰ Having received multiple complaints, the State brought action against the developer, claiming multiple UTPCPA violations.¹⁰¹ The State later amended its complaint to include the First National Bank of Anchorage as a defendant for financing the developer’s property.¹⁰²

The court held, however, that the State could not seek redress under the UTPCPA because the Act did not apply to the sale of real property.¹⁰³ The court’s holding relied on the maxim of *ejusdem generis*: “[w]hen particular words are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.”¹⁰⁴ The court held that the doctrine also applied when looking at “specific words comprehending a class of activity [that] follow[s] a more general description.”¹⁰⁵

The court’s reasoning relied on its belief that the legislature intended the UTPCPA to prohibit unlawful practices involving *consumer* goods and services, which the court held did not include real property.¹⁰⁶ The list of twenty-five enumerated prohibited acts at the time consisted of transactions involving “goods” or “goods or services” generally, as well as sales or related activities “commonly associated with consumer goods and services transactions.”¹⁰⁷ The court noted that, while the law was clear

96. *Id.* at 529–30 (citing ALASKA STAT. § 45.50.545 (2021)).

97. *Id.* at 523 n.1, 530 (citing Fair Debt Collection Practices Act, Pub. L. No. 95-109, 91 Stat. 874 (1977) (codified as amended at 15 U.S.C. § 1692)).

98. 660 P.2d 406 (Alaska 1982).

99. *Id.* at 409.

100. *Id.*

101. *Id.* at 409–10.

102. *Id.* at 410.

103. *Id.* at 414.

104. *Id.* at 413 (quoting *Chugach Elec. Ass’n v. Calais Co.*, 410 P.2d 508, 509–10 (Alaska 1966)).

105. In other words, there is no difference between the more general description preceding or following the more specific terms. *Id.*

106. *Id.* at 412.

107. *Id.* at 412–13.

that it was not an exhaustive list, none of the enumerated prohibited acts mentioned real property, and no other provisions of the UTPCPA “suggest[ed] that the legislature intended the sale of real property to come within the Act’s purview.”¹⁰⁸ Therefore, under the maxim of *eiusdem generis*, transactions involving real property did not constitute consumer goods or services “particularly described” in the UTPCPA and were therefore “not within [its] scope.”¹⁰⁹

The court further curtailed consumer protections under the UTPCPA in *Barber v. National Bank of Alaska*.¹¹⁰ There, the court held that the UTPCPA did not apply to mortgages because they were not a covered “good.”¹¹¹ While the court’s reasoning in finding for the State in *O’Neill* relied on the UTPCPA’s provision giving “due consideration and great weight” to laws like the FDCPA, the court held in *Barber* that this provision did not apply for the wronged mortgagor.¹¹² According to the court, the FDCPA was not specifically directed toward mortgages or mortgage-servicing.¹¹³ Furthermore, the bank’s principal business was not debt collection.¹¹⁴ As a result, the court held that the UTPCPA did not protect consumers against foreclosures and related transactions.¹¹⁵

In subsequent cases, the court further reiterated that the UTPCPA’s scope does not include real property transactions.¹¹⁶ The court defined consumer goods as those “used or bought for use primarily for personal, family, or household purposes.”¹¹⁷ By the court’s own reasoning from *First National Bank* and *Barber*, however, a home itself is not used for household purposes.

D. 2004 and 2007 Amendments to the UTPCPA

In 2004, the Alaska state legislature amended the UTPCPA largely to

108. *Id.* at 413.

109. *Id.* at 413–14.

110. 815 P.2d 857 (Alaska 1991).

111. *Id.* at 861.

112. *Compare id.* at 860–61, with *State v. O’Neill Investigations, Inc.*, 609 P.2d 520, 534 (Alaska 1980).

113. *Barber*, 815 P.2d at 860–61.

114. *Id.* at 861.

115. *See id.* (barring recovery after the plaintiff’s home had been foreclosed upon).

116. The court reiterated these limitations until the same year that the legislature passed the first UTPCPA amendment addressing real property. *W. Star Trucks, Inc. v. Big Iron Equip. Serv., Inc.*, 101 P.3d 1047, 1052 (Alaska 2004) (“[T]he statutes of other states cited in our *First National Bank* discussion support the proposition that real estate transactions were not intended to be covered by the Alaska act . . .”).

117. *Aloha Lumber Corp. v. Univ. of Alaska*, 994 P.2d 991, 1002 (Alaska 1999) (quoting ALASKA STAT. § 45.09.109 (2021)).

address fraud in telephone and charitable solicitations.¹¹⁸ Though the original purpose of the amendment related to establishing the Alaska No-Call List, the legislature broadened its purpose to one “relating to fair trade practices and consumer protection” that remained in the amendment eventually signed into law.¹¹⁹ Importantly, the amendment also added a new subsection to the UTPCPA expanding the definition of “goods or services” to include “goods or services provided in connection . . . with a transaction involving an *indebtedness secured by the borrower’s residence*.”¹²⁰ In other words, the UTPCPA now protected any good or service connected to a debt where the lender’s residence served as collateral.

Three years later, the Alaska legislature passed the Mortgage Lending Regulation Act, which added a number of prohibited activities to the UTPCPA for those licensed or required to be licensed as mortgage lenders.¹²¹ This new language forbids deceptive advertising in mortgage lending, misrepresentations that lead applicants to enter a mortgage loan, misrepresentations through an agent, and deceptive acts related to the “brokering, making, purchase or sale of a mortgage loan.”¹²² The bill’s sponsor stated that a mortgage is the largest loan most individuals take out and that failing to find the optimal mortgage could result in a “very expensive, 30-year mistake.”¹²³ The goal of the amendment was “to protect Alaskans when shopping for a home.”¹²⁴

The court, however, limited these amendments and continued excluding real property transactions from the UTPCPA. In *Roberson v. Southwood Manor Associates, LLC*,¹²⁵ the court acknowledged that the 2007 amendment prohibited “certain mortgage practices within the UTPA” but then reiterated that the Act did not apply to real property transactions, including residential leases.¹²⁶ The court defined a “real property

118. See 2004 Alaska Sess. Laws ch. 55.

119. 2004 Alaska Sess. Laws ch. 55, 1; see ALASKA H. JOURNAL, 23d Leg., 2d Sess. 2709 (Feb. 24, 2004).

120. *Id.* at 4 (codified as amended at ALASKA STAT. § 45.50.561(a) (2021)) (emphasis added).

121. 2007 Alaska Sess. Laws ch. 50 (codified as amended at ALASKA STAT. § 06.60.340 (2021)).

122. ANDREA LEE NEGRONI & MARY M. PFAFF, RESIDENTIAL MORTGAGE LENDING: STATE REGULATION MANUAL – WEST, Alaska Mortgage Lending, ch. 2, § 11 (Sept. 2021 update).

123. HB162, ALASKA H. LAB. & COM. COMM. STANDING COMM. MINUTES, 23d Leg., 2d Sess., (Mar. 23, 2007) [hereinafter *2007 Amendment Hearings*] (statement of Bob Lynn, Rep., Alaska State Legislature).

124. See *id.* (statement of Mark Davis, Dir., Div. of Banking & Sec., Dept. of Com., Cmty., & Econ. Dev.).

125. 249 P.3d 1059 (Alaska 2011).

126. *Id.* at 1062–63.

transaction” as a transaction including a “transfer in interest.”¹²⁷ Thus, the UTPCPA may cover certain deceptive real estate acts, such as a “home construction scam,” since the property interest itself does not transfer.¹²⁸ However, the court reasoned that leases were not covered under the UTPCPA because leases do include a transfer of property interest.¹²⁹

In *Alaska Trustee, LLC v. Bachmeier*,¹³⁰ the court reiterated its position in *Barber*¹³¹ that the UTPCPA does not cover home foreclosures, even after the 2004 and 2007 amendments.¹³² The court reasoned that the legislature passed the 2004 amendment principally to cover telephone solicitations, as there was no legislative history regarding goods or services.¹³³ According to the court, the plain language of the statute defining goods and services to include an “indebtedness secured by the borrower’s residence”¹³⁴ did not apply to real estate transactions.¹³⁵ The court reasoned that the amendment merely elaborated the “types of goods and services . . . covered by the Act” and did not change the definition of goods and services to include real property transactions.¹³⁶

The court briefly evaluated the 2007 amendment’s application to the case, simply noting that the amendment’s extension of the UTPCPA to include violations of the Mortgage Lending Regulation Act did not apply to the defendant because Alaska Trustee’s business did not fall into the category of “mortgage lenders, mortgage brokers, mortgage loan originators, loan processors, and certain loan underwriters to be licensed.”¹³⁷ The court finally noted in the same footnote that the Mortgage Lending Regulation Act “has no implication for non-judicial deed of trust foreclosures”; therefore, the UTPCPA does not apply to these or related transactions.¹³⁸ Consequently, the 2007 amendment does

127. *Id.* at 1062 n.30.

128. *See id.* (“[W]e ameliorate [the tenant]’s concern that a broad reading of ‘transactions involving real property’ would preclude a UTPA claim for such deceptive practices as a ‘home construction scam,’ because such practices do not involve an interest transfer.”).

129. *Id.* at 1062.

130. 332 P.3d 1 (Alaska 2014).

131. *Barber v. Nat’l Bank of Alaska*, 815 P.2d 857 (Alaska 1991).

132. *Bachmeier*, 332 P.3d at 9.

