

Introduced: 3/23/63
Referred: Judiciary

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 HOUSE BILL NO. 223

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRD LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to real property; providing
7 for the creation of horizontal property
8 regimes and their regulation."

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

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

11 CHAPTER 7. HORIZONTAL PROPERTY REGIMES ACT.

12 Sec. 34.07.010. THIS CHAPTER APPLICABLE ONLY IF
13 DECLARATION EXECUTED AND RECORDED. This chapter is appli-
14 cable only to property, the sole owner or all of the owners
15 of which submit it to the horizontal property regime by exe-
16 cuting and recording a declaration under secs. 150 - 160 of
17 this chapter.

18 Sec. 34.07.020. APARTMENT CLASSIFIED AS REAL PROPERTY.
19 Each apartment, together with its undivided interest in the
20 common areas and facilities shall not be considered as an
21 intangible or a security or any interest therein but shall
22 for all purposes constitute and be classified as real proper-
23 ty under the provisions of this chapter.

24 Sec. 34.07.030. APARTMENT OWNERSHIP AND POSSESSION.
25 Each apartment owner shall be entitled to the exclusive owner-
26 ship and possession of his apartment but any apartment may be
27 owned by husband and wife as tenants by the entirety or com-
28 monly owned by more than one person.

29 Sec. 34.07.040. COMMON AREAS AND FACILITIES OWNERSHIP.

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(a) Each apartment owner shall have the common right to a share, with other apartment owners, in the common areas and facilities.

(b) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration. The percentage is computed by taking as a basis the value of the apartment in relation to the value of the property.

Sec. 34.07.050. ALTERATION OF COMMON AREAS AND FACILITIES OWNERSHIP. (a) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the declaration shall not be altered except in accordance with procedures set forth in the bylaws and by amending the declaration.

(b) The bylaws shall provide for a periodic reappraisal of the apartments and the common areas and facilities together with a recomputation, if required, of the percentage of the undivided interest of each apartment owner in the common areas and facilities.

Sec. 34.07.060. SEPARATION OF APARTMENT OWNERSHIP FROM COMMON AREAS AND FACILITIES OWNERSHIP PROHIBITED. (a) The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains even though the interest is not expressly mentioned or described in the conveyance or other instrument.

(b) Nothing in this section or this chapter shall be construed to detract from or limit the powers and duties of any assessing or taxing unit or official which is otherwise granted or imposed by law or regulation.

1 Sec. 34.07.070. PARTITION OF COMMON AREAS AND FACILITIES
2 OWNERSHIP PROHIBITED. (a) The common areas and facilities
3 shall remain undivided and no apartment owner or other person
4 shall bring an action for partition or division of any part,
5 unless the property has been removed from the provisions of
6 secs. 270, 280, and 410 - 430 of this chapter. Any covenant
7 to the contrary shall be void.

8 (b) Nothing in this chapter shall be construed as a li-
9 mitation on the right of partition by a husband and wife own-
10 ing as tenants by the entirety or by the owners in common of
11 one or more of the apartments as to the ownership of the
12 apartment or apartments.

13 Sec. 34.07.080. NONEXCLUSIVE EASEMENT TO USE COMMON
14 AREAS AND FACILITIES. Each apartment owner has a nonexclusive
15 easement for, and may use the common areas and facilities in
16 accordance with the purpose for which they were intended with-
17 out hindering or encroaching upon the lawful right of the
18 other apartment owners.

19 Sec. 34.07.090. MAINTENANCE, REPAIR AND REPLACEMENT OF
20 COMMON AREAS AND FACILITIES. (a) The necessary work of mainten-
21 ance, repair and replacement of the common areas and facili-
22 ties and the making of an addition or improvement shall be car-
23 ried out only as provided in this chapter and in the bylaws.

