

Offered: 5/12/85
For Today's Supplemental
Calendar

Original sponsors: Halford, Faiks,
Sturgulewski and Kerttula

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 HOUSE CS FOR CS FOR SENATE BILL NO. 44 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL
6 For an Act entitled: "An Act relating to the Uniform Common Interest
7 Ownership Act; and providing for an effective date."

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 8. COMMON INTEREST OWNERSHIP.

11 ARTICLE I. APPLICABILITY.

12 Sec. 34.08.010. APPLICABILITY GENERALLY. Except as provided in
13 AS 34.08.020 and 34.08.030, this chapter applies to each common inter-
14 est community created within the state after the effective date of
15 this Act. The provisions of AS 10.15 and AS 34.07 do not apply to
16 common interest communities created after the effective date of this
17 Act.

18 Sec. 34.08.020. APPLICABILITY TO SMALL COOPERATIVES. If a
19 cooperative contains only units restricted to nonresidential use or
20 contains no more than 12 units and is not subject to any development
21 rights or financing from the Alaska Housing Finance Corporation, it is
22 subject only to AS 34.08.720 - 34.08.740 unless the declaration
23 provides that the entire chapter is applicable.

24 Sec. 34.08.030. APPLICABILITY TO SMALL AND LIMITED EXPENSE
25 LIABILITY COMMON INTEREST COMMUNITIES. If a common interest community
26 contains no more than 12 units and is not subject to any development
27 rights or financing from the Alaska Housing Finance Corporation or
28 provides, in its declaration, that the annual average common expense
29 liability of all units restricted to residential purposes, exclusive

1 of optional user fees and any insurance premiums paid by the associa-
2 tion, may not exceed \$100, as adjusted under AS 34.08.820, the common
3 interest community is subject only to AS 34.08.720 - 34.08.740 unless
4 the declaration provides that the entire chapter is applicable. A
5 declarant may not subdivide real property under single ownership into
6 two or more common interest communities to avoid the application of
7 this chapter.

8 Sec. 34.08.040. APPLICABILITY TO PREEXISTING COMMON INTEREST
9 COMMUNITIES. Except as provided in AS 34.08.050, the provisions of
10 AS 34.08.110, 34.08.120, 34.08.290, 34.08.320(1) - (6) and (11) -
11 (16), 34.08.420, 34.08.470, 34.08.490, 34.08.590, 34.08.670, 34.08.-
12 720, 34.08.730, 34.08.740, and 34.08.990, to the extent necessary in
13 construing any of those sections, apply to all common interest commu-
14 nities created in the state before the effective date of this Act
15 except that the sections apply only with respect to events and circum-
16 stances occurring after the effective date of this Act and do not
17 invalidate existing provisions of the declaration, bylaws, or plats or
18 plans of the common interest communities.

19 Sec. 34.08.050. APPLICABILITY TO SMALL PREEXISTING COOPERATIVES
20 AND PLANNED COMMUNITIES. If a cooperative or planned community cre-
21 ated within the state before the effective date of this Act contains
22 no more than 12 units and is not subject to any development rights, it
23 is subject only to AS 34.08.720 - 34.08.740, unless the declaration is
24 amended in conformity with law and with the procedures and require-
25 ments of the declaration to take advantage of the provisions of
26 AS 34.08.060, in which case all the sections enumerated in AS 34.08.-
27 040 apply to the cooperative or planned community.

28 Sec. 34.08.060. AMENDMENTS TO GOVERNING INSTRUMENTS. (a) In
29 amendments to the declaration, bylaws, or plats and plans of a common

1 interest community created before the effective date of this Act:

2 (1) if the result accomplished by the amendment was per-
3 mitted by law prior to this chapter, the amendment may be made either
4 in accordance with the former law, in which case that law applies to
5 that amendment, or it may be made under this chapter; and

6 (2) if the result accomplished by the amendment is permit-
7 ted by this chapter and was not permitted by law before the effective
8 date of this Act, the amendment may be made under this chapter.

9 (b) An amendment to the declaration, bylaws, or plats and plans
10 authorized by this chapter must be adopted in conformity with law and
11 with the procedures and requirements specified by the declaration,
12 bylaws, or plats and plans. If an amendment grants a person any
13 right, power, or privilege permitted by this chapter, each correlative
14 obligation, liability, and restriction in this chapter also applies to
15 the person.

16 Sec. 34.08.070. APPLICABILITY TO NONRESIDENTIAL COMMON INTEREST
17 COMMUNITIES. (a) With the exception of AS 34.08.720 - 34.08.740,
18 this chapter does not apply to a common interest community in which
19 each unit is restricted exclusively to nonresidential use unless the
20 declaration provides that the chapter does apply to the common
21 interest community.

22 (b) This chapter applies to a common interest community
23 containing some units that are restricted exclusively to
24 nonresidential use and other units that are not restricted exclusively
25 to nonresidential use only if the declaration provides that the
26 chapter applies to the common interest community or the real estate
27 comprising the units that may be used for residential purposes would
28 be a common interest community in the absence of the units that may
29 not be used for residential purposes.

1 Sec. 34.08.080. APPLICABILITY TO OUT-OF-STATE COMMON INTEREST
2 COMMUNITIES. This chapter does not apply to a common interest commu-
3 nity or unit located outside the state, but AS 34.08.520 - 34.08.580
4 apply to a contract for the disposition of a common interest community
5 or unit that is signed in the state by a party unless the disposition
6 is exempt under AS 34.08.510(b).

7 ARTICLE 2. CREATION, ALTERATION, AND TERMINATION OF
8 COMMON INTEREST COMMUNITIES.

9 Sec. 34.08.090. CREATION OF COMMON INTEREST COMMUNITIES. (a) A
10 common interest community may be created under this chapter only by
11 recording a declaration executed in the same manner as a deed and, in
12 a cooperative, by conveying the real estate subject to the declaration
13 to the association. The declaration must be recorded in each record-
14 ing district in which a portion of the common interest community is
15 located and must be indexed in the grantee's index in the name of the
16 common interest community and the association and in the grantor's
17 index in the name of each person executing the declaration.

18 (b) In a condominium, a declaration or an amendment to a decla-
19 ration that adds a unit may not be recorded unless the structural
20 components and mechanical systems of each building containing or
21 comprising a unit of the condominium is completed substantially in
22 accordance with the plans, as evidenced by a certificate of completion
23 recorded with the declaration or amendment to the declaration and
24 executed by

25 (1) an independent registered engineer, architect, or land
26 surveyor;

27 (2) an appraiser with the designation of Senior Residential
28 Appraiser, Senior Real Property Appraiser or Senior Real Estate
29 Analyst of the Society of Real Estate Appraisers;

1 (3) a Residential Member or Member, Appraisal Institute, of
2 the American Institute of Real Estate Appraisers; or

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

6 Sec. 34.08.100. UNIT BOUNDARIES. Except as provided by the
7 declaration

8 (1) if walls, floors, or ceilings are designated as bound-
9 aries of a unit, the lath, furring, wallboard, plasterboard, plaster,
10 paneling, tiles, wallpaper, paint, finished flooring, and other mate-
11 rials constituting a part of the finished surfaces of the walls,
12 floors, or ceiling are a part of the unit, and all other portions of
13 the walls, floors, or ceilings are a part of the common elements;

14 (2) if a chute, flue, duct, wire, conduit, bearing wall,
15 bearing column, or other fixture lies partially within and partially
16 outside the designated boundaries of a unit, the portion serving only
17 the unit is a limited common element allocated solely to the unit, and
18 any portion serving more than one unit or a portion of the common
19 elements is a part of the common elements;

20 (3) subject to (2) of this section, spaces, interior parti-
21 tions, and other fixtures and improvements within the boundaries of a
22 unit are a part of the unit;

23 (4) any shutters, awnings, window boxes, doorsteps, stoops,
24 porches, decks, balconies, patios, and each exterior door and window
25 or other fixture designed to serve a single unit that is located
26 outside the boundaries of the unit, are limited common elements allo-
27 cated exclusively to the unit.

28 Sec. 34.08.110. CONSTRUCTION AND VALIDITY OF DECLARATION AND
29 BYLAWS. (a) Each provision of the declaration and bylaws is

1 severable.

2 (b) The rule against perpetuities does not defeat any provision
3 of the declaration, bylaws, rules, or regulations adopted under
4 AS 34.08.320(a)(1).

5 (c) In a conflict between the provisions of the declaration and
6 the bylaws, the declaration prevails unless the declaration is incon-
7 sistent with this chapter.

8 (d) Title to a unit and common elements is not rendered un-
9 marketable or otherwise affected by reason of an insubstantial failure
10 of the declaration to comply with this chapter. Whether a substantial
11 failure impairs marketability is not affected by this chapter.

12 Sec. 34.08.120. DESCRIPTION OF UNITS. A description of a unit
13 that sets out the name of the common interest community, the recording
14 data for the declaration, the recording district in which the common
15 interest community is located, and the identifying number of the unit,
16 is a legally sufficient description of the unit and all rights, obli-
17 gations, and interests appurtenant to the unit that were created by
18 the declaration or bylaws.

19 Sec. 34.08.130. CONTENTS OF DECLARATION. (a) The declaration
20 must contain:

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

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

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

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

1 (5) in a condominium or planned community, a description of
2 the boundaries of each unit created by the declaration, including the
3 identifying number of the unit, or in a cooperative, a description,
4 which may be by plats or plans, of each unit created by the declara-
5 tion, including the identifying number of the unit, its size or number
6 of rooms, and its location within a building if it is within a build-
7 ing containing more than one unit;

8 (6) a description of any limited common elements, other
9 than those specified in AS 34.08.100(2) and (4) or 34.08.170(b)(10)
10 and, in a planned community, any real estate that is or must become
11 common elements;

12 (7) a description of any real estate, except real estate
13 subject to development rights, that may be allocated subsequently as
14 limited common elements, other than limited common elements specified
15 in AS 34.08.100(2) and (4), together with a statement that the desig-
16 nated real estate may be allocated;

17 (8) a description of any development rights or other spe-
18 cial declarant rights reserved by the declarant, together with a
19 legally sufficient description of the real estate to which each of the
20 rights applies, and a time limit within which each of the rights must
21 be exercised;

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

25 (A) either a statement fixing the boundaries of the
26 portions and regulating the order in which the portions may be
27 subjected to the exercise of each development right or a state-
28 ment that assurances are not made with regard to matters under
29 this paragraph; and

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

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

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

10 (12) any restrictions

11 (A) on use, occupancy, and alienation of the units;
12 and

13 (B) on the amount for which a unit may be sold or on
14 the amount that may be received by a unit owner on sale, condem-
15 nation, or casualty loss to the unit or to the common interest
16 community, or on termination of the common interest community;

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

21 (14) each matter required by AS 34.08.140, 34.08.150, 34.-
22 08.160, 34.08.170, 34.08.230, 34.08.240 and 34.08.330(d).

23 (b) A declaration may contain other matters the declarant con-
24 siders appropriate.

25 Sec. 34.08.140. LEASEHOLD COMMON INTEREST COMMUNITIES. (a) If
26 the expiration or termination of a lease or a memorandum of the lease
27 will terminate the common interest community or reduce its size, the
28 lease or a memorandum of the lease must be recorded. In a condominium
29 or planned community, the lessor of each lease described in this

1 subsection shall sign the declaration. The declaration must state:

2 (1) the recording data for the lease or a summary of the
3 complete lease;

4 (2) the date on which the lease is scheduled to expire;

5 (3) a legally sufficient description of the real estate
6 subject to the lease;

7 (4) any right of the unit owners to redeem the reversion
8 and the manner in which the rights may be exercised, or a statement
9 that the unit owners do not have a right to redeem the reversion;

10 (5) any right of the unit owners to remove any improvements
11 within a reasonable time after the expiration or termination of the
12 lease, or a statement that the unit owners do not have the right to
13 remove improvements after the expiration or termination of the lease;
14 and

15 (6) any right of the unit owners to renew the lease and the
16 conditions of the renewal, or a statement that the unit owners do not
17 have the right to renew the lease.

18 (b) After the declaration for a leasehold condominium or lease-
19 hold planned community is recorded, neither the lessor nor the succes-
20 sor in interest of the lessor may terminate the leasehold interest of
21 a unit owner who makes timely payment of a unit owner's share of the
22 rent and otherwise complies with the covenants that, if violated,
23 would entitle the lessor to terminate the lease. The leasehold inter-
24 est of a unit owner in a condominium or planned community is not af-
25 fected by the failure of any other person to pay rent or fulfill a
26 covenant.

27 (c) The acquisition of the leasehold interest of a unit owner by
28 the owner of the reversion or remainder does not merge the leasehold
29 and fee simple interests unless the leasehold interests of all unit

1 owners subject to that reversion or remainder are acquired.

2 (d) If the expiration or termination of a lease decreases the
3 number of units in a common interest community, the allocated inter-
4 ests must be reallocated under AS 34.08.740(a) as if the units had
5 been taken by eminent domain. The reallocation must be confirmed by
6 an amendment to the declaration prepared, executed, and recorded by
7 the association of unit owners.

8 Sec. 34.08.150. ALLOCATION OF ALLOCATED INTERESTS. (a) The
9 declaration must allocate

10 (1) to each unit in a condominium, a fraction or percentage
11 of undivided interests in the common elements and in the common ex-
12 penses of the association and a portion of the votes in the associa-
13 tion;

14 (2) to each unit in a cooperative, an ownership interest in
15 the association, a fraction or percentage of the common expenses of
16 the association and a portion of the votes in the association; and

17 (3) to each unit in a planned community, a fraction or
18 percentage of the common expenses of the association and a portion of
19 the votes in the association.

20 (b) The declaration must state the formulas used to establish
21 allocations of interests. The allocations may not discriminate in
22 favor of units owned by the declarant or an affiliate of the decla-
23 rant.

24 (c) If a unit may be added to or withdrawn from the common
25 interest community, the declaration must state the formulas to be used
26 to reallocate the allocated interests among the units included in the
27 common interest community after the addition or withdrawal.

28 (d) The declaration may provide: (1) that different alloca-
29 tions of votes shall be made to the units on particular matters

1 specified in the declaration; (2) for cumulative voting only for the
2 purpose of electing members of the executive board; and (3) for class
3 voting on specified issues affecting the class if necessary to protect
4 valid interests of the class. A declarant may not utilize cumulative
5 or class voting for the purpose of evading any limitation imposed on
6 declarants by this chapter nor may units constitute a class because
7 they are owned by a declarant.

8 (e) Except for minor variations due to rounding, the sum of the
9 common expense liabilities and, in a condominium, the sum of the
10 undivided interests in the common elements allocated at any time to
11 all the units must each equal one if stated as a fraction or 100
12 percent if stated as a percentage. In the event of discrepancy be-
13 tween an allocated interest and the result derived from application of
14 the pertinent formula, the allocated interest prevails.

15 (f) In a condominium, the common elements are not subject to
16 partition, and any purported conveyance, encumbrance, judicial sale,
17 or other voluntary or involuntary transfer of an undivided interest in
18 the common elements made without the unit to which that interest is
19 allocated is void.

20 (g) In a cooperative, any purported conveyance, encumbrance,
21 judicial sale, or other voluntary or involuntary transfer of an owner-
22 ship interest in the association made without the possessory interest
23 in the unit to which that interest is related is void.

24 Sec. 34.08.160. LIMITED COMMON ELEMENTS. (a) Except for the
25 limited common elements described in AS 34.08.100(2) and (4), the
26 declaration must specify to which unit or units each limited common
27 element is allocated. An allocation may not be altered without the
28 consent of the unit owners whose units are affected.

29 (b) Except as the declaration otherwise provides, a limited

1 common element may be reallocated by an amendment to the declaration
2 executed by the unit owners between or among whose units the realloca-
3 tion is made. The persons executing the amendment shall provide a
4 copy of the amendment to the association, which shall record it. The
5 amendment must be recorded in the names of the parties and the common
6 interest community.

7 (c) A common element not previously allocated as a limited
8 common element may be allocated as a limited common element only under
9 provisions in the declaration adopted under AS 34.08.130(a)(7). The
10 allocation must be made by an amendment to the declaration.

11 Sec. 34.08.170. PLATS AND PLANS. (a) Plats and plans are a
12 part of the declaration and are required for all common interest
13 communities except cooperatives. Separate plats and plans are not
14 required by this chapter if the information required by this section
15 is contained in either a plat or plan. Each plat and plan must be
16 clear and legible and contain a certification that the plat or plan
17 contains the information required by this section.