133. *See id.* at 8–9 (“At most, the legislative history and purpose evince an intent to bring telephonic solicitation of mortgage origination under the purview of the UTPA.”).

134. ALASKA STAT. § 45.50.561(a)(9) (2021).

135. *Bachmeier*, 332 P.3d at 7.

136. *See id.* at 7 & n.48 (mentioning that the 2004 amendment only applied to goods and services that involved a debt instrument “secured by a deed of trust covering the debtor’s residence”).

137. *Id.* at 6 n.43.

138. *Id.*

not apply to mortgage loans themselves.¹³⁹

E. Continuing Tension Between the UTPCPA's Broad Application and Limits on Real Property Transactions

While the court has continued to limit the UTPCPA's application to real property transactions, including to foreclosures and residential leases, it has also continued to broadly apply the UTPCPA outside of this area. For example, in *ASRC Energy Services Power & Communications, LLC v. Golden Valley Electric Association*,¹⁴⁰ the court chose not to incorporate changes Congress made to the FTC Act narrowing the definition of an unfair act¹⁴¹ because those changes "would result in less protection for Alaska consumers."¹⁴² The court made this decision to protect consumers even though the UTPCPA instructed courts to give "due consideration and great weight" to the FTC and federal interpretations of the FTC Act.¹⁴³ In that case, the court further expanded the UTPCPA to allow one business to sue another.¹⁴⁴ While some have criticized the court broadly applying and expanding the UTPCPA,¹⁴⁵ many other states also allow businesses to bring action under their UDAP statutes.¹⁴⁶ Moreover, the Alaska Supreme Court has repeatedly reiterated in subsequent cases that the statute's language is broad and should be "liberally construed."¹⁴⁷

Another recent real property UTPCPA case exemplifies the tension between broadly interpreting the UTPCPA and refusing to apply it to real property transactions. In *Alaska Trustee, LLC v. Ambridge*,¹⁴⁸ the plaintiffs defaulted on their home loan and faced foreclosure.¹⁴⁹ The court held that they could recover under the UTPCPA only because they included claims under the Fair Debt Collection Practices Act (FDCPA), aligning it with the earlier precedent in *O'Neill*.¹⁵⁰ Foreclosures were still not covered "goods or services," but the court noted that "[t]here are different avenues to

139. See NEGRONI & PFAFF, *supra* note 122, at ch. 2, § 11 (noting that mortgage loans are not within the scope of the UTPCPA after citing *Bachmeier*).

140. 267 P.3d 1151 (Alaska 2011).

141. Federal Trade Commission Act Amendments of 1994, Pub. L. No. 103-312, sec. 9, § 5, 108 Stat. 1691, 1695 (1994) (codified as amended at 15 U.S.C. § 45(n)).

142. *ASRC Energy*, 267 P.3d at 1161.

143. *Id.* at 1153-54 (citing ALASKA STAT. § 45.50.545 (2021)).

144. O'Quinn & Watterson, *supra* note 49, at 333.

145. See generally *id.*

146. CARTER ET AL., *supra* note 61, at ch. 2, § 4.4.2.

147. See, e.g., *Merdes & Merdes, P.C. v. Leisnoi, Inc.*, 410 P.3d 398, 411-12 (Alaska 2017).

148. 372 P.3d 207 (Alaska 2016).

149. *Id.* at 209.

150. *Id.* at 226 (citing *State v. O'Neill Investigations*, 609 P.2d 520, 530 (Alaska 1980)).

coverage under the [UTPCPA], and a violation of the FDCPA is one of them.”¹⁵¹ Complicating matters further, in 2021, the court held that a bank is not subject to the FDCPA and therefore also not subject to the UTPCPA when making efforts to collect its own debt.¹⁵²

These holdings leave significant confusion regarding what real estate and real property transactions the UTPCPA covers. Confusion like this may leave consumers and businesses frustrated, while leading to calls to *limit* actions parties may take under the UTPCPA.¹⁵³ In other words, the court’s unclear interpretations of the UTPCPA’s application to real property transactions undermine confidence in the statute that could lead to statutory changes that strip consumer protections.

III. STATUTORY INTERPRETATION OF THE UTPCPA

The UTPCPA states that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce are declared to be unlawful.”¹⁵⁴ The statute continues, “[t]he terms ‘unfair methods of competition’ and ‘unfair or deceptive acts or practices’ include, *but are not limited to*, the following acts.”¹⁵⁵ The statute then lists fifty-seven prohibited acts, including “representing that goods or services are of a particular standard, quality, or grade . . . if they are of another”¹⁵⁶ and “engaging in . . . conduct creating a likelihood of confusion or of misunderstanding and which misleads, deceives or damages a buyer or a competitor in connection with the sale or advertisement of goods or services.”¹⁵⁷ This list, however, does not limit unfair or deceptive acts that a consumer may allege fall under the UTPCPA.¹⁵⁸ Finally, in another effort to protect consumers, the statute explicitly notes that filing suit under the UTPCPA does not preclude the use of other relevant statutes that may have been violated.¹⁵⁹

In Alaska, the plain meaning of the statute begins statutory interpretation.¹⁶⁰ Alaska has adopted a “sliding-scale approach” where “legislative history can alter a statute’s literal terms.”¹⁶¹ However, “the

151. *Id.*

152. *Wendt v. Bank of N.Y. Mellon Tr. Co.*, 487 P.3d 235, 238–40 (Alaska 2021).

153. *O’Quinn & Watterson*, *supra* note 49, at 326, 335.

154. ALASKA STAT. § 45.50.471(a) (2021).

155. *Id.* § 45.50.471(b) (emphasis added).

156. *Id.* § 45.50.471(b)(6).

157. *Id.* § 45.50.471(b)(11).

158. *See id.* § 45.50.471(b) (noting that the protections “include, but are not limited to,” the fifty-seven listed acts).

159. *Id.* § 45.50.471(c).

160. *Ward v. Dep’t of Pub. Safety*, 288 P.3d 94, 98 (Alaska 2012).

161. *Bartley v. Dep’t of Admin.*, 110 P.3d 1254, 1258 (Alaska 2005).

plainer the language . . . the more convincing contrary legislative history must be.”¹⁶² When legislative history is “somewhat contrary” to the statute’s plain meaning, “plain meaning still controls.”¹⁶³ Alaska courts cannot rewrite the words of a statute to fit the legislative history if the court thinks the legislature erred.¹⁶⁴

The 2004 and 2007 UTPCPA amendments changing the plain language of the UTPCPA now compel the court to reevaluate its precedent about real property transactions because the maxim of *ejusdem generis*, which the court invoked to preclude real estate transactions from the UTPCPA,¹⁶⁵ is weakened. This Part first explores how the amendments’ legislative histories and the requirement to liberally construe the UTPCPA’s language¹⁶⁶ demonstrate that applying *ejusdem generis* today compels including at least some transactions involving real property as covered “goods or services” under the UTPCPA.¹⁶⁷ It next argues that the modern definitions of leasing and residential services also provide a strong rationale to include these as covered goods and services. Finally, even if not directly involving goods or services, unfair or deceptive real property transactions involve practices that occur within “trade or commerce . . . declared to be unlawful,” which are covered under the UTPCPA.¹⁶⁸

A. The 2004 and 2007 UTPCPA Amendments Undermine the Alaska Supreme Court’s Original Precedent Precluding Real Property Transactions Under the UTPCPA.

The court relied on *ejusdem generis* in its original precedent to preclude real property transactions from the scope of the UTPCPA.¹⁶⁹ Because the specific words following the catch-all provision only concerned consumer goods and services, the UTPCPA did not apply to real property transactions.¹⁷⁰ At the time, the court specifically noted that

162. *Id.* (quoting *Alaskans for Efficient Gov’t, Inc. v. Knowles*, 91 P.3d 273, 275 (Alaska 2004)).

163. *Estate of Kim ex rel. Alexander v. Coxe*, 295 P.3d 380, 387 (Alaska 2013) (citing *Oels v. Anchorage Police Dep’t Emps. Ass’n*, 279 P.3d 589, 597 (Alaska 2012)).

164. *Alaska Tr., LLC v. Bachmeier*, 332 P.3d 1, 9 (Alaska 2014) (Bolger, J., dissenting) (citing *Dep’t of Commerce, Cmty. & Econ. Dev. v. Alyeska Pipeline Serv. Co.*, 262 P.3d 593, 598 (Alaska 2011)).

165. *See State v. First Nat’l Bank of Anchorage*, 660 P.2d 406, 413 (Alaska 1982) (applying the doctrine of *ejusdem generis*).

166. *State v. O’Neill Investigations*, 609 P.2d 520, 528 (Alaska 1980).

167. ALASKA STAT. § 45.50.561(a)(9) (2021).

168. ALASKA STAT. § 45.50.471(a).

169. *First Nat’l Bank*, 660 P.2d at 413.

170. *Id.*

the list included only “twenty-five specific acts or practices.”¹⁷¹ Today, the list totals fifty-seven acts and practices, one of which includes any violations of Alaska Statutes section 06.60.340, the mortgage lending regulation.¹⁷² This Section first closely analyzes the 2007 amendment and its legislative history and how this undermines the original application of *eiusdem generis*. It next analyzes the 2004 amendment, followed by the need to liberally construe the UTPCPA.