24 (b) The association of apartment owners have the ir-
25 revocable right, to be exercised by the manager or board of
26 directors, to have access to each apartment from time to
27 time during reasonable hours as may be necessary for the
28 maintenance, repair, or replacement of any of the common
29 areas and facilities in it, or accessible from it, or for

1 making emergency repairs in the apartment necessary to pre-
2 vent damage to the common areas and facilities or to another
3 apartment.

4 Sec. 34.07.100. STRICT COMPLIANCE WITH BYLAWS BY
5 APARTMENT OWNER NECESSARY. Each apartment owner shall
6 comply strictly with the bylaws and with the adopted adminis-
7 trative regulations, as either may be lawfully amended from
8 time to time, and with the covenants, conditions and restric-
9 tions set forth in the declaration or in the deed to his
10 apartment. Failure to comply with any of the foregoing is
11 ground for an action to recover sums due for damages or in-
12 junctive relief, or both, maintainable by the manager or
13 board of directors on behalf of the association of apartment
14 owners or by a particularly aggrieved apartment owner.

15 Sec. 34.07.110. UNANIMOUS CONSENT OF ALL APARTMENT
16 OWNERS NEEDED FOR CERTAIN WORK ON INDIVIDUAL APARTMENT. No
17 apartment owner may do any work which will jeopardize the
18 soundness or safety of the property, reduce its value, or
19 impair any easement or hereditament without in every case
20 the unanimous consent of all of the other apartment owners
21 being first obtained.

22 Sec. 34.07.120. LIENS AGAINST APARTMENTS, COMMON AREAS
23 AND FACILITIES. (a) Subsequent to recording the declara-
24 tion as provided in this chapter, and while the property re-
25 mains subject to this chapter, no lien may thereafter arise
26 or be effective against the property. During this period,
27 liens or encumbrances may arise or be created only against
28 each apartment and the percentage of undivided interest in
29 the common areas and facilities and appurtenant to the apart-

1 ment in the same manner and under the same conditions in
2 every respect as liens or encumbrances may arise or be creat-
3 ed upon or against any other separate parcel of real proper-
4 ty subject to individual ownership; except that no labor
5 performed or materials furnished with the consent of or at
6 the request of the owner of any apartment, or the owner's
7 agent, contractor, or subcontractor, may be the basis for
8 the filing of a lien against any other apartment or any
9 other property of any other apartment owner not expressly
10 consenting to or requesting the same. However, express
11 consent is considered given by any apartment owner in the
12 case of emergency repairs.

13 (b) Labor performed or materials furnished for the
14 common areas and facilities, if authorized as provided in
15 this chapter, by the association of apartment owners, the
16 manager, board of directors, the declaration, or bylaws, is
17 considered performed or furnished with the express consent
18 of each apartment owner and may be the basis for the filing
19 of a lien against each of the apartments and is subject to
20 the provisions of sec. 130 of this chapter.

21 Sec. 34.07.130. REMOVAL OF LIEN AGAINST TWO OR MORE
22 APARTMENTS. (a) In the event a lien against two or more
23 apartments becomes effective, the apartment owners of the
24 separate apartments may remove their apartments and the
25 percentage of undivided interest in the common areas and
26 facilities appurtenant to the apartments from the lien by
27 payment of the fractional or proportional amounts attribut-
28 able to each of the apartments affected. The individual
29 payments are computed by reference to the percentage appear-

1 ing on the declaration.

2 (b) Subsequent to payment, discharge, or satisfaction,
3 the apartment and the percentage of undivided interest in the
4 common areas and facilities appurtenant to it are thereafter
5 free and clear of the liens paid, satisfied, or discharged.
6 The partial payment, satisfaction, or discharge shall not
7 prevent the lienor from proceeding to enforce his rights
8 against any apartment and the percentage of undivided inter-
9 est in the common areas and facilities appurtenant to it not
10 paid, satisfied, or discharged.

11 Sec. 34.07.140. COMMON PROFITS AND EXPENSES SHARED BY
12 APARTMENT OWNERS. The common profits of the property shall
13 be distributed among, and the common expenses shall be
14 charged to, the apartment owners according to the percentage
15 of the undivided interest in the common areas and facilities.

