

SENATE CS FOR CS FOR HOUSE BILL NO. 470(RLS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE

Offered: 5/1/02

Referred: Today's Calendar

Sponsor(s): REPRESENTATIVES ROKEBERG, Scalzi, Hayes

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to public offering statements required under the Uniform Common**
2 **Interest Ownership Act; and providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 34.08.520(c) is amended to read:

5 (c) A declarant or dealer who offers a unit to a purchaser shall deliver a public
6 offering statement, **or a preliminary version of the public offering statement that**
7 **reasonably reflects the contents of the public offering statement that is**
8 **subsequently delivered to a purchaser,** in the manner required by AS 34.08.580(a).
9 The person who prepared all or a part of the public offering statement is liable under
10 AS 34.08.580 and 34.08.670 for any false or misleading statement set out in the
11 statement or for any omission of a material fact from the statement with respect to the
12 portion of the public offering statement that the person prepared. If a declarant did not
13 prepare any part of a public offering statement, the declarant is not liable for a false or
14 misleading statement set out in the statement or for an omission of a material fact from

1 the statement unless the declarant had actual knowledge of the statement or omission
 2 or, in the exercise of reasonable care, should have known of the statement or omission.

3 * **Sec. 2.** AS 34.08.530(a) is amended to read:

4 (a) Except as provided in (b) of this section, a public offering statement must
 5 fully and accurately contain or disclose

6 (1) the name and principal address of the declarant and of the common
 7 interest community and indicate whether the common interest community is a
 8 condominium, cooperative, or planned community;

9 (2) a general description of the common interest community,
 10 including, in a building constructed for residential purposes with horizontal
 11 boundaries, the area of the interior surface of floors available for residential purposes
 12 and, to the extent possible, the types, number, and declarant's schedule for the
 13 commencement and completion of construction of buildings and amenities that the
 14 declarant anticipates including in the common interest community;

15 (3) the number of units in the common interest community;

16 (4) copies and a brief narrative description of the significant features of
 17 the declaration, other than plats and plans, and

18 (A) any recorded covenants, conditions, restrictions, and
 19 reservations affecting the common interest community;

20 (B) the bylaws and any rules or regulations of the association;

21 (C) copies of any contracts and leases to be signed by
 22 purchasers at closing; and

23 (D) a brief narrative description of any contracts or leases that
 24 will or may be subject to cancellation by the association under AS 34.08.360;

25 (5) any current balance sheet and a projected budget for the
 26 association, either within or as an exhibit to the public offering statement, for one year
 27 after the date of the first conveyance to a purchaser, and the current budget of the
 28 association, the name of the person who prepared the budget, and a statement of the
 29 budget's assumptions concerning occupancy, assumptions concerning the calculation
 30 of the amount of reserves certified by a certified architect or engineer, and inflation
 31 factors, including, without limitation,

(A) a statement of the amount included in the budget as a reserve for repairs and replacement including the estimated cost of repair or replacement cost and the estimated useful life of the asset to be repaired or replaced;

(B) a statement of any other reserves;

(C) the projected common expense assessment by category of expenditures for the association; and

(D) the projected monthly common expense assessment for each type of unit;

(6) any services not reflected in the budget that the declarant provides, or expenses that the declarant pays and that the declarant expects may become a common expense of the association at a subsequent time and the projected common expense assessment attributable to each of those services or expenses for the association and for each type of unit;

(7) any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;

(8) a description of liens, defects, or encumbrances on or affecting the title to the common interest community;

(9) a description of financing offered or arranged by the declarant;

(10) the terms and significant limitations of warranties provided by the declarant, including statutory warranties and limitations on the enforcement of the warranties or on damages;

(11) a statement that

(A) within 15 days after receipt of a public offering statement **or a preliminary version of the public offering statement that reasonably reflects the contents of the public offering statement that is subsequently delivered to a purchaser,** a purchaser, before conveyance, may cancel any contract for purchase of a unit from a declarant;

(B) if a declarant fails to provide a public offering statement to a purchaser before conveying a unit, the purchaser may recover from the declarant **up to** 10 percent of the sales price of the unit plus 10 percent of the

1 share, proportionate to the common expense liability of the unit, of any
 2 indebtedness of the association secured by security interests encumbering the
 3 common interest community; and

4 (C) a purchaser who receives the public offering statement, or
 5 a preliminary version of the public offering statement that reasonably
 6 reflects the contents of the public offering statement that is subsequently
 7 delivered to a purchaser, more than 15 days before signing a contract cannot
 8 cancel the contract;

9 (12) a statement of any unsatisfied judgments or pending suits against
 10 the association, and the status of any pending suits material to the common interest
 11 community of which a declarant has actual knowledge;

12 (13) a statement that a deposit made in connection with the purchase of
 13 a unit will be held in an escrow account until closing and will be returned to the
 14 purchaser if the purchaser cancels the contract under AS 34.08.580, together with the
 15 name and address of the escrow agent;

16 (14) any restraints on alienation of any portion of the common interest
 17 community and any restrictions

18 (A) on use, occupancy, and alienation of the unit; and

19 (B) on the amount for which a unit may be sold or on the
 20 amount that may be received by a unit owner on sale, condemnation, or
 21 casualty loss to the unit or to the common interest community, or on
 22 termination of the common interest community;

23 (15) a description of the insurance coverage provided for the benefit of
 24 unit owners;

25 (16) current or expected fees or charges to be paid by a unit owner for
 26 the use of the common elements and other facilities related to the common interest
 27 community;

28 (17) the extent to which financial arrangements have been provided for
 29 completion of improvements that the declarant is obligated to build under
 30 AS 34.08.690;

31 (18) a brief narrative description of zoning and other land use

1 requirements affecting the common interest community;

2 (19) each unusual and material circumstance, feature, or characteristic
3 of the common interest community and the units; and

4 (20) in a cooperative,

5 (A) whether each unit owner will be entitled, for federal, state,
6 and local income tax purposes, to a pass-through of deductions for payments
7 made by the association for real estate taxes and interest paid the holder of a
8 security interest encumbering the cooperative; and

9 (B) a statement as to the effect on each unit owner if the
10 association fails to pay real estate taxes or payments due the holder of a
11 security interest encumbering the cooperative.

12 * **Sec. 3.** AS 34.08.580(a) is amended to read:

13 (a) A person required to deliver a public offering statement under
14 AS 34.08.520(c) shall provide each purchaser with a copy of the public offering
15 statement and each amendment to the statement, or a preliminary version of the
16 public offering statement that reasonably reflects the contents of the public
17 offering statement that is subsequently delivered to a purchaser, before
18 conveyance of the unit, and not later than the date of a contract of sale. If a purchaser
19 is not given the public offering statement, or a preliminary version of the public
20 offering statement that reasonably reflects the contents of the public offering
21 statement that is subsequently delivered to a purchaser, more than 15 days before
22 execution of a contract for the purchase of a unit, the purchaser, before conveyance,
23 may cancel the contract within 15 days of receipt of the public offering statement or
24 preliminary version of the public offering statement.

25 * **Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).