

HOUSE BILL NO. 477

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced: 3/31/98

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to common interest communities; and amending Rule 72(k),
2 Alaska Rules of Civil Procedure."

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

4 * **Section 1.** AS 34.08.010 is amended to read:

5 **Sec. 34.08.010. Applicability generally.** Except as provided in AS 34.08.025
6 and 34.08.030 [AS 34.08.030], this chapter applies to **all** [EACH] common interest
7 **communities** [COMMUNITY] created within the state after January 1, 1986. The
8 provisions of AS 10.15 and AS 34.07 do not apply to common interest communities
9 created after January 1, 1986.

10 * **Sec. 2.** AS 34.08 is amended by adding a new section to read:

11 **Sec. 34.08.025. Applicability to small cooperatives.** If a cooperative contains
12 fewer than 13 units and is not subject to development rights, the cooperative is subject
13 only to AS 34.08.720 - 34.08.740 unless the declaration provides that this entire
14 chapter applies.

1 * **Sec. 3.** AS 34.08.030 is repealed and reenacted to read:

2 **Sec. 34.08.030. Applicability to small and limited expense liability planned**
 3 **communities.** Unless the declaration provides that this entire chapter applies, a
 4 planned community created after January 1, 1986, is subject only to AS 34.08.720 -
 5 34.08.740 if the planned community is not subject to any development rights and
 6 contains fewer than 13 units or

7 (1) provides, in its declaration, that the annual average common
 8 expense liability of all units restricted to residential purposes, exclusive of optional
 9 user fees and any insurance premiums paid by the association, may not exceed \$600
 10 as adjusted under AS 34.08.820;

11 (2) the declarant reasonably believes in good faith that the maximum
 12 stated assessment will be sufficient to pay the expenses of the planned community; and

13 (3) the declaration provides that the assessment may not be increased
 14 during the period of declarant control without the consent of all unit owners.

15 * **Sec. 4.** AS 34.08.060 is repealed and reenacted to read:

16 **Sec. 34.08.060. Amendments to governing instruments.** (a) The
 17 declaration, bylaws, or plats and plans of a common interest community created before
 18 January 1, 1986, may be amended to achieve any result permitted by this chapter,
 19 regardless of what applicable law provided before January 1, 1986.

20 (b) An amendment to the declaration, bylaws, or plats and plans authorized by
 21 this section must be adopted in conformity with the procedures and requirements for
 22 amending the instruments specified by those instruments or, if there are none, in
 23 conformity with the amendment procedures of this chapter. If an amendment grants
 24 to a person rights, powers, or privileges permitted by this chapter, all corresponding
 25 obligations, liabilities, and restrictions in this chapter also apply to that person.

26 * **Sec. 5.** AS 34.08.070(b) is amended to read:

27 (b) This chapter applies to a common interest community containing some
 28 units that are restricted exclusively to nonresidential use and other units that are not
 29 restricted exclusively to nonresidential use only if the declaration provides that **this**
 30 **[THE]** chapter applies to the common interest community or **if** the real estate
 31 comprising the units that may be used for residential purposes would be a common

1 interest community **subject to this chapter** in the absence of the units **restricted**
 2 **exclusively to nonresidential use** [THAT MAY NOT BE USED FOR RESIDENTIAL
 3 PURPOSES].

4 * **Sec. 6.** AS 34.08.090 is amended to read:

5 **Sec. 34.08.090. Creation of common interest communities.** (a) A common
 6 interest community may be created under this chapter only by recording a declaration
 7 executed in the same manner as a deed and, in a cooperative, by conveying the real
 8 estate subject to the declaration to the association. The declaration must be recorded,
 9 and a plat or plan that is part of the declaration [FILED AND] recorded, in each
 10 recording district in which a portion of the common interest community is located and
 11 must be indexed in the grantee's index in the name of the common interest community
 12 and the association and in the grantor's index in the name of each person executing
 13 the declaration.

14 (b) In a condominium, a declaration or an amendment to a declaration that
 15 adds a unit may not be recorded, and a plat or plan that is part of the declaration may
 16 not be [FILED OR] recorded, unless the structural components and mechanical systems
 17 of each building containing or comprising a unit of the condominium are completed
 18 substantially in accordance with the plans, as evidenced by a certificate of completion
 19 recorded with the declaration or amendment to the declaration and executed by

20 (1) **a** [AN INDEPENDENT] registered engineer, architect, or land
 21 surveyor;

22 (2) an appraiser with the designation of senior residential appraiser,
 23 senior real property appraiser, or senior real estate analyst of the Society of Real Estate
 24 Appraisers;

25 (3) a residential member, or member of the appraisal institute, of the
 26 American Institute of Real Estate Appraisers; or

27 (4) an individual with a designation established by regulation of the
 28 Alaska Housing Finance Corporation for fee appraisers who certify the completion of
 29 construction.

30 * **Sec. 7.** AS 34.08.130 is amended to read:

31 **Sec. 34.08.130. Contents of declaration.** (a) The declaration must contain

1 (1) the names of the common interest community and the association
2 and a statement that the common interest community is either a condominium,
3 cooperative, or planned community;

4 (2) the name of each recording district in which a part of the common
5 interest community is situated;

6 (3) a legally sufficient description of the real estate included in the
7 common interest community;

8 (4) a statement of the maximum number of units that the declarant
9 reserves the right to create;

10 (5) in a condominium or planned community, a description of the
11 boundaries of each unit created by the declaration, including the identifying number
12 of the unit, or in a cooperative, a description, which may be by plats or plans, of each
13 unit created by the declaration, including the identifying number of the unit, its size
14 or number of rooms, and its location within a building if it is within a building
15 containing more than one unit;

16 (6) a description of any limited common elements, other than those
17 specified in AS 34.08.100(2) and (4) or **shown on the plats or plans under**
18 **AS 34.08.170(b)(10)** [34.08.170(b)(10)] and, in a planned community, any real estate
19 that is or must become common elements;

20 (7) a description of any real estate, except real estate subject to
21 development rights, that may be allocated subsequently as limited common elements,
22 other than limited common elements specified in AS 34.08.100(2) and (4), together
23 with a statement that the designated real estate may be allocated;

24 (8) a description of any development rights or other special declarant
25 rights reserved by the declarant, together with a legally sufficient description of the
26 real estate to which each of the rights applies, and a time limit within which each of
27 the rights must be exercised;

28 (9) if a development right may be exercised with respect to different
29 parcels of real estate at different times, a statement to that effect together with

30 (A) either a statement fixing the boundaries of the portions and
31 regulating the order in which the portions may be subjected to the exercise of

1 each development right or a statement that assurances are not made with regard
2 to matters under this paragraph; and

3 (B) a statement as to whether, if a development right is
4 exercised in a portion of the real estate subject to the development right, the
5 development right must be exercised in all or in any other portion of the
6 remainder of that real estate;

7 (10) any other condition or limitation under which the rights described
8 in (8) of this subsection may be exercised or will lapse;

9 (11) an allocation to each unit of the allocated interests in the manner
10 described in AS 34.08.150;

11 (12) any restrictions

12 (A) on [USE, OCCUPANCY, AND] alienation of the units,
13 **including restrictions on leasing that exceed the restrictions on leasing**
14 **units that executive boards may impose under AS 34.08.320(c)(2);** and

15 (B) on the amount for which a unit may be sold or on the
16 amount that may be received by a unit owner on sale, condemnation, or
17 casualty loss to the unit or to the common interest community, or on
18 termination of the common interest community;

19 (13) the recording data for recorded easements and licenses appurtenant
20 to or included in the common interest community or to which any portion of the
21 common interest community is or may become subject by virtue of a reservation in the
22 declaration; and

23 (14) each matter required by AS 34.08.140, 34.08.150, 34.08.160,
24 34.08.170, 34.08.230, 34.08.240, and 34.08.330(d).

25 (b) A declaration may contain other matters the declarant considers
26 appropriate, **including restrictions on the uses of a unit or the number or other**
27 **qualifications of persons who may occupy units.**

28 * **Sec. 8.** AS 34.08.140(b) is amended to read:

29 (b) After the declaration for a leasehold condominium or leasehold planned
30 community is recorded, and a plat or plan that is part of the declaration is [FILED
31 AND] recorded, neither the lessor nor the successor in interest of the lessor may

1 terminate the leasehold interest of a unit owner who makes timely payment of a unit
 2 owner's share of the rent and otherwise complies with the covenants that, if violated,
 3 would entitle the lessor to terminate the lease. The leasehold interest of a unit owner
 4 in a condominium or planned community is not affected by the failure of any other
 5 person to pay rent or fulfill a covenant.

