ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE
March 14, 2012
3:21 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Craig Johnson, Vice Chair
Representative Mike Chenault
Representative Dan Saddler
Representative Lindsey Holmes
Representative Bob Miller

MEMBERS ABSENT

Representative Steve Thompson

COMMITTEE CALENDAR

HOUSE BILL NO. 292, "An Act relating to property exemptions for retirement plans; relating to pleadings, orders, liability, and notices under the Uniform Probate Code; relating to the Alaska Principal and Income Act; relating to the Alaska Uniform Transfers to Minors Act; relating to the disposition of human remains; relating to insurable interests for life insurance policies; relating to transfers of individual retirement plans; relating to the community property of married persons; and amending Rule 301(a), Alaska Rules of Evidence."

- MOVED CSHB 292(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 269, "An Act relating to the amendment of a declaration that creates a common interest community."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 292
SHORT TITLE: PRINCIP.& INC/PROBATE/UTMA/RETIREMT/ETC.
SPONSOR(s): REPRESENTATIVE(s) THOMPSON

01/20/12	(H)	READ THE FIRST TIME - REFERRALS
01/20/12	(H)	L&C, JUD, FIN
02/29/12	(H)	L&C AT 3:15 PM BARNES 124
02/29/12	(H)	Heard & Held

02/29/12	(H)	MINUTE(L&C)
03/14/12	(H)	L&C AT 3:15 PM BARNES 124

BILL: HB 269
SHORT TITLE: COMMON INTEREST COMMUNITIES
SPONSOR(s): REPRESENTATIVE(s) HOLMES

01/17/12	(H)	PREFILE RELEASED 1/13/12
01/17/12	(H)	READ THE FIRST TIME - REFERRALS
01/17/12	(H)	L&C, JUD
03/14/12	(H)	L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

JANE PIERSON, Staff
Representative Steve Thompson
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Testified on behalf of the sponsor, Representative Steve Thompson, on legal issues raised during the discussion of HB 292.

LINDA HALL, Director
Division of Insurance, Anchorage Office
Department of Commerce, Community & Economic Development (DCCED)
Anchorage, Alaska
POSITION STATEMENT: Answered questions during the discussion of HB 292.

JAMES WALDO, Staff
Representative Lindsey Holmes
Juneau, Alaska
POSITION STATEMENT: Testified during the discussion of HB 269.

JAMES H. MCCOLLUM, Attorney
Law Offices of James H. McCollum
Anchorage, Alaska
POSITION STATEMENT: Testified during the discussion of HB 269.

JOE BEEDLE, President; Chief Executive Officer (CEO)
Northrim Bank
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 269.

TERRY BRYAN, Vice President; Manager
First American Title Insurance Company (FATIC)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 269.

BOB PETERSEN, President and Owner
The Petersen Group
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 269.

ACTION NARRATIVE

3:21:43 PM

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:21 p.m. Representatives Holmes, Miller, Johnson, Saddler, and Olson were present at the call to order. Representative Chenault arrived as the meeting was in progress.

HB 292-PRINCIP.& INC/PROBATE/UTMA/RETIREMT/ETC.

3:21:55 PM

CHAIR OLSON announced that the first order of business would be HOUSE BILL NO. 292, "An Act relating to property exemptions for retirement plans; relating to pleadings, orders, liability, and notices under the Uniform Probate Code; relating to the Alaska Principal and Income Act; relating to the Alaska Uniform Transfers to Minors Act; relating to the disposition of human remains; relating to insurable interests for life insurance policies; relating to transfers of individual retirement plans; relating to the community property of married persons; and amending Rule 301(a), Alaska Rules of Evidence."

3:22:08 PM

CHAIR OLSON lifted his objection. He stated that the issue he had has been addressed.