18 (b) Each plat must show:

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

21 (2) the location and dimensions of the real estate not
22 subject to development rights or subject only to the development right
23 to withdraw, and the location and dimensions of each existing improve-
24 ment within the real estate;

25 (3) a legally sufficient description of the real estate
26 subject to development rights, labeled to identify the rights applica-
27 ble to each parcel;

28 (4) the extent of each encroachment by or upon a portion of
29 the common interest community;

1 (5) to the extent feasible, a legally sufficient descrip-
2 tion of each easement serving or burdening a portion of the common
3 interest community;

4 (6) the location and dimensions of any vertical unit bound-
5 aries not shown or projected on plans recorded under (d) of this
6 section and the identifying number of the unit;

7 (7) the location with reference to an established datum of
8 any horizontal unit boundaries not shown or projected on plans re-
9 corded under (d) of this section and the identifying number of the
10 unit;

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

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

16 (10) the location and dimensions of limited common elements,
17 including porches, decks, balconies and patios, other than parking
18 spaces and the other limited common elements described in AS 34.08.-
19 100(2) and (4);

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

22 (c) A plat may also show the intended location and dimensions of
23 a contemplated improvement to be constructed within the common inter-
24 est community. A contemplated improvement shown must be labeled
25 either "MUST BE BUILT" or "NEED NOT BE BUILT".

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

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

1 (2) any horizontal unit boundaries, with reference to an
2 established datum, and the identifying number of the unit; and

3 (3) each unit in which the declarant has reserved the right
4 to create additional units or common elements, identified appropri-
5 ately.

6 (e) Unless the declaration provides otherwise, the horizontal
7 boundaries of part of a unit located outside a building have the same
8 elevation as the horizontal boundaries of the inside part and need not
9 be depicted on the plats and plans.

10 (f) Upon the exercise of any development right, the declarant
11 shall either record new plats and plans necessary to conform to the
12 requirements of (a), (b), and (d) of this section, or record new
13 certifications of plats and plans previously recorded if the plats and
14 plans otherwise conform to the requirements of (a), (b), and (d) of
15 this section.

16 (g) A certification of a plat or plan required by this section
17 or AS 34.08.090(b) shall be made by an independent registered
18 surveyor, architect, or engineer.

19 (h) The state recorder shall prescribe the style, size, form,
20 and quality of plats and plans filed under this chapter.

21 Sec. 34.08.180. EXERCISE OF DEVELOPMENT RIGHTS. (a) To exer-
22 cise a development right reserved under AS 34.08.130(a)(8), a decla-
23 rant shall prepare, execute, and record an amendment to the declara-
24 tion and, in a condominium or planned community, comply with AS 34.-
25 08.170. The declarant is the unit owner of the units created under
26 the amendment. The amendment to the declaration must assign an iden-
27 tifying number to each new unit created, and, except in the case of
28 subdivision or conversion of units described in (b) of this section,
29 reallocate the allocated interests among all units. The amendment

1 must describe any common elements and any limited common elements
2 created under the amendment and, in the case of limited common ele-
3 ments, designate the unit to which each is allocated to the extent
4 required by AS 34.08.160.

5 (b) A development right may be reserved within any real estate
6 added to the common interest community if the amendment adding the
7 real estate includes the matters required by AS 34.08.130 or 34.08.-
8 140, and, in a condominium or planned community, if the plats and
9 plans include the matters required by AS 34.08.170. This provision
10 does not extend the time limit on the exercise of development rights
11 imposed by the declaration under AS 34.08.130(a)(8).

12 (c) Whenever a declarant exercises a development right to subdivi-
13 de or convert a unit previously created into additional units,
14 common elements, or both:

15 (1) if the declarant converts the unit entirely to common
16 elements, the amendment to the declaration must reallocate all the
17 allocated interests of the unit among the other units as if that unit
18 had been taken by eminent domain; and

19 (2) if the declarant subdivides the unit into two or more
20 units, whether or not any part of the unit is converted into common
21 elements, the amendment to the declaration must reallocate all the
22 allocated interests of the unit among the units created by the subdivi-
23 sion in any reasonable manner prescribed by the declarant.

24 (d) If the declaration under AS 34.08.130(a)(8) provides that
25 all or a portion of the real estate is subject to a right of withdraw-
26 al:

27 (1) if all of the real estate is subject to withdrawal and
28 the declaration does not describe separate portions of real estate
29 subject to the right, none of the real estate may be withdrawn after a

1 unit has been conveyed to a purchaser; and

2 (2) if a portion is subject to withdrawal, it may not be
3 withdrawn after a unit in the portion has been conveyed to a pur-
4 chaser.

5 (e) A declarant may terminate development rights by an amendment
6 to the declaration.

7 Sec. 34.08.190. ALTERATIONS OF UNITS. Subject to the provisions
8 of the declaration and other provisions of law, a unit owner (1) may
9 make an improvement or alteration to the unit that does not impair the
10 structural integrity or mechanical systems or lessen the support of a
11 portion of the common interest community; (2) may not change the
12 appearance of the common elements or the exterior appearance of a unit
13 or any portion of the common interest community without permission of
14 the association; (3) after acquiring an adjoining unit or an
15 adjoining part of an adjoining unit, may remove or alter an
16 intervening partition or create apertures in the partition even if the
17 partition in whole or in part is a common element, if the removal or
18 alteration does not impair the structural integrity or mechanical
19 systems or lessen the support of a portion of the common interest
20 community and is completed according to applicable codes and in a
21 skillful and workmanlike manner. Removal of partitions or creation of
22 apertures under this paragraph is not an alteration of boundaries.

23 Sec. 34.08.200. RELOCATION OF BOUNDARIES BETWEEN ADJOINING
24 UNITS. (a) Subject to the provisions of the declaration and other
25 provisions of law, the boundaries between adjoining units may be
26 relocated by an amendment to the declaration upon application to the
27 association by the owners of the units. If the owners of the ad-
28 joining units have specified a reallocation between their units of
29 their allocated interests, the application must state the proposed

1 reallocations. Unless the executive board determines within 30 days
2 that the reallocations are unreasonable, the association shall prepare
3 an amendment that identifies the units involved and states the reallo-
4 cations. The amendment must be executed by those unit owners, contain
5 words of conveyance between them, and, on recording, be indexed in the
6 name of the grantor, the grantee, and the association.

7 (b) The association

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

11 (2) in a cooperative shall prepare and record amendments to
12 the declaration, including any plans, necessary to show or describe
13 the altered boundaries between adjoining units, and their dimensions
14 and identifying numbers.

15 Sec. 34.08.210. SUBDIVISION OF UNITS. (a) If the declaration
16 expressly permits it, a unit may be subdivided into two or more units.
17 Upon application of a unit owner to subdivide a unit, the association
18 shall, subject to the provisions of the declaration and other pro-
19 visions of law, prepare, execute, and record an amendment to the
20 declaration, including in a condominium or planned community the plats
21 and plans, subdividing the unit.

22 (b) The amendment to the declaration must be executed by the
23 owner of the unit to be subdivided, assign an identifying number to
24 each unit created, and reallocate the allocated interests formerly
25 allocated to the subdivided unit to the new units in any reasonable
26 manner prescribed by the owner of the subdivided unit.

27 Sec. 34.08.220. EASEMENT FOR ENCROACHMENTS. If a unit or common
28 element encroaches on another unit or common element, a valid easement
29 for the encroachment exists. The easement does not relieve a unit

1 owner of liability in case of wilful misconduct nor relieve a declar-
2 ant or any other person of liability for failure to adhere to any
3 plats and plans or, in a cooperative, to any representation in the
4 public offering statement.

5 Sec. 34.08.230. USE FOR SALES PURPOSES. (a) A declarant may
6 maintain sales offices, management offices, and models in units or on
7 common elements in the common interest community only if the declara-
8 tion permits it and specifies the rights of a declarant with regard to
9 their number, size, location, and relocation. In a cooperative or
10 condominium, a sales office, management office, or model not desig-
11 nated a unit by the declaration is a common element. A declarant who
12 ceases to be a unit owner ceases to have any rights under this section
13 unless the unit is removed promptly from the common interest community
14 under a right to remove reserved in the declaration. A declarant may
15 maintain signs on the common elements advertising the common interest
16 community subject to any limitations in the declaration.

17 (b) Rights granted under this section are subject to state law
18 and to municipal ordinances.

19 Sec. 34.08.240. EASEMENT RIGHTS. (a) Subject to the provisions
20 of the declaration, a declarant has an easement through the common
21 elements as may be reasonably necessary for the purpose of discharging
22 the declarant's obligations or exercising special declarant rights,
23 whether arising under this chapter or reserved in the declaration.

24 (b) In a planned community, subject to the provisions of AS 34.-
25 08.320(a)(6) and 34.08.430, a unit owner has an easement

26 (1) in the common elements for purposes of access to their
27 units; and

28 (2) to use the common elements and all real estate that
29 must become common elements for all other purposes.

1 Sec. 34.08.250. AMENDMENT OF DECLARATION. (a) Except for
2 amendments that may be executed by a declarant under AS 34.08.170(b)
3 or 34.08.180, or by the association under AS 34.08.140(d), 34.08.-
4 160(c), 34.08.200(a), 34.08.210, or 34.08.740, or by certain unit
5 owners under AS 34.08.160(b), 34.08.200(a), 34.08.210(b), or 34.08.-
6 260(b), and except as limited by (d) of this section, a declaration,
7 including any required plats and plans, may be amended only by vote or
8 agreement of unit owners of units comprising either at least 67 per-
9 cent of the allocated interests in the association or a larger per-
10 centage specified in the declaration. A declaration may not specify a
11 smaller number unless all of the units are restricted exclusively to
12 nonresidential use.

13 (b) An action to challenge the validity of an amendment adopted
14 by the association under this section may not be brought more than one
15 year after the amendment is recorded.

16 (c) Each amendment to the declaration must be recorded in each
17 recording district in which a portion of the common interest community
18 is located and the amendment is effective only upon recording. An
19 amendment, except an amendment under AS 34.08.200(a), must be indexed
20 in the name of the common interest community and the association and
21 in the name of the parties executing the amendment.

22 (d) Except to the extent expressly permitted or required by
23 other provisions of this chapter, an amendment may not create or
24 increase special declarant rights, increase the number of units,
25 change the boundaries of a unit, the allocated interests of a unit, or
26 the uses to which a unit is restricted, in the absence of unanimous
27 consent of the unit owners.

28 (e) An amendment to the declaration required by this chapter to
29 be recorded by the association must be prepared, executed, recorded,

1 and certified on behalf of the association by an officer of the asso-
2 ciation designated for that purpose or, in the absence of designation,
3 by the president of the association.

4 Sec. 34.08.260. TERMINATION OF COMMON INTEREST COMMUNITY. (a)

5 Unless all units are taken by eminent domain, or unless there has been
6 a foreclosure of a security interest that has priority over the decla-
7 ration against an entire cooperative, a common interest community may
8 be terminated only by agreement of unit owners of units comprising
9 either at least 80 percent of the votes in the association or any
10 larger percentage specified in the declaration. The declaration may
11 specify a smaller percentage only if all of the units are restricted
12 exclusively to nonresidential uses.

13 (b) An agreement to terminate must be evidenced by the execution
14 of a termination agreement or ratification of an agreement to termi-
15 nate, in the same manner as a deed is executed by the required number
16 of unit owners. The termination agreement must specify a date after
17 which the agreement will be void unless it is recorded before that
18 date. A termination agreement and each ratification of the termina-
19 tion agreement must be recorded in each recording district in which a
20 portion of the common interest community is situated. A termination
21 agreement is effective only upon recording.

22 (c) If a condominium or planned community contains only units
23 having horizontal boundaries described in the declaration, a termina-
24 tion agreement may provide that all of the common elements and units
25 of the common interest community must be sold following termination.
26 If, under the agreement, any real estate in the common interest commu-
27 nity is to be sold following termination, the termination agreement
28 must set out the minimum terms of the sale.

29 (d) If a condominium or planned community contains a unit not

1 having horizontal boundaries described in the declaration, a termina-
2 tion agreement may provide for sale of the common elements, but it may
3 not require that the unit be sold following termination unless the
4 declaration as originally recorded provided otherwise or unless all
5 unit owners consent to the sale.

6 (e) The association, on behalf of the unit owners, may contract
7 for the sale of real estate in a common interest community, but the
8 contract is not binding on the unit owners until approved under (a)
9 and (b) of this section. If real estate is to be sold following
10 termination, title to the real estate, upon termination, vests in the
11 association as trustee for the holders of all interests in the units.
12 The association has at that time all powers necessary and appropriate
13 to effect the sale. Until the sale has been concluded and the pro-
14 ceeds of the sale distributed, the association continues in existence
15 with all powers it had before termination. Proceeds of the sale must
16 be distributed to unit owners and lien holders as their interests may
17 appear under (h), (i), and (j) of this section. Unless otherwise
18 specified in the termination agreement, as long as the association
19 holds title to the real estate, each unit owner and the successor in
20 interest of each unit owner has an exclusive right to occupancy of the
21 portion of the real estate that formerly constituted the unit. During
22 the period of that occupancy, each unit owner and the successors in
23 interest of each unit owner remain liable for all assessments and
24 other obligations imposed on unit owners by this chapter or the decla-
25 ration.

26 (f) In a condominium or planned community, if the real estate
27 constituting the common interest community is not to be sold following
28 termination, title to the common elements and, in a common interest
29 community containing only units having horizontal boundaries described

1 in the declaration, title to all the real estate in the common inter-
2 est community, vests in the unit owners upon termination as tenants in
3 common in proportion to their respective interests under (j) of this
4 section, and liens on the units shift accordingly. While the tenancy
5 in common exists, each unit owner and the successors in interest of
6 each unit owner has an exclusive right to occupancy of the portion of
7 the real estate that formerly constituted the unit.

8 (g) Following termination of the common interest community, the
9 proceeds of any sale of real estate, together with the assets of the
10 association, are held by the association as trustee for unit owners
11 and holders of liens on the units as their interests may appear.

12 (h) Following termination of a condominium or planned community,
13 a creditor of the association holding a lien on the units that was
14 reduced to judgment and recorded before termination, may enforce the
15 lien in the same manner as any other lien holder. Each other creditor
16 of the association shall be treated as if the creditor had perfected a
17 lien on the units immediately before termination.

18 (i) In a cooperative, the declaration may provide that each
19 creditor of the association has priority over the interests of unit
20 owners and creditors of unit owners. In that event, following termi-
21 nation, a creditor of the association holding a lien on the coopera-
22 tive that was reduced to judgment and recorded before termination may
23 enforce the lien in the same manner as a lien holder, and each other
24 creditor of the association shall be treated as if the creditor had
25 perfected a lien against the cooperative immediately before termina-
26 tion. Unless the declaration provides that all creditors of the
27 association have that priority (1) the lien of each creditor of the
28 association that was perfected against the association before termi-
29 nation becomes, upon termination, a lien against the interest of each

1 unit owner in the unit as of the date the lien was perfected; (2) any
2 other creditor of the association shall be treated upon termination as
3 if the creditor had perfected a lien against the interest of each unit
4 owner immediately before termination; (3) the amount of the lien of an
5 association's creditor described in (1) and (2) of this subsection
6 against the interest of each unit owner must be proportionate to the
7 ratio which the common expense liability of each unit bears to the
8 common expense liability of all of the units; (4) the lien of each
9 creditor of each unit owner that was perfected before termination
10 continues as a lien against the unit as of the date the lien was
11 perfected; and (5) the assets of the association must be distributed
12 to each unit owner and each lien holder as their interests may appear
13 in the order described in this section. Creditors of the association
14 are not entitled to payment from a unit owner in excess of the amount
15 of the creditor's lien against the interest of the unit owner.

16 (j) The respective interests of each unit owner referred to in
17 (e) - (i) of this section are as follows:

18 (1) except as provided in (2) of this subsection, the
19 respective interest of each unit owner is the fair market value of the
20 unit, allocated interests, and any limited common elements immediately
21 before the termination, as determined by one or more independent
22 appraisers selected by the association; the decision of the indepen-
23 dent appraisers must be distributed to the unit owners and becomes
24 final unless disapproved within 30 days after distribution by unit
25 owners of units comprising 25 percent of the allocated interests in
26 the association; the proportion of each unit owner's interest to that
27 of all unit owners is determined by dividing the fair market value of
28 the unit and its allocated interests by the total fair market value of
29 all units and their allocated interests;

1 (2) if a unit or a limited common element is destroyed to
2 the extent that an appraisal of the fair market value of the unit or
3 the limited common interest before destruction cannot be made, the
4 interests of all unit owners are:

5 (A) in a condominium, their respective common element
6 interests immediately before the termination;

7 (B) in a cooperative, their respective ownership
8 interests immediately before the termination; and

9 (C) in a planned community, their respective common
10 expense liabilities immediately before the termination.