6 * **Sec. 9.** AS 34.08.140(d) is amended to read:

7 (d) If the expiration or termination of a lease decreases the number of units
 8 in a common interest community, the allocated interests must be reallocated under
 9 AS 34.08.740(a) as if the units had been taken by eminent domain. The reallocation
 10 must be confirmed by an amendment to the declaration prepared, executed, and
 11 recorded by the association of unit owners; a plat or plan that accompanies the
 12 amendment must be [FILED AND] recorded with the amendment.

13 * **Sec. 10.** AS 34.08.160(b) is amended to read:

14 (b) Except as the declaration otherwise provides, a limited common element
 15 may be reallocated by an amendment to the declaration executed by the unit owners
 16 between or among whose units the reallocation is made. The persons executing the
 17 amendment shall provide a copy of the amendment to the association, which shall
 18 record the amendment and [FILE AND] record a plat or plan that accompanies the
 19 amendment. The amendment must be recorded, and an accompanying plat or plan
 20 [FILED AND] recorded, in the names of the parties and the common interest
 21 community.

22 * **Sec. 11.** AS 34.08.160(c) is amended to read:

23 (c) A common element not previously allocated as a limited common element
 24 may **not** be allocated as a limited common element **unless the allocation is made**
 25 **[ONLY]** under **[PROVISIONS IN THE DECLARATION ADOPTED UNDER]**
 26 AS 34.08.130(a)(7) **and not prohibited by the declaration.** The allocation must be
 27 made by an amendment to the declaration.

28 * **Sec. 12.** AS 34.08.170(b) is amended to read:

29 (b) Each plat must show

30 (1) the name and a survey or general schematic map of the entire
 31 common interest community;

1 (2) the location and dimensions of the real estate not subject to
 2 development rights or subject only to the development right to withdraw, and the
 3 location and dimensions of each existing improvement within the real estate;

4 (3) a legally sufficient description of the real estate subject to
 5 development rights, labeled to identify the rights applicable to each parcel;

6 (4) the extent of each **known** encroachment by or upon a portion of the
 7 common interest community;

8 (5) to the extent feasible, a legally sufficient description of each
 9 easement serving or burdening a portion of the common interest community;

10 (6) the **approximate** location and dimensions of any vertical unit
 11 boundaries not shown or projected on plans [FILED AND] recorded under (d) of this
 12 section and the identifying number of the unit;

13 (7) the **approximate** location with reference to an established datum
 14 of any horizontal unit boundaries not shown or projected on plans [FILED AND]
 15 recorded under (d) of this section and the identifying number of the unit;

16 (8) a legally sufficient description of any real estate in which the unit
 17 owners will own only an estate for years, labeled as "leasehold real estate";

18 (9) the distance between noncontiguous parcels of real estate
 19 comprising the common interest community;

20 (10) the **approximate** location and dimensions of limited common
 21 elements, including porches, decks, balconies, and patios, other than parking spaces
 22 and the other limited common elements described in AS 34.08.100(2) and (4);

23 (11) in the case of real estate not subject to development rights, all
 24 other matters customarily shown on land surveys.

25 * **Sec. 13.** AS 34.08.170(d) is amended to read:

26 (d) To the extent not shown or projected on the plats, plans of the units must
 27 show or project

28 (1) the **approximate** location and dimensions of the vertical boundaries
 29 of each unit [,] and the identifying number of the unit;

30 (2) **the approximate location of** any horizontal unit boundaries, with
 31 reference to an established datum, and the identifying number of the unit; and

1 (3) **the approximate location of** each unit in which the declarant has
 2 reserved the right to create additional units or common elements, identified
 3 appropriately.

4 * **Sec. 14.** AS 34.08.170(f) is amended to read:

5 (f) Upon the exercise of a development right, the declarant shall either [FILE
 6 AND] record new plats and plans necessary to conform to the requirements of (a), (b),
 7 and (d) of this section, or [FILE AND] record new certifications of plats and plans
 8 previously [FILED AND] recorded if the plats and plans otherwise conform to the
 9 requirements of (a), (b), and (d) of this section.

10 * **Sec. 15.** AS 34.08.170(g) is amended to read:

11 (g) A certification of a plat or plan required by this section or AS 34.08.090(b)
 12 shall be made by a [AN INDEPENDENT] registered surveyor, architect, or engineer.

13 * **Sec. 16.** AS 34.08.170(h) is amended to read:

14 (h) The state recorder shall prescribe the style, size, form, and quality of plats
 15 and plans [FILED AND] recorded under this chapter.

16 * **Sec. 17.** AS 34.08.170 is amended by adding a new subsection to read:

17 (i) Notwithstanding the other provisions of this section, plats and plans are not
 18 required to show the location and dimensions of the boundaries of the units or their
 19 limited common elements if

20 (1) the plats or plans show the location and dimensions of all buildings
 21 containing or comprising the units; and

22 (2) the declaration includes other information that shows or contains
 23 a narrative description of the general layout of the units in the buildings shown under
 24 (1) of this subsection and the limited common elements allocated to the units.

25 * **Sec. 18.** AS 34.08.180(a) is amended to read:

26 (a) To exercise a development right reserved under AS 34.08.130(a)(8), a
 27 declarant shall prepare, execute, and record an amendment to the declaration, [FILE
 28 AND] record a plat or plan that accompanies the amendment, and, in a condominium
 29 or planned community, comply with AS 34.08.170. [THE DECLARANT IS THE
 30 UNIT OWNER OF THE UNITS CREATED UNDER THE AMENDMENT.] The
 31 amendment to the declaration must assign an identifying number to each new unit

1 created [,] and, except in the case of subdivision or conversion of units described in
 2 (b) of this section, reallocate the allocated interests among all units. The amendment
 3 must describe common elements and any limited common elements created under the
 4 amendment and, in the case of limited common elements, designate the unit to which
 5 each is allocated to the extent required by AS 34.08.160.

6 * **Sec. 19.** AS 34.08.200(b) is amended to read:

7 (b) The association

8 (1) in a condominium or planned community shall prepare [, FILE,]
 9 and record plats or plans necessary to show the altered boundaries between adjoining
 10 units [,] and their dimensions and identifying numbers; and

11 (2) in a cooperative shall prepare and record amendments to the
 12 declaration, [AND FILE] and record a plat or plan necessary to show or describe the
 13 altered boundaries between adjoining units and their dimensions and identifying
 14 numbers.

15 * **Sec. 20.** AS 34.08.200 is amended by adding a new subsection to read:

16 (c) Subject to the provisions of the declaration and other provisions of law,
 17 boundaries between units and common elements may be relocated to incorporate
 18 common elements within a unit by an amendment to the declaration upon application
 19 to the association by the owner of the unit who proposes to relocate a boundary.
 20 Unless the declaration provides otherwise, the amendment may not be approved unless
 21 persons entitled to cast at least 67 percent of the votes in the association, including 67
 22 percent of the votes allocated to units not owned by the declarant, agree to the action.
 23 The amendment may describe any fees payable by the owner of the affected unit in
 24 connection with the boundary relocation, and the fees are assets of the association.
 25 The amendment must be executed by the unit owner of the unit whose boundary is
 26 being relocated and by the association, contain words of conveyance between them,
 27 and on recordation be indexed in the name of the unit owner and the association as
 28 grantor or grantee.

29 * **Sec. 21.** AS 34.08.250(a) is amended to read:

30 (a) Except for amendments that may be executed by a declarant under
 31 AS 34.08.170(b) or 34.08.180, or by the association under AS 34.08.140(d),

1 34.08.160(c), 34.08.200(a), 34.08.210, or 34.08.740, or by certain unit owners under
 2 AS 34.08.160(b), 34.08.200(a), 34.08.210(b), or 34.08.260(b), and except as limited
 3 by (d) of this section, a declaration, including any required plats and plans, may be
 4 amended only by vote or agreement of **persons entitled to cast** [UNIT OWNERS OF
 5 UNITS COMPRISING EITHER] at least 67 percent of the **votes** [ALLOCATED
 6 INTERESTS] in the association or a larger percentage specified in the declaration. A
 7 declaration may not specify a smaller number unless all of the units are restricted
 8 exclusively to nonresidential use.

9 * **Sec. 22.** AS 34.08.250(c) is amended to read:

10 (c) Each amendment to the declaration must be recorded, and a plat or plan
 11 that accompanies the amendment [FILED AND] recorded, in each recording district
 12 in which a portion of the common interest community is located, and the amendment
 13 is effective only upon recording. An amendment, except an amendment under
 14 AS 34.08.200(a), must be indexed in the name of the common interest community and
 15 the association and in the name of the parties executing the amendment.

