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January 21, 2022

Representative David Nelson
State Capitol Room 13
Juneau AK, 99801

Senator Josh Revak
State Capitol Room 125
Juneau AK, 99801

RE: Support of House Bill No. 243 and Senate Bill No. 143;
Amendments to Alaska's Horizontal Property Regimes Act and Uniform Common
Interest Ownership Act

Representative Nelson,

My name is Matt Widmer and I have been practicing law in Alaska for approximately 16 years. Over the past three years, I have represented many homeowner associations, primarily in the Anchorage and Mat-Su areas. I am writing this letter in support of House Bill No. 243 and Senate Bill No. 143. The issues addressed by these bills will greatly impact the ability of HOAs to better govern their communities. I hope that the Legislature will pass these much-needed bills, as they fix two problems with the laws that govern HOAs.

Homeowner Associations can be generally separated into two distinct groups: those that are organized under AS 34.07 ("the Horizontal Property Regimes Act") and those that are organized under AS 34.08 ("the Common Interest Ownership Act"). In addition to the statutes, Associations also govern themselves through recorded Declarations. Each Declaration is specific to an Association and sets forth the rules, benefits, and obligations of an Association member to every other member of the Association, including the steps that must be taken to amend that Declaration.

The process to amend every Declaration is different, but most Declarations require the express agreement of a large percentage (sometimes 100%!) of both the Association members and the lienholders of each property. Obtaining the consent of this second group is what causes Associations the most problems. These lienholders (usually taking the form of mortgages) are almost always large, bureaucratic, national banks with no real presence in Alaska. When an Association asks these banks to

consent to an amendment, the response is almost always silence. Without express agreement from these banks, an Association cannot change the way it governs itself to take advantage of either new laws or the wishes of its current members.

HB 243 and SB 143 will eliminate this problem. Lienholders must still be notified of any proposed changes to an Association's Declaration. But the obligation to respond is fully placed on the lienholder by allowing an Association to treat a failure to respond as an agreement to the amendment. The lienholder is protected because it is still given the opportunity to participate in the amendment process; the Association is protected because lienholders will not be able to simply remain silent and hamstring the Association's ability to govern itself.

The second change that these bills fix is the status of the super-priority lien. Under Alaska law, an Association has a lien on property within the Association in the amount of unpaid assessments, fines, or other charges against that property. Under the Common Interest Ownership Act, six months of that lien takes priority over any mortgage on the property. This language allows an Association to recover certain amounts owed by the owner directly from the lienholder; a bank that fails to pay those amounts can have its own lien extinguished. This provides Associations with much needed funds to operate.

Unfortunately, certain lenders have interpreted the language in the Common Interest Ownership Act as exempting them from having to pay the super-priority lien for Associations organized under the Horizontal Property Regimes Act. HB 243 and SB 143 will make it clear that Associations may enforce a super-priority lien regardless of the Act in which it was organized.

These bills enact long-needed changes to Alaska law that will allow Associations to better govern themselves. On behalf of the Associations I represent, I strongly support this legislation.

Sincerely,

BIRCH HORTON BITTNER & CHEROT



Matthew C. Widmer



February 9, 2022

Alaska Legislature
Senate Labor and Commerce Committee
120 4th Street
Juneau, Alaska 99801

RE: Comments on SB 143 - An Act relating to horizontal property regimes and common interest communities; and relating to mortgages, deeds of trust, and other property liens

Dear Chairman Costello, and Members of the Senate Labor and Commerce Committee:

My name is Dawn M. Bauman, CAE, and I am the Senior Vice President of Government and Public Affairs for the Community Associations Institute representing 73.9 million Americans living in more than 351,000 communities. I am writing to provide the community association industry's support of SB 143, and HB 243, - An Act relating to horizontal property regimes and common interest communities; and relating to mortgages, deeds of trust, and other property liens.

On behalf of Community Associations Institute (CAI), thank you for the opportunity to share comments related to SB 143 - An Act relating to horizontal property regimes and common interest communities; and relating to mortgages, deeds of trust, and other property liens. CAI would like to start by applauding Senator Revak, sponsor of SB 143, for introducing this important legislation, which provide a streamlined method for community associations to obtain lienholder approval so that they may amend their governing documents and take advantage of the protections, flexibility, and guidance of UCIOA, as well as the super-priority lien.

[SB 143 - An Act relating to horizontal property regimes and common interest communities; and relating to mortgages, deeds of trust, and other property liens](#)

Community Associations Institute (CAI) supports an association's ability to have a streamlined process to amend their documents without antiquated and onerous requirements stated in their declaration that an association must first receive prior approval in writing from mortgagees or other lienholders of the properties within the association.

[Uniform Common Interest Ownership Community Act \(UCIOA\) – Amendment of Declarations](#)

[CAI advocates for the adoption of Uniform Common Interest Ownership Act \(UCIOA\)](#), and applauds Alaska for being one of nine, which has adopted this Uniform Act. UCIOA has been updated twice to reflect changing practices since Alaska adopted the Act. SB 143 and HB 243 would bring Alaska up to date to a more current version of the Act.

This legislation will incorporate changes adapted in 2008 from the Connecticut version of the Act, codified as C.G.S. § 47-237, which provides that consent of a holder of a security interest in a unit is deemed granted if a refusal to consent in a record is not received by the association within 60 days after the association delivers notice of the proposed amendment to the holder at an address for notice



provided by the holder or mails the notice to the holder by certified mail, return receipt requested at that address ([UCIOA SECTION 2-117. AMENDMENT OF DECLARATION](#)). According to a [Comment in UCIOA](#):

“This draft expands the Connecticut statute by applying those provisions not only to communities created under UCIOA, but to pre-existing communities that now fall partially under the Act, since some of the most difficult mortgagee consent provisions can be found in the documents of older communities. These may arguably have made some sense in the earlier days of development when most unit mortgages were held by local financial institutions concerned that unit owners might routinely adopt irresponsible amendments, and when the lenders whose consent was required were often readily available. Now that most mortgages are held by distant entities unable to respond to requests for needed amendments in a timely way, however, provisions requiring lender approval frequently hinder communities in their efforts to adopt necessary changes to their documents.”

The following states have adopted this ability into their state UCIOA:

- Colorado Revised Statutes: 38-33.3-217(1)(b)
- Connecticut Statute: 47-236(i)
- Florida Statute: 720.306(1)(d)

Lien Priority for Community Association Assessments

Community Associations Institute [supports legislation](#) that provides community associations with an assessment lien priority equal to the amount of assessments that are due over the term of the lien of a first mortgage or deed of trust. Community association liens, including the portion that has priority over the lien of a first mortgage or deed of trust, should be perpetually renewable. A single claim of priority should not preclude subsequent applications of future liens for a property in a community association. The lien provided for should apply only to monthly or periodic common expense assessments made by an association in accordance with its annual operating budget, together with reasonable attorneys’ fees and other costs of collection to recover this amount.

SB 143 and HB 243 will clearly provide for pre-existing associations, created prior to January 1, 1986, to have the benefit of super-priority lien. This legislation will clarify that 34.08.470 does not “invalidate” a declaration provision, even if it conflicts with it, so that pre-existing associations are entitled to the super-priority lien. When community association assessments are not paid, it threatens the viability of the community itself, forcing down property values within and around the community. Associations rely on lien priority as an effective means to recover delinquent assessments to achieve financial stability. It is critical for all associations in Alaska to have this ability to protect the community association housing model.

More than [20 states](#) currently allow for this process, without the confusion that is caused by Alaska law. CAI urges this Committee to allow for all Alaskan community associations to recover certain amounts owed by the owner directly from the lienholder, providing associations with the necessary funds to operate.



CAI urges the Alaska Legislature to enact this streamlined method for community associations to obtain lienholder approval so that they may amend their governing documents and take advantage of the protections, flexibility, and guidance of UCIOA, as well as the super-priority lien.

About CAI and the Community Association Housing Modelⁱ

CAI is the only international membership organization dedicated to the community association model of homeownership. CAI members are homeowners, association board members, managing agents and business partners who work tirelessly to improve the community association model of housing. CAI members have a keen focus on homeowner and board member education, development and enforcement of best practices and ethical standards, and raising standards through credentialing and continuing education requirements for community association professionals. CAI's more than 42,000 members are organized in more than 60 chapters.

For more statistical data on the community association housing model in the state of Alaska, I encourage you to review the [Foundation for Community Associations Research \(FCAR\), Fact Book: Alaska State Summary: Community Association Data and Information](#). Community Association Fact Book is published by FCAR and documents the history, current status, trends and future issues of U.S. community association housing in general. The Fact Book, also provides, community association information on a state-by-state basis.

We hope the comments provided in this letter are helpful to the Committee and will assist in developing public policy that is sensible for residents living in the Alaska's community associations. Please feel free to contact us to discuss these comments or any legislation impacting community association residents in the Alaska.

Respectfully yours,

A handwritten signature in black ink that reads "DM Bauman". The signature is written over a light gray dotted background.

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CC: Senator Revak, Senator.Joshua.Revak@akleg.gov

¹ Role & Benefit Community Association Housing

Emerging in the 1970s, community association housing was a means to address issues of land use and limited resources at the state and local level for housing development. HOAs and condominiums allowed for affordable and efficient construction of housing while concurrently limited the financial impact of such development on local and state governments. The investment in community infrastructure including roads, retention ponds, parks, club houses and amenities are borne by developers and the ongoing cost of maintenance is supported by assessments paid by residents of the community association. Amenities and infrastructure are driven by market considerations and the result is a vast array of communities that provide consumers with an array of choices in housing and lifestyles.

When purchasing a home in a community association, a resident enters into a contractual arrangement which obligates them to pay assessments to their association, which is governed by a board elected by the residents. Such communities, through deed restrictions and adopted rules have provisions to enhance and maintain the property values of homes in the community. The benefits of such communities accrue to both residents, taxpayers and local business. First, homes in community associations are worth at minimum, 5% more than homes in a traditional community. This directly benefits the purchaser, but also the larger jurisdiction through enhanced property taxes resulting from this value premium. Additionally, community association residents assess themselves to maintain the infrastructure and amenities in their community, costs that would otherwise fall on state or local governments.

More importantly, community associations provide residents with an accessible opportunity for civic involvement. Community Associations are governed by their residents, who elect representatives to serve on a board of directors. This provides a level of local governance that residents find highly responsive to their needs. 93% of association residents rate their experience as positive, and 88% believe their elected boards strive to serve the best interests of their community. In total, more than 1.6 million Americans demonstrate their civic commitment by service on a community association board each year.