

1 IN THE SENATE

BY FAIKS

2

SENATE BILL NO. 338

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to rights and responsibilities

7

created under the Uniform Common Interest Ownership

8

Act; and providing for an effective date."

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

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* Section 1. AS 34.03.070 is amended by adding a new subsection to

11

read:

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(h) A landlord who offers property within a common interest

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community described in AS 34.08 for rent shall provide the tenant with

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a copy of the declaration, bylaws, and rules and regulations of the

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common interest community. The failure of a landlord to provide the

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tenant with copies of the declaration, bylaws, or rules and regula-

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tions under this subsection does not preclude the executive board of

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the common interest community from enforcing provisions of the decla-

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ration, bylaws, or rules and regulations against the tenant.

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* Sec. 2. AS 34.03.130 is amended by adding a new subsection to read:

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(d) The declaration, bylaws, and the rules and regulations of a

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common interest community described in AS 34.08 are enforceable

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against a tenant of a unit owner in the common interest community.

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The executive board of the common interest community shall provide the

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tenant with a copy of the provisions of each declaration, bylaw, or

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rule and regulation with which the common interest community seeks to

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have the tenant comply. A failure of a tenant to comply with a pro-

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vision of a declaration, bylaw, or rule and regulation after copies of

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the declaration, bylaws, or rules and regulations of the common

1 interest community have been provided to the tenant is grounds for
2 eviction of the tenant under AS 34.03.220.

3 * Sec. 3. AS 34.03.220 is amended by adding a new subsection to read:

4 (d) The executive board of a common interest community described
5 in AS 34.08.990 may evict a tenant of a unit owner in the common
6 interest community for violation of the duties imposed on the tenant
7 of a unit owner in a common interest community under AS 34.08.320.
8 The executive board shall send notice of its intent to evict the
9 tenant to the last known address of the unit owner.

10 * Sec. 4. AS 34.03.310(a) is amended to read:

11 (a) Except as provided in (c) and (d) of this section, a land-
12 lord may not retaliate by increasing rent or decreasing services or by
13 bringing or threatening to bring an action for possession after the
14 tenant has

15 (1) complained to the landlord of a violation of AS 34.03.-
16 100;

17 (2) sought to enforce rights and remedies granted the
18 tenant under this chapter;

19 (3) organized or become a member of a tenant's union or
20 similar organization; [OR]

21 (4) complained to a governmental agency responsible for
22 enforcement of governmental housing, wage, price or rent controls; or

23 (5) paid amounts due by the landlord to an association
24 under AS 34.08.320 after demand by the association.

25 * Sec. 5. AS 34.08.040 is amended to read:

26 Sec. 34.08.040. APPLICABILITY TO PREEXISTING COMMON INTEREST
27 COMMUNITIES. Except as provided in AS 34.08.050, the provisions of
28 AS 34.08.110, 34.08.120, 34.08.290, 34.08.320(a)(1) - (6), (11) -
29 (14), and (16) - (18) [34.08.320(a)(1) - (6) AND (11) - (16)],

1 34.08.420, 34.08.470, 34.08.490, 34.08.510, 34.08.590, 34.08.670,
2 34.08.720, 34.08.730, 34.08.740, and 34.08.990, to the extent neces-
3 sary in construing any of those sections, apply to all common interest
4 communities created in the state before January 1, 1986, except that
5 the sections apply only with respect to events and circumstances
6 occurring after January 1, 1986, and do not invalidate existing pro-
7 visions of the declaration, bylaws, or plats or plans of the common
8 interest communities.

