

Introduced: 3/9/63
Referred: Judiciary

RULES COMMITTEE
BY REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 208

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRD LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act providing for horizontal property
7 regimes."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 34 is amended by adding a new chapter to read

10 CHAPTER 07. HORIZONTAL PROPERTY

11 ARTICLE 1. HORIZONTAL PROPERTY REGIMES

12 Sec. 34.07.010. HORIZONTAL PROPERTY REGIMES. Whenever
13 the owner of a building, or of the land on which a building
14 is planned, executes and records a master deed setting forth
15 the things required by sec. 50 of this chapter, there is
16 established a horizontal property regime.

17 Sec. 34.07.020. STATUS OF APARTMENTS WITHIN A HORI-
18 ZONTAL PROPERTY REGIME. Once the property is submitted to
19 the horizontal property regime, an apartment in the building
20 may be individually conveyed and encumbered and may be the
21 subject of ownership, possession or sale and of all legal
22 rights, as if it were sole and entirely independent of the
23 other apartments in the building of which they form a part,
24 and the individual titles and interests shall be recordable.

25 Sec. 34.07.030. JOINT OR COMMON OWNERSHIP OF AN APART-
26 MENT. Any apartment under this chapter may be commonly owned
27 by more than one person when the persons are not husband and
28 wife and may be jointly or commonly owned by a husband and
29 wife.

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1 to regroup or merge the records of the filial estates with
2 the principal property, provided, that the filial estates are
3 unencumbered, or if encumbered, that the creditors in whose
4 behalf the encumbrances are recorded agree to accept as
5 security the undivided portions of the property owned by
6 the debtors.

7 Sec. 34.07.080. MERGER NO BAR TO RE-CONSTITUTION. The
8 merger provided for in sec. 70 of this chapter shall in no
9 way bar the subsequent constitution of the property into
10 another horizontal property regime whenever so desired and
11 upon observance of the provisions of this chapter.

12 ARTICLE 3. ADMINISTRATION

13 Sec. 34.07.090. HORIZONTAL PROPERTY REGIME BYLAWS.
14 The administration of every building constituted into a
15 horizontal property regime shall be governed by bylaws ap-
16 proved and adopted by the council of co-owners. The bylaws
17 may be amended from time to time by the council.

18 Sec. 34.07.100. RECORD OF RECEIPTS AND EXPENDITURES.
19 The administrator, or the board of administration, or the
20 person appointed by the bylaws of the regime, shall keep a
21 book with a detailed account of the receipts and expenditures
22 affecting the building and its administration and specifying
23 the maintenance and repair expenses of the common elements,
24 and any other expenses incurred by or in behalf of the regime.
25 Both the book and vouchers accrediting the entries made in
26 the book shall be available for examination by all the co-
27 owners at convenient hours on working days that shall be
28 made known to the co-owners. All books and records shall be
29 kept in accordance with good accounting procedures and shall

1 be audited at least once a year by an auditor outside of the
2 organization.

3 Sec. 34.07.110. PRO-RATA CONTRIBUTION TOWARD EXPENSES.
4 Each co-owner is bound to contribute pro-rata toward the
5 expenses of administration and of maintenance and repair of
6 the general common elements, and, in the proper case, of the
7 limited common elements of the building, and toward any other
8 expense lawfully agreed upon by the council of co-owners.
9 No co-owner shall be exempted from contributing toward such
10 expenses by waiver or non-use of the common elements, both
11 general and limited, or by abandonment of the apartment
12 belonging to him.

13 Sec. 34.07.120. PROPERTY TAXES. Property taxes
14 assessed by the state or its political subdivisions shall be
15 assessed on and collected on the individual apartments to-
16 gether with their appurtenant undivided interests in the
17 common elements of the building and not on the building as a
18 whole.

19 Sec. 34.07.130. PRIORITY OF LIENS. Upon the sale or
20 conveyance of an apartment, all unpaid assessments against
21 a co-owner for his pro-rata share in the expenses to which
22 sec. 110 refers shall be withheld and paid out of the sales
23 price by the purchaser in preference over any other assess-
24 ments or charges of whatever nature except the following:

25 (1) assessments, liens, and charges in favor of
26 the state or its political subdivisions for taxes past due
27 and unpaid on the apartment; and

28 (2) payments due under recorded mortgage instru-
29 ments.

ARTICLE 4. REGULATION BY DEPARTMENT OF COMMERCE

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2 Sec. 34.07.140. NOTIFICATION OF INTENTION. Before a
3 condominium project is offered for sale in the state, the
4 developer shall notify the commissioner of commerce in
5 writing of his intention to offer it for sale.

6 Sec. 34.07.150. STATEMENT OF FACTS AND FILING FEE. The
7 developer shall file with the notice of intention a fee of
8 \$50 and a statement of all material facts required by the
9 department.

10 Sec. 34.07.160. INSPECTION. After the developer has
11 made the appropriate notification pursuant to secs. 140 and
12 150, an inspection of the condominium project may be made by
13 the department. The developer shall prepay to the department
14 the cost of making the inspection as estimated by the depart-
15 ment.