3:22:47 PM

JANE PIERSON, Staff, Representative Steve Thompson, Alaska State Legislature, related that questions previously arose in a Legislative Legal memo on the single-subject rule and whether this would violate the contracts clause of the U.S. Constitution. She provided copies of the memos. She said the court found a need to balance the rule's purpose with the need of efficiency in the legislative process. She pointed out only one case arose, which was Croft v. Parnell) 236 P.3d 369 (Alaska

2010), but since it was a soft dedication of funds it did not fall under the single-subject rule. The legislature has previously passed bills having to do with water or lands. She related one bill addressed driving while intoxicated and liquor laws since they both pertained to liquor. She offered her belief that this bill relates to Title 13 and seems fine. Second, she did not view any impairment of contractual obligations with respect to the contract clause of the U.S. Constitution. It is permissible to expand rights and this bill does not constitute an impairment of contracts. The only people's rights constrained by these provisions are creditors, who have no contractual right to enforce a claim against an individual retirement account (IRA) or retirement interest. Third, she noted many modifications are to administrative provisions and it is well established that changes that are administrative in nature do not impact the contract clause. She concluded that none of the provisions in this bill that apply to the existing retirement accounts, trusts, IRA, or uniform transfer to minors account violate the contract clause of the U.S. Constitution.

3:26:30 PM

LINDA HALL, Director, Division of Insurance, Anchorage Office, Department of Community & Economic Development (DCCED), stated she has a small section of the bill that falls under the Division of Insurance's title. She highlighted that one provision pertains to trusts and a trustee's ability to purchase insurance for the trust and to be paid for that insurance. This bill allows an insurance contract to be part of a trust. In response to a question from Chair Olson, Ms. Hall agreed she had no problems with the bill.

3:28:03 PM

REPRESENTATIVE JOHNSON moved to report the proposed committee substitute (CS) for HB 292, labeled 27-LS1232\B, Bannister, 2/22/12, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, the CSHB 292(L&C) was reported from the House Labor and Commerce Standing Committee.

3:28:47 PM

The committee took an at-ease from 3:28 p.m. to 3:31 p.m.

HB 269-COMMON INTEREST COMMUNITIES

3:31:06 PM

CHAIR OLSON announced that the final order of business would be HOUSE BILL NO. 269, "An Act relating to the amendment of a declaration that creates a common interest community."

3:31:18 PM

REPRESENTATIVE LINDSEY HOLMES, sponsor, stated that HB 269 relates to the Common Interest Ownership Act (CIOA) that typically applies to condominium projects. She explained that the CIOA was passed in 1986, based on the Federal Uniform Common Interest Ownership Act (FUCIOA). Since then new provisions have been added to the FUCIOA and the state's act needs to be updated.

3:32:16 PM

JAMES WALDO, Staff, Representative Lindsey Holmes, stated that the bill is somewhat simple, but the concept is somewhat complex. He reported that the Uniform Common Interest Ownership Act (UCIOA) in state law is currently outdated; however, provisions have been updated in the FUCIOA. He explained problems can arise during construction of housing projects that can stall the project. He related a scenario in which a developer plans to build certain units under an established timeline; however, if the time runs out before the units are completed numerous people are affected. The developer would not be able to sell uncompleted units and the lender would not be repaid until the units are finished. He offered that HB 269 takes the updated provision contained in FUCIOA and enacts it into state law. He said this will address the problem developers are experiencing. He clarified that the language in HB 269 is modeled after one provision of the federal act and will fix what could be a big problem in the state.

3:34:09 PM

MR. WALDO explained that the current UCIOA was written at a time when the economy was fast-paced, but the economy has slowed down in terms of construction. Thus the timeframes which were compressed when the economy was booming worked well; however, the timeframes don't work as well now that the economy has slowed down. Currently, the UCIOA allows a developer to extend the timeline to complete the project so long as the condominium association votes in favor of extending the timeline, but it

requires a unanimous vote in favor by the condominium association. He said that obtaining unanimous consent is difficult to achieve.

3:34:58 PM

MR. WALDO pointed out that if one person out of 400 condominium association members votes no to extend the timeline it would halt a project and could adversely affect the developer who must carry the units not yet built or finished. Additionally, once a project is stalled, workers are not paid and the bank may become concerned about the overall financial stability of the project. He stated that the remedy in the FUCIOA would reduce the percentage from 100 to 80 percent of the condominium association's members in order to approve timeline extensions. This would still show significant support, but represents an achievable threshold. In Alaska, some tenants travel to warmer states during the winter to places such as Arizona so it is difficult to contact them for approval. He reiterated that reducing the necessary approval to 80 percent of the condominium association members can help keep the project moving forward at the right pace. He concluded that HB 269 contains the 80 percent threshold.

3:36:37 PM

REPRESENTATIVE SADDLER asked for clarification on the term "development rights."