11 (k) In a condominium or planned community, except as provided in
12 (1) of this section, foreclosure or enforcement of a lien or encum-
13 brance against the entire common interest community does not, of
14 itself, terminate the common interest community, and foreclosure or
15 enforcement of a lien or encumbrance against a portion of the common
16 interest community, other than withdrawable real estate, does not
17 withdraw the portion from the common interest community. Foreclosure
18 or enforcement of a lien or encumbrance against withdrawable real
19 estate does not withdraw, of itself, the real estate from the common
20 interest community, but the person taking title to the real estate may
21 require from the association, upon request, an amendment excluding the
22 real estate from the common interest community.

23 (1) In a condominium or planned community, if a lien or encum-
24 brance against a portion of the real estate comprising the common
25 interest community has priority over the declaration and the lien or
26 encumbrance has not been partially released, the parties foreclosing
27 the lien or encumbrance, upon foreclosure, may record an instrument
28 excluding the real estate subject to the lien or encumbrance from the
29 common interest community.

1 Sec. 34.08.270. RIGHTS OF SECURED LENDERS. (a) A financial
2 institution, including a commercial bank, mutual savings bank, savings
3 and loan association, credit union and mortgage company when acting as
4 an ordinary money lender, whether secured or not, and providing
5 financing for a common interest community subject to the provisions of
6 this chapter or to a declarant, unit owner, or purchaser for that
7 person's interest subject to the provisions of this chapter, is not
8 liable under this chapter to a person for an act, omission, warranty,
9 product or structural defect, obligation, breach of contract or other
10 duty arising from common interest community financing.

11 (b) For purposes of this section, "acting as an ordinary money
12 lender" means a non-negligent action including, but not limited to,
13 property inspections, review of public offering statements, approval
14 of declarations, plats and construction plans and requiring proof of
15 compliance with laws or codes to protect a lender's security interest
16 or otherwise assure the proper use of or repayment of its loan. A
17 lender does not act as an ordinary money lender when it is an
18 affiliate of the declarant or possesses a direct equity interest other
19 than an interest foreclosed upon in the promotion, development, and
20 sale of a common interest.

21 (c) A declaration may require that all or a specified number or
22 percentage of the lenders who hold security interests encumbering the
23 units approve specified actions of the unit owners or the association
24 as a condition to the effectiveness of the action, but a requirement
25 for approval does not operate to

26 (1) deny or delegate control over the general administra-
27 tive affairs of the association by the unit owners or the executive
28 board;

29 (2) prevent the association or the executive board from

1 commencing, intervening in, or settling any litigation or proceeding;
2 or

3 (3) prevent an insurance trustee or the association from
4 receiving and distributing insurance proceeds except under AS 34.08.-
5 440.

6 Sec. 34.08.280. MASTER ASSOCIATIONS. (a) If the declaration
7 provides that a power described in AS 34.08.320 is to be exercised by
8 or may be delegated to a profit or nonprofit corporation that exer-
9 cises those or other powers on behalf of one or more common interest
10 communities or for the benefit of the unit owners of one or more
11 common interest communities, each provision of this chapter applicable
12 to a unit owners' association applies to the corporation, except as
13 modified by this section.

14 (b) Unless it is acting in the capacity of an association de-
15 scribed in AS 34.08.310, a master association may exercise the powers
16 set out in AS 34.08.320(a)(2) only to the extent expressly permitted
17 in the declarations of common interest communities that are part of
18 the master association or expressly described in the delegation of
19 power from the common interest communities to the master association.

20 (c) If the declaration of a common interest community provides
21 that the executive board may delegate certain powers to a master
22 association, the members of the executive board of the common interest
23 community are not liable for an act or omission of the master associa-
24 tion with respect to the delegated powers following the delegation.

25 (d) The rights and responsibilities of unit owners with respect
26 to the unit owners' association under AS 34.08.330, 34.08.390, 34.08.-
27 400, 34.08.410, and 34.08.430 apply in the conduct of the affairs of a
28 master association only to persons who elect the board of a master
29 association, whether or not those persons are otherwise unit owners

1 within the meaning of this chapter.

2 (e) If a master association is also an association described in
3 AS 34.08.310, the certificate of incorporation or other instrument
4 creating the master association and each declaration of a common
5 interest community that had assigned powers by the declaration or that
6 has delegated powers to the master association, may provide that the
7 executive board of the master association must be elected after the
8 period of declarant control in one of the following ways:

9 (1) each unit owner of all common interest communities
10 subject to the master association may elect all members of the execu-
11 tive board of the master association;

12 (2) the members of the executive boards of all common
13 interest communities subject to the master association may elect the
14 members of the executive board of the master association;

15 (3) the unit owners of each common interest community
16 subject to the master association may elect specified members of the
17 executive board of the master association;

18 (4) the members of the executive board of each common
19 interest community subject to the master association may elect speci-
20 fied members of the executive board of the master association.

21 Sec. 34.08.290. MERGER OR CONSOLIDATION OF COMMON INTEREST
22 COMMUNITIES. (a) Any two or more common interest communities of the
23 same form of ownership, by agreement of the unit owners under (b) of
24 this section, may be merged or consolidated into a single common
25 interest community. On the merger or consolidation, unless the agree-
26 ment otherwise provides, the resulting common interest community is
27 the legal successor, for all purposes, of the preexisting common
28 interest communities, and the operations and activities of each asso-
29 ciation of the preexisting common interest communities are merged or

1 consolidated into a single association that holds all powers, rights,
2 obligations, assets, and liabilities of all preexisting associations.

3 (b) An agreement of two or more common interest communities to
4 merge or consolidate under (a) of this section must be evidenced by an
5 agreement prepared, executed, recorded, and certified by the president
6 of the association of each of the preexisting common interest communi-
7 ties following approval by owners of units comprising the percentage
8 of votes in each common interest community required to terminate the
9 common interest community. The agreement must be recorded in each
10 recording district in which a portion of the common interest community
11 is located and is not effective until recorded.

12 (c) Each merger or consolidation agreement must provide for the
13 reallocation of the allocated interests in the new association among
14 the units of the resultant common interest community either (1) by
15 stating the reallocations or the formulas upon which they are based or
16 (2) by stating the percentage of overall allocated interests of the
17 new common interest community that are allocated to all of the units
18 comprising each of the preexisting common interest communities, and
19 providing that the portion of the percentages allocated to each unit
20 formerly comprising a part of the preexisting common interest communi-
21 ty must be equal to the percentages of allocated interests allocated
22 to the unit by the declaration of the preexisting common interest
23 community.

24 Sec. 34.08.300. ADDITION OF UNSPECIFIED REAL ESTATE. In a
25 planned community, if the right is originally reserved in the declara-
26 tion, the declarant, in addition to any other development right, may
27 amend the declaration at any time during as many years as are speci-
28 fied in the declaration for adding additional real estate to the
29 planned community without describing the location of the real estate

1 in the original declaration. The amount of real estate added to the
2 planned community under this section may not exceed 10 percent of the
3 real estate described in AS 34.08.130(a)(3) and the declarant may not
4 in any event increase the number of units in the planned community
5 beyond the number stated in the original declaration under AS 34.08.-
6 130(a)(5).

7 ARTICLE 3. MANAGEMENT OF THE COMMON INTEREST COMMUNITY.

8 Sec. 34.08.310. ORGANIZATION OF UNIT OWNERS' ASSOCIATION. An
9 association of unit owners must be organized no later than the date on
10 which the first unit in the common interest community is conveyed.
11 The membership of the association at all times consists exclusively of
12 all unit owners or, following termination of the common interest
13 community, of all former unit owners entitled to distributions of
14 proceeds under AS 34.08.260 or their heirs, successors, or assigns.
15 The association must be organized as a profit or nonprofit corpora-
16 tion, trust, or partnership.

17 Sec. 34.08.320. POWERS OF UNIT OWNERS' ASSOCIATION. (a) Except
18 as provided in (b) of this section and subject to the provisions of
19 the declaration, the association may:

- 20 (1) adopt and amend bylaws and rules and regulations;
21 (2) adopt and amend budgets for revenues, expenditures, and
22 reserves and collect assessments for common expenses from unit owners;
23 (3) hire and discharge managing agents and other employees,
24 agents, and independent contractors;
25 (4) institute, defend, or intervene in litigation or ad-
26 ministrative proceedings or seek injunctive relief for violations of
27 its declaration, bylaws or rules in its own name on behalf of itself
28 or two or more unit owners on matters affecting the common interest
29 community;

- 1 (5) make contracts and incur liabilities;
- 2 (6) regulate the use, maintenance, repair, replacement, and
3 modification of common elements;
- 4 (7) cause additional improvements to be made as a part of
5 the common elements;
- 6 (8) acquire, hold, encumber, and convey in its own name any
7 right, title, or interest to real estate or personal property, except
8 that
- 9 (A) common elements in a condominium or planned commu-
10 nity may be conveyed or subjected to a security interest only
11 under AS 34.08.430; and
- 12 (B) part of a cooperative may be conveyed or all or
13 part of a cooperative may be subjected to a security interest
14 only under AS 34.08.430;
- 15 (9) grant easements, leases, licenses, and concessions
16 through or over the common elements;
- 17 (10) impose and receive a payment, fee, or charge for the
18 use, rental, or operation of the common elements, other than limited
19 common elements described in AS 34.08.100(2) and (4), and for services
20 provided to unit owners;
- 21 (11) impose a reasonable charge for late payment of assess-
22 ments and, after notice and an opportunity to be heard, levy a reason-
23 able fine for a violation of the declaration, bylaws, rules, and
24 regulations of the association;
- 25 (12) impose a reasonable charge for the preparation and
26 recording of an amendment to the declaration, resale certificate
27 required by AS 34.08.590, or a statement of unpaid assessments;
- 28 (13) provide for the indemnification of its officers and
29 executive board and maintain directors' and officers' liability

1 insurance;

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

5 (15) exercise any other powers conferred by the declaration
6 or bylaws;

7 (16) exercise any other power that may be exercised in the
8 state by a legal entity of the same type as the association; and

9 (17) exercise any other power necessary and proper for the
10 governance and operation of the association.

11 (b) The declaration may not impose limitations on the power of
12 the association to deal with the declarant that are more restrictive
13 than the limitations imposed on the power of the association to deal
14 with other persons.

15 Sec. 34.08.330. EXECUTIVE BOARD MEMBERS AND OFFICERS. (a)
16 Except as provided in the declaration, the bylaws, (b) of this sec-
17 tion, or other provisions of this chapter, the executive board may act
18 in all instances on behalf of the association. In the performance of
19 their duties, the officers and members of the executive board are
20 required to exercise the care required of fiduciaries of the unit
21 owners.

22 (b) The executive board may not act on behalf of the association
23 to amend the declaration, to terminate the common interest community,
24 or to elect members of the executive board or determine the qualifica-
25 tions, powers and duties, or terms of office of executive board mem-
26 bers, but the executive board may fill vacancies in its membership for
27 the unexpired portion of a term.

28 (c) Within 30 days after adoption of a proposed budget for the
29 common interest community, the executive board shall provide a summary

1 of the budget to each unit owner, and shall set a date for a meeting
2 of the unit owners to consider ratification of the budget not less
3 than 14 nor more than 30 days after mailing of the summary. Unless at
4 that meeting a majority of all unit owners or any larger vote spec-
5 ified in the declaration reject the budget, the budget is ratified,
6 whether or not a quorum is present. If the proposed budget is reject-
7 ed, the periodic budget last ratified by the unit owners continues
8 until the unit owners ratify a budget proposed by the executive board.

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

26 (e) Not later than 60 days after conveyance of 25 percent of the
27 units that may be created to unit owners other than a declarant, at
28 least one member and not less than 25 percent of the members of the
29 executive board must be elected by unit owners other than the

1 declarant. Not later than 60 days after conveyance of 50 percent of
2 the units that may be created to unit owners other than a declarant,
3 not less than 33 1/3 percent of the members of the executive board
4 must be elected by unit owners other than the declarant.

5 (f) Except as otherwise provided in AS 34.08.280(e), not later
6 than the termination of any period of declarant control, the unit
7 owners shall elect an executive board. The executive board consists
8 of at least three members, except that if there are fewer than 12
9 units in the common interest community, the declaration may provide
10 for an executive board with one or two members. At least a majority
11 of the members of the executive board must be unit owners. The
12 executive board shall elect the officers. The executive board members
13 and officers take office upon election.

14 (g) Notwithstanding any provision of the declaration or bylaws
15 to the contrary, following notice under AS 34.08.390, the unit owners,
16 by a two-thirds vote of all persons present and entitled to vote at a
17 meeting of the unit owners at which a quorum is present, may remove a
18 member of the executive board with or without cause, other than a
19 member appointed by the declarant.

20 Sec. 34.08.340. TRANSFER OF ASSOCIATION CONTROL. (a) Before or
21 not more than 60 days after the termination of declarant control, the
22 declarant shall relinquish control of the common interest community
23 and the unit owners shall accept control. At the same time, the
24 declarant shall deliver to the common interest community all property
25 of the unit owners and of the common interest community held or
26 controlled by the declarant including, but not limited to

27 (1) the original or a photocopy of the recorded declaration
28 and each amendment to the declaration; if a photocopy is provided, it
29 shall be certified by affidavit of the declarant, or an officer or

1 agent of the declarant, as being a complete copy of the actual record-
2 ed declaration;

3 (2) a certified copy of the common interest community
4 articles of incorporation, trust or partnership agreement;

5 (3) a copy of the bylaws;

6 (4) the minute books, including all minutes, and other
7 books and records of the common interest community;

8 (5) any rules and regulations that have been adopted;

9 (6) resignations of officers and members of the executive
10 board who are required to resign because the declarant is required to
11 relinquish control of the common interest community;

12 (7) the financial records, including financial statements
13 of the common interest community, and source documents since the
14 incorporation of the common interest community through the date of
15 turnover;

16 (8) common interest community funds or control of the funds
17 of the common interest community;

18 (9) all tangible personal property that is property of the
19 common interest community, represented by the declarant to be the
20 property of the association or ostensibly the property of the
21 association and an inventory of the property;

22 (10) a copy of the plans and specifications utilized in the
23 construction or remodeling of improvements and the supplying of equip-
24 ment to the common interest community and in the construction and
25 installation of all mechanical components serving the improvements and
26 the site, with a certificate in affidavit form of the declarant or an
27 architect or engineer authorized to practice in the state that the
28 plans and specifications represent, to the best of their knowledge and
29 belief, the actual plans and specifications utilized in the

1 construction and improvement of the common interest community property
2 and for the construction and installation of the mechanical components
3 serving the improvements;

4 (11) insurance policies;

5 (12) copies of any certificates of occupancy that may have
6 been issued for the common interest community property;

7 (13) any other permits issued by governmental bodies appli-
8 cable to the common interest community property in force or issued
9 within one year before the date the unit owners other than the de-
10 clarant take control of the common interest community;

11 (14) all written warranties of the contractor, subcontrac-
12 tors, suppliers, and manufacturers, if any, that are still effective;

13 (15) a roster of unit owners and their addresses and tele-
14 phone numbers, if known, as shown on the declarant's records;

15 (16) leases of the common elements and other leases to which
16 the association is a party;

17 (17) employment contracts or service contracts in which the
18 common interest community is one of the contracting parties or service
19 contracts in which the common interest community or the unit owners
20 have an obligation or responsibility, directly or indirectly, to pay
21 some or all of the fee or charge of the person performing the service;

22 (18) all other contracts to which the common interest commu-
23 nity is a party.

24 (b) The records shall be reviewed by an independent certified
25 public accountant. The minimum report required shall be a review in
26 accordance with generally accepted accounting standards as defined by
27 regulation by the Board of Public Accountancy. The accountant per-
28 forming the review shall examine to the extent necessary supporting
29 documents and records, including the cash disbursements and related

1 paid invoices to determine if expenditures were for the common inter-
2 est community purposes and the billings, cash receipts, and related
3 records to determine that the declarant was charged and paid the
4 proper amounts of assessments.