16 Sec. 34.07.150. CONTENTS OF DECLARATION. The declara-
17 tion shall contain the following:

18 (1) a description of the land on which the build-
19 ing and improvement are or are to be located;

20 (2) a description of the building, stating the
21 number of stories and basements, the number of apartments and
22 the principal materials of which it is or is to be construc-
23 ted;

24 (3) the apartment number of each apartment, and
25 a statement of its location, approximate area, number of
26 rooms, and immediate common areas to which it has access, and
27 any other data necessary for its proper identification;

28 (4) a description of the common areas and facili-
29 ties;

1 (5) a description of the limited common areas and
2 facilities, if any, stating to which apartment their use is
3 reserved;

4 (6) the value of the property and of each apart-
5 ment, and the percentage of undivided interest in the common
6 areas and facilities appertaining to each apartment and its
7 owner for all purposes, including voting;

8 (7) a statement of the purposes for which the
9 building and each of the apartments are intended and re-
10 stricted as to use;

11 (8) the name of a person to receive service of
12 process in the cases provided for in this chapter, together
13 with a residence or place of business of the person which
14 shall be within the city or recording district in which the
15 building is located;

16 (9) a provision as to the percentage of votes by
17 the apartment owners which shall be determinative of whether
18 to rebuild, repair, restore, or sell the property in event
19 of damage or destruction of all or part of the property;

20 (10) a provision authorizing and establishing pro-
21 cedures for the subdividing or combining of any apartment or
22 apartments, common areas and facilities or limited common
23 areas and facilities, which procedures may provide for the
24 accomplishment thereof through means of a metes and bounds
25 description;

26 (11) a provision requiring the adoption of bylaws
27 for the administration of the property or for other purposes
28 not inconsistent with this chapter, which may include whether
29 administration of the property shall be by a board of

1 directors elected from among the apartment owners, by a
2 manager, or managing agent, or otherwise, and the procedures
3 for their adoption and amendment;

4 (12) any further details in connection with the
5 property which the person executing the declaration may deem
6 desirable to set forth consistent with this chapter; and

7 (13) the method by which the declaration may be
8 amended, consistent with this chapter; except that not less
9 than sixty per cent of the apartment owners may consent to
10 any amendment.

11 Sec. 34.07.160. RECORDING OF DECLARATION. The declara-
12 tion shall be recorded in the recording district in which the
13 property is located.

14 Sec. 34.07.170. FILING OF SURVEY MAP, FLOOR PLANS WITH
15 VERIFIED STATEMENT BY ARCHITECT OR ENGINEER WHEN DECLARATION
16 IS RECORDED. Simultaneously with the recording of the
17 declaration there shall be filed in the recording district in
18 which the property is located

19 (1) a survey map of the surface of the land sub-
20 mitted to the provisions of this chapter showing the location
21 of the building or buildings thereon;

22 (2) a set of the floor plans of the building or
23 buildings showing the layout, apartment numbers and dimen-
24 sions of the apartments in sufficient detail to identify and
25 locate each apartment with certainty, stating the name of the
26 building or that it has no name, and bearing the verified
27 statement of a registered architect or registered professional
28 engineer certifying that it is an accurate copy of portions
29 of the plans of the building as filed with and approved

1 by the governmental entity having jurisdiction over the
2 approval or issuance of permits for the construction of the
3 building, or a statement that no approval or permit is
4 required.

5 Sec. 34.07.180. AMENDMENT TO DECLARATION IN LIEU OF
6 VERIFIED STATEMENT BY ARCHITECT OR ENGINEER REGARDING FLOOR
7 PLANS. (a) If the floor plans do not include a verified
8 statement by a registered architect or registered profes-
9 sional engineer that the plans fully and accurately depict
10 the layout, apartment numbers and dimensions of the apart-
11 ments as built, there shall be recorded prior to the first
12 conveyance of an apartment an amendment to the declaration
13 to which shall be attached a verified statement of a regis-
14 tered architect certifying that the plans previously filed
15 or being filed simultaneously with the amendment, fully and
16 accurately depict the layout, apartment number and dimen-
17 sions of the apartments as built.

