

Introduced: 4/1/86
Referred: Judiciary and
Finance

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2

SENATE BILL NO. 470

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the Uniform Common Interest
7 Ownership Act."

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

9 * Section 1. AS 34.08.020 is amended to read:

10 Sec. 34.08.020. APPLICABILITY TO SMALL COOPERATIVES. If a
11 cooperative created after January 1, 1986 contains only units re-
12 stricted to nonresidential use or contains no more than 12 units and
13 is not subject to any development rights [OR FINANCING FROM THE ALASKA
14 HOUSING FINANCE CORPORATION], it is subject only to AS 34.08.720 -
15 34.08.740 unless the declaration provides that the entire chapter is
16 applicable.

17 * Sec. 2. AS 34.08.030 is amended to read:

18 Sec. 34.08.030. APPLICABILITY TO SMALL AND LIMITED EXPENSE
19 LIABILITY PLANNED [COMMON INTEREST] COMMUNITIES. If a planned [COM-
20 MON INTEREST] community created after January 1, 1986 [CONTAINS NO
21 MORE THAN 12 UNITS AND] is not subject to any development rights or
22 [FINANCING FROM THE ALASKA HOUSING FINANCE CORPORATION OR] provides,
23 in its declaration, that the annual average common expense liability
24 of all units restricted to residential purposes, exclusive of optional
25 user fees and any insurance premiums paid by the association, may not
26 exceed \$100, as adjusted under AS 34.08.820, the planned [COMMON
27 INTEREST] community is subject only to AS 34.08.720 - 34.08.740 unless
28 the declaration provides that the entire chapter is applicable. [A
29 DECLARANT MAY NOT SUBDIVIDE REAL PROPERTY UNDER SINGLE OWNERSHIP INTO

1 TWO OR MORE COMMON INTEREST COMMUNITIES TO AVOID THE APPLICATION OF
2 THIS CHAPTER.]

3 * Sec. 3. AS 34.08 is amended by adding a new section to read:

4 Sec. 34.08.035. PROHIBITED SUBDIVISIONS. A declarant may not
5 subdivide real property under single ownership into two or more common
6 interest communities to avoid the application of this chapter.

7 * Sec. 4. AS 34.08.040 is amended to read:

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, 34.08.510, 34.08.590, 34.08.-
12 670, 34.08.720, 34.08.730, 34.08.740, and 34.08.990; to the extent
13 necessary in construing any of those sections, apply to all common
14 interest communities created in the state before January 1, 1986,
15 except that the sections apply only with respect to events and circum-
16 stances occurring after January 1, 1986, and do not invalidate exist-
17 ing provisions of the declaration, bylaws, or plats or plans of the
18 common interest communities.

19 * Sec. 5. AS 34.08 is amended by adding a new section to read:

20 Sec. 34.08.255. AMENDMENT OF A DECLARATION WHERE FEWER THAN 50
21 PERCENT OF UNIT OWNERS APPROVE. (a) If a declaration requires owners
22 having more than 50 percent of the votes in the association in a
23 single class voting structure or unit owners having more than 50
24 percent of the votes in more than one class in a voting structure with
25 more than one class to vote in favor of an amendment in order to amend
26 a declaration, the association or a unit owner may petition the supe-
27 rior court for the judicial district in which the common interest
28 community is located for an order reducing the percentage of the
29 affirmative votes necessary for the adoption of the amendment. The

1 petition shall describe the efforts that have been made to solicit the
2 approval of the unit owners in the association in the manner required
3 by the declaration, the number of affirmative and negative votes
4 actually received, the number or percentage of affirmative votes
5 required to adopt the amendment under the declaration, and any other
6 matter the petitioner considers relevant to the determination of the
7 court. The petition must include as exhibits to the petition a copy
8 of

- 9 (1) the governing documents;
- 10 (2) a complete text of the amendments;
- 11 (3) a copy of each notice and the solicitation materials
12 used in the solicitation of the approval of the amendment by the unit
13 owners;
- 14 (4) an explanation of the reason for the amendment;
- 15 (5) other documentation relevant to the determination by
16 the court.

17 (b) When the petition is filed with the superior court, the
18 court shall set the matter for hearing and issue an ex parte order
19 setting out the manner in which notice shall be given to the unit
20 owners in the association.

21 (c) The court may, but is not required to, grant the petition if
22 it finds that

- 23 (1) the petitioner has given not less than 15 days' written
24 notice of the court hearing to
 - 25 (A) each unit owner in the association;
 - 26 (B) a mortgagee of a mortgage or beneficiary of a deed
27 of trust that is entitled to notice under the provisions of the
28 declaration; and
 - 29 (C) the municipality in which the common interest

1 community is located if it is entitled to notice under the decla-
2 ration;

3 (2) the balloting on the proposed amendment was conducted
4 under each of the applicable provisions of the declaration, bylaws,
5 and rules or regulations of the association;

6 (3) a reasonable diligent effort was made to permit each
7 eligible unit owner to vote on the proposed amendment;

8 (4) in a common interest community with a single class
9 voting structure, unit owners with more than 50 percent of the votes
10 voted in favor of the amendment;

11 (5) in a voting structure with more than one class and
12 where the declaration requires a majority of more than one class to
13 vote in favor of the amendment, unit owners having more than 50 per-
14 cent of the votes in each class required by the declaration to vote in
15 favor of the amendment did vote in favor of the amendment;

16 (6) the amendment is reasonable; and

17 (7) granting the petition is appropriate considering the
18 circumstances.

19 (d) If the court makes the findings required in (c) of this
20 section, an order issued under this section may

21 (1) confirm the amendment as being validly approved on the
22 basis of the affirmative votes actually received during the balloting
23 period; or

24 (2) dispense with a requirement relating to quorums or to
25 the percentage of votes needed for approval of an amendment under the
26 governing documents.

27 (e) A court may not approve an amendment to a declaration under
28 this section that

29 (1) would change the provision in a declaration requiring

1 the approval of unit owners having more than 50 percent of the votes
2 in more than one class to vote in favor of an amendment unless more
3 than 50 percent of the unit owners in each affected class of unit
4 owners approve the amendment;

5 (2) would eliminate a special right, preference, or privi-
6 lege designated in the declaration as belonging to the declarant
7 without the approval of the declarant; or

8 (3) would impair the security interest of a mortgagee of a
9 mortgage or the beneficiary of a deed of trust without the approval of
10 the percentage of the mortgagees and beneficiaries specified in the
11 declaration if the declaration requires the approval of a specified
12 percentage of the mortgagees and beneficiaries.

13 (f) An amendment to the declaration approved under this section
14 is not effective until the order of the court and the amendment have
15 been recorded in each municipality in which a portion of the common
16 interest community is located. The amendment may be acknowledged by,
17 and the court order and amendment may be recorded by, an individual
18 designated in the declaration or by the association and, if no one is
19 designated for that purpose, by the president of the association. On
20 the recording of the amendment and the court order, the declaration,
21 as amended under this section, has the same force and effect as if the
22 amendment were adopted in compliance with the declaration.

23 (g) Within a reasonable time after the recording of the amend-
24 ment under (f) of this section, the association shall mail a copy of
25 the amendment to each unit owner in the association together with a
26 statement that the amendment has been recorded.

27 * Sec. 6. AS 34.08.260 is amended by adding new subsections to read:

28 (a) A declaration that specifies a termination date but that
29 does not contain a provision for the extension of the termination date

1 may be extended

2 (1) by the approval of the unit owners having more than 50
3 percent of the votes in the association;

4 (2) by the approval of the unit owners having the percent-
5 age of votes as specified in the declaration for an amendment to the
6 declaration; or

7 (3) if the approval of unit owners having more than 50
8 percent of the votes in the association is required to amend the
9 declaration, under AS 34.08.255.

10 (n) An amendment to a declaration under (m) of this section
11 becomes effective when it has been recorded in each municipality in
12 which a portion of the common interest community is located.

13 (o) A single extension of the terms of a declaration made under
14 this section may not exceed the initial term of the declaration or 20
15 years, whichever is less. More than one extension of the term may
16 occur under this section.

17 * Sec. 7. AS 34.08.470(j) is amended to read:

18 (j) The association's lien may be foreclosed under this subsec-
19 tion:

20 (1) in a condominium or planned community, the lien of the
21 association must be foreclosed [AS A MORTGAGE OR DEED OF TRUST ON REAL
22 ESTATE IS FORECLOSED, OR] as a lien is foreclosed under AS 34.35.005;

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

27 (3) in a cooperative whose unit owners' interests in the
28 units are personal property, the lien of the association must be
29 foreclosed as a security interest under AS 45.09 [; OR

1 (4) IN THE CASE OF FORECLOSURE UNDER AS 34.20.070, THE
2 ASSOCIATION SHALL GIVE REASONABLE NOTICE OF ITS ACTION TO EACH LIEN
3 HOLDER OF A UNIT WHOSE INTEREST WOULD BE AFFECTED].

4 * Sec. 8. AS 34.08.590 is amended by adding a new subsection to read:

5 (d) A unit owner in a planned community that was created before
6 January 1, 1986, is not exempt under AS 34.08.050, and does not col-
7 lect assessments as a planned community and has not formed an asso-
8 ciation or elected officers or an executive board may comply with (a)
9 and (b) of this section by furnishing the purchaser of the unit an
10 affidavit in recordable form

11 (1) stating that assessments are not collected, the last
12 date assessments were collected, if known, the amount of the last
13 assessment, if known, and the reason assessments ceased;

14 (2) stating that an association has not been formed or that
15 no officers or executive board exists; and

16 (3) providing the purchaser a copy of

17 (A) the recorded declaration, if any, and any amend-
18 ment to the declaration;

19 (B) bylaws, rules, and regulations of the association,
20 if any; and

21 (C) a brief narrative description of

22 (i) the real estate comprising the planned commu-
23 nity; and

24 (ii) obligations to pay for real estate taxes,
25 insurance premiums, maintenance, and improvements of the
26 real estate described in the declaration.

27 * Sec. 9. In a condominium created after January 1, 1986, and before
28 the effective date of the amendment to AS 34.08.030 made by sec. 2 of this
29 Act, the provisions of AS 34.08.040 apply to events and occurrences con-

1 cerning the condominium occurring after the effective date of the amendment
2 to AS 34.08.030.