SB

470

STATE OF ALASKA
THE LEGISLATURE

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

May, 1986

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

Jeanie Henry

House Judiciary 5-9-86 1:30 pm

LAW OFFICES OF
Reginald J. Christie, Jr.
307 EAST NORTHERN LIGHTS BOULEVARD
SUITE 200
ANCHORAGE, ALASKA 99503
(907) 276-0924

May 9, 1986

Representative Mike Miller
House of Representatives
State Capital
Juneau, Alaska 99811

RE: Proposed Amendments to AS 34.08.470 (Lien for Assessments/ Uniform Common Interest Ownership Act) (House Bill 470)

Dear Mr. Miller:

I have worked extensively as a lawyer in the condominium and planned unit development field for 15 years. During this period of time I have prepared legal documents for not less than 50 condominiums and PUDs, and have represented owners' associations.

While I believe it reasonable and necessary for a condominium owners' association to have the ability to foreclose its assessment lien by summary proceedings, AS 34.08.470 as it is now written will not work for this purpose.

AS 34.08.470(j)(1) and (4) purport to give a condominium owners' association the right to foreclose an assessment lien under the non-judicial deed of trust foreclosure procedure set forth in AS 34.20.070 et seq.

The legal basis for a non-judicial or summary foreclosure under AS 34.20.070 is found in its first sentence:

> Section 34.20.070. SALE BY TRUSTEE. (a) If a deed of trust is executed <u>conveying</u> real property located in the state <u>to a trustee</u> as security for the payment of an indebtedness and the deed provides that in the case of default . . . the <u>trustee may sell</u> the property for a condition broken, the trustee, . . . may execute the trust by sale of the property, . . . without first securing a decree of foreclosure and order of sale from the court . . . . (emphasis added)

Thus, unless there is a conveyance of a condominium unit to a trustee, the unit can not be sold by a trustee to satisfy the association's lien. In short, there is a very significant legal difference between an assessment lien, and the lien of a deed of trust. A purported extra judicial sale under AS 34.20.070 to satisfy an assessment lien would pass no title as the "trustee" never was conveyed title.

I have discussed this provision with representatives of three title insurance companies doing business in the Anchorage area who concurred with the foregoing analysis and indicated that their companies would not insure title acquired through such a procedure.

Sincerely,

Reginald J. Christe, Jr.

RJC:slt

ALASKA MORTGAGE BANKERS ASSOCIATION
P.O. BOX 4-2691 / ANCHORAGE, ALASKA 99509

May 1, 1986

Honorable M. Mike Miller
Chairman, Judiciary Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

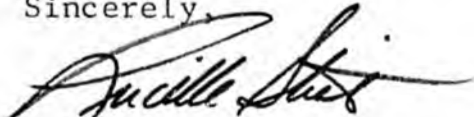
RE: Senate Bill 470
Uniform Common Interest Ownership Act

Dear Representative Miller:

We understand the subject bill has been referred to the House Judiciary Committee, which has a hearing scheduled for May 9th.

We urge quick passage of the bill, so