18 (b) The plans shall each contain a reference to the
19 date of recording of the declaration and the volume, page,
20 and receiving number of the recorded declaration.

21 Sec. 34.07.190. RECORD OF DECLARATION TO CONTAIN FLOOR
22 PLAN FILE NUMBER. The declaration recorded under sec. 160
23 of this chapter shall contain a reference to the file number
24 of the floor plans of the building affected.

25 Sec. 34.07.200. FLOOR PLANS FORM PRESCRIBED BY RECORD-
26 ING OFFICE. The recording office shall prescribe the style,
27 size, form and quality of floor plans filed under sec. 170
28 of this chapter.

29 Sec. 34.07.210. SURVEY MAP AND FLOOR PLANS SUBJECT TO

1 STATE AND LOCAL LAWS. The survey map and floor plans are
2 subject to the provisions of state and local laws relating
3 to plats, planning and plans, subdivisions, and zoning, if
4 the laws are not inconsistent with the purposes of this
5 chapter and if the building is or is to be located on land
6 which is not owned in common.

7 Sec. 34.07.220. INTERPRETATION OF LOCAL ORDINANCES,
8 RESOLUTIONS, OR ZONING LAWS. Local ordinances, resolutions,
9 or laws relating to zoning shall be construed to treat like
10 structures, lots, or parcels in like manner regardless of
11 whether the ownership is divided by sale of apartments under
12 this chapter rather than by lease of apartments.

13 Sec. 34.07.230. CONTENTS OF APARTMENT DEED. An apart-
14 ment deed shall include

15 (1) a description of the land as provided in sec.
16 150 of this chapter, or the post office address of the prop-
17 erty, including in either case the date of recording of the
18 declaration and the volume, page and receiving number of
19 the recorded declaration;

20 (2) the apartment number of the apartment in the
21 declaration and any other data necessary for its proper
22 identification;

23 (3) a statement of the use for which the apartment
24 is intended and restrictions on its use;

25 (4) the percentage of undivided interest apper-
26 taining to the apartment, the common areas and facilities
27 and limited common areas and facilities appertaining to it,
28 if any; and

29 (5) any further details which the grantor and

1 grantee may set forth consistent with the declaration and
2 with this chapter.

3 Sec. 34.07.240. RELEASE OR PARTIAL RELEASE FROM EN-
4 CUMBRANCE AFFECTING APARTMENT WITH FIRST CONVEYANCE. At
5 the time of the first conveyance of each apartment, every
6 mortgage, deed of trust, lien, or other encumbrance affecting
7 the apartment, including the percentage of undivided interest
8 of the apartment in the common areas and facilities, shall
9 be paid and satisfied of record, or the apartment being con-
10 veyed and its percentage of undivided interest in the common
11 areas and facilities shall be released by a recorded partial
12 release.

13 Sec. 34.07.250. RECORDING OF INSTRUMENTS AFFECTING
14 HORIZONTAL PROPERTY REGIMES. The declaration, an amendment
15 to it, or any instrument by which the property may be re-
16 moved from this chapter and every instrument affecting the
17 property or an apartment may be recorded.

18 Sec. 34.07.260. DECLARATION OR AMENDMENT MUST BE
19 RECORDED TO BE VALID. No declaration or any amendment to it
20 is valid unless recorded.

21 Sec. 34.07.270. REMOVAL OF PROPERTY FROM THE PROVIS-
22 IONS OF THIS CHAPTER. All of the apartment owners may re-
23 move a property from the provisions of this chapter by a
24 recorded instrument to that effect if the mortgagees, trus-
25 tees, and holders of all liens affecting any of the apart-
26 ments consent or agree, in either case by a recorded instru-
27 ment, that their mortgages, deeds of trust, and liens are
28 transferred to the percentage of the undivided interest of
29 the apartment owner in the property as provided in sec. 280

of this chapter.

