

HOUSE BILL NO. 243

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE NELSON

Introduced: 1/18/22

Referred: Community and Regional Affairs, Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to horizontal property regimes and common interest communities; and**
2 **relating to mortgages, deeds of trust, and other property liens."**

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

4 * **Section 1.** AS 34.07 is amended by adding a new section to read:

5 **Sec. 34.07.025. Amendment of declaration; lienholder consent.** (a) If a
6 declaration requires an association of apartment owners to obtain the consent of a
7 lienholder with a lien on the property before the association may amend the
8 declaration, the association may obtain the consent of the lienholder under this section.

9 (b) To amend the declaration under (a) of this section, the association of
10 apartment owners shall send to a lienholder a dated written notice and a copy of the
11 proposed amendment by certified mail, return receipt requested, to the most recent
12 address of the lienholder shown on the mortgage, deed of trust, or other document that
13 established the lien and to any other address provided by the lienholder to the
14 association in writing.

1 (c) The association of apartment owners shall include in the notice provided
2 under (b) of this section

3 (1) a statement that the association intends to amend the declaration;

4 (2) a request that the lienholder consent to the amendment;

5 (3) a statement that the association will amend the declaration if the
6 lienholder fails to respond to the notice within 60 days after the postmark date of the
7 notice; and

8 (4) a statement that the lienholder may not unreasonably withhold the
9 lienholder's consent.

10 (d) If an association of apartment owners complies with (b) and (c) of this
11 section and the lienholder fails to respond to the association within 60 days after the
12 postmark date of the notice provided under (b) of this section, the lienholder is
13 considered to have approved the proposed amendment.

14 (e) A lienholder may not unreasonably withhold the lienholder's consent to an
15 amendment under this section.

16 (f) This section is not intended to be the exclusive method for an association
17 of apartment owners to obtain the consent of a lienholder to an amendment of the
18 declaration. If the association obtains the consent of a lienholder without using the
19 method provided by this section, the association may obtain the consent of other
20 lienholders by using the method provided by this section.

21 (g) This section applies to a lienholder whose lien on the property has been
22 recorded under AS 40.17.

23 (h) In this section, "lienholder" means a person that is a mortgagee, lender, or
24 other holder of a lien on the property.

25 * **Sec. 2.** AS 34.08.040 is amended by adding a new subsection to read:

26 (b) For the purposes of (a) of this section, the application of AS 34.08.470 to a
27 common interest community created under AS 34.07 before January 1, 1986, with
28 respect to an event or circumstance occurring after January 1, 1986, does not
29 invalidate a provision in the declaration of the common interest community, even if
30 the provision in the declaration conflicts with AS 34.08.470.

31 * **Sec. 3.** AS 34.08.250 is amended by adding new subsections to read:

1 (g) If a declaration requires an association to obtain the consent of a lienholder
2 with a lien on the property before the association may amend the declaration, the
3 association may obtain the consent of the lienholder under (h) - (n) of this section.

4 (h) To amend the declaration under (g) of this section, the association shall
5 send to a lienholder a dated written notice and a copy of the proposed amendment by
6 certified mail, return receipt requested, to the most recent address of the lienholder
7 shown on the mortgage, deed of trust, or other document that established the lien and
8 to any other address provided by the lienholder to the association in writing.

9 (i) The association shall include in the notice provided under (h) of this
10 section

11 (1) a statement that the association intends to amend the declaration;

12 (2) a request that the lienholder consent to the amendment;

13 (3) a statement that the association will amend the declaration if the
14 lienholder fails to respond to the notice within 60 days after the postmark date of the
15 notice; and

16 (4) a statement that the lienholder may not unreasonably withhold the
17 lienholder's consent.

18 (j) If an association complies with (h) and (i) of this section and the lienholder
19 fails to respond to the association within 60 days after the postmark date of the notice
20 provided under (h) of this section, the lienholder is considered to have approved the
21 proposed amendment.

22 (k) A lienholder may not unreasonably withhold the lienholder's consent to an
23 amendment under (g) - (n) of this section.

24 (l) The provisions of (g) - (n) of this section are not intended to be the
25 exclusive method for an association to obtain the consent of a lienholder to an
26 amendment of the declaration. If an association obtains the consent of a lienholder
27 without using the method provided by (g) - (n) of this section, the association may
28 obtain the consent of other lienholders by using the method provided by (g) - (n) of
29 this section.

30 (m) The provisions of (g) - (n) of this section apply to a lienholder whose lien
31 on the property has been recorded under AS 40.17.

1 (n) In (g) - (m) of this section, "lienholder" means a person that is a
2 mortgagee, lender, or other holder of a lien on the property.