5 (c) Before the transfer of control from the declarant to the
6 association, an inspection of the common areas and limited common
7 areas subject to the association's control shall be completed by

8 (1) an independent registered engineer, architect, or land
9 surveyor;

10 (2) an appraiser with the designation of Senior Residential
11 Appraiser, Senior Real Property Appraiser or Senior Real Estate
12 Analyst of the Society of Real Estate Appraisers;

13 (3) a Residential Member or Member, Appraisal Institute, of
14 the American Institute of Real Estate Appraisers; or

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

18 (d) A report shall be prepared indicating the incomplete work
19 and repairs needed and the method of completing the work and making
20 the repairs. The transfer of control to the association shall be
21 based upon the declarant's obligation to complete all repairs and
22 finish all incomplete work within a reasonable time after transfer of
23 control under representations in the public offering statement.

24 Sec. 34.08.350. TRANSFER OF SPECIAL DECLARANT RIGHTS. (a) A
25 special declarant right created or reserved under this chapter may be
26 transferred only by an instrument evidencing the transfer that has
27 been recorded in each recording district in which any portion of the
28 common interest community is located. The instrument is not effective
29 unless executed by the transferee.

1 (b) Upon transfer of any special declarant right, the liability
2 of a transferor declarant is as follows:

3 (1) a transferor is not relieved of an obligation or lia-
4 bility arising before the transfer and remains liable for warranty
5 obligations imposed by this chapter; lack of privity does not deprive
6 a unit owner of standing to maintain an action to enforce an obliga-
7 tion of the transferor;

8 (2) if a successor to a special declarant right is an
9 affiliate of a declarant, the transferor is jointly and severally
10 liable with the successor for an obligation or liability of the suc-
11 cessor relating to the common interest community;

12 (3) if a transferor retains a special declarant right but
13 transfers other special declarant rights to a successor who is not an
14 affiliate of the declarant, the transferor is liable for an obligation
15 or liability imposed on a declarant by this chapter or by the declara-
16 tion relating to the retained special declarant right and arising
17 after the transfer;

18 (4) a transferor is not liable for any act or omission or
19 any breach of a contractual or warranty obligation arising from the
20 exercise of a special declarant right by a successor declarant who is
21 not an affiliate of the transferor.

22 (c) Unless otherwise provided in a mortgage instrument, deed of
23 trust, or other agreement creating a security interest, on the fore-
24 closure of a security interest, sale by a trustee under an agreement
25 creating a security interest, tax sale, judicial sale, or sale under
26 Bankruptcy Act or receivership proceedings of a unit owned by a de-
27 clarant or of real estate in a common interest community subject to
28 development rights, the person acquiring title to the property being
29 foreclosed or sold, but only upon the request of the person, succeeds

1 either (1) to the special declarant rights related to the property
2 held by the declarant, or (2) only to any rights reserved in the
3 declaration under AS 34.08.230 and held by that declarant to maintain
4 models, sales offices, and signs. The judgment or instrument convey-
5 ing title must provide for transfer of only the special declarant
6 rights requested.

7 (d) Upon foreclosure of a security interest, sale by a trustee
8 under an agreement creating a security interest, tax sale, judicial
9 sale, or sale under Bankruptcy Act or receivership proceedings, of the
10 interests in a common interest community owned by a declarant:

11 (1) the declarant ceases to have special declarant rights,
12 and

13 (2) the period of declarant control terminates unless the
14 judgment or instrument conveying title provides for transfer of the
15 special declarant rights held by the declarant to a successor declar-
16 ant.

17 (e) The liabilities and obligations of a person who succeeds to
18 special declarant rights are as follows:

19 (1) a successor to any special declarant right who is an
20 affiliate of a declarant is subject to the obligations and liabilities
21 imposed on the transferor by this chapter or by the declaration;

22 (2) a successor to any special declarant right, other than
23 a successor described in (3) or (4) of this subsection or a successor
24 who is an affiliate of a declarant, is subject to the obligations and
25 liabilities imposed by this chapter or the declaration

26 (A) on a declarant that relate to the successor's
27 exercise or nonexercise of special declarant rights; or

28 (B) on the transferor, other than:

29 (1) misrepresentations by a previous declarant;

1 (ii) warranty obligations on improvements made by
2 a previous declarant or made before the common interest
3 community was created;

4 (iii) breach of a fiduciary obligation by a previ-
5 ous declarant or the appointees of a previous declarant to
6 the executive board; or

7 (iv) a liability or obligation imposed on the
8 transferor as a result of the acts or omissions of the
9 transferor after the transfer;

10 (3) a successor to a right reserved in the declaration only
11 to maintain models, sales offices, and signs may not exercise any
12 other special declarant right and is not subject to liability or
13 obligation as a declarant except the obligation to provide a public
14 offering statement, and any liability arising as a result of the
15 statement;

16 (4) a successor to the special declarant rights held by a
17 transferor who succeeded to the rights under a deed or other instru-
18 ment of conveyance in lieu of foreclosure or under a judgment or
19 instrument conveying title under (c) of this section may declare in a
20 recorded instrument, including one conveying title under (c) of this
21 section

22 (A) an intention to hold the rights solely for
23 transfer to another person; or

24 (B) an intention to hold the rights for transfer to
25 another person after making, finishing, or completing
26 improvements in conformity with the declaration, consistent with
27 the public offering statement, plans, and overall development
28 scheme of the common interest community for purposes of
29 preserving or improving the common interest community.

1 (f) Until transferring the special declarant rights to a person
2 acquiring title to a unit or real estate subject to the development
3 rights owned by the successor, or until recording an instrument
4 permitting exercise of all those rights, the successor may not
5 exercise any of the rights other than those specified in (e)(4)(B) of
6 this section and the right held by the transferor of the successor to
7 control the executive board under AS 34.08.330(d) for the duration of
8 any period of declarant control and an attempted exercise of rights is
9 void.

10 (g) So long as a successor declarant may not exercise special
11 declarant rights under (e) of this section, and for purposes of
12 (e)(4)(B) of this section so long as the successor declarant transfers
13 within the time period specified in (h) of this section the rights to
14 a subsequent successor declarant who will assume liability for the
15 improvements made by the successor declarant, the successor declarant
16 is not subject to liability or obligation as a declarant other than
17 liability for acts and omissions under AS 34.08.330(d).

18 (h) If a lender fails to transfer special declarant rights to a
19 successor declarant within one year of the date of recording an
20 instrument under (e)(4)(B) of this section, then the lender becomes
21 subject to the obligations and liabilities imposed by this chapter or
22 the declaration as specified in (e)(2) of this section.

23 (i) Nothing in this section subjects a successor to a special
24 declarant right to a claim against or other obligation of a transferor
25 declarant, other than a claim or obligation arising under this chapter
26 or the declaration.

27 Sec. 34.08.360. TERMINATION OF CONTRACTS AND LEASES OF DECLAR-
28 ANT. (a) If entered into before the executive board elected by the
29 unit owners under AS 34.08.330(f) takes office (1) a management

1 contract, employment contract, or lease of recreational or parking
2 areas or facilities; (2) a contract or lease between the association
3 and a declarant or an affiliate of a declarant; or (3) a contract or
4 lease that is not bona fide or was unconscionable to the unit owners
5 at the time entered into under the circumstances then prevailing may
6 be terminated without penalty by the association at any time after the
7 executive board elected by the unit owners under AS 34.08.330(f) takes
8 office upon not less than 90 days' notice to the other party.

9 (b) This section does not apply to

10 (1) a lease if a termination of the lease would terminate
11 the common interest community or reduce its size, unless the real
12 estate subject to the lease was included in the common interest commu-
13 nity for the purpose of avoiding the right of the association to
14 terminate a lease under this section; or

15 (2) a proprietary lease.

16 Sec. 34.08.370. BYLAWS. (a) The bylaws of the association must
17 provide

18 (1) for the number of the members of the executive board
19 and for the titles of the officers of the association;

20 (2) for the election by the executive board of a president,
21 treasurer, secretary, and other officers of the association specified
22 by the bylaws;

23 (3) for the qualifications, powers and duties, terms of
24 office, and manner of electing and removing executive board members
25 and officers and filling vacancies;

26 (4) which, if any, of its powers the executive board or
27 officers may delegate to other persons or to a managing agent;

28 (5) which of its officers may prepare, execute, certify,
29 and record amendments to the declaration on behalf of the association;

1 and

2 (6) for a method of amending the bylaws.

3 (b) Subject to the provisions of the declaration, the bylaws may
4 provide for any other matters the association considers necessary and
5 appropriate.

6 Sec. 34.08.380. UPKEEP OF COMMON INTEREST COMMUNITY. (a)
7 Except to the extent provided by the declaration, by (b) of this
8 section, or by AS 34.08.440(h), the association is responsible for the
9 maintenance, repair, and replacement of the common elements, and each
10 unit owner is responsible for the maintenance, repair, and replacement
11 of the unit. Each unit owner shall afford to the association, the
12 other unit owners, and to their agents or employees, access through
13 the unit that is reasonably necessary for maintenance and repair of
14 the unit. If damage is inflicted on the common elements or on any
15 unit through which access is taken, the unit owner responsible for the
16 damage, or the association if it is responsible, is liable for the
17 prompt repair of the damage.

18 (b) In addition to the liability that a declarant as a unit
19 owner has under this chapter, a declarant is solely liable for the ex-
20 penses in connection with real estate subject to development rights.
21 No other unit owner and no other portion of the common interest commu-
22 nity is subject to a claim for payment of expenses in connection with
23 development rights. Unless the declaration provides otherwise, the
24 income and proceeds from real estate subject to development rights
25 inures to the declarant.

26 (c) In a planned community, when all development rights have
27 expired with respect to real estate, the declarant remains liable for
28 the expenses of the real estate unless, upon expiration, the declara-
29 tion provides that the real estate becomes common elements or units.

1 Sec. 34.08.390. MEETINGS. A meeting of the association must be
2 held at least once each year. A special meeting of the association
3 may be called by the president, by a majority of the members of the
4 executive board, or by unit owners comprising either 20 percent or a
5 lower percentage specified in the bylaws of the votes in the associa-
6 tion. Not less than 10 nor more than 60 days in advance of a meeting,
7 the secretary or other officer specified in the bylaws shall cause
8 notice to be hand-delivered or sent prepaid by United States mail to
9 the mailing address of each unit or to the mailing address designated
10 in writing by the unit owner. The notice of a meeting must state the
11 time and place of the meeting and the items on the agenda, including
12 the general nature of a proposed amendment to the declaration or
13 bylaws, budget changes, and a proposal to remove an officer or member
14 of the executive board.

15 Sec. 34.08.400. QUORUMS. (a) Unless the bylaws provide other-
16 wise, a quorum is present throughout a meeting of the association if
17 persons entitled to cast 20 percent of the votes that may be cast for
18 election of the executive board are present in person or by proxy at
19 the beginning of the meeting.

20 (b) Unless the bylaws specify a larger percentage, a quorum is
21 considered present throughout a meeting of the executive board if
22 persons entitled to cast 50 percent of the votes on the board are
23 present at the beginning of the meeting.

24 Sec. 34.08.410. VOTING AND PROXIES. (a) If only one of several
25 owners of a unit is present at a meeting of the association, the owner
26 present is entitled to cast all the votes allocated to the unit. If
27 more than one of the owners are present, the votes allocated to the
28 unit may be cast only in accordance with the agreement of a majority
29 in interest of the owners, unless the declaration expressly provides

1 otherwise. There is majority agreement if any one of the owners casts
2 the votes allocated to the unit without protest being made promptly to
3 the person presiding over the meeting by another owner of the unit.

4 (b) Votes allocated to a unit may be cast under a proxy duly
5 executed by a unit owner. If a unit is owned by more than one person,
6 each owner of the unit may vote or register protest to the casting of
7 votes by the other owners of the unit through a duly executed proxy.
8 A unit owner may revoke a proxy given under this section only by
9 actual notice of revocation to the person presiding over a meeting of
10 the association. A proxy is void if it is not dated or purports to be
11 revocable without notice. A proxy terminates one year after its date,
12 unless it specifies a shorter term.

13 (c) If the declaration requires that votes on specified matters
14 affecting the common interest community be cast by lessees rather than
15 unit owners of leased units: (1) the provisions of (a) and (b) of
16 this section apply to lessees as if they were unit owners; (2) unit
17 owners who have leased their units to other persons may not cast votes
18 on the specified matters; and (3) lessees are entitled to notice of
19 meetings, access to records, and other rights respecting the matters
20 as if they were unit owners. Unit owners must also be given notice
21 under AS 34.08.390, of all meetings at which lessees are entitled to
22 vote.

23 (d) Votes allocated to a unit owned by the association may not
24 be cast.

25 Sec. 34.08.420. TORT AND CONTRACT LIABILITY. Neither the asso-
26 ciation nor any unit owner except the declarant is liable for the
27 torts of the declarant in connection with any part of the common
28 interest community that the declarant has the responsibility to main-
29 tain. An action alleging a wrong done by the association must be

1 brought against the association and not against a unit owner. If the
2 wrong occurred during a period of declarant control and the associa-
3 tion gives the declarant reasonable notice of and an opportunity to
4 defend against the action, the declarant who then controlled the
5 association is liable to the association or to a unit owner for (1)
6 tort losses not covered by insurance suffered by the association or
7 the unit owner, and (2) each cost that the association would not have
8 incurred but for a breach of contract or other wrongful act or omis-
9 sion. If the declarant is liable to the association under this sec-
10 tion, the declarant is liable for the expenses of litigation incurred
11 by the association. A statute of limitation affecting the right of
12 action of the association under this section is tolled until the
13 period of declarant control terminates. A unit owner is not precluded
14 from maintaining an action under this section because the person is a
15 unit owner or a member or officer of the association. A lien result-
16 ing from a judgment against the association is governed by AS 34.08.-
17 480.

18 Sec. 34.08.430. CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS.
19 (a) In a condominium or planned community, portions of the common
20 elements may be conveyed or subjected to a security interest by the
21 association if persons entitled to cast at least 80 percent of the
22 votes in the association, including 80 percent of the votes allocated
23 to units not owned by a declarant, or any larger percentage the decla-
24 ration specifies, agree to the action, but each owner of a unit to
25 which a limited common element is allocated must agree in order to
26 convey the limited common element or subject it to a security inter-
27 est. The declaration may specify a smaller percentage only if each of
28 the units is restricted exclusively to nonresidential uses. The
29 proceeds of the sale and proceeds of a loan secured by encumbering a

1 common area are an asset of the association.

2 (b) Part of a cooperative may be conveyed and all or part of a
3 cooperative may be subjected to a security interest by the association
4 if persons entitled to cast at least 80 percent of the votes in the
5 association, including 80 percent of the votes allocated to units not
6 owned by a declarant, or any larger percentage the declaration speci-
7 fies, agree to the action, but, if fewer than all of the units or
8 limited common elements are to be conveyed or subjected to a security
9 interest, then each unit owner or the units to which the limited
10 common elements are allocated must agree in order to convey the units
11 or limited common elements or subject them to a security interest.
12 The declaration may specify a smaller percentage only if each of the
13 units is restricted exclusively to nonresidential uses. The proceeds
14 of the sale and proceeds of a loan secured by encumbering a common
15 area are an asset of the association. A purported conveyance or other
16 voluntary transfer of an entire cooperative, unless made under AS 34.-
17 08.260, is void.

18 (c) An agreement to convey common elements in a condominium or
19 planned community or to subject the common elements to a security
20 interest and an agreement to convey any part of a cooperative or
21 subject the cooperative to a security interest must be evidenced by
22 the execution of an agreement, or ratifications of the agreement, in
23 the same manner as a deed by the requisite number of unit owners. The
24 agreement must specify a date after which the agreement will be void
25 unless recorded before the date. The agreement and each ratification
26 of the agreement must be recorded in each recording district in which
27 a portion of the common interest community is situated and is effec-
28 tive only upon recording.

29 (d) The association on behalf of the unit owners may contract to

1 convey an interest in a common interest community under (a) of this
2 section, but the contract is not enforceable against the association
3 until approved under (a) - (c) of this section. After approval under
4 (a) - (c) of this section, the association has the powers necessary
5 and appropriate to effect the conveyance or encumbrance, including the
6 power to execute a deed or other instrument.

7 (e) Unless made under this section, a purported conveyance,
8 encumbrance, judicial sale, or other voluntary transfer of common
9 elements or of any other part of a cooperative is void.

10 (f) A conveyance or encumbrance of common elements or of a
11 cooperative under this section does not deprive a unit of its right of
12 access and support.

13 (g) Unless the declaration provides otherwise, a conveyance or
14 encumbrance of common elements under this section does not affect the
15 priority or validity of preexisting encumbrances.