1 Sec. 34.07.280. OWNERSHIP OF PROPERTY UPON REMOVAL FROM
2 THE PROVISIONS OF THIS CHAPTER. (a) Upon removal of the proper-
3 ty from the provisions of this chapter, the property is owned
4 in common by the apartment owners. (b) The undivided interest
5 in the property owned in common which appertains to each apart-
6 ment owner is the percentage of the undivided interest pre-
7 viously owned by the owners in the common areas and facilities.

8 Sec. 34.07.290. REMOVAL OF PROPERTY DOES NOT BAR SUBSE-
9 QUENT RESUBMISSION UNDER THIS CHAPTER. The removal provided
10 for in secs. 270-280 of this chapter does not bar the subse-
11 quent resubmission of the property to the provisions of this
12 chapter.

13 Sec. 34.07.300. RECEIPTS AND EXPENDITURES RECORDS AFFECT-
14 ING COMMON AREAS AND FACILITIES TO BE KEPT. (a) The manager or
15 board of directors, shall keep detailed, accurate records in
16 chronological order of the receipts and expenditures affecting
17 the common areas and facilities, specifying and itemizing the
18 maintenance and repair expenses of the common areas and facili-
19 ties and any other expenses incurred.

20 (b) All books and records shall be kept in accordance with
21 good accounting procedures and shall be audited at least once
22 a year by an auditor outside of the organization.

23 Sec. 34.07.310. EXAMINATION BY APARTMENT OWNER OF RE-
24 CEIPTS AND EXPENDITURES AFFECTING COMMON AREAS AND FACILITIES
25 The receipts and expenditures records and vouchers authorizing
26 payment for maintenance and repair of common areas and facili-
27 ties provided in sec. 300 of this chapter shall be available
28 for examination by an apartment owner at
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1 convenient hours of week-days.

2 Sec. 34.07.320. APARTMENT OWNER LIABLE FOR HIS SHARE
3 OF THE COMMON EXPENSES OF COMMON AREAS AND FACILITIES. No
4 apartment owner may exempt himself from liability for his
5 contribution towards the common expenses of common areas or
6 facilities by his waiver of the use or enjoyment of any of
7 the common areas and facilities or by abandonment of his
8 apartment.

9 Sec. 34.07.330. COLLECTION OF UNPAID COMMON EXPENSES
10 FROM APARTMENT OWNER. A sum assessed by the association of
11 apartment owners but unpaid for the share of the common ex-
12 penses chargeable to any apartment may be enforced by the
13 manager or board of directors acting on behalf of the apart-
14 ment owners, upon first obtaining the approval of a majority
15 of all apartment owners, in the following manner:

16 (1) ten days notice shall be given the delinquent
17 apartment owner stating that unless the assessment is paid
18 within ten days any or all utility services will be forth-
19 with severed and shall remain severed until the assessment
20 is paid; or

21 (2) by the lawful method of enforcement, judicial
22 or extra-judicial, as may be provided in the declaration or
23 bylaws.

24 Sec. 34.07.340. UNPAID COMMON EXPENSE IS LIEN ON
25 APARTMENT, ORDER OF LIEN PRIORITY. A sum assessed by the
26 association of apartment owners but unpaid for the share of
27 the common expenses chargeable to an apartment constitutes
28 a lien on the apartment prior to all other liens except

29 (1) tax liens on the apartment in favor of an

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assessing unit or special district and

(2) all sums unpaid on all deeds of trust or mortgages of record.

Sec. 34.07.350. COMMON EXPENSE LIEN FORECLOSURE. (a) A common expense lien as provided for in sec. 340 of this chapter may be foreclosed by suit by the manager or board of directors, acting on behalf of the apartment owners, in the same manner as a lien on, or mortgage or a deed of trust of real property.