9 * Sec. 6. AS 34.08.040 is amended by adding a new subsection to read:
10 (b) Except as provided in AS 34.08.050, the provisions of
11 AS 34.08.255(c), 34.08.320(a)(15), 34.08.375, 34.08.380(d) - (h),
12 34.08.405, 34.08.470(b), and 34.08.485, 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. 7. AS 34.08.255(c) is amended to read:
20 (c) The court may, but is not required to, grant the petition if
21 it finds that
22 (1) the petitioner has given not less than 15 days' written
23 notice of the court hearing to
24 (A) each unit owner in the association;
25 (B) a mortgagee of a mortgage or beneficiary of a deed
26 of trust that is entitled to notice under the provisions of the
27 declaration; and
28 (C) the municipality in which the common interest
29 community is located if it is entitled to notice under the

1 declaration;

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

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

7 (4) in a common interest community with a single class
8 voting structure, unit owners with more than 50 percent of the votes
9 in attendance at a properly noticed meeting voted in favor of the
10 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, who were in attendance at a properly noticed
16 meeting, did vote in favor of the amendment;

17 (6) the amendment is reasonable; and

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

20 * Sec. 8. AS 34.08.320(a) is amended to read:

21 (a) Except as provided in (b) of this section and subject to the
22 provisions of the declaration, the association may [:]

23 (1) adopt and amend bylaws and rules and regulations;

24 (2) adopt and amend budgets for revenues, expenditures, and
25 reserves and collect assessments for common expenses from unit owners;

26 (3) hire and discharge managing agents and other employees,
27 agents, and independent contractors;

28 (4) institute, defend, or intervene in litigation or admin-
29 istrative proceedings or seek injunctive relief for violations of its

1 declaration, bylaws, or rules and regulations in its own name on
2 behalf of itself or two or more unit owners on matters affecting the
3 common interest community;

4 (5) make contracts and incur liabilities;

5 (6) regulate the use, maintenance, repair, replacement, and
6 modification of common elements;

7 (7) cause additional improvements to be made as a part of
8 the common elements;

9 (8) acquire, hold, encumber, and convey in its own name any
10 right, title, or interest to real estate or personal property, except
11 that

12 (A) common elements in a condominium or planned commu-
13 nity may be conveyed or subjected to a security interest only
14 under AS 34.08.430; and

15 (B) part of a cooperative may be conveyed or all or
16 part of a cooperative may be subjected to a security interest
17 only under AS 34.08.430;

18 (9) grant easements, leases, licenses, and concessions
19 through or over the common elements;

20 (10) impose and receive a payment, fee, or charge for the
21 use, rental, or operation of the common elements, other than limited
22 common elements described in AS 34.08.100(2) and (4), and for services
23 provided to unit owners;

24 (11) impose a reasonable charge for late payment of assess-
25 ments and, after notice and an opportunity to be heard, levy a reason-
26 able fine for a violation of the declaration, bylaws, rules, and
27 regulations of the association;

28 (12) impose a reasonable charge for the preparation and
29 recording of an amendment to the declaration, resale certificate

1 required by AS 34.08.590, or a statement of unpaid assessments;

2 (13) provide for the indemnification of its officers and
3 executive board and maintain directors' and officers' liability insur-
4 ance;

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

8 (15) evict the tenant of a unit owner for the failure of

9 (A) the tenant to comply with the declarations, by-
10 laws, or rules and regulations of the association if the failure
11 to comply with the declaration, bylaws, or rules and regulations
12 continues for 30 days after the executive board has provided the
13 tenant with notice of the section of the declaration, bylaws, or
14 rules and regulations that was violated; or

15 (B) the unit owner to pay assessments due to the
16 association if the tenant

17 (i) has been advised of the delinquency of the
18 unit owner, that the tenant may offset from amounts due to
19 the unit owner an amount paid to the association under this
20 paragraph, and that the association may evict the tenant for
21 a failure or refusal to pay the amount due from the unit
22 owner; and

23 (ii) fails within 30 days to make the payment due
24 from the unit owner;

25 (16) exercise any other powers conferred by the declaration
26 or bylaws;

27 (17) [(16)] exercise any other power that may be exercised
28 in the state by a legal entity of the same type as the association;
29 and

1 (18) [(17)] exercise any other power necessary and proper
2 for the governance and operation of the association.