MR. WALDO explained the development rights process, such that a developer must adhere to a declaration when a condominium project is developed. This document outlines the timeline for the development of the project and during that timeline the developer has development rights to continue to build units; however, when the timeline runs out, the development rights expire and need to be extended. This bill addresses this by changing the vote from unanimous to 80 percent approval of the condominium owners.

REPRESENTATIVE SADDLER asked for further clarification on special development rights as opposed to development rights.

MR. WALDO said he was unsure.

3:38:14 PM

REPRESENTATIVE CHENAULT recalled that a super majority of 80 percent of the owners would be necessary. He pointed out the sponsor statement identifies 67 percent as a majority of the owners.

MR. WALDO explained that the 67 percent threshold listed in Section 1 refers to current law; however the main thrust of the bill is in Section 3. He referred to page 2, lines 15-16 of Section 3, which requires at least 80 percent of the votes of the association, including 80 percent of the votes allocated to units not owned by the declarant. He clarified that the declarant is the developer so the provision essentially requires 80 percent of the people living in the condominium must vote in support of a time extension in order to extend the time limit for project completion.

3:39:38 PM

REPRESENTATIVE SADDLER questioned the reason a condominium association would want to extend development rights.

MR. WALDO answered that a developer may initially plan on building a certain number of condominiums in each unit, but only three are completed during the timeline. This would result in essentially a vacant lot adjacent to the finished condominium units. He imagined a condominium association and developer would negotiate the extension process. He deferred to the developers to more fully define the reasons.

3:40:39 PM

REPRESENTATIVE JOHNSON asked whether HB 269 is limited to new construction or if it would apply to conversion of rental properties to condominiums. He envisioned some units would be sold and others would be rented.

MR. WALDO deferred to Mr. McCollum to more fully answer. He surmised that converting rental units to condominiums would form a common interest community, which would fall under the governing statutes. He suggested that this bill would apply, but it may depend on how the conversion is set up, but he was unsure.

3:41:38 PM

REPRESENTATIVE JOHNSON related a scenario in which an apartment is being converted to condominiums, but some leases would extend

over a period of years. He asked if the owner sold two units whether the two unit owners could vote to extend the rights. Further, he asked whether the owner could execute an extension without the consent of two condominium owners if the developer owns 67 percent of the building. He reiterated his question is whether the building owner could execute the change without the consent of the two condominium owners.

MR. WALDO related his understanding that the scenario is that an owner plans to convert a building to condominiums and creates a declaration to form a common interest community with less than the total units occupied. He answered that in that situation 80 percent of the owners occupying the units must agree to extend the timeline for special development rights. Thus the owners of both units would need to agree.

REPRESENTATIVE JOHNSON understood the scenario just described would pose a problem since one person could potentially hold up the development.

3:43:51 PM

REPRESENTATIVE SADDLER asked for clarification of why the UCIOA initially set the threshold at 100 percent.

MR. WALDO said this provision dates back to the 1980s when the UCIOA was written. He stated that the UCIOA group quickly realized this presents a problem since unanimous consent is nearly impossible to meet. In 1996, the group released amendments to the UCIOA that changed it from unanimous to 80 percent and in 2008 the most recent release of the FUCIOA also included the amendments.

3:45:12 PM

REPRESENTATIVE SADDLER asked whether most other states have subscribed to the changes in the FUCIOA.

MR. WALDO responded that only a small number of states have wholly adopted the UCIOA, but he has not researched the number of states that have adopted some portions of the act.

3:45:43 PM

JAMES H. MCCOLLUM, Attorney, Law Offices of James H. McCollum, introduced himself.

REPRESENTATIVE SADDLER asked what types of situations would require a developer's timeline to be extended.

MR. MCCOLLUM responded that typically long before a developer performs some construction the developer would declare the additional units. Thus a property could be partially developed, including foundations in place, holes, or ditches. In some instances the property will be in some stage of development, but units have not been declared. If the project timeline is not extended, the condominium association would not just inherit land, but sometimes dangerous grounds. In most instances the biggest problem in acquiring 100 percent of the owners' approval is not due to opposition to the time extension, but getting people to address the issues. He related one issue is that property under development is taxed to the developer, but when development rights expire the unit owners will be taxed. Additionally, if the improvements have not been constructed the condominium association must complete the remaining improvements from their budget and expenses shared by the association would be assessed to a smaller number of people. He offered that negotiations frequently occur and the association may support extending the timeline provided the developer adds a flower garden or swing set. He acknowledged some negotiations occur during this process.