16 * **Sec. 23.** AS 34.08.250(d) is amended to read:

17 (d) Except to the extent expressly permitted or required by other provisions of
 18 this chapter, an amendment may not create or increase special declarant rights, increase
 19 the number of units, **or** change the boundaries of a unit **or** [,] the allocated interests
 20 of a unit [, OR THE USES TO WHICH A UNIT IS RESTRICTED] in the absence
 21 of unanimous consent of the unit owners.

22 * **Sec. 24.** AS 34.08.250 is amended by adding new subsections to read:

23 (f) By vote or agreement of persons entitled to cast at least 80 percent of the
 24 votes in the association, or any larger percentage specified in the declaration, an
 25 amendment to the declaration may prohibit or materially restrict the permitted uses of
 26 or behavior in a unit or the number or other qualifications of persons who may occupy
 27 units. The amendment must provide reasonable protection for a use or occupancy
 28 permitted at the time the amendment was adopted.

29 (g) The time limits specified in the declaration under AS 34.08.130(a)(8)
 30 within which reserved development rights must be exercised may be extended and
 31 additional development rights may be created if persons entitled to cast at least 80

1 percent of the votes in the association, including 80 percent of the votes allocated to
 2 units not owned by the declarant, agree to the action. The agreement is effective 30
 3 days after an amendment to the declaration reflecting the terms of the agreement is
 4 recorded unless all the persons holding the affected special declarant rights, or security
 5 interests in those rights, record a written objection within the 30-day period, in which
 6 case the amendment is void, or consent in writing at the time the amendment is
 7 recorded, in which case the amendment is effective when recorded.

8 * **Sec. 25.** AS 34.08.260(a) is amended to read:

9 (a) Unless all units are taken by eminent domain, or unless there has been a
 10 foreclosure of a security interest that has priority over the declaration against an entire
 11 cooperative, a common interest community may be terminated only by agreement of
 12 **persons entitled to cast** [UNIT OWNERS OF UNITS COMPRISING EITHER] at
 13 least 80 percent of the votes in the association or any larger percentage specified in
 14 the declaration. The declaration may specify a smaller percentage only if all of the
 15 units are restricted exclusively to nonresidential uses.

16 * **Sec. 26.** AS 34.08.260(m) is amended to read:

17 (m) A declaration that specifies a termination date but that does not contain
 18 a provision for the extension of the termination date may be extended **by amendment**
 19 **to the declaration approved**

20 [(1)] by **persons entitled to cast** [THE APPROVAL OF THE UNIT
 21 OWNERS HAVING] more than 50 percent of the votes in the association [;

22 (2) BY THE APPROVAL OF THE UNIT OWNERS HAVING THE
 23 PERCENTAGE OF VOTES AS SPECIFIED IN THE DECLARATION FOR AN
 24 AMENDMENT TO THE DECLARATION; OR

25 (3) IF THE APPROVAL OF UNIT OWNERS HAVING MORE
 26 THAN 50 PERCENT OF THE VOTES IN THE ASSOCIATION IS REQUIRED TO
 27 AMEND THE DECLARATION, UNDER AS 34.08.255].

28 * **Sec. 27.** AS 34.08.300 is amended to read:

29 **Sec. 34.08.300. Addition of unspecified real estate.** In a planned community,
 30 if the right is originally reserved in the declaration, the declarant, in addition to any
 31 other development right, may amend the declaration at any time during as many years

1 as are specified in the declaration for adding additional real estate to the planned
 2 community without describing the location of the real estate in the original declaration.
 3 The amount of real estate added to the planned community under this section may not
 4 exceed 10 percent of the real estate described in AS 34.08.130(a)(3). The [AND THE]
 5 declarant may not [IN ANY EVENT] increase the number of units in the planned
 6 community beyond the number stated in the original declaration under
 7 AS 34.08.130(a)(4) unless the unit owners unanimously consent to the increase.

8 * **Sec. 28.** AS 34.08 is amended by adding a new section to article 2 to read:

9 **Sec. 34.08.305. Master planned communities.** (a) The declaration for a
 10 common interest community may state that it is a master planned community if the
 11 declarant has reserved the development right to create at least 80 units that may be
 12 used for residential purposes, and at the time of the reservation the declarant owns or
 13 controls more than 20 acres on which the units may be built.

14 (b) If the requirements of (a) of this section are satisfied, the declaration for
 15 the master planned community is not required to state a maximum number of units or
 16 to contain the information required by AS 34.08.130(a)(3) - (14) until the declaration
 17 is amended under (c) of this section.

18 (c) When a unit in a master planned community is conveyed to a purchaser,
 19 the declaration must contain

20 (1) a sufficient legal description of the unit and all portions of the
 21 master planned community in which other units have been conveyed to a purchaser;
 22 and

23 (2) all the information required by AS 34.08.130(a)(3) - (14) with
 24 respect to the real estate of the master planned community.

25 (d) The only master planned community real estate that is subject to this
 26 chapter is a unit that has been declared or that is being offered for sale and other real
 27 estate described under (c) of this section. Other real estate that is or may become part
 28 of the master planned community is not subject to this chapter.

29 (e) If the public offering statement conspicuously identifies the fact that the
 30 community is a master planned community, the disclosure requirements contained in
 31 AS 34.08.510 - 34.08.700 apply only with respect to units that have been declared or

1 are being offered for sale in connection with the public offering statement and to the
2 real estate described under (c) of this section.

3 (f) Limitations under AS 34.08.300 on the addition of unspecified real estate
4 do not apply to a master planned community.

5 (g) The period of declarant control of the association for a master planned
6 community terminates in accordance with any conditions specified in the declaration
7 or otherwise when the declarant, in a recorded instrument and after giving written
8 notice to all the unit owners, voluntarily surrenders all rights to control the activities
9 of the association.

10 (h) In this section, "master planned community" means a common interest
11 community described in a declaration under (a) of this section.

12 * **Sec. 29.** AS 34.08.310 is amended to read:

13 **Sec. 34.08.310. Organization of unit owners' association.** An association
14 of unit owners shall [MUST] be organized no later than the date on which the first
15 unit in the common interest community is conveyed **to a purchaser**. The membership
16 of the association at all times consists exclusively of all unit owners or, following
17 termination of the common interest community, of all former unit owners entitled to
18 distributions of proceeds under AS 34.08.260 or their heirs, successors, or assigns.
19 The association shall [MUST] be organized as a profit or nonprofit corporation, trust,
20 or partnership.

21 * **Sec. 30.** AS 34.08.320(a) is amended to read:

22 (a) Except as provided in (b) of this section and subject to the provisions of
23 the declaration, the association may

24 (1) adopt and amend bylaws and rules [AND REGULATIONS];

25 (2) adopt and amend budgets for revenues, expenditures, and reserves
26 and collect assessments for common expenses from unit owners;

27 (3) hire and discharge managing agents and other employees, agents,
28 and independent contractors;

29 (4) institute, defend, or intervene in litigation or administrative
30 proceedings or seek injunctive relief for violations of its declaration, bylaws, or rules
31 in its own name on behalf of itself or two or more unit owners on matters affecting

1 the common interest community;

2 (5) make contracts and incur liabilities;

3 (6) regulate the use, maintenance, repair, replacement, and modification
4 of common elements;

5 (7) cause additional improvements to be made as a part of the common
6 elements;

7 (8) acquire, hold, encumber, and convey in its own name any right,
8 title, or interest to real estate or personal property, except that

9 (A) common elements in a condominium or planned community
10 may be conveyed or **encumbered by** [SUBJECTED TO] a security interest
11 only under AS 34.08.430; and

12 (B) part of a cooperative may be conveyed or all or part of a
13 cooperative may be **encumbered by** [SUBJECTED TO] a security interest only
14 under AS 34.08.430;

15 (9) grant easements, leases, licenses, and concessions through or over
16 the common elements;

17 (10) impose and receive a payment, fee, or charge for the use, rental,
18 or operation of the common elements, other than limited common elements described
19 in AS 34.08.100(2) and (4), and for services provided to unit owners;

20 (11) impose a reasonable charge for late payment of assessments and,
21 after notice and an opportunity to be heard, levy a reasonable fine for a violation of
22 the declaration, bylaws, **and** rules [, AND REGULATIONS] of the association;

23 (12) impose a reasonable charge for the preparation and recording of
24 an amendment to the declaration, the [FILING AND] recording of a plat or plan that
25 accompanies an amendment, resale certificate required by AS 34.08.590, or a statement
26 of unpaid assessments;