3 * Sec. 9. AS 34.08 is amended by adding a new section to read:

4 Sec. 34.08.375. DUTIES OF THE EXECUTIVE BOARD. (a) Unless the
5 declaration or bylaws of an association impose more stringent stan-
6 dards, the executive board shall review

7 (1) a current reconciliation of the operating accounts of
8 the association on a quarterly basis;

9 (2) a current reconciliation of the reserve accounts of the
10 association on a quarterly basis;

11 (3) the actual reserve revenues and expenses of the current
12 year compared to the budget of the current year on a quarterly basis;

13 (4) an income and expense statement for the operating and
14 reserve accounts of the association on a quarterly basis;

15 (5) the most recent account statement prepared by the
16 financial institution where the association has its operating and
17 reserve accounts at each meeting of the executive board.

18 (b) Unless the declaration or bylaws of an association impose
19 more stringent standards on annual financial reporting, the executive
20 board shall require

21 (1) a compilation as defined by the American Institute of
22 Certified Public Accountants to be performed annually on the books of
23 the association if the association has annual receipts of \$18,000 or
24 less;

25 (2) a review to be performed annually on the books of the
26 association and an audit as defined by the American Institute of
27 Certified Public Accountants to be performed every third year if the
28 association has annual receipts of \$100,000 or less;

29 (3) an annual audit as defined by the American Institute of

1 Certified Public Accountants to be performed on the books of the
2 association if the association has an annual budget in excess of
3 \$100,000.

4 (c) In (b) of this section, "annual receipts" includes each
5 assessment of the association, whether regular, special, or for the
6 operation of the association or for association reserves.

7 (d) An association may not withdraw funds from a reserve account
8 of the association except on the signatures of

9 (1) two members of the executive board; or

10 (2) a member of the executive board and an officer of the
11 association who is not a member of the executive board.

12 (e) In this section

13 (1) an "audit" and a "review" are defined and performed by
14 the standards issued by the American Institute of Certified Public
15 Accountants; and

16 (2) "reserve account" means money that the executive board
17 has identified from its annual budget for use to defray the future
18 repair or replacement of or an addition to a limited common area or a
19 common area of the association.

20 (f) This section applies to each common interest community
21 organized under this chapter.

22 * Sec. 10. AS 34.08.380 is amended by adding new subsections to read:

23 (d) A state law or regulation and a municipal ordinance regulat-
24 ing health and safety apply to the operation of an association.

25 Notwithstanding this subsection, a state law or regulation or a munic-
26 ipal ordinance may not require an association to employ licensed or
27 unlicensed staff in the operation of an amenity operated by the asso-
28 ciation on its property if the amenity is available only to a unit
29 owner or tenant and the guest of a unit owner or tenant of the

1 association.

2 (e) The association may, under AS 28.11, request the removal
3 without notice of a vehicle parked in a marked fire lane, within 15
4 feet of a fire hydrant, in a parking space designated for use by the
5 handicapped, or in a manner that interferes with an entrance to or
6 exit from the common elements of an association or a unit within the
7 association.

8 (f) An association may remove a vehicle parked on the common
9 elements of the association if a sign not less than 17 by 22 inches in
10 size with lettering not less than one inch in height appears at each
11 entrance to the common elements and contains

12 (1) a statement that public parking is prohibited and each
13 vehicle not authorized to park on the common elements will be removed
14 at the owner's expense;

15 (2) a statement that a citation may be issued for the
16 violation; and

17 (3) the telephone number of the police department within
18 the municipality in which the association is located or, if the asso-
19 ciation is not located within a municipality, the telephone number of
20 the state troopers.

21 (g) If the identity of the registered owner of the vehicle is
22 known or readily ascertainable to the association, the association
23 shall, in the case of a removal under (f) of this section, within a
24 reasonable time, notify the registered owner of the removal by first-
25 class mail. If the identity of the registered owner is not known or
26 readily ascertainable, notice shall be furnished to the registered
27 owner under AS 28.11.030(c). In a removal under (f) of this section
28 by an association, the association shall immediately give notice of
29 the removal to the police department of the municipality within which

1 the association is located or, if the association is not located
2 within a municipality, to the state troopers. Notica shall include a
3 description of the vehicle, the license plate number, the address from
4 which the vehicle was removed, and the place to which the vehicle was
5 removed.