(b) In the event of foreclosure, the apartment owner shall be required to pay a reasonable rental for the apartment, if provided for in the bylaws, and the plaintiff in the foreclosure may appoint a receiver to collect it.

(c) The manager or board of directors, acting on behalf of the apartment owners may, unless prohibited by the declaration, bid in the apartment at the foreclosure sale, and may acquire and hold, lease, mortgage and convey the apartment.

Sec. 34.07.360. ACTION TO RECOVER A JUDGMENT FOR UNPAID COMMON EXPENSES DOES NOT WAIVE LIEN. An action to recover a judgment for unpaid common expenses is maintainable without foreclosing or waiving the lien securing the same.

Sec. 34.07.370. LIABILITY FOR COMMON EXPENSES OF PERSON OBTAINING POSSESSION UPON FORECLOSURE. If a mortgagee of a recorded mortgage or a trustee of a recorded deed of trust or other purchaser of an apartment obtains possession of the apartment as a result of foreclosure of the mortgage or deed of trust, such possessor, his successors and assigns shall not be liable for the share of the common

1 expenses or assessments by the association of apartment
2 owners chargeable to the apartment which became due prior
3 to his possession. This unpaid share of common expenses or
4 assessments is a common expense collectable from all of the
5 apartment owners including the possessor, his successors
6 and assigns.

7 Sec. 34.07.380. LIABILITY OF GRANTEE FOR UNPAID COMMON
8 EXPENSES AT TIME OF CONVEYANCE. In a voluntary conveyance
9 the grantee of an apartment is jointly and severally liable
10 with the grantor for all unpaid assessments against the
11 latter for his share of the common expenses up to the time
12 of the grantor's conveyance, without prejudice to the
13 grantee's right to recover from the grantor the amounts paid
14 on the assessments by the grantee.

15 Sec. 34.07.390. GRANTEE ENTITLED TO STATEMENT OF
16 UNPAID ASSESSMENTS. A grantee is entitled to a statement
17 from the manager or board of directors setting forth the
18 amount of the unpaid assessments against the grantor. The
19 grantee is not liable for, nor is the apartment conveyed
20 subject to a lien for, any unpaid assessments against the
21 grantor in excess of the amount set forth.

22 Sec. 34.07.400. INSURANCE OF PROPERTY. (a) The mana-
23 ger or board of directors, if required by the declaration,
24 bylaws, or by a majority of the apartment owners, or at the
25 request of a mortgagee or trustee having a mortgage or a
26 deed of trust of record covering an apartment, shall obtain
27 insurance for the property against loss or damage by fire
28 and other hazards under the terms and amounts required or
29 requested.

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(b) The insurance coverage shall be written on the property in the name of the manager or of the board of directors of the association of apartment owners, as trustee for each of the apartment owners in the percentages established by the declaration.

(c) Premiums for insurance coverage secured under (a) of this section is a common expense.

(d) Provision for insurance under this section does not prejudice the right of an apartment owner to insure his own apartment or the personal contents in it for his benefit.

Sec. 34.07.410. DAMAGE OR DESTRUCTION OF THE PROPERTY. If within sixty days of the date of damage or destruction to all or part of the property it is not determined by a majority of all apartment owners to repair, reconstruct, or rebuild in accordance with the original plan, or by a unanimous vote of all apartment owners to do otherwise, then and in that event

(1) the property shall be owned in common by the apartment owners;

(2) the undivided interest in the property owned in common which appertains to each apartment owner shall be the percentage of undivided interest previously owned by the owner in the common areas and facilities; and

(3) mortgages, deeds of trust, or liens affecting any of the apartments are transferred in accordance with the existing priorities to the percentage of the undivided interest of the apartment owner in the property.

Sec. 34.07.420. ACTION FOR PARTITION IN THE EVENT

1 APARTMENT OWNERS FAIL TO ACT UNDER SEC. 410 OF THIS CHAPTER
2 An action for partition may be started by an apartment owner
3 if the apartment owners fail to act under sec. 410 of this
4 chapter after the damage or destruction of the property.

