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**Matthew C. Widmer**

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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