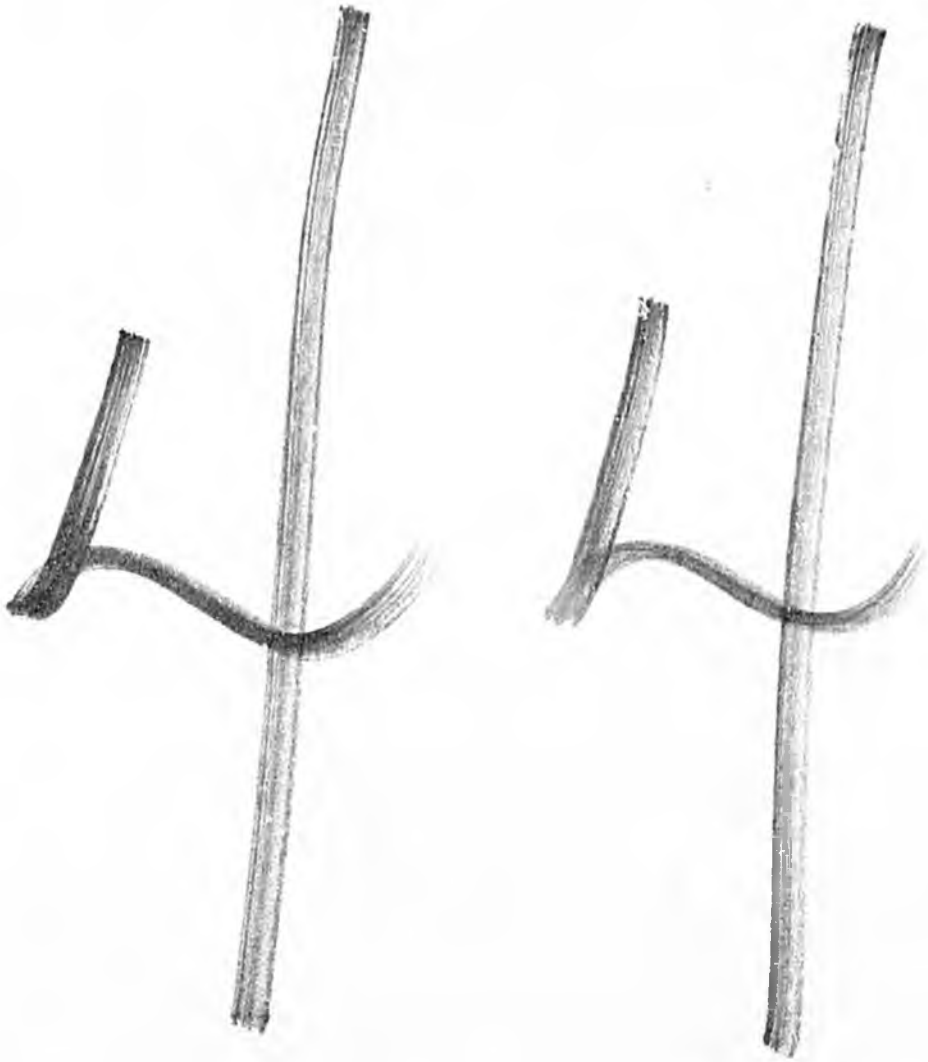
SB



STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS data base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	5/9/85	1:00 pm
" "	5/11/85	1:00 pm
" "	5/12/85	3:00 pm

COMMITTEE REPORT

HOUSE

(7)

4/17/85

FURTHER:

Date: _____

The Committee on JUDICIARY has had CSSB 44 (Jud)

"An Act relating to the Uniform Common Interest Ownership Act; and providing for an effective date."

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for CSSB 44 (JUD) [ ] same title [ ] new title

and recommends it do pass

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

Bradley ✓

A M E N D M E N T

Offered in the HOUSE By Clocksin

TO: CSSB 44(Jud)

Page 71, line 25, after "tenant." insert:

"The failure to give notice as required by this section is a defense to an action for possession and the terms of the tenancy may not be altered during the notice period provided by this subsection."

Page 71, line 28, delete all material after "one year's notice except" through the end of the subsection and insert:

"for one of the following reasons

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

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

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

CONDO/PUD PROJECTS DECLINED

by AHFC

Rep.	Date Turned Down	Project & Address	Reason for Decline
GRUENBERG JENKINS	2/84	Arctic View 740 W. 47th Avenue Anchorage	insufficient documentation
GRUENBERG JENKINS	3/84*	Woronzof 1113 W. Fireweed Ln. Anchorage	owner-occupancy, unacceptable budget delinquencies
PETTYJOHN RIEGER	3/84	Sunrise Terrace Blackberry Anchorage	insufficient documentation
	11/84	Sunrise Terrace	insufficient documentation
PHILLIPS COTTEN	3/84	Chugach View II Shrub Court Anchorage	inadequte budget, ground sinking problems, insufficient documentation
GRUENBERG JENKINS	4/84	Wells Place 200 W. 34th Avenue Anchorage	insufficient documentation
FURNACE PIGNALBERI	5/84	Brookview Turf Court Anchorage	insufficient documentation
FURNACE PIGNALBERI	4/85	Rainbow Terrace PUD Lunar Court Anchorage	inadequate budget, dues collected do not substantiate budgeted amount, amendment to By-Laws unacceptable as it is inconsistent with State Statute
CLOCKSIN UEHLING	4/85	Eastridge IV, Phases I, II, III Lake Otis & 15th Anchorage	insufficient documentation, declarant delinquency, budget & insurance on total project
MARTIN POURCHOT	4/85	Timber Manor E. 12th Anchorage	inadequate budget, deficit not substantiated in proposed budget, high delinquency

*Still ineligible for AHFC financing.

5/7/85

Rep.	Date Turned Down	Project & Address	Reason for Decline
MARTIN POURCHOT	4/85	Contempo One McCarry Street Anchorage	budget unacceptable, inadequate to support expenses
PETTYJOHN RIEGER	3/85	Kandlewood Park Independence Park Anchorage	declarant delinquency, adequate fidelity coverage required
GRUENBERG JENKINS	7/84	Piedmont West Lois Drive Anchorage	inadequate budget, delcarant not paying full assessments, budget AHFC approved not budget Assoc. operated off of, plumbing and heating problems -budget inadequate
	6/83	Piedmont West	same as above
CLOCKSIN UEHLING	3/85	Terrace 21 E. 16th Anchorage	owner-occupancy, budget unacceptable inconsistent financial information, status of construction loan, audit, developer delinquency
	1/84	Terrace 21	same as above
CLOCKSIN UEHLING	4/85	West Bluff W. 7th Avenue Anchorage	inadequate budget, deficit '83, '84 & proposed '85, reserves used as operating, owner-occupancy, inadequate fidelity bond coverage
PEARCE HANLEY	4/85	Forest Park LaHonda Drive Anchorage	budget & financial statement inconsistent, delinquency replacement reserve funds inadequate
	2/84	Forest Park	same as above
	9/83	Forest Park	same as above
PEARCE HANLEY	4/85	Carlton Square W. Northern Lights Anchorage	declarant delinquency
PEARCE HANLEY	1/84*	Campbell Village Dimond Blvd. Anchorage	delinquencies high, deficit, structural repairs needed, budget inadequate

*Still ineligible for AHFC financing

5/7/85

Condo/PUD Projects Declined by AHFC
Page 3

Rep.	Date Turned Down	Project & Address	Reason for Decline
PEARCE HANLEY	1/84*	Endeavor 400 W. 76th Avenue Anchorage	developer retaining common area for business, inconsistent documentation, owner-occupancy
	2/84*	Endeavor	developer using two units as offices after assurances by sponsor and developer and amendment of documents that these units were common areas. insufficient/ inadequte documentation, owner-occupancy, inadequate reserves
FURNACE PIGNALBERI	2/85	Prosperity Prosperity Drive Anchorage	owner-occupancy
PHILLIPS COTTEN	10/84	Victoria Hills II Boundary Avenue Anchorage	owner-occupancy
	9/83	Victoria Hills II	same as above
	3/83	Victoria Hills II	same as above
PETTYJOHN RIEGER	1/84	Kandlewood Independence Park Anchorage	transition problems, insufficient documentation
	2/85	Kandlewood	inadequate budget, deficit in '84 reserves
MARTIN POURCHOT	5/84	Tamarak II & III Reka Drive Anchorage	two separate entities acting as one association, question ownership of pool, compliance with State Statute (legal doc.), unacceptable budget, fidelity bond coverage inadequate
	2/84	Tamarak II & III	
MARTIN POURCHOT	3/85	Santa Fe San Ernesto	budget unacceptable, delinquencies, pre-sale requirement not satisfied
	2/85	Santa Fe	same as above

*Still ineligible for AHFC financing

5/7/85

Condo/PUD Project Declined by AHFC
Page 4

Rep.	Date Turned Down	Project & Address	Reason for Decline
MARTIN POURCHOT	11/84	Santa Fe	developer delinquent ($20,000+), compliance with MOA warning letter, developer delinquency
FURNACE PIGNALBERI	3/85	Cottonwood Village Baxter Road Anchorage	inconsistent documentation, budget vs. income/expenses, delinquencies, inadequate budget
MARTIN POURCHOT	8/84	Nina Plaza 834 North Lane Anchorage	insufficient documentation
CLOCKSIN UEHLING	(1981)	Crestview West 22nd Anchorage	structural problems involving litigation
	6/83	Crestview	inadequate budget, insufficient documentation
	8/83	Crestview	buyer awareness statement regarding pending litigation and possible structural problems
	10/84	Crestview	insufficient documentation
MARTIN POURCHOT	2/85	Russian Jack Park 1600-1700 Russian Jack Dr. Anchorage	insufficient documentation
BOUCHER COLLINS	2/85	Park Forrest Vanguard Anchorage	unaccepable/inadequate budget, insufficient documentation
FURNACE PIGNALBERI	3/85	Spicewood, Phases I & II Northern Lights/Baxter Anchorage	unacceptable budget with regard to projected annual income vs. proposed budget
GRUENBERG JENKINS	3/85	Cedarwood West 47th Anchorage	inadequate budget, '84 deficit in reserves, insufficient documentation
FURNACE PIGNALBERI	9/81	Glacier Estates Glacier St. Anchorage	inadequte budget-reserves & operating

*Still ineligible for AHFC financing

5/7/85

Rep.	Date Turned Down	Project & Address	Reason for Decline
CLOCKSIN UEHLING	2/82	The Fountains E. 7th Avenue Anchorage	owner-occupancy, insufficient reserve funds
	10/80	The Fountains	same as above
	7/82	The Fountains	same as above
BOUCHER COLLINS	9/81	Woodlands East Copperbush Ct. Anchorage Sweetgate Crt	developer contributing share of assessments, excessive delinquencies, budget inadequate, water drainage problems
GRUENBERG JENKINS	6/83	Camai 4600 Cordova St. Anchorage	budget discrepancies
PEARCE HANLEY	7/83*	Lakeshore Towers Lakeshore Drive Anchorage	inadequate budget, foreclosure action against declarant, delinquencies, structure problems, owner-occupancy, incomplete construction
PEARCE HANLEY	10/83	Blackberry, Phase II Blackberry St. Anchorage	insufficient documentation
CLOCKSIN UEHLING	1/84	Birch Hill Nelchina Street Anchorage	insufficient documentation
FURNACE PIGNALBERI	1/84	Chugach View Early View Dr. Anchorage	structural problems/skirting. Were ineligible for a time but have since met conditions for reinstatement. are currently in an eligible for purchase status.
PEARCE HANLEY	3/84	Town West 2900-3100 W. Northern Lights Anch	insufficient documentation regarding $60,000 deficit
GRUENBERG JENKINS	3/85	35th Ave West Condo Anch	owner-occupancy
CLOCKSIN UEHLING	4/85	Admiralty O & P Streets Anch	owner-occupancy, inadequate budget

5/7/85

Condo/PUD Project Declined by AHFC
Page 6

Rep.	Date Turned Down	Project & Address	Reason for Decline
CLOCKSIN UEHLING	10/84	Boardwalk 2nd & Barrow Anch	presale owner-occupancy, declarant's delinquency status
PETTYJOHN RIEGER	1/85	Commodore Park O'Malley Road Anch	owner-occupancy
CLOCKSIN UEHLING	4/85	Crawford Park 140 Eagle St. Anch	owner-occupancy, inadequate budget
FURNACE PIGNALBERI	4/85	Eastside Estates E. 20th Anch	declarant's delinquency status, amend Declaration on declarant paying assessments
GRUENBERG JENKINS	4/85	Kapingen Clay Court Anch	owner-occupancy
FURNACE PIGNALBERI	3/85	Meadowridge Lunar Dr. Anch	declarant's delinquency status, sound problems
BOUCHER COLLINS	4/85	Piper Hill Piper St. Anch	declarant-foreclosure action
PEARCE HANLEY	3/85	Alaska Landings International Airport Rd. Anch	developer delinquency
PEARCE HANLEY	2/84*	Chinook Estates 3055 Telequana Dr. Anch	high delinquency, 110 claims against developer on construction
PEARCE HANLEY	6/84	One South	declarant delinquency, construction deficiencies

*Still ineligible for AHFC financing

5/7/85

Rep.	Date Turned Down	Project & Address	Reason for Decline
BOUCHER COLLINS	3/85	Campbell Creek Park 4511 Folker Anch	unacceptable budget, insufficient documentation
CLOCKSIN UEHLING	4/85	Park Place 1200 I Street Anch	developer delinquencies ($40,000), insufficient documentation, inadequate fidelity bond coverage, '84 deficit-need explanation on how loss will be made up
MARTIN POURCHOT	3/85	The Village Reka Drive Anch	developer delinquencies and subsequent bankruptcy of developers, homeowner delinquencies

Condo/PUD Projects Declined by AHFC
Page 8

Rep.	Date Turned Down	Project & Address	Reason for Decline
MILLER DUNCAN	2/84	Parkshore 800 F St. Juneau	insufficient documentation
MILLER DUNCAN	4/84	Vasha Tongass Blvd/Glacier Hwy Juneau	inadequate budget, replacement reserves showing deficit, insufficient documentation
MILLER DUNCAN	10/81	Glacier View Mendenhall Loop Juneau	inadequate budget, association relies on spec. assm't instead of budgeting for reserves
	6/83	Glacier View	unacceptaule budget
	4/85	Glacier View	unacceptable budget
MILLER DUNCAN	3/85	Mendenhall James Blvd. Juneau	serious homeowner delinquencies
MILLER DUNCAN	9/81	Auke Bay Towers Auke Bay-Juneau	insufficient documentation, non-compliance w/conditions
KOPENEN	2/84	Woodside North PUD Fairbanks	inadequate budget
	3/83	Woodside North PUD	owner-occupancy
	2/83	Woodside North PUD	delinquent assessments
KOPENEN	2/84	Riverside West Dartmouth Fairbanks	insufficient/inadequate documentation, inadequate budget, inadequate insurance information
	4/84	Riverside West	conditional until insurance rewritten
RINGSTAD FRANK	6/84	El Dorado Estates #2 11th Avenue Fairbanks	budget unacceptable, question common area property ownership, two-year operating deficit, reserves spent on operating expenses, need legal doc. amended for common area that was created into residential unit

(cont.)

5/7/85

Rep.	Date Turned Down	Project & Address	Reason for Decline
	10/81	El Dorado Estates #2	budget unacceptable, common area conversion status
PHILLIPS COTTEN	4/85	Eagle River West Eagle River	developer delinquencies, presale requirement
PHILLIPS COTTEN	5/84	Mariner Village Regional Park Eagle River	question status of security locks and intercom systems promised buyers
SUND	2/85	Tongass Heights Ketchikan	owner-occupancy, high delinquency, budget unacceptable
PHILLIPS COTTEN	10/83	Bear Mountain Chugiak	insufficient documentation
DAVIS	3/84	Beaver Springs North Pole	insufficient documentation, need for adequate reserve account, capital working fund not established, inadequate fidelity coverage
	11/83	Beaver Springs	inadequate insurance, inadequate financial statement

HOUSE CS FOR CS FOR SB 44 (JUDICIARY)

BACKGROUND ON BILL

Over a year and a half ago, research was begun on the laws regulating condominiums. The industry was found to be in chaos, primarily due to an outdated, ineffective law - the Horizontal Property Regimes Act which was originally adopted in 1963. A review of the laws in other states concluded that the most comprehensive law available was the Uniform Common Interest Ownership Act.

The Uniform Common Interest Ownership Act (UCIOA) was adopted at the 1982 Annual Meeting of the National Conference of Commissioners on Uniform State Law. UCIOA represents the culmination of the Conference's 9 year effort to offer comprehensive legislation to the states. UCIOA was endorsed by national associations of developers, lenders, title insurers, consumers, realtors, and attorneys.

SB 44 is a modified version of UCIOA and provides needed regulation for condominiums, cooperatives, planned unit developments and timeshares.

WHY IS THIS BILL NEEDED?

Major problems exist in Alaska. A list of condominium projects which have been declined AHFC financing has been provided to all of the Representatives. A review of the reasons that certification was denied, highlights the major problems:

Only condominiums are regulated presently, PUDs, cooperatives and timeshares have no statutory guidelines.

Lack of regulation for reserve accounts and association dues - low balled dues have resulted;

No statutory guidelines are available to govern the transition period from developer control to association control - financial documentation has not been turned over to the association.

No statutory guideline are available for association management

No disclosure requirements exist.

Lack of regulation of timeshares.

No warranties exist.

SB 44 PROVIDES SOLUTIONS TO ALL OF THESE PROBLEMS AND MORE.

SB 44 Review

Article I, Applicability

Applies to non-commercial common interest communities, however, commercial entities may opt in and many will want to because of the great financing and development flexibility available. Preexisting communities are not required to comply with the full Act, but may wish to opt in also.

Article II, Creation, Alteration and Termination of Common Interest Communities

This Article provides assistance to developers in the creation, alteration, expansion, and financing of projects.

Article III, Management of the Common Interest Community

Organization, powers, rights and responsibilities of associations are outlined. Bylaws, meetings, tort and contract liability, insurance, surplus fund, records and more day to day functions and duties are specified.

Article IV, Protection of Purchasers

Numerous provisions are made for consumer protection: disclosures, warranties, promotional material, obligation to complete, recision rights, conversion property, regulation of timeshares, etc. are outlined.

Article V, General Provisions

Separate titles and taxation, applicability of local ordinances, obligation of good faith, definitions

SUPPORTERS OF SB 44

CONSUMER PROTECTION DIVISION OF DEPARTMENT OF LAW

ALASKA ASSOCIATION OF BANKERS

ALASKA PUBLIC INTEREST RESEARCH GROUP

ALASKA ASSOCIATION OF REALTORS

MUNICIPALITY OF ANCHORAGE

ALASKA HOUSING FINANCE CORPORATION

NUMEROUS ASSOCIATION MANAGERS

ANCHORAGE HOMEBUILDERS ASSOCIATION

NUMEROUS UNIT OWNERS

ALASKA TRAILOR COURT ASSOCIATES

THE FOLLOWING STATE AGENCIES ARE SUPPORTIVE OF THE SECTIONS WHICH AFFECT THEIR AREA OF REVIEW

STATE RECORDER
STATE ASSESSOR
DIVISION OF BANKING, SECURITIES & CORPORATIONS

Sec. 34.08.270 RIGHTS OF SECURED AND UNSECURED LENDERS.

(a) A financial institution (including commercial banks, mutual savings banks, savings and loan associations, credit unions and mortgage companies) when acting as an ordinary money lender (whether secured or not) and providing financing

(1) for any common interest subject to the provisions of this Chapter; or

(2) to any declarant, unit owner or purchaser for that person's interest subject to the provisions of this chapter,

shall not be liable under this chapter to any person for any act, omission, warranty, product or structural defect, obligation, breach of contract or other duty arising from the common interest or interests so financed.

(b) For purposes of this section "acting as an ordinary money lender" means any reasonable action (including, but not limited to, property inspections, review of public offering statements, approval of declarations, plats and construction plans and requiring proof of compliance with laws or codes) to protect a lender's security interest or otherwise assure the proper use of, or repayment of its loan. No lender acts as an ordinary money lender when it is an affiliant of the declarant or possesses a direct equity interest (other than those foreclosed upon) in the promotion, development, and sale of a common interest or interests.

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

(1) deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board

(2) prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceeding;

(3) prevent an insurance trustee or the association from receiving and distributing insurance proceeds except under AS 34.08.440.

0889M

CS SB 44 (JUDICIARY)
UNIFORM COMMON INTEREST OWNERSHIP ACT

Maureen Weeks Halford's Off. Liz Hickerson [redacted] - 274-1426 (777 Scan)
— Don Buck - Teleconference
Conn. Condo Man

CS SB 44 (Jud)
Sectional Analysis

This bill creates a new chapter to AS 34, entitled Common Interest Ownership Act, and contains comprehensive provisions designed to unify and modernize the law of common interest communities such as condominiums, cooperatives, planned unit developments, and time shares. Presently, only condominiums are regulated by state law under the Horizontal Property Regimes Act, AS 34.07, which was adopted in 1963. Not only is the Horizontal Property Regimes Act dated, it does not effectively address problems such as: creation, alteration and termination of common interest communities; management of the common interest community; protection of purchasers; warranties; unit boundaries; powers and duties of associations; and numerous other important matters which arise out of the creation, marketing and ownership of common interest property.

The Uniform Common Interest Ownership Act (UCIOA) was adopted at the 1982 Annual Meeting of the National Conference of Commissioners on Uniform State Laws. UCIOA represents the culmination of the Conference's 9 year effort to offer comprehensive legislation to the states which provides a common structural and regulatory scheme equally applicable to all three forms of common ownership. Nearly without exception, UCIOA achieves the goal of uniformity among all three forms of ownership by consolidating the Uniform Condominium Act, Uniform Planned Community Act and the Model Real Estate Cooperative Act.

ARTICLE I. APPLICABILITY

This chapter applies to all common interest communities created in Alaska after the effective date of this act (January 1, 1986). The Alaska Cooperative Corporation Act and the Horizontal Property Regimes Act do not apply to common interest communities created after January 1, 1986. Exclusively nonresidential common interest communities are only subject to Sections 34.08.720, 34.08.730 and 34.08.740 of this chapter, unless they elect to be subject to the entire chapter.

Exceptions exist to the general rule of applicability:

1. A common interest community created prior to the adoption of this chapter may elect, under AS 34.08.060, to have the provisions of this chapter apply. Except for preexisting small cooperatives and planned communities which are not subject to development rights, certain provisions under AS 34.08.040, apply automatically to events and circumstances occurring after the effective date of this act, but do not invalidate existing provisions of declarations, bylaws, or plats or plans.

Provisions that automatically apply include: separate titles and taxation, applicability of local ordinances, regulations and building codes, eminent domain, construction and validity of declaration and bylaws, description of units, merger or consolidation, powers of unit

owners' association, tort and contract liability, lien for assessments, association records, resales, effect of violation on rights of action, and definitions.

2. Small cooperatives (no more than 12 units) created after the effective date of this act, are subject only to the provisions regarding local ordinances, regulations and building codes and eminent domain, unless:

future development right are retained or financing through AHFC is utilized, or,

the cooperative's declaration makes the entire chapter applicable.

3. Small (no more than 12 units and not subject to any development rights or AHFC financing) and limited expense liability common interest communities (as measured by the size of its common expense assessments) created after the effective date of this act, are subject only to provisions relating to separate titles and taxation, local ordinances, regulation and building codes, and eminent domain, unless the declaration provides that the entire chapter applies.

ARTICLE II. CREATION, ALTERATION, AND TERMINATION OF COMMON INTEREST COMMUNITIES.

Sec. 34.08.090. CREATION OF COMMON INTEREST COMMUNITIES. Creation of common interest communities is accomplished by recording a declaration in each recording district in which a portion of the common interest community is located, and indexing in the grantee's and grantor's index. In cases of cooperatives, the declaration must also convey the real estate to the association. In cases of condominiums, substantial structural completion is also required before the condominium is created.

Sec. 34.08.100. UNIT BOUNDARIES. Except as may be provided in a declaration, unit boundaries for common elements and individual units are defined.

Sec. 34.08.110. CONSTRUCTION AND VALIDITY OF DECLARATION AND BYLAWS. Construction and validity of the declaration and bylaws are established. All provisions of the declaration and bylaws are severable. In the event of a conflict between the declaration and the bylaws, the declaration prevails, unless the declaration is inconsistent with this chapter. Title to a unit and common elements is not unmarketable or otherwise affected if the declaration insubstantially fails to comply with this chapter.

Sec. 34.08.120. DESCRIPTION OF UNITS. Sufficient legal description of a unit is detailed.

Sec. 34.08.130. CONTENTS OF DECLARATION. The required contents of a declaration are itemized under this section.

Sec. 34.08.140. LEASEHOLD COMMON INTEREST COMMUNITIES. This section sets out provisions and requirements concerning leasehold common interest communities. Leases which may result in terminating the common interest community or reducing its size, must be recorded. Lessors of those leases in condominiums or planned communities must sign the declaration. Required contents of the declaration are itemized. After the declaration for a leasehold condominium or planned community is recorded, the leasehold interest of a unit owner who timely pays rent and complies with relevant covenants may not be terminated. A unit owner's leasehold interest in a condominium or planned community is not affected by failure of any other person to pay rent or fulfill any other covenant.

The acquisition of the leasehold interest of a unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests, unless the leasehold interest of all unit owners subject to that reversion or remainder are acquired. If the number of units in a common interest community are decreased upon expiration or termination of a lease, the allocated interest must be reallocated and confirmed by an amendment to the declaration.

Sec. 34.08.150. ALLOCATION OF ALLOCATED INTERESTS. The required allocation of allocated interests of each unit (common elements, common expenses of the association, and votes in the association) for condominiums, cooperatives and planned communities are outlined and must be included in the declaration. Formulas used to establish or reallocate allocations of interest must be included in the declaration. The allocation of votes may be different depending upon the subject of the vote.

In a condominium, the common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void. In a cooperative, any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an ownership interest in the association made without the possessory interest in the unit to which that interest is related is void.

Sec. 34.08.160. LIMITED COMMON ELEMENTS. The declaration must specify to which unit or units each limited common element is allocated. An allocation may not be altered without the consent of the affected unit owners. Unless the declaration provides otherwise, a limited common element may be reallocated by an amendment to the declaration, copy to the association and proper recordation. A common element not previously allocated as a limited common element must be allocated according to the declaration. The allocations must be made by amendments to the declaration.

Sec. 34.08.170. PLATS AND PLANS. Plats and plans are a part of the declaration and are required for condominiums and planned communities, but not for cooperative. Items to be included in plats and plans are outlined.

Sec. 34.08.180. EXERCISE OF DEVELOPMENT RIGHTS. This section generally describes the method by which any development rights may be exercised. The development process may continue only within the self-determined constraints originally described by the declarant. Amendments with specific information to the declaration are required to be prepared, executed and recorded. Plats and plans or new certifications must be recorded for condominiums or planned communities.

If the declaration provides that all or a portion of the real estate is subject to a right of withdrawal the following limits apply:

> if all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser; and
>
> if any portion is subject to withdrawal, it may not be withdrawn after a unit in that portion has been conveyed to a purchaser.

Sec. 34.08.190. ALTERATIONS OF UNITS. Permissible alterations of the interior of a unit and impermissible alterations of the exterior of a unit and the common elements are detailed under this section. These rules may be varied by the declaration.

Sec. 34.08.200. RELOCATION OF BOUNDARIES BETWEEN ADJOINING UNITS. Subject to the provisions of the declaration and other provisions of law, boundaries between adjoining units may be altered by an amendment to the declaration upon application to the association by the owners of those units. Any reallocation of allocated interests must be specified in the application and determined reasonable by the executive board.

Sec. 34.08.210. SUBDIVISION OF UNITS. Unless subdivision of the units is expressly permitted by the original declaration, a unit may not be subdivided, unless the declaration is amended to permit it.

Sec. 34.08.220. EASEMENT FOR ENCROACHMENTS. If the physical boundaries of any unit or common element encroach on any other unit or common element, an easement exists. The easement does not effect liability that may exist.

Sec. 34.08.230. USE FOR SALES PURPOSES. This section prescribes the circumstances under which portions of the common interest community - either units or common elements - may be used for sales offices, management offices, or models. The declarant must describe the right to maintain such offices in the declaration. This section is subject to the provisions of other state law and to local ordinances.

Sec. 34.08.240. EASEMENT RIGHTS. This section grants to a declarant an easement across the common elements which may be reasonably necessary for the discharging of the declarant's obligations or exercising of special rights, and is subject to any restrictions in the declaration. This section also grants unit owners in a planned community an easement for access, support and enjoyment in the common elements, but these rights may be limited by the declaration.

Sec. 34.08.250. AMENDMENT OF DECLARATION. This section recognizes that the declaration may be amended by various parties at various times in the life of the project. The basic rule is that the declaration , including the plats and plans, may only be amended by a vote of 67% of the unit owners.

The declaration may be amended by a declarant upon exercising any development right or by the association in cases of eminent domain, reallocations following the termination or expiration of a lease, common element reallocated as limited common elements, relocation of boundaries between adjoining units, or subdivision of units. Unit owners may amend a declaration in cases of reallocation of limited common elements, relocation of boundaries between units, subdivision of units, or termination of common interest community.

A declarant is not permitted to use any device, such as powers of attorney executed by purchasers at closing, to circumvent requirements of unanimous consent under subsection (d). Each amendment to the declaration must be properly prepared, executed, recorded, certified and indexed.

Sec. 34.08.260. TERMINATION OF COMMON INTEREST COMMUNITY. As a general rule, 80% of the votes in the association is required for termination of a project. The declaration may require a larger percentage of the votes and in a nonresidential project a smaller percentage is permitted. A termination agreement is effective only upon recordation, and may provide that all of the common elements and units of the common interest community be sold. Until the sale has been concluded and the proceeds distributed in accordance with this section, the association continues in existence with all powers it had before termination.