3:49:14 PM

REPRESENTATIVE SADDLER asked if anything would prevent a developer from creating a large 50-year window. He asked whether the problem has resulted from the developers who have wrongly estimated timeframes or if another dynamic is in place.

MR. MCCOLLUM answered that in addition to the CIOA related to condominiums, the set of regulations put forth by the Federal National Mortgage Association (FNMA) commonly known as Fannie Mae, the Federal Home Loan Mortgage Corporation (FHLMC), known as Freddie Mac, the U.S. Department of Housing and Urban Development - also known as HUD - and Alaska Housing Finance Corporation (AHFC) apply. Years ago, the financing agencies would not approve projects beyond five to seven years without special consideration. He said it's only been the past few years since Fannie Mae has abandoned that approach. Currently, projects have relatively short development times. He offered his belief that if someone put a 50 or even 20 year timeframe for development it may scare off financing agencies even though technically it is not a specific requirement. He said they want to see a plan of development that will occur since it affects

the value of their collateral to not have construction going on indefinitely.

REPRESENTATIVE SADDLER characterized the process as attempting to reach a sweet spot.

MR. MCCOLLUM agreed.

3:51:17 PM

REPRESENTATIVE SADDLER asked for clarification of the reason for the 100-percent threshold on extensions.

MR. MCCOLLUM responded he is on list serve of condominium lawyers that serve as advisors to the uniform act. He related his understanding everyone realized after the fact that the requirement set up an impossible situation and simply did not make sense. He pointed out one oddity is that under current law, 80 percent of the condominium owners can terminate the condominium or sell a portion of the common interest, but it requires 100 percent agreement to extend the development rights. Additionally, the reality is that the requirement being set at 100 percent has the effect of saying it can't be done. He recapped that the changes to reduce the requirement from 100 to 80 percent was made almost without comment since the original requirement was not a reasonable or workable position. He reiterated that if the whole project could be terminated with 80 percent it didn't make sense to require 100 percent just to extend the right to complete the project.

REPRESENTATIVE SADDLER acknowledged that achieving agreement can be problematic. He pointed out his condominium association had difficulty determining simple things like what kind of flowers to plant.

3:53:13 PM

CHAIR OLSON asked if this bill would apply to reconstruction for situations in which a significant amount of damage occurred to a major condominium and had to rebuild from the ground up. He recalled a specific project in Anchorage was hamstrung by ownership issues.

MR. MCCOLLUM answered no, that reconstruction is covered by other sections of the law. He said he was familiar with the specific project in question. He recalled the project was underinsured and the owners were not happy that the other owners

received brand new units, yet all condominium owners were being assessed substantial assessments; however, this situation is not governed by this section of statutes.

3:54:38 PM

REPRESENTATIVE JOHNSON questioned whether the bill would affect contractors or developers converting apartments to condominiums.

MR. MCCOLLUM answered that it would depend on whether the conversion was done in stages or not. Most conversion projects have been smaller four-plex to six-plex projects that have not involved reserving development rights since all four or six units are converted at once. He described the process for a project that involved an apartment building with 10 units on each floor and the developer wanted to create 10 condominiums at a time. Fannie Mae rules require the conversion be done one floor at a time so the developer would create 10 units on the upper floor and reserve the right to declare the other units at a later date. Further, this type of development doesn't create significant problems since the apartments are already built. As the deadline approaches the developer would simply declare the units and not need any time extension. This would simply accelerate the time for the conversion, but the units exist. This differs from new development projects the bill remedies since the physical structure does not yet exist with proposed new construction.

3:56:28 PM

REPRESENTATIVE JOHNSON related a scenario in which the developer has 10 apartment units and would like to convert them to five larger units and sell them as condominiums.

MR. MCCOLLUM answered that if the building is vacant, without tenants, it is not likely the developer would record the condominium documents until the work was finished. He related the developer would then declare all five units. In a practical sense it would be impossible for the developer to declare units or reserve development rights since the units must be substantially complete before they are declared. He reiterated the developer could not record the conversion of 10 units to five condominiums until construction was completed so it would not constitute a development rights issue.