27 (13) provide for the indemnification of its officers and executive board
28 and maintain directors' and officers' liability insurance;

29 (14) assign its right to future income, including the right to receive
30 common expense assessments, but only to the extent the declaration expressly permits
31 the assignment;

1 (15) exercise any other powers conferred by the declaration or bylaws;
 2 (16) exercise any other power that may be exercised in the state by a
 3 legal entity of the same type as the association; [AND]

4 (17) exercise any other power necessary and proper for the governance
 5 and operation of the association; **and**

6 **(18) require by rule that, before beginning a court action, a dispute**
 7 **between the executive board and unit owners, or between two or more unit**
 8 **owners, regarding the common interest community must be submitted to**
 9 **nonbinding alternative dispute resolution in the manner described in the rules.**

10 * **Sec. 31.** AS 34.08.320 is amended by adding new subsections to read:

11 (c) Unless otherwise provided by the declaration or this chapter, an association
 12 may not adopt rules that affect the use of, behavior in, or occupancy of units that may
 13 not be used for residential purposes unless the rules

14 (1) prevent a use that violates the declaration;

15 (2) prohibit behavior or occupancy that violates the declaration or that
 16 adversely affects the use and enjoyment of other units, or the common elements, by
 17 other unit owners; or

18 (3) restrict the leasing of residential units, if and to the extent the rules
 19 are reasonably designed to meet underwriting requirements of institutional lenders that
 20 lend money secured by first mortgages on units in common interest communities or
 21 that purchase those mortgages.

22 (d) If a tenant of a unit owner violates the declaration, bylaws, or rules of the
 23 association, in addition to exercising its powers against the unit owner, the association
 24 may

25 (1) exercise directly against the tenant the powers described in (a)(11)
 26 of this section;

27 (2) after giving notice to the tenant and the unit owner and an
 28 opportunity to be heard, levy reasonable fines against the tenant for the violation; and

29 (3) enforce any other right against the tenant for the violation that the
 30 unit owner as lessor could lawfully have exercised under the lease or that the
 31 association could lawfully have exercised directly against the unit owner.

1 (e) The rights granted under (d)(3) of this section may not be exercised unless
 2 the tenant or unit owner fails to cure the violation within 10 days after the association
 3 notifies the tenant and unit owner of the violation.

4 (f) Unless a lease provides otherwise, this section does not

5 (1) affect rights that the unit owner has to enforce the lease or that the
 6 association has under other law; or

7 (2) permit the association to enforce a lease to which it is not a party
 8 unless there is a violation of the declaration, bylaws, or rules.

9 * **Sec. 32.** AS 34.08.330(d) is amended to read:

10 (d) Subject to (e) of this section, the declaration may provide for a period of
 11 declarant control of the association, during which a declarant or persons designated by
 12 the declarant may appoint and remove the officers and members of the executive
 13 board. Regardless of the period provided in the declaration, **and except as provided**
 14 **in AS 34.08.305,** a period of declarant control terminates no later than the earlier of
 15 [:] (1) 60 days after conveyance of 75 percent of the units that may be created to unit
 16 owners other than a declarant; (2) two years after all declarants have ceased to offer
 17 units for sale in the ordinary course of business; or (3) two years after any right to add
 18 new units was last exercised. A declarant may voluntarily surrender the right to
 19 appoint and remove officers and members of the executive board before termination
 20 of the periods established in this subsection, but, in that event, the declarant may
 21 require, for the duration of the period of declarant control, that specified actions of the
 22 association or executive board, as described in a recorded instrument executed by the
 23 declarant, be approved by the declarant before they become effective.

24 * **Sec. 33.** AS 34.08.330(f) is amended to read:

25 (f) Except as otherwise provided in AS 34.08.280(e), not later than the
 26 termination of any period of declarant control, the unit owners shall elect an executive
 27 board. The executive board consists of at least three members, except that, if there are
 28 fewer than **13** [12] units in the common interest community, the declaration may
 29 provide for an executive board with one or two members. At least a majority of the
 30 members of the executive board must be unit owners. The executive board shall elect
 31 the officers. The executive board members and officers take office upon election.

1 * **Sec. 34.** AS 34.08.340(c) is amended to read:

2 (c) Before the transfer of control from the declarant to the association, an
3 inspection of the common **elements** [AREAS] and limited common **elements**
4 [AREAS] subject to the association's control shall be completed by

5 (1) **a** [AN INDEPENDENT] registered engineer, architect, or land
6 surveyor;

7 (2) an appraiser with the designation of senior residential appraiser,
8 senior real property appraiser, or senior real estate analyst of the Society of Real Estate
9 Appraisers;

10 (3) a residential member, or member of the appraisal institute, of the
11 American Institute of Real Estate Appraisers; or

12 (4) an individual with a designation established by regulation of the
13 Alaska Housing Finance Corporation for fee appraisers who certify the completion of
14 construction.

15 * **Sec. 35.** AS 34.08.380(a) is amended to read:

16 (a) Except to the extent provided by the declaration, by (b) of this section, or
17 by AS 34.08.440(h), the association is responsible for the maintenance, repair, and
18 replacement of the common elements, and each unit owner is responsible for the
19 maintenance, repair, and replacement of the unit. Each unit owner shall afford to the
20 association, the other unit owners, and [TO] their agents or employees [,] access
21 through the unit that is reasonably necessary for **those purposes** [MAINTENANCE
22 AND REPAIR OF THE UNIT]. If damage is inflicted on the common elements or
23 on any unit through which access is taken, the unit owner responsible for the damage,
24 or the association if it is responsible, is liable for the prompt repair of the damage.

25 * **Sec. 36.** AS 34.08.420 is repealed and reenacted to read:

26 **Sec. 34.08.420. Tort and contract liability.** (a) A unit owner is not liable,
27 solely by reason of being a unit owner, for an injury or damage arising out of the
28 condition or use of the common elements. The association and a unit owner except
29 the declarant is not liable for the torts of the declarant in connection with a part of the
30 common interest community that the declarant has the responsibility to maintain.

31 (b) An action alleging a wrong done by the association must be brought

1 against the association and not against a unit owner. If the wrong occurred during a
 2 period of declarant control and the association gives the declarant reasonable notice
 3 of and an opportunity to defend against the action, the declarant who then controlled
 4 the association is liable to the association or to a unit owner for

5 (1) tort losses not covered by insurance suffered by the association or
 6 the unit owner; and

7 (2) other losses that the association would not have incurred but for a
 8 breach of contract by the declarant or other wrongful act or omission of the declarant.

9 (c) Except as provided in AS 34.08.660(d) for warranty claims, a statute of
 10 limitation affecting the right of action of the association under this section is tolled
 11 until the period of declarant control terminates. A unit owner is not precluded from
 12 maintaining an action under this section because the person is a unit owner or a
 13 member or officer of the association. A lien resulting from a judgment against the
 14 association is governed by AS 34.08.480.

15 * **Sec. 37.** AS 34.08.430(a) is amended to read:

16 (a) In a condominium or planned community, portions of the common
 17 elements may be conveyed or **encumbered by** [SUBJECTED TO] a security interest
 18 by the association if persons entitled to cast at least 80 percent of the votes in the
 19 association, including 80 percent of the votes allocated to units not owned by a
 20 declarant, or any larger percentage the declaration specifies, agree to the action, but
 21 each owner of a unit to which a limited common element is allocated must agree in
 22 order to convey the limited common element or **encumber it by** [SUBJECT IT TO]
 23 a security interest. The declaration may specify a smaller percentage only if each of
 24 the units is restricted exclusively to nonresidential uses. The proceeds of the sale or
 25 **encumbrance of a common element** [AND PROCEEDS OF A LOAN SECURED BY
 26 ENCUMBERING A COMMON AREA] are an asset of the association, **but the**
 27 **proceeds of the sale or encumbrance of a limited common element shall be**
 28 **distributed equitably among the owners of units to which the limited common**
 29 **element was allocated.**

30 * **Sec. 38.** AS 34.08.430(b) is amended to read:

31 (b) Part of a cooperative may be conveyed and all or part of a cooperative may

1 be **encumbered by** [SUBJECTED TO] a security interest by the association if persons
 2 entitled to cast at least 80 percent of the votes in the association, including 80 percent
 3 of the votes allocated to units not owned by a declarant, or any larger percentage the
 4 declaration specifies, agree to the action, but, if fewer than all of the units or limited
 5 common elements are to be conveyed or **encumbered by** [SUBJECTED TO] a
 6 security interest, then each unit owner of the units to which the limited common
 7 elements are allocated must agree in order to convey the units or limited common
 8 elements or **encumber** [SUBJECT] them **by** [TO] a security interest. The declaration
 9 may specify a smaller percentage only if each of the units is restricted exclusively to
 10 nonresidential uses. The proceeds of the sale **or encumbrance of a common element**
 11 [AND PROCEEDS OF A LOAN SECURED BY ENCUMBERING A COMMON
 12 AREA] are an asset of the association. A purported conveyance or other voluntary
 13 transfer of an entire cooperative, unless made under AS 34.08.260, is void.