6 (h) The association is not liable for damages incurred by the
7 registered owner because of the removal of the vehicle in compliance
8 with (e) - (g) of this section or for damages caused by the removal.
9 Notwithstanding this subsection, the registered owner may recover for
10 damages to the vehicle resulting from the intentional or negligent act
11 of the association arising out of the removal of the vehicle.

12 * Sec. 11. AS 34.08 is amended by adding a new section to read:

13 Sec. 34.08.405. VACANCIES IN THE EXECUTIVE BOARD. (a) If an
14 association is unable to obtain a quorum in the membership of the
15 executive board of the association because the executive board has
16 failed to fill a vacancy in the executive board as it occurs or to
17 call an election for a vacancy caused by the expiration of the term of
18 a member of the executive board, an owner of a unit within the asso-
19 ciation may advise the executive board that the member intends to
20 exercise rights granted under (b) of this section. The notice to the
21 board must be in writing and shall be posted in a conspicuous place
22 within the association.

23 (b) If the executive board has not filled a vacancy or called a
24 meeting of the association for the election of members of the execu-
25 tive board within 30 days after the receipt of the notice given under
26 (a) of this section, the owner of the unit within the association may
27 apply to the superior court for the appointment of a receiver to
28 manage the affairs of the association. The receiver appointed under
29 this section has the powers of the executive board and serves until

1 the vacancies on the executive board sufficient to constitute a quorum
2 ara filled.

3 (c) If a receiver is appointed by the court under this section,
4 the association is responsible for the compensation of the receiver
5 and for court costs and attorney fees.

6 * Sec. 12. AS 34.08.470(b) is amended to read:

7 (b) A lien under this section is prior to all other liens and
8 encumbrances on a unit except (1) a lien and encumbrance recorded
9 before the recordation of the declaration and, in a cooperative, a
10 lien and encumbrance which the association creates, assumes, or takes
11 subject to; (2) a first security interest on the unit recorded before
12 the date on which the assessment sought to be enforced became delin-
13 quent, or, in a cooperative, the first security interest encumbering
14 only the interest of the unit owner and perfected before the date on
15 which the assessment sought to be enforced became delinquent; and (3)
16 a lien for real estate taxes and other governmental assessments or
17 charges against the unit or cooperative. A lien under this section is
18 also prior to all security interests described in (2) of this sub-
19 section if the common expense assessments based on the periodic budget
20 adopted by the association under AS 34.08.460(a) would have become due
21 in the absence of acceleration during the six months immediately
22 preceding institution of each action to collect the assessment or each
23 [AN] action to enforce the lien. This subsection does not affect the
24 priority of a mechanic's or materialman's lien, or the priority of a
25 lien for other assessments made by the association. A lien under this
26 section is not subject to the provisions of AS 09.38.010. For the
27 purposes of this subsection, an "action to collect" includes notifica-
28 tion by certified mail to a mortgagee of record who holds an interest
29 in a unit of the association's claim for unpaid assessments.

1 * Sec. 13. AS 34.08 is amended by adding a new section to read:

2 Sec. 34.08.485. CONTRACTOR AND MATERIALMAN LIENS. (a) A con-
3 tractor performing work that requires licensing and bonding under
4 AS 08.18, that has a contract amount of \$5,000 or more, and that
5 involves the repair, improvement, or maintenance of real estate,
6 personal property, common elements, or limited common elements of an
7 association with a value of more than \$5,000 may not recover for the
8 value of work performed unless, at that time,

9 (1) the contractor had a written agreement with the asso-
10 ciation

11 (A) describing the work to be performed, the services
12 to be rendered, and the materials to be used;

13 (B) the amount due for the work contracted for;

14 (C) the terms of the payment due from the association,
15 including the amount expected to be due periodically for the
16 contractor's payroll associated with the work to be performed;

17 (D) the time of performance; and

18 (E) other matters agreed to between the contractor and
19 the association; and

20 (2) the contractor submits to the association proof of
21 registration and bonding under AS 08.18.