16 (h) In a cooperative, the association may acquire, hold, encum-
17 ber, or convey a proprietary lease without complying with this sec-
18 tion.

19 Sec. 34.08.440. INSURANCE. (a) Commencing not later than the
20 first conveyance of a unit to a person other than a declarant, the
21 association shall maintain, to the extent reasonably available:

22 (1) property insurance on the common elements and, in a
23 planned community, on property that must become common elements,
24 insuring against all risks of direct physical loss commonly insured
25 against or, in the case of conversion property, against fire and
26 extended coverage perils and the total amount of insurance after
27 application of any deductibles must be not less than 100 percent of
28 the actual cash value of the insured property at the time the insur-
29 ance is purchased and at each renewal date, exclusive of land,

1 excavations, foundations, and other items normally excluded from
2 property policies; and

3 (2) liability insurance, including medical payments insur-
4 ance, in an amount determined by the executive board but not less than
5 an amount specified in the declaration, covering all occurrences
6 commonly insured against for death, bodily injury, and property damage
7 arising out of or in connection with the use, ownership, or mainte-
8 nance of the common elements and, in cooperatives, of each unit.

9 (b) In the case of a building that is part of a cooperative or
10 that contains a unit having horizontal boundaries described in the
11 declaration, the insurance maintained under (a)(1) of this section, to
12 the extent reasonably available, must include the unit, but need not
13 include improvements and betterments installed by a unit owner.

14 (c) If the insurance described in (a) and (b) of this section is
15 not reasonably available, the association promptly shall cause notice
16 of the fact to be hand-delivered or sent prepaid by United States mail
17 to each unit owner. The declaration may require the association to
18 carry other insurance, and the association in any event may carry
19 other insurance it considers appropriate to protect the association or
20 the unit owners.

21 (d) Insurance policies carried under (a) and (b) of this section
22 must provide that

23 (1) each unit owner is an insured person under the policy
24 with respect to liability arising out of interest of the unit owner in
25 the common elements or membership in the association;

26 (2) the insurer waives the right to subrogation under the
27 policy against a unit owner or member of the household of a unit
28 owner;

29 (3) an act or omission by a unit owner, unless acting

1 within the scope of the unit owner's authority on behalf of the asso-
2 ciation, will not void the policy or be a condition to recovery under
3 the policy; and

4 (4) if, at the time of a loss under the policy, there is
5 other insurance in the name of a unit owner covering the same risk
6 covered by the policy, the policy of the association provides primary
7 insurance.

8 (e) A loss covered by the property policy under (a)(1) and (b)
9 of this section must be adjusted with the association, but the insur-
10 ance proceeds for the loss are payable to an insurance trustee des-
11 ignated for the purpose or to the association and not to a holder of a
12 security interest. The insurance trustee or the association shall
13 hold insurance proceeds in trust for the association, unit owners, and
14 lien holders as their interests may appear. Subject to the provisions
15 of (h) of this section, the proceeds must be disbursed first for the
16 repair or restoration of the damaged property, and the association,
17 unit owners, and lien holders are not entitled to receive payment of a
18 portion of the proceeds unless there is a surplus of proceeds after
19 the property has been completely repaired or restored or unless the
20 common interest community is terminated.

21 (f) An insurance policy issued to the association does not
22 prevent a unit owner from obtaining insurance for the benefit of the
23 unit owner.

24 (g) An insurer that has issued an insurance policy under this
25 section shall issue certificates or memoranda of insurance to the
26 association and, upon written request, to a unit owner or holder of a
27 security interest. The insurer issuing the policy may not cancel or
28 refuse to renew it until 30 days after notice of the proposed cancel-
29 lation or nonrenewal has been mailed to the association, each unit

1 owner and each holder of a security interest to whom a certificate or
2 memorandum of insurance has been issued at their last known addresses.

3 (h) A portion of the common interest community for which insur-
4 ance is required under this section that is damaged or destroyed must
5 be repaired or replaced promptly by the association unless (1) the
6 common interest community is terminated and AS 34.08.260 applies, (2)
7 repairs or replacement would be illegal under a state statute or
8 municipal ordinance governing health or safety, or (3) 80 percent of
9 the unit owners, including each owner of a unit or assigned limited
10 common element that will not be rebuilt, vote not to rebuild. The
11 cost of repair or replacement in excess of insurance proceeds and
12 reserves is a common expense. If the entire common interest community
13 is not repaired or replaced, (1) the insurance proceeds attributable
14 to the damaged common elements must be used to restore the damaged
15 area to a condition compatible with the remainder of the common inter-
16 est community, and (2) except to the extent that other persons will be
17 distributees, (A) the insurance proceeds attributable to a unit and
18 limited common elements that is not rebuilt must be distributed to the
19 owner of the unit and the owner of the unit to which the limited
20 common elements were allocated, or to lien holders, as their interests
21 may appear, and (B) the remainder of the proceeds must be distributed
22 to each unit owner or lien holder, as their interests may appear, as
23 follows: (i) in a condominium, in proportion to the common element
24 interest of all the units and (ii) in a cooperative or planned commu-
25 nity, in proportion to the common expense liabilities of all the
26 units. If the unit owners vote not to rebuild a unit, the allocated
27 interests of the unit are reallocated upon the vote as if the unit had
28 been condemned under AS 34.08.860(a), and the association promptly
29 shall prepare, execute, and record an amendment to the declaration

1 reflecting the reallocations.

2 (i) The provisions of this section may be varied or waived in a
3 common interest community if all of the units are restricted to non-
4 residential use.

5 Sec. 34.08.450. SURPLUS FUNDS. Unless otherwise provided in the
6 declaration, surplus funds of the association remaining after payment
7 of or provision for common expenses and prepayment of reserves must be
8 paid to the unit owners in proportion to common expense liabilities or
9 credited to them to reduce future common expense assessments.

10 Sec. 34.08.460. ASSESSMENTS FOR COMMON EXPENSES. (a) Until the
11 association makes a common expense assessment, the declarant shall pay
12 all common expenses. After an assessment has been made by the associ-
13 ation, assessments must be made at least annually, based on a budget
14 adopted at least annually by the association.

15 (b) Except for assessments under (c) - (e) of this section, all
16 common expenses must be assessed against each unit in accordance with
17 the allocations set out in the declaration under AS 34.08.150(a) and
18 (b). A past due common expense assessment or an installment of the
19 assessment bears interest at the rate established by the association
20 not exceeding 18 percent per year.

21 (c) To the extent required by the declaration

22 (1) a common expense associated with the maintenance,
23 repair, or replacement of a limited common element must be assessed
24 against each unit to which that limited common element is assigned,
25 equally, or in proportion provided by the declaration;

26 (2) a common expense or portion of the common expense
27 benefiting fewer than all of the units must be assessed exclusively
28 against the units benefited;

29 (3) the costs of insurance must be assessed in proportion

1 to risk; and

2 (4) the costs of utilities that can be determined must be
3 assessed in proportion to usage and if the costs of utilities cannot
4 be determined, the cost of nondeterminable utilities shall be shared
5 as a common expense.

6 (d) An assessment to pay a judgment against the association may
7 be made only against the units in the common interest community at the
8 time the judgment was entered, in proportion to their common expense
9 liabilities.

10 (e) If a common expense is caused by the misconduct of a unit
11 owner, the association may assess that expense exclusively against the
12 unit.

13 (f) If common expense liabilities are reallocated, common ex-
14 pense assessments and any installment of the assessment not yet due
15 must be recalculated in accordance with the reallocated common expense
16 liabilities.

17 Sec. 34.08.470. LIEN FOR ASSESSMENTS. (a) The association has
18 a lien on a unit for an assessment levied against the unit or fines
19 imposed against its unit owner from the time the assessment or fine
20 becomes due. Unless the declaration otherwise provides, fees,
21 charges, late charges, fines, and interest charged under AS 34.08.-
22 320(a)(10) - (12) are enforceable as assessments under this section.
23 If an assessment is payable in installments, the full amount of the
24 assessment is a lien from the time the first installment becomes due.

25 (b) A lien under this section is prior to all other liens and
26 encumbrances on a unit except (1) a lien and encumbrance recorded
27 before the recordation of the declaration and, in a cooperative, a
28 lien and encumbrance which the association creates, assumes, or takes
29 subject to; (2) a first security interest on the unit recorded before

1 the date on which the assessment sought to be enforced became delin-
2 quent, or, in a cooperative, the first security interest encumbering
3 only the interest of the unit owner and perfected before the date on
4 which the assessment sought to be enforced became delinquent; and (3)
5 a lien for real estate taxes and other governmental assessments or
6 charges against the unit or cooperative. A lien under this section is
7 also prior to all security interests described in (2) of this subsec-
8 tion if the common expense assessments based on the periodic budget
9 adopted by the association under AS 34.08.460(a) would have become due
10 in the absence of acceleration during the six months immediately
11 preceding institution of an action to enforce the lien. This subsec-
12 tion does not affect the priority of a mechanic's or materialman's
13 lien, or the priority of a lien for other assessments made by the
14 association. A lien under this section is not subject to the pro-
15 visions of AS 09.38.010.

16 (c) Unless the declaration provides otherwise, if two or more
17 associations have liens for assessments created at any time on the
18 same property, each lien has equal priority.

19 (d) The recording of the declaration constitutes record notice
20 and perfection of the lien. Further recording of a claim of lien for
21 assessment under this section is not required.

22 (e) A lien for an unpaid assessment is extinguished unless pro-
23 ceedings to enforce the lien are instituted within three years after
24 the full amount of the assessment becomes due.

25 (f) This section does not prohibit an action to recover sums for
26 which (a) of this section creates a lien or prohibit an association
27 from taking a deed in lieu of foreclosure.

28 (g) A judgment or decree in an action brought under this section
29 is enforceable by execution under AS 09.35.010.

1 (h) The association upon written request shall furnish to a unit
2 owner a statement setting out the amount of unpaid assessments against
3 the unit. If the interest of the unit owner is real estate, the
4 statement must be in recordable form. The statement must be furnished
5 within 10 business days after receipt of the request and is binding on
6 the association, the executive board, and each unit owner.

7 (i) In a cooperative, upon nonpayment of an assessment on a
8 unit, a unit owner may be evicted in the same manner as provided by
9 law in the case of an unlawful holdover by a commercial tenant, and
10 the lien may be foreclosed under this section.

11 (j) The association's lien may be foreclosed under this sub-
12 section:

13 (1) in a condominium or planned community, the lien of the
14 association must be foreclosed as a mortgage or deed of trust on real
15 estate is foreclosed, or as a lien is foreclosed under AS 34.35.005;

16 (2) in a cooperative whose unit owners' interests in the
17 units are real estate, the lien of the association must be foreclosed
18 as a mortgage or deed of trust on real estate is foreclosed or as a
19 lien is foreclosed under AS 34.35.005;

20 (3) in a cooperative whose unit owners' interests in the
21 units are personal property, the lien of the association must be
22 foreclosed as a security interest under AS 45.09; or

23 (4) in the case of foreclosure under AS 34.20.070, the
24 association shall give reasonable notice of its action to each lien
25 holder of a unit whose interest would be affected.

26 (k) In a cooperative, if the interest of the unit owner in a
27 unit is real estate,

28 (1) the association, upon nonpayment of an assessment and
29 compliance with this subsection, may sell the unit at a public sale or

1 by private negotiation, and at any time and place; each aspect of the
2 sale, including the method, advertising, time, place, and terms must
3 be reasonable; the association shall give reasonable written notice to
4 the unit owner and a lessee of the unit owner of the time and place of
5 the public sale or, if a private sale is intended, of the intention of
6 entering into a contract to sell and of the time after which a private
7 disposition may be made; the same notice must also be sent to any
8 other person who has a recorded interest in the unit that would be cut
9 off by the sale, but only if the recorded interest was on record seven
10 weeks before the date specified in the notice as the date of a public
11 sale or seven weeks before the date specified in the notice as the
12 date after which a private sale may be made; the notices required by
13 this subsection may be sent to any address reasonable in the cir-
14 cumstances; sale may not be held until five weeks after the sending of
15 the notice; the association may buy at a public sale and, if the sale
16 is conducted by a fiduciary or other person not related to the asso-
17 ciation, at a private sale;

18 (2) unless otherwise agreed, the debtor is liable for any
19 deficiency in a foreclosure sale under AS 09.45.170;

20 (3) the proceeds of a foreclosure sale must be applied in
21 the following order:

22 (A) the reasonable expenses of sale;

23 (B) the reasonable expenses of securing possession
24 before sale including holding, maintaining, and preparing the
25 unit for sale, payment of taxes and other governmental charges,
26 premiums on hazard and liability insurance;

27 (C) satisfaction of the lien of the association;

28 (D) satisfaction in the order of priority of a subor-
29 dinate claim of record; and

1 (E) remittance of any excess to the unit owner.

2 (4) a good faith purchaser for value acquires the unit free
3 of the association's debt that gave rise to the lien under which the
4 foreclosure sale occurred and any subordinate interest, even though
5 the association or other person conducting the sale failed to comply
6 with the requirements of this section; the person conducting the sale
7 shall execute a conveyance to the purchaser sufficient to convey the
8 unit and stating that it is executed after a foreclosure of the asso-
9 ciation's lien by power of sale and that person conducting the sale
10 was empowered to make the sale; signature and title or authority of
11 the person signing the conveyance as grantor and a recital of the
12 facts of nonpayment of the assessment and of the giving of the notices
13 required by this subsection are sufficient proof of the facts recited
14 and of the authority of the person to sign; further proof of authority
15 is not required even if the association is named as grantee in the
16 conveyance;

17 (5) at any time before the association has disposed of a
18 unit in a cooperative or entered into a contract for its disposition
19 under the power of sale, the unit owner or the holder of a subordinate
20 security interest may cure the default of the unit owner and prevent
21 sale or other disposition by tendering the performance due under the
22 security agreement, including an amount due because of exercise of a
23 right to accelerate, plus the reasonable expenses of proceeding to
24 foreclosure incurred to the time of tender.

25 Sec. 34.08.480. OTHER LIENS. (a) In a condominium or planned
26 community,

27 (1) except as provided in (2) of this subsection, a record-
28 ed judgment for money against the association is not a lien on the
29 common elements, but is a lien in favor of the judgment lien holder

1 against the units in the common interest community at the time the
2 judgment was entered and no other property of a unit owner is subject
3 to the claims of creditors of the association;

4 (2) if the association has granted a security interest in
5 the common elements to a creditor of the association under AS 34.08.-
6 430, the holder of the security interest shall exercise its right
7 against the common elements before its judgment lien on a unit may be
8 enforced;

9 (3) whether perfected before or after the creation of the
10 common interest community, if a lien, other than a deed of trust or
11 mortgage including a judgment lien or lien attributable to work
12 performed or materials supplied before creation of the common interest
13 community, becomes effective against two or more units, the unit owner
14 of an affected unit may pay to the lien holder the amount of the lien
15 attributable to the unit, and the lien holder, upon receipt of pay-
16 ment, shall promptly deliver a release of the lien covering the unit;
17 the amount of the payment must be proportionate to the ratio that the
18 unit owner's common expense liability bears to the common expense
19 liabilities of all unit owners whose units are subject to the lien;
20 after payment, the association may not assess or have a lien against
21 the unit owner's unit for any portion of the common expenses incurred
22 in connection with the lien;

23 (4) a judgment against the association must be indexed in
24 the name of the common interest community and the association and,
25 when so indexed, is notice of the lien against the units.

26 (b) In a cooperative,

27 (1) if the association receives notice of an impending
28 foreclosure on all or a portion of the association's real estate, the
29 association shall promptly transmit a copy of the notice to each unit

1 owner of a unit located within the real estate to be foreclosed; a
2 failure of the association to transmit the notice does not affect the
3 validity of the foreclosure;

4 (2) whether or not the property of a unit owner is subject
5 to the claims of creditors of the association, other property of a
6 unit owner is not subject to the claims.

7 Sec. 34.08.490. ASSOCIATION RECORDS. (a) The association shall
8 keep financial records sufficiently detailed to enable the association
9 to comply with AS 34.08.590. Financial and other records must be made
10 reasonably available for examination by a unit owner and an authorized
11 agent of a unit owner.

12 (b) A professional manager, managing agent, accountant, or other
13 person with whom the association has contracted for services shall
14 return all association records within five days of the termination of
15 the contract. If the association records are not returned within five
16 days, the association may sue for their return and for damages.