Calculations and priorities for creditors which might result upon termination of a common interest community are outlined. This involves competing claims of first mortgage holders on individual units, other secured and unsecured creditors of individual unit owners, judgment creditors of the association, creditors of the association to whom a security interest in the common elements has been granted and unsecured creditors of the association. Different treatment for these interest is provided depending upon the type of common interest community involved.

Sec. 34.08.270. RIGHTS OF SECURED LENDERS. A lender's security may be dramatically affected by acts of the association. For that reason this section permits the declaration to provide that lenders ratify specified actions of the association. No requirement for approval may operate to:

1. prohibit control over the general administrative affairs of the association;

2. prevent the association or executive board from commencing, intervening in, or settling any litigation or proceeding; or,

3. prevent any insurance trustee or the association from receiving and distributing any insurance proceeds except as provided under

this chapter.

Sec. 34.08.280. MASTER ASSOCIATIONS. It is common in large or multiphased condominiums or planned communities for the declarant to create a master or umbrella association which provides management services or decision-making functions for a series of smaller projects. This section details the requirements of a master association. Generally, the powers of a unit owners' association may only be exercised by, or delegated to, a master association if the declaration for the common interest community permits that result. Provisions on notice, voting, quorums, records, meetings and other matters which apply to the unit owner's association would apply to a master association.

Sec. 34.08.290. MERGER OR CONSOLIDATION OF COMMON INTEREST COMMUNITIES. There may be circumstances where common interest communities may wish to merge or consolidate their activities by the creation of a single common interest community; this section provides for that possibility. A merger or consolidation agreement must be prepared, executed, recorded and certified, and must provide for the reallocations of the allocated interests in the new association.

Sec. 34.08.300. ADDITION OF UNSPECIFIED REAL ESTATE. This section was designed to allow developers the ability to add after-acquired parcels of real estate to planned communities. This power is available only if the declarant makes clear in the original declaration that this development right has been reserved. The declarant may impose his/her own time limit on the period during which this development right may be exercised. To foreclose the possibility of an increase in the density of the project beyond that which was originally contemplated, the number of units is limited to the amount specified in the original declaration and the amount of real estate added may not exceed 10% of the real estate originally subjected to the declaration.

ARTICLE III: MANAGEMENT OF THE COMMON INTEREST COMMUNITY.

Sec. 34.08.310. ORGANIZATION OF UNIT OWNERS' ASSOCIATION. A unit owners' association must be organized no later than the date the first unit in the common interest community is conveyed. The first purchaser of a unit is entitled to have in place the legal structure of the unit owners' association. The existence of the structure clarifies the relationship between the developer and other unit owners and makes it easy for the developer to involve unit owners in the governance of the common interest community even during a period of declarant control.

Sec. 34.08.320. POWERS OF UNIT OWNERS' ASSOCIATION. Subject to the provisions of the declaration, the powers of the association are enumerated under this section, and include, the right to: adopt and amend bylaws, rules, regulations, budgets; collect assessments; hire and discharge managing agents, employees, agents, contractor; institute, defends or intervene in litigation; make contracts and incur liabilities; regulate the common elements; acquire, hold, encumber and convey right, title or interest to real estate or personal property; grant easements, leases, licenses and concessions through or over the

common elements; and assign its right to future income. The declaration may extend the powers of the association.

Sec. 34.08.330. EXECUTIVE BOARD MEMBERS AND OFFICERS. Except as provided in the declaration, bylaws, or other provisions of this chapter, the executive board may act in all instances on behalf of the association and are liable as fiduciaries of the unit owners with respect to their actions or omissions as members of the board. A high standard of duty is imposed on the board members because they are vested with great powers over the property interests of unit owners. The duties and powers of the board members and officers are listed. Highlights include:

adoption of proposed budgets and presentation to the unit owners for ratification;

termination of declarant control no later than the earlier of:
60 days after conveyance of 75% of the units,
2 years after all declarants have ceased to offer units for sale, or
2 years after any right to add new units was last exercised.

Sec. 34.08.340. TRANSFER OF ASSOCIATION CONTROL. Before, and not more than 60 days after the termination of declarant's control, the declarant shall relinquish control of the common interest community and the unit owners shall accept control. At this time the declarant must deliver to the community all property of the unit owners and the common interest community held or controlled by the declarant. A list of items that must be transferred is provided. The records must be reviewed by an independent certified public accountant. Before the transfer an inspection of the common areas and limited common areas must be completed by a certified architect or engineer. The transfer of control to the association shall be based upon the declarant's obligation to complete all repairs and finish all incomplete work within a reasonable time after transfer.

Sec. 34.08.350. TRANSFER OF SPECIAL DECLARANT RIGHTS. This section deals with the manner in which obligations and liabilities imposed upon a declarant by this chapter are transferred to a third party by a transfer of the declarant's interest in a common interest community. This section strikes a balance between the obvious need to protect the interests of unit owners and the equally important need to protect innocent successors to the declarant's rights, especially persons such as mortgagees. The general scheme of the section is to impose upon a declarant continuing obligations and liabilities for promises, acts, or omissions undertaken during the period that he/she was in control of the community, while relieving a declarant, who transfers all or part of his/her special declarant rights in a project, of the responsibilities of a successor over whom he/she has no control.

Sec. 34.08.360. TERMINATION OF CONTRACTS AND LEASES OF DECLARANT. This section deals with a common problem in the development of common interest community projects: the temptation on the part of the developer, while in control of the association, to enter into, on behalf

of the association, long-term contracts and leases with himself/herself or with an affiliated entity. Management and employment contracts, leases of recreational or parking areas or facilities; other contracts or lease between the association and a declarant or an affiliate of a declarant; or any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the existing circumstances may be terminated.

Sec. 34.08.370. BYLAWS. The bylaws of an association must provide: for the number of members of the executive board, and titles of the officers of the association; for the election of the officers of the association; for the qualifications, powers, and duties, terms of office and manner of electing and removing executive board member and officers and filling vacancies; which, if any, of its powers the executive board or officers may delegate; which of its officers may prepare, execute, certify and record amendments to the declaration; for a method of amending the bylaw; and other matters allowable under the declaration.

Sec. 34.08.380. UPKEEP OF COMMON INTEREST COMMUNITY. In the absence of any provision in the declaration, maintenance responsibility follows ownership of the unit or rests with the association in the case of common elements. Limited common elements are treated as common elements, unless the declaration provides otherwise.

Sec. 34.08.390. MEETINGS. A meeting of the association must be held at least once each year. Other special meetings may be held. Notice of meetings must be given to all unit owners and must state the items on the agenda.

Sec. 34.08.400. QUORUMS. Unless the bylaws provide otherwise, a quorum is present throughout a meeting if persons entitled to cast 20% of the votes for election of the board are present in person or by proxy at the beginning of the meeting. Unless the bylaws specify a larger percentage, a quorum is considered present throughout a meeting of the board if persons entitled to cast 50% of the votes on the board are present at the beginning of the meeting.

Sec. 34.08.410. VOTING AND PROXIES. Votes allocated to a unit may be cast under a proxy duly executed by a unit owner. Other provisions regarding proxies are included. Provisions for lessee voting is included. Votes allocated to a unit owned by the association may not be cast.

Sec. 34.08.420. TORT AND CONTRACT LIABILITY. This section provides that any action in tort or contract arising out of acts or omissions of the association shall be brought against the association and not against the individual unit owners. The association or any unit owner has a right of action against the declarant for any losses suffered as a result of an action based upon a tort or breach of contract arising during any period of declarant control.

Sec. 34.08.430. CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS. A condominium or planned community association may sell or encumber

portions of the common elements and a cooperative association may sell part, or encumber all of the cooperative.

Sec. 34.08.440. INSURANCE. The association shall maintain, to the extent reasonably available, property and liability insurance on the common elements. Association insurance on "stacked" units is required.

Sec. 34.08.450. SURPLUS FUNDS. Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of common expenses and reserves must be paid or credited to the unit owners proportionately.

Sec. 34.08.460. ASSESSMENTS FOR COMMON EXPENSES. Assessments must be made at least annually, and based on a budget adopted at least annually by the association. Assessment rules are provided. Any common expense caused by the misconduct of any unit owner may be assessed by the association against that unit exclusively.

Sec. 34.08.470. LIEN FOR ASSESSMENTS. To ensure prompt and efficient enforcement of the association's lien for unpaid assessments, such liens enjoy statutory priority over all other liens and encumbrances except those recorded prior to the recordation of the declaration, those imposed for real estate taxes or other governmental assessments or charges against the unit, and first security interests recorded before the date the assessment became delinquent. As to first security interest the association's lien does have priority for 6 months' assessments based on the periodic budget. A significant departure from existing practice, the 6 months' priority for the assessment lien strikes an equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the security interests of lenders. If the lender wishes, an escrow for assessments can be required. Other foreclosure provisions are included.

Sec. 34.08.480. OTHER LIENS. Provisions are included for other liens with special procedures and requirements for condominiums, planned communities and cooperatives.

Sec. 34.08.490. ASSOCIATION RECORDS. The association shall keep sufficiently detailed financial records and these must be available for reasonable examination. Association records in the possession of managers, agents, accountants, or any other person under contract with the association, must be returned to the association within 5 days of the termination of such contract.

Sec. 34.08.500. ASSOCIATION AS TRUSTEE. This section outlines the relationship between third persons dealing with the association.

ARTICLE IV: PROTECTION OF PURCHASERS

Sec. 34.08.510. APPLICABILITY. This section permits waiver or modification of Article IV protections in common interest communities where all units are restricted to nonresidential use. Public offering statements and resale certificates are not required on:

gratuitous disposition of a unit;

disposition pursuant to court order;

disposition by a government or governmental agency;

disposition by foreclosure;

disposition to a dealer;

disposition that may be canceled at any time and for any reason by the purchaser without penalty; or,

disposition of a unit in a planned community if the declaration limits the maximum annual assessment of any unit to $300 and if the declarant has a good faith belief that the stated maximum will be sufficient to pay the expenses of the association.

Sec. 34.08.520 LIABILITY FOR PUBLIC OFFERING STATEMENT REQUIREMENTS. This section permits declarant to transfer responsibility for preparation of a public offering statement to successor declarants or dealers, provided the declarant furnishes the information needed by the successor or dealer to complete the statement. The person who prepares the public offering statement is liable for his/her own misrepresentations and material omissions. A person who delivers a public offering statement prepared by others is responsible for any such deficiencies only to the extent he knows or reasonably should have known of them.

Sec. 34.08.530. PUBLIC OFFERING STATEMENTS GENERALLY. This section protects the purchaser by giving him/her an opportunity to understand the nature of the unit which is being purchased. A lengthy list of information must be provided to each purchaser before a contract is signed.

Sec. 34.08.540. COMMON INTEREST COMMUNITIES SUBJECT TO DEVELOPMENT RIGHTS. This section requires disclosure in the public offering statement of the manner in which the declarant's exercise of development rights may affect purchasers who acquire units before those rights have been full exercised. The purpose is to put the purchaser on notice.

Sec. 34.08.550. TIME SHARES. This section requires additional disclosure in the public offering statement for ownership or occupancy of any units in time shares.

Sec. 34.08.560. COMMON INTEREST COMMUNITIES CONTAINING CONVERSION PROPERTY. In the case of common interest community containing conversion property, the disclosure of additional information relating to the condition of this property is required in the public offering statement. This is because of the difficulty inherent in a single purchaser attempting to determine the condition of what is likely to be older property being renovated for the purpose of common interest community sales.

Sec. 34.08.570. COMMON INTEREST COMMUNITY SECURITIES. The purpose of this section is to permit the declarant to file or deliver, in lieu of a

public offering statement specifically prepared to comply with the provision of this chapter, the prospectus filed with and distributed pursuant to the regulation of the U. S. Securities and Exchange Commission. A security interest in a common interest community is not subject to the registration requirements of AS 45.55.

Sec. 34.08.580. PURCHASER'S RIGHT TO CANCEL. This section provides a "cooling off" period for purchasers. Purchasers must be given a public offering statement and all amendments prior to the time that the unit is conveyed. If there is a contract for the sale of the unit, these documents must be provided not later than the date of the contract. Any amendments to the public offering statement prepared between the date of any contract and the date of conveyance must be provided to the purchaser. Unless the purchaser is given the public offering statement more than 15 days before execution of a contract, the purchaser may cancel the contract within 15 days after first receiving it.

Sec. 34.08.590. RESALE OF UNITS. In the case of resale of a unit by a private unit owner who is not a declarant or a person in the business of selling real estate, a public offering statement need not be provided. However, before the execution of any contract of sale, a copy of the declaration, bylaws, and rules and regulation of the association and a variety of fiscal, insurance and other information concerning the common interest community and the unit must be provided.

Sec. 34.08.600. ESCROW OF DEPOSITS. This section applies to the sale by persons required to furnish public offering statements of residential units and of nonresidential units unless waived. It does not apply to resales of units between private parties.

Sec. 34.08.610. RELEASE OF LIENS. In the case of a sale of a unit where a delivery of a public offering statement is required, a seller, before conveying a unit, shall record of furnish to the purchaser releases of all liens. Exceptions are provided for real estate that a declarant has a right to withdraw from the common interest community.

Sec. 34.08.620. CONVERSION PROPERTY. This section is an attempt to strike a fair balance between the competing interests of rental tenants and prospective owners. When a declarant decides to convert a property to common interest ownership, 180 days notice of the conversion with a public offering statement must be given to the residential tenants and subtenants. If the conversion property consists of a mobile home park notice of the conversion and delivery of the public offering statement must be provided no later than one year before the tenant and any subtenant in possession is required to vacate. If the building or mobile home park will be converted to residential use, the tenants must also be given a opportunity to purchase their units. The declarant is not required to offer residential tenants the right to purchase commercial units or to offer to sell to the tenants if the dimensions of their previous apartment have been substantially altered.

Sec. 34.08.630. EXPRESS WARRANTIES OF QUALITY. Expectations of the purchaser created by the particular conduct (facts, promises, rights, models, descriptions, etc.) of the declarant in connection with the inducement of the sale create express warranties of quality. This is

based on the principle that once it is established that the declarant has acted to create particular expectations in the purchaser, warranty should be found unless it is clear that, prior to the time of final agreement, the declarant has negated the conduct which created the expectation. Statement of mere opinion or commendation of the real estate or its value does not create a warranty.

Sec. 34.08.640. IMPLIED WARRANTIES OF QUALITY. The principal warranty imposed under this section is that of suitability of both the unit and common elements for ordinary uses of real estate of similar type, and of quality of construction. Both of these warranties are imposed only against declarants and dealers and not against unit owners selling their units to others.

Sec. 34.08.650. EXCLUSION OR MODIFICATION OF IMPLIED WARRANTIES OF QUALITY. Under this section implied warranties of quality may be disclaimed, however, the disclaimer to each defect or failure must be in a signed instrument. This is designed to insure that the declarant sufficiently calls each defect or failure to the purchaser's attention and that the purchaser has the opportunity to consider the effect of the particular defect or failure upon the bargain.

Sec. 34.08.660. STATUTE OF LIMITATIONS FOR WARRANTIES. Unless otherwise agreed to in a separate instrument executed by the purchaser, breach of any warranty obligations must be brought within 6 years after the cause of action arises.

Sec. 34.08.670. EFFECT OF VIOLATIONS ON RIGHTS OF ACTION. This section provides a general cause of action or claim for relief for failure to comply with this chapter by either a declarant or any other person subject to the chapter's provisions.

Sec. 34.08.680. LABELING OF PROMOTIONAL MATERIAL. This section requires the labeling of improvements depicted on promotional material to assure that purchasers are not deceived about improvements the declarant intends to make.

Sec. 34.08.690. DECLARANT'S OBLIGATION TO COMPLETE AND RESTORE. Except for improvements labeled "NEED NOT BE BUILT", the declarant must complete all improvements depicted on plans, representations, and promotional materials. The declarant is also liable for prompt repair and restoration of the common interest community following the exercise of any rights reserved or created to exercise a development right, alter units, relocate boundaries, subdivide, use units or common elements for sales purposes or exercise of easement rights.

Sec. 34.08.700. SUBSTANTIAL COMPLETION OF UNITS. The purpose of this section is to assure that the declarant is not able to obtain use of the purchaser's money until the purchaser is able to get a completed unit.

ARTICLE V. GENERAL PROVISIONS.

Sec. 34.08.710. VARIATION BY AGREEMENT. This chapter is generally designed to provide great flexibility in the creation of common interest

communities, and therefore this section permits the parties to vary many provisions. In many instances, however, provisions of the chapter may not be varied because of the need to protect purchasers, lenders, and declarants. This section adopts the approach of prohibiting variation by agreement except in those cases where it is expressly permitted by the terms of the chapter.

Sec. 34.08.720. SEPARATE TITLES AND TAXATION. A unit owner's interest in cooperatives is real estate. In condominiums or planned communities, each unit and its interest in the common elements constitutes a separate parcel of real estate. Each unit must be separately taxed and assessed. Any portion of the common elements for which the declarant has reserved any development right must be separately taxed and assessed against the declarant. If there is no unit owner other than a declarant, the real estate comprising the common interest community may be taxed and assessed in any manner provided by law.

Sec. 34.08.730. APPLICABILITY OF LOCAL ORDINANCES, REGULATIONS, AND BUILDING CODES. The purpose of this section is to resolve the relative roles of the state and local communities in regulating the creation of common interest communities. The underlying concept is to make clear that the local government has a legitimate interest in regulating the use of real estate, in accordance with established zoning, building codes and similar practices, and that such practices continue to have equal applicability to common interest communities.

Sec. 34.08.740. EMINENT DOMAIN. The provisions of this chapter is not intended to supplant the usual rules of eminent domain but merely to supplement those rules in addressing the unique problems which eminent domain raises in the context of a common interest community.

Sec. 34.08.750. SUPPLEMENTAL GENERAL PRINCIPLES OF LAW APPLICABLE. This chapter displaces existing law relating to common interest communities and other law only as stated by specific sections and by reasonable implication therefrom. Unless specifically displaced, common law rights are retained.

Sec. 34.08.760. CONSTRUCTION AGAINST IMPLICIT REPEAL.

Sec. 34.08.770. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

Sec. 34.08.780. SEVERABILITY.

Sec. 34.08.790. UNCONSCIONABLE AGREEMENT OR TERM OF CONTRACT. Upon finding that a contract or contract clause was unconscionable at the time the contract was made, a court may refuse to enforce the contract in whole or part.

Sec. 34.08.800. OBLIGATION OF GOOD FAITH. This section sets forth a basic principle running throughout this chapter: in transactions involving common interest communities, good faith is required in the performance and enforcement of all agreements and duties.

Sec. 34.08.810. REMEDIES TO BE LIBERALLY ADMINISTERED.

Sec. 34.08.820. ADJUSTMENT OF DOLLAR AMOUNTS. Calculation are outlined for adjustment of dollar amounts discussed in other sections.

Sec. 34.08.830. TRANSFER OF A UNIT IN A COOPERATIVE. If a unit in a cooperative is transferred by the unit owner the interest in the unit that is transferred is the right to possession of the unit under a proprietary lease coupled with the allocated interest of the unit. The association's interest in the unit is not affected by the transfer.

Sec. 34.08.990. DEFINITIONS.

Sections 2 and 3 make necessary revisions to other sections of Title 34.

NOTE: Under the proposed committee substitute, the Horizontal Property Regimes Act is not repealed. This is due to the fact that condominiums now in existence were formed under the old act and will continue to be regulated in part under that law. Unless exisiting declarations are amended to provide regulation under the Common Interest Ownership Act, only future occurrences or actions after the effective date of this chapter are governed by this new chapter.

Section 5 makes this act effect January 1, 1986.

The following individuals, agencies, associations are on record in support of SB 44.

ALASKA HOUSING FINANCE CORPORATION - Betty Cook

CONSUMER PROTECTION DIVISION OF DEPARTMENT OF LAW - Linda O'Bannon

ALASKA ASSOCIATION OF REALTORS - Bob Arwezon

Wiley Brooks, Certified property manager of six common interest communities

RE-MAX of Eagle River Realtors, 17 realtors

Homebuilders Association - Fred Ferrara, President of Alaska Evaluation Services

Bill Lulay / Marston Properties, property manager - 13 assoc.

The following state agencies are supportive of the sections affecting their area of review:

State Recorder - Rose Ferren
State Assessor - Michael Worley
Division of Banking, Securities and Corporations - Willis Kirkpatrick

Alaska HOUSING FINANCE CORPORATION

February 15, 1985

Ms. Elizabeth J. Hickerson
Senior Advisor
Alaska State Legislature
1024 W. 6th Avenue, Suite #203
Anchorage, AK 99501

Dear Ms. Hickerson:

In response to your January 28, 1985, letter to Denna Cline:

1. AHFC currently finances 7715 loans in condominiums and PUD's, totaling $614,232,289.

2. Of those 7715, 168 loans are in a delinquent status. This includes REO's and foreclosures. The 168 loans total $12,745,425.

3. AHFC has encountered "low balled" association budgets. We generally will require bids to be obtained and a more realistic budget drawn up.

4. The problems AHFC encounters are quite varied. The most common problems relate to transfer of ownership from the developer to the association, lack of home owner participation, and collection of delinquent association dues.

Please let us know if you need any additional information.

Sincerely,

Betty M Cook

Betty M. Cook
Mortgage Operations Director

su

Telephone (907) 276-5599
235 East 8th Avenue
Third Floor
P.O. Box 101020
Anchorage, Alaska 99510

LAW OFFICES OF VINCENT VITALE
A PROFESSIONAL CORPORATION

725 CHRISTENSEN DRIVE
ANCHORAGE, ALASKA 99501-2184
(907) 274-3538
(907) 276-7570

☐ PLEASE REPLY TO THE ABOVE ADDRESS.

VINCENT VITALE *
WILLIAM L. McNALL
DAVID E. GEORGE
KATHLEEN A. WEEKS
EDWARD L. MINER

P.O. BOX 772889
EAGLE RIVER, ALASKA 99577-2889
(907) 694-8050

☐ PLEASE REPLY TO THE ABOVE ADDRESS.

January 31, 1985

The Honorable Senator Pat Rodey
Chairman, Judiciary Committee
Pouch B
Juneau, Alaska 99811

Re: Senate Bill 44, Common Interest Ownership Act

Dear Senator Rodey:

The following review is designed to point out a few of the important differences between the existing act (A.S. 34.07.) and Senate Bill 44. As you are aware the existing act covers only condominiums and does not cover planned unit developments, leasehold planned communities, planned communities, timeshare communities, or cooperatives.

Specific Area of Concern	AS.34.07.	SB 44
1. Association Insurance needs.	Generally addressed by AS 34.07.400	Detailed insurance requirements contained in AS 34.08.440

Insurance needs of the associations should be clearly spelled out to avoid confusion on the part of developers and association boards and assure adequate coverage. The new statute requires insurance to be at 100% of the replacement value, for example.

2. Transition Problems	Not addressed	Detailed requirements contained in AS 34.08.340

There must be a specific statute which identifies those items or acts which must be completed as part of turning the control of the project over to the owners. This new section accomplishes that purpose. Owners, directors, managers and developers benefit by having the requirements clearly established.

Specific Area of Concern	AS.34.07.	SB 44

The declarant is required to provide the board with all financial records, amendments to declarations or bylaws, warranties from suppliers and subcontractors and so forth. Plans for the building and underground utilities must be provided. The Associations and the unit owners will benefit by having such information. A punch list of common area repairs must be made thus elliminating disputes over common area repairs. This will tend to reduce unnecessary litigation.

3.	Developer reservation of rights.	Not addressed	Addressed in detail AS.34.08.180

Developers must be able to phase projects. Purchasers should know what the developer must build and what the developer may build to avoid misleading representations. By avoiding innocent misrepresentation the developer, realtor and homebuyer will benefit. Unnecessary litigation can be avoided.

4.	Association Budget for Reserves	Not addressed	Addressed in detail As 34.08.___

The method of computing reserves should be clearly understood by developer and owners. In this manner "low balling" of budgets can be limited. Proper budgeting for reserves will avoid unexpected special assessments or large increases in the monthly assessments Homebuyers will be assured of having a monthly assessment within their projected household budget.

5.	Maintenance of Units	Not addressed	Addressed in

Developer, managers, and boards often dispute whether an item within a unit is the association's responsibility, or the unit owner's responsibility. The new definition will help avoid these disputes. The new unit boundary definition allows clear

Specific Area of Concern	AS.34.07.	SB 44
distinction to be drawn between owner responsibility and association responsibility. Owners will know that they are responsible for certain maintenance items and can plan accordingly. Arguments about such maintenance items should be limited.		
6. Transfer of reserves rights by declarant	Not addressed	AS 34.08.350 allows declarant to transfer rights reserved by declarant to third parties, generally builders or other developers.

This section allows the developer to transfer specific declarant rights to another developer. In this manner a project can proceed even though the initial developer may choose not to do further work.

7. Termination of Contracts entered into by developer	Not addressed	AS 34.08.360 allows the association to terminate contracts entered into by declarant and avoids unfair contracts

This section avoids situations where a developer may have entered into a contract on behalf of the association on terms that are unfavorable. The association has the right to cancel. This avoids the situation where snow removal is being done by the developer's wife's company at exorbitant rates.

Specific Area of Concern	AS.34.07.	SB 44
8. Assessments for Common Expenses	AS.34.07.380 and .450(7)	AS 34.08.460 more clearly spells out assessment requirements.

What is, or is not a common expense, is sometimes a problem. In the case of a P.U.D. there is no statutory definition to aid the association. This section solves those problems.

9. Borrowing by Association	Not addressed	AS 34.08.320(a)(14) specifically allows associations to assign future income

Associations presently have no ability to borrow funds by assigning future income. As potential borrowers the associaton needs to have statutory authority to assign future income to secure borrowing for repairs.

10. Disclosure to Purchasers	Not addressed	AS 34.08.530 sets forth specific information which must be contained in the Public Offering Statement clearly spelled out in AS 34.08.460

Numerous complaints by unit owners involve nondisclosure of future plans by the developer. The Public Offering statement

Specific Area of Concern	AS.34.07.	SB 44

tells potential purchasers and realtors exactly what the project entails and should reduce misleading information being given to buyers. AS 34.08.680 requires the declarant to mark promotional literature with "must be built" or "need not be built" to avoid confusion. Buyers will have available information which will advise them of the developers intentions and plans. Such information will substantially reduce complaints by purchasers.

11.	Liability for Assessments for Common Expenses	Addressed but confusing	Clearly spelled out in AS 34.08 .460

Developers often believe they do not have the same liability as unit owners to pay for common expense assessments. This statute clearly sets forth those responsibilities.

12.	Access to Records	AS.34.07.290 allows access to financial expenditure records	AS 34.08.490 allows access to all records

Some developers and managers refuse to allow associations to have access to corporate records prior to transition. This statute clearly sets forth the unit owners right to access all records.

13.	Resale Disclosure	Not addressed	AS 34.08.590

Many complaints have involved nondisclosure of material facts by unit owners upon resale. The problem can be substantially resolved by requiring the unit owner to give the required information to a purchaser. To do this the associations will be required to keep all the records current. Unit owners, buyers realtors and managers will benefit from up to date informaton.

Specific Area of Conern	AS.34.07.	SB 44
14. Express Warranties of Quality	Not addressed	AS 34.08 630 sets forth how express warranties are created and what they are.

Numerous difficulties are involved in warranty disputes. These statutes clearly set forth what a warranty is.

15. Implied Warranties	Not addressed	AS 34.08.640 sets forth implied warranties. AS 34.08.650 discusses how warranties can be modified or excluded. AS 34.08.660 establishes a statute of limitations for implied warranties.

Under present Alaska law an implied warranty goes on until the court decides the time period is too long. This statute sets up specific implied warranty periods and avoids much confusion that exists in the area of implied warranty liability.

16. Organization of Unit Owners	Not addressed	Requires association corporations to be formed no later than the date of first conveyance of unit.

Numerous disputes involve situations where the associaton was not created until time of transition. Thus owners were paying assessments to a nonexisting association prior to transition. This section requires the declarant to have the association in place prior to the conveyance of the first unit so the unit purchaser will be a member of an existing ass ciation.

There are numerous other differences between the present act and Senate Bill 44. The purpose of this summary is to highlight specific areas that have caused difficulties in the past and reflect the fact that these areas are covered in Senate Bill 44.

Sincerely yours,

LAW OFFICES OF VINCENT VITALE
A Professional Corporation

By: _____
WILLIAM L. McNALL

WLM:ail

SENATE JUDICIARY COMMITTEE MEETING
Invitational Work Session
SB 44, Uniform Common Interest Act
February 5, 1984

Meeting called to order by Senator Rodey.
Attendance at meeting: Senator Faiks, Senator Halford, Senator Kelly, Senator Ziegler. Senator Rodey, Chair.

Senator Rodey: We will be taking up Senate Bill 44. The Committee has discussed the bill. Many of the people here are quite familiar with the bill. The bill has been discussed in Committee and we discussed it totally. We have, fortunately, several people with us today. Perhaps the first thing to do is to call Mr. Don Buck, to take the witness chair.

Senator Faiks: Mr. Chairman, because of a conflict in the Senate Finance, I am going to have to leave the committee right now, but I promise to be in on the next one.

Senator Rodey: I know that you have to take care of our money. What little we have left. Thank you Senator. Mr. Buck you have the floor, sir.

(012)
Don Buck: May I suggest perhaps that Mr. McNall could join us and we could have an interchange.