14 * **Sec. 39.** AS 34.08.430(g) is repealed and reenacted to read:

15 (g) Unless the declaration provides otherwise, if the holders of security
 16 interests that are first in priority on 80 percent of the units that are encumbered by
 17 security interests on the day the unit owners' agreement under (c) of this section is
 18 recorded consent in writing,

19 (1) a conveyance of common elements under this section terminates
 20 both the undivided interests in those common elements allocated to the units and the
 21 security interests in those undivided interests held by all persons holding security
 22 interests in the units; and

23 (2) a security interest in common elements under this section has
 24 priority over all preexisting encumbrances on the undivided interests in those common
 25 elements and held by all persons holding security interests in the units.

26 * **Sec. 40.** AS 34.08.430 is amended by adding a new subsection to read:

27 (i) The consents by holders of security interests that are first in priority on
 28 units under (g) of this section, or a certificate of the secretary of the association
 29 affirming that the consents have been received by the association, may be recorded at
 30 any time before the date on which the agreement under (c) of this section becomes
 31 void. Consents or certificates recorded under this subsection are valid from the date

1 they are recorded for purposes of calculating the percentage of consenting security
 2 interest holders, regardless of later sales or encumbrances on those units. Even if the
 3 required percentage of security interest holders that are first in priority consent, a
 4 conveyance or encumbrance of common elements does not affect interests having
 5 priority over the declaration or that are created by the association after the declaration
 6 is recorded.

7 * **Sec. 41.** AS 34.08.440(h) is amended to read:

8 (h) A portion of the common interest community for which insurance is
 9 required under this section that is damaged or destroyed must be repaired or replaced
 10 promptly by the association unless [:] the common interest community is terminated
 11 and AS 34.08.260 applies, [;] repairs or replacement would be illegal under a state
 12 statute or municipal ordinance governing health or safety, [;] or 80 percent of the unit
 13 owners, including each owner of a unit or assigned limited common element that will
 14 not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of
 15 insurance proceeds and reserves is a common expense. If the entire common interest
 16 community is not repaired or replaced, (1) the insurance proceeds attributable to the
 17 damaged common elements **shall** [MUST] be used to restore the damaged area to a
 18 condition compatible with the remainder of the common interest community, and (2)
 19 except to the extent that other persons will be distributees, (A) the insurance proceeds
 20 attributable to a unit and limited common elements that are not rebuilt **shall** [MUST]
 21 be distributed to the owner of the unit and the owner of the unit to which the limited
 22 common elements were allocated, or to lien holders, as their interests may appear, and
 23 (B) the remainder of the proceeds **shall** [MUST] be distributed to each unit owner or
 24 lien holder, as their interests may appear, as follows: (i) in a condominium, in
 25 proportion to the common element interest of all the units, and (ii) in a cooperative or
 26 planned community, in proportion to the common expense liabilities of all the units.
 27 If the unit owners vote not to rebuild a unit, the allocated interests of the unit are
 28 reallocated upon the vote as if the unit had been condemned under AS 34.08.740(a),
 29 and the association promptly shall prepare, execute, and record an amendment to the
 30 declaration reflecting the reallocations [, AND FILE] and record a plat or plan that
 31 accompanies the amendment.

1 * **Sec. 42.** AS 34.08.450 is amended to read:

2 **Sec. 34.08.450. Surplus funds.** Unless otherwise provided in the declaration,
3 any surplus funds of the association remaining after payment of or provision for
4 common expenses and any prepayment of reserves must be paid to the unit owners in
5 proportion to their common expense liabilities or credited to them to reduce their
6 future common expense assessments.

7 * **Sec. 43.** AS 34.08.470(a) is amended to read:

8 (a) The association has a statutory lien on a unit for an assessment levied
9 against the unit or a fine [FINES] imposed against the [ITS UNIT] owner of the unit
10 [FROM THE TIME THE ASSESSMENT OR FINE BECOMES DUE]. Unless the
11 declaration otherwise provides, fees, charges, late charges, fines, and interest charged
12 under AS 34.08.320(a)(10) - (12) are enforceable as assessments under this section.
13 If an assessment is payable in installments, the full amount of the assessment is a lien
14 from the time the first installment becomes due.

15 * **Sec. 44.** AS 34.08.470(b) is amended to read:

16 (b) A lien under this section is prior to all other liens and encumbrances on
17 a unit except (1) a lien and encumbrance recorded before the recordation of the
18 declaration and, in a cooperative, a lien and encumbrance that [WHICH] the
19 association creates, assumes, or takes subject to; (2) a [FIRST] security interest that
20 is first in priority on the unit and recorded before the date on which the assessment
21 sought to be enforced became delinquent, or, in a cooperative, the [FIRST] security
22 interest that is first in priority, encumbering only the interest of the unit owner, and
23 perfected before the date on which the assessment sought to be enforced became
24 delinquent; and (3) a lien for real estate taxes and other governmental assessments or
25 charges against the unit or cooperative. A lien under this section is also prior to all
26 security interests described in (2) of this subsection if the common expense
27 assessments based on the periodic budget adopted by the association under
28 AS 34.08.460(a) would have become due in the absence of acceleration during the six
29 months immediately preceding institution of an action to enforce the lien. This
30 subsection does not affect the priority of a mechanic's or materialman's lien [,] or the
31 priority of a lien for other assessments made by the association. A lien under this

1 section is not subject to the provisions of AS 09.38.010.

2 * **Sec. 45.** AS 34.08.470 is amended by adding a new subsection to read:

3 (l) In an action by an association to collect assessments or to foreclose a lien
4 for unpaid assessments, the court may appoint a receiver under AS 09.40.240 to collect
5 all sums alleged to be due and owing to a unit owner before the commencement or
6 during pendency of the action. The receivership is governed by AS 09.40.240 and
7 09.40.250. The court may order the receiver to pay any sums held by the receiver to
8 the association during the pendency of the action to the extent of the association's
9 common expense assessments based on a periodic budget adopted by the association
10 under AS 34.08.460.

11 * **Sec. 46.** AS 34.08.510 is amended to read:

12 **Sec. 34.08.510. Applicability.** (a) The provisions of AS 34.08.510 -
13 34.08.700 apply to all units subject to this chapter, except as provided in (b) of this
14 section or in AS 34.08.305(e) or as modified or waived by agreement of purchasers
15 of units in a common interest community in which each unit is restricted to
16 nonresidential use.

17 (b) A public offering statement and a resale certificate are not required to be
18 prepared or delivered on

19 (1) a gratuitous disposition of a unit;

20 (2) a disposition under a court order;

21 (3) a disposition by a governmental agency;

22 (4) a disposition by foreclosure or deed in lieu of foreclosure;

23 (5) a disposition to a dealer;

24 (6) a disposition that may be canceled at any time and for any reason
25 by the purchaser without penalty;

26 (7) a disposition of a unit restricted to nonresidential purposes [IN
27 A PLANNED COMMUNITY IN WHICH THE DECLARATION LIMITS THE
28 MAXIMUM ANNUAL ASSESSMENT OF A UNIT TO NOT MORE THAN \$300,
29 AS ADJUSTED UNDER AS 34.08.820, IF

30 (A) THE DECLARANT HAS A REASONABLE AND GOOD
31 FAITH BELIEF THAT THE MAXIMUM STATED ASSESSMENT WILL BE

1 SUFFICIENT TO PAY THE EXPENSES OF THE PLANNED COMMUNITY;

2 (B) THE DECLARATION CANNOT BE AMENDED TO
3 INCREASE THE ASSESSMENT DURING THE PERIOD OF DECLARANT
4 CONTROL WITHOUT THE CONSENT OF ALL UNIT OWNERS; AND

5 (C) THE PLANNED COMMUNITY IS NOT SUBJECT TO
6 DEVELOPMENT RIGHTS]; or

7 (8) a disposition of property by a nonprofit development corporation
8 if that corporation is eligible for assistance from the Neighborhood Reinvestment
9 Corporation organized under 42 U.S.C. 8101 - 42 U.S.C. 8107 (Neighborhood
10 Reinvestment Corporation Act) for neighborhood housing services, neighborhood
11 revitalization, and economic development projects in a community.

12 * **Sec. 47.** AS 34.08.520(c) is amended to read:

13 (c) A declarant or dealer who offers a unit to a purchaser shall deliver a public
14 offering statement in the manner required by AS 34.08.580(a). The **declarant or**
15 **dealer** [PERSON] who prepared all or a part of the public offering statement is liable
16 under AS 34.08.580 and 34.08.670 for any false or misleading statement set out in the
17 statement or for any omission of a material fact from the statement with respect to the
18 portion of the public offering statement that the **declarant or dealer** [PERSON]
19 prepared. If a declarant did not prepare any part of a public offering statement, the
20 declarant is not liable for a false or misleading statement set out in the statement or
21 for an omission of a material fact from the statement unless the declarant had actual
22 knowledge of the statement or omission or, in the exercise of reasonable care, should
23 have known of the statement or omission.

24 * **Sec. 48.** AS 34.08.520 is amended by adding a new subsection to read:

25 (e) The real estate commission established under AS 08.88.011 may establish
26 the form of the disclosures required by AS 34.08.530 - 34.08.560.

27 * **Sec. 49.** AS 34.08.530(a) is amended to read:

28 (a) A [EXCEPT AS PROVIDED IN (b) OF THIS SECTION, A] public
29 offering statement must fully and accurately contain or disclose

30 (1) the name and principal address of the declarant and of the common
31 interest community and indicate whether the common interest community is a

1 condominium, cooperative, or planned community;

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

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

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

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

13 (B) the bylaws and [ANY] rules [OR REGULATIONS] of the
14 association;

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

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

19 (5) any current balance sheet and a projected budget for the association,
20 either within or as an exhibit to the public offering statement, for one year after the
21 date of the first conveyance to a purchaser, and the current budget of the association,
22 the name of the person who prepared the budget, and a statement of the budget's
23 assumptions concerning occupancy, assumptions concerning the calculation of the
24 amount of reserves [CERTIFIED BY A CERTIFIED ARCHITECT OR ENGINEER],
25 and inflation factors, including, without limitation,

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

30 (B) a statement of any other reserves;

31 (C) the projected common expense assessment by category of

1 expenditures for the association; and

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

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

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

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

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

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

17 (11) a statement that

18 (A) within 15 days after receipt of a public offering statement,
19 a purchaser, before conveyance, may cancel any contract for purchase of a unit
20 from a declarant;

21 (B) if the [A] declarant **or dealer required** [FAILS] to provide
22 a public offering statement to a purchaser **knowingly fails to provide a public**
23 **offering statement to a purchaser** before conveying a unit **and the purchaser**
24 **suffers damages**, the purchaser may recover from **that person** [THE
25 DECLARANT] 10 percent of the sales price of the unit plus 10 percent of the
26 share, proportionate to the common expense liability of the unit, of any
27 indebtedness of the association secured by security interests encumbering the
28 common interest community; and

29 (C) a purchaser who receives the public offering statement more
30 than 15 days before signing a contract **may not** [CANNOT] cancel the
31 contract;

1 (12) a statement of any unsatisfied judgments or pending suits against
 2 the association [,] and the status of any pending suits material to the common interest
 3 community of which a declarant has actual knowledge;

4 (13) a statement that a deposit made in connection with the purchase
 5 of a unit is required to [WILL BE HELD IN AN ESCROW ACCOUNT UNTIL
 6 CLOSING AND WILL] be returned to the purchaser if the purchaser cancels the
 7 contract under AS 34.08.580 [, TOGETHER WITH THE NAME AND ADDRESS OF
 8 THE ESCROW AGENT];

9 (14) any restraints on alienation of any portion of the common interest
 10 community and any restrictions on

11 (A) [ON] use, occupancy, and alienation of the unit; and

12 (B) [ON] the amount for which a unit may be sold or on the
 13 amount that may be received by a unit owner on sale, condemnation, or
 14 casualty loss to the unit or to the common interest community, or on
 15 termination of the common interest community;

16 (15) a description of the insurance coverage provided for the benefit
 17 of unit owners;

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

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

24 (18) a brief narrative description of zoning and other land use
 25 requirements affecting the common interest community;

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

28 (20) in a cooperative,

29 (A) whether each unit owner will be entitled, for federal, state,
 30 and local income tax purposes, to a pass-through of deductions for payments
 31 made by the association for real estate taxes and interest paid the holder of a

1 security interest encumbering the cooperative; and

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

5 * **Sec. 50.** AS 34.08.530(b) is repealed and reenacted to read:

6 (b) After a purchaser receives a public offering statement, the declarant or
7 dealer responsible for providing a purchaser with the public offering statement under
8 AS 34.08.520 is not required to provide the purchaser with amendments to the public
9 offering statement unless the purchaser requests in writing to be informed of any
10 material change in the information required by this section.

11 * **Sec. 51.** AS 34.08.580(a) is amended to read:

12 (a) A **declarant or dealer** [PERSON] required to deliver a public offering
13 statement under **AS 34.08.520** [AS 34.08.520(c)] shall provide each purchaser with a
14 copy of the public offering statement, and, **if required under AS 34.08.530(b)**, each
15 amendment to the statement before conveyance of the unit [,] and not later than the
16 date of a contract of sale. If a purchaser is not given the public offering statement
17 more than 15 days before execution of a contract for the purchase of a unit, the
18 purchaser, before conveyance, may cancel the contract within 15 days of receipt of the
19 public offering statement.

20 * **Sec. 52.** AS 34.08.580(c) is repealed and reenacted to read:

21 (c) If the declarant or dealer required to provide a public offering statement
22 to a purchaser under AS 34.08.520 knowingly fails to provide a public offering
23 statement to a purchaser before conveying a unit and the purchaser suffers damages,
24 the purchaser may recover from the declarant or dealer required to provide the
25 statement 10 percent of the sales price of the unit plus 10 percent of the share,
26 proportionate to the common expense liability of the unit for any indebtedness of the
27 association secured by security interests encumbering the common interest community.

28 * **Sec. 53.** AS 34.08.590(a) is amended to read:

29 (a) Except for a sale in which delivery of a public offering statement is
30 required, or unless the sale is exempt under AS 34.08.510(b), a unit owner shall
31 furnish to a purchaser before execution of a contract for sale of a unit or before

1 conveyance a copy of the declaration, as amended, the bylaws, or the rules [OR
2 REGULATIONS] of the association, and a certificate containing a statement disclosing

3 (1) the effect on the proposed disposition of a right of first refusal or
4 other restraint on the free alienability of the unit;

5 (2) the amount of the monthly common expense assessment and any
6 unpaid common expense or special assessment currently due and payable from the
7 selling unit owner;

8 (3) any other fees [FEE] payable by the owner of the unit being sold
9 [OWNERS];

10 (4) any capital expenditures in excess of \$3,000 approved by the
11 executive board for the current and two next succeeding fiscal years;

12 (5) the amount of reserves for capital expenditures and of any portion
13 [PORTIONS] of the reserves designated by the association for a specified project;

14 (6) the most recent regularly prepared balance sheet and income and
15 expense statement, if any, of the association;

16 (7) the current operating budget of the association;

17 (8) any unsatisfied judgment against the association and the status of
18 any pending suit in which the association is a defendant or plaintiff;

19 (9) any insurance coverage provided for the benefit of unit owners;

20 (10) whether the executive board has given or received written notice
21 that any existing uses, occupancies, alterations, or improvements in or
22 [KNOWLEDGE THAT ANY ALTERATIONS OR IMPROVEMENTS] to the unit or
23 to the limited common elements assigned to the unit violate any provision of the
24 declaration;

25 (11) whether the executive board has received written notice from a
26 governmental agency of a violation of an applicable environmental, health, or
27 building law or ordinance [KNOWLEDGE OF ANY VIOLATION OF A HEALTH
28 OR SAFETY, FIRE, OR BUILDING CODE OR OTHER LAW, ORDINANCE, OR
29 REGULATION] with respect to the unit, the limited common elements assigned to the
30 unit, or any other portion of the common interest community;

31 (12) a statement of the remaining term of a leasehold estate affecting

1 the common interest community and the provisions governing an extension or renewal
2 of the lease;

3 (13) a statement of any **restriction** [RESTRICTIONS] in the
4 declaration affecting the amount that may be received by a unit owner upon sale,
5 condemnation, casualty loss to the unit or the common interest community, or
6 termination of the common interest community; [AND]

7 (14) in a cooperative, an accountant's statement, if any was prepared,
8 as to the deductibility for federal income tax purposes by the unit owner of real estate
9 taxes and interest paid by the association;

10 **(15) any pending sale or encumbrance of common elements; and**
11 **(16) the effect on the unit to be conveyed of any restrictions on the**
12 **owner's right to use or occupy the unit or to lease the unit to another person.**

13 * **Sec. 54.** AS 34.08.590(d) is amended to read:

14 (d) A unit owner in a planned community that was created before January 1,
15 1986, is not exempt under AS 34.08.050, [AND] does not collect assessments as a
16 planned community, and has not formed an association, [OR] elected officers, or
17 **elected** an executive board may comply with (a) and (b) of this section by furnishing
18 the purchaser of the unit an affidavit, in recordable form, **that contains**

19 (1) **a statement** [STATING] that assessments are not collected, the last
20 **known** date assessments were collected, [IF KNOWN,] the amount of the last **known**
21 assessment, [IF KNOWN,] and the reason assessments ceased;

22 (2) **a statement** [STATING] that an association has not been formed
23 or that no officers or executive board **have been elected** [EXISTS]; and

24 (3) **attached copies** [PROVIDING THE PURCHASER A COPY] of
25 (A) the recorded declaration, if any, and any amendment to the
26 declaration;

27 (B) bylaws **and** [,] rules [, AND REGULATIONS] of the
28 association, if any; and

29 (C) a brief narrative description of
30 (i) the real estate comprising the planned community;

31 and

1 (ii) obligations to pay for real estate taxes, insurance
2 premiums, maintenance, and improvements of the real estate described
3 in the declaration.

4 * **Sec. 55.** AS 34.08.600 is amended to read:

5 **Sec. 34.08.600. Escrow of deposits.** A deposit made in connection with the
6 purchase or reservation of a unit from a person required to deliver a public offering
7 statement under AS 34.08.520(c) must be placed in escrow and held either in this state
8 or in the state where the unit is located in an account designated solely for that
9 purpose by a licensed title insurance company, an attorney, a licensed real estate
10 broker, an independent bonded escrow company, or an institution whose accounts are
11 insured by a governmental agency or instrumentality until

12 (1) delivered to the declarant **or dealer** at closing;

13 (2) delivered to the declarant **or dealer** because of the purchaser's
14 default under a contract to purchase the unit; or

15 (3) refunded to the purchaser.

16 * **Sec. 56.** AS 34.08.640 is repealed and reenacted to read:

17 **Sec. 34.08.640. Implied warranties of quality.** (a) A declarant impliedly
18 warrants that improvement it constructs in the common interest community will be in
19 at least as good condition at the time of the conveyance or delivery of possession of
20 the improvements, whichever time is earlier, as they were at the time of contracting,
21 reasonable wear and tear excepted.

22 (b) A dealer impliedly warrants that improvements it constructs in the common
23 interest community will be in at least as good condition at the time of the conveyance
24 or delivery of possession of the improvements, whichever time is earlier, as they were
25 at the time of contracting, reasonable wear and tear excepted.

26 (c) A declarant impliedly warrants to a purchaser, other than a dealer, of a unit
27 from the declarant that any improvements on the unit and on the common elements
28 made or contracted for by the declarant or an affiliate of the declarant, or made by any
29 person before the creation of the common interest community, will be free from
30 defective materials and constructed in accordance with applicable law, according to
31 sound engineering and construction standards, and in a skillful manner.

1 (d) A dealer impliedly warrants to a purchaser of a unit from the dealer that
 2 the unit is suitable for the ordinary uses of real estate of its type and that any
 3 improvements on the unit made or contracted for by the dealer, or made by any person
 4 before the creation of the common interest community, will be free from defective
 5 materials, and constructed in accordance with applicable law, according to sound
 6 engineering and construction standards, and in a skillful manner.

7 (e) A declarant impliedly warrants to a purchaser, other than a dealer, of a
 8 residential unit from the declarant that an existing use contemplated by the declarant
 9 and the purchaser does not violate applicable law at the time of conveyance or delivery
 10 of possession, whichever time is earlier.

11 (f) A dealer impliedly warrants to a purchaser of a residential unit from the
 12 dealer that an existing use contemplated by the declarant and the purchaser does not
 13 violate applicable law at the time of conveyance or delivery of possession, whichever
 14 time is earlier.

15 (g) Warranties under this section may be excluded or modified under
 16 AS 34.08.650.

17 (h) For the purposes of this section, improvements made or contracted for by
 18 an affiliate of a declarant are made or contracted for by the declarant.

19 (i) A conveyance of a unit transfers to the purchaser all of the declarant's and
 20 dealer's implied warranties of quality.

21 * **Sec. 57.** AS 34.08.660(a) is amended to read:

22 (a) **Unless a period of limitation is tolled under AS 34.08.420 or affected**
 23 **by (d) of this section, a** [A] judicial proceeding for breach of an obligation arising
 24 under AS 34.08.630 or 34.08.640 must be commenced within six years after the cause
 25 of action accrues, but the parties may agree to reduce the period of limitation to not
 26 less than two years. If the unit may be occupied for residential use, an agreement to
 27 reduce the period of limitation must be evidenced by a separate instrument executed
 28 by the purchaser.

29 * **Sec. 58.** AS 34.08.660(b) is repealed and reenacted to read:

30 (b) Subject to (c) of this section, a cause of action for breach of warranty of
 31 quality, regardless of the purchaser's lack of knowledge of the breach, accrues as to

1 (1) a unit at the time the purchaser to whom the warranty is first made
 2 enters into possession if a possessory interest was conveyed, or at the time of
 3 acceptance of the instrument of conveyance if a nonpossessory interest was conveyed;
 4 and

5 (2) each common element when the later of the following occurs:

6 (A) the common element is completed;

7 (B) the common element is added to the common interest
 8 community; or

9 (C) the first unit in the common interest community is conveyed
 10 to a bona fide purchaser.

11 * **Sec. 59.** AS 34.08.660 is amended by adding a new subsection to read:

12 (d) During the period of declarant control, the association may authorize an
 13 independent committee of the executive board to evaluate and enforce by any lawful
 14 means warranty claims involving the common elements and to compromise those
 15 claims. Only members of the executive board elected by unit owners other than the
 16 declarant, and other persons appointed by those independent members, may serve on
 17 the committee, and the committee's decision shall be made without any control by the
 18 declarant or by a member of the executive board or an officer appointed by the
 19 declarant. All costs reasonably incurred by the committee, including attorney fees, are
 20 common expenses and must be added to the budget annually adopted by the
 21 association under AS 34.08.460(a). If a committee is created under this subsection,
 22 the period of limitation for claims for the warranties begins to run from the date of the
 23 first meeting of the committee, regardless of when the period of declarant control
 24 terminates.

25 * **Sec. 60.** AS 34.08.670 is amended by adding a new subsection to read:

26 (b) Parties to a dispute arising under this chapter, the declaration, or the
 27 bylaws of a common interest community may agree to resolve the dispute by a form
 28 of binding or nonbinding alternative dispute resolution, except that a declarant may not
 29 agree with the association to submit all of the disputes to binding or nonbinding
 30 alternative dispute resolution after the period of declarant control passes unless the
 31 agreement is made by the declarant with an independent committee of the executive

1 board elected under AS 34.08.660(d). An agreement under this section must be in
2 writing and signed by the parties.

3 * **Sec. 61.** AS 34.08.680 is amended to read:

4 **Sec. 34.08.680. Labeling of promotional material.** Promotional material
5 may not be displayed or delivered to a prospective purchaser that describes or portrays
6 an improvement that is not in existence unless the description or portrayal of the
7 improvement in the promotional material is [CONSPICUOUSLY] labeled or identified
8 either as "MUST BE BUILT" or as "NEED NOT BE BUILT."

9 * **Sec. 62.** AS 34.08.690 is amended to read:

10 **Sec. 34.08.690. Declarant's obligation to complete and restore.** (a) Except
11 for an improvement labeled "NEED NOT BE BUILT," the declarant shall complete
12 each improvement depicted on a site plan or other graphic representation **provided by**
13 **the declarant to a purchaser**, including any plats or plans prepared under
14 AS 34.08.180 [, WHETHER OR NOT THE SITE PLAN OR OTHER GRAPHIC
15 REPRESENTATION IS CONTAINED IN THE PUBLIC OFFERING STATEMENT
16 OR IN PROMOTIONAL MATERIAL DISTRIBUTED BY OR FOR THE
17 DECLARANT].

18 (b) The declarant is liable for the prompt repair and restoration, to a condition
19 compatible with the remainder of the common interest community, of a portion of the
20 common interest community **damaged** [AFFECTED] by the exercise of rights reserved
21 under or created by AS 34.08.180, 34.08.190, 34.08.200, 34.08.210, 34.08.230, or
22 34.08.240.