17 Sec. 34.08.500. ASSOCIATION AS TRUSTEE. If a third person deals
18 with the association in the capacity of the association as a trustee,
19 the existence of trust powers and their proper exercise by the asso-
20 ciation may be assumed without inquiry. A third person is not bound
21 to inquire whether the association has power to act as trustee or is
22 properly exercising trust powers. A third person, without actual
23 knowledge that the association is exceeding or improperly exercising
24 its powers, is fully protected in dealing with the association as if
25 it possessed and properly exercised the powers it purports to exer-
26 cise. A third person is not bound to assure the proper application of
27 trust assets paid or delivered to the association in its capacity as
28 trustee.

29 ARTICLE 4. PROTECTION OF PURCHASERS.

1 Sec. 34.08.510. APPLICABILITY. (a) The provisions of AS 34.-
2 08.510 - 34.08.700 apply to all units subject to this chapter, except
3 as provided in (b) of this section or as modified or waived by agree-
4 ment of purchasers of units in a common interest community in which
5 each unit is restricted to nonresidential use.

6 (b) A public offering statement and a resale certificate is not
7 required to be prepared or delivered on

8 (1) a gratuitous disposition of a unit;

9 (2) a disposition under a court order;

10 (3) a disposition by a governmental agency;

11 (4) a disposition by foreclosure or deed in lieu of fore-
12 closure;

13 (5) a disposition to a dealer;

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

16 (7) a disposition of a unit in a planned community in which
17 the declaration limits the maximum annual assessment of a unit to not
18 more than \$300, as adjusted under AS 34.08.820, if

19 (A) the declarant has a reasonable and good faith
20 belief that the maximum stated assessment will be sufficient to
21 pay the expenses of the planned community;

22 (B) the declaration cannot be amended to increase the
23 assessment during the period of declarant control without the
24 consent of all unit owners; and

25 (C) the planned community is not subject to develop-
26 ment rights.

27 Sec. 34.08.520. LIABILITY FOR PUBLIC OFFERING STATEMENT REQUIRE-
28 MENTS. (a) Except as provided in (b) of this section, a declarant,
29 before offering an interest in a unit to the public, shall prepare a

1 public offering statement conforming to the requirements of AS 34.08.-
2 530, 34.08.540, 34.08.550, and 34.08.560.

3 (b) A declarant may transfer responsibility for preparation of
4 all or a part of the public offering statement to a successor de-
5 clarant or to a dealer who intends to offer units in the common inter-
6 est community. On the transfer of responsibility, the transferor
7 shall provide the transferee with information necessary to enable the
8 transferee to fulfill the requirements of (a) of this section.

9 (c) A declarant or dealer who offers a unit to a purchaser shall
10 deliver a public offering statement in the manner required by AS 34.-
11 08.580(a). The person who prepared all or a part of the public offer-
12 ing statement is liable under AS 34.08.580 and 34.08.670 for any false
13 or misleading statement set out in the statement or for any omission
14 of a material fact from the statement with respect to the portion of
15 the public offering statement that the person prepared. If a
16 declarant did not prepare any part of a public offering statement the
17 declarant is not liable for a false or misleading statement set out in
18 the statement or for an omission of a material fact from the statement
19 unless the declarant had actual knowledge of the statement or omission
20 or, in the exercise of reasonable care, should have known of the
21 statement or omission.

22 (d) If a unit is part of a common interest community and is part
23 of a real estate regime where a public offering statement is required
24 under the laws of the state before the unit is offered for sale, a
25 single public offering statement conforming to the requirements of
26 AS 34.08.530, 34.08.540, 34.08.550, and 34.08.560 may be prepared and
27 delivered in lieu of providing two or more public offering statements.

28 Sec. 34.08.530. PUBLIC OFFERING STATEMENTS GENERALLY. (a)
29 Except as provided in (b) of this section, a public offering statement

1 must fully and accurately contain or disclose

2 (1) the name and principal address of the declarant and of
3 the common interest community and indicate whether the common interest
4 community is a condominium, cooperative, or planned community;

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

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

13 (4) copies and a brief narrative description of the signif-
14 icant features of the declaration, other than plats and plans, and

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

17 (B) the bylaws, and any rules or regulations of the
18 association;

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

21 (D) a brief narrative description of any contracts or
22 leases that will or may be subject to cancellation by the asso-
23 ciation under AS 34.08.360;

24 (5) any current balance sheet and a projected budget for
25 the association, either within or as an exhibit to the public offering
26 statement, for one year after the date of the first conveyance to a
27 purchaser, and the current budget of the association, the name of the
28 person who prepared the budget, and a statement of the budget's as-
29 sumptions concerning occupancy, assumptions concerning the calculation

1 of the amount of reserves certified by a certified architect or engi-
2 neer, and inflation factors, including, without limitation,

3 (A) a statement of the amount included in the budget
4 as a reserve for repairs and replacement including the estimated
5 cost of repair or replacement cost and the estimated useful life
6 of the asset to be repaired or replaced.

7 (B) a statement of any other reserves;

8 (C) the projected common expense assessment by cate-
9 gory of expenditures for the association; and

10 (D) the projected monthly common expense assessment
11 for each type of unit;

12 (6) any services not reflected in the budget that the
13 declarant provides, or expenses that the declarant pays and that the
14 declarant expects may become a common expense of the association at a
15 subsequent time and the projected common expense assessment attribut-
16 able to each of those services or expenses for the association and for
17 each type of unit;

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

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

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

25 (10) the terms and significant limitations of warranties
26 provided by the declarant, including statutory warranties and limita-
27 tions on the enforcement of the warranties or on damages;

28 (11) a statement that

29 (A) within 15 days after receipt of a public offering

1 statement a purchaser, before conveyance, may cancel any contract
2 for purchase of a unit from a declarant;

3 (B) if a declarant fails to provide a public offering
4 statement to a purchaser before conveying a unit, the purchaser
5 may recover from the declarant 10 percent of the sales price of
6 the unit plus 10 percent of the share, proportionate to the
7 common expense liability of the unit, of any indebtedness of the
8 association secured by security interests encumbering the common
9 interest community; and

10 (C) a purchaser who receives the public offering
11 statement more than 15 days before signing a contract cannot
12 cancel the contract;

13 (12) a statement of any unsatisfied judgments or pending
14 suits against the association, and the status of any pending suits
15 material to the common interest community of which a declarant has
16 actual knowledge;

17 (13) a statement that a deposit made in connection with the
18 purchase of a unit will be held in an escrow account until closing and
19 will be returned to the purchaser if the purchaser cancels the con-
20 tract under AS 34.08.580, together with the name and address of the
21 escrow agent;

22 (14) any restraints on alienation of any portion of the
23 common interest community and any restrictions

24 (A) on use, occupancy, and alienation of the unit; and

25 (B) on the amount for which a unit may be sold or on
26 the amount that may be received by a unit owner on sale, condem-
27 nation, or casualty loss to the unit or to the common interest
28 community, or on termination of the common interest community;

29 (15) a description of the insurance coverage provided for

1 the benefit of unit owners;

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

5 (17) the extent to which financial arrangements have been
6 provided for completion of improvements that the declarant is obligat-
7 ed to build under AS 34.08.690;

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

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

12 (20) in a cooperative,

13 (A) whether each unit owner will be entitled, for
14 federal, state, and local income tax purposes, to a pass-through
15 of deductions for payments made by the association for real
16 estate taxes and interest paid the holder of a security interest
17 encumbering the cooperative; and

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

21 (b) If a common interest community composed of not more than 12
22 units is not subject to any development rights and power is not re-
23 served to a declarant to make the common interest community part of a
24 larger common interest community, group of common interest communi-
25 ties, or other real estate, a public offering statement may but need
26 not include the information required by (a)(9), (10) and (15) - (19)
27 of this section and the narrative descriptions of documents required
28 by (a)(4) of this section.

29 (c) A declarant promptly shall amend the public offering

1 statement to report any material change in the information required by
2 this section.

3 Sec. 34.08.540. COMMON INTEREST COMMUNITIES SUBJECT TO DEVELOP-
4 MENT RIGHTS. If the declaration provides that a common interest
5 community is subject to development rights, the public offering state-
6 ment must disclose, in addition to the information required by AS 34.-
7 08.530,

8 (1) the maximum number of units, and the maximum number of
9 units per acre, that may be created;

10 (2) a statement of the number or the percentage of the
11 units that may be created that will be restricted exclusively to
12 residential use, or a statement that representations have not been
13 made regarding use restrictions;

14 (3) if any of the units that may be built within real
15 estate subject to development rights are not to be restricted exclu-
16 sively to residential use, a statement, with respect to each portion
17 of the real estate, of the maximum percentage of the real estate
18 areas, and the maximum percentage of the floor areas of all units that
19 may be created that are not restricted exclusively to residential use;

20 (4) a brief narrative description of the development rights
21 reserved by a declarant and of any conditions relating to or limita-
22 tions upon the exercise of development rights;

23 (5) a statement of the maximum extent to which the allocat-
24 ed interests of each unit may be changed by the exercise of a develop-
25 ment right described in (3) of this section;

26 (6) a statement of the extent to which a building or other
27 improvement that may be erected under a development right in any part
28 of the common interest community will be compatible with existing
29 buildings and improvements in the common interest community in terms

1 of architectural style, quality of construction, and size, or a state-
2 ment that assurances have not been made in that regard;

3 (7) a general description of each other improvement that
4 may be made and limited common elements that may be created within a
5 part of the common interest community under a development right re-
6 served by the declarant, or a statement that assurances have not been
7 made in that regard;

8 (8) a statement of any limitations as to the location of
9 any building or other improvement that may be made within a part of
10 the common interest community under a development right reserved by
11 the declarant, or a statement that assurances have not been made in
12 that regard;

13 (9) a statement that the limited common elements created
14 under a development right reserved by the declarant will be of the
15 same general type and size as the limited common elements within other
16 parts of the common interest community, or a statement of the type and
17 size planned, or a statement that assurances have not been made in
18 that regard;

19 (10) a statement that the proportion of limited common
20 elements to units created under a development right reserved by the
21 declarant will be approximately equal to the proportion existing
22 within other parts of the common interest community, or a statement of
23 any other assurances in that regard, or a statement that assurances
24 have not been made in that regard;

25 (11) a statement that each restriction in the declaration
26 affecting use, occupancy, and alienation of a unit will apply to each
27 unit created under a development right reserved by the declarant, or a
28 statement of a differentiation that may be made as to the units, or a
29 statement that assurances have not been made in that regard; and

1 (12) a statement of the extent to which an assurance made
2 under this section applies or does not apply if a development right is
3 not exercised by the declarant.

4 Sec. 34.08.550. TIME SHARES. If the declaration provides that
5 ownership or occupancy of a unit is or may be in time shares, the
6 public offering statement shall disclose, in addition to the informa-
7 tion required by AS 34.08.530,

8 (1) the number and identity of units in which time shares
9 may be created;

10 (2) the total number of time shares that may be created;

11 (3) the minimum duration of any time shares that may be
12 created;

13 (4) the extent to which the creation of time shares will or
14 may affect the enforceability of the lien of the association for
15 assessments under AS 34.08.470;

16 (5) any restraint on the power of the purchaser of the
17 time-share unit to transfer the interest in the time-share unit;

18 (6) whether the time-share unit is included in an exchange
19 program, the present cost and a good faith estimate of the future cost
20 to the purchaser from the exchange program; and

21 (7) whether the purchaser is required to become a member of
22 the exchange program.

23 Sec. 34.08.560. COMMON INTEREST COMMUNITIES CONTAINING CONVER-
24 SION PROPERTY. (a) The public offering statement of a common inter-
25 est community containing conversion property must contain, in addition
26 to the information required by AS 34.08.530,

27 (1) a statement by the declarant, based on a report pre-
28 pared by a registered architect or engineer, describing the present
29 condition of all structural components and mechanical and electrical

1 installations material to the use and enjoyment of the property;

2 (2) a statement by the declarant of the expected useful
3 life of each item reported on in (1) of this subsection or a statement
4 that representations have not been made in that regard; and

5 (3) a list of any outstanding notices of uncured violations
6 of building code or other municipal regulations, together with the
7 estimated cost of curing the violations.

8 (b) This section applies only to property that contains a unit
9 that may be occupied for residential use.

10 Sec. 34.08.570. COMMON INTEREST COMMUNITY SECURITIES. If an
11 interest in a common interest community is currently registered with
12 the Securities and Exchange Commission of the United States, a de-
13 clarant satisfies each requirement relating to the preparation of a
14 public offering statement of this chapter if the declarant delivers to
15 the purchaser a copy of the public offering statement filed with the
16 Securities and Exchange Commission. An interest in a common interest
17 community is not subject to the registration requirements of AS 45.55.

18 Sec. 34.08.580. PURCHASER'S RIGHT TO CANCEL. (a) A person
19 required to deliver a public offering statement under AS 34.08.520(c)
20 shall provide each purchaser with a copy of the public offering state-
21 ment and each amendment to the statement before conveyance of the
22 unit, and not later than the date of a contract of sale. If a pur-
23 chaser is not given the public offering statement more than 15 days
24 before execution of a contract for the purchase of a unit, the pur-
25 chaser, before conveyance, may cancel the contract within 15 days of
26 receipt of the public offering statement.

27 (b) A purchaser who wishes to cancel a contract under (a) of
28 this section may cancel the contract by hand delivering notice of the
29 cancellation to the offeror or by mailing notice of the cancellation

1 by prepaid United States mail to the offeror or to the agent for
2 service of process of the offeror. Cancellation is without penalty
3 and each payment made by the purchaser before cancellation must be
4 refunded promptly to the purchaser.

5 (c) If a person required to deliver a public offering statement
6 under AS 34.08.520(c) fails to provide a purchaser to whom a unit has
7 been conveyed with the public offering statement and each amendment to
8 the statement under (a) of this section, the purchaser, in addition to
9 any right to damages or other relief, is entitled to receive from the
10 person an amount equal to 10 percent of the sale price of the unit,
11 plus 10 percent of the share, proportionate to the common expense
12 liability, of an indebtedness of the association secured by security
13 interests encumbering the common interest community.

14 Sec. 34.08.590. RESALES OF UNITS. (a) Except for a sale in
15 which delivery of a public offering statement is required, or unless
16 the sale is exempt under AS 34.08.510(b), a unit owner shall furnish
17 to a purchaser before execution of a contract for sale of a unit or
18 before conveyance a copy of the declaration, as amended, the bylaws,
19 the rules or regulations of the association, and a certificate con-
20 taining a statement disclosing

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

23 (2) the amount of the monthly common expense assessment and
24 any unpaid common expense or special assessment currently due and
25 payable from the selling unit owner;

26 (3) any other fee payable by unit owners;

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

- 1 (5) the amount of reserves for capital expenditures and of
2 any portions of the reserves designated by the association for a
3 specified project;
- 4 (6) the most recent regularly prepared balance sheet and
5 income and expense statement, if any, of the association;
- 6 (7) the current operating budget of the association;
- 7 (8) any unsatisfied judgment against the association and
8 the status of any pending suit in which the association is a defendant
9 or plaintiff;
- 10 (9) any insurance coverage provided for the benefit of unit
11 owners;
- 12 (10) whether the executive board has knowledge that any
13 alterations or improvements to the unit or to the limited common
14 elements assigned to the unit violate any provision of the declara-
15 tion;
- 16 (11) whether the executive board has knowledge of any viola-
17 tion of a health or safety, fire, or building code or other law,
18 ordinance, or regulation with respect to the unit, the limited common
19 elements assigned to the unit, or any other portion of the common
20 interest community;
- 21 (12) a statement of the remaining term of a leasehold estate
22 affecting the common interest community and the provisions governing
23 an extension or renewal of the lease;
- 24 (13) a statement of any restrictions in the declaration
25 affecting the amount that may be received by a unit owner upon sale,
26 condemnation, casualty loss to the unit or the common interest commu-
27 nity, or termination of the common interest community; and
- 28 (14) in a cooperative, an accountant's statement, if any was
29 prepared, as to the deductibility for federal income tax purposes by

1 the unit owner of real estate taxes and interest paid by the associ-
2 ation.

3 (b) The association, within 10 days after a written request by a
4 unit owner and the payment of a reasonable fee, shall furnish a
5 certificate containing the information necessary to enable the unit
6 owner to comply with this section. A unit owner providing a
7 certificate under (a) of this section is not liable to the purchaser
8 for erroneous information provided by the association and included in
9 the certificate.

10 (c) A purchaser is not liable for an unpaid assessment or fee
11 greater than the amount set out in the certificate prepared by the
12 association. A unit owner is not liable to a purchaser for the fail-
13 ure or delay of the association to provide the certificate in a timely
14 manner, but the purchase contract is voidable by the purchaser until
15 the certificate has been provided and for five days after the certifi-
16 cate was provided or until conveyance, whichever occurs first.

17 Sec. 34.08.600. ESCROW OF DEPOSITS. A deposit made in connec-
18 tion with the purchase or reservation of a unit from a person required
19 to deliver a public offering statement under AS 34.08.520(c) must be
20 placed in escrow and held either in this state or in the state where
21 the unit is located in an account designated solely for that purpose
22 by a licensed title insurance company, an attorney, a licensed real
23 estate broker, an independent bonded escrow company, or an institution
24 whose accounts are insured by a governmental agency or instrumentality
25 until

- 26 (1) delivered to the declarant at closing;
27 (2) delivered to the declarant because of the purchaser's
28 default under a contract to purchase the unit; or
29 (3) refunded to the purchaser.

1 Sec. 34.08.610. RELEASE OF LIENS. (a) In a sale of a unit
2 where delivery of a public offering statement is required under
3 AS 34.08.520(c), a seller before conveying a unit, shall record and
4 furnish to the purchaser a release of each lien, except a lien on real
5 estate that a declarant has the right to withdraw from the common
6 interest community, that the purchaser does not expressly agree to
7 take subject to or assume and that encumbers

8 (1) in a condominium, the unit and its common element
9 interest; or

10 (2) in a cooperative or planned community, the unit and any
11 limited common elements assigned to the unit.

12 (b) Before conveying real estate to the association, the de-
13 clarant shall have the real estate released from

14 (1) each lien the foreclosure of which would deprive unit
15 owners of a right of access to or easement of support of their units;
16 and

17 (2) each other lien on the real estate unless the public
18 offering statement describes certain real estate that may be conveyed
19 subject to liens in specified amounts.

20 Sec. 34.08.620. CONVERSION PROPERTY. (a) A declarant of a
21 common interest community containing conversion property, and any
22 dealer who intends to offer units in a common interest community
23 containing conversion units, shall give each residential tenant and
24 each residential subtenant in possession of a portion of conversion
25 property notice of the conversion and provide each person with the
26 public offering statement no later than 180 days before the tenant and
27 any subtenant in possession is required to vacate. If the conversion
28 property consists of a mobile home park, notice of the conversion and
29 delivery of a public offering statement shall be provided no later

1 than one year before the tenant and any subtenant in possession is
2 required to vacate. The notice must set out generally the rights of
3 tenants and subtenants under this section and shall be hand delivered
4 to the tenant or subtenant in possession or mailed by certified mail,
5 return receipt requested, to the tenant and subtenant at the address
6 of the unit or any other mailing address provided by a tenant. The
7 failure to give notice as required by this section is a defense to an
8 action for possession and the terms of the tenancy may not be altered
9 during the notice period provided by this subsection. A tenant or
10 subtenant may not be required to vacate upon less than 180 days'
11 notice and a tenant and a subtenant in possession in a mobile home
12 park may not be required to vacate upon less than one year's notice
13 except for one of the following reasons

14 (1) the tenant or subtenant has defaulted in the payment of
15 rent owed;

16 (2) the tenant or subtenant has been convicted of violating
17 a federal or state law or local ordinance, and that violation is
18 continuing and is detrimental to the health, safety or welfare of
19 other dwellers or tenants in the mobile home park; and

20 (3) the tenant or subtenant has violated a provision,
21 enforceable under AS 34.03.130, of the rental agreement or lease
22 signed by both parties and not prohibited by law including rent and
23 the terms of agreement.

24 (b) For 90 days after delivery or mailing of the notice de-
25 scribed in (a) of this section, the person required to give the notice
26 shall offer to convey each unit or proposed unit occupied for residen-
27 tial use to the tenant who leases or rents the unit. If a tenant
28 fails to purchase the unit during the 90-day period, the offeror may
29 not offer to dispose of an interest in the unit during the following

1 180 days at a price or on terms more favorable to the offeree than the
2 price or terms offered to the tenant. This subsection does not apply
3 to a unit in conversion property if the unit will be restricted exclu-
4 sively to nonresidential use or if the boundaries of the converted
5 unit do not substantially conform to the dimensions of the residential
6 unit before conversion.

7 (c) If a seller, in violation of (b) of this section, conveys a
8 unit for value to a purchaser who has no knowledge of the violation,
9 the recording of the deed conveying the unit or, in a cooperative, the
10 conveyance of the unit, extinguishes any right a tenant may have under
11 (b) of this section to purchase the unit if the deed states that the
12 seller has complied with (b) of this section, but the conveyance does
13 not affect the right of a tenant to recover damages from the seller
14 for a violation of (b) of this section.

15 (d) If a notice of conversion specifies a date by which a unit
16 or proposed unit must be vacated and otherwise complies with the
17 provisions of AS 09.45.060 - 09.45.160, the notice also constitutes a
18 notice to quit.

19 (e) Nothing in this section permits termination of a lease by a
20 declarant in violation of its terms.

21 Sec. 34.08.630. EXPRESS WARRANTIES OF QUALITY. (a) An express
22 warranty made by a seller to a purchaser of a unit, if relied upon by
23 the purchaser, is created as follows:

24 (1) any affirmation of fact or promise that relates to the
25 unit, its use, or rights appurtenant to the unit, area improvements to
26 the common interest community that would directly benefit the unit, or
27 the right to use or have the benefit of facilities not located in the
28 common interest community, creates an express warranty that the unit
29 and related rights and uses will conform to the affirmation or

1 promise;

2 (2) a model or description of the physical characteristics
3 of the common interest community, including plans and specifications
4 of or for improvements, creates an express warranty that the common
5 interest community will conform to the model or description;

6 (3) a description of the quantity or extent of the real
7 estate comprising the common interest community, including plats or
8 surveys, creates an express warranty that the common interest communi-
9 ty will conform to the description, subject to customary tolerances;
10 and

11 (4) a provision that a purchaser may put a unit only to a
12 specified use is an express warranty that the specified use is lawful.

13 (b) Formal words such as "warranty" or "guarantee" and the
14 specific intention to make a warranty are not necessary to create an
15 express warranty of quality, but a statement purporting to be merely
16 an opinion or commendation of the real estate or its value does not
17 create a warranty.

18 (c) A conveyance of a unit transfers to the purchaser each
19 express warranty of quality made by a previous seller.

20 Sec. 34.08.640. IMPLIED WARRANTIES OF QUALITY. (a) A declarant
21 and a dealer warrants that a unit will be in at least as good condi-
22 tion at the earlier of the time of the conveyance or delivery of
23 possession as it was at the time of contracting, reasonable wear and
24 tear excepted.

25 (b) A declarant and a dealer impliedly warrants that a unit and
26 the common elements in the common interest community are suitable for
27 the ordinary uses of real estate of its type and that any improvements
28 made or contracted for by the declarant or dealer, or made by any
29 person before the creation of the common interest community, will be

1 (1) free from defective materials; and
2 (2) constructed in accordance with applicable law, accord-
3 ing to sound engineering and construction standards, and in a skillful
4 and workmanlike manner.

5 (c) A declarant and a dealer warrants to a purchaser of a unit
6 that may be used for residential use that an existing use, continua-
7 tion of which is contemplated by the parties, does not violate appli-
8 cable law at the earlier of the time of conveyance or delivery of
9 possession.

10 (d) Warranties imposed by this section may be excluded or modi-
11 fied under AS 34.08.650.

12 (e) For purposes of this section, improvements made or contract-
13 ed for by an affiliate of a declarant are made or contracted for by
14 the declarant.

15 (f) A conveyance of a unit transfers to the purchaser all of the
16 declarant's implied warranties of quality.

17 Sec. 34.08.650. EXCLUSION OR MODIFICATION OF IMPLIED WARRANTIES
18 OF QUALITY. (a) Except as limited by (b) of this section with re-
19 spect to a purchaser of a unit that may be used for residential use,
20 implied warranties of quality

21 (1) may be excluded or modified by written agreement of the
22 parties; and

23 (2) are excluded by a written expression of disclaimer such
24 as "as is," "with all faults," or other language that in common
25 understanding calls the attention of the purchaser to the exclusion of
26 warranties.

27 (b) With respect to a purchaser of a unit that may be occupied
28 for residential use, a general disclaimer of implied warranties of
29 quality is not effective, but a declarant and a dealer may disclaim

1 liability in an instrument signed by the purchaser for a specified
2 defect or specified failure to comply with applicable law, if the
3 defect or failure entered into and became a part of the basis of the
4 bargain.

5 Sec. 34.08.660. STATUTE OF LIMITATIONS FOR WARRANTIES. (a) A
6 judicial proceeding for breach of an obligation arising under AS 34.-
7 08.650 or this section must be commenced within six years after the
8 cause of action accrues, but the parties may agree to reduce the
9 period of limitation to not less than two years. If the unit may be
10 occupied for residential use, an agreement to reduce the period of
11 limitation must be evidenced by a separate instrument executed by the
12 purchaser.

13 (b) Subject to (c) of this section, a cause of action for breach
14 of warranty of quality, regardless of the purchaser's lack of knowl-
15 edge of the breach, accrues

16 (1) as to a unit, at the time the purchaser to whom the
17 warranty is first made enters into possession if a possessory interest
18 was conveyed or at the time of acceptance of the instrument of convey-
19 ance if a nonpossessory interest was conveyed; and

20 (2) as to each common element, at the time the common
21 element is completed or, if later, as to

22 (A) a common element that may be added to the common
23 interest community or a portion of the common interest community,
24 at the time the first unit is conveyed to a bona fide purchaser;
25 or

26 (B) a common element within any other portion of the
27 common interest community, at the time the first unit is conveyed
28 to a bona fide purchaser.

29 (c) If a warranty of quality explicitly extends to future

1 performance or duration of an improvement or component of the common
2 interest community, the cause of action accrues at the time the breach
3 is discovered or at the end of the warranty period, whichever is
4 earlier.

5 Sec. 34.08.670. EFFECT OF VIOLATIONS ON RIGHTS OF ACTION. If a
6 declarant or any other person subject to this chapter fails to comply
7 with a provision of this chapter or with a provision of the declara-
8 tion or bylaws, a person or class of persons adversely affected by the
9 failure to comply has a claim for appropriate relief. Punitive dam-
10 ages may be awarded for a wilful failure to comply with this chapter.

11 Sec. 34.08.680. LABELING OF PROMOTIONAL MATERIAL. Promotional
12 material may not be displayed or delivered to a prospective purchaser
13 that describes or portrays an improvement that is not in existence
14 unless the description or portrayal of the improvement in the promo-
15 tional material is conspicuously labeled or identified either as "MUST
16 BE BUILT" or as "NEED NOT BE BUILT."

17 Sec. 34.08.690. DECLARANT'S OBLIGATION TO COMPLETE AND RESTORE.
18 (a) Except for an improvement labeled "NEED NOT BE BUILT," the de-
19 clarant shall complete each improvement depicted on a site plan or
20 other graphic representation, including any plats or plans prepared
21 under AS 34.08.180, whether or not the site plan or other graphic
22 representation is contained in the public offering statement or in
23 promotional material distributed by or for the declarant.

24 (b) The declarant is liable for the prompt repair and restora-
25 tion, to a condition compatible with the remainder of the common
26 interest community, of a portion of the common interest community af-
27 fected by the exercise of rights reserved under or created by AS 34.-
28 08.180, 34.08.190, 34.08.200, 34.08.210, 34.08.230, or 34.08.240.

29 Sec. 34.08.700. SUBSTANTIAL COMPLETION OF UNITS. In the sale of

1 a unit for which delivery of a public offering statement is required,
2 a contract of sale may be executed, but an interest in the unit may
3 not be conveyed until the declaration is recorded and the unit is
4 substantially completed as evidenced by issuance of a certificate of
5 occupancy authorized by law or by a recorded certificate of
6 substantial completion executed by

7 (1) an independent registered engineer, architect, or land
8 surveyor;

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

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

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

17 **ARTICLE 5. GENERAL PROVISIONS.**

18 **Sec. 34.08.710. VARIATION BY AGREEMENT.** Except as expressly
19 provided in this chapter the provisions of this chapter may not be
20 varied by agreement and rights conferred by this chapter may not be
21 waived. A declarant may not act under a power of attorney or use any
22 other device to evade the limitations or prohibitions of this chapter
23 or a declaration recorded under it.

24 **Sec. 34.08.720. SEPARATE TITLES AND TAXATION.** (a) In a cooper-
25 ative, the interest of a unit owner in a unit and its allocated
26 interests is real estate for all purposes, except that the real estate
27 constituting the cooperative shall be assessed and taxed as a whole
28 and the interest of a unit owner may not be separately taxed.

29 (b) In a condominium or planned community,

1 (1) if there is a unit owner other than a declarant, each
2 unit that has been created, together with its interest in the common
3 elements, constitutes for all purposes a separate parcel of real
4 estate;

5 (2) if there is a unit owner other than a declarant, each
6 unit shall be separately taxed and assessed, and a separate tax or
7 assessment may not be rendered against any common elements for which a
8 declarant has reserved no development rights.

9 (c) Any portion of the common elements for which the declarant
10 has reserved a development right shall be separately taxed and
11 assessed against the declarant and the declarant alone is liable for
12 payment of the taxes.

13 (d) If there is no unit owner other than a declarant, the real
14 estate comprising the common interest community may be taxed and
15 assessed in any manner provided by law.

16 Sec. 34.08.730. APPLICABILITY OF LOCAL ORDINANCES, REGULATIONS,
17 AND BUILDING CODES. (a) A building code may not impose a requirement
18 upon a structure in a common interest community that the building code
19 would not impose upon a physically identical development under a
20 different form of ownership.

21 (b) A zoning, subdivision, or other real estate use law, ordi-
22 nance, or regulation may not prohibit the condominium or cooperative
23 form of ownership or impose a requirement upon a condominium or co-
24 operative that it would not impose upon a physically identical devel-
25 opment under a different form of ownership.

26 (c) Except as provided in (a) and (b) of this section, the
27 provisions of this chapter do not invalidate or modify a provision of
28 a building code, zoning, subdivision, or other real estate use law,
29 ordinance, or regulation governing the use of real estate.

1 Sec. 34.08.740. EMINENT DOMAIN. (a) If a unit is acquired by
2 eminent domain or part of a unit is acquired by eminent domain leaving
3 the unit owner with a remnant that may not practically or lawfully be
4 used for any purpose permitted by the declaration, the award must
5 include compensation to the unit owner for that unit and its allocated
6 interests, whether or not any common elements are acquired. Upon
7 acquisition, unless the decree otherwise provides, the allocated
8 interests of the unit are automatically reallocated to the remaining
9 units in proportion to the respective allocated interests of those
10 units before the taking, and the association shall promptly prepare,
11 execute, and record an amendment to the declaration reflecting the re-
12 allocations. A remnant of a unit remaining after part of a unit is
13 taken under this subsection is a common element from that time.

14 (b) Except as provided in (a) of this section, if part of a unit
15 is acquired by eminent domain, the award must compensate the unit
16 owner for the reduction in value of the unit and its interest in the
17 common elements, whether or not any common elements are acquired.
18 Upon acquisition, unless the decree provides otherwise,

19 (1) the allocated interests of the unit are reduced either
20 in proportion to the reduction in the size of the unit or on the basis
21 specified in the declaration; and

22 (2) the portion of the allocated interests divested from
23 the partially acquired unit are automatically reallocated to the unit
24 and to the remaining units in proportion to the respective allocated
25 interests of the units before the taking, with the partially-acquired
26 unit participating in the reallocation on the basis of its reduced
27 allocated interests.

28 (c) If part of the common elements is acquired by eminent do-
29 main, the portion of the award attributable to the common elements

1 taken must be paid to the association. Unless the declaration pro-
2 vides otherwise, any portion of the award attributable to the acquisi-
3 tion of a limited common element must be equally divided among the
4 owners of the units to which that limited common element was allocated
5 at the time of acquisition.

6 (d) The court decree must be recorded in each recording district
7 in which any portion of the common interest community is located.

8 (e) On a condemnation of a unit or common area, an award or
9 decree must include a reasonable amount to cover the cost of reallo-
10 cating the allocatable interests of the unit owners.

11 Sec. 34.08.750. SUPPLEMENTAL GENERAL PRINCIPLES OF LAW APPLIC-
12 ABLE. The principles of law and equity, including the law of corpora-
13 tions and unincorporated associations, the law of real property, and
14 the law relative to capacity to contract, principal and agent, eminent
15 domain, estoppel, fraud, misrepresentation, duress, coercion, mistake,
16 receivership, substantial performance, or other validating or invali-
17 dating cause supplement the provisions of this chapter except to the
18 extent inconsistent with this chapter.

19 Sec. 34.08.760. CONSTRUCTION AGAINST IMPLICIT REPEAL. This
20 chapter is a general act intended as a unified coverage of its subject
21 matter and a part of the chapter may not be construed to be impliedly
22 repealed by subsequent legislation if that construction can reasonably
23 be avoided.

24 Sec. 34.08.770. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
25 This chapter shall be applied and construed so as to effectuate its
26 general purpose to make uniform the law with respect to the subject of
27 the chapter among states enacting it.

28 Sec. 34.08.780. SEVERABILITY. If a provision of this chapter or
29 its application to any person or circumstance is held invalid, the

1 invalidity does not affect other provisions or applications of this
2 chapter that can be given effect without the invalid provision or
3 application, and to this end the provisions of this chapter are sever-
4 able.

5 Sec. 34.08.790. UNCONSCIONABLE AGREEMENT OR TERM OF CONTRACT.

6 (a) Upon finding as a matter of law that a contract or contract
7 clause was unconscionable at the time the contract was made, a court
8 may refuse to enforce the contract, may enforce the remainder of the
9 contract without the unconscionable clause, or may limit the applica-
10 tion of the unconscionable clause in order to avoid an unconscionable
11 result.

12 (b) Whenever it is claimed or appears to the court that a con-
13 tract or a contract clause is or may be unconscionable, the parties,
14 in order to aid the court in making the determination, must be afford-
15 ed a reasonable opportunity to present evidence as to (1) the commer-
16 cial setting of the negotiations; (2) whether a party has knowingly
17 taken advantage of the inability of another party reasonably to pro-
18 tect personal interests by reason of physical or mental infirmity,
19 illiteracy, inability to understand the language of the agreement, or
20 similar factors; (3) the effect and purpose of the contract or clause;
21 and (4) any gross disparity, if a sale, at the time of contracting,
22 between the amount charged for the property and the value of the
23 property measured by the price at which similar property was readily
24 obtainable in similar transactions. A disparity between the contract
25 price and the value of the property measured by the price at which
26 similar property was readily obtainable in similar transactions does
27 not, of itself, render the contract unconscionable.

28 Sec. 34.08.800. OBLIGATION OF GOOD FAITH. A contract or duty
29 governed by this chapter imposes an obligation of good faith in its

1 performance or enforcement.

2 Sec. 34.08.810. REMEDIES TO BE LIBERALLY ADMINISTERED. (a) The
3 remedies provided by this chapter shall be liberally administered to
4 the end that the aggrieved party is put in as good a position as if
5 the other party had fully performed. Consequential, special, or
6 punitive damages may not be awarded except as specifically provided in
7 this chapter or by other rule of law.

8 (b) A right or obligation declared by this chapter is enforce-
9 able by judicial proceeding.

10 Sec. 34.08.820. ADJUSTMENT OF DOLLAR AMOUNTS. (a) The dollar
11 amounts specified in AS 34.08.030 and 34.08.510(b)(7) change under (b)
12 and (c) of this section, according to and to the extent of changes in
13 the Consumer Price Index for Urban Wage Earners and Clerical Workers:
14 U.S. City Average, All Items 1967 equal 100, compiled by the Bureau of
15 Labor Statistics, United States Department of Labor, (the "Index").
16 The Index for December, 1979, which was 230, is the Reference Base
17 Index.

18 (b) The dollar amounts specified in AS 34.08.030 and 34.08.-
19 510(b)(7) and any amount stated in the declaration pursuant to those
20 sections change on July 1 of each year if the percentage of change,
21 calculated to the nearest whole percentage point, between the Index at
22 the end of the preceding year and the Reference Base Index is 10
23 percent or more, except that

24 (1) the portion of the percentage change in the Index in
25 excess of a multiple of 10 percent shall be disregarded and the dollar
26 amounts shall change only in multiples of 10 percent of the amounts
27 appearing in this chapter on the effective date of this Act;

28 (2) the dollar amounts may not change if the amounts re-
29 quired by this section are those currently in effect under this

1 chapter as a result of an earlier application of this section; and

2 (3) in no event may the dollar amounts be reduced below the
3 amounts appearing in this chapter on the effective date of this Act.

4 (c) If the Index is revised after December 1979, the percentage
5 of change under this section shall be calculated on the basis of the
6 revised Index. If the revision of the Index changes the Reference
7 Base Index, a revised Reference Base Index must be determined by
8 multiplying the Reference Base Index then applicable by the rebasing
9 factor furnished by the Bureau of Labor Statistics. If the Index is
10 superseded, the index referred to in this section is the one repre-
11 sented by the Bureau of Labor Statistics as reflecting most accurately
12 changes in the purchasing power of the dollar for consumers.

13 Sec. 34.08.830. TRANSFER OF UNIT IN A COOPERATIVE. If a unit in
14 a cooperative is owned by a unit owner or is sold, conveyed, volun-
15 tarily or involuntarily encumbered, or otherwise transferred by the
16 unit owner, the interest in the unit that is owned, sold, conveyed,
17 encumbered, or otherwise transferred is the right to possession of the
18 unit under a proprietary lease, coupled with the allocated interests
19 of the unit, and the association's interest in the unit is not affect-
20 ed by the transfer.

21 Sec. 34.08.990. DEFINITIONS. In this chapter,

22 (1) "affiliate of a declarant"

23 (A) means a person who controls, is controlled by, or
24 is under common control with a declarant;

25 (B) as used in this paragraph, a person "controls" a
26 declarant if the person

27 (i) is a general partner, officer, director, or
28 employer of the declarant;

29 (ii) directly or indirectly or acting in concert

1 with one or more other persons, or through one or more
2 subsidiaries, owns, controls, holds with power to vote, or
3 holds proxies representing more than 20 percent of the
4 voting interest in the declarant;

5 (iii) controls in any manner the election of a
6 majority of the directors of the declarant; or

7 (iv) has contributed more than 20 percent of the
8 capital of the declarant;

9 (C) as used in this paragraph, a person "is controlled
10 by" a declarant if the declarant

11 (i) is a general partner, officer, director, or
12 employer of the person;

13 (ii) directly or indirectly or acting in concert
14 with one or more other persons, or through one or more
15 subsidiaries, owns, controls, holds with power to vote, or
16 holds proxies representing more than 20 percent of the
17 voting interest in the person;

18 (iii) controls in any manner the election of a
19 majority of the directors of the person; or

20 (iv) has contributed more than 20 percent of the
21 capital of the person;

22 (D) as used in this paragraph, "control" does not
23 exist if the powers described in this paragraph are held solely
24 as security for an obligation and are not exercised;

25 (2) "allocated interests" means the following interests
26 allocated to each unit:

27 (A) in a condominium, the undivided interest in the
28 common elements, the common expense liability, and votes in the
29 association;

1 (B) in a cooperative, the common expense liability and
2 the ownership interest and votes in the association; and

3 (C) in a planned community, the common expense liability
4 and votes in the association;

5 (3) "association" or "unit owners' association" means the
6 unit owners' association organized under AS 34.08.310;

7 (4) "common elements" means

8 (A) in a condominium or cooperative, each portion of
9 the common interest community other than a unit; and

10 (B) in a planned community, the real estate within a
11 planned community owned or leased by the association, other than
12 a unit;

13 (5) "common expenses" means expenditures made by, or finan-
14 cial liabilities of, the association, together with any allocations to
15 reserves;

16 (6) "common expense liability" means the liability for
17 common expenses allocated to each unit under AS 34.08.150;

18 (7) "common interest community" means real estate with
19 respect to which a person, by virtue of ownership of a unit, is obli-
20 gated to pay for real estate taxes, insurance premiums, maintenance,
21 or improvement of other real estate described in a declaration;

22 (8) "condominium" means a common interest community in
23 which

24 (A) portions of the real estate are designated for
25 separate ownership;

26 (B) the remainder of the real estate is designated for
27 common ownership solely by the owners of those portions; and

28 (C) the undivided interests in the common elements are
29 vested in the unit owners;

1 (9) "conversion property" means real estate that before
2 creation of the common interest community, was occupied wholly or
3 partially by persons other than purchasers and persons who occupy with
4 the consent of purchasers;

5 (10) "cooperative" means a common interest community in
6 which the real estate is owned by an association, each of whose mem-
7 bers is entitled by virtue of an ownership interest in the association
8 to exclusive possession of a unit;

9 (11) "dealer" means a person who owns either six or more
10 units in a common interest community or 50 percent or more of the
11 units in a common interest community;

12 (12) "declarant" means a person or a group of persons acting
13 in concert who

14 (A) as part of a common promotional plan, offers to
15 dispose of its interest in a unit not previously disposed of; or

16 (B) reserves or succeeds to a special declarant right;

17 (13) "declaration"

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

20 (B) includes amendments to a declaration;

21 (14) "development right" means a right or a combination of
22 rights reserved by a declarant in the declaration to

23 (A) add real estate to a common interest community;

24 (B) create units, common elements, or limited common
25 elements within a common interest community;

26 (C) subdivide units or convert units into common
27 elements; or

28 (D) withdraw real estate from a common interest commu-
29 nity;

1 (15) "dispose" or "disposition"

2 (A) means a voluntary transfer to a purchaser of any
3 legal or equitable interest in a unit;

4 (B) does not include the transfer or release of a
5 security interest;

6 (16) "executive board" means the body designated in the
7 declaration to act on behalf of the association;

8 (17) "identifying number" means a symbol or address that
9 identifies only one unit in a common interest community;

10 (18) "leasehold common interest community" means a common
11 interest community in which all or a portion of the real estate is
12 subject to a lease that, on its expiration or termination, will termi-
13 nate the common interest community or reduce its size;

14 (19) "limited common element" means the portion of the
15 common elements allocated for the exclusive use of one or more but
16 fewer than all of the units by the declaration or by operation of
17 AS 34.08.100(2) or (4);

18 (20) "master association" means an organization described in
19 AS 34.08.280 whether or not it is also an association described in
20 AS 34.08.310;

21 (21) "offering"

22 (A) means an advertisement, inducement, solicitation,
23 or attempt to encourage a person to acquire an interest in a
24 unit, other than as security for an obligation;

25 (B) does not include an advertisement in a newspaper
26 or other periodical of general circulation, or in any other
27 broadcast medium to the general public describing a common inter-
28 est community not located in the state if the advertisement
29 states that an offering may be made only in compliance with the

1 law of the jurisdiction in which the common interest community is
2 located;

3 (22) "ownership of a unit" does not include a leasehold
4 interest, including renewal options, of less than 40 years in a unit;

5 (23) "person" means

6 (A) an individual, corporation, business trust,
7 estate, trust, partnership, association, joint venture, govern-
8 ment, government subdivision or agency, or other legal or commer-
9 cial entity;

10 (B) in the case of a land trust, the beneficiary of
11 the land trust and not the land trust or its trustee;

12 (24) "planned community" means a common interest community
13 that is not a condominium or a cooperative although a condominium or
14 cooperative may be part of a planned community;

15 (25) "proprietary lease" means the agreement with the
16 association under which a member is entitled to exclusive possession
17 of a unit in a cooperative;

18 (26) "purchaser" means a person, other than a declarant or a
19 dealer, who by means of a voluntary transfer acquires a legal or
20 equitable interest in a unit other than

21 (A) a leasehold interest, including renewal options,
22 of less than 40 years; or

23 (B) as security for an obligation;

24 (27) "real estate"

25 (A) means a leasehold or other estate or interest in,
26 over, or under land, including structures, fixtures, and other
27 improvements and interests that by custom, usage, or law pass
28 with a conveyance of land though not described in the contract of
29 sale or instrument of conveyance;

1 (B) includes parcels with or without upper or lower
2 boundaries, and spaces that may be filled with air or water;

3 (28) "residential purposes" means use for dwelling or recre-
4 ational purposes, or both;

5 (29) "security interest"

6 (A) means an interest in real estate or personal
7 property, created by contract or conveyance, that secures payment
8 or performance of an obligation;

9 (B) includes a lien created by a mortgage, deed of
10 trust, trust deed, security deed, contract for deed, land sales
11 contract, lease intended as security, assignment of lease or
12 rents intended as security, pledge of an ownership interest in an
13 association, and any other consensual lien or title retention
14 contract intended as security for an obligation;

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

17 (A) complete improvements indicated on plats and plans
18 filed with the declaration or, in a cooperative, to complete
19 improvements described in the public offering statement pursuant
20 to AS 34.08.530(a)(2);

21 (B) exercise a development right;

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

24 (D) use easements through the common elements for the
25 purpose of making improvements within the common interest commu-
26 nity or within real estate that may be added to the common inter-
27 est community;

28 (E) make the common interest community subject to a
29 master association;

1 (F) merge or consolidate a common interest community
2 with another common interest community of the same form of owner-
3 ship; or

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

7 (31) "time share" means a right to occupy a unit or any of
8 several units during five or more separated time periods over a period
9 of at least five years, including renewal options, whether or not
10 coupled with an estate or interest in a common interest community or a
11 specified portion of a common interest community;

12 (32) "unit" means a physical portion of the common interest
13 community designated for separate ownership or occupancy, the bound-
14 aries of which are described under AS 34.08.130(a)(5);

15 (33) "unit owner"

16 (A) means

17 (i) a declarant;

18 (ii) a person who owns a unit;

19 (iii) a person who leases a unit in a leasehold
20 common interest community whose lease expires simultaneously
21 with any lease that on its expiration or termination will
22 remove the unit from the common interest community;

23 (B) does not include a person having an interest in a
24 unit solely as security for an obligation;

25 (C) includes

26 (i) in a condominium or planned community, the
27 declarant as the owner of any unit created by the declara-
28 tion;

29 (ii) in a cooperative, the declarant as the owner

1 of any unit to which allocated interests have been allocated
2 until that unit has been conveyed to another person.

3 Sec. 34.08.995. SHORT TITLE. This Act may be cited as the
4 Uniform Common Interest Ownership Act.

5 * Sec. 2. AS 34.35.071(f) is amended to read:

6 (f) After recording a common interest community [CONDOMINIUM]
7 declaration under AS 34.08 [AS PROVIDED IN AS 34.07.010 - 34.07.460
8 (HORIZONTAL PROPERTY REGIMES ACT)], an owner may record a notice of
9 completion under this section as to each unit [APARTMENT] after com-
10 pletion of the original construction of each unit of the common inter-
11 est community [CONDOMINIUM APARTMENT].

12 * Sec. 3. AS 34.35.119 is amended to read:

13 Sec. 34.35.119. WAIVER OF LIENS ON UNSOLD COMMON INTEREST COMMU-
14 NITY UNITS [CONDOMINIUM APARTMENTS]. (a) A lien [LIENS] created
15 under AS 34.35.050 - 34.35.120 arising out of original construction
16 that [WHICH] becomes subject to AS 34.07 or AS 34.08 [THE HORIZONTAL
17 PROPERTY REGIMES ACT (AS 34.07.010 - 34.07.460)] before the first sale
18 of a unit within a common interest community [ANY PORTION OF THE
19 PROPERTY] after commencement of construction shall be subject to the
20 provisions of this section.

21 (b) Subject to (c) of this section, a claimant who claims a lien
22 against an entire common interest community [THE ENTIRE BUILDING]
23 shall release that portion of the [HIS] lien claim that [WHICH] re-
24 lates to a particular unit within a common interest community [CONDO-
25 MINIUM APARTMENT] selected by the owner of the unsold common interest
26 community units [CONDOMINIUM APARTMENTS] after the claimant receives a
27 partial payment of the [HIS] lien claim that [WHICH] is equal to 115
28 percent of the amount determined

29 (1) if the common interest community has been established

1 under AS 34.07 by [:]

2 (A) [(1)] dividing the surface area of the common
3 areas and facilities attendant to the common interest community
4 unit [CONDOMINIUM APARTMENT] by the surface area of all common
5 areas and facilities of the common interest community building;
6 and

7 (B) [(2)] multiplying the result obtained in (A)
8 [(1)] of this subsection by the total amount of the claimant's
9 lien claim;

10 (2) by the allocated interest in the common expenses if the
11 common interest community has been established under AS 34.08.

12 (c) A lien claimant is not required to waive a portion of the
13 [HIS] lien claim under this section unless the amount of indebtedness
14 secured by a prior encumbrance against the common interest community
15 building held by a construction lender is also reduced by an amount
16 calculated in the same manner as provided in (b) of this section.

17 * Sec. 4. This Act takes effect January 1, 1986.