3:57:49 PM

MR. MCCOLLUM characterized development rights as a very narrow term. He said development rights would allow the developer to add units and withdraw property. He said, "That is it. It is very, very narrow. In most cases you are adding units." Thus the process of converting units to condominiums would not be considered creating the units pursuant to development rights. Instead, the developer would create the condominiums by recording the declaration. He explained the typical process a developer would use to develop units on two floors. The developer could reserve the right to create the five units on each additional floor, but would not record the amendment until such time as the construction was complete. Theoretically, if a developer needed additional time to reconstruct the units it could fall under these statutes and the developer would need to approach the condominium association to extend the development rights to create the units.

3:59:03 PM

REPRESENTATIVE SADDLER asked for clarification on development rights. He asked whether "withdrawing property" is shrinking the footprint and use less real estate.

MR. MCCOLLUM answered that is correct. He defined the term withdrawing property as a right granted under the act that is reserved under the declaration. He related a scenario, such that if 10 acres of a 20-acre parcel is built out, the developer could withdraw 10 acres. The only limitation would be for the developer to re-class the 10 acres. He said that sometimes it is feasible to do so and sometimes it is not. He recalled an Anchorage project that involved a large parcel. The developer had planned to build 600 condominiums; however, the developer did not finish the improvements and defaulted on the property which went into foreclosure. He described his involvement. He reported that he has worked with the Municipality of Anchorage, the developer, and the lender to withdraw a major portion of the parcel for further development, in part, because the market did not support the original development plan. He stated that the developer has been considering building senior housing rather than building typical condominium units for about 30-40 acres of the original parcel.

4:00:52 PM

REPRESENTATIVE SADDLER related his understanding of special declarant rights as an umbrella concept that would encompass development rights as well as other rights.

MR. MCCOLLUM agreed. He said that special declarant rights include a whole variety of rights given to developers, such as the right to have sales offices on the property or other things that allow the developer to continue to develop the property without interference. He characterized development rights as a subcategory of special declarant rights. He further clarified development rights are not considered special development rights, but rather are considered a subcategory of declarant rights and are referred to as development rights.

4:01:53 PM

JOE BEEDLE, President; Chief Executive Officer (CEO), Northrim Bank, spoke in favor of HB 269 and as an Alaska bank executive urged support and immediate action and said that time is of the essence. He elaborated the state lags slightly behind on UCIOA, with respect to the provisions that allow for time extensions on development projects for condominiums. Further, this bill would provide consistency with national best practices given the slowing economy and the absorption of real estate projects, including condominium projects. He predicted unintended consequences would result by not amending the existing statutes. He said condominiums provide higher density construction that allows developers to allocate land for more efficient development and spread amenity costs based on the common interest community development protocol. Additionally, many obstacles must be overcome with condominium construction and this committee has just begun to hear some of the challenges. He said today's banking environment is cautious about condominiums. He emphasized the projects are significantly more complicated and to add this five-year timeout is problematic since projects that go beyond the timeframe encounter financing difficulties.

4:04:38 PM

MR. BEEDLE elaborated on the five-year timeframe. He said typically banks don't like to finance projects that will take more than five years to build due to the cost to carry and the unknown market environment. He recalled legal counsel previously mentioned phasing of projects and he acknowledged that normally banks want a project absorbed within a few years. Thus the historical creation of UCIOA for the secondary market addresses the preference that these projects be defined early, completed, and put into the market. The slow economy has had unintended consequences which has adversely affected the

contractor declarant and potentially the banks. He reported that the Northrim Bank currently has eight projects impacted by the 100 percent unanimity requirement and the developers are adversely impacted. He predicted not removing the artificial impediment will guarantee hardships for financing and condominiums that already face difficulties for various reasons. He stated that Northrim Bank is a market share leader in residential construction in Southcentral Alaska, with more than 50 percent of bank financing for residential construction. Thus Northrim has had experience working on these projects, albeit not all good experiences. He trusted the committee's action will be appropriate. He reported he serves as chair of the Alaska Bankers Association, which is comprised of eight banks and the group meets on Friday mornings. He anticipated that the ABA will vote on Friday to support this bill since they have informally expressed concern. He urged members to pass HB 269 so the problematic projects can move forward. He advised members that Northrim Bank's Senior Vice President, Tera Tetzlaff, Senior Vice President, Construction Loan Manager is available to answer questions.