16 Sec. 34.07.170. PUBLIC REPORT. When the department
17 makes an examination of a project, it shall make a public
18 report of its findings, containing all material facts reason-
19 ably available. A public report is neither an approval nor
20 a disapproval of a project. No unit in a condominium project
21 shall be offered for sale, nor shall reservations to purchase
22 be taken until the department has issued a public report.

23 Sec. 34.07.180. COPY OF PUBLIC REPORT TO BE GIVEN TO
24 PROSPECTIVE PURCHASER. The developer shall not enter into a
25 binding contract or agreement for the sale of any unit in a
26 condominium project until a true copy of the department's
27 public report on the project with all supplementary public
28 reports, has been given to the prospective purchaser, who has
29 been given an opportunity to read the report, and has given

1 the developer a receipt for it. The developer shall keep a
2 receipt taken for any public report on file in his possession
3 subject to inspection at a reasonable time by the department
4 for a period of three years from the date the receipt was
5 taken.

6 Sec. 34.07.190. SUPPLEMENTARY PUBLIC REPORT. If, after
7 a public report has been issued, the department deems it
8 necessary to conduct further inquiries or investigations in
9 order to protect the general public in its real estate trans-
10 actions, the department may issue a supplementary public
11 report describing its findings. Upon the issuance of a sup-
12 plementary public report, it shall be the duty of the devel-
13 oper to issue a true copy of the report to all purchasers.

14 Sec. 34.07.200. NOTICE OF CHANGE. The developer of
15 the project shall not, after it is submitted to the depart-
16 ment, materially change the plans or value or use of the
17 project or its apartments without first notifying the depart-
18 ment in writing of the intended change and substantially
19 notifying all purchasers and prospective purchasers of the
20 change.

21 Sec. 34.07.210. REQUEST FOR HEARING BY DEVELOPER. When
22 a public report is not issued within a reasonable time after
23 notice of intention is properly filed pursuant to secs. 140
24 and 150 of this chapter, or if the developer is materially
25 grieved by the form or content of a public report, the
26 developer may, in writing, request and shall be given a
27 hearing by the department within a reasonable time.

28 ARTICLE 5. PENALTIES

29 Sec. 34.07.220. PENALTIES FOR VIOLATIONS. (a) A

1 person who knowingly authorizes, directs or aids in the
2 publication, advertisement, distribution or circularization
3 of a false statement or representation concerning a project
4 offered for sale or lease under this chapter is guilty of
5 a misdemeanor.

6 (b) A person who, knowing that an advertisement, pam-
7 phlet, prospectus or letter concerning a project under this
8 chapter contains a written statement that is false or fraudu-
9 lent, issues, circulates, publishes or distributes the same
10 or causes it to be issued, circulated, published or distri-
11 buted, is guilty of a misdemeanor.

12 (c) A person who fails to comply with a provision of
13 Article 4 or with an order issued under Article 4 is guilty
14 of a misdemeanor.

15 Sec. 34.07.230. INVESTIGATORY POWERS. The department
16 may investigate the developer's project and examine the
17 books, accounts, records and files used in the project. The
18 developer is required to keep a record of all sales trans-
19 actions and of the funds received by him pursuant thereto,
20 and to make the record accessible to the department upon
21 reasonable notice and demand.

22 ARTICLE 6. GENERAL PROVISIONS

23 Sec. 34.07.240. DEFINITIONS. In this chapter

24 (1) "apartment" means an enclosed room or rooms
25 occupying all or part of a floor in a building of one or more
26 floors or stories regardless of whether it is intended for
27 residence, for office, for the operation of any industry or
28 business, or for any other type of independent use, provided
29 it has a direct exit to a thoroughfare or to a given common

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space leading to a thoroughfare;

(2) "condominium" means the ownership of single units in a multi-unit structure with common elements;

(3) "condominium project" means a real estate condominium project; a plan or project whereby six or more apartments, rooms, office spaces, or other units in an existing or proposed building or structure are offered or proposed to be offered for sale;

(4) "co-owner" means a person, firm, corporation, partnership, association, trust or other legal entity, who owns an apartment within the building;

(5) "council of co-owners" means all the co-owners as defined in subsec. (4) of this section;

(6) "department" means the Department of Commerce;

(7) "developer" means a person who undertakes to develop a real estate condominium project;

(8) "general common element" includes:

(A) the land whether leased or in fee simple, on which the building stands;

(B) the foundations, main walls, roofs, halls, lobbies, stairways, and entrances and exit or communication ways;

(C) the basements, flat roofs, yards and gardens, except as otherwise provided or stipulated;

(D) the premises for the lodging of janitors or persons in charge of the building, except as otherwise provided or stipulated;

(F) the compartments or installations of central services such as power, light, gas, cold and

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hot water, refrigeration, reservoirs, water tanks and pumps, and the like;

(G) the elevators, garbage incinerators and, in general all devices or installations existing for common use; and

(H) all other elements of the building for common use or necessary to its existence, upkeep and safety.

(9) "limited common elements" means and includes those common elements which are agreed upon by all the co-owners to be reserved for the use of a certain number of apartments to the exclusion of the other apartments, such as special corridors, stairways and elevators, sanitary services common to the apartments of a particular floor, and the like;

(10) "majority of co-owners" means more than fifty percent of the co-owners;

(11) "master deed" means the deed establishing the horizontal property regime;

(12) "property" includes the land whether leasehold or in fee simple, the building, all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto.