

Offered: 4/11/86  
Referred: Finance

Original sponsor: Finance Committee

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 470 (Judiciary)

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 34.08.010 is amended to read:

10 Sec. 34.08.010. APPLICABILITY GENERALLY. Except as provided in  
11 AS [34.08.020 AND] 34.08.030, this chapter applies to each common  
12 interest community created within the state after January 1, 1986.  
13 The provisions of AS 10.15 and AS 34.07 do not apply to common  
14 interest communities created after January 1, 1986.

15 \* Sec. 2. AS 34.08.030 is amended to read:

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

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

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

5 \* Sec. 4. AS 34.08.040 is amended to read:

6           Sec. 34.08.040. APPLICABILITY TO PREEXISTING COMMON INTEREST  
7           COMMUNITIES. Except as provided in AS 34.08.050, the provisions of  
8           AS 34.08.110, 34.08.120, 34.08.290, 34.08.320(1) - (6) and (11) -  
9           (16), 34.08.420, 34.08.470, 34.08.490, 34.08.510, 34.08.590, 34.08.-  
10          670, 34.08.720, 34.08.730, 34.08.740, and 34.08.990, to the extent  
11          necessary in construing any of those sections, apply to all common  
12          interest communities created in the state before January 1, 1986,  
13          except that the sections apply only with respect to events and circum-  
14          stances occurring after January 1, 1986, and do not invalidate exist-  
15          ing provisions of the declaration, bylaws, or plats or plans of the  
16          common interest communities.

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

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

1 by the declaration, the number of affirmative and negative votes  
2 actually received, the number or percentage of affirmative votes  
3 required to adopt the amendment under the declaration, and any other  
4 matter the petitioner considers relevant to the determination of the  
5 court. The petition must include as exhibits to the petition a copy  
6 of

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

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

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

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

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

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

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

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

14 (6) the amendment is reasonable; and

15 (7) granting the petition is appropriate considering the  
16 circumstances.

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

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

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

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

27 (1) would change the provision in a declaration requiring  
28 the approval of unit owners having more than 50 percent of the votes  
29 in more than one class to vote in favor of an amendment unless more

1 than 50 percent of the unit owners in each affected class of unit  
2 owners approve the amendment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (4) IN THE CASE OF FORECLOSURE UNDER AS 34.20.070, THE

1       ASSOCIATION SHALL GIVE REASONABLE NOTICE OF ITS ACTION TO EACH LIEN  
2       HOLDER OF A UNIT WHOSE INTEREST WOULD BE AFFECTED].

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

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

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

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

15               (3) providing the purchaser a copy of

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

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

20                       (C) a brief narrative description of

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

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

26       \* Sec. 9. In a condominium or cooperative created after January 1,  
27       1986, and before the effective date of this Act, the provisions of  
28       AS 34.08.040 apply to events and occurrences concerning the condominium or  
29       cooperative occurring after the effective date of this Act.

1 \* Sec. 10. AS 34.08.020 is repealed.