22 (b) If the work performed is satisfactory to the association, it
23 shall pay to the contractor an amount owed by the contractor for wages
24 under a payroll certified by the contractor. The association shall
25 pay the contractor or subcontractor before the end of the next busi-
26 ness day after the submission of the payroll to the association by the
27 contractor or subcontractor.

28 (c) If the work performed is satisfactory to the association,
29 the association shall pay to the contractor an amount owed by the

1 contractor to subcontractors and materialmen according to a list
2 certified by the contractor. Each check prepared by the association
3 in payment of the subcontractor or materialmen under the certified
4 list shall list both the contractor and the subcontractor or
5 materialman.

6 (d) On payment under (b) or (c) of this section by the associa-
7 tion, a subcontractor, an employee of the contractor or a subcontrac-
8 tor, or a materialman may not pursue against the association a right
9 granted by AS 34.35. If the association complies with this section,
10 an employee of a contractor, a subcontractor, or a materialman may not
11 file a claim against the association.

12 (e) As a part of the bidding process, an association may require
13 a contractor to submit a bid bond in the amount of five percent of the
14 bid. On award of the contract, an association may require a contrac-
15 tor to submit a payment and performance bond. An unpaid employee,
16 subcontractor, or materialman may file a claim against the payment and
17 performance bond but not against the association.

18 * Sec. 14. AS 34.35.050 is amended to read:

19 Sec. 34.35.050. LIEN FOR LABOR OR MATERIALS FURNISHED. Except
20 as provided in AS 34.08.485, a [A] person has a lien, only to the
21 extent provided under this chapter, to secure the payment of the
22 contract price if the person

23 (1) performs labor upon real property at the request of the
24 owner or the agent of the owner for the construction, alteration, or
25 repair of a building or improvement;

26 (2) is a trustee of an employee benefit trust for the
27 benefit of individuals performing labor on the building or improvement
28 and has a direct contract with the owner or the agent of the owner for
29 direct payments into the trust;

1 (3) furnishes materials that are delivered to real property
2 under a contract with the owner or the agent of the owner that are
3 incorporated in the construction, alteration, or repair of a building
4 or improvement;

5 (4) furnishes equipment that is delivered to and used upon
6 real property under a contract with the owner or the agent of the
7 owner for the construction, alteration, or repair of a building or
8 improvement;

9 (5) performs services under a contract with the owner or
10 the agent of the owner in connection with the preparation of plans,
11 surveys, or architectural or engineering plans or drawings for the
12 construction, alteration, or repair of a building or improvement,
13 whether or not actually implemented on that property; or

14 (6) is a general contractor.

15 * Sec. 15. AS 34.35.435 is amended to read:

16 Sec. 34.35.435. LIEN FOR WAGES. Except as provided in AS 34,-
17 08.485, when [WHEN] a clerk, accountant, bookkeeper, waiter, waitress,
18 cook, maid, porter, servant, employee, artisan, craftsman, factory
19 operator, mill operator, mechanic, quarryman, common laborer, farm-
20 hand, laborer or performs a service in an office, store, hotel, rooming
21 house, boardinghouse, restaurant, cafe, shop, newspaper plant, fac-
22 tory, quarry, or mill, of any character, or upon a farm, under or by
23 virtue of a contract or agreement, written or verbal, with a person or
24 employer, or an agent, receiver or trustee of the person or employer,
25 in order to secure the payment of the amount due or owing under the
26 contract or agreement, written or verbal, the employee has a first
27 lien upon all products, machinery, tools, fixtures, appurtenances,
28 goods, wares, merchandise, chattels, wagons, carts, or things of
29 value, of whatever character, that are created in whole or in part

1 by the labor or that may be used or useful by the person or may be
2 necessarily connected with the performance of the labor or service,
3 which may be owned by the employer, or an agent, receiver, or trustee
4 of the employer.

5 * Sec. 16. This Act takes effect January 1, 1989.