5 Sec. 34.07.430. DISTRIBUTION OF FUNDS FROM PARTITION
6 SALE. (a) The net proceeds of a sale of the property
7 conducted in an action for partition under sec. 420 of this
8 chapter shall be considered as one fund.

9 (b) The fund shall be divided into separate shares,
10 one for each apartment owner in a percentage equal to the
11 percentage of undivided interest which he has in the prop-
12 erty.

13 (c) After first paying out of the respective share of
14 each apartment owner all mortgages, deeds of trust, and
15 liens on the undivided interest in the property owned by
16 the apartment owner, the balance remaining in each share
17 shall be distributed to each apartment owner respectively.

18 Sec. 34.07.440. CAUSES OF ACTION RELATING TO COMMON
19 AREAS AND FACILITIES. (a) Without limiting the rights of
20 an apartment owner, a cause of action may be brought as
21 provided by law and by the rules of court by the manager
22 or board of directors, in either case in the discretion of
23 the board of directors, on behalf of two or more apartment
24 owners, as their respective interests may appear, with
25 respect to a cause of action relating to the common areas
26 and facilities of more than one apartment.

27 (b) Service of process on two or more apartment owners
28 in an action relating to the common areas and facilities of
29 more than one apartment may be made on the person designated

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in the declaration to receive service of process.

(c) A cause of action relating to the common areas and facilities for damages arising out of tortious conduct shall be maintained only against the association of apartment owners and a judgment lien or other charge is a common expense. The judgment lien or charge is removed from an apartment and its percentage of undivided interest in the common areas and facilities upon payment by the respective owner of his proportionate share based on the percentage of undivided interest owned by him.

Sec. 34.07.450. ASSESSMENT AND TAXATION OF APARTMENTS

An apartment and its undivided interest in the common areas and facilities are a parcel and it is subject to separate assessments and taxation by each assessing unit for all types of taxes authorized by law including but not limited to special ad valorem levies and special assessments. No building, property, or any of the common areas and facilities may be a security or a parcel for any purpose.

Sec. 34.07.460. PERSONS SUBJECT TO THIS CHAPTER. (a)

An apartment owner, his tenant, or their employees, or any other person that may in any manner use the property or any part of it under this chapter are subject to the provisions of this chapter, and to the declaration and bylaws of the association of apartment owners adopted pursuant to this chapter.

(b) An agreement, decision and determination made by the association of apartment owners under the provisions of this chapter, the declaration, or the bylaws and in accordance with the voting percentages established under this

1 chapter, declaration, or the bylaws, is binding on all
2 apartment owners.

3 Sec. 34.07.470. DEFINITIONS. In this chapter unless
4 the context otherwise requires

5 (1) "apartment" means a part of the property in-
6 tended for any type of independent use, including one or
7 more rooms or enclosed spaces located on one or more floors
8 (or part or parts thereof) in a building, regardless of
9 whether it is destined for a residence, an office, the
10 operation of any industry or business, or for any other
11 use not prohibited by law, and which has a direct exit to
12 a public street or highway, or to a common area leading to
13 such street or highway. The boundaries of an apartment are
14 the interior surfaces of the perimeter walls, floors, ceil-
15 ings, windows and doors thereof, and the apartment includes
16 both the portions of the building so described and the air
17 space so encompassed. In interpreting declarations, deeds,
18 and plans, the existing physical boundaries of the apart-
19 ment as originally constructed or as reconstructed in
20 substantial accordance with the original plans thereof shall
21 be conclusively presumed to be its boundaries rather than
22 the metes and bounds expressed or depicted in the declara-
23 tion, deed or plan, regardless of settling or lateral
24 movement of the building and regardless of minor variance
25 between boundaries shown in the declaration, deed, or plan
26 and those of apartments in the building;

27 (2) "apartment owner" means the person or persons
28 owning an apartment, as herein defined, in fee simple
29 absolute or qualified, or by way of a periodic estate, or