4:07:27 PM

REPRESENTATIVE JOHNSON referred to page 1, line 12, and read, "A declaration may not specify a smaller number unless all of the units are restricted exclusively to nonresidential use." He asked for clarification on how this language would affect condominium storage units.

MR. MCCOLLUM answered that a smaller percentage of unit owners can be specified for commercial projects, since the buyers are typically more sophisticated. He related that only 67 percent is required under current law, AS 38.08.250 (a), as listed in Section 1 of HB 259. He said this will certainly impact projects and he was unsure he would ever write an amendment for less than 67 percent or two-thirds. He was unsure he has ever seen one.

4:09:42 PM

REPRESENTATIVE JOHNSON asked whether he predicted any problems for condominium storage units.

MR. MCCOLLUM offered his belief this is a marketing decision. He related in his experience that commercial buyers are more careful about reading documents than residential buyers. He offered his belief that a buyer would not want to buy into a

project in which some ridiculously small number of people could impact the project. He explained that this is an unrelated issue for typical amendments to other provisions of the declaration. This provision will only apply to commercial non-residential projects. He reiterated this specific provision is existing law. He pointed out the 80 percent for extension or granting new development.

REPRESENTATIVE JOHNSON referred to the MacKay building which was converted to condominiums and recalled that at one time a business was located on the ground floor, yet the language indicates it must exclusively be non-residential. He asked whether that causes any concern.

MR. BEEDLE said he is familiar with the project. He explained that the MacKay building project falls under the UCIOA; however, the project is not a condominium project, but rather is considered a planned community. In a planned community some of the terms are worked out through negotiations and marketing. The specific project, the MacKay building consists of only two units. Projects of this type will often will require 100 percent approval although it depends on the division of ownership. He highlighted that it is important to avoid having one person control the entire building so if one person owns 70 percent the others must retain some control; however, this specific project will not be impacted by this bill. The sole purpose of HB 269 is to reduce the percentage necessary to extend development rights from 100 percent to 80 percent.

REPRESENTATIVE JOHNSON wanted to ensure it was not an issue.

4:13:16 PM

REPRESENTATIVE SADDLER related his understanding that development rights would be described as withdrawing property and adding additional units. He asked whether that description is the full extent of development rights.

MR. BEEDLE answered that developer rights are basically owner rights in which the developer has restricted rights. An owner would be able to make any decisions. He stated that development rights would be defined in the declarations. He characterized development rights as the completion of the original plan as described in the declarations. A developer could not "willy-nilly" decide to change the project. He likened developer rights, such as an entrepreneur making decisions to develop a

project people will like, but if the circumstances change the developer must go back and obtain amendments to the declaration.

4:15:10 PM

REPRESENTATIVE SADDLER read, "...and additional development rights created...." He related his understanding this language would not give the developer the right to change from a ranch to a skyscraper. He asked for clarification that the additional development rights would be constrained by the original declaration.

MR. BEEDLE answered yes.

4:15:38 PM

REPRESENTATIVE SADDLER inquired as to the reasons the original timeframe for the eight Northrim projects is insufficient. He further asked whether changing the threshold to 80 percent will resolve the issues for the bank with respect to these projects.

MR. BEEDLE responded that the eight situations vary. He recalled one project in which the absorption was slower. He pointed out that when the market is slow the developer is also on hold. Further, the developer may have spec-built more units which could extend beyond the five-year period. Further, if property must be sold in the timeframe and not just be leased. One unintended consequence of carrying rental property which is later sold is that the timeframe could run beyond the five-year timeframe.

4:17:02 PM

MR. BEEDLE related a scenario involving vertical developments, or higher rise condominiums. The developer may have built three towers, but due to the lack of market response the developer cannot build the fourth condominium building within the timeframe. In that instance, the condominium association either obtains a park or it results in undeveloped property defaulting back to the condominium association. He highlighted that the primary reason for this has been due to the slow market and absorption of projects is taking longer than five years. He said no one - the developer, the development rights person, or the bank - anticipated this would happen. He emphasized the bank did not anticipate the issue arising or it would not have made the loan in the first place. He pointed out that currently

several projects Northrim Bank is financing now face the five-year issue.