Senator Rodey: Good suggestion. Mr. McNall would you please. I would like to point out to the committee that Mr. McNall is an Anchorage attorney who has considerable experience with this area of law, such as it is in the Alaska Statutes. Mr. Buck is a very well known attorney nationally in this field and heads the Bar Association Committee in this area. Identify both yourselves for the record.

(021)

Don Buck: My name is Gurdon Buck. I'm with the law firm of Robinson & Cole in Hartford, Connecticut. I'm a lawyer. I'm also a Realtor. As a background, I've also been a developer. I'm also presently the vice-chairman of the Committee on Condominiums, Cooperatives and Home-owners Associations of the American Bar Association. I'm a Trustee of Community Associations Institute and professionally I write documents for common interest communities in Connecticut and undertake the representation of developers, although I do have municipalities and

associations as clients in the common interest community field.

Bill McNall: My name is Bill McNall. I'm attorney [illegible] does a lot of association work. I work with some brokers, some developers. I'm president of the Alaska Chapter of Community Association Institute.

Rodey: Mr. Buck could you give us kind of a brief statement of why you're familiar with the Alaska law and give the committee, as well as the other group that is here, your idea why it is important that we adopt this piece of legislation.

Mr. Buck: Certainly, this is a barely modified version of the Common Interest Ownership Act which was passed in 1982, by the National Conference of Commissioners on Uniform State Laws. UCIOA, as it is called, is a combined act combining the provisions of the Uniform Condominium Act (originally passed in 1977, and modified in 1980), the Uniform Planned Community Act passed by the Commissioners in 1980, and the Model Real Estate Cooperative Act passed in 1981. They pushed them all together in 1982 as a single act which covers condominiums, cooperatives and any common interest community which is not a condominium or cooperative, which is called a planned community under the act.

The purpose of the bill is to supplant the Alaska Horizontal Properties Act as to condominiums declared effective after the Act, which is January 1, 1986. It also applies the same statutory framework of condominiums to cooperatives and planned unit developments or cluster housing, and every other form of common interest community. The central provision of the Act is the definition of common interest community. In short, it is a community whereby the ownership of a unit mandates the payment of maintenance assessments for property other than a unit. A unit is defined as a parcel or physical division of land. It could be: a lot, it could be a marina slip, it could be a stable, it could be an apartment, a building, a house, or a shop. It could be almost any form of real estate that can be divided and set aside for individual ownership or occupancy. It also applies in approximately a dozen sections, pursuant to its section 40, to pre-existing common interest communities whether they were formed under the Horizontal Properties Act, or formed under the Common Law such as the planned unit developments, or formed under one form or another under corporation law such as cooperatives.

The Act is based almost entirely on the Uniform Common Interest Ownership Act which was developed through the

National Conference of Commissioners of Uniform State Laws, promoted by the National Institution of Real Estate. It's consumer interest, title interest folks, association people to provide a uniform and balanced statute to represent all interests and provide for free interstate commerce, and uniform mortgage and sales instruments, and to solve the myriad of problems that have arisen since FHA originally promulgated its model statute for apartment ownership in 1962, which was adopted by Alaska in 1963. It was last revised by FHA in 1965 and basically what has happened since that period of time is the states have been monkeying around with their statutes in all different directions. The Uniform Law Commissioners felt that it was important that there be a uniform law throughout the United States.

They started the Uniform Condominium Act, but realized that the same problems were arising in cooperatives and arising in planned unit developments and a Uniform Condominium Act alone does not solve the problems in these other forms of ownership. So the Commissioners decided to merge the three acts which had been designed to merge in 1982. The structure of the Act is relatively simple. It begins at the beginning and ends at the end and then stops. The Alaska bill is similar but shifts some of the definitions to the end, which is in course with the statutory practice, so it goes back to the beginning again. One of the great advantages of the act is that you can find things in it. There is an order to it, and going through in a general overview you can begin finding where solutions to problems occur by knowing approximately how the act is arranged.

The first Article, which is the applicability article, provides for applications and exemptions of various communities. It divides communities into classes: new communities which are created or declared after the effective date of the Act, in which the entire act applies; small or limited expense communities, which are of such a small nature that the imposition of the Act would be cumbersome; 12 units or less, or where their annual assessments is $100 or less per unit (adjusted by the CPI which tends to be $140 this year); and old communities which were declared before the effective date of the Act, in which, as I explained, certain provisions of the Act apply to them but only with respect to acts and occurrences happening after its effective date and only provided that the initial documents of the project are not contrary to the statutes.

In respect to old communities, the statute is overridden by the documents because of the contract

clause of the constitution. In respect to new communities, the statute overrides the document if they are otherwise contrary. It applies to nonresidential communities with a very limited aspect, unless the developer opts to take advantage of all the various provisions of the act, and there is a very large number of those provisions which are very useful. It applies to out-of-state communities with respect to offers or sales made within the state and in which case then a public offering statement is required.

(101)

Article II, is the beginning: creation, alteration, and termination of the community. This is basically the developers'/draftsmens' article. It has a whole tool box of useful provisions that can be used by a draftsman in creating an act to follow the desires of an individual developer or project which is being contemplated. It allows the developer to flex the condominium in a wide range of varying ways, to create units in common elements, to add land, to withdraw land, to subdivide units into sub-units such as in office buildings. These particular flexing powers allow a developer to sensitively respond to the market. Not to commit him or herself to a particular format or formula, and discover that the market does not like a walk-up two bedroom flat and be stuck with 15 of them. The concept of flexing units, I think the most useful concepts of the act, has been done in varying ways or mucked up in other various ways by developers using common law covenants, and couldn't be done under the old act. In addition, there are some substantial lender protection provisions put into the Act, under Section 270, which provide for things that lenders have been wanting for a long time, the right to participate in major association decisions.

(120)

Article III is management provision. We have now created a community and now we are going to operate it. Management, Sections 300 through 500, include the powers of the association, giving broad and flexible rights to the association to enforce and develop the activities of the common interest community. It includes some interesting new powers: the right to collect fines and late charges; the right to sue and be sued; which is an interesting problem in some of the common interest communities as whether they can sue on behalf of the owners. It gives some very interesting and powerful remedies in collection. Probably one of the most useful remedies that are in the Act is the so called superlien, giving the association the right to collect up to six months of regularly budgeted assessments that accrued prior to commencement of

collection ahead of first mortgages on the property. This gives a very, very substantial financial viability to the association, high levels of credit, and the ability to obtain funds quickly and easily for the operations of the association. It provides protection of the board of directors from liability, however, imposes upon the developer fiduciary responsibilities during the period of development control.

It has a detailed provision on the transfer of the association control, which was not in the uniform act but a version of it was in the Connecticut act, and this particular provision is adopted from the Florida provisions. It has a detail of the transfer of special declarant rights. That's the developers' rights to undertake a project and allows a construction lender to be assigned these development rights, but not use them, and therefore not be subject to liability and then thaw them out, as they say, after the successor developer comes along and gives the successor developer the liabilities and not expose the lenders. It gives some interesting provisions on corporate duties, including assignment of assessment of income, a new source of credit for associations. As parking lots are beginning to fail and roofs need to be reroofed, and major structural components are needed, the ability of the association to borrow money on the assignments assessment income is necessary and gives them this source of credit. It has a detailed provision on insurance, which is a mess that has needed clarification since the first act was promulgated. There is a relatively simplistic approach, that is, the association is obligated to insure what is it obligated to repair.

There are two kinds of classes of associations: those with horizontal boundaries, have ceilings and floors, in which case, all buildings and improvements, including the areas within the units, kitchen cabinets and the like, have to be insured. Those without horizontal boundaries, that is, with no boundary that interferes between the center of the earth and the heaven. I'm thinking in that case as a house lot, in which case the insurance only has to be on the common elements and optionally the association can choose to insure all the buildings.

(156)

Article IV, after we have the management completed, is the protection of the purchasers, Section 510 and following. It provides for two kinds of consumer protection of great substance and works it through disclosure, that would be it licensing and registration that would be due. You have a heavy disclosure provision on the developer by the preparation and

presentation of a public offering statement. If it is a simple straight forward, one building condominium, there are 20 questions that have to be answered, like the quiz show. If it is a complex project, where there is going to be an addition of units, or an addition of land, or development rights are reserved undertaking a change of the project, there are a dozen more questions that have be answered to predict the developer's actions. If the project is time share, there are four questions that are added to the public offering statement that have to be answered with respect to time share activities and plans. If it is a conversion building, there are three questions that must be answered having to do with the physical characteristics of the common interest community at the time it is offered for sale.

The second area where consumer protection is put in a major area, is in resales. A seller of common interest community unit must obtain from his or her association a resale certificate and disclosure package. It consists of 14 questions having to do with the financing, the financial viability, lawsuits and matters having to do with the operation of the condominium. Three of which are really optional, that is, if there is a municipal project or limited equity project under the co-ops, and it has to include a declaration, the bylaws and rules and regulations.

(181)

Article V, which is an extract actually of Article I of the Uniform Act, contains general provisions, and includes one of the most important provisions, the definitions. The definitions are very carefully spelled out and as I explained, one of the most important definitions is the definition of the common interest community. That's probably where we should start with what a common interest community is and what a unit is.

To give you an outline and the scope of the Act, I have a few examples of what I would consider the outlying frontiers of the area. This act can cover and provide solutions to problems. One of the areas would be older people in an apartment who wish to stabilize their housing costs. Apartments could be bought as investments by relatives using gifts as downpayment and can undertake some advantageous estate planning. Groups of investors are interested in commercial property, but they have different equity interests. This has become quite prominent in the medical field where some of the doctors are retiring, some of them wish to remain as investors and some wish to remaining as owner occupants. There may be owner-occupancy.

There may be industrial revenue bond financing. There may be tax exempt financing. There may be investment without occupancy. There may be various corporate estate and limited partnership requirements indicating each of the sections of the given property. It would be useful if it was divided into separate ownership with financing capability. The Act permits that and permits a wide variety of flexibility in doing that.

Presently doing that is the city of New Haven. Providing an office building, a city hall, a parking garage, a shopping center, and an underground highway, each having separate ownership, separate financing and they are tied together under common ownership activity. It looks like, if it is done right, they are going to get a free city hall. State bond money is paying for the highway, so it had to have separate ownership. The state highway department actually owns it, while the parking garage is owned by the parking authority. The office building is owned by a private investment developer with a combination of Urban Development Acceptance Corporation (UDAC) and certain kinds of industrial revenue financing. And, of course, city hall is owned by the city using general obligation bond financing. We had to title them all separately. We had to relate it and they had a series of common elements just to hold these things in the air. It was done through using the Common Interest Ownership Act as a method of financing this.

Industrial high technology parks are now in a situation where they require architectural controls. They incorporate common utilities, private slopes and open space, life style amenities and matters of that nature. Industrial people or high technology people will not run and move in where these controls exist. Under common interest communities the Act permits a reasoned method of combining the common facilities.

Student housing, apartments in the vicinities of universities, are built by private investors and sold to parents who then give the children the rent. They have the depreciation shelter, reallocation income to children that can be a good investment. These are occurring all over the country.

Municipal and local government protection. Where municipal (indiscernible) amenities such as fragile wet lands and eco-systems, protections of drainage systems, detention basin and stream encroachment zones, historic facades, and central sewer systems. All require common maintenance, common control, and financially viable associations. This Act gives financially viable association so that the municipality can be assured of the continued maintenance of these amenities at the

expense of the particular properties that are creating the burden.

(226)
Marina condominiums. Interesting issue. They are not an apartment, because they are not in a closed space within a building as the old act required. They are a slip. They are actually a portion of reparation rights. A very interesting metaphysical concept which is a unit with common maintenance. The consumer would purchase the uplands as tenants in common or as a condominium. The slips would become units. Consumers would purchase these in order to get stability of and assurances of a slip, particularly where they are restricted. Although, in many cases, there seems to be little chance of equity growth, the values are going up and obviously because there is more value of the increments of the marinas, then there is value from a cash flow basis, and so we are forming a number of those. They all can be mixed. Presently, in some 24 projects I did last year, over half of them had mixed uses: professional units, marina units, commercial units, mixed in with residential. The common interest act permits this and allows the documents to be developed.

That's some of the things. It is not just an apartment act. It's an act that has a great deal of excitement. It's a bold venture and I certainly commend it to your favorable consideration. I think at this time I would like to consider it on a section-by-section basis and I'll turn it over to Bill.

(244)
Bill McNall: Thank you, Mr. Chairman. After hearing everything that can be done with the new act, I'm embarrassed to say that under the old act, I have clients that come to talk with me about the problems they have in their associations, and because an association may be a PUD, for example, I can't give them any help. PUDs simply are not covered by our statutes. Our statutes only apply to condominiums in the traditional sense and there is no case law in our state. There are no regulations, so I am afraid that if the association I'm trying to deal with is a PUD I simply have no place to go for information.

I would also like to point out that most of our current statute has literally no help for associations that are having manageral problems in the day-to-day problem solving that the board of directors and association managers have to face. Among these issues sometimes you find that the association was never properly formed by the developer. The units have been sold. The

declaration requires automatic membership in those units. The corporation process has never occurred. The association has gone on, and now the unit owners are taking over and trying to find out what's happened to the money. They are trying to find out what their rights are. They are trying to figure out why it is they are not members of an association. The statutes simply do not speak to those type of problems. All these problems have been addressed in the new act and more. I have numerous examples that I can share with you and should probably do so as we go through specific portions of the bill.

I am in favor of the new act because it simply gives me some tremendous flexibility to help the associations that I'm working with, either after the fact or trying to solve problems that the association itself has. Where if I'm representing realtors, who I think have some substantial protections under this act, I can assist them, or for that matter, developers, in avoiding problems that I know will come up at a later point in time. Last but not least, I would like to point out that I think the new act is a substantial help to the Alaska Housing Finance Corporation who is asked to look at projects that are not covered by any statutory guidelines, and are asked to assist in the development of those projects without appropriate statutory guidelines. I simply don't know how AHFC is going to be able to do that without getting into the regulation drafting process. I think that this new act will also help substantially at that level. Thank you.

(281)
Senator Rodey: Just a reminder to other members of the Committee that we are on Teleconference. A number of our constituents in Anchorage and Mat-Su Valley are listening and if we could use our microphones when we talk it would be very helpful. There are a number of proposed amendments to the bill. Have you had a chance to review them?

Buck: Yes.

Rodey: We have talked previously about the Act and got a very good overview of the act. And perhaps it would be appropriate at this time, because it is a uniform act, to talk about some of the changes that make it a nonuniform act, at least in that sense.

Buck: There were a number of changes. I can't pull them all out from the uniform act. Generally, we've made some comparisons from the act. There're some other changes, however, the act itself is still substantially uniform with respect to interstate commerce, forms and

activities. The proposed changes, perhaps we could do them when we go on a section by section bases, or we could suggest that they be introduced and described in whole. Taking them out of context does tend to make it a little difficult to deal with.

Senator Halford: Mr. Chairman, there is one set of changes that was in our packet and we also have another set of changes that are somewhat related to drafting in the second handout. I don't know whether we should maybe go through section by section, but I think that they know where those changes apply. If they could point them out to us as they go through that section then we could request that the substitute to include all the changes.

Rodey: Senator Kelly.

Senator Kelly: I'm under the impression that the first pages of changes are incorporated in the second pages of changes. Is that correct? The second set of changes contains all the changes we're looking at?

Buck: I have one set of changes, that is correct.

Halford: Yes. The second set of changes includes the first set of changes. We can go through the sectional analysis with the changes and the bill at the same time. I think we're all familiar with the changes.

Rodey: Perhaps the best way to do that is to start out at the beginning, as you say, and go through the end.

Buck: What Bill and I sort of agreed to do was go through the sections and he will come up with specific Alaska examples to which these would apply. I'll discuss the relationship of the uniform act and perhaps some of the drafting reasons for coming up with this particular provision.

The first section which is Section 34.08.010, General Applicability, is a uniform provision and it indicates essentially that the act is applicable to all common interests communities after its effective date. The provisions of the existing law do not apply to common interest communities after the effective date of this act. The existing law, pursuant to a change that we are submitting, will not be repealed. It still exists. It is the enabling statute for existing condominiums. Connecticut went through the horrible experience in 1976 of inadvertently repealing the old condominium law at the time they passed the new one, having the new one only effective for condominiums declared after its effective date. Thus leaving 300 projects with no

enabling statute at all. It was chaos and nine months later the legislature cured it. Therefore, one of the recommended changes to the bill, before you, is that you do not repeal the existing horizontal properties act. You follow the applicability provision as suggested, indicating that the provisions of the existing act do not apply to common interest communities created after its effective date and it still remains on the books.

Rodey: A question on the applicable law regarding those projects which have been created and are functioning.

Buck: The applicability is picked up in section 40. Perhaps we can jump over 20 and 30, because of the applicability of the portions of this act to existing communities. I'll go over that and list, what I call the section 40 sections. Portions of this act apply to existing communities and solve some of the problems which Bill will come to.

With the Chairman's permission, I'll cover 20 and 30 quickly and we can go to 40 which will take some discussion.

Rodey: Please do. You have the broadest possible latitude in explaining this. You are the expert, we're not, and we will be guided by your experience.

Buck: Thank you. Section 20, Applicability of Small Cooperatives, indicates that if the cooperative contains only units restricted to nonresidential use or contains no more than 12 units, and is not subject to any development rights, and not subject to any financing from AHFC, it is only subject to Sections 720, 730, and 740. We're proposing an amendment to add 720 in there. The universal sections which are at the back of the act are very important and at this point we'll skip to them to give you an idea what they are.

They essentially include those particular provisions that should apply to all common interest communities no matter how large they are, how small they are, residential or nonresidential and no matter what their structure is.

There are separate titles and taxation (34.08.720), indicating that each unit, no matter how it is structured, as a condominium unit or a planned community unit is separately taxable. It also provides in cases of a condominium, in a planned community, that there is no separate tax bill for the common elements. This has been a problem. The Community Association Institute feels that throughout the country, where

people are assessed the full value of a house in a planned unit development, and then the town will tax the common elements which are obviously included in the value of the house. After great arguments, usually in almost every case, the town municipal tax assessor has been persuaded to reduce the assessment on the common elements to an nominal amount because he is picking up the taxes in the house taxes. This settles that problem, clear and simple. It just says that there are no taxes on the common elements.

Cooperatives are treated somewhat differently in the universal section, because obviously there is a single tax bill for the whole cooperative. The unit is not for taxation purposes, considered to be separate. There is a single bill, and in the concept of credit pools, where everybody pools their credit in a cooperative, this is a slight difference between the functions of the cooperative and the condominium. This universal section is on page 76, section 720.

There is another important provision, although with respect to the small portions there is no problem. If a developer has reserved development rights, that is the right to unilaterally change the project by adding units, subtracting units, withdrawing units or subdividing, that portion on which a development right is reserved is separately taxed and assessed against the declarant and the declarant alone is liable. It's part of the the overall structure and it is also part of the reason that the declarant wants to get rid of the development rights as soon as they have used them, that is to create the units, withdraw the land or done whatever they predicted they would do, because they are liable for expenses and taxes on it.

And finally, if there is no unit owner other than the declarant, the estate is taxed as a whole, in the same way it would be taxed no matter if it was another form. So if there is a declaration on the land records, the estate is taxed in the same way. The whole estate is taxed in the same way it would be taxed if it were an apartment building or whatever until there is a unit sold.

Halford: Is that the way they are currently taxed in Anchorage for example?

McNall: The documents that I have seen from the Anchorage Municipality indicate that there is a tax bill generated, and there is in fact a tax assessed. If the association manager is on top of it, he will go down and talk to the Municipality, who will then reduce that to zero.

Halford: So the Municipality has agreed with this position in terms of allocating that tax from the common areas to the individual units.

McNall: Yes. according to the two experiences I have had.

Rodey: We should get a formal statement from the assessor's office and it would behoove us to also contact the other municipalities that would or could levy property on cooperative housing and receive a statement from them.

Halford: We don't necessarily want to know whether they would like to be able to tax both. We want to know what they are doing and what they end up in court able to do under existing law.

Buck: Under the condominium statutes, since the common elements are not owned by anyone except unit owners, there is no separate tax on common elements in condominiums. I have seen tax assessors try to do that too, set a tax for the club house even though it is owned by everybody else. So essentially what we are doing is unifying the treatment of condominiums and planned communities so that there is a tax bill on the unit and there is not on the common elements. The whole concept of unifying these forms of ownerships is evidenced here. In subsection D, of the universal section (34.08.720) indicating as I stated, is a shelf conversion. If no units have been sold it would be taxed as any unitary property.

The applicability of local ordinances, regulations and building codes indicates that a building code cannot impose a requirement on a structure in a common interest community that the building code cannot impose in a physically identical development. Thus if it is an apartment house, it's an apartment house, it's an apartment house, it does not matter whether it is owned by 13 orthodontists from Brooklyn or owned as a condominium or owned as a cooperative or as a planned community. The same code requirements apply across the board. This does not waive the code requirements, but it does in fact, mean that the code will not put additional burdens, such as extra fire walls, merely because of the form of ownership. The idea being unified management, unified control of the project is provided in all forms.

Rodey: Let me get back to my original question which was, the applicability of this act to those condominiums that are presently in existence. Actually the most important thing is the management structure. One that Mr. McNall has had a great deal of experience with.

The question will be asked by constituents of mine and by the real estate community and developers: "How will this effect the management and operation of existing condominium projects and liabilities of all parties involved?"

(478)
Buck: Because by virtue of what I described as the universal sections, these particular provisions, Sections 720, 730 and 740 are one of section 40 sections applying to old condominiums, cooperatives and planned communities, and thus it will settle elements with respect to old projects. It cannot, however, override the decision of an existing document, but with respect to the fact the documents are silent these particular provisions will then apply to the older communities.

Rodey: Essentially then, we are grandfathering in existing condominiums and grandfathering their documents, covenants and maybe bylaws. Everything they have unless they are silent on any particular point. Where they are silent the new law supercedes that silence.

Buck: Yes, the new law would and it does solve problems, because obviously the documentation cannot impose assessment practice on a municipality. In a PUD this will solve the problem because in most cases the documents are silent.

Rodey: I wonder if the State of Alaska can impose assessments upon requirements on municipal documents.

Buck: The State can on the individual documents, but the project can't. That's what we're doing, is saying OK where we have an old project where this is unclear, there can't be a separate tax on the common elements.

Finally, another universal section is the eminent domain provision. The eminent domain provision merely answers a lot of questions that a lot of people have had in condemnations. When you have a partial condemnation of a condominium, say affecting the unit and not affecting a units, or not affecting the units affecting the common elements only, affecting some of the units, some of the common elements. How is the pot wacked up? This particular provision gives that answer. It is essential and those who have gotten involved in partial condemnations of condominiums will find that this is just a can of worms and definitely needs a solution and this bill does a fairly good job.

(517)

McNall: Mr. Chairman, I have just been contacted by an association that exists out on the Dimond Boulevard widening area, and in fact they are having a partial taking and are trying to figure out right now what is a fair value. The present statute addresses the issues but not to any great extent. There are two halves to it. The association is having some common area property taken, and the individual unit owners are now discovering that their units will be sitting right on the new highway and will be having some losses. All these factors have to be considered in dealing with taking authority. Any clarification we get out of this statue will be of benefit to both the state, local government and the association.

Rodey: Because of the new highways that are being built in Anchorage I suspect it will be. What is your reading of the law in Alaska now with regard to taking. We have a number of near misses, if you will, by the highway department. We have a possible diminishing value because of the proximity of a high speed highway. Are any recoveries being had, or any payments being made in that case now.

McNall: Mr. Eschbacher, an Anchorage attorney, is representing four of the association owners in this particular matter that I was just describing. He indicates to me that he thinks that they've had some substantial diminution in value that they are going to seek redress for. It's my understanding from our existing statute, that you have to live with the statute and you also have to look very closely at the documentation for the association, because some of the draftsmen have different approaches to condemnation than others. I have seen drafting that has more detailed discussion of partial and total takings in the declaration. I've seen some that just mimic what the present statute says.

(556)
Halford. Just another question to Mr. McNall on the applicability of local ordinances in terms of building codes, zoning, subdivision and all the other local regulations. Is that what's happening with regard to condominiums?

McNall: In Anchorage, the building codes are enforced and inspections occur and the projects are being built pursuant to the uniform building codes adopted by Anchorage. The uniform building codes apply in Eagle River, but there are no inspections for example. In the Valley I'm not sure at this point if they have adopted

any uniform codes at all. So as far as this section is concerned, those codes that are enforced in those areas will continue to be enforced and if the old pre-existing association documents are silent this comes in to protect the associations and brings in those sections.

Halford: The question is, are we limiting anything that is currently going on?

McNall: No, I think as a matter of fact, as I understand it, the application by the State, the State electrical inspector, State plumbing inspector you may be able to bring in some additional protections that are not there now.

Halford: From the State level without cost to the developer?

McNall: That's correct.

Buck: I would like to indicate that in Connecticut they have had some interesting problems because of the fact that the condominium unit is a title line. Some building inspectors have said, well it's a title line, therefore, we need a full fire wall in every apartment. Other building inspectors have said, this is a unified ownership and therefore we don't need fire walls in every apartment, we have them every four apartments. This confusion is simply cleared up by the act and indicates that they be uniform.

Halford: Would they be treated as if they were apartments.

Buck: That's right. They would be treated as an apartment building. It does not invalidate or modify any particular provisions of the zoning codes, it just indicates that there is a uniform provision.

Those are the three universal sections, and I think that they do apply. This moves us on to Section 40 which sections 20 and 30 indicate that with respect to small limited common expense communities, only these universal sections apply. The limited expense of common interest communities that we are proposing be changed from "planned" to "common" interest so that they all get treated in a uniform manner, indicates that when you have a small community of this nature that they do not have to go through the formality of the whole public offering statement, documentation, organization of an incorporated association and everything else that is required unless they opt in. Any planned community can opt. We may find by virtue of the lending practice and requirements, that most

communities will because there are substantial advantages of being subject to the act, because of the fact that you don't get as good and clear defined guidelines under the common law. But many cases in a small community, merely because of informality, it is worthwhile not being in it.

A limited expense common interest community came out of the planned community act. There's a large number of PUDs only maintain a detention basin or a single drainage way or a sign at the end of the street. And in those particular cases with the corporate formalities and record keeping and financial reporting would be a burden on these folks. So again the $100 per year per unit limitation is written into the act. It's modified by the CPI based on a very complex formula and this year it means that it's about $140 because it comes in $10 increments.

Kelly: Is that complex formula something that is easy to figure out?

Buck: Yes. It is the same formula that the uniform commissioners use for every CPI adjustment, Uniform Commercial Code, and the others. It is easy to extend. It is written into the act. It is easy to understand although, it takes a little bit of calculation. It is the same provision in every uniform act, Uniform Condominium Act, Planned Community Act that has been passed in other states. It is one of the uniform provisions that the commissioners would like to remain uniform so that everybody will know what's equally exempt in every state. It can be calculated, as I say, it is in $10 increments and now it uses a 1976 base which is the Virginia act. Thus all the states which are adjusting their provisions are adjusting on the same base.

Section 40 is an important provision. It's probably one of the most important provisions and one that will create most of the trauma if at all, by the passage of the bill. This is the applicability of certain provisions to pre-existing common interest communities. There are 12 sections plus the definitions. A round dozen sections which apply to pre-existing common interest communities. These are provisions which will go ahead and cure alot of the problems that Bill is coming up with and provide definitions where no definitions have been provided. Give uniformity as to activities within these areas, new powers and all kinds of very useful activities to the associations.

The Section 40 sections are very important. I would like to perhaps suggest doing, as a matter of order,

and depart from beginning at the beginning go through the end and stop routinely and go through the Section 40 sections. Because these are the ones that your existing communities will be subject to, as I said, unless the declaration or documents provide otherwise. These are the ones that they will have to conform to and these will be the ones that will be the most surprised when they discover the existence of the act. No matter how much news we put out a lot of them won't.

Kelly: Surprises should be reserved for Christmas and birthdays.

Buck: I think that we are doing this for New Year's. But, I think that there are some very important provisions

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that validate a lot of sloppy documents, a very, very important provision. I would like to defer to Bill to talk about some of the Alaskan provisions with respect to section 110 and perhaps this particular provision will assist.

McNall: The number of times that I have seen documents drafted back in the early 70's that have maybe eight pages, six pages of which are legal descriptions, one page is a dedication of the property, leaving one page to deal with association management, assessments, and so forth. Gives you an idea that the documents are not very complete. As a result, we have to either go back and try to substantially amend, which is a very expensive process for the associations. When allowing these sections to come into play we simply do not have to go through that drill. They may want to anyway, but they don't have to because most of these statements are written with the statement that says, "if and unless the declaration states otherwise these sections apply", "these definitions apply", "this statutory provision applies". So those will apply where the document is silent, which will help substantially when I have to sit down and try to work with an association and figure out what the answer to a problem is. I'd be willing to bet that of the pre-76 documents that I've seen probably all of them will benefit from this provision.

Buck: There are a number of things in here, one of them is the title insurance provision in 110. This is the bail out title insurance company provision which indicates that the title of the unit common elements is not rendered unmarketable rather or otherwise effected by reason of insubstantial failure of the declaration to comply with the chapter. Where a substantial failure,

of course of marketability, is not effected by this chapter but it does allow title insurance people to sleep a little better. But it was put in at the insistence of the title insurance folks. It covers the rules of against perpetuities, which in some of our more obscure provisions, that only lawyers who took first year property know about, indicate that it not defeat any portion and it makes the sense that the declaration is superior to the bylaws. It's just sort of a useful housekeeping item.

Halford: Run by that title insurance again. It says that basically an unimportant, insignificant violation of something or other does not effect the title of the property.

Buck: That's right, so if there is an insubstantial failure to comply with the act the purchaser can't say "I'm going to walk away because a 't' hasn't been crossed or an 'i' hasn't been dotted." Now the difference between substantial and insubstantial is the difference between reasonable and unreasonable which we leave to the courts. I think it was left ambiguous. It was the kind of thing that you have to look at the facts. And thus this particular provision is an ambiguous provision, but it is the kind of thing that the courts can deal with if they have to.

Rodey: The Alaska courts have been good about dealing with that topic but we haven't had anything major, at least that I am aware of relating to condominium titles. Correct me if I'm wrong, are you familiar with dealing with title documents for condominiums?

McNall: No. The only Alaskan case that deals with condominiums at all is Carroll vs. Eldorado Estates out of Fairbanks that was dealing with notice requirements in the declaration of bylaws. That also was, by the way, the case that suggested Uniform Condominium Act and the Model Real Estate Cooperative Act for guidance in this area.

Buck: The section 120 is another housekeeping item that basically says that a simple description in the purchase agreement which sets out: the name of the common interest community, the recording information of the declaration, and the district in which it is recorded and identifying number of the unit is all you need to legally describe the unit. You don't have to go into great detail in order to have a legal description.

Section 290 is another universal section, which, is a merger or consolidation section, permits existing and

new common interest communities of the same type. That is condominiums with condominiums, planned communities with planned communities, cooperatives with cooperatives to merge or consolidate their activities under a single association and gives a technique for doing it, providing essentially for a negotiated merger agreement which will take care of most of the problems.

The powers' section, Section 320, subsections 1 through 6 and 11 through 16, add to the powers of the associations. Very important powers, that many of them don't have, including the power to levy fines, late charges, charge fees, charge assessments, bring law suits and undertake some other types of activities that are in question under the condominium act. If a PUD is operating under the corporation laws it may or may not have powers to represent its members or shareholders in actions of common interest. These powers are an excellent and superkind of a provision, and should be in there and applicable to all projects.

McNall: Most of the property management firms in Anchorage right now impose fines and attempt to work with boards to assure collections of unpaid assessments. They have fines, late fees and so forth. As to whether or not these will ever be enforced by our courts, I will leave for the courts to decide because it is not clear from the existing statutes. Most declarations allow it and state that you can impose these, but the statutes are silent on that particular issue.

Buck: There has been some argument since the lien is proportioned to the percentage interest allocated in the documents. A fine is not proportioned to that, and there may not be a statutory lien for a fine, so this cures it. Yes, that kind of a prophylactic activity which I seriously commend for your favorable consideration.

Section 420, the tort and contract liability, has some fairly interesting aspects in it. It does generate a corporate limited liability provisions to protect the association, but does impose some liabilities on the declarant with respect to torts while the declarant is in the control of the association. It's basically an insurance provision, but it does clarify that the declarant does have this particular liability. It will infact have some significant impact on existing associations with respect to developers, because it provides, for instance, that a statute of limitation is tolled until a period of declarant control terminates. Thus if you are working under a warranty provision or a tort provision, and a declarant is in control, you

don't lose your right of action merely because the declarant controlled the right to bring the action. There have been some unfortunate cases. I consider them unfortunate even as a developer's representative, where in short statutes (one, two or three years), the right to bring an action simply has disappeared, and the action was against the declarant while the declarant was in control and he didn't sue himself, surprisingly. There is a provision in this tort contract liability provision which I think is going to be very useful in existing associations.

McNall: Often a board will come in after the transition has occurred and the developer said, "You are now in control." They will then raise issues of common area maintenance or common construction problems, only to be told that their one year warranty has lapsed, and they really don't have any rights to sue the developer for any of these types of problems. All the help we can get to clarify those types of issues, including the warranty language, we have contained in the new proposed act will be of benefit.

Rodey: What effect will this have on the liability of developers for existing projects. The law is silent on that now.

Buck: There is a problem with this area. It is the kind of problem that 85 pages of legislation will be needed to be draft, that's the straddle problem, where the statute of limitation is running and then the act passes and then it fails and then controls transfer. We come up with a whole series of permutations and combinations of this which probably will ultimately end up being worked out on a case by case situation. The act only applies with respect to Section 40 sections as to events and occurrences after its effective date. So the termination of the statute of limitations is that an event or a circumstance? I don't know the answer.

Rodey: So for any existing project there is still a murky question of liability?

Buck: There always was, there will be, but after the act gets older and older that question will become more and more put in the past.

Section 470, the lien for assessments, is applied to existing associations and is a very, very powerful remedy, probably one of the more exciting and excellent provisions of the statute. This particular provision indicates that the association has a lien for an assessment to be levied on a unit for common expenses.

It doesn't matter whether the common expenses are proportioned to allocated interest or fines, whether they are payable in installments or not, the lien exists. It's prior to all other liens or encumbrances except mortgages and taxes. With respect to mortgages, it is prior to mortgages up to the amount of six months of regularly budgeted assessments that have come due prior to the institution of an action to enforce the lien.

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This super lien, which gives priority to the association assessments, will provide for quick collections. It will provide for excellent financial credit [illegible] the associations. It will allow a wide range of new [illegible]medies available to the association to get their association fees in on a timely manner. In Connecticut, it is probably one of the aspects that has most reformed the condominium practice. That is, that collection now occurs following a letter to the bank, and the bank helps by sending the check or bringing the borrower in and making the borrower send a check. That's the end of it. We don't go through the formality of filing a notice of lien on the land records, commencing a foreclosure action, or going to small claims waiting for this to happen, and then have at the end, because many times when these liens aren't paid the borrower is in trouble and we find that the bank forecloses out the whole thing at the end. The attorney's fees, the time, and all the accumulated assessments are lost and laid off on the rest of the unit owners. With many cases they can ill afford it.

McNall: The situation in Anchorage is identical to what has just been described by Mr. Buck. Associations that have, say, ten unit owners who are in arrears, finally lose patience with the promises to pay and bring those in for small claims court. Either I'll file it or the association manager might file it, or some associations can file it themselves. If I do it, of course, it will cost money and this situation can be avoided under the new act. The disadvantage to the association, of course, is if I've gone through the process, and if I get a judgement against that unit owner and can't collect that judgement because the unit owner is unemployed or whatever reason, as long as the bank is receiving its mortgage payment, the banker is not going to be involved in the collection efforts. It is up to the association to attempt to collect. I have numerous examples where we have judgements, attempts to collect the money, and we cannot. The association comes back and says let's attempt to foreclose and attempts to file an action for foreclosure. Judge Johnstone

refused to let me foreclose on behalf of an association because he didn't think that it was appropriate to foreclose for $1,700. He gave me a continuing judgement against the unit owner, which to this day, we have not collected because she simply is not going to pay and we have no place to go for money.

I think that if this super lien will work to cut down those costs to the association it will be of benefit. Also the cost incurred by that association, money that you don't collect, winds up to be a common expense to all those other unit owners to share. I have unfortunate situations where associations are out many tens of thousands of dollars which are going to be foisted upon folks who cannot afford to pick up a prorata share of a huge special assessment to cover that, particularly where it's a HOF project. There have been some great disasters for example within a HOF project, where these folks are going to be tagged for $200 to $300 apiece, and they are not able to afford probably even $20 a month in additional assessments.

Buck: This particular six months super lien is the law in ten of thirteen states that have passed the Uniform Condominium Act. It's been accepted by Fannie Mae, Freddie Mac, VA, FHA as an appropriate method of assuring the financial viability of the association. The fact that they are going to sacrifice potentially the priority of six months' assessments, and only regular budget assessments, not special assessments, not fines, not collection costs, is minor compared to the financial viability of the whole system. They have accepted it and are now accepting it quite enthusiastically.

McNall: In addition to the problems that associations have in this particular area, any time a unit is listed for sale, the realtor that is representing that seller had better make sure that there is a thorough understanding of what those unpaid assessments are. That is affirmative representation and of course something the buyer would want to know.

I did have a situation out in Muldoon where a young lady came to me. She had closed on a Friday, and on the following Friday received a special assessment notice for $6,000. She had spent every dime she had in purchasing her unit, and did not have any money to hire an attorney. I sent her to the Real Estate Commission to file a surety fund claim against the realtor who should have gotten that information from the association and disclosed it. This act of course, takes care of that entire issue.

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Buck: That brings us to the next two sections. There are two sections that should be read together, section 490 and section 590, association records and and resales. Section 490 fairly simply says that the association has to maintain sufficient records to provide resale disclosures. Which brings us to the resale disclosures. This particular provision, although it is a simple one, is probably the provision that had the greatest amount of trauma at the time of the passage of the Connecticut Act. There are a lot of planned communities that simply don't maintain records and they have to get them together. They learn about this requirement when a realtor shows up with a written request for a resale certificate and then they scratch around. In the early days it took more then ten statutory days to come up with these records but they did. In about six months virtually all the community associations in the state are now in compliance, their records have been improved immeasurably and resale purchasers are finding that the whole management quality of these small communities has increased by virtue of the fact of the requirements of regular record keeping, budgeting, financial statements and that the money is being handled. This goes back to the definition of the common interest community. That is ownership of the unit requires contribution to a common fund for the maintenance of other property. The disclosure of where this money goes and the control of where this money goes is central to the philosophy of the common interest ownership act. This particular provision, the resale provision, gives the seller the information of where the money is going.

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McNall: I would like to add a comment as far as the resale certificates are concerned. One of the problems that the real estate industry has right now is that they are looked at as the ultimate deep pocket in every transaction. The seller may be gone, the builder may be gone, you always have the real estate firm as the agents involved. The resale certificate is required to be given by the seller of the unit to the buyer of the unit, which means that information obligation is on the seller not the realtor. The information that is needed to be disclosed is the type of information for which agents are now being sued. By making the unit owner, which is trying to resell his unit, disclose this information, I think is going to provide some measure of protection for the realtors involved. I believe that the real estate industry at this point needs to have this protection.

Buck: I'd like to make one small correction to Mr. McNall's provisions. The seller is responsible for obtaining the information. The association is responsible for its accuracy. The seller must request the information but once they get the information from the association the seller is not responsible for any inaccuracy that the association may have put in there, however, the association may be responsible for that. It does mean that the associations have to be quite careful as to the preparation of these resale disclosures and the result has been that the records have been brought up to date very quickly. In the planned unit development field they were in terrible shape. Condominiums have been better, principally because there was an old statutory structure. There was a formal association and in many cases the realtors knew it was a condominium and the purchaser would ask for a documents of some sort so they could take a look at it, thus the associations were maintaining it. But even in the small ones, the financial records were a mess.

This has been probably an area of impact which took my lecturing to 35 sessions of training for realtors in the state of Connecticut. There were about 200 realtors in every session, to get them to understand what the resale disclosures looked like, how to ask for them, how to present them to the purchaser and giving them some idea of their format. There was one amendment proposed for section 470 which has to do with association records proposing on page 56 line 3 that a professional manager, agent, accountant or party with whom the association has contracted for services, must return all association records within five days of termination of the contract. In the event that the association records are not returned the association may bring a claim. This is under association records, but it does have the effect by being put in one of the section 40 sections of applying this provision to old projects.

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McNall: This gets around to the problem where the association manager may be terminated and refused to return the documents for any number of reasons, the bill's not paid, the dispute or whatever it might be, and allows the association to get those records back very quickly and turn them over to new management or to take them over themselves. This is more important in the sense that the association is now required to provide the resale certificate information within ten days. It was felt by several of the associations that I talked with and several of the managers who have been asked to take over from another manager that this

section protection needs to be put in for the associations.

Buck: The whole resale process I think has been one of the areas that we would really commend the act for in Connecticut. It took a great deal of shaking up when it got started. But now it is in effect, the realtors don't mind it. It was the portion that they were objecting to, because in Connecticut there's still a little bit of caveat emptor left in the law. The realtors were not responsible for innocent misrepresentations and they would just as soon not have to go through this particular trauma. But now that they are accepting it, they are happy with it, and they were threatening that they were going to move for the repeal of the resale section. They did a survey of the multiple listing service in the state of Connecticut, some 11,000 transactions that occurred last year, to discover how many had to be relisted on the computer because people had walked away by virtue of the resale rescission and the answer was two. People don't rescind but they get the opportunity to review. It's an indication that the process is more prophylactic than a threat of rescission.

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Section 670 is a very, very powerful section and it is something that applies to old as well as new and it is in the section 40 sections. It essentially cuts through a lot of problems that have occurred in the past throughout the United States where the question is, "who has the right to sue the declarant in the case of a warranty provision." "Who has a right to appear before a tribunal on an action effecting a common interest community." "Can the association represent the unit owners?" "Can a unit owner undertake an action which is really an action of the association even though there has been loses?" "Do you have to have some kind of relationship between the two parties, for instance, a failure of a particular act to occur in the loss of the real estate commission?" It's possible that the realtor can sue the actual person who caused the failure, rather than having to go through the whole contract change or recheck. The section 670 provision essentially says that any person has the right to sue any person for failure to comply with the act if there are damages, and it allows punitive damages to be awarded for willful failure to comply with the chapter. It does mean that the lawyers' dance, dos-a-dos as to jurisdiction at the courthouse steps, is eliminated and they are right in there discussing the actual case. It is very useful and as I say a very powerful provision.

We've gone over sections 720, 730 and 740 the universal sections, and now come to the definitions in section 990. The definitions in this particular act are extremely important and there are a number of important definitions that I would like to go over. Not just because they are applicable to old projects, because as we deal with the entire act these definitions become extremely important.

The concept of "allocated interest." We don't have something called the percentage interest in the common elements. If we do it doesn't have any effect. Two important allocated interests are the votes and the common expense liabilities. Those two provisions can be different. They could not under the old act. If anybody has conducted a condominium election where one person has 8.13756 votes and the next person has 9.1234 votes and you try to count the votes, at the end, you need a major computer. The ability to separate the votes from the percentage interest in the common elements is something that every manager will be enthusiastic about. Obviously it doesn't override existing documents. Existing condominiums are still stuck with it and in a challenged election having to virtually get a computer to determine who won. But in new communities it certainly will be useful. It allows to have one resident, one vote, or one person, one vote, depending what the documents provide. It also, by virtue of another provision in the act with respect to new communities, allows voting to be split up between different classes of people. In Virginia there are some cases where tenants have partial votes, which is an interesting way of bringing tenants into the opportunity of running the community.

The other aspect to common expense liability is one of the allocated interests that is quite important. It basically is allocated in proportion to burden. How much burden does a particular unit have in a condominium association? It can be under any fair method, it does not discriminate in favor of the declarant. It's a marketing decision. It can be based on values, or square footage as the existing act provides. It can be based upon the number of the square feet of parking lot that have to be maintained, size of the roof, heating bills, a whole masses of areas could go on in that. The allocated interest run through the act and the whole concept of sharing the burden based upon expense burden, rather than value is a possibility which is important.

In a condominium it includes the undivided interest in the common elements, however, the undivided interest in the common elements have no effect. It's really

something that is left over from the old condominium act. It's there because there is a tendency in common element ownership, and a feeling among common law lawyers that there has to be a fraction somewhere so that everybody will know how much they own. But it virtually has no effect except in one instance the combination. If you can't figure out how much the value is it is a residual thing that people fall back on. That is an important aspect.

The "common interest community", very important definition, I've referred to several times. It is central to the act. The obligation to pay for property other than the unit is the obligation which is what we are regulating. The financial relationship between unit owners in common for cooperative efforts, activities, fun and games, is the kind of thing that we feel is important and that's what we are looking at. Almost everything else becomes secondary to that cooperative effort.

A condominium essentially is a common interest community where the common elements are owned as undivided interests as tenants in common. A cooperative is a common interest community where the entire community is owned by the association. A planned community is a common interest community that is not a condominium or a cooperative. It exhausts the various definitions.

A "declarant" is an important definition because is a person who essentially is a sponsor, interestingly enough, the declarant need not declare. The declarant is a person who offers the sale as part of his regular business and thus is like a sponsor in a securities act concept and is a very important definition as the person upon who certain burdens are involved. "Special declarant rights" and "development rights" are important, in that the special declarant rights are the rights to develop the project, maintain model signs, convey easements and do things of that nature. The declarant only has special declarant rights that are different from unit owners. The basic rule is that every unit owner is equal, except in those animal farms, some are more equal than others. Declarants have special declarant rights. It's felt that these are the only rights that they need. Thus, they cannot have other overriding rights that they can write into the documents that are outside of these particular aspects.

One of the special declarant rights is the development right which is the right to unilaterally change the community by adding units, by adding land, by

withdrawing land, by subdividing units based on the unilateral filing of an amendment of the declarant themselves. This ability to flex the flexible condominium is one of the new and exciting aspects of the act, and one of the things that the developers really like and it also indicates that they do not have to commit to anything more than they have to market at a given time. Under the law, if the unit is within a building you can't create it until the building is finished. Thus what you do is start on a major project such as a 100 unit project. You create 15 units by finishing a building with 15 units in it. Market them, and create development rights or have development rights to create additional units. In a project we are dealing with at the moment, a 150 unit project formed under the old law, we opted to come under the new law for this very reason. We completed 55 units, sold them all so essentially the title for the entire project is done. We have development rights to create 95 more units. These development rights are just merely a right to build a building and locate a unit in various locations on empty land in the project. Technically, as we say, all the interest in the community has been sold except development rights. We are selling those development rights, 25 to one person, 35 to another person. We have a mortgage on the balance which has been assigned to the bank. It's an entirely new concept in the form of ownership and it's a very useful form of ownership for development purposes.

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Halford: In the past when they wanted to do that, did they subdivide the property and go ahead with one section, and that was the common interest to that one. And then go on to the next section and that was the common interest to itself, and the next section an common interest to itself and then somehow recombine them later.

Buck: They never recombine them except that basically that's the way that it was done. There were two or three methods of doing it. One of which was a method whereby the developer would reserve a power of attorney from every purchaser to vote the vote of the purchaser in amending the documents to bring on new units. An irrevocable power of attorney always makes people nervous. Because people die, people sell, and there is a potential error. That's one method. Another method is to have a multiple chain of independent condominiums under an umbrella association which would maintain the common facilities. In one particular project, which we are amending to come under the act, there are seven condominiums each with five directors. Each

condominium has 20 units or less and there are nine members of the master association. In a 150 unit project we have 44 officers. We can't even fill the vacancies. We are now merging them altogether using the common interest ownership act.

Another method that was done is the so called "Chinese menu" system, whereby a developer predicts that he would have 20 units. When he has 20 units there is a percentage allocated to each of the 20 units. At a later date he has 20 more. In column B he puts 40 units and then a different percentage is allocated and then he allocates another 20 units. In column C he has 60 units with a different percentage. He predicted up front. He says what his plans will be, what his construction quality will be, and he sort of predicts ahead of time that automatically there will be a jump from column to column. It's done without statutory authority but it's been insured by title insurance so people can follow the "Chinese menu". In every case when a condominium has been created they are locked into some form of design, except in the chain of multiple condominiums. In that case they declare all the units on paper, some are finished. The paper units sit out there having to contribute to their common expense assessment but are nonexisting. They are just ready to be built around. It has been cumbersome and it has been a problem. The ability to flex the condominium under development rights is one of the big advances in the act.

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Halford: But all the development rights provisions are in the offering statement, so anyone that's buying knows that instead of getting something that's going to grow later from some other source, he knows exactly the growth pattern will be because it's in the offering statement.

Buck: That's correct. If there are development rights, there are an additional 12 questions that must be answered in the public offering statement. Essentially disclosing what plans, or no assurances that there are any plans, that the developer has with respect to the exercise of these development rights. We've found interestingly enough, that the 12 questions have made the developers plan, because they don't want to say that they have no idea what's going to happen in the rest of the development rights property. It could be a hazardous waste dump, or a dried egg factory, or whatever they choose, although, in the old days that's what they would like to reserve the right to do. Now they have to say it, and anything can be done in the adjoining property. They say that they don't want to

say that so they go ahead and plan it. Again the disclosure has had a salutary effect on the planning aspects of developers just because they had to plan.

McNall: The problem that the developers in Alaska have had is that they have attempted to phase through 25 units to test the market. If they are successful, they want to do a phase two and a phase three. Capitol Ring, for example, has got a phase one, phase two and I think phase three on the Old Seward Highway. Phasing was not actually allowed under our statutes, and I know that developer's counsel who are trying to phase have long and hard arguments trying to get phasing accepted by the lenders, because our statutes simply did not speak to how you do that. This simply takes that problem away from everybody. All you have to do is say what you are going to do. Disclose that you are going to put this in segments of 25 units apiece and get around that entire issue.

Buck: I must obviously hasten to indicate that although the definitions apply to old projects, they only apply to with respect to defining terms. They don't generate the development rights to the old projects. Because of this flexibility I think you will find that a number of projects will wait until the act passes in order to be declared. This has been the effect in a lot of the states. There isn't a rush to the land records to get ahead of it. Because of the developers' goodies that are given in the act the developers say, "Ah, we finally can do what we want to do and we'll wait until the act is effective," before they put it on the land records. There will possible be a rush to the land records with respect to simple planned unit developments that don't want a public offering statement. In those cases they will be required to give a resale certificate, because interestingly enough, a resale certificate is not just for resales, it's where ever there is a sale of a common interest community unit that a public offering statement is not required. Old projects which are being sold by the developer will have to come up with resale statements within the five day rescission period after the effective date of this act. Nobody gets away unscathed by rushing to the land records. The act itself offers so many goodies that it may be that you'll find in more complex projects they will actually wait for it's effective date.

A couple of other, what I consider, important provisions. One provision we're proposing a change in which is item 22, page 86, "ownership of a unit" does not include a leasehold interest, including renewable options, of less than 20 years in a unit under this present bill, that's the uniform provision. In

Connecticut we found that we picked up a lot of communities that had ten year leases and two five year options, clearly intended to be lease hold relationships, not long term equity relationships and so Connecticut has increased it to 40 years. I've recommended that and that is one of the bill provisions that has been submitted to you as a change in definition.

I think those are probably are some of the fundamental definitions that we probably should go through before we go through the rest of the act and the section 990 is the last of the section 40 sections that apply to existing condominiums.

Rodey: Let's stop for just a second, we have with us Linda O'Bannon who has been the chief attorney in the Consumer Protection Division. Perhaps this might be an appropriate time to ask Linda if she has any questions with regard to any of the commentary that has gone on previously on the act. Linda O'Bannon has been in private practice in Anchorage and as I suspect is experienced like the rest of us do with regard to this issue.

Linda O'Bannon: Thank you Mr. Chairman. Yes, I want to second some of the opinions that Mr. McNall has expressed, in that in our Consumer Protection Section of the Department of Law, we have received numerous consumer complaints particularly from condominium purchasers concerning their association assessments that they weren't planning for. Particularly first time condominium buyers who are perhaps unsophisticated, not aware of what was going on and the fact that there were such poor disclosures made at the time of purchasing the unit led to much concern later on when they found out that these problems existed.

Rodey: Will you identify yourself on the record for our tape.

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O'Bannon: My name is Linda O'Bannon, I'm the chief of the Consumer Protection Section of the Department of Law, I'm an assistant Attorney General.

I just want to make some very brief comments that I think is a little break in to the section by section analysis. I've already talked to both Mr. Buck and Mr. McNall earlier today, and Mr. McNall on other occasions. We have been considering certain aspects of the bill. One of the proposed changes was one that I was very concerned about is the definition on interior

space and actual condominium units. That is one of the proposed changes. We had a problem a few years ago with how appraisers and other people involved in real estate business would measure the square footage of condominiums. They were measuring from exterior walls to exterior walls. Our current act, the Horizontal Properties Regime Act, in the definition of an apartment defines the square footage as interior wall to interior wall. I was concerned that this was not accurate, as proposed in SB 44. I talked to Mr. Buck about still allowing the flexibility in forming the type of ownership he was talking about, perhaps for a marina or something, where there actually are no interior walls, but yet providing in the traditional situation of a condominium apartment that the square footage measurement would continue to be from interior wall to interior wall, so that there would not be deception in the market place in the size of the condominium for residential use, which happens often.

Buck: Perhaps if I could add to that. We did discuss this matter. Under the Horizontal Regime the interior measurement of the unit was the basis of allocating the percentage interest in the common elements and had a great deal of significance. Now what we have done is we've put the amendment in the public offering statement so it is disclosed. It doesn't necessarily mean that the percentage interest will be in proportion to that it could be, as we indicated, any burden of common expenses but we now have a uniform system required as one of the questions in the public offering statement to disclose what the interior space is in interior kinds of condominium units, residential buildings with horizontal boundaries. We feel that we are doing it merely as a disclosure, not as a basis for setting assessment or votes or anything of that nature but with the uniform system the uniform disclosure will occur and thus the advertising has to be consistent with the public offering statement and you'll have a system which everybody will be able to compare for evaluation purposes but not for any other purpose.

O'Bannon: Basically, I am speaking from consumer a outlook. In four ways this act addresses consumer protection. One is the disclosure requirements, one is through the section on warranties, and the particular section on escrow deposits and the section on cancellation rescission rights. I'm sure that Mr. Buck is going to go through each of those sections so I won't repeat that but those are all areas that have come to our attention that are really needed. Particularly, disclosure and cancellation rights if you do not receive a full disclosure within 15 days prior to the contract to purchase the common interest ownership. I suppose that would all my general remarks. There is a

House Bill 138, a bill on time sharing and this common interest ownership act would include time shares. There are some provisions for anyone needing aid that are not currently in SB 44, Mr. Buck talked very briefly about some of those. One would be to provide time shares sales only through a licensed real estate agent regardless of the type of time share interests being offered. Time share is defined in SB 44 in the definition section in paragraph 31. The way it is defined currently it would include interest, it would not necessarily be a real estate interest but it would be what is known as a right to use time share interest. The way that HB 138 is drafted currently, even in that right to use the type of time share it would require a licensed real estate agent to sell that. That is one I would like to see addressed in this bill and the reason would be we could do that through an amendment to AS 08.88, real estate commission section of our statutes. It's been the experience in many states that when people, other than real estate agents, are selling time shares it is much more likely that there will be a great deal of misrepresentation in the actual marketing of the time shares, than when you have a licensee who actually has some interest, of course, in preserving their license. They would be more interested in marketing them in a more honest way. That's basically all the general comments that I have. I don't think that it would be good for me to go through a section by section analysis. Mr. Buck is really doing very good.

Halford: Just a question on time sharing. Are you saying that all sales in time shares have to go through a real estate or are you saying that all professional sales. Can't an individual sell their own time shares under your proposal.

O'Bannon: Of course.

Halford: If the time share is sold professionally for a fee then it has to be sold by a real estate agent.

O'Bannon: Right. Or in the original offering by a developer.

Halford: Then the developer can sell it himself.

O'Bannon: No, we would recommend even in that situation that is be sold through a licensed real estate agent. But I mean either through the original offering or if you are selling for a fee. But if it's someone selling their own without bothering an agent for reselling they could certainly sell on their own. We wouldn't

recommend that they had hired an agent to sell their time share.

Senator Ziegler: Because of other obligations may I ask at what time do you intend to adjourn.

Rodey: I was going to raise that question. The members of this committee have scheduled their day according to a three o'clock adjournment time and Senator Ziegler was checking the accuracy, I believe, not for the reason that he thought that it was inaccurate. Therefore, several of the members of the committee have other commitments. I'll question Senator Halford, the prime sponsor of the bill, how (indiscernible) in terms, obviously there is a great deal of work to be done. We are fortunate to have Mr. Buck with us and (indiscernible) in this room. Senator Halford

Halford: What I suggest that we do in terms of format is request that the bill be drafted as a potential committee substitute, including these changes. I also request that the Department of Law and the guests and (indiscernible) and when we take it out the next time we've got everything all together. I don't know what the schedule is in terms of, I hate to lose the resource of Mr. Buck, particularly. I think that we have gone through an awful lot of it and have probably brought I (indiscernible).

End of Tape 1.

Tape 2, Side 1.

Rodey: ...for that reason I would like to spend as much time as possible, appoint as many people as possible, and get the best light on the problems. Is there a possibility that you would be able to join us again within a month or so?

Buck: Probably not, basically it's four days to come here for two. I could certainly join you on the telephone.

Rodey: That was my second suggestion, would be to use Alascom's new video teleconferencing system and actually work ...that would be the ideal situation, the ideal way for us to go back and forth. Obviously we will have to settle for a phone connection at this point. ATT and (indiscernible)

Halford: The only other question that I would also have is that people on the teleconference network, I don't know if they came for testimony or listen to an overview. I think that there is a lot of professional interest out there and a lot of people involved just looking over

the list is very exciting. We should at least let them know exactly when they are going to have an opportunity to present testimony.

Rodey: At this point I think that it is appropriate to hold hearings in Anchorage because of the large number of people, particularly in Anchorage, that are concerned about this and again, we ought to start it sooner rather than later...within the next several weeks.

Halford: Could I make a formal request that we have a potential CS drafted with the proposed changes and distribute that to everyone who has shown any interest on your mailing list, Senator Faiks mailing list and my mailing list prior to this so at that point they have the current version prior to the hearing in Anchorage.

Rodey: Yes, I presume that we are going to draft a committee substitute. Mr. Lewis will see to that.

Halford: I assume that we are closing out the day.

Rodey: Yes, I think that we have lost a good portion of the committee except the prime sponsor and the chairman. That's some indication that other members have other obligations. Obviously we are going to spend a great deal more time on this and just to my constituents in Anchorage, we will be providing copies of the committee substitute to Anchorage as soon as possible. I noticed the list and many of them are members of the real estate and legal community and themselves will be important people in disseminating the draft. Hopefully we can rely on the continued guidance of Mr. Buck as well as Mr. McNall. I just wish that he was a little closer. With that I will adjourn the Judiciary Committee.

SB - 44
Public Testimony 4/9/85
Senate Judiciary

Present: Senator Kelly, vice chair
Senator Halford
Senator Faiks

WILEY BROOKS:

This is Wiley Brooks. I am a certified property manager with Real Estate Management. I have presently about six home-owner associations, management-wise. I have been in the management business about 7 years. I feel that I am fairly knowledgeable of the old statutes and I've looked over the proposed statutes and see a lot of improvement. And I am for this pushing the bill on through.

If I was giving first priority to my finances I would probably be opposed to this bill because a fair share of my business comes to me because an association has problems. They have money problems, they have management problems, they have developer transition problems and they are looking for assistance to right some wrongs.

Three things have come to be common with homeowners when homeowners take over from developers. They fire the manager, they raise the assessments and they sue the developer. And I don't think that's necessarily necessary. A large share of the phone calls and the business I get would not come if we had well-defined statutes like SB 44.

A large share of the business that comes my way are developer transition related, to be honest. And that's an area in which I see real fine improvements in SB 44. A smart manager won't sign on with a developer. He'll wait until the people are mad with the first management firm and go on with the second echelon. Perhaps I shouldn't say that. I have been successful in taking over some associations from developers and it's worked because it was the desire of the developer to avoid transition problems. And we did most of the things that the proposed SB 44 proposes. And that is the reason it was successful:

- The proper documentation was turned over.
- The building plans were turned over.
- I assisted the developer with a budget and in those cases where I have worked with a developer and gotten in early, we avoided the transition problems.

That's not always the case. With most of the problems that come to me now, they did not get the assistance and they did not have the guidance that they need to make that transition go and not run into those problems.

I don't think there are bad builders. I don't think there are builders that go out there and intentionally do things wrong. Most of them don't have the guidance they need and when they

construct these projects. And if they had these items that SB 44 requires in their loan package, a lot of these problems would be avoided. So I'm of the opinion that this bill will not only assist managers. It will assist builders and it's in the interest of lenders, also.

I think the long range viability of these projects is in the interests of bankers. I'll give you a short example of a project that I have. It was mostly HOF buyers that bought into this project. The initial budgeted monthly home-owner dues were set at $65 a month. When I got involved, it had been raised to $90, the insurance premium was due, there was no money to pay for the insurance and they were flat broke. Well, it called for a special assessment and now the assessments are $130 a month, each. And that's barely covering the operating expenses. A lot of those buyers down there cannot afford that. They qualified on a $65 a month fee. They cannot afford $130. It has a high delinquency rate. I've been into it 6 months and there's approximately $4,000 in the treasury and there is approximately $4,000 delinquent in this project and the insurance premium is not far away. Some of those that are delinquent are going to the bank and asking for a deed in lieu of foreclosure. One has already been given. They were $1200 behind in homeowner assessments. And under the present statutes, the association lost that $1200. They could not afford that.

You know the state of Alaska has made relatively low interest available for homebuyers. In many cases we've built a trap for young buyers with hopes and expectations. These statutes should have been in effect before low interest loans were available. So I urge that we move forward on this bill and try to get it through this Legislative session. I think it's important that we get it in place as soon as possible. The boards which I work for have authorized me to say they are in full support of it. That's all I have.

SENATOR HALFORD: Thank you very much Mr. Brooks. I appreciate the fact that your testimony will probably generate less business in the future if we can get this bill through,but I very much appreciate your testimony and your interest in going through this bill and coming in to say something about it. Thank you. We will take the next witness from Anchorage.

RANDY BOYD: My name is Randy Boyd and I am general manager of Alaska Pacific Mortgage. Today I represent a trade association known as Alaska Mortgage Bankers Association. I would like to read a letter that we've written to the Senate Judiciary Committee:

Alaska Mortgage Bankers Association is an organization which represents 29 financial institutions, composed of four national banks, five state banks, four credit unions, two savings and loan associations, 13 mortgage companies and one savings bank. Collectively employing in excess of 6,000 people in the state of Alaska.

Thank you for the opportunity to comment on Judiciary Substitute for SB 44, Uniform Common Interest Ownership Act.

Alaska Mortgage Bankers Association has reviewed the bill. While it appears to offer some improvements over current statutes, it is an extensive piece of legislation which should be thoroughly reviewed in order to ascertain its full impact. Following are some specific comments:

1. Section 34.08.030. This section proposes to exempt small and limited expense common interest communities from most of the bill's requirements. However, since these communities would not be exempt if they are subject to financing from the Alaska Housing Finance Corporation, in reality, there will be few if any communities eligible for exemption.

2. Section 34.08.030(e). This section requires addition of unit owners other than the declarant to the executive board upon conveyance of 25% and 50% of the units to individual unit owners. While the concept of individual unit owners representation on the executive board has merit, compliance with this requirement would probably result in a new requirement of the lenders by Alaska Housing Finance Corporation which would be difficult to monitor, since typically the long term loans on individual units close at many different lending institutions.

3. Paragraph (f) of the same section. This section requires a minimum of three members on executive boards. There are a few associations comprised of only two units.

4. Section 34.08.340. This section requires inspection of the common and limited common areas by certified architect or engineer. This type of inspection is typically performed by a fee appraiser who provides a list of unfinished items. If the items cannot be completed due to weather or other adverse conditions, it is normal for a cash escrow to be established to insure completion.

It should be noted that throughout the bill, performance of certain types of items is required by persons other than those typically performing those functions.

5. Section 34.08.350. Transfer of special declarant rights. This is of particular concern to construction lenders. The concept appears to be that a lender obtaining title through process of foreclosure, deed in lieu of foreclosure, sale under the bankruptcy act, etc., is protected from additional liability or obligation as a declarant if the lender declares in a recorded instrument an intention to hold the right solely for transfer to another person. In reality, a lender often must assume completion and maintenance of a project in order to hold sales transactions together, maintain a good relationship with existing unit owners and avoid potentially

expensive litigation. By the time a construction lender must take over property through foreclosure, deed in lieu, etc., the project usually has a poor image in the community which would only be worsened by putting the project on hold pending sale by the lender to another person. The ultimate result of this bill could be to put the lender in the position of increased liability.

6. Section 34.08.470. Fee for assessment. This section would give a maximum of six months' association dues priority lien rights over a first mortgage. The Alaska Mortgage Bankers Association has requested a policy statement from the Federal National Mortgage Assn, Fannie Mae, regarding this item. Paul Vergets, counsel for Fannie Mae in Los Angeles, has stated verbally that if this section became law, Fannie Mae may require:

(1) that all association dues be collected on a monthly basis (some associations currently collect annually) and

(2) association dues be included in the mortgage payment.

Item (2) would greatly increase the responsibility and paper work of mortgage servicers. Although Fannie Mae may not own many loans in the majority of Alaska's common interest communities, it does own some loans in many of the projects, and the impact of such a requirement could be extensive.

In support for our request for thorough review prior to passage, we would bring to your attention a law which passed in Utah in 1983. It gave the associations priority lien rights. Once the impact of the law was discovered -- inability to sell loans on the secondary market, which quickly affected condominium values -- the law was rescinded in special legislation. As I understand, the wording of the Utah law is different than SB 44. However, it does point out problems which can occur when legislation is enacted precipitously.

7. Section 34.08.520 - 590. These sections relate to requirements for information to be furnished to purchasers. (Public Offering Statement). The requirements are burdersome, at times with unworkable time frames, and appear to add financial liability to executive boards, developers and lenders.

8. Section 34.08.530. ('1) This section, allowing a buyer 15 days after receipt of the Public Offering Statement in which to cancel a contract for purchase of a unit, could prove costly to a developer. Units would be held off the market during the waiting period, with uncertainty as to the sale. Or if not held off market, may result in litigation if "sold" to more than one purchaser. In most instances, purchasers who, shortly after signing a contract decide they do not wish to pursue the transation, receive their earnest

money back from the seller. This requirement would result in additional carrying costs to the seller which would be ultimately passed through to buyers in higher sales prices.

9. (17) Same section. Requires disclosure of financial arrangement on additional payment. While lending institutions may anticipate financing all phases of a project, it is not typical to commit to additional lending prior to completion and marketing.

10. Section 34.08.700. This section requires substantial completion be evidenced "by a recorded certificate of substantial completion executed by an independent registered architect, surveyor or engineer or buy issuance of certificate of occupancy. Certificates of occupancy are not available in many areas of Alaska. Requirement of a certificate by a registered architect, surveyor or engineer again adds to the cost -- both direct costs and those due to delay. Final inspections are typically performed by fee appraisers. Requirement of performance by other entities appears to set another layer of paper work, delay and expense.

We have mentioned problems which are immediately apparent. There are many other areas of concern which have not been addressed. We do not understand their full impact at this time. The bill would require increased policing on the part of the lenders by secondary market investors. Realistically, this will result in higher fees to developers and therefore higher costs to homebuyers.

The Section Analysis is brief and in our opinion misleading in that it glosses over the actual impact of the bill on developers, lenders, executive boards and the secondary market. Final enforcement of this bill would be litigation which would benefit few outside of the legal community. The Alaska Mortgage Bankers Assn is ready and willing to work with the Legislature and or legislative staff on this bill. But we urge you to fully consider the impact and delay passage until all sections can be thoroughly reviewed. Thank you very much.

SENATOR HALFORD: Thank you for your testimony Mr. Boyd. The Judiciary Committee has not received a letter from your association. When was it sent?

MR. BOYD: I turned it into the office today and sent a telegram I believe about two weeks ago.

SENATOR HALFORD: Were you on our original mailing list in December -- I think we sent out about 500 letters on the original version of the bill and have been corresponding with a number of people in financial institutions as well as others. I am referencing that to your concern about rushing the bill through. I think we've been working on it for about 6 months now.

MR. BOYD: I've received two packages of one copy of the original bill and then the legislative analysis at my institution.

SENATOR HALFORD: When did you receive the first one?

MR. BOYD: I can't remember the exact time frame, but it's been four months.

SENATOR HALFORD: Thank you. I wonder, Don Buck, are you on?

DON BUCK: Yes.

SENATOR HALFORD: Don, could you try to run through some of those considerations and what's happened in other states. The Utah law was mentioned. A number of other things were mentioned. I tried to take notes on them. I hope you did too. If you could kind of run through some of that...

DON BUCK: Ok. I tried to take notes as fast as I could. (Breaking up)... Some of the comments made were, in some cases, correct and it's a matter public policy as to whether it is acceptable to the Legislature.

For instance in 34.08.030, indicating that certain de minimum projects are exempt from the act unless they are subject to financing by Alaska Housing Finance Corporation, which means that a lot of the de minimum projects will in fact be brought under the act. Connecticut has a similar experience, except that if the de minimus project is a conversion project it is brought under the act. And what is happening in these smaller projects is that the documents are being prepared and some straight forward forms have been made available and in fact the purchasers of conversion projects -- even though they may only have half a dozen units -- are getting better consumer protection than they would have, had they not been under the act itself. It was a policy decision made in Connecticut that these projects should be covered and I think the policy decision made by the Senate that AHFC-financed projects should be covered by the act is probably a good one, too. But it does, in fact, put some requirements on the new projects, if they are going to be financed by AHFC.

Section 34.08.330(e), requires one-third of the unit owners who are directors or members of the executive board to be elected by persons other than the declarant. That has been a provision that we've had in the Connecticut since 1976 and it's not been a serious problem. It probably often has served in the breach but by the time transition occurs (in Connecticut's provision that occurs when 60 percent of the units are sold) there is a meeting and there doesn't seem to be any serious consequences. Although I suppose if the developer had been running rough-shod during this period of time, and had had his executive board passing various kinds of rules and regulations, the passage of those rules would have been in doubt. But in fact, it's been a fairly small point.

The point he brought up in Subsection (f) -- the minimum of three members on the executive board -- does come from the UCIOA. And it does in fact trouble us, too. Because we do find that in the two, three or four unit projects, coming up with three members of the executive board is sometimes a bit cumbersome. What we have done, is that we've provided for a three member executive board, but with a potential for vacancy. That's not particularly neat draftsmanship but we can find that the unit owners are automatically on the executive board and we can draft around it. In the case of a project with perhaps six units or less, subject to AHFC financing, under the act it should be possible to have fewer than 3 members on the executive board. Good point.

The issue of certification by the architect or engineer was brought up twice. In Connecticut we don't have a fee appraiser as a licensed professional who is subject to professional discipline. If that person is subject to professional discipline in Alaska, the addition of the word "fee appraiser" to the words "architect" or "engineer" would appear to obviate the problem of inspection and might be, in the Alaska practice, a fairly good amendment.

The issue on transfer of special declarant rights. The deep freeze, as it's called. This is where the lender who obtains title is protected from liability as a declarant, provided he only assumes certain numbers of the declarant rights, but not all of them. In reality, if you read the provision of .08.350, most of those powers that are needed to sell out the existing project -- that is the power to provide for model units for sales, and some control provisions -- are given to a lender even if the special declarant rights are in deep freeze. However, the uniform law commissioners felt that if they were in fact going to start construction again and start exercising the development rights to add units and in fact were going to become developers, that they then had to assume the liability as developers under those circumstances. But if in fact they were going to turn it over to a successor declarant who could then assume these liabilities, it would be appropriate. In fact in Connecticut, what happens is a subsidiary corporation is formed to give some insulation of liability and in most cases the projects are sold (inaudible). But if a lender is going to assume the responsibility of a developer, in fact the liabilities of developers for disclosure should be appropriately in their lap.

Section 34.08.470. Superliens. I have not talked to Mr. Vergetz at Fannie Mae, but I did talk to Mr. Joseph Harris, who is the condominium authority in the general counsel's office in Washington, DC, of Fannie Mae. And he, this afternoon, as we were talking, was conferring with Mr. Vergetz about the policy based on the inquiry from the Alaska Mortgage Bankers Assn.

On October 28, 1980, Fannie Mae sent a letter to all their conventional seller-servicers in Pennsylvania. The subject: Fannie Mae's conventional mortgage purchase policy relative to the Pennsylvania Uniform Condominium Act. And the Pennsylvania

Uniform Condominium Act did, in fact, provide for a limited lien priority under their section 33.15.B, which is the same as your Section 34.08.470. And they indicated that Fannie Mae would approve loans from condominiums that were subject to the Uniform Condominium Act in Pennsylvania provided that the declaration required that all common expenses would be made due and payable in a monthly basis and that the declaration provided for the subordination of fees charges and late charges that could be levied outside of the regularly budget assessment, pursuant to Pennsylvania's 33.02.A 10, 11 and 12, which is your section 34.08.320 (a), 10, 11 and 12. And if those particular provisions were inserted in the declaration, they would accept mortgages from the seller servicers in Pennsylvania.

There is no provision or requirement in there that association dues would be collected with the mortgage payments. And in reality, in the 10 states that have passed in one form or another the Uniform Condominium Act, Fannie Mae h not yet required association dues to be collected in escrow or as part of the mortgage payment. And they have lived relatively happily with the six month superlien.

The Utah experience was an absolute priority, I understand, of the association fees over the assessments and, in fact, not limiting it to six months regularly budgeted assessments. Utah had the Uniform Condominium Act. I do not know at the time of the recision whether they went back to the six-month limitation or not. I am not familiar with it. But the other states that have passed the Uniform Condominium Act have the six months and Fannie Mae has been buying mortgages without requiring association dues to be collected in the mortgage payments. In further discussion with Mr. Harris, he agreed that since de minimus PUDS are exempt from the Fannie Mae requirements entirely (and that is if the association dues are so small as to be appropriately collected annually) they are generally exempted from Fannie May review and warranty and thus, in the cases where there were annual assessments, Fannie Mae would not worry about it if it fulfilled the de minimus standards.

So the basic conclusion was that they would not be terribly concerned, but he was going to discuss it with Mr. Vergetz this afternoon and they were going to come up with a policy statement. And Mr. Vergetz, he said, was the spokesman for Fannie Mae in Alaska and would be coming up with something official on that.

Let's see now. The basic package policy was put out from Pennsylvania and then followed substantially in W. Virginia and still remains in effect. They found that they required (in addition to the Pennsylvania requirements) that the title policies contain affirmative insurance, indicating that all of the assessments had been paid up through the date of the policy. The private mortgage assurer would in fact assume these particular charges if they were unpaid. That has been the practice in Pennsylvania, W. Virginia and the other uniform states.

So that's basically the comments I have on 34.08.470.

With respect to the requirement for the Public Offering Statement, in sections 520-590. In fact it is true, that there are additional burdens being put upon the developer to provide full disclosure to the purchasers of planned unit development units and condominium units in Connecticut and states which have passed this act, as well as in those states which have other forms of 2nd generation acts: New York, Flordia, California and Michigan (which has its own act, which is different from the uniform act.)

The Public Offering Statement is considered as a public policy statement to be the best way to protect the consumer. And what happens, in fact, however, is that the consumer not so much reads these public offering statements and rescinds but the developer preparing the public offering statement plans better and comes up with the answer to the question he would like to see the public have in the public's hands. And thus the planning and the quality of the project goes up, principally because of the disclosure aspect.

And in fact recision is very rare. In Connecticut, the realtors were opposed to the resale disclosures because we do not have the law that you have in Alaska that a realtor is liable for misrepresentation. In Connecticut, the realtors, after a year of experience, did a survey of all the multiple listing services in the state (22 of them). There were approximately 4,000 condominium units listed in the MLS as being for sale, and they surveyed the MLS to find out how many were re-listed on the computer after having been listed as having been sold by virtue of a recision under the 5 day recision period period for resale certificates. And the answer was 2. Out of 4,000. And so, in fact, the recision does not happen very often -- and the reason it does not happen is because the disclosures are better. Disclosure is of course the seller's best friend. And in the case of the resale, also the realtor's best friend.

And so the preparation of the Public Offering Statement has in fact increased the quality being provided and that has pretty much universally occurred. And I was reminded of that provision with Mr. Brooks' testimony in that a developer provided a $65 a month fee. Had the act been in place, if the developer in fact was subsidizing or not providing services that would have to be provided by the association, he would have had to have said so exactly in answer to one of the statutory questions. It would have been disclosed and thus the people who qualified on $65 a month would not be looking at $135 or $150 a month fees right now. They would have known that there had been a subsidy. The lenders could have found that answer out and that could have been adequately disclosed. The subsidy is not prohibited. All that is required is that the subsidy be disclosed.

Which brings up the question of 17, the disclosure of financial arrangements for additional phases. He is correct. In fact,

lenders usually don't commit to the financing of subsequent phases. What happens as far as the answer to the Public Offering Statement is concerned, is that there is no financial arrangement for the completion of the subsequent phases. Thus it means that the developer has a sparkling brochure showing club house facilities and additional parking and additional drainage and water and open space and park areas and lakes. If he has no financing for the completion of all of these amenities, it will be disclosed. It doesn't mean that they must have financial arrangements made. It merely says that if they don't, it is disclosed and the consumer gets a clear crack at it.

And likewise, if a developer's sales agent represents by this condominium unit that its going to look over lovely recreational amenity, and in fact there's no financial arrangement for doing so, the developer can be protected because the financial disclosures in the Public Offering Statement said so. And the agent can be in trouble, but at least the developer is protected because, in fact, he's given the disclosure.

Section 34.08.700. With respect to the certifications by the architect or engineer. To repeat, if the fee appraiser is a licensed professional and is in fact subject to professional discipline, malpractice and so forth, and can, in fact, provide this kind of information, I can see no objection to adding a fee appraiser under whatever appropriate licensing provisions Alaska has as an entity that would certify completion.

I know there are many areas which of course I have not addressed. It's a complex statute and many, many hours can be spent on going through it. I'd like to assure the members of the Alaska Mortgage Bankers Assn that Fannie Mae, Freddie Mac, VA and FHA were all on the advisory committees that drafted the act and we did spend close to five years in discussing these particular points. That is not to say that you can't come up with a new one, but a tremendous number of these particular points can be explained. The commentary does it fairly accurately, but I'd have to again commend this particular bill to your favorable consideration and thank you again for allowing me to speak.

SENATOR HALFORD: Thank you very much, Don. There are a couple of areas that I wish you would -- as you're sitting there and we take some more testimony -- look at and possibly give us some language on. One is the point on the members of the executive board. If there needs to be language added to the section on the executive board of the de minimum common interest project, we need to know where that language should go to be able to reduce that number of members back to a smaller number in those cases. Also, with regard to fee appraisers. I don't think we have a state licensing provision. However, I think there are probably national provisions on appraisal and there may be some way that we can in this legislation reference someone licensed by some kind of a national organization and add that to the persons who can make that approval. If you

would be thinking about those two things while we go on to some testimony, then we'll come back to you.

If we could go back to Anchorage and take the next witness.

FRED FERRARA: My name is Fred Ferrara. I am a real estate appraiser and president of Alaska Valuation Service, an appraisal consulting firm. I am here testifying today on behalf of a trade association, the Building Industry Association of Anchorage -- better known as the Homebuilders Association in most parts of Alaska. We've looked at the bill for some time.

For the most part I think that most of the response we've gotten from our members has been favorable. For one thing the disclosure requirements are plain and the developer would know what he has to do in order to comply with the Act. We believe that's appropriate. We did have a few of the same concerns that were voiced by the Mortgage Bankers Assn and I think those have been discussed fairly well for us. I can take that back to our membership and explain some of those.

Some of the other provision that we are concerned about also were brought up,particularly about the architect requirement. Many of the projects do not have a registered architect connected with the project. Perhaps in preparation for some plans and so forth but usually not in the inspection process. As an appraiser, I can speak to the other part of it. The appraisers are not licensed in Alaska. Many of the appraisers are covered by insurance. There is an omissions insurance policy which many of the lenders do require that they approve each year, so perhaps that would be a substitute. Beyond that: the national organizations. There are several major ones, but the two major organizations which are most recognized are the American Institute of Real Estate Appraisers and the Society of Real Estate Appraisers, which have a number of members in Alaska. Those appraisers, I think you will find, probably do many of the existing condominium projects or common interest ownership already. They are the appraisers involved in those projects in many instances. So they may be covered at the present time, at any event. But there is no licensing for appraisers in Alaska now. But the Homebuilders were concerned of course that they will have to retain an architect who is not involved in the project to certify it or something, which may be difficult to do and a costly process. Just to certify that a project was in fact done. The other aspects of the bill, I think are fine.

We've got some concern -- we didn't understand how it would apply and what the track history has been. We have made some contact in Connecticut with a few developers and builders who are participating in it, including an attorney and a developer, a Mr. Cone. I think Mr. Buck would be familiar with him. And the response that I got back and we received from them was that basically the bill was working fine. They have not had any particular amount of litigation under case law, so they could not really say how it would come out if it came to any kind of adjudication of that

sort. So to some extent we are a little concerned in that we are at the cutting edge more or less of new legislation and the amount of the population in Alaska is such that we are concerned that the case law would be slow to develop here because we have so few people and so few cases. Perhaps some other states would have larger populations and many more projects of this nature and would develop their case law and their back up much sooner than we would and we would have many questions which would be unanswered for a number of years. We don't know how to solve that problem at this point in time. There obviously would be no other regulations or other supplemental or other types of things which would explain this bill. Everyone would have to go back to the statute.

So all in all, I can definitely say our local association is in favor of the bill as it is with the amendments that have been made, with some questions relative to some things that have been brought up and some things that I've mentioned and the Mortgage Bankers Assn has mentioned earlier.

It's a new thing. We are concerned we don't know how it would apply to us. But we think the disclosure requirements are good. We don't see it solving the problems that many people are mentioning as to projects. We don't see it solving the fact that perhaps there has been a building or construction project and something is sinking. This bill won't solve that. It won't solve the problem that all of a sudden some of the expense of operation of the project have changed drastically, that taxes go up, or that insurance policies go up and the monthly payment is not sufficient to cover it. It may cover it if the monthly payment was supposed to have been double. But if the monthly payment has to rise by 30 to 40% due to inflation or whatever, this bill is not going to solve that problem either. I don't think anything will do that.

But as you say, it will allow the developer to line out all the points and people will be able to see it and make a decision on it. And the developers to some extent will feel that it may serve to limit their liability in a way because they have disclosed all of the facts which were considered pertinent and perhaps they may have a better occasion if it comes to law to prove their position that they were doing things properly in conjunction with market conditions at that time.

So overall I would say that our organization is in favor of the bill. We would like to see it passed. We do feel perhaps there are a few questions and it would probably benefit from some additional study. But we could live with it. The question is, do we want to see it passed now and make changes later as they come up. Or do we want to make the changes now before the bill gets passed. We haven't resolved that question in our own minds. That is the extent of my testimony.

SENATOR HALFORD: Thank you very much for your testimony. I would

point out that the bill has a delayed effective date. It goes until the first of January, 1986. Senator Kelly has a question.

SENATOR KELLY: My question, Fred, is on the qualifications of appraisers. What if we were to use appraisers qualified by the Alaska Housing Finance Corporation. Would that solve the problem?

FERRARA: We would have no problem with it. I would imagine Alaska Housing may have some problem with it, because at present they don't qualify appraisers except for the mobile home appraising program. That's the only qualifications list they maintain. It the responsibility of the individual lenders at present to qualify the appraiser they use for an appraiser report. If they would come up with an approved appraiser list, the appraisers would qualify for that and one of the requirements would be perhaps an errors and omissions insurance in an adequate amount to cover it. I'm sure you'd find appraisers, you know, coming up with that very quickly in order to meet those requirements. Fannie Mae did have the approval list in past years when they were active in the market. They terminated that list about four years ago and as a result now there is virtually no approval process except what the individual lenders go through in the state.

SENATOR HALFORD: There is another way to deal with the de minimus projects with AHFC financing. That is that we could maintain the exemption in the legislation and have AHFC by regulation require those parts that they thought were appropriate. That at least would give them some guidelines that are better than they have now. But it would allow some flexibility in the small projects that are only covered because they are financed by AHFC.

DONALD HARMON: My name is Donald Harmon. I've been on the board of directors and am president of Alaska Landings Homeowners Assn for the last two and a half years. I've come here today to talk to you about the little people. The people, after all the litigation and everything is passed. The people that are buying these homes and the day to day problems they are faced with -- mainly dealing with the board of directors.

These people are mostly young single families, young single people or older people who are told by the realtors that all of the problems are going to be taken care of by someone else. This is the way these things are sold. This is what I was told. The whole point I'm getting at is the misrepresentation that is involved with the lack of proper legislation.

I was told that everything would be taken care of. I had just sold a home that I was constantly taking care of -- the lawn, and all kinds of things. It was a relief to me that someone else would be taking care of it. Once I started reading through my decs and by-laws I began to realize that nobody was going to take care of this, other than myself or my neighbor. And as I started talking to my neighbors, as the units started to be closed, no one was interested in taking care of this. Everybody was thinking

that someone else would take care of it because they got pretty well the same story that I did. And from talking to the managing agent, who the builder was working with, it was pretty obvious that we were going to have some definite problems.

I was trying to protect my investment. I didn't want my property value to just go right out the door. I wanted somebody to be taking care of this.

And the manager said, "We will handle everything, don't worry about it."

I said, "Well, what about the dues? A lot of people here, myself included, have pretty much extended ourselves the maximum the state will allow in order to qualify for this home, even though it is so small. I have extended myself totally. And the dues will probably go up 10 to 20 percent." And I said, "Why is that?"

And he said, "Standard practice. Mostly that the developer will -- in order to sell the unit -- try to keep the dues low for the sale."

And I said, "Well, can't we live with this budget. Isn't it comparable to what we actually have to pay?"

And he said, "Yes, but it's pretty standard procedure that we'll have to go increase by 10 to 20%."

And I said "Why? Why is this?"

"Just standard procedure."

OK, as the association was formed, it was time for us to take over. I was elected board member and president and trying to deal with the manager that the builder was associated with. I was beginning to realize that we, the homeowners, were not in control of the situation. It was the manager who was trying to manage the property himself -- he might have thought it was in our best interest to try to manage the property himself, and make all of our decisions for us.

I did not believe that was true. I asked for documentation of the bills, how much are we paying here, how much are we paying fr gas, water, ground maintenance. He could not supply me with that. He said, "It's no problem. You don't have to worry about this. I'll take care of it." I was beginning to see a very serious communication problem between the board and the managing agent and so we started looking around. We found one that we could communicate with effectively and who we felt comfortable with... (change tape)...

And I said (to the old manager), "Why not?"

And he said, "We need a hand-written letter from the board of directors." So I typed up a letter myself and sent it in to him and he got it.

I said, "Now can we have our paper work?"

And he said, "No, we need a hand-written letter."

I said, "Do you mean written in longhand .?"

He said, "Yes."

I could not believe this was actually happening. I was appalled that this was even happening. I was convinced even more that he was working with the builder as a buddy system, or they had worked on many projects and they just worked smoothly together. I do that with people myself. If there's a problem involved, I work with people I can work out something smoothly with. I don't really blame either the builder or the developer. I didn't blame them at this point because I figured that they were just trying the easiest route in order to take care of the association.

But it was the homeowners, according to the state Legislature in the by-laws and decs, who were responsible for taking care of it. It was not the builder, it was not the managing agent. This time I got very serious about the decs and by-laws and started reading them. What was the governing body behind this? The Horizontal Property Regimes Act. I asked our new manager to give me a copy of this, which he did. I tried reading it and I could not understand it. I did not know what it was about. I'm used to reading technical manuals, too, but that was a little too involved for me to even understand.

As time went on, the new managing agent showed very much interest in us. I was pleased by this. Then we had to deal with the builder, or the developer, who was a conglomeration of builder, banker, real estate. He put this all together. We were the first board of directors. They knew what the decs and the by-laws said but they did not disclose very much of this information to us at all. We found out everything ourselves from research, (us being the board of directors and the new property manager).

We found out that we were responsible for quite a few things. We're not just responsible for a single family home. We are responsible for 102. I am responsible for 102 people with houses. Not just my own.

We were beginning to realize that the developer was falling behind on a lot of his responsibilities as the one paying home-owners dues. He started falling behind. We thought we would give him a little time to catch up. He was having troubles selling units. He started falling behind in the warranty items. The warranty items were being drastically disregarded because he was on to a new project. We had to send him paperwork from a lawyer about the

warranty work, which he finally started doing again, but now time has gone on and we are giving him ample time to pay home-owners dues and he is now $16,000 in arrears. And we've had to take him to court to make him pay his home-owners dues. And he set up the decs and by-laws in the first place. They signed the things and got the whole thing started. They, if anyone, should know what their responsibilities are.

Another problem with disclosure was we have a railroad crossing entering right into our complex that as we started very seriously into our decs and by-laws, we found out that the association is responsible for any accident that is involved there. Thus we have a security gate system there. You drive up, it opens, you come in and punch a number. It was sold as a security item for the complex. But we were told by the developer, by the realtors who sold the units to me and my neighbors -- everybody -- that it was an added feature the developer has given to you, for your security.

And then we find out that in order for him to develop that project he had to enter into a contract with the State of Alaska in order to get a railroad crossing there. One of the requirements was this electric gate or some type of security gate. We were misrepresented again. We were told that it was an added feature for our benefit. Now the board of directors, after finally finding the agreement between the original board of directors and the developer and the lawyer who got this all together, after we finally get a copy of this, we find out that we are possibly liable for about $11,000 in payments on this gate. And also, yearly expenses that will have to be general assessments, or added assessments to the home owners. And this we are finally finding out after two years. We have had to get a lawyer on this too because after reading the decs and by-laws we are finding out how serious this is.

I believe that SB 44 is going to clarify everybody's responsibilities and liabilities in order to give a new homeowner an idea what he is getting into.

Don't get me wrong. I'm not bitter about this. When I got into this I was very naive about this whole situation. I've learned a lot and I'm glad that I did. But I don't think that it was necessary to have to learn it this way. If there was proper legislation in order to guard some of the home owners that are getting into it on a very honest basis and are being totally misled. That's all I have at this time.

SENATOR HALFORD: Thank you very much. Those are some of the problems we are trying to address. Could we take the next witness from Anchorage? We also have representatives here from the Division of Banking and Securities on a specific question that we will be taking up after we finish the last person who wants to speak from Anchorage.

GIL LULAY: Good afternoon. I'm Gil Lulay. I am employed by Marston

Properties. I am a community associations manager. I also live in a condominium association, so I see the problems from several different angles. There are three points that I would like to make.

One is the records responsibilities. I believe Mr. Harmon spoke about those just before me. The records are an integral part of the history of an association, the life of that association. Good record keeping and transfer and availability of records is really essential for the well-being of the association to do the work that it has to do. The provisions that are made for record keeping in this law are very valuable.

The second point is the problems that we're running into with collection. As the default records escalate with the mortgage companies, the collection problems also escalate. In one particular association which I manage there have been two deeds of trust in lieu of foreclosure signed and in both of these there have been delinquencies that have had small claims actions initiated. But in one particular association there is a clause in the declaration that says with the deed in lieu, any assessment becomes the common liability of all the other owners. That's not a common provision, I find, in many of the declarations, but it is spelled out specifically in this particular document. It is also one of the associations in which there are many HOF buyers, who again are maxed out with regard to their ability to assume additional financial liability. The superlien, as it is referred to, and addressed in the document, would offer some assistance in that. It is not going to be the answer to all collection problems, but it would certainly provide some assistance.

The third point is also a point that I found Mr. Harmon speaking of from his personal experience. I see it from the other side. It is that the strongest asset that an association has is the informed participation of its homeowners. I manage 13 associations and many of the owners in those associations come in with what I refer to as a regimentality. They do expect that, since they are paying their assessment, that the management company is then going to take care of everything, as a landlord does. That we are their landlord. And that if there is a problem, all they need to do is call it to our attention and it will be taken care of.

The things that we can do as a management company depend upon the cooperation and the functioning of the board of directors. The board is what sets the policy. They are the ones that make the decisions and give us the direction.

If the board is not involved in the association, if the homeowners do not realize that they have bought into a multimillion dollar business when they bought their home -- that they didn't buy just the inside of their unit, but that they bought an operating business that has a budget, that it has property in various states of repair that is going to require various kinds of work to

maintain it -- if they don't realize the complexities of handling that is involved, that they are just a co-owner, that it requires a level of cooperation that is not required in the ownership of an individual residence, there can be resistance to participating in that process. Resistance to going to association meetings or to participating in a board of directors. And that resistance can be devastating to the morale and the general live-ability of the association. Information is the first step. To inform them, to let them know that they are buying into something that is rather complex. Again it isn't the end of the problem or the whole solution, but it is a good first step as they begin their home owner ownership. Thank you.

SENATOR HALFORD: Thank you very much. I think now we'll hear from Willis Kirkpatrick with the Division of Banking and Securities.

WILLIS KIRKPATRICK: Thank you Mr. Chairman. My name is Willis Kirkpatrick, Director of the Division of Banking and Securities. We have one amendment that we would like for the committee to consider and that occurs on page 66 on lines 12 and 13. There is a provision there that the bill you have before you says it is not a security under the Alaska Securities Act. We would like to amend that to bring it within the scope of the Securities Act, but not as a registration requirement. Section 10 of the Alaska Securities Act of 1959 has fraud provisions in it and by including it with the body of 45.55, it would give attorneys a right of action against fraud or in cases of investment contracts were misrepresentations are made. I have with me Ed Watkins, securities examiner and investigator with my agency, who could discuss with you what some of those abuses have been or could be.

SENATOR HALFORD: Thank you. I am trying to think what the effect of that is on another proposed amendment, Unfair Trade Practices. Currently you do have access to condominium problems under the existing law?

WILLIS KIRKPATRICK: Only in the area where it can be found to be investment contracts. In the situation of time shares, we are proposing that that be left with the Department of Law and the Consumer Protection Act.

SENATOR HALFORD: But under current law, if they are found to be securities, then you do have access.

WILLIS KIRKPATRICK: Yes.

SENATOR HALFORD: So we wouldn't be changing current law. We would simply be stating that instead of a complete exemption, it would be an exemption from the registration part. This is not a change from current law.

Discussion of amendments...

SB 44

Teleconferenced Testimony
before the Senate Judiciary Committee

February 26, 1985

DON BUCK

My name is Gurdon Buck. I am with a law firm, Robinson and Cole, in Hartford, Connecticut, and I am testifying from Hartford, continuing on the testimony on Senate Bill 44 concerning the Uniform Common Interest Ownership Act.

As a matter of background and to try to catch up from the previous testimony, I am, in addition to being an attorney, a Realtor and a national trustee of the Community Associations Institute and the Vice Chairman of the Condominium Committee of the Real Property Section of the American Bar Association. I was also an ABA advisor to the Uniform Law Commissioners Committee that drafted the Uniform Common Interest Ownership Act.

Also as a matter of background, the State of Connecticut passed its version of the Uniform Common Interest Ownership Act effective January 1, 1984 and since that time I have drafted about two dozen sets of documents for projects. As for my interest, I personally principally represent common interest community developers, drafting documents and counseling the acquisition, marketing and transition of control for common interest community projects. We also represent associations, lenders and municipalities in community association matters

I have been asked to make a brief overview of the Act to try to bring people up to speed. For those of you who are not privy to the testimony earlier on the Act on February 5, the Uniform Common Interest Ownership Act was adopted by the 1982 annual meeting of the National Conference of Commissioners on Uniform State Law. Basically it is an act that regulates three forms of ownership of common interest community projects: the condominium, the cooperative and what used to be called the planned unit development but is now called the planned community in the act.

While there is a common scheme of development (that is, that there is a central community association that provides maintenance and upkeep and services for the units or portions of property within the project and this common scheme is shared by all three forms) the legal consequences flowing from the choice of forms differ substantially. Typically, condominiums have been a regulated form of ownership under statutes -- often, in some states, with consumer protection provided and in Alaska with no substantial consumer protection. Cooperatives and planned unit developments are significantly less regulated and are created by either corporate law or common law covenants in creating the association and the obligation to provide maintenance assessments, often with varying levels of competence with respect to the documents that are provided for the particular associations.

National lenders have found it very difficult to compare laws between states and statutes governing condominiums and

common law rules governing cooperatives and planned communities and they will use varying terminology, varying systems and make it almost impossible to assess the appropriateness of making loans, financing, sale and interstate commerce. Thus the National Conference of Commissioners and Uniform State Laws, in a process starting in 1975, has drafted a series of acts -- the Uniform Condominium Act, the Uniform Planned Community Act, the Model Real Estate Cooperative Act -- and then in 1982 merged all three acts into the Uniform Common Interest Ownership Act regulating all forms of ownership, using unified terminologies, unified systems. The act itself has been passed in one form or another as either the Uniform Condominium Act, the Uniform Planned Community Act or the Model Real Estate Cooperative Act in some 11 states. Oregon has the Uniform Planned Community Act, Virginia has the Model Real Estate Cooperative Act, and the Uniform Condominium Act has been passed in West Virginia, Pennsylvania, New Hampshire, Minnesota, Maine, Missouri, New Mexico, Rhode Island and Nebraska. All of these acts have essentially the same structure but apply only to their form of ownership.

The Uniform Common Interest Ownership Act is presently the law only in Connecticut, but it is being contemplated in West Virginia, Vermont and New Jersey, with significant excerpts being submitted in California. Thus the act itself, as far as its administration, as far as its financibility, its internal operations, has a great deal of experience.

The new aspect of the act, which is the governance of all three forms of ownership, has only had experience in Connecticut, and thus I've been asked to discuss some of the Connecticut experience and to go through the act on a section by section basis, giving a summary and giving some reasons for what's happening and possibly giving some anecdotal information as to what is our experience in Connecticut.

With your permission, I'd like to suggest that as I finish a section, perhaps Bill McNall from Anchorage, who has had a substantial amount of experience in this area of law representing associations and some developers and who was president of the Alaska Chapter of the Community Associations Institute, could step in and perhaps provide some anecdotal support for the needs for some of these particular provisions.

At the February 5th hearing, we went through the Act very generally and then started taking up the bill on a section by section basis. We ended up going through what I call the Section 40 sections. Under Section 38.08.040 -- applicability of pre-existing common interest communities -- there are around a dozen provisions of the Act that apply to all common interest communities that were created in the state before the effective date of the Act, but only with respect to

events or circumstances occurring after this effective date. These particu.ar dozen sections are quite important and we went through them in some detail because they are the ones that we will apply to the existing projects. What I am proposing to do, in order to catch up, is to go through the sections on a sections by section basis, but when I get to one of what I'll call a Section 40 section, I'll gloss over it very quickly because we have gone into it in some detail on February 5th. I hope to try to confine my remarks to no more than another perhaps 45 minutes and then we can answer specific questions with respect to specific elements of the Act itself.

The Act, which is Senate Bill 44, is a proposed revision of the laws applicable to condominiums, planned unit developments and cooperatives. The Act itself is quite orderly. One of its advantages is that the provisions of the Act are in places that you can find them logically. Sort of as I said at the last Testimony, I believe, as the White Queen said, it begins at the beginning, goes through to the end and then stops.

And thus Article 1 covers the general provisions as to the application of the Act on various forms of communities. The Act itself, in Sections 020 and 030, exempts from most of its provisions, small communities. The Act is providing, however, that if the community is subject to development rights or subject to financing from the AHFC, the Act does apply. In every case, even in the small communities, a community may opt into the Act by having its declaration indicate that the Act is applicable.

We've gone over Section 40 -- applicability through pre-existing common interest communities -- and that particular provision is the area where in Connecticut, perhaps we had the most adjustment to make on passage of the Act. This was particularly with respect to the resale procedures and record keeping procedures of some of the communities that have been in existence over the years with no records or primitive records at best. But as far as Connecticut is concerned, the resale system has adapted to the existence of the Act. The sale systems have adapted, and at the moment things seem to be going along fairly well.

Section 50 -- applicabil.ty to small pre-existing cooperatives and planned communities -- indicates that if it is a small community and it is less that 12 units it is subject to what we call the three Universal Sections: Subsections 720, 730 and 740. These Universal Sections are extremely important. They are those which essentially are essential for existence of a condominium -- because a condominium is a creature of statute -- and are useful for the existence of a cooperative or a planned unit development, because they define the real estate interests and the interest in the

common elements, the applicability of local ordinances, building codes and regulations indicating that you don't discriminate between the various forms of ownership. They also define eminent domain, which in the case of one of these common interest communities, solves a large number of problems. So I'll be referring to those as the three Universal Sections and those sections appl - no matter how old, how small, how large. Whatever form a common interest community is, it is governed by those universal sections, 720, 730, 740.

Section 60 is a fairly complex provision. It is in there in order to satisfy constitutional requirements. That is, if a declaration is created prior to the existence of the statute and an association wishes to amend its instruments, it has a choice: it can amend its instruments under the previous law if the amendment was made in accordance with the former law, and that law will continue to apply. However, there are a lot of excellent provisions in the new law which old associations would like to be part of. Thus, what it says is, if the amendment is permitted by this chapter and not permitted by law before the effective date of this Act, the amendment will be made under this chapter. It indicates also that if an amendment grants any person any right, power or privilege permitted by this chapter, any obligation or liability will also apply to this person. This particularly focuses at developers because this Act provides a wide range of flexibility for developers for developing and carrying on their project. Three projects in Connecticut are amending their documents to come under the new Act because of its advantages to the developer. However, if they do come under the new Act, the developers would be liable for the public offering statement, for the warranties and the escrows and the other liabilities that the Act applies.

Section 70, the applicability to the nonresidential common interest community, with the exception of the universal sections, indicates that the Act does not apply to the common interest community where all the units are restricted to non-residential use. Parenthetically, in looking at your definitions, you'll discover that the word residential includes the word recreational. This would be under definition 20(h) in the Act in Section 990. Residential includes recreational purposes, so if a campground, a marina, a stables or some other activity which would be of a recreational nature is being contemplated in the common interest community, then the full panoply of public offering statement and protections must apply, even though it is technically a non-residential project. The philosophy is that a recreational project requires similar consumer protections as a residential project. The chapter applies to communities which are mixed use.

Section 80 -- applicability to out of state common interest communities. The chapter does not apply to out of state common interest communities. But the consumer protection provisions (that is, the requirements for a public offering statement) are required where the disposition of a common interest community unit is signed in Alaska by a person, unless it is otherwise exempt.

Now Article 2 -- now that we've gone through the fundamentals of the applicability provisions. Article 2 covers the creation, alteration or termination of common interest communities. Article 2 is principally the developer and the developers' draftsman's article. It provides for the technical provisions as to how to create a common interest community. Very simply, it is created by a declaration. The declaration has a few mandatory items in it. It is relatively easy to create a common interest community. That is, if you describe the community with units and the ownership of the unit mandates the payment of maintenance, insurance or taxes on property or the unit, you have a common interest community. And the instrument, however designated, which creates that obligation is the declaration.

Another element of Article 2 which is important is that it provides bandaids for sloppy draftsmen. That is, if a draftsman created a very simple declaration and didn't define items such as the activities of the association or the boundaries of the unit -- a very important item to an association council (because maintenance boundaries seem to be a continual low level source of irritation) -- the Act goes ahead and writes into the declaration statutory definitions. These may not be the ideal answer, but at least they are answers and settle a lot of disputes. And probably one of the reasons for the length and complexity of the Act is many of these provisions which say "except as provided in the declaration" such as Section 100. These are the definitions. So what they are doing is providing answers to hard questions that the common community association institution has been raising where a draftsman forgets to provide them or where the draftsman is indefinite. And those particular provisions we found to be very useful.

Section 110 is one of the Section 40 sections, and it provides for a number of what I would call prophylactic provisions supporting the validity of the declarations. So only those lawyers who have listened tightly in the first year of law school know all the problems against the rule of perpetuity, but it does indicate that it doesn't defeat any provisions of the declaration -- you don't have to worry about it.

Section 120, the description of the units, provides for a shorthand description. It is another one of the Section 40

sections that will allow the ease of conveyancing of common interest community units after the passage of the Act.

Section 130, the contents of the declaration. The basic contents of the declaration are relatively straight forward. Provided that the declaration is filed with these particular elements in it, it will conform to the statute. Enough information will be given for title purposes in order to create the common interest community.

Subsections 8, 9 and 10 are provisions for development rights. Development rights are a term created by the Uniform Condominium Act of 1980 and the Uniform Planned Community Act of 1980 as well (formerly called additional withdrawable and subdividable land under the original Uniform Condominium Act) whereby a developer or declarant can unilaterally amend the declaration to change the community in order to create new units, add land, withdraw land or subdivide a unit into units in common elements. These particular powers are extremely valuable. They are essentially a new form of real property ownership that can be sold. As I have explained, we have a client who has created 55 condominium units on a parcel of land which is zoned for 150. He has reserved the right to create an additional 95 condominium units on empty land within the project. Those reserve rights are called development rights. He has sold out his 55 units for all intents and purposes, so technically the 55 units together with their assigned interest in the common elements, their vote in the association and everything necessary to run the project, have been sold and are gone, but the development rights unit remain . He has sold 25 development rights units to another builder and is reserving the balance in a bank, so to speak, secured by the mortgage loan. And he doesn't own anything that you can put your hand on. It is a very interesting philosophy. It gives you some idea of the scope and flexibility of the Act and obviously some of the wide ranging powers that the Act permits.

Section 140 permits leasehold common interest communities. Like the Section 130, they have to be disclosed, there has to be a sufficient information and there are some elements of consumer protection: if an individual unit owner makes timely payment on that unit owner's share of the rent, the leasehold cannot be terminated and everybody thrown out. However, it does permit the development of leasehold common interest communities.

Section 150, on Page 9, the allocation of allocated interest. Allocated interests are a new term created by the Common Interest Ownership Act. Under the Condominium Act, there was something called a "percentage interest in the common elements". With a percentage interest in the common elements, you received a vote and you received a proportionate share in the common expense liability and they all had to

equal the percentage interest in the common elements. There is no real rhyme or reason for doing that. What the Act does is allow these three interests to be allocated differently. However, the fraction or percentage interest in the common elements for a condominium has no practical effect under the Act and is just there because we common law lawyers like to think that when there is a tenancy in common there is a fractional interest that is spelled out somewhere.

In reality, the practical impacts of the allocated interest are in the percentage interest of common expenses and the percentage interest in the votes, and it can be a fraction or a percentage. They can be different. And they can be under any formula, provided they do not discriminate in favor of the units owned by the declarant or the affiliate of the declarant. So, any rational method of allocating the allocated interest would be spelled out in the declaration and based upon the market and the desires and the kind and quality of the units.

Whether they are garages, marinas, storage, office units, professional units, parking space units, the allocation would describe the formula which is used to establish these allocations and would describe, for the initial created community, what the allocated interests are for the first units being created. It is again a very flexible aspect and it has a well thought out approach to a problem. And, typically in Connecticut, what we are doing is that we're having an allocated interest in the common interest in the expenses which is based upon the burden that the particular unit imposes upon the community -- sometimes based on bedrooms, sometimes on square footage, sometimes on the square footage of roof, sometimes on the value and sometimes on the amount of siding that is put up. Sometimes, in many cases, we are doing it equal. In almost every case, the voting, however, is on a one unit one vote basis, but it can be one person one vote or any other method that is non discriminatory.

There are a few other interesting allocations under Section 150. The declaration can provide that different allocations can be provided to units on different matters. In Virginia there is one project where the tenants have a partial vote and the occupant has a partial vote and if it's an owner-occupant they have a whole vote. This brings tenants into the voting of the affairs of the association and that's permitted under the Act if somebody is so interested. Then there are some general provisions prohibiting partition and, in the cooperative, indicating that the ownership interest can't be made without possessory interest in the unit, so they are never separated.

Section 160, the limited common elements, permits an allocation of specific portions of the common elements to persons less than all the persons in the project, so it takes

care of balconies and other elements of that nature. It is also possible to allocate common expense liabilities based upon common elements burdens so there are a number of ways that common element expense can be allocated besides basic fraction which is a residual number under the declaration.

Plats and plans under Section 170 is a fairly complex provision. We've prepared checklists, which Bill McNall has, giving the surveyors, engineers and architects instructions as to how to prepare the plats and how to prepare the plans. Technically, a plat is a survey which would be prepared by a surveyor, that is a picture of the property as it existed at the time of the creation of the first units, and then the time of creation of subsequent units. A plan is a drawing showing what contemplated units are going to be looking like. A plat may show the intended locations and dimensions of contemplated improvements, in which case that particular provision should probably be done by a planner. Any contemplated improvements must be labeled with the words "must be built" or "need not be built". On Page 13, this is the first reference to those very, very important consumer protection provisions. That is, we are making statutory representations to purchasers and to anybody who comes in contact with the plats and plans, over what the developers are committing to and what they need not build and thus are not committing to. It is one of the essential disclosures of the Act. In advertisement, as you'll discover later on, if something is not labeled "need not be built", it must be built -- it becomes an affirmative representation.

The plans for the units under Subsection D are essentially floor plans, which we used to call building plans, wherein the dimensions of the unit are specifically identified and those particular dimensions are laid out on the plans so that boundaries of the units, which are described in the declaration by narrative, are now shown in a physical, graphic manner. The requirement of Subsection (g), certification of the plan, must be made by an independent surveyor, architect or engineer. The intent of this is that the particular disciplines which undertake the particular aspects, whether surveying, whether engineering or whether architecture, would be the ones who would certify as to their own professional discipline. And in the case of a subdivision -- for instance a cluster subdivision where all you have is the subdivision map, units consisting of house lots and common elements possibly consisting of a well site or a private road -- the entire certification would be made by a surveyor. However, where there is architecture and engineering data appearing, their disciplines may require that the engineer or architect sign it.

Section 180 is the exercise of the development rights that I have described. As developers unilaterally exercise their development rights (and it is important to indicate that they cannot exercise a development right unless they have reserved

it in a declaration) they prepare and record amendments to the declaration. Thus, whatever the development right was, they create units or they withdraw land or they add land. If they create units, the declarant is the unit owner automatically of those units. The process of exercising development rights is usually undertaken by a one or two page amendment. A new plat or plan is appropriate showing where the new property is. It can be done fairly quickly and easily with a fairly simple amendment provided it has been adequately protected in the documents.

If property is subject to development rights -- that is, if there is a project whereby a portion of the property will be subject to the right of the developer to add or create units (in most cases most of the property when it begins) -- the developer is liable for all of the expenses allocated to the property subject to development rights. Thus developers may terminate the rights and would probably want to terminate the rights as soon as they had used them up. And it is to the interest of the developer to terminate the development rights as soon as they are used because of the obligation for maintenance, tort liability and taxes on the development rights land.

Page 15, on alterations to the units: unit owners may in fact have a specific power to alter units and may under Page 16, under Section 200, relocate boundaries between units. In Section 120, if the declaration permits, it may be subdivided into two or more units. In the commercial context, this is a very useful provision. In California and Connecticut, prior to the existence of the Act, when you had a commercial or an office condominium you had to divide it up into little mini-units of one square foot apiece and then you would assign as many of these as were needed to a given office and then allow people to buy these units back and forth. Very cumbersome. And sure enough, somebody would want six inches instead of a foot and thus they would discover their documents prohibited it. Subdivision makes it very easy.

Section 220 is the easement for encroachments, indicating that it is quite likely that the building when finished will not exactly comply with the plans. This provides an easement for these minor encroachments that may occur by virtue of construction, sinking or shifting of a unit. There is still a requirement to adhere to the plans.

There are certain powers (Section 230) used for sales purposes, that the declarant has the right to maintain sales and management and models. These are the only rights that declarants can reserve that discriminate in their favor. They are, for all intents and purposes, essentially appropriate for the declarant.

Section 240, the easement rights, are other special declarant rights for use of the easements for the property.

Section 250 provides for amendment process which is uniform. There have been a number of declarations which have been created merely by reference to a master deed requiring 100 percent to amend, which we call the bullet proof project. Conditions do change, but an amendment is necessary. They're detailed as to how the amendment is done in Section 250.

Section 260 is termination. There is a substantial provision on termination in Section 260. Suffice it to say virtually all the permutations and combinations of termination are described in great detail -- as to how they are voted in by an 80 percent vote, how the proceeds are whacked up, how they are re-submitted and what happens to subordinate lienors and with adequate protection for any kind of secured lender involved.

Which brings us up to Section 270, the rights of the secured lender.

This is basically what the rights of the secured lender are not. However, it does permit, as the old statutes did not in many states permit, that there be a condition that a specified percentage of those holding security interest approve certain actions of the unit owners. But they cannot deny or delegate control of the administrative affairs or prevent the executive board from settling litigation or prevent an insurance trustee from receiving or distributing insurance proceeds.

In many cases, you'll read the old statutes and you'll discover for instance that the amendment process must occur by the vote of (x) percent, 70 percent, or whatever of the unit owners. You'll then discover that the lenders are not mentioned. There is a likely possibility that by not mentioning them, they are left out. Thus if the unit owners go ahead and do it without the lenders' consent the lenders may not have the ability to object. The lenders are concerned about this. <u>This gives secured lenders some additional protection</u>.

<u>The Act itself, as we have described, gives things to people that they need. It takes away things as well and it represents a compromise in the drafting because of the large number of interest that were involved: lenders, developers, associations, consumers and folks of this nature</u>.

Section 280, master associations, permits the delegation of certain powers from a sub-association to a master association. Now, under the old act, in order to get flexibility, many developers created a chain of independent condominiums, all governed by a master association and there was simply no

authority to delegate the board of directors powers to the master association. This cures that.

Section 290, merger or consolidation, is one of the Section 40 sections applicable to old as well as new condominiums and allows the merger or consolidation of common interest communities. In many cases where you have a multi-phase project of multiple condominiums, the ability to merge them all, even in the old concept, is very useful.

Section 310 is the first section of Article 3, management. We've gone through now what I call the developers' articles, the creation, alteration and termination -- the developers' and lawyers' article. We now go to the day to day management. This is an area where even the most sophisticated states, until the passage of the Uniform Condominium Act, had virtually no law. They were giving the associations virtually no powers and no specific remedies for the activities that the association had to undertake in order to fulfill its governance responsibilities. Article 3 is probably one of the articles that is most useful as far as the ongoing operation of the associations is concerned.

It provides that an association must be organized no later than the date on which the first unit is conveyed. There have been projects where the developer will convey the unit and organize the association at a later date and find that all the financing, covenant powers, the responsibilities and rights, the accountability and everything is all muddled up. This makes it very clear to organize first.

Section 320 is partially -- through Section 6 and from 11 on -- a Section 40 section. It specifically grants to the unit owners association a number of powers which the association really does need. Many of them were granted by the non-stock or stock corporation laws, if the developer for them was under the stock or non-stock corporation law. Many were not. There are always questions whether or not the association could adequately represent unit owners as a class, whether it could go into litigation on matters of common interest, contracting powers, regulatory powers, the acquiring of real estate and personal property and all of these other powers which were not in the original statutes and in many cases were left to question. Section 320 gives the association this power and is a very important one to recommend to you.

Section 330, executive board members and officers, basically gives the executive board virtually the carte blanche to run the association except as otherwise limited in the declaration. Thus the executive board is given virtually all the powers to run the association except to amend the documents and to elect themselves. And then the declaration can divide the powers appropriately between the executive board

and the association, depending upon the size and style of the association.

Section 340, transfer of association control. The termination of declarant control is a word of art. This is not in the Uniform Act. It is something we highly recommend. Connecticut has a similar provision. It is adopted from the Florida statute and it does give a list of items that the declarant must transfer to the unit owners at the time they relinquish control. The control is relinquished under the powers -- Section (e) on Page 31, which indicates that not later than 60 days after conveyance of 25 percent, one quarter of the members of the executive board must be elected by unit owners. After conveyance of 50 percent of the units that may be created, not less than one third must be elected by unit owners. Then under Section (d), 60 days after conveyance of 75 percent of the units, or two years after declarants have ceased to offer units for sale, or two years after the right to add units was exercised, the declarant must call a meeting and the unit owners may elect the members of the board. Interestingly enough, the declarant can vote at that meeting but cannot vote at the earlier provisions.

But the termination of the developer declarant control is a term that is actually defined in Section 330, subparagraph (d), and at that point, then the developer or declarant must transfer a list of essential items to allow the association to operate in a meaningful manner, including financial statements and the source documents for the financial statements from the beginning of the incorporation of the common interest community.

This particular provision has created a lot of heat and light because of the fact that developers have been operating under the concept of form and forget. Then all of a sudden control gets transferred and the developer for the first time in years brings out the books of the association and tries to figure out what he was supposed to have been doing. Now it makes it very clear from the beginning that the developer will have a transition process that is reasonable. He can prepare for it in an orderly manner. This is not a Section 40 section, so it applies only to those projects declared after its effective date and they'll still have to muddle along with the old ones. It's probably the only way it can be done.

Section 350, the transfer of declarant rights, permits a declarant essentially to assign or transfer the declarant rights to a successor who need not be the declarant. That is he puts the declarants rights into deep freeze. The successor, who more likely than not is a foreclosing mortgage lender, can keep the declarant rights in deep freeze without being tarred with the liabilities of the declarant until they bring a successor on line, thaw the declarant rights out and give them to a successor. Successors then have the full

powers of exercising special development rights and things of that nature -- at which time they assume all the liabilities.

Section 360 terminates contracts and leases of the declarant and its affiliate where the association votes after the termination of the declarant control, but not less than ninety days after. This would obviate the possibility of long-term management contracts between developer and his relatives and friends, long term Muzak contracts where the developer's only liable to change the cassette once a month and receives $1000 per month for the purpose. This particular provision allows that kind of contract to be terminated.

The by-laws are a fairly short document under Section 370. It provides for a minimum number of corporate pieces of information which we would most likely find in a corporate set of by-laws. Interestingly enough, the by-laws can be amended any way that the declarant says they are. In the model forms we have opted to indicate that the by-laws can be amended by the association executive board upon notice, comment and a vote of a larger than the normal majority of executive board members. Thus it means anything of permanent nature appears in the declaration. The by-laws are generally a day to day operating chart of the project. And unlike the former Act, they need not be recorded.

The Section 380 is a very basic section indicating that the association is responsible for the common elements. It goes into some detail, with the exception as I explained before, that the declarant is liable for the expenses in connection with real estate subject to development rights. There is a meeting. There is a new provision in this particular Act which is somewhat surprising to associations that the association must have a meeting once a year. This is even during the period of declarant control.

In addition, there is a provision for budgetary provisions. The budget must be submitted to the meeting. By a percentage appearing in the documents, the association can provide for a veto to unit owners for the budget. So, even during the period of declarant control there has to be an annual meeting. An interesting issue.

Under quorums, there is an automatic quorum of 20 percent if the by-laws are silent but, likewise, the by-laws can provide a larger percentage by quorum, and the executive board is 50 percent. It is possible, and in Connecticut, under our quorum provisions, we provide in our standard by-laws that a quorum consists of the person present, provided that there has been full notice to the unit owners. Because we have found in many cases the establishment of a quorum particularly in a condominium such as a marina or a recreational

facility is quite difficult to obtain, even the small percentage of 10 percent.

Section 410, tort contract liability, is essentially a limitation of liability on unit owners. It is a Section 40 section, applicable to old projects and is very useful.

Section 430 is something that's brand new. It's a whole new idea in a condominium and it's very rare in a planned community. It permits portions of the common elements to be conveyed or subjected to a security interest by a vote of 80 percent of the votes of the association. (This parenthetically is the same number that we would require to terminate the common interest community.) It allows, for instance, the clubhouse or the well or the sewer plant to be secured by a security interest with an agreement to the particular entity loaning the money and allows a partial sale. Obviously that's one of those amendments that lenders would want to have a voice in and they can under the statute. It's a very useful technique. It's not been used yet in Connecticut that I know of because the general power to assign the interest of the association in the common assessments is allowing the association to give a wide variety of credit and the collateral assignment of assessment income now allows an association to provide for credit. Most of them are taking their loans out using a cycle of assessment income rather than security of interest on the common elements.

Section 440 is an insurance -- more of a housekeeping item -- and it provides for the kind of insurance an association should maintain. There's a dichotomy in here. That is, a common interest community with horizontal boundaries (i.e. floors and ceilings) must provide insurance covering the entire common interest community including all buildings and improvements including those within the units. If it does not have horizontal boundaries, that is, if it is something like a house lot where the boundaries extend from the center of the earth and the heavens, blanket insurance is optional. It doesn't matter whether it is a condominium or planned community or coop, these rules apply across the board.

Section 450, on surplus funds. They are basically divided, of course, into common expense liabilities.

Section 460 is the assessment for common interests, with particular provisions for reallocations of common expenses in accordance with specific burdens that are imposed -- such as judgments or assessments -- or specific services that are provided by a unit owners. Interestingly enough, all of these are common expense assessments, all of them are lienable, all of them are collectible under the statutory lien. It is a very useful element because in many cases they are not proportionate to percentage interest in the common elements as they were in the condominium.

Under Section 470, the lien for assessments. This is a very powerful remedy indicating the lien is perfected at the time of the filing of the declaration. This is a Section 40 section. It applies to old communities as well as new communities. It also provides that the lien is superior to the lien of first mortgage interests to the extent of six months of assessments that would have become due prior to the institution of actions that would force the lien.

This super lien is now the law in most of the states that have passed the Uniform Condominium Act. It is acceptable to the Fannie Mae, Freddie Mac and the FHA. All of them recognize that the institutional powers to collect a few months of assessments that are there and keep the financial viability of the association above water is more important than perhaps, as I say, just a few months or six months of assessments which might be ahead of the first mortgage loans. It obviously has facilitated collection of liens because the lender is interested in those payments, as is the individual unit owner.

The procedure for collection and foreclosure I'll skim over because it is relatively technical. Suffice it to say that there is no longer a necessity to file a notice of lien. The lien exists by virtue of the declaration. Upon commencement of foreclosure and the appropriate remedies, the lien can be undertaken.

Section 480 is the divisions of various kinds of attachments, mechanics liens and items of that nature, judgments liens and how it is undertaken.

Section 490 is another Section 40 section, on association records. It is very simple. They are required to keep financial records sufficient for the association to provide resale certificate. In Alaska you have added what I think is an excellent provision. It provides that the professional manager or managing agent or other person with whom the association has contracted for services must return all association records within five days of termination of contract. Because of the responsibility of an association to provide a resale statement within ten days, they obviously need the records. If they're having a dispute with their financial manager and he won't give them the records, this obviously has some substantial provisions.

Section 500 is a housekeeping item where the association is acting as trustee as they often do in an insurance provision.

Article 4 is the consumer protection provisions. I'll run through them fairly quickly because I can see my allocated time is running out.

Article 4, Section 510 applies to all units which are subject to this chapter. However, there are a number of exemptions -- that is, the sale of the unit that is non-residential, for instance, or disposition of the unit where the declaration limits the maximum assessment to $300 per year per unit. In those particular cases, the public offering statement is not required.

There is substantial liability when the public offering statement is prepared. It has to be delivered to a purchaser who offers a unit to a purchaser before sale. The public offering statement then gives the purchaser a 15 day recision period, during which time he can walk away from the deal after reviewing the public offering statement.

Section 550. These are the basic questions that a public offering statement should supply. There are 20 questions, just like in the old quiz game. Those 20 questions must be answered for every common interest unit where a public offering statement is required. In addition, there is another round dozen of questions under Section 540 that must be answered if development rights are reserved. Because of the unilateral power of a developer to change the condominium or the common interest community, those 12 questions describe what the plans are in the future. Or, they give assurances that there are no plans and anything can happen with respect to the development rights plans.

With the same effect, time share gives four questions out of the Uniform Act and three additional questions which I would commend to you with respect to time sharing. The result of this is, in Connecticut, that if in fact time sharing is not contemplated, it is prohibited in the declaration, because the developers don't want to go through the answers of these questions which would require planning of something that is not contemplated. So technically, in Connecticut, in most of our cases where we're not contemplating time sharing, we prohibit it. And that gets us out from under answering those questions which come up under Section 550.

In Section 560, there are three basic questions having to do with the engineering aspect and the useful life and the cost of curing the outstanding notices of violation where there is a conversion building. Conversion buildings are buildings that were occupied by tenants before the common interest community was offered as a common interest community. And thus, if it is a used building, the declarant is obligated to provide certain engineering, code and useful like items with respect to the provisions here.

This is a very important provision. It is one of the reasons -- the tenant protections and the tenant information -- Connecticut passed the Uniform Common Interest Ownership Act. It wanted this particular information as a tenant

protection to be given to conversion tenants in all forms of common interest communities.

Section 570. If it is registered with the United States, the registration satisfies the public offering statement.

The 15 day recision under Section 580 is spelled out.

Section 590, which is also a Section 40 section -- resales. It provides for when a unit is being sold where a public offering statement is not required. This will encumber the sale of units in old communities and even new sales by developers if there was a community declared before the effective date of the Act. There is a requirement in that particular case for the answers to some 14 questions. They give a statement of the community's financial activities and affairs, what is going on, and a general coverage of the character of the community, including the declaration, the by-laws and the rules.

The association is responsible for delivering this particular resale statement within ten days after a written request and the payment of a fee to the association. And the purchaser is not liable for any unpaid assessments greater than the amounts set forth in the certificate. Thus the association has to be fairly careful with the delivery of these resale statements. Now, it is important to emphasize that this applies to old communities as well as new communities because it is a Section 40 section.

And it applies when a public offering statement is not delivered. So in every sale of a common interest community in Alaska you will get either a public offering statement or a resale statement (unless it is exempt because it is non-residential or less than $300 per unit.)

Section 600 provides for escrow deposits until delivered to the declarant at closing or by default or by refund. The release of liens indicates that any lien that the purchaser doesn't agree to has to be released at closing. The conversion building element in Section 320 gives some specific rights to residential tenants, the residential sub- tenant, to purchase their particular unit. They're obligated to receive a full public offering statement not later than 120 days before the tenant is required to vacate. And for the first 60 days they have the first right to purchase.

This ameliorates the trauma of conversions and is one of the provisions, as I said, that called for Connecticut to pass the Act covering all forms of ownership.

Section 630, the express warranties of quality, is a fairly carefully drafted situation providing for express warranties. It indicates that models, descriptions,

affirmations of facts or promises create an express warranty. Section 640 develops the implied warranties which basically are spelled out in some detail. I'll skim over those even though I know there may be some questions and some important sections.

Section 650 indicates the implied warranties may be excluded provided that they're fully disclosed. But a simple general disclaimer is not sufficient to disclaim the implied warranties. And then there is a specific statute of limitations of Section 660, allowing for enforcement. But it also allows for the shut off of these warranties, which could possibly run forever.

Section 670 is one of the most interesting and most powerful provisions of the Act. It is a Section 40 section covering old condominiums and communities. It essentially says that anybody -- or any class of people adversely affected for failure to comply with the Act -- has a cause of action against any other person. You don't have to worry about the issues of standing or any of the other areas that lawyers do their dances over at the threshold of the court house. The question is, if there has been damage, if they have been adversely affected, they have a claim for appropriate relief.

Section 680, labelling of materials, another consumer protection provision, indicates that promotional materials showing a contemplated improvement must be conspicuously labeled "must be" or "need not be" built. And if they have not labeled it "need not be built", under Section 690 it is assumed that they must build it.

Section 700 requires an architect's certificate of completion if the unit is to be conveyed if a public offering statement is required. And that means that no unit can essentially be conveyed until the unit has been created and the building is complete.

Article 5, the general provisions, which in the Uniform Act were in Article 1, gives some fairly general activities which can be undertaken and shows the applicability of the various aspects of the Act. It gives some very powerful positions to the Act itself with respect to other laws, with respect to documents. It indicates that the Act in most cases is supreme unless the Act specifically provides for those particular provisions where they can be varied.

I would commend to your attention the commentary to this particular provision in the Uniform Act where it lists the number of provisions which may be varied by the declaration or the by-laws or by agreement. And they're very large. It turns out that probably 2/3rd of the Act may be varied, but

where they cannot be varied, obviously this particular provision means that the Act is supreme.

The separate titles and taxation in the proposed bill changes the common interest ownership provision indicating that in a cooperative the unit owners' interest in the unit and allocated interest are real property for all purposes.

The Connecticut provision makes the unit in a cooperative financable and subject to real estate mortgages. But it does create a certain amount of problems which can be solved by sensitive drafting (some problems with respect to the chain of title allocated to a cooperative unit owner's interest) but the declaration can be filed and, as I say, sensitive drafting can cure that. In the Uniform Common Interest Ownership Act there is the alternative of having a cooperative unit's interest being personal property, which in some cases may be relatively useful.

The separate titles and taxation section -- 720 -- like 730 and 740, is universal, and has solved a number of problems in Connecticut with respect to taxation of common elements, indicating the unit owner's interest is real estate and is taxable and it can be separately conveyed. This makes the title insurance people happy.

Section 730 is a Section 40 section and a universal section, as a matter of fact. It indicates that the application of local ordinances and building codes doesn't discriminate between physically identical portions and kinds of property. This is quite useful because it means the building inspectors won't require full scale firewalls in an apartment building that happens to be a condominium but not in an apartment building that does not happen to be a condominium.

Section 750 is an important section. It supplements general principles of law so that you can create contract rights.

Section 760, 770, 780 are basically boiler plate contracts and appear in universally all uniform laws.

Section 790, an unconscionability provision. Very powerful with respect to overwhelming developers who decide to write documents that are totally one-sided. The court can go and look at it to find out if they are unconscionable. This is a provision that comes out of the uniform laws and a number of uniform laws have it.

Likewise, Sections 800, 810. These are uniform law provisions. Adjustment of dollar amounts (that is, the $100 threshold under 820 and the $300 threshold in the Section 510) are adjusted based upon a 1979 index which is now the uniform index used for all the uniform condominium acts

throughout the United States. That is the reason why that very strange formula is in there. That formula also is a standard formula used by the Uniform Law Commissioners for CPI adjustments in other uniform acts providing for CPI's.

That brings us to the definitions. There are a number of important items in here. I'll skip through.

You should review the "affiliate of a declarant". It is quite important.

The Alaska bill has added an excellent one in Definition 9 on Page 84, indicating that a conversion building includes a mobile home site as well as a building that was occupied by persons other than the purchasers. So the conversion protections are now offered for mobile home sites as well as buildings.

The definition of a "declarant" isn't necessarily the person who declares. It is the person who sponsors or actually offers the units for sale as a regular course of business.

"Ownership" interestingly enough does not include just owning, but also includes leases in excess of 40 years in a unit in Definition 22 on Page 87. On Page 87 there is a mistake that should be corrected -- on Line 21, 20 years should be 40 years to be consistent with the 40 years on Line 3.

The definition on Page 88 of "special declarant rights" is very important with respect to developers. Those are the rights which the developer may reserve for the developer's benefit and no others and thus there can be no additional unilateral rights reserved. But we have found that those rights are all the developer needs. They include development rights to exercise the development right under subsection (b). And they include a number of other special declarant rights which, as long as they are held by a person, that person is declarant and subject to the liability and obligations. But they all can be held. There is a relatively good summary of those things that the developer really needs and in fact that they need no more.

Page 89, "time share" definition under Section 31 is the definition that comes from the Uniform Real Estate Time Share Act and is similar to the one in the National Association of Real Estate Licensing Law Officials Act indicating how a time share operates.

The "unit owner" includes the declarant. There's some clarifying language in there. It basically indicates someone who owns a unit. All right, there are a few provisions under Section 2 of the Act on Page 90 to conform this act and integrate it into the Horizontal Properties Regimes Act.

However, it is important the Horizontal Regimes Act be recognized as still being in effect and still acting as the fundamental law operating for the existing condominiums in Alaska, subject only to the Section 40 provisions.

BILL McNALL: The importance of several of these sections cannot be minimized in light of the current state of law in Alaska vis a vis, among other things, realtor liability.

Section 170 specifically talks about identifying projects which either "must be built" or "not be built". As things stand right now, if there is a representation being made in some form of document and it turns out to be inconsistent with the project as completed, the realtor who was out there listing or selling those units may be potentially liable. If the developer has perchance left the state in the process of development, of course the realtor is sitting out here being the only one around.

Organizing the associations -- Section 310. I have handled numerous cases where the association was not developed until long after half the units had been sold, often times not until the 75th percentile of ownership had been conveyed, at which time the developer then created the association. This means that essentially unit owners that were members of the association at the time of the conveyance because of mandatory membership were paying assessments into the association that simply didn't exist. The process of trying to determine through an accounting process afterwards is often very difficult. Developers, of course, do not understand why the owners are upset.

I have even seen documents that were prepared to establish upon the developer the obligation to create the associations after the 75th percentile of ownership had been conveyed. Totally inconsistent with how corporations are supposed to operate. I have also recently seen a document that required the association to have its first annual meeting three years after the development process was started.

During the operation of the association, this is probably the biggest problem area that I've had to deal with. There seems to be constant conflict between the developers and the association directors as to how the association is to be operated. Our existing statutes give us no protection whatsoever, no assistance whatsoever, in devising these boards. Section 330 is going to be a substantial benefit.

The transition from developer control section -- Section 340 -- is going to eliminate many of the problems that we have been asked to handle in the past. Developers often times do not want to turn over documents or simply have lost them in the process somehow. Quite frankly, associations

need to have copies of plats and specifications, of underground site locations, so that if they're doing any sort of work or repair they know where the pipes and gas lines are and that sort of thing. They need to have copies of the books, they need to have copies of the checks.

We have presently been asked to straighten out a situation where the developer has entered into a lease with the firm providing the washer and dryer for the project unfortunately didn't bother to enter into that on behalf of the association, but simply did it himself -- and the fees being charged are exorbitant. The association wants to get rid of those and I'm afraid that this is a case that's going to wind up going to court because the parties cannot agree on how to handle it. It simply could have been avoided by, in part the transition statute. as well as the part I'll get to in a bit -- allowing the association to void the contract as reached by the developer.

As far as the encumbrance of the common elements is concerned, I think you'll find that in future associations you're going to have the ability to assign their future income ranks or encumber their common elements -- whatever is going to require you to allow them to borrow money from lenders and to be able to do some of those repairs. Often times, the reserve process that the association must go through to raise the money is not adequate. Or you'll have an emergency situation which means that some unit owners will have a huge assessment which they can ill afford. The ability to go to the lending institutions to borrow the money is something that this Act contemplates and I think reality in the practical world will require associations and the lenders to work it out in the future.

Public offering statement. I think this, of course, is very important. It specifically sets the board's requirements for the information that must go to the consuming public. This is, of course, important in light of the fact that right now those making those representations are a lot of real estate people who are trying to guess what the developer is going to really do. Public offering statements make the developer commit. It makes him make the decisions or reserve the right to make those decisions.

(Indiscernible) along the same lines as resale certificates requiring the association and the seller to make specific (inaudible) important because this is going to limit some of the litigation that is presently out there.

I like the idea of expressed warranties and implied warranties, the modification of warranties being spelled by statute. Presently we have only case law to guide us and it is, in my opinion, inadequate. Everybody winds up guessing whether or not there is a warranty present or how long it might last.

The eminent domain issue. I have just been asked again with an eminent domain matter where the declaration is inconsistent with our present statute and the association is trying to figure out how to divide the money up between the lenders, itself and the unit owners that are damaged. And, it being most difficult, this section 740 certainly will assist them.

MARK BARNES. This is Mark Barnes. I am from the Alaska Banker's Association. I would like to raise an issue with the Committee which I think it should be aware of.

The bill seems like a good bill in the sense... (and I'm not representing, right now, the banker's position on this. I understand lenders have had some input as to legislation.) Under the current status in Alaska law, a lender who is simply participating as a routine lender in a real estate transaction, normally is not held to be liable for subsequent defects in the real estate. Normally, warranties, if they exist, are accrued to the developer. My only concern is what kind of new liabilities would Alaska lenders assume under this legislation? It appears to me they don't seem to assume any new liabilities, but that doesn't seem to be entirely clear. The case law in our state is that unless they're an active participant in the development, (in other words, if they have some kind of management or participatory development with the developer), then they're normally held liable for these defects that subsequently show up in the real estate. (...) Is there any intent for a lender to assume new liabilities under this Act?

Buck: No, not at all. As a matter of fact, the deep freeze provision of the Act (which is what I think you're talking about) is the basic provision whereby the lender is specifically held not to be a declarant but is subject to declarant liabilities if as a successor declarant he only takes certain of the declarant rights: the right to sell, the right to put up signs, and models. The Act itself was designed specifically to provide a construction lender who takes over a project with the responsibility only with respect to those particular aspects which were assigned to it in its loans. It was written in by the lenders group. It is Section 350, Page 35 of the revised bill, indicating that the special declarant rights may be transferred only by an instrument. And with the special declarant rights go special declarant obligations.

So unless there is a specific transfer then there are no rights at all with no declarant obligations. Then there is a specific provision upon transfer. Upon Section (d), upon foreclosure, the successor essentially is subject to the rights and obligations under (e) (1), but if he is not subject to the rights and obligations he has only specific limited rights under 3. I believe that's the way the deep freeze is. He is not subject (on Line 27, Page 37) to liability

obligations as declarant. Except the obligation to provide a public offering statement. It was fairly well thought out with respect to construction lenders that they would not be liable.

Now this does not change the common law joint venture. If, however, a lender has exercised the control over the common law that would make him a joint venture, I think this doesn't change it. But I think that they can reserve all the rights that a lender would normally need to take over the rights of a declarant upon foreclosure, but not become a declarant subject to declarant liabilities. So there is no intent that there would be a joint venture predicament coming up on the lender in this Act.

SENATOR HALFORD. Okay Anchorage, do you have any other questions. Does any other person want to testify...If there is any other public comment or testimony from Anchorage, we can go ahead and hear it now.

MODERATOR. We have one other individual who would like to testify.

BETTY COOK. As I testified before, we are in favor of SB 44. We have a couple concerns I'd like to go into. On the first page, we feel that projects of less than 12 units should not be exempt from the entire chapter. Owners of small projects tend to need just as much protection as those in larger projects. (Indiscernible) poorly managed project or misinformation can be just as detrimental to owners of small projects.

And Section 030, we'd like clarification: if the word "or" at the end of line 27 means that projects with annual fees of less than $100 would also be exempt, regardless of the number of units. It is kind of unclear and we would like to know if this is the intent, or if the work "or" should be changed to "and".

BUCK. No, the answer is "or". The intent of the draftsman in that particular case is even if it's a large project of 50 or 60 house lots in it, but its only function is the maintenance of the sign at the end of the street, or the maintenance of a detention area, or maybe a piece of open space, and all it has to do is provide insurance for it -- that it would not have to go through the formalities of this particular Act. Form an association, have annual budget meetings, have annual assessments and have all that. Unless it opted into the Act. So the answer is that the intention of the Act was "or".

The whole issue of de minimum was an issue that was discussed at great length, with great heat and light, by the Uniform Law Commissioners. The number 12 and the $100 was frankly a matter of just attempting to draw a line. There is a recognition, quite clearly, that very small projects, with

very small interests, that are subject to the Act, probably should not have to go through the formality of the Act. The question how small is small. The Uniform Law Commissioners came up with 12. That particular provision, as I say, was a matter of an attempt to draw a line. I think the comment was designed so that even though there may be a lot of units, if the common expense assessments are very small per unit per year, then it would be exempt from the Act. Unless they opted it. It's quite likely that in many cases they will opt in. Alaska Housing Finance Corporation could require as a condition of financing that they opt in because they have the power to do so. But there was a feeling that there is a point where small is too small.

COOK. My comment would be that I disagree with that. I think the philosophy is good behind it that de minimus PUDs do not need to be as concerned. But there are small units out there -- I know of a three-unit project -- that have some very large assessments on their property. The problems with those three people are just as much as the problems with 100 people in a unit. The disclosures are not made. If the projects are that small, the public offering statement would not be that cumbersome to give and it certainly would give protection to those buyers in those units left on a project of less that 10 units.

We would also like to see provisions made for the enforcement of the bill. The bill offers good protection but it offers the consumers no easy way to insure that protection.

The super lien provisions we are in favor of -- although they create a lien that could be superior to the Alaska Housing lien. We feel that it makes for financially health associations and the amount is so minimal that we are in favor of that part of the bill.

We appreciate the opportunity to testify and we've given the bill to our legal counsel to answer the main question that Mr. Barnes brought up and how to conform to the bill if it is passed: what legal problems that it might cause for us. We'd like to be further informed of hearings so that we may testify after we have our legal counsel opinion.

BUCK. I have to admit that the problem of the de minimus project is one that we did wrestle with. And all I can offer is that all the interests were represented in the drafting of the initial Act -- the consumer interest, the developer interest, the lender interest. The municipal officials and governmental officials all came out and finally, sort of reluctantly, said 12 and $100 is probably as fair as we can get. It is a policy question and it certainly, I think legitimately, is a policy question that the Legislature should consider.

I have to indicate that the two-unit common interest community, we all agree (which probably consists only of a party wall) should probably be exempt from the Act.

I would also like to point out that this Act is not going to satisfy the problems for new home warranties. New home warranties is a different battle and a different battlefield. The bill provides some relatively good warranties within its provisions, but perhaps the Legislature should look at the new home warranties provision with respect to single family houses alone. Because many of these problems can occur just because it happens to be a single family house and the building didn't fulfill the builder's promises. I think it provides an orderly system for warranty administration if it happens to be a common interest community. But when it gets down to 12 or under, I think more likely than not, what you're dealing with are problems that are problems that occur with single family house builders, not so much a problem with (indiscernible,. Although I admit that if there are three houses and the entire roof goes, all the roofs go. And the fact that it is a common interest community or not isn't going to give it much help.

Had they had a public offering statement and some affirmative representation, they would be getting a better handle.

SENATOR HALFORD. Thank you.....

SUMMARY

The Uniform Common Interest Ownership Act

Uniform Law Commissioners

UNIFORM COMMON INTEREST OWNERSHIP ACT

Between 1977 and 1981, the National Conference of Commissioners on Uniform State Laws (ULC) promulgated three Acts dealing with multiple-ownership forms of real estate. These were the Uniform Condominium Act, the Uniform Planned Community Act, and the Model Real Estate Cooperative Act. Each form of ownership involves a different organization of ownership interests. In condominiums, owners have title to their units and undivided shares in the common elements. A planned community has owners who own their own units, but the common elements are owned by the owners' association. Every owner is a member of the owners' association. In a cooperative, the association owns all the real estate. Cooperative members own shares in the association, and lease their individual units from the association. These are the principal differences between these forms of multiple ownership.

But these forms are greatly similar to each other, as well, and the similarities have greater practical significance than the differences. For all of them, there is an owners' association responsible for the affairs of the community. Every owner belongs, and has voting rights and the opportunity to participate in the governing board. The community, in all cases, assesses the owners for common expenses and maintenance. The association, in all cases, contracts for management and services for the whole project. The documentation for any multiple-ownership project during its life, although some language may vary slightly, is much the same. Any multiple-ownership form requires some kind of creation document or declaration, as an example, and these documents have much the same function, no matter the form. In short, the technical questions of ownership do not create an enormous difference between these forms when it comes down to matters of operation of a project. And the three earlier Acts by the ULC look very much alike.

So why not one Act that includes all forms within its scope? In response in 1982, the ULC has produced the Uniform Common Interest Ownership Act. It encompasses all forms of multiple or "common interest" ownership.

The major obstacle to such an Act is, basically, definitional. The Common Interest Ownership Act uses the new term "common interest community." It means "real estate with respect to which any person, by virtue of his ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in the declaration. 'Ownership of a unit' does not include holding a leasehold interest of less than [20] years in a unit, including renewal options." The basic determinant of applicability is obligation for assessments. All multiple-ownership arrangements call for assessments.

Then, the sub-forms, such as condominiums, planned communities, and cooperatives, are defined as kinds of common interest communities. So a developer may choose any form for his project, initially, designating that particular form in the declaration.

The Act then treats the subject of common interest communities, comprehensively, as the earlier Acts treated the individual forms, comprehensively. A comprehensive statute deals with the creation, financing, management and termination of these communities. It also provides for consumer protection and regulation. These subjects must be included before any legislation on common interest real estate can be considered comprehensive.

Creation begins with a declaration, which is the fundamental property document describing the common interest project and identifying it. This document is filed in the land records of the locality. The Act deals with a great number of issues relating to creation, such as unit and common element boundaries, allocation of common element interests and voting rights, rights of the developer in the property while sales of units go on, and procedures for amendment of the declaration. Of special interest is the concept of development rights, which permits the developer to reserve the right to add or subtract real estate, and to add units and common elements, in the declaration. This permits the developer to plan phased common interest projects as long as all effects upon owners' interests are described and disclosed at the outset.

This Act also provides for the other end of any common interest project in time. How can such a project be terminated if and when it is desirable and necessary? The answer

is to provide a procedure for termination and some rules to protect owners' specific rights. Actual termination requires the agreement of a substantial number of owners (suggested is 80% of the total number). The agreement must be recorded in the land records. Once the termination is authorized, the association, as trustee, oversees the actual termination of the declaration, the sale, if any, and the distribution of proceeds, if any. Owners receive exactly their share of the total interest, whether that be proceeds or an individual interest in the real estate. Without the termination procedure, there is no assurance that a project can be terminated or that ownership interests will be protected.

This Act, further, deals with the substantial interests of those who finance common interest projects. There are three key things it does. The Act limits any control of the project or the owners' association by lenders that adversely affects owners. It establishes clear priorities for liens or secured interests against the project or individual owners' interests. It allows the developer's lender or lenders to assume declarant rights so that failure of the developer does not, necessarily, mean failure of the project. The Act defines rights and obligations between lenders and others, generally, to keep the project going, once it has been launched.

The management provisions of the Common Interest Ownership Act establish a workable basis for the ongoing community which the project must become. A common interest ownership community is like a small municipality. It must be governed, and it must be governed democratically. The developer must establish the owners' association at least by the time the first sale is made. Every owner becomes a member upon purchase. The governing body is the Executive Board, elected by the owners on a regular basis. The Executive Board has all of the powers essential to governing the community, including the power to make and enforce assessments. Its members are, also, accountable to the owners as fiduciaries, and are held to that higher standard of care.

The developer has a strong interest in the governance of the community, diminished in proportion to the units he sells. He can, therefore, appoint the initial Executive Board and control it until his interest diminishes sufficiently. Under this Act, he relinquishes control by stages - giving up his Executive Board members at given times during the sell-out. He must relinquish total control at a specific

time, either at a given percentage of the sell-out (75% suggested) or within a specific time (2 years suggested), whichever comes first. Then, the developer may not capture the government of the community beyond the span of his own legitimate interests.

Since the developer, also, makes the initial contracts for maintenance and services, this Act, in addition, permits the association to repudiate his contracts after control passes to the owners. Developers and contractors are put on notice that burdensome sweetheart contracts will not survive, if they are attempted.

The Act and the project declaration act as a kind of constitution for the community. For example, the Act establishes liability and allocation of risk for insurance purposes for all communities. These are basic provisions to which any common interest project is subject. The Act also empowers the Association to make its bylaws which function as the statutes of the community. The association governs itself, mostly, through its bylaws. The object of the Act is to make each community as autonomous a self-governing entity as possible. These various documents, coupled with the enabling provisions of this Act, are simply the tools to accomplish this purpose.

Consumer protection is accomplished with four basic controls on the sale from developer to purchaser, but it is important to note that this Act tries to provide stability in all phases of common interest ownership development. That stability is the most important characteristic of any project to any buyer. But the specific provisions to protect buyers fall into readily identifiable categories: disclosure, warranties, escrow of deposits, and recission rights.

This Act requires an extensive public offering statement which must be delivered to a purchaser of a unit in any common interest project before a sales contract can be concluded. The statement must give the customer all the information essential to an adequate purchase decision. That kind of information includes accurate identification of the developer, information about the significant features of the project, and balance sheets and budgets, as examples. However, drafters of these documents are encouraged to summarize those items that may be summarized, in an effort to keep public offering statements more reasonable in volume and weight.

The public offering statement is linked to the buyer's recission rights, another important aspect of buyer protection. Every buyer has a 15-day period from the time the public offering statement is delivered, within which any sales contract may be cancelled. This right gives the buyer time to consider the character of the purchase and to review his commitment - a cooling off period for the purchase decision. In addition, these recission rights are part of the disclosure requirements so that the buyer is made aware of them before they accrue.

Tied, also, to the recission rights and disclosure is the escrow requirement. Any deposit made in connection with a purchase must be placed in an appropriate escrow account. It is not possible, then, for deposits to be dissipated before buyers close on the purchase of a unit. If the buyer wishes to exercise his or her recission right, or is faced with the seller's default in any way, deposits are safe.

What remains, then, for consumer protection is a remedy for defects that are the responsibility of the developer. This Act provides both express and implied warranties of sale. The seller is bound by any representation made with respect to quality of the project. In addition, whatever is affirmed expressly, and unless adequately disclaimed, the developer must deliver the unit in at least as good a condition as at the time of contracting. It must also be suitable for the ordinary uses to which such property may be put, and free of defects. For residential property, the developer warrants that the existing use does not violate any applicable law when conveyed to, or possessed by, the buyer. If seller and purchaser specifically agree, implied warranties may be waived. For other than residential property, the seller may use a general disclaimer of warranties. And warranties are subject to a statute of limitations in order to encourage timely litigation or settlement of any claims.

The Common Interest Ownership Act also provides for agency supervision of condominium development. The agency has the power to review disclosure. It has investigative and enforcement powers to protect purchasers. It should be noted, however, that the agency article is offered as an optional addition to this Act. Many states do not want to create new agencies or increase the authority and responsibility of old ones. Fiscal constraints underlie such decisions, for the most part. This Act tries to enhance self-enforcement by purchasers as much as possible. Purchasers

can sue for any violation of the Act and ask for attorney's fees. So, an agency presence is not mandatory, and may be considered as an extra element of protection to be added at a jurisdiction's desire.

It is not possible to describe all aspects of a comprehensive act's provisions. It is important to emphasize the need for comprehensiveness. If these kinds of common interest communities are to survive over time, the law must give to them a definite, discernible character. They must know what they are and what they can do. Only a comprehensive act addressing all of the major issues in a careful and complementary way can do the job fully. This is that Act.

OFFICE OF THE MAYOR
POUCH 6-650
ANCHORAGE, ALASKA 99502

TONY KNOWLES
Mayor

April 11, 1985

Sen. Rick Halford
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Member of our Delegation:

I am writing you to urge your support for passage of a new Uniform Common Ownership Interest Act this session. We have long needed a better definition and clarification of the rights and responsibilities of both developers and individual property owners. The existing Horizontal Property Regimes Act does not sufficiently address the situation. The continued growth and the changes in our housing stock, particularly the increase in multi-family units, makes enactment of an improved law even more important.

A great deal of work has been done this session to refine the proposed Uniform Common Ownership Interest Act, and I would appreciate your support for the legislation.

Sincerely,

Tony

Tony Knowles
Mayor

Dear Mike,

We are mobile home trailer owners and are aware that we could be able to finally own our lot; with your help. I don't know if HB#155 passed the Senate, but I do know it passed the House. SB#41 passed the Senate & is now in your House Judiciary Committee. Mike, please hear this bill before your session concludes? We would feel so much more secure if we could own our own lot. Thank you for your valuable time.

Sincerely Yours
John A. Alt

John A. Alt
AIC USAF
Elmendorf AFB, AK

2221 Muldoon Rd. #509
Anchorage, Alaska
99504

M. M. MILLER
(JUNEAU)

REMARKS OF

J. ERRELL SMITH

ON

CSSB 44
THE UNIFORM COMMON INTEREST
OWNERSHIP ACT

before

THE COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ALASKA STATE LEGISLATIVE

Thursday, May 9, 1985

ANCHORAGE, ALASKA

CHAIRMAN MILLER, MEMBERS OF THE COMMITTEE, MY NAME IS DERRELL SMITH AND I AM PRESIDENT OF THE ALASKA BANKERS ASSOCIATION. THE ALASKA BANKERS ASSOCIATION WISHES TO THANK THE COMMITTEE FOR THE OPPORTUNITY TO TESTIFY BEFORE IT TODAY ON THE SENATE JUDICIARY COMMITTEE'S SUBSTITUTE FOR SENATE BILL 44, WHICH IS THE PROPOSED CODIFICATION IN THE ALASKA STATUTES OF THE UNIFORM COMMON INTEREST OWNERSHIP ACT. FIRST MR. CHAIRMAN, LET ME COMMENT ON THE ALASKA BANKERS ASSOCIATION. THE ASSOCIATION REPRESENTS VIRTUALLY EVERY MAJOR BANK IN THE STATE, AND THE VIEWS EXPRESSED BY THE ASSOCIATION REPRESENT THOSE OF THE TOP MANAGEMENT IN EACH FINANCIAL INSTITUTION. THE ASSOCIATION MAINTAINS A CONTINUING AND ACTIVE INTEREST IN STATE AND FEDERAL LEGISLATIVE AFFAIRS THAT CAN IMPACT THE ALASKA BANKING INDUSTRY.

SINCE THE INCEPTION OF THIS SESSION OF THE LEGISLATURE, THE ALASKA BANKERS ASSOCIATION COMMITTEE ON LEGISLATIVE AFFAIRS HAS VIEWED WITH INTEREST THE INTRODUCTION OF SENATE BILL 44 AND THE IMPACT THAT IT WOULD HAVE ON THE FINANCING OF COMMON INTEREST OWNERSHIP PROPERTY IN THE STATE OF ALASKA. MR. CHAIRMAN, WE DID NOT PARTICIPATE TO ANY GREAT DEGREE IN THE REVIEW OF THIS LEGISLATION IN THE SENATE, PRIMARLY BECAUSE OUR MEMBERSHIP WISHED TO REVIEW THE LEGISLATION WITH SOME CARE. AFTER THAT PROCESS HAD BEEN COMPLETED, WE DID AND ARE WORKING WITH THE SPONSORS OF THE LEGISLATION ON THE SENATE SIDE TO MAKE THEM

AWARE OF OUR CONCERNS ABOUT THE LEGISLATION, AND OUR SUGGESTIONS FOR IMPROVING THE BILL. THEREFORE, THIS IS REALLY THE FIRST OPPORTUNITY WE HAVE TAKEN TO FORMALLY MAKE THE VIEWS OF THE ASSOCIATION KNOWN ON THIS BILL.

THE ASSOCIATION SUPPORTS MANY OF THE OBJECTIVES THAT ARE SET FORTH IN THIS LEGISLATION, ESPECIALLY THOSE WHICH IMPROVE CONSUMER PROTECTIONS IN THE PURCHASE OF COMMON INTEREST OWNERSHIP PROPERTY. GENERALLY, WHEN IT COMES TO REAL ESTATE THAT OUR MEMBERSHIP IS FINANCING, IF A CUSTOMER'S INTERESTS ARE PROTECTED, THEN ULTIMATELY SO ARE OURS. WHILE THE ACT HAS MANY LAUDABLE ELEMENTS TO IT, THERE ARE TWO PRIMARY AREAS OF CONCERN TO ALASKA'S BANKERS.

OUR FIRST AND PRIMARY CONCERN WITH THE LEGISLATION IS THE ADDITIONAL LIABILITY THAT THE LENDING COMMUNITY MAY ACQUIRE AS A RESULT OF THE ACT'S PASSAGE. YOU MAY BE AWARE THAT THE ALASKA SUPREME COURT HAS HELD IN WIERZBICKI V. ALASKA MUTUAL SAVINGS BANK, 630 P.2d 998 (ALAKSA 1981) THAT A LENDER FINANCING THE CONSTRUCTION OF A NEW HOME OWES NO DUTY OF DUE CARE TO PROSPECTIVE PURCHASERS OF THE HOME IF THE LENDER'S PARTICIPATION IN THE CONSTRUCTION IS LIMITED TO THAT OF A CONVENTIONAL CONSTRUCTION LENDER. A CONVENTIONAL CONSTRUCTION LENDER USUALLY DOES NO MORE THAN, "LEND MONEY AT AN INTEREST RATE ON THE SECURITY OF REAL PROPERTY,". BRADLER V. CRAIG, 274

CAL. APP. 2d 466, 79 CAL. REPORTER 401 (CAL.APP. 1969). LENDERS ALSO FREQUENTLY APPROVE, ON A PERIODIC BASIS, PLANS AND SPECIFICATIONS FOR HOMES, TOWNHOUSES AND OTHER RESIDENTIAL PROJECTS THEY ARE LENDING ON, AS WELL AS INSPECTING THE PROJECTS DURING THEIR CONSTRUCTION. THIS CONDUCT HAS ALSO BEEN HELD TO BE NO MORE THAN ANY "CONVENTIONAL" CONSTRUCTION LENDER WOULD DO.

DESPITE ALASKA CASE LAW, AND WHAT WE UNDERSTAND TO BE THE LEGISLATIVE INTENT OF NOT OVERRULING WIERZBICKI, AND NOT CREATING NEW STATUTORY DUTIES FOR LENDERS UNDER SB 44, WE BELIEVE THERE IS A SIGNIFICANT RISK THAT SUCH DUTIES WOULD BE CREATED BY THE ADOPTION OF THE ACT IN ITS PRESENT FORM. SPECIFICALLY, ARTICLE I OF THE UNIFORM ACT REQUIRES THAT EXTENSIVE OBLIGATIONS BE UNDERTAKEN BY A DEVELOPER TO PERFECT HIS DEVELOPMENT RIGHTS. THE DEVELOPER ALSO ASSUMES, PURSUANT TO ARTICLE IV OF THE UNIFORM ACT, FURTHER OBLIGATIONS TO CORRECTLY REPRESENT THE PROJECT AND ITS DECLARATIONS TO CONSUMERS. BECAUSE THESE NEW OBLIGATIONS WILL REQUIRE MORE EXTENSIVE REVIEW BY LENDERS OF A DEVELOPER'S PROPOSALS, AND ALSO REQUIRE MORE EXTENSIVE MONITORING DURING CONSTRUCTION, WE DO SEE THE POTENTIAL IN PARTICULAR CIRCUMSTANCES FOR THE WIERZBICKI DOCTRINE TO BE SET ASIDE AND LENDERS VIEWED AS BEING IN "JOINT VENTURE" WITH DEVELOPERS, AND THUS INCURRING UNINTENDED LIABILITY.

TO CORRECT THIS PROBLEM, WE BELIEVE WE HAVE RECEACHED AN UNDERSTANDING IN CONCEPT WITH THE SENATE SPONSORS OF THIS BILL ON AN AMENDMENT WHICH IS NONCONTROVERSIAL, AND WOULD AFFIRM THE PRINCIPLES IN WIERZBICKI. THE SUGGESTED AMENDATORY LANGUAGE, WHICH HAS NOT YET BEEN AGREED TO WITH THE SENATE SPONSORS, IS ATTACHMENT ONE TO THE COPIES OF THE TESTIMONY I AM PROVIDING TO THE COMMITTEE TODAY. OF COURSE, MR. CHAIRMAN, WE STAND READY TO WORK WITH THE HOUSE STAFF ON SIMILAR LANGUAGE SHOULD THE COMMITTEE BE DISPOSED TO ACCEPT THE SUGGESTED CHANGE IN THE BILL.

THE SECOND MAJOR CONCERN OF THE ASSOCIATION ARE THE PROBLEMS THAT LENDERS FACE WHEN A MAJOR CONSTRUCTION BORROWER DEFAULTS ON A COMMON INTEREST OWNERSHIP PROJECT, SUCH AS A TOWNHOME OR CONDOMINIUM PROJECT. AS PROPOSED IN THE BILL AS § 34.08.350 IS INTENDED TO PROTECT LENDERS AS TRANSFEREE DECLARANTS WHEN FORECLOSURE BECOMES NECESSARY. IN § 350 WE FEEL ADDITIONAL CHANGES SHOULD BE MADE TO PROTECT A LENDER'S FORECLOSURE RIGHTS AND TO GIVE SOME GREATER FLEXIBILITY TO THE LENDER AS A TRANSFEREE DECLARANT. THE CONCEPT OF PUTTING ALL DECLARANT LIABILITY IN "DEEP FREEZE" UNTIL A LENDER, AS A TRANSFEREE DECLARANT, CAN FIND A "SUCCESSOR DECLARANT" WHO IS WILLING TO TAKE ON A BAD PROJECT WITH TREMENDOUS LIABILITY MAY NOT WORK IN A STATE LIKE ALASKA. THE IDEA OF SELLING AWAY

LIABILITY SEEMS ATTRACTIVE AT FIRST, BUT IN REALITY A LENDER MUST OFTEN ASSUME THE COMPLETION OF A PROJECT. IF THIS OCCURS, THEN IT IS CLEAR UNDER § 350 THAT A LENDER WOULD HAVE TO ASSUME ALL THE OBLIGATIONS REQUIRED UNDER THE ACT OF A SUCCESSOR DECLARANT. UNDER THIS APPROACH, IT BECOMES MORE LIKELY THAT A PROJECT WILL REMAIN IN LIMBO, PERHAPS EVEN WITH SOME OCCUPANTS, LONGER THAN IT WOULD HAVE TO BECAUSE NO RESPONSIBLE ENTITY WOULD MOVE TO CORRECT PROBLEMS OR COMPLETE THE PROJECT DUE TO THE POTENTIAL FOR COSTLY LITIGATION ON WARRANTY CLAIMS.

WE ARE PROPOSING TO THE COMMITTEE TODAY IN ATTACHMENT TWO TO MY TESTIMONY AMENDATORY LANGUAGE WHICH WOULD ALLOW THE LENDING COMMUNITY THE FLEXIBILITY IT NEEDS TO FIND ANOTHER INVESTOR FOR AN UNCOMPLETED PROJECT, WITHOUT THE LENDER HAVING TO ASSUME A SUCCESSOR DECLARANT'S FULL LIABILITY. THE GOAL IS TO GIVE ALASKA LENDING INSTITUTIONS THE FLEXIBILITY TO, "BRING UNCOMPLETED STRUCTURES UP TO CODE" SO THAT A PROJECT BECOMES MORE ATTRACTIVE AND IT THEN BECOMES POSSIBLE TO TRANSFER THE PROJECT TO A SUCCESSOR DECLARANT WHO WOULD THEN COMPLETE THE PROJECT IN TOTAL, MARKET IT, AND SELL IT TO THE PUBLIC. NOW IT MAY BE, MR. CHAIRMAN, THAT THERE WILL BE LENDING INSTITUTIONS THAT WILL IN FACT WISH TO BECOME FULL SUCCESSOR DECLARANTS. IN THAT CASE, WE HAVE NO OBJECTION TO A LENDING INSTITUTION WHO CHOOSES TO BECOME A SUCCESSOR DECLARANT ASSUMING ALL THE LIABILITY THAT COMES WITH THAT CHOICE. HOWEVER, WE STRONGLY

URGE THE COMMITTEE TO CONSIDER AN AMENDMENT IN THIS AREA OF THE BILL WHICH WILL ENSURE A MUCH MORE RAPID RESOLUTION OF A PROJECT'S FUNDING AND COMPLETION PROBLEMS OVER WHAT WE FEEL IS THE MORE INFLEXABLE LANGUAGE PRESENTLY EXISTING IN THE BILL. ASSUMING THE COMMITTEE AGREES WITH OUR RECOMMENDATION IN ATTACHMENT TWO, AT LEAST IN CONCEPT, I AM SURE THAT YOUR STAFF AND LEGISLATIVE COUNSEL COULD WORK WITH US IN DRAFTING ANY NECESSARY REVISIONS TO THE AMENDMENT.

MR. CHAIRMAN WITH THESE MODEST AMENDMENTS THAT WE HAVE SUGGESTED TO THE COMMITTEE, THE ALASKA BANKERS ASSOCIATION COULD ACCEPT THE PASSAGE OF SENATE BILL 44. THE ADOPTION IN ALASKA OF THE UNIFORM COMMON INTEREST OWNERSHIP ACT HAS THE POTENTIAL FOR POSITIVELY BENEFITING THE GENERAL PUBLIC, AS WELL AS THE REAL ESTATE AND LENDING COMMUNITIES. HOWEVER, AS IS OFTEN TRUE WITH UNIFORM ACTS THEY ARE MEANT ONLY AS A GUIDE TO THOSE LEGISLATIVE BODIES THAT ARE CONSIDERING THEM. WE FEEL THAT IT IS EXTREMELY IMPORTANT THAT THIS ACT BE CAREFULLY WEIGHED IN VIEW OF THE SOMEWHAT UNIQUE OPERATING CIRCUMSTANCES OF ALASKA'S FINANCIAL INSTITUTIONS. AS THE COMMITTEE PROCEEDS IN ITS DELIBERATIONS ON THIS MEASURE, THE ALASKA BANKERS ASSOCIATION STANDS READY TO OFFER ANY FURTHER INFORMATION, OR ASSISTANCE TO THE MEMERS OR STAFF OF THE COMMITTEE THAT MAY BE NEEDED. THANK YOU AGAIN, MR. CHAIRMAN, FOR THE OPPORTUNITY TO TESTIFY BEFORE THE COMMITTEE TODAY. I WOULD NOW BE PLEASED TO

ANSWER ANY QUESTIONS FROM YOU OR OTHER MEMBERS ON THE POSITION OF OUR ASSOCIATION.

1047B

ATTACHMENT 1

*Section _____. At page _____, line _____, Section 34.08.27 is amended to read as follows:

"Sec. 34.08.270 RIGHTS OF SECURED AND UNSECURED LENDERS.

"(a) A financial institution (including commercial banks, mutual savings banks, savings and loan associations, credit unions and mortgage companies) when acting as an ordinary money lender (whether secured or not) and providing financing

(1) for any common interest subject to the provisions of this Chapter; or

(2) to any declarant, unit owner or purchaser for that person's interest subject to the provisions of this chapter,

shall not be liable under this chapter to any person for any act, omission, warranty, product or structural defect, obligation, breach of contract or other duty arising from the common interest or interests so financed.

"(b) For purposes of this section "acting as an ordinary money lender" means any reasonable action (including, but not limited to, property inspections, review of public offering statements, approval of declarations, plats and construction plans and requiring proof of compliance with laws or codes) to protect a lender's security interest or otherwise assure the

proper use of, or repayment of its loan. No lender acts as an ordinary money lender when it is an affiliant of the declarant or possesses a direct equity interest (other than those foreclosed upon) in the promotion, development, and sale of a common interest or interests.

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

(1) deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board

(2) prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceeding;

(3) prevent an insurance trustee or the association from receiving and distributing insurance proceeds except under AS 34.08.440.".

0889M

ATTACHMENT TWO

*Section _____. At page _____, line _____, Sec. 34.08.350, subsection (e), paragraph (4), is amended to read as follows:

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

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

(B) an intention to hold the rights for transfer to another person after making, finishing, or completing improvements in conformity with the declaration to the units or common elements for purposes of preserving or improving the same; and

(C) until transferring the special declarant rights to a person acquiring title to a unit or real estate subject to the development rights owned by the successor, or until recording an instrument permitting exercise of all those rights, the successor may not exercise any of the rights other than those specified in (B) of this paragraph

and [a] the right held by the transferor of the successor to control the executive board under AS 34.08.330(d) for the duration of any period of declarant control and an attempted exercise of rights is void; and

(D) so long as a successor declarant may not exercise special declarant rights under this subsection, and for purposes of (B) of this paragraph so long as the successor declarant transfers within the time period specified in this paragraph the rights to a subsequent successor declarant who will assume liability for the improvements made by the successor declarant, the successor declarant is not subject to liability or obligation as a declarant other than liability for acts and omissions under AS 34.08.330(d)[.]; and

(E) if a successor declarant fails to transfer special declarant rights to a subsequent successor declarant within 5 years of the date of recording an instrument under (B) of this paragraph, then the successor declarant becomes subject to the obligations and liabilities imposed by this chapter or the declaration as specified in (2)(A) and (2)(B) of this subsection.".

RE/MAX Above the Crowd!®

January 31, 1985

Senator Rick Halford
Senator Jan Faiks
Senator Arliss Sturgulewski;

RECEIVED FEB 04 1985

Re: Senate Bill No. 44
Relating to the Uniform Common Interest Ownership Act

Dear Senators;

We strongly endorse and urge your support of the above mentioned bill. We are particularly interested in the section relating to implied warranties of quality, as we believe this will help to alleviate many of the problems purchasers and sellers are faced with upon contracting for sale of a condominium unit.

Further we would encourage you to consider a similar home warranty bill for single family homes. The need here is as great as the other if not greater.

RE/MAX OF EAGLE RIVER

REALTORS

cc:Senator Tim Kelly
Senator Robert Zigler
Senator Jay Kertulla

Representative Randy Phillips
Representative Sam Cotten
Representative Ben Gruesndorf
Representative Don Clocksin
Representative Mike M. Miller
Representative Rick Uehling
Representative Pat Porchot

RE/MAX eagle river
post office box 772849
eagle river, alaska 99577
(907) 694-4200

Representative Mike M. Miller
Chairman
House Judiciary Committee

April 25, 1985
905 Muldoon Rd. #75A
Anchorage, Ak. 99504

APR 29
AT... 1985

Dear Representative Miller:

I am writing to you concerning recent legislation being circulated between the House and Senate that deals with the potential ability of mobile home owners to purchase the lots on which their homes rest. I have not read either HB155 or SB44 and have no desire to enter the political aspects of one over the other. I would, however, urge all legislators to put all political motives aside while considering what may prove to be very serious economic consequences for thousands of people in the state of Alaska.

There are many reasons that people buy mobile homes, but most often in the main it is a stepping stone. Not everyone starts out with the job or financing that allows them to purchase a house with $1000/month or more payments. I personally bought a mobile home in Anchorage - as an investment, as opposed to throwing that money away in rent - because

I was also paying for land near Homer with the intent of eventually moving there.

I am fortunate in that my trailor is on the lower end of the price range - eventual sale price between 10 to $15,00. But folks I know are in high ticket mobile homes, 30, 40, $50,000. That is serious investment as far as I am concerned.

It is one thing to fall on hard times as a "real" home owner, when one may be able to at least borrow property Tax money from friends. It is entirely another to be forced from one's tens of thousands of dollars investment by the closure of a trailor court. In a stringent economic situation, that ~~is~~ exactly what many trailor owners would face. the cost of buying a private lot on which to place an "orphaned" trailor could bankrupt many people. Obviously, purchasing the trailor's original lot may be less severe; not only would it be somewhat less expensive because of size, also hundreds if not thousands would be saved in moving expenses for the trailor itself. Finally, resting on its owner's lot, as

opposed to someone else's, the trailer would indeed become a viable investment, not only for present owners, but for future step-stone Alaskans.

Representative Miller, trailer owners are not second-class citizens. They have made investments and surely contribute as much to Alaska as other fixed-home owners. Please rally all forces available to ensure that present and future mobile home owners will not lose their investments.

Sincerely,

James L. Bachman Jr.

JAMES L. BACHMAN JR.

4/24/85

REP MIKE M MILLER

APR 29 1985

DEAR SIR

PLEASE HELP THE PEOPLE IN THE TRAILOR PARK TO GAIN A LITTLE MORE PEACE OF MIND AND MAYBE BUILD UP THEIR ASSETS AND SECURITY AT THE SAME TIME. I AM SURE THAT THE OWNERS WILL BE TREATED FAIRLY BUT MY MAIN CONCERN IS FOR THOSE OF US THAT NEED THIS SECURITY

PLEASE PUSH FOR LEGISLATION ON BILL SB 44. I THANK YOU AND I ALSO THANK SEN. TIM KELLY FOR HIS EFFORTS TOWARDS THIS BILL AND I REMAIN

YOURS TRULY

WILLIAM ALLEN
7800 DEBARR RD
ALASKA VILLAGE -552
ANCH AK 99504

Paul R. Larson
7800 Debarr Rd.
Space 304
Anchorage, AK 99504

April 22, 1985

Representative Mike M. Miller
Alaska House Judiciary Committee Chairman
Pouch V
Juneau, AK 99811

Dear Representative Miller:

I am a mobile home owner and space renter. I feel that myself, other mobile home owners, and the State of Alaska would benefit from the passage of Senate Bill 44, the Uniform Common Interest Ownership Act. I respectfully urge you to bring this legislation before the House Judiciary Committee.

Sincerely,

Paul R. Larson

DUANE D. HENRICKSEN
7800 DeBarr Rd. #112
ANCH AK 99504

THE HOUSE JUDICIARY COMMITTEE
CHAIRMAN REPRESENTATIVE MIKE M. MILLER
POUCH V, JUNEAU AK 99811

RE: HB155, SB44

IT IS TO THE BEST INTEREST(S) OF MYSELF AND OTHER HOME OWNERS, RENTERS, AND 'PROSPECTIVE BUYERS', (THE LATTER BEING MY POSITION), THAT CONCERNS 'US' TO URGE YOU AS OUR REPRESENTATIVE TO BRING THE ABOVE REFERENCED LEGISLATION BEFORE THE COMMITTEE FOR ITS' APPROVAL.

SINCERELY

Duane Henricksen

DUANE D. HENRICKSEN

DDH:ddh

April 26, 1985

Mike M. Miller
Pouch V
Juneau, ALaska 99811

Dear Sir:

This is with reference to SB44 (mobile home park condominimizing).

Everyone is not fortunate enough to be in a position to purchase anything more expensive than a mobile home. I feel this would provide an excellent solution to residents of mobile home parks. Problems such as raising the space rent when the service has not improved seem to be never ending.

My family and I have resided in mobile home parks in Anchorage for a number of years and feel that this option would greatly benefit us and our friends and neighbors.

Sincerely,

Mary P. Hyland

Mary P. Hyland
resident of
Riviera Terrace MHP
3307 Boniface Pkwy #11-B
Anchorage, ALaska 99504

Donna Mogg
745 Muldoon Rd #210
Anch AK 99504

April 28, 1985

Mike Miller

I hope the SB#4 will pass the house. I would love to buy the land my Mobil home is on. It used to work for a place to live then all of a sudden they tell you to move. This is very hard on the little people. please do your best

Thank you
Donna Mogg

7800 DeBarr Rd, Sp 240
Anchorage, AK 99504

April 29, 1985

Pouch V,
Juneau, AK 99811

Dear Representative Miller:

Since becoming a resident of a trailer park here in Anchorage, I have been concerned with the prospect of losing my home because of the lack of protection afforded to mobile home owners in Alaska.

Recently, a Laotian refugee family lost their mobile home because their trailer park was converted into a condominium. I had helped them purchase their mobile home and now they hold me somewhat responsible for this loss. They only got 10% of what they paid for their home at the auction block.

Please, don't let this travesty continue. All mobile home owners of Alaska need protection from this kind of lawlessness. Please pass SB44 before the end of this session. So I can at least face my Laotian friends again.

Sincerely Yours

James Cronin

WHILE YOU WERE AWAY

FOR M. L. Hayden DATE 4/25 TIME 2:00 A.M. P.M.

M Colonel Lundell

OF

PHONE 562-6740
AREA CODE NUMBER EXTENSION

MESSAGE 5944 support . . .

Kaylene

SIGNED

- TELEPHONED
- RETURNED YOUR CALL
- PLEASE CALL
- WILL CALL AGAIN
- CAME TO SEE YOU
- WANTS TO SEE YOU

TOPS FORM 4002

LARRY R. WEEKS
ATTORNEY AT LAW
319 SEWARD STREET • JUNEAU, ALASKA 99801
(907) 586-6812

APR 24 1985

22 April 1985

Representative Mike Miller (Juneau)
Pouch V
Juneau, Alaska 99811

Dear Representative Miller:

I would like to encourage you to pass out Senate Bill 44 as soon as possible. I represent two condo associations in Juneau and one Mobile home Association and I can assure you that there are substantial problems in the Juneau area that are addressed by this bill and solutions that are long overdue. There are outrageous instances of over-reaching by developers and owners that this bill deals with in affirmative ways.

I understand that it is a long bill. It is but the legislation that is needed is not simple. It deals for the most part with the biggest investment people make in their lives and has a dramatic impact on them.

Thank you for your consideration.

Sincerely,

Larry R. Weeks

ALASKA PUBLIC INTEREST RESEARCH GROUP
Post Office Box 1093/Anchorage, Alaska 99510/(907) 278-3661

April 19, 1985

Representative Mike Miller, Chair
Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Miller:

I am writing to urge you to move SB44, the Uniform Common Interest Ownership Act, through your committee as quickly as possible. While I am aware that SB44 is a rather involved, lengthy bill, it is also a much needed bill in this state. That we here in Alaska live with a common interest ownership act which is over 20 years old is a bit ludicrous. Common interest properties have become an extremely popular form of ownership. SB44 addresses the issues associated with common ownership and offers protection to buyers; protection which has been sorely missing.

It is important to act on this bill yet this session. If passed before session ends, this bill will go into effect January 1, 1986. If it is postponed until next session, we won't see it implemented until January, 1987. I think that is too long to wait for SB44. We need it now.

I appreciate your attention to this matter and hope you find that you will support this bill and do what you can to keep it moving. Thank you.

Sincerely,

Gail Neubert

Gail Neubert
Consumer researcher