1 in any other manner in which real property may be owned in
2 this state, together with an undivided interest in a like
3 estate of the common areas and facilities in the percentage
4 specified and established in the declaration as duly re-
5 corded or as it may be amended;

6 (3) "apartment number" means the number, letter,
7 or a combination of them, designating the apartment in the
8 declaration as recorded or as it may be amended;

9 (4) "association of apartment owners" means all
10 of the apartment owners acting as a group in accordance
11 with the bylaws and with the declaration as it is recorded
12 or as they may be amended;

13 (5) "building" means a building, containing two
14 or more apartments, or two or more buildings each contain-
15 ing two or more apartments, and comprising a part of the
16 property;

17 (6) "common areas and facilities" unless other-
18 wise provided in the declaration as recorded or as it may
19 be amended, includes (a) the land on which the building is
20 located;

21 (b) the foundations, columns, girders, beams, supports,
22 main walls, roofs, halls, corridors, lobbys, stairs, stair-
23 ways, fire escapes, and entrances and exits of the build-
24 ing;

25 (c) the basements, yards, gardens, parking areas and
26 storage spaces;

27 (d) the premises for the lodging of janitors or per-
28 sons in charge of the property;

29 (e) the installations of central services such as

1 power, light, gas, hot and cold water, heating, refrigera-
2 tion, air conditioning and incinerating;

3 (f) the elevators, tanks, pumps, motors, fans, com-
4 pressors, ducts and in general all apparatus and installa-
5 tions existing for common use;

6 (g) the community and commercial facilities as provid-
7 ed for in the declaration as recorded or as it may be
8 amended;

9 (h) all other parts of the property necessary or con-
10 venient to its existence, maintenance and safety, or
11 normally in common use.

12 (7) "common expenses" include: (a) all sums law-
13 fully assessed against the apartment owners by the associa-
14 tion of apartment owners;

15 (b) expenses of administration, maintenance, repair, or
16 replacement of the common areas and facilities;

17 (c) expenses agreed upon as common expenses by the
18 association of apartment owners;

19 (d) expenses declared common expenses by the provisions
20 of this chapter, or by the declaration as it is recorded,
21 or by the bylaws, or as they may be amended.

22 (8) "common profits" means the balance of all
23 income, rents, profits and revenues from the common areas
24 and facilities remaining after the deduction of the common
25 expenses;

26 (9) "declaration" means the instrument by which
27 the property is submitted to provisions of this chapter and
28 as it may be, from time to time amended;

29 (10) "land" means the material of the earth, what-

1 ever may be the ingredients of which it is composed,
2 whether soil, rock, or other substance, and includes free
3 or occupied space for an indefinite distance upwards as
4 well as downwards, subject to limitations upon the use of
5 airspace imposed, and rights in the use of the airspace
6 granted, by the laws of this state or of the United States;

7 (11) "limited common areas and facilities" includes
8 those common areas and facilities designated in the declar-
9 ation, as it is recorded or as it may be amended, as re-
10 served for use of certain apartment or apartments to the
11 exclusion of the other apartments;

12 (12) "majority" or "majority of apartment owners" means
13 the apartment owners with fifty-one percent or more of the
14 votes in accordance with the percentages assigned in the
15 declaration, as recorded or as it may be amended, to the
16 apartments for voting purposes.

17 (13) "property" means the land, the building, all
18 improvements and structures thereon, all owned in fee simple
19 absolute or qualified, or by way of a periodic estate, or
20 in any other manner in which real property may be owned in
21 this state, and all easements, rights and appurtenances be-
22 longing thereto, none of which shall be considered as a
23 security or security interest, and all articles of person-
24 alty intended for use in connection therewith, which have
25 been or are intended to be submitted to the provisions of
26 this chapter.

27 Sec. 34.07.480. SHORT TITLE. This chapter may be
28 cited as the Horizontal Property Regimes Act.
29