The 2007 amendment’s language alone undermines the court’s original reasoning that excluded all real property transactions from the UTPCPA. In *First National Bank*, the court noted: “In our view, real property falls outside of the class [of enumerated violations of the UTPCPA] ‘particularly described,’ i.e., ‘goods and services.’”¹⁷³ In 2007, the legislature expanded the “particularly described” list by including unfair or deceptive acts relating to mortgage lending regulations as explicit violations of the UTPCPA.¹⁷⁴ A mortgage, and those practices related to acquiring one, concerns a debt instrument used to purchase real property.¹⁷⁵ The enumerated list of prohibited activities therefore now “particularly describe[s]” a facet of real property, a mortgage, as “goods and services.”¹⁷⁶ Applying *eiusdem generis* to the UTPCPA as written today means that, at minimum, unfair or deceptive acts related to mortgages should fall under the UTPCPA.¹⁷⁷

Beyond the 2007 amendment’s plain language, its legislative history further suggests that the UTPCPA should apply to mortgage-related activities.¹⁷⁸ The bill’s sponsor, who was also a licensed real estate broker, described the serious financial undertaking consumers make when entering a mortgage.¹⁷⁹ He stated that “having a good *lender* is more important” than a buyer having the perfect home.¹⁸⁰ He further noted that the 2007 amendment was a “*consumer protection bill of great importance*”

171. *Id.* at 412–13.

172. ALASKA STAT. § 45.50.471(b)(1)–(57) (2021).

173. *First Nat’l Bank*, 660 P.2d at 413 (emphasis added).

174. *Id.*; § 6, 2007 Alaska Sess. Laws ch. 50 (codified as amended at ALASKA STAT. § 45.50.471(b)(52) (2021)).

175. See *What Is a Mortgage? Loan Basics for Beginners*, ROCKET MORTG. (June 17, 2021), <https://www.rocketmortgage.com/learn/what-is-a-mortgage> (defining “mortgage”).

176. ALASKA STAT. § 45.50.471(b)(52); see also *First Nat’l Bank*, 660 P.2d at 413.

177. See ALASKA STAT. § 45.50.471(b)(52); see also *First Nat’l Bank*, 660 P.2d at 413.

178. By mortgages, this analysis refers to mortgages and deeds of trust, as they are both commonly used in Alaska. See *Young v. Embley*, 143 P.3d 936, 941 (Alaska 2006) (treating deeds of trust as identical to mortgages in nearly all respects).

179. 2007 Amendment Hearings, *supra* note 123, at 11 (statement of Bob Lynn, Rep., Alaska State Legislature).

180. *Id.* at 12 (emphasis added).

for Alaska homebuyers.¹⁸¹ Additionally, this measure was “directed at commercial mortgage transactions for residential property.”¹⁸² These comments demonstrate a legislative desire for the 2007 amendment to provide broad consumer protections related to entering a mortgage, a residential property transaction.¹⁸³ The sliding-scale approach to statutory interpretation therefore compels interpreting the UTPCPA to provide broad protection against deceptive acts related to mortgages.¹⁸⁴

While the 2007 amendment expanded the enumerated list of prohibited acts to include real property, the 2004 amendment wrote real property into the UTPCPA in another section. The 2004 amendment expanded the definition of “goods or services” to include those “provided in connection with a consumer credit transaction or with a transaction involving an indebtedness secured by the borrower’s residence.”¹⁸⁵ The court’s original precedent utilizing ejusdem generis depended on the fact that the court could find no other provisions of the UTPCPA demonstrating the legislature’s intention to include real property transactions.¹⁸⁶ The 2004 amendment demonstrates an intention to include real property transactions, as the definition of a good was expanded to include a “good . . . provided in connection . . . with a transaction involving an indebtedness secured by the borrowers residence.”¹⁸⁷

As the dissent in *Bachmeier* noted, Alaska courts never held that “goods or services” could *not* include those related to real estate transactions.¹⁸⁸ Prior to the 2004 amendment, the court did not apply the UTPCPA to real property because the statute did not specifically mention real property.¹⁸⁹ After the 2004 amendment, however, real property in the form of “indebtedness secured by the borrower’s residence” now appears in the UTPCPA, meaning that ejusdem generis today “does not apply to the statute as amended.”¹⁹⁰ The *Bachmeier* majority, by holding that the 2004 amendment stated the *types* of goods or services covered by the

181. *Id.* (emphasis added).

182. *Id.* at 15 (statement of Mark Davis, Dir., Div. of Banking & Sec., Dep’t of Com., Cmty., & Econ. Dev.).

183. *See id.* at 12, 15.

184. *See* *Bartley v. Dep’t of Admin.*, 110 P.3d 1254, 1258 (Alaska 2005) (describing Alaska’s sliding-scale approach to statutory interpretation).

185. Act Effective July 1, 2004, § 9, 2004 Alaska Sess. Laws ch. 55 (codified as amended at ALASKA STAT. § 45.50.561(a)(9) (2021)).

186. *State v. First Nat’l Bank of Anchorage*, 660 P.2d 406, 413 (Alaska 1982).

187. ALASKA STAT. § 45.50.561(a)(9).

188. *Alaska Tr., LLC v. Bachmeier*, 332 P.3d 1, 10 (Alaska 2014) (Bolger, J., dissenting).

189. *Id.*

190. *Id.*

UTPCPA,¹⁹¹ failed to see that the amendment also expanded the *definition* of goods or services themselves.¹⁹² The clear, unambiguous language of the statute brought real property transactions “involving an indebtedness secured by the borrower’s residence” within the UTPCPA.¹⁹³ The court cannot ignore the 2004 amendment in order to rewrite the statute and adhere to its 1982 precedent.¹⁹⁴ The “plain meaning still controls.”¹⁹⁵ Even if some doubt remains, “[d]efinitions in the UDAP statute are to be construed in light of the statute’s remedial purpose to protect the public.”¹⁹⁶

Furthermore, the *Bachmeier* majority misused legislative history in its statutory interpretation.¹⁹⁷ The House Finance Committee added the expanded definition of goods or services on February 24, 2004,¹⁹⁸ and the House passed the amended bill on March 3, 2004 by a 35-1-2 vote.¹⁹⁹ The majority is correct that the bill’s legislative history shows no debate over this change,²⁰⁰ while other aspects of the amendment—specifically, its application to phone solicitation—were debated.²⁰¹ Nowhere, however, does the legislative history suggest that preventing unwanted phone solicitation was the *only* reason for the amendment.²⁰² The fact that the expanded definition of goods or services was not the subject of debate could instead demonstrate clear, unopposed legislative intent to expand the UTPCPA’s protections. At most, the legislative history is only “somewhat contrary” to the statute’s plain meaning.²⁰³

191. *Id.* at 7 (majority opinion).

192. *See id.* at 9–11 (Bolger, J., dissenting) (stating the 2004 amendment modifies the definition of goods and services). *But see id.* at 7 (majority opinion) (stating the 2004 amendment “did not change the longstanding definition of goods and services itself”).

193. ALASKA STAT. § 45.50.561(a)(9) (2021); *see also Bachmeier*, 332 P.3d at 10 (Bolger, J., dissenting) (describing how the 2004 amendment to the definition of “goods or services” brought these transactions within the UTPCPA).

194. *Bachmeier*, 332 P.3d at 9 (Bolger, J., dissenting) (citation omitted).

195. *Estate of Kim ex rel. Alexander v. Coxe*, 295 P.3d 380, 387 (Alaska 2013) (citation omitted).

196. CARTER ET AL., *supra* note 61, at ch. 2, § 2.1.3.

197. *Bachmeier*, 332 P.3d at 11–12 (Bolger, J., dissenting).

198. Alaska H. Fin. Comm. Substitute for H. Bill No. 15, 23d Leg., 2d Sess., at 4 (2004).

199. ALASKA H. JOURNAL, 23d Leg., 2d Sess. 2826 (Mar. 3, 2004).

200. *See Bill History/Action for Legislature*, ALASKA STATE LEG., http://www.legis.state.ak.us/basis/Bill/Detail/23?Root=hb%2015#tab4_4 (last visited Dec. 6, 2021).

201. *See, e.g., HB15*, ALASKA H. LAB. & COM. COMM. STANDING COMM. MINUTES, 23d Leg. (Feb. 7, 2003) (statement of Hugh Fate, Rep., Alaska State Legislature) (discussing the key points of the bill creating the Alaska No-Call List).

202. *See id.* (making no mention of unwanted phone solicitations being the exclusive purpose of the amendment).

203. *Estate of Kim ex rel. Alexander v. Coxe*, 295 P.3d 380, 387 (Alaska 2013)

Even in the face of “somewhat contrary” legislative history, however, the plain meaning still controls.²⁰⁴ The legislature broadened the purpose of the 2004 amendment from establishing a no-call list to one “relating to fair trade practices and consumer protection.”²⁰⁵ This language directly suggests that the legislature intended the 2004 amendment to expand, not limit, the UTPCPA’s scope.²⁰⁶ The *Bachmeier* court, however, essentially rewrote the amendment to comport with its own precedent by choosing to not utilize the stated broad purpose of the statute when interpreting the newly expanded definition of goods and services.²⁰⁷

The Alaska Supreme Court itself has held that courts should liberally construe remedial statutes like the UTPCPA.²⁰⁸ At minimum, therefore, the 2004 amendment and this principle suggest that the UTPCPA should apply to real property transactions involving an indebtedness of the borrower’s residence, including trusts of deed, mortgages, and other similar instruments.

Coupled with the 2007 amendment, the court’s original precedent relying on the application of *eiusdem generis* stands on even more tenuous ground. Two areas of the statute now include practices related to real property.²⁰⁹ Furthermore, “remedial civil statutes” like the UTPCPA should be “accorded a liberal construction.”²¹⁰ Therefore, the court should reevaluate and invalidate its holding in *First National Bank* excluding real property from the UTPCPA.²¹¹ The fact that each of the court’s subsequent cases concerning real estate transactions “merely followed *First National Bank*’s holding,”²¹² instead of applying proper methods of statutory interpretation to the UTPCPA’s new language, may even indicate that all

(citing *Oels v. Anchorage Police Dep’t Emps. Ass’n*, 279 P.3d 589, 597 (Alaska 2012)).

204. *Id.*

205. ALASKA H. JOURNAL, 23d Leg., 2d Sess. 2709 (Mar. 3, 2004); 2004 Alaska Sess. Laws ch. 55.

206. See 2004 Alaska Sess. Laws ch. 55.

207. See *Alaska Tr., LLC v. Bachmeier*, 332 P.3d 1, 9 (Alaska 2014) (Bolger, J., dissenting) (citation omitted).

208. *State v. O’Neill Investigations, Inc.*, 609 P.2d 520, 528 (Alaska 1980).

209. See ALASKA STAT. §§ 45.50.471(b)(52), 45.50.561(a)(9) (2021).

210. *O’Neill*, 609 P.2d at 528; see also CARTER ET AL., *supra* note 61, at ch. 2, § 2.1.3 (“[T]he court should adopt a liberal interpretation of the statute’s scope and should resolve any doubts in favor of coverage [for the consumer].”).

211. See ALASKA STAT. § 45.50.471(b)(52). In *First National Bank*, the court held “that the sale of real property is not within the regulatory scope of the Consumer Protection Act.” *State v. First Nat’l Bank of Anchorage*, 660 P.2d 406, 414 (Alaska 1982). Reevaluating and correcting this precedent therefore may mean that real property is within its scope.

212. *Bachmeier*, 332 P.3d at 10 (Bolger, J., dissenting) (citation omitted).

transactions involving real property should fall under the UTPCPA.²¹³ This change would restore clarity in the law and ensure the UTPCPA continues protecting consumers.

B. The Modern-Day Lease Constitutes a Good or Service Under the UTPCPA

The 2004 amendment protects consumers against unfair or deceptive acts related to a number of real property transactions. The court has also held that unfair or deceptive acts incidental to a home sale, such as a home construction scam, are covered as well.²¹⁴ If the court does not fully correct its original precedent, but rather continues precedent based on *Bachmeier*, then the UTPCPA's application to real property would only cover practices related to home sales, mortgages, and various mortgage lending requirements.²¹⁵ This would leave out leases and the lease component of "rent to own" (RTO) transactions as the last major real property transactions not covered by the UTPCPA. Leases, however, can be classified as a service both by definition and by the context of the modern-day consumer of housing.

A lease is "[a] contract between two parties, by which the one conveys lands or tenements to the other for [a period of time] . . . usually in consideration of rent or other periodical compensation."²¹⁶ A service is "the performance of some useful act or series of acts for the benefit of another, usu[ally] for a fee."²¹⁷ Taken together, a lease is nothing more than a contract where paying rent is the fee provided in exchange for a service, which is the use of the property.²¹⁸ Therefore, a lease meets the definition of a service, so Alaskans should have protection against deceptive leasing activities under the UTPCPA.

The Alaska Supreme Court's definition of a lease includes the component of conveying an interest in land, which suggests a potential transfer of a real property interest,²¹⁹ but this rigid reading does not properly characterize a modern-day lease. In *Javins v. First National Realty*

213. See *First Nat'l Bank*, 660 P.2d at 413.

214. *Roberson v. Southwood Manor Assocs., LLC*, 249 P.3d 1059, 1062 n.30 (Alaska 2011).

215. See ALASKA STAT. §§ 45.50.471(b)(52), 45.50.561(a)(9) (2021).

216. *Lease*, OXFORD ENGLISH DICTIONARY: ONLINE, www.oed.com/view/Entry/106729 (last visited Oct. 11, 2020).

217. *Services*, BLACK'S LAW DICTIONARY (11th ed. 2019).

218. See *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071, 1075, 1079 (D.C. Cir. 1970) ("[L]eases . . . should be interpreted and construed like any other contract. . . . In a lease contract, a tenant seeks to purchase from his landlord shelter for a specified period of time.").

219. *Roberson*, 249 P.3d at 1062.

Corp.,²²⁰ the court noted that this distinction between real and personal property is largely historical and a “particularly old common law doctrine[] which the courts themselves created and developed.”²²¹ Landlord-tenant law, “derived from feudal property law,” traditionally conveyed an interest in land, but modern practice is often quite different.²²² Today, apartment dwellers have little, if any, interest in the land and instead find value because the lease gives them “a place to live.”²²³ Those entering residential leases today seek shelter, which is nothing more than a “well known package of *goods and services*.”²²⁴ This description of a lease even meets the Alaska Supreme Court’s own definition of consumer goods as those “used or bought for use primarily for personal, family, or *household purposes*.”²²⁵ The context of a changing society, one with few resemblances to those of feudal times, demonstrates that residential leases represent a modern-day consumer service.²²⁶

The Alaska Supreme Court refused to apply the *Javins* reasoning in *Roberson* because the court noted that *Javins* was primarily concerned with an implied warranty of habitability for “leases of urban dwelling units,” not with a consumer protection statute.²²⁷ Because of this distinction, the court chose not to apply the *Javins* reasoning to the UTPCPA and to not bring leases under the UTPCPA’s purview.²²⁸

The description of the modern-day apartment dweller provided in *Javins*, however, does not distinguish between habitability and consumer protection.²²⁹ The second section of the opinion concerns the history of landlord-tenant law and what the modern consumer of a lease looks like.²³⁰ Nowhere in this section did the court reference habitability; instead, it simply concluded that “leases of urban dwelling units should be interpreted and construed like any other contract.”²³¹

220. 428 F.2d 1071 (D.C. Cir. 1970).

221. *Id.* at 1074.

222. *Id.*

223. *Id.*

224. *Id.* (emphasis added).

225. *Aloha Lumber Corp. v. Univ. of Alaska*, 994 P.2d 991, 1002 (Alaska 1999) (quoting ALASKA STAT. § 45.09.109 (2021)) (emphasis added).

226. *See Javins*, 428 F.2d at 1074 (“The assumption of landlord-tenant law, derived from feudal property law, that a lease primarily conveyed to the tenant an interest in land may have been reasonable in a rural, agrarian society. . . . But in the case of the modern apartment dweller, the value of the lease is that it gives him a place to live. The city dweller who seeks to lease an apartment on the third floor of a tenement has little interest in the land 30 or 40 feet below. . . .”).

227. *Roberson v. Southwood Manor Assocs., LLC*, 249 P.3d 1059, 1062 (Alaska 2011) (citing *Javins*, 428 F.2d at 1072).

228. *Id.*

229. *Javins*, 428 F.2d at 1074.

230. *Id.* at 1074–75.

231. *See id.*

Even Alaska's state legislature recognizes this changing context and definition. The Uniform Residential Landlord and Tenant Act ("Landlord-Tenant Act")²³² explicitly states that the purpose of the law is in part to "modernize . . . the law governing the rental of dwelling units."²³³ Such a consumer enters into a lease for residential services. The consumer then resides there for a set period of time, expecting a habitable residence. This all occurs in the same modern-day context. Such context does not change whether the consumer faces an issue relating to consumer protection, implied habitability, or landlord-tenant relations. In each of these areas of law, including consumer protection, courts should consider the same context of a modern-day consumer of residential services.²³⁴

Pennsylvania courts have provided an example of the analysis the Alaska Supreme Court can apply in classifying real property transactions, specifically leases, as those involving goods or services. Over forty-five years ago, the Pennsylvania Supreme Court held that residential leases fall within that state's consumer protection law, even when not explicitly included in the state's UDAP statute.²³⁵ That court determined that "the modern apartment dweller is a consumer of housing services" and that there was little difference between a tenant and the purchaser of an automobile in determining what constituted a consumer.²³⁶ That court finally noted that the Pennsylvania legislature had taken a "modern, pragmatic and functional approach" when it passed its UDAP statute.²³⁷ The Alaska legislature approached the UTPCPA with the same practical mindset,²³⁸ and the Alaska Supreme Court should therefore adopt the same approach as Pennsylvania and categorize leases as goods or services covered under the UTPCPA.

Unfortunately, Alaska law pertaining to leases outside of the UTPCPA does not afford consumers adequate protection. The Landlord-Tenant Act predominantly limits what a landlord may do *after* the tenant already entered the lease, not in deceptive practices the landlord may employ *before* a tenant enters the lease.²³⁹ For example, the plaintiff in

232. § 8, 1974 Alaska Sess. Laws ch. 10 (codified at ALASKA STAT. §§ 34.03.010-.380 (2021)).

233. ALASKA STAT. § 34.03.010(b)(1) (emphasis added).

234. Cf. *Off. of Pub. Advoc. v. Super. Ct.*, 462 P.3d 1000, 1006 (Alaska 2020) (holding that the definition of the term "biological parent" in one set of rules should also have the same meaning in a different set of rules, even when appearing in separate statutes and parts of the Alaska Code).

235. *Commonwealth v. Monumental Props., Inc.*, 329 A.2d 812, 820 (Pa. 1974).

236. *Id.* at 820-21.

237. *Id.* at 820.

238. See 1970 Judiciary Report, *supra* note 75, at 1 (noting that it would be "impractical . . . for most injured consumers to have to protect themselves as individuals").

239. See ALASKA STAT. § 34.03.100 (2021) (mandating a landlord to make

Roberson could not and did not seek a remedy under the Landlord-Tenant Act when the landlord began charging sizable late fees.²⁴⁰ The Landlord-Tenant Act's general provisions only apply to a landlord's *material* noncompliance that affects a tenant's health and safety, a higher burden than that set out in the UTPCPA.²⁴¹ Finally, a harmed tenant would only recover damages equal to the experienced loss or, under limited circumstances, one and a half times the loss.²⁴² These limitations demonstrate the failings of existing law and the need for separate UDAP protections.

In contrast, under the UTPCPA, a harmed tenant would have the right to treble damages, serving as a significant deterrent against unfair or deceptive acts in residential leases.²⁴³ It would also cover any deceptive acts that occur *before* the lease is entered and acts that go beyond harming the health and safety of the tenant, such as hidden fees in the lease agreement or unfair late charges.²⁴⁴ Such protections preventing and deterring the harm from occurring concern the very purpose of UDAP statutes that both contract law and tort law do not adequately cover.²⁴⁵

Because the UTPCPA also applies to transactions between two businesses, this expanded scope would likely also cover commercial leases.²⁴⁶ Some may argue that the relatively low barriers to recovery under the UTPCPA will lead to one business bringing claims against another, even if there is an innocent misrepresentation when advertising the commercial lease.²⁴⁷

Such floodgates of litigation will not open, however. The Alaska Supreme Court has stated that there must be "something more than the

necessary repairs and keep premises safe, among other conditions).

240. *Roberson v. Southwood Manor Assocs., LLC*, 249 P.3d 1059, 1060 (Alaska 2011).

241. ALASKA STAT. § 34.03.160(a) (emphasis added); *see State v. O'Neill Investigations, Inc.*, 609 P.2d 520, 534–35 (noting that a party seeking remedies under the UTPCPA need only show that an act "is deceptive or unfair if it has the capacity or tendency to deceive" and need not demonstrate actual injury or intent to deceive).

242. ALASKA STAT. §§ 34.03.160(b), 34.03.210.

243. ALASKA STAT. §§ 45.50.531(a), 45.50.537(a); *see id.* § 45.12 (containing the various provisions regulating leases in the state); *see also id.* § 45.12.108 (stating that attorneys' fees are awarded only when the court finds the lease unconscionable).

244. *See ALASKA STAT.* § 45.50.531(a); *see also Roberson*, 249 P.3d at 1060 (describing the plaintiff's claim that the defendant charged unfair late fees).

245. *See Schwartz & Silverman, supra* note 42, at 7.

246. *See ASRC Energy Servs. Power & Commc'ns, LLC v. Golden Valley Elec. Ass'n*, 267 P.3d 1151, 1163 (Alaska 2011) (citing *W. Star Trucks, Inc. v. Big Iron Equip. Serv., Inc.*, 101 P.3d 1047, 1053–54 (Alaska 2004)).

247. *See State v. O'Neill Investigations, Inc.*, 609 P.2d 520, 534 (Alaska 1980); *see also O'Quinn & Watterson, supra* note 49, at 330.

mere assertion of a good faith but mistaken belief that a contract was valid” in determining unfair or deceptive conduct.²⁴⁸ The courts therefore apply a “flexible, case-specific approach.”²⁴⁹ If anything, under the expanded UTPCPA, commercial leasing companies will *better* inspect and represent their properties to businesses. Under this flexible approach, companies that offer higher quality commercial leases containing misrepresentations will likely avoid liability if they acted in good faith.²⁵⁰ Those that genuinely harm other businesses will face liability.²⁵¹ Worries of businesses “litigat[ing] any and all disputes arising from even the most routine and ordinary commercial transactions”²⁵² are simply unfounded.

C. Real Property Transactions Occur Within Trade or Commerce

The UTPCPA should also cover real property transactions because they occur “in the conduct of trade or commerce.”²⁵³ Trade and commerce consist of “[e]very business occupation carried on for subsistence or profit and involving the elements of bargain and sale, barter, exchange, or traffic.”²⁵⁴ Whether it is purchasing a home through a mortgage, signing a lease to rent a property, or hiring a company to construct a building, each of these involves a seller charging fees or prices for profit and a buyer obtaining some type of property to live in. Foreclosure from either a mortgage or deed of trust consists of the lender (or seller) taking back its collateral (the house) because of the buyer’s failed payments.²⁵⁵ The foreclosure process is nothing more than the end of the exchange between the home loan provider and the buyer.²⁵⁶ Each of these transactions clearly falls within the definition of trade and commerce and therefore should be covered under UTPCPA’s broad language.

Furthermore, real estate transactions have become a growing part of overall trade and commerce. In 2020, the real estate market in the United States generated estimated revenue of \$725 billion.²⁵⁷ The apartment rental industry accounted for a significant portion of that amount, generating an estimated revenue of \$173 billion in 2020 from over 500,000

248. Kenai Chrysler Ctr., Inc. v. Denison, 167 P.3d 1240, 1256 (Alaska 2007).

249. *Id.*

250. *See id.*

251. *See id.*

252. O’Quinn & Watterson, *supra* note 49, at 330.

253. *See* ALASKA STAT. § 45.50.471(a) (2021).

254. *Trade and Commerce*, BLACK’S LAW DICTIONARY (11th ed. 2019).

255. *See* Jean Folger, *The Foreclosure Process in 5 Steps*, MILLION ACRES (Mar. 2, 2021), <https://www.millionacres.com/real-estate-basics/articles/foreclosure-process-5-steps/> (defining “foreclosure”).

256. *See id.*

257. John Madigan, IBISWorld, *Real Estate and Rental and Leasing in the US*, U.S. INDUS. (NAICS) REP. 53, at 21 (July 2020).

enterprises while employing almost one million people across the United States.²⁵⁸ These revenue levels demonstrate that real estate transactions have become a significant part of trade and commerce and therefore should fall under the UTPCPA's protection.

Unlike Alaska, other states have adopted broad readings of their UDAP statutes that include real property transactions within trade or commerce.²⁵⁹ For example, the Hawaii Supreme Court determined that a real estate broker's and salesperson's "role in facilitating every real estate transaction in which he or she participates *necessarily involves* 'conduct in any trade or commerce,' namely, the systematic sale or brokering of interests in real property."²⁶⁰ On the other side of the transaction, the buyers are "'consumers' who 'committed money in a personal investment.'"²⁶¹ Because the court determined that real property transactions were nothing more than buyers and sellers engaged in trade or commerce, that state's UDAP statute covered real estate transactions.²⁶²

Even if the Alaska Supreme Court continues applying the UTPCPA only to "consumer" goods, the court can still cover real property transactions under the UTPCPA as those that occur in trade or commerce. Illinois provides a model example of this. In Illinois, the state legislature amended its UDAP statute to prohibit deceptive acts in "any trade or commerce."²⁶³ In the same amendment, the legislature also broadened the purpose of the statute to protect "businessmen."²⁶⁴ However, the legislature did not broaden a section of the statute that narrowly defined a "consumer" as "one who purchases or contracts for the purchase of 'merchandise.'"²⁶⁵ An Illinois appellate court held that the amendment protected businessmen in real estate transactions because such transactions fell under the amended "any trade or commerce" language.²⁶⁶ A later appellate court held that this broadened scope also covered consumer victims of deceptive real estate transactions "even

258. John Madigan, IBISWorld, *Apartment Rental in the US*, U.S. INDUS. (NAICS) REP. 53111, at 44 (Sept. 2020).

259. These include, inter alia, Pennsylvania, Florida, North Carolina, New York, Hawaii, Kentucky, Illinois, Michigan, Tennessee, Texas, and Washington. See CARTER ET AL., *supra* note 61, at ch. 2, § 2.5.1.1 & n.953 (citing various state court cases that have included the sale of real estate in "trade or commerce") (citations omitted).

260. *Cieri v. Leticia Query Realty*, 905 P.2d 29, 40 (Haw. 1995) (emphasis added).

261. *Id.* at 42.

262. *See id.* at 40, 42.

263. *Beard v. Gress*, 413 N.E.2d 448, 452 (Ill. App. Ct. 1980).

264. *Id.*

265. *Id.*

266. *People ex rel. Scott v. Cardet Int'l, Inc.*, 321 N.E.2d 386, 392 (Ill. App. Ct. 1974).

though they still d[id] not come within the definition of ‘consumers’ set forth in the act.”²⁶⁷ Not doing so would have made no sense, as it would have meant that the Illinois UDAP statute would protect businessmen but not consumers in like transactions.²⁶⁸ In other words, Illinois chose not to engage in a rigid reading of the statute but rather applied it broadly to protect everyday consumers against unfair or deceptive real estate practices.²⁶⁹

Hawaii and Illinois are only two of many states providing a model for the Alaska Supreme Court to cover real property transactions under the UTPCPA as those that occur in trade or commerce. This Part has demonstrated that this is only one of a handful of methods through which the UTPCPA can and should apply to real estate transactions. Not doing so could chill plaintiffs from bringing cases concerning any type of deceptive real estate transactions, even the limited number already protected under the UTPCPA.²⁷⁰ Multiple paths exist for the court to correctly interpret the UTPCPA in a broad, pro-consumer way to ensure those harmed by unfair and deceptive real property acts and practices have adequate avenues to be made whole. The court may take any or all of these corrective steps it deems necessary.

IV. EMERGING SCAMS AND IMPENDING ECONOMIC DIFFICULTIES CREATE A POLICY NEED FOR THE UTPCPA TO COVER REAL PROPERTY TRANSACTIONS

This Note has argued that the Alaska Supreme Court should change its precedent regarding real property transactions under the UTPCPA. The need to do so is greater than ever before, as the next Part of this Note depicts the growing economic crisis that Alaska may confront. Such an economic crisis creates the conditions ripe for unfair and deceptive practices in real estate to emerge.

267. *Gress*, 413 N.E.2d at 452 (emphasis added).

268. *Id.*

269. *See id.*

270. *See* Richard Ullstrom, *Alaska Supreme Court: Unfair Trade Practices Act Does Not Apply to Nonjudicial Foreclosures*, U.S. FORECLOSURE NETWORK (Oct. 13, 2015), <https://www.usfn.org/blogpost/1296766/229055/Alaska-Supreme-Court-Unfair-Trade-Practices-Act-Does-Not-Apply-to-Nonjudicial-Foreclosures> (concluding that *Bachmeier* will “greatly reduce” foreclosure challenges brought under the UTPCPA in Alaska). *But see* *Roberson v. Southwood Manor Assocs., LLC*, 249 P.3d 1059, 1062 n.30 (Alaska 2011) (holding that a home construction scam is covered by the UTPCPA because it does not involve a transfer in interest).

A. Real Property Internet Scams

Real property internet scams are especially alarming for Alaskans, specifically scams concerning Anchorage rental properties.²⁷¹ In 2016, *Craigslist* postings appeared for rental properties in the Anchorage area at a price of roughly \$750 per month.²⁷² In these three *Craigslist* postings referenced in a newspaper article, however, all were scams: someone used the descriptions and photos of properties that were actually for sale to create fake rental ads.²⁷³ Alaska and its future residents are particularly vulnerable to these scams, as a large number of consumers use the internet to find an apartment because many individuals hope to confirm housing before moving to the state.²⁷⁴

Outside of these *Craigslist* posts, fifty-two Alaskans reported themselves as victims of these types of rental scams in 2015.²⁷⁵ While the number of reported individuals may be few, “Real Estate/Rental” scams led to total victim loss of \$50,951, or approximately \$1,000 per person.²⁷⁶ Though the total victim count dropped to forty-five in 2019, the total loss increased to \$79,400, roughly \$1,764 per person.²⁷⁷ A victim of Real Estate/Rental fraud faced an average financial loss more than seventy-five percent higher than they would have faced only four years prior.²⁷⁸ The number of Real Estate/Rental frauds has surged in the wake of the COVID-19 pandemic, as apartment hunting over the internet has increased with virtual showings and lease signings.²⁷⁹ The sharp rise in the average dollar loss consumers in Alaska have faced, coupled with the common use of digital services to find rental property, demonstrate the growing need to protect consumers against potential unfair and deceptive acts in this area.

Under the court’s current precedent, the UTPCPA would not protect

271. See Kyle Hopkins, *What a Steal! These Rental Ads in Anchorage Were Too Good to Be True*, ALASKA’S NEWS SOURCE (Dec. 7, 2016), <https://www.alaskasnewssource.com/content/news/What-a-steal-These-rental-ads-in-Anchorage-were-too-good-to-be-true-405304745.html>.

272. See *id.* (noting that the three *Craigslist* scams mentioned in the article had rental prices of \$800, \$645, and \$750).

273. *Id.*

274. *Id.*

275. INTERNET CRIME COMPLAINT CTR., FBI, INTERNET CRIME REP. 26 (2015) [hereinafter INTERNET CRIME REP. 2015].

276. *Id.* at 26–27.

277. *Internet Crime State Rep.*, INTERNET CRIME COMPLAINT CTR., FBI (2019), <https://www.ic3.gov/Media/PDF/AnnualReport/2019State/StateReport.aspx#?s=2>.

278. *Id.*; INTERNET CRIME REP. 2015, *supra* note 275, at 26.

279. Ashley Abramson, *Renter, Beware: Fake Apartment Listings Are All Over the Internet*, MONEY (Feb. 1, 2021), <https://money.com/fake-apartment-scam/>.

against Real Estate/Rental Internet scams. The Alaska Supreme Court specifically held that the Act does not protect against residential leases as real property transactions.²⁸⁰ The provisions outlawing certain acts about advertising goods or services would also not apply since renting property is not covered under current precedent.²⁸¹ Without a change in precedent, the UTPCPA would not protect consumers against the aforementioned scams. The legislature would therefore need to amend the UTPCPA to bring real property transactions within its scope.

Coverage under the UTPCPA is particularly important because common law fraud is not a sufficient avenue for recovery for these victims. In Alaska, succeeding in a fraud case requires proving “(1) a false representation of fact; (2) knowledge of the falsity of the representation; (3) intention to induce reliance; (4) justifiable reliance; and (5) damages.”²⁸² Proving an intention to induce reliance, however, may be a significant hurdle for a plaintiff to overcome.²⁸³ Furthermore, the lack of treble damages disincentivizes a lawyer from taking a case like this with average damages of \$1,000.²⁸⁴ Coverage under the UTPCPA, however, creates fewer hurdles for a plaintiff to recover and proper incentives for an attorney to take the case.²⁸⁵

B. Skirting Mortgage Regulations: Land Installment Contracts and “Rent to Own” Transactions

Internet schemes pose real threats to Alaska consumers, but there are two particular real estate transactions that sophisticated parties use that

280. *Roberson v. Southwood Manor Assocs., LLC*, 249 P.3d 1059, 1062 (Alaska 2011).

281. See ALASKA STAT. § 45.50.471(b)(8)–(12) (2021).

282. *Cornelison v. TIG Ins.*, 376 P.3d 1255, 1270 (Alaska 2016) (quoting *Shehata v. Salvation Army*, 225 P.3d 1106, 1114 (Alaska 2010)).

283. See MARY J. DAVIS, OWEN & DAVIS ON PRODUCTS LIABILITY, ch. 3, § 7 (May 2021 update) (noting that the tort of fraud or deceit requires proving a defendant’s knowledge “that its representation is false and intent to deceive the plaintiff thereby,” making it difficult to establish the “‘scienter’ component to an intentional misrepresentation claim”); see also Schwartz & Silverman, *supra* note 42, at 7 (noting challenges of proving intent to deceive before the FTC Act).

284. See *Kenai Chrysler Ctr., Inc. v. Denison*, 167 P.3d 1240, 1260 (Alaska 2007) (“The legislative history of Alaska’s provision [in the UTPCPA] establishes that treble damages were adopted not just to deter fraud, but also to encourage injured parties to file suits under the UTPA and to ensure that they would be adequately compensated for their efforts.” (citing 1970 Judiciary Report, *supra* note 75, at 2) (emphasis added)); see also *Hopkins*, *supra* note 271 (listing the average cost of damages).

285. See ALASKA STAT. §§ 45.50.531(a), 45.50.537(a) (2021) (establishing that a plaintiff can recover three times the actual damages or \$500 if that is greater and that “a prevailing plaintiff” will be given “full reasonable attorney fees”).

can significantly harm consumers: land installment contracts, also known as land contracts, and “rent to own” (RTO) transactions. Under current court precedent, the UTPCPA would not protect Alaskans against either of these alarming, predominantly unregulated transactions.

A land contract is a form of financing where, when selling a home, the seller retains all legal title until the buyer has made all payments for the property.²⁸⁶ Described as the “poor man’s mortgage,”²⁸⁷ sellers aim these contracts at low-income individuals.²⁸⁸ The contract typically has a forfeiture clause that “authoriz[es] the seller to terminate the contract, regain possession, and retain all of the buyer’s prior payments as liquidated damages when the buyer misses a payment or otherwise violates the terms of the contract.”²⁸⁹ Such clauses put buyers at risk to lose all home equity after missing even just one payment.²⁹⁰ Other risks include a bar on assignments, substandard property conditions, title defects, and balloon payments.²⁹¹ In the wake of the foreclosure crisis, homebuyers were increasingly shut out of traditional mortgage lending and have few, if any, options beyond entering a land contract, one reason for the increasing use of these predatory contracts.²⁹² Few states have addressed problems with land contracts, and the Consumer Financial Protection Bureau (CFPB) has not addressed these issues, either.²⁹³

Land contracts are particularly dangerous because they provide consumers “none of the protections of homeownership and none of the legal rights that a tenant would have.”²⁹⁴ One example of the more predatory aspects of land contracts is the fact that sellers are not obligated to make repairs to the properties, forcing the new “owners” to make expensive repairs to what are often uninhabitable properties.²⁹⁵ No longer are small individual owners making these loans; large investment and private equity firms increasingly use these contracts as a way to profit off

286. ANDREW G. PIZOR ET AL., *Mortgage Lending* ch. 10, § 1 (3d ed. 2019).

287. Way & Wood, *supra* note 40, at 37 (quoting *Ellis v. Butterfield*, 570 P.2d 1334, 1336 (Idaho 1977)).

288. *See id.* at 37–38 (noting that lawyers for the poor have advocated against these loans and that low-income buyers in Texas used them as a common form of financing).

289. *Id.* at 38.

290. *Id.* at 40.

291. For more detail on these risks, *see id.* at 40–41.

292. *Id.* at 39; NAT’L CONSUMER L. CTR., *POLICY RECOMMENDATIONS FOR A STRONG STATE LAW ON LAND CONTRACTS* 1 (Apr. 2017), https://www.nclc.org/images/pdf/foreclosure_mortgage/predatory_mortgage_lending/ib-land-contracts-policy-recs.pdf.

293. JEREMIAH BATTLE, JR. ET AL., *TOXIC TRANSACTIONS: HOW LAND INSTALLMENT CONTRACTS ONCE AGAIN THREATEN COMMUNITIES OF COLOR* 2 (July 2016).

294. NAT’L CONSUMER L. CTR., *supra* note 292, at 1.

295. *Id.* at 2.

the significant number of foreclosed homes left after the financial crisis.²⁹⁶ It is not uncommon for these sophisticated parties to buy foreclosed homes at auction for \$5,000 and sell them as land contract properties only days later for \$30,000 without interim repairs.²⁹⁷ Such markups create extreme price gouging that unfairly harms consumers.²⁹⁸

Meanwhile, RTO transactions consist of two contracts: one that is a standard residential lease and another that is an option contract that gives the tenant the right to buy the home at some point in the future at an agreed-upon price.²⁹⁹ The option typically forces the buyer to pay a nonrefundable option fee.³⁰⁰ The option-to-buy benefit is usually illusory, as the purchase price often exceeds the actual home market value, and if buyers need to delay the purchase date for something as standard as setting an appraisal date, they forfeit the option fee entirely.³⁰¹ Buyers typically enter a seven-year lease and must find financing at the end to purchase the home.³⁰² Most tenants do not ultimately purchase the home after putting their own money into making repairs and paying rent with the hope to own the home in the end, leaving the property manager to prey on the next victim for the same property.³⁰³

Current lack of recourse under UTPCPA precedent leaves Alaskans vulnerable to the pitfalls of these emerging transactions. While the UTPCPA alone is not enough to regulate these transactions,³⁰⁴ states may place a “general prohibition against unfair, deceptive, or abusive practices” related to these transactions.³⁰⁵ Furthermore, another suggested regulation is to “[i]mpose strict penalties to make compliance more likely.”³⁰⁶ The UTPCPA provides these protections and strict penalties through the potential for plaintiffs to collect treble damages, receive attorneys’ fees, and have a relatively low burden to prove a case.³⁰⁷

296. BATTLE, JR. ET AL., *supra* note 293, at 2.

297. *Id.* at 3.

298. NAT’L CONSUMER L. CTR., *supra* note 292, at 2.

299. PIZOR ET AL., *supra* note 286, at ch. 10, § 2.2.

300. *Id.*

301. *Id.*

302. Alexandra Stevenson & Matthew Goldstein, *Rent-to-Own Homes: A Win-Win for Landlords, a Risk for Struggling Tenants*, N.Y. TIMES (Aug. 21, 2016), <https://www.nytimes.com/2016/08/22/business/dealbook/rent-to-own-homes-a-win-win-for-landlords-a-risk-for-struggling-tenants.html>.

303. *Id.*

304. See BATTLE, JR. ET AL., *supra* note 293, at 9 (stating that most state laws “leave consumers without any significant protections”); see also NAT’L CONSUMER L. CTR., *supra* note 292, at 2–3 (noting eight significant statutory changes states should take to regulate land contracts).

305. BATTLE, JR. ET AL., *supra* note 293, at 11.

306. NAT’L CONSUMER L. CTR., *supra* note 292, at 3.

307. ALASKA STAT. §§ 45.50.531(a), 45.50.537(a) (2021); see *State v. O’Neill Investigations, Inc.*, 609 P.2d 520, 534–35 (Alaska 1980) (stating that actual injury

Such regulations would not entirely outlaw land contract and RTO transactions, but rather ensure that companies and individuals market and operate them in a way that protects Alaska consumers from harm.³⁰⁸

Other Alaska laws do not adequately protect consumers against land contracts, necessitating such protection under the UTPCPA and its pro-consumer protections. Alaska law requires the transferor of real property to make certain disclosures to the buyer, and not doing so may even lead to treble damages.³⁰⁹ This regulation would not apply to land contracts, however, because in these transactions the seller retains all title to the land; there is never a transfer of real property.³¹⁰ Deed of trust regulation would not apply for the same reason.³¹¹ While there is no transfer of real property in these arrangements, there is still an exchange of an *interest* in real property, which precludes protection under the UTPCPA.³¹² Furthermore, in these transactions specifically, current law may provide protections only where federal due process is concerned.³¹³ It would not protect against practices like price gauging and the often uninhabitable nature of these properties.³¹⁴ Because there is no landlord-tenant relationship, the Landlord-Tenant Act would also not apply.³¹⁵

Such laws also do not adequately protect against unfair or deceptive acts related to RTO transactions. While the Landlord-Tenant Act may protect against certain harmful conditions like uninhabitability, it would not protect against abuses of using a miniscule amount of rent payments towards building home equity.³¹⁶ It would also not apply to any portion

and intent to deceive are not required to prove a claim under the UTPCPA and the party need only show “that the acts and practices were capable of being interpreted in a misleading way”).

308. See NAT’L CONSUMER L. CTR., *supra* note 292, at 1 (noting that those entering land contracts should “have all the rights of homeownership” and “all of the protections provided to tenants”).

309. ALASKA STAT. §§ 34.70.010, 34.70.090(b)-(c) (2021).

310. PIZOR ET AL., *supra* note 286, at ch. 10, § 1.

311. See ALASKA STAT. § 34.20.070 (2021).

312. See Dep’t of Revenue v. Baxter, 486 P.2d 360, 364 (Alaska 1971) (“[L]and contracts should be treated somewhat in the manner of a mortgage in which the vendee is deemed to have an interest”); see also Roberson v. Southwood Manor Assocs., LLC, 249 P.3d 1059, 1062 (Alaska 2011) (“[L]eases generally include a transfer of an interest”).

313. See Anderson v. Alaska Hous. Fin. Corp., 462 P.3d 19, 27 (Alaska 2020) (holding that “substantial installment payments” under condition sales contracts for real property may have federal due process protections) (citation omitted).

314. See *id.* (discussing the possibility of a federal due process claim alone and not those under the UTPCPA); see also NAT’L CONSUMER L. CTR., *supra* note 292, at 2 (discussing the problems of price gouging and uninhabitable properties in these transactions).

315. See ALASKA STAT. § 34.03.010 (2021) (clarifying that the Uniform Residential Landlord and Tenant Act applies to landlords and tenants).

316. See *id.* (omitting any mention of protection against this type of abuse); see

of the agreement related to the option to buy, including the nonrefundable option fee, the stringent requirements to properly execute the option, and the typically inflated home value.³¹⁷

The UTPCPA, with its broad prohibitions, can adequately protect consumers against unfair and deceptive practices related to land contracts and RTO transactions, but only if the court changes precedent or the legislature acts. If neither of these entities act, these arrangements will proliferate in Alaska. Perpetrators will know that they will not need to comply with the broad protections afforded to consumers under the UTPCPA³¹⁸ and will not face significant deterrents like treble damages or paying attorneys' fees.³¹⁹

Even though Alaska may appear less prone to these scams given lower foreclosure rates relative to the U.S. population as a whole during the Great Recession, the state still saw a fifteen-year high in foreclosure rates at that time.³²⁰ The financial consequences of the COVID-19 pandemic also increase the incentives for these deceptive arrangements to emerge in the state.³²¹

C. The COVID-19 Pandemic Puts Alaska Consumers More at Risk than Ever Before

The COVID-19 pandemic has hit Alaska particularly hard, creating an economic situation that could lead to a rise of unfair and deceptive acts related to real property transactions. Alaska saw one of the largest losses of regional payrolls in the first quarter of 2021.³²² In the preceding quarter, over 19,800 Alaskans lost their jobs, with more than seventy percent of those losses coming from the leisure and hospitality, education and health services, and government sectors.³²³ This wave of economic hardship

also Giammarise, *supra* note 15 (noting that the RTO lessee took action by reporting this as a deceptive practice to the Attorney General's office, but she did not have the legal protections of either a homebuyer or renter).

317. See ALASKA STAT. § 34.03.010 (stating the purpose of the Act is to "simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlord and tenant" as well as to "encourage" both parties "to maintain and improve the quality of housing" without providing any protections against the aforementioned predatory practices); see *also* PIZOR ET AL., *supra* note 286, at ch. 10, § 2.2 (stating that a lease with an option to buy is two contracts, since it is "a residential lease and an option contract").

318. See ALASKA STAT. § 45.50.471(b).

319. See *id.* §§ 45.50.531(a), 45.50.537(a).

320. Elizabeth Bluemink, *Rising Foreclosures – Alaska Rate Is at Its Highest in 15 Years, but It Still Ranks Among the Lowest in the Country*, ANCHORAGE DAILY NEWS, Mar. 31, 2009, at A1.

321. See *infra* Section IV.C.

322. HUD REPORT 1Q2021, *supra* note 32, at 3.

323. 4TH QUARTER 2020 U.S. DEP'T HOUS. & URB. DEV. PD&R REG'L REP.: REGION

struck the state while it was already facing economic difficulties, with payrolls only increasing 0.1% in the first quarter of 2020 from the prior year.³²⁴

High unemployment could have a significant effect on Alaska's housing market. Nationwide, of all mortgages outstanding in the first quarter of 2021, 4.6% are now "seriously delinquent," an increase of over 300% compared to those in the first quarter of 2020.³²⁵ While the number of newly initiated foreclosures decreased to a significant low in the same quarter, this resulted only from the foreclosure moratorium of the CARES Act.³²⁶ Most homeowners could also request forbearance³²⁷ for up to eighteen months if they showed financial hardship stemming from the pandemic.³²⁸ Such protections, however, only apply to federally backed mortgage loans, so they do not protect consumers in land contracts or RTO properties.³²⁹ The moratorium, however, ended in July 2021.³³⁰

Furthermore, the state appears far from economic recovery, especially due to sharp job losses in the hospitality and leisure sector. In Alaska, businesses in the tourism sector employed the second-largest number of private sector employees in 2019³³¹ and provide ten percent of

10, at 3 (2021).

324. HUD REPORT 1Q2021, *supra* note 32, at 3.

325. FIRST QUARTER 2021 U.S. OFF. OF THE COMPTROLLER OF THE CURRENCY MORTG. METRICS REP., at 2 (2021).

326. *Id.*; 15 U.S.C. § 9056(c)(2).

327. Forbearance allows those with federally backed mortgages to defer monthly mortgage payments, while the moratorium was an outright federal ban on foreclosures. Julia Ingram, *A Tsunami of Deferred Debt is About to Hit Homeowners No Longer Protected by a Foreclosure Moratorium*, WASH. POST (Aug. 1, 2021), <https://www.washingtonpost.com/business/2021/08/01/tsunami-deferred-debt-is-about-hit-homeowners-no-longer-protected-by-foreclosure-moratorium/>.

328. *Mortgage Forbearance During COVID-19: What to Know and What to Do*, CONSUMER FIN. PROT. BUREAU, <https://www.consumerfinance.gov/coronavirus/mortgage-forbearance-during-covid-19-what-know-what-do/> (last visited Oct. 23, 2021) [hereinafter *CFPB Forbearance Information*]; 15 U.S.C. § 9056(b)(2)–(c)(2).

329. See 15 U.S.C. § 9056(b)(2); see also *CFPB Forbearance Information*, *supra* note 328 ("The COVID hardship forbearance applies to all federally backed and federally sponsored mortgages, which includes HUD/FHA, VA, USDA, Fannie Mae, and Freddie Mac mortgage loans.").

330. Michelle Singletary, *The Federal Foreclosure Moratorium Has Ended. Struggling Homeowners May Still Be Able to Keep Their Homes*, WASH. POST (Aug. 3, 2021), <https://www.washingtonpost.com/business/2021/08/03/faq-foreclosure-moratorium-ending/>.

331. Sarah Leonard, *Opinion, Alaska Leaders' Help Is Needed to Save Alaska Tourism*, ANCHORAGE DAILY NEWS (Aug. 6, 2020), <https://www.adn.com/opinions/2020/08/06/alaska-leaders-help-is-needed-to-save-alaska-tourism/>.

Alaska's jobs.³³² Most of the state's tourism, moreover, occurs in the summer.³³³ While Alaska did have a higher-than-expected boom in summer tourism in 2021, Alaskan businesses could not operate at full capacity to capitalize on the influx of tourism dollars.³³⁴ Additionally, Alaska COVID-19 cases dramatically increased in the fall of 2021,³³⁵ and the highly contagious Delta variant caused a resurgence in canceled travel plans.³³⁶ Finally, even more uncertainty remains due to the Omicron variant, which may "pose[] 'very high' global risk."³³⁷

COVID-19 protections for homeowners have ended or will end soon, creating more risk for everyday Alaskans. If Alaska homeowners requested forbearance in March or April when the pandemic began, their protection ended shortly after the summer.³³⁸ At that time, the state may face a wave of nonjudicial foreclosures and potential deceptive acts to take advantage of consumers facing reduced economic activity in the state.

Furthermore, the forbearance measures and foreclosure moratorium also do nothing to protect those currently looking to buy a home.³³⁹ The pandemic has made it more difficult for borrowers, even those in better financial positions, to qualify for mortgages.³⁴⁰ This comes after banks have stopped approving loans for buyers trying to purchase homes worth less than \$100,000.³⁴¹ These conditions could force Alaska consumers to

332. Carl Johnson, Opinion, *Expanding Tourism Is Vital to Alaska's Economy*, ANCHORAGE DAILY NEWS (June 26, 2020), <https://www.adn.com/opinions/2020/06/26/expanding-tourism-is-vital-to-alaskas-economy/>.

333. *Id.*

334. Joe Yogerst, *Things Are Looking Up on the Last Frontier as Alaska Tourism Booms*, CNN: TRAVEL (Aug. 2, 2021), <https://www.cnn.com/travel/article/alaska-summer-travel-recovery/index.html>.

335. *Id.*

336. Debra Kamin, *Once Again, Travelers Ask: 'Should I Cancel My Trip?'*, N.Y. TIMES (Aug. 20, 2021), <https://www.nytimes.com/2021/08/20/travel/delta-variant-trip-cancellations.html>.

337. Holly Ellyatt, *Covid Omicron Variant Poses 'Very High' Global Risk and Is Likely to Spread, WHO Warns*, CNBC (Nov. 29, 2021), <https://www.cnn.com/2021/11/29/who-omicron-covid-variant-poses-very-high-risk-global-spread-likely.html>.

338. See 15 U.S.C. § 9056(b)(2) (providing that forbearance begins on request and only lasts 180 total days).

339. See *id.* § 9056 (providing relief for those who have federally backed mortgage loans).

340. Tara Siegel Bernard, *Interest Rates Are Low, but Loans Are Harder to Get. Here's Why.*, N.Y. TIMES, <https://www.nytimes.com/2020/08/04/your-money/mortgage-loans-credit-cards-coronavirus.html> (last updated Aug. 13, 2020).

341. Stevenson & Goldstein, *supra* note 302.

rent-to-own and land contract arrangements with potentially pernicious outcomes.³⁴²

Renters may also face similar unfair or deceptive acts. The CARES Act declared a moratorium on evictions at the beginning of the pandemic, with the Centers for Disease Control (CDC) issuing a series of moratoriums once that provision of the act expired.³⁴³ The Supreme Court, however, ended these protections in August 2021.³⁴⁴ Perpetrators of unfair or deceptive acts could then take advantage of vulnerable Alaskans now facing the possibility or reality of eviction, whether through RTOs, land contracts, or other means.

In these dire economic conditions, Alaska consumers will have no recourse under the UTPCPA without a change in precedent or legislative action.³⁴⁵ With only fifty-nine percent of Americans and fifty-three percent of Alaskans fully vaccinated against COVID-19 as of the middle of November 2021,³⁴⁶ the devastating effects of the Delta variant, economic activity from summer tourism being at an end, and the potential risks of the newly discovered Omicron variant, Alaska could see increased economic losses, foreclosures, and unfair and deceptive acts targeting homeowners.

Under current precedent, however, Alaska consumers cannot recover under the UTPCPA when financial losses stemming from unfair or deceptive practices relating to these real property arrangements emerge.³⁴⁷ If the court fails to correct precedent, the legislature should bring real property transactions under the UTPCPA to serve as a strong deterrent against such deceptive acts and protect everyday Alaskans.³⁴⁸

342. See *id.* (noting that banks do not lend for homes under \$100,000, leading consumers to consider RTO properties); see also Way & Wood, *supra* note 40, at 39 (“In the wake of the recent foreclosure crisis, as more homebuyers have been shut out of traditional bank financing, some urban areas have seen dramatic upticks in home sales using contracts for deed.”).

343. Adam Liptak & Glenn Thrush, *Supreme Court Ends Biden’s Eviction Moratorium*, N.Y. TIMES, <https://www.nytimes.com/2021/08/26/us/eviction-moratorium-ends.html> (last updated Sept. 1, 2021).

344. *Id.*

345. See *Alaska Tr., LLC v. Bachmeier*, 332 P.3d 1, 9 (Alaska 2014) (holding that the UTPCPA does not apply to nonjudicial deed of trust foreclosures).

346. See *How Vaccinations Are Going in Your County and State*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/us/covid-19-vaccine-doses.html> (last updated Nov. 16, 2021).

347. See *supra* Part III.B.

348. See ALASKA STAT. § 45.50.537(a) (2021) (providing for plaintiff recovery of attorneys’ fees); see also *id.* § 45.50.531(a) (allowing plaintiffs to recover three times actual damages).

V. CONCLUSION

The Unfair Trade Practices and Consumer Protection Act is meant to broadly protect everyday Alaskans from unfair and deceptive acts. The UTPCPA does so through providing plaintiffs treble damages, attorneys' fees, and a relatively easy burden of proof. The Alaska Supreme Court, however, has precluded recovery in transactions involving the largest investment most consumers will make: buying or renting a home. Technology has made it easier to perpetuate real estate scams that are becoming more costly for consumers. Sophisticated parties are now using new arrangements in the form of "rent to own" transactions and land contracts that threaten current and future Alaska homeowners and apartment seekers. Without proper legal recourse under the UTPCPA, Alaskans are vulnerable to immense financial losses. The UTPCPA can only fulfill the legislature's goal that the Act "adequately deal with the many and complex problems involved in a rapidly expanding economy" for Alaska consumers of "whatever economic status" when the statute finally applies to real property transactions.³⁴⁹

349. See 1970 Judiciary Report, *supra* note 75, at 3.