23 * **Sec. 63.** AS 34.08.700 is amended to read:

24 **Sec. 34.08.700. Substantial completion of units.** In the sale of a unit for
25 which delivery of a public offering statement is required, a contract of sale may be
26 executed, but an interest in the unit may not be conveyed until the declaration is
27 recorded, a plat or plan that accompanies the declaration is [FILED AND] recorded,
28 and, **in the case of a condominium**, the unit is substantially completed as evidenced
29 by [ISSUANCE OF] a certificate of occupancy authorized by law or by a
30 [RECORDED] certificate of **completion recorded under AS 34.08.090(b)**
31 [SUBSTANTIAL COMPLETION EXECUTED BY

1 (1) AN INDEPENDENT REGISTERED ENGINEER, ARCHITECT,
2 OR LAND SURVEYOR;

3 (2) AN APPRAISER WITH THE DESIGNATION OF SENIOR
4 RESIDENTIAL APPRAISER, SENIOR REAL PROPERTY APPRAISER, OR
5 SENIOR REAL ESTATE ANALYST OF THE SOCIETY OF REAL ESTATE
6 APPRAISERS;

7 (3) A RESIDENTIAL MEMBER, OR MEMBER OF THE
8 APPRAISAL INSTITUTE, OF THE AMERICAN INSTITUTE OF REAL ESTATE
9 APPRAISERS; OR

10 (4) AN INDIVIDUAL WITH A DESIGNATION ESTABLISHED BY
11 REGULATION OF THE ALASKA HOUSING FINANCE CORPORATION FOR FEE
12 APPRAISERS WHO CERTIFY THE COMPLETION OF CONSTRUCTION].

13 * **Sec. 64.** AS 34.08.740(a) is amended to read:

14 (a) If a unit is acquired by eminent domain or part of a unit is acquired by
15 eminent domain leaving the unit owner with a remnant that may not practically or
16 lawfully be used for any purpose permitted by the declaration, the award must include
17 compensation to the unit owner for that unit and its allocated interests, whether or not
18 any common elements are acquired. Upon acquisition, unless the decree otherwise
19 provides, the allocated interests of the unit are automatically reallocated to the
20 remaining units in proportion to the respective allocated interests of those units before
21 the taking, and the association shall promptly prepare, execute, and record an
22 amendment to the declaration reflecting the reallocations [, AND FILE] and record a
23 plat or **plans** [PLAN] that **accompany** [ACCOMPANIES] the amendment. A remnant
24 of a unit remaining after part of a unit is taken under this subsection is a common
25 element from that time.

26 * **Sec. 65.** AS 34.08.740(e) is repealed and reenacted to read:

27 (e) On a condemnation of a unit or common element, the court shall award to
28 the association reasonable costs for preparation and recording of the amendment, plat,
29 or plans required by (a) of this section.

30 * **Sec. 66.** AS 34.08.820(a) is amended to read:

31 (a) The dollar **amount** [AMOUNTS] specified in AS 34.08.030 **changes** [AND

1 34.08.510(b)(7) CHANGE] under (b) and (c) of this section [,] according to and to the
 2 extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical
 3 Workers: U.S. City Average, All Items 1967 equal 100, compiled by the Bureau of
 4 Labor Statistics, United States Department of Labor, (the "Index"). The Index for
 5 December [,] 1979, which was 230, is the Reference Base Index.

6 * **Sec. 67.** AS 34.08.820(b) is amended to read:

7 (b) The dollar **amount** [AMOUNTS] specified in AS 34.08.030 and
 8 [34.08.510(b)(7) AND] any amount stated in the declaration **under that section**
 9 [PURSUANT TO THOSE SECTIONS] change on July 1 of each year if the
 10 percentage of change, calculated to the nearest whole percentage point, between the
 11 Index at the end of the preceding year and the Reference Base Index is 10 percent or
 12 more, except that

13 (1) the portion of the percentage change in the Index in excess of a
 14 multiple of 10 percent shall be disregarded and the dollar amounts shall change only
 15 in multiples of 10 percent of the amounts appearing in this chapter on **the effective**
 16 **date of this Act** [JANUARY 1, 1986];

17 (2) the dollar amounts may not change if the amounts required by this
 18 section are those currently in effect under this chapter as a result of an earlier
 19 application of this section; and

20 (3) in no event may the dollar amounts be reduced below the amounts
 21 appearing in this chapter on **the effective date of this Act** [JANUARY 1, 1986].

22 * **Sec. 68.** AS 34.08.990(4) is amended to read:

23 (4) "common elements" means

24 (A) in a condominium or cooperative, each portion of the
 25 common interest community other than a unit; [AND]

26 (B) in a planned community, the real estate within a planned
 27 community owned or leased by the association, other than a unit; **and**

28 **(C) in all common interest communities, any real estate**
 29 **interests, other than units, that are for the benefit of unit owners who are**
 30 **subject to the declaration;**

31 * **Sec. 69.** AS 34.08.990(11) is amended to read:

1 (11) "dealer" means a person who **is in the business of selling units**
 2 **for the person's own account** [OWNS EITHER SIX OR MORE UNITS IN A
 3 COMMON INTEREST COMMUNITY OR 50 PERCENT OR MORE OF THE
 4 UNITS IN A COMMON INTEREST COMMUNITY];

5 * **Sec. 70.** AS 34.08.990(13) is amended to read:

6 (13) "declaration"

7 (A) means an instrument, however described, that creates a
 8 common interest community; and

9 (B) includes **any amendment** [AMENDMENTS] to **an**
 10 **instrument described in (A) of this paragraph** [A DECLARATION];

11 * **Sec. 71.** AS 34.08.990(30) is amended to read:

12 (30) "special declarant rights" means the right reserved for the benefit
 13 of a declarant to

14 (A) complete improvements indicated on plats and plans
 15 [FILED AND] recorded with the declaration or, in a cooperative, to complete
 16 improvements described in the public offering statement under
 17 AS 34.08.530(a)(2);

18 (B) exercise a development right;

19 (C) maintain sales offices, management offices, signs
 20 advertising the common interest community, and models;

21 (D) use easements through the common elements for the
 22 purpose of making improvements within the common interest community or
 23 within real estate that may be added to the common interest community;

24 (E) make the common interest community subject to a master
 25 association;

26 (F) merge or consolidate a common interest community with
 27 another common interest community of the same form of ownership; or

28 (G) appoint or remove an officer of the association or a master
 29 association or an executive board member during a period of declarant control;

30 * **Sec. 72.** AS 34.08.990(33) is repealed and reenacted to read:

31 (33) "unit owner"

1 (A) means

2 (i) a declarant or other person who owns a unit or a
3 lessee of a unit in a leasehold common interest community if the lease
4 expires simultaneously with another lease whose expiration or
5 termination removes the unit from the common interest community;

6 (ii) the declarant in a condominium or planned
7 community, except for units that have been conveyed to another person;

8 (iii) the declarant in a cooperative as to any unit to
9 which allocated interests have been allocated except for units that have
10 been conveyed to another person;

11 (B) does not include a person who has an interest in a unit
12 solely as security for an obligation.

13 * **Sec. 73.** AS 34.08.990 is amended by adding a new paragraph to read:

14 (34) "knowingly" has the meaning given in AS 11.81.900.

15 * **Sec. 74.** AS 34.08.990 is amended by adding a new subsection to read:

16 (b) Unless specifically provided otherwise by the declaration or bylaws, or
17 unless the context requires otherwise, the definitions in (a) of this section apply to the
18 declaration and bylaws of a common interest community.

19 * **Sec. 75.** AS 34.08.530(c), 34.08.770, 34.08.790, and 34.08.800 are repealed.

20 * **Sec. 76.** This Act does not affect a right of action or another right that accrues before
21 the effective date of this Act. This Act may not be applied to change or otherwise impair a
22 contract in effect before the effective date of this Act unless all of the persons who are parties
23 to the contract at the time of the change or other impairment agree to the change or other
24 impairment.

25 * **Sec. 77.** COURT RULE. AS 34.08.740(e), enacted by sec. 65 of this Act, changes Rule
26 72(k), Alaska Rules of Civil Procedure, by requiring the award of certain costs in eminent
27 domain actions, even if the costs are not allowed under Rule 72(k).

28 * **Sec. 78.** AS 34.08.740(e), enacted by sec. 65 of this Act, takes effect only if sec. 77 of
29 this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
30 Constitution of the State of Alaska.