4:18:20 PM

REPRESENTATIVE SADDLER asked whether the 80 percent threshold in the bill will accomplish the bank's goal.

MR. BEEDLE answered the assumption is that the development rights owner has a good relationship with the association. He offered his belief that the developer must be sophisticated to develop a condominium development. The successful developer generally sets up the condominium association and has the majority votes, communicates well, and recognizes the importance of maintaining good relations; however, this is not always the case. Sometimes the developer defaults on the loan and foreclosure results. The new owner could come in and not have good relationships. He related his understanding that the current developers Northrim is working with on the aforementioned projects have good relationships. This bill will adopt the national standard of the 80 percent threshold. The advantage of using the national standard is that it provides a uniform code. Thus the secondary market does not need to consider that Alaska has a peculiar rule. He testified in favor of adopting the 80 percent threshold. He acknowledged obtaining 80 percent will still not be easy, as the flower bed example illustrated.

REPRESENTATIVE SADDLER acknowledged that uniformity has value.

4:20:10 PM

TERRY BRYAN, Vice President; Manager, First American Title Insurance Company (FATIC), spoke in support of HB 269. He related that FATIC provides title and escrow services to all communities within Alaska via 10 branch offices. He characterized HB 269 as taking a common sense approach to correct a statute that has established an impractical impediment to the traditional flow of commerce due to the restrictive unanimous vote requirement. He highlighted the evolving real estate and lending industry needs to update to the UCIOA. This bill will remedy issues related to absorption rate, the risk of lending, or the risk of insuring a property. He said that Alaska has evolved along with the national real estate marketplace. He emphasized that Alaska requires a continual and sustained flow of development. This bill would help ensure that development is not stymied or adversely affected by an

artificial impediment, such as the unanimous approval of project timelines. He emphasized that the 100 percent approval creates an artificial impediment from his perspective. The bill would be more in compliance with the modifications of the UCIOA. He concluded that the bill is a common sense approach to the issue. He stressed the difficulty in obtaining 100 percent of the votes for anything.

4:22:58 PM

BOB PETERSEN, President and Owner, The Petersen Group, stated that his company is a 30-year construction company in Anchorage. He said his group was the first builder to build a condominium in Girdwood under the UCIOA in 1995. He reported that he is on his sixteenth condominium building project, which makes his company the most experienced condominium builder in the state with over 1,000 units completed. He testified in support of HB 269.

MR. PETERSEN gave an example of the type of problem encountered with the requirement of a unanimous vote to change a declarant right. He recorded the declaration for one project, Summerstone, in Anchorage eight years ago, with 164 units declared to be built over seven year period. The last four units were finished in year eight; however, since the declarant rights expired in the seventh year, the developer, the Petersen Group, cannot get clear title to the last four units. The Summerstone Board of Directors (BOD) is unanimously in support to change the declaration to extend the rights since it benefits the homeowners association. The BOD sent out a proxy to the homeowners and to date has received 79 or 80 proxies in support of the extension. He highlighted that there is always a dissenter. The BOD is sending another proxy to attract decisions on the other 80. This bill would resolve the issue. He firmly believes that he will be able to attain the 80 percent approval or better since the BOD unanimously is in favor of the extension. It is good for the homeowner's association and will remove the cloud on the title. It will be impossible to achieve 100 percent approval. The reason it is good for homeowners associations to have the ability to change a declarant right is that during a slow market many projects cannot be finished in the timeframe allowed via the UCIOA at the time the declaration is recorded. First, when a project is completed it maximizes the value of the project and avoids vacant lots that homeowners association must pay taxes on. He pointed out the lot is owned by the developer, but due to a technicality must transfer the rights to the homeowners association. He explained that when a

proforma is done and the developer amortizes expenses it helps keeps homeowners association dues to a minimum. From that standpoint a homeowners association wants the developer to finish the project and the Municipality of Anchorage (MOA) would be in favor of completion since it will increase the property tax base. He offered his belief this bill will address the technicality and update the UCIOA that most of the U.S. has already adopted as an amendment to their state statutes.

4:28:17 PM

REPRESENTATIVE SADDLER asked whether the bill has any known opposition.

REPRESENTATIVE HOLMES answered that she was not aware of any.

[HB 269 was held over.]

4:29:10 PM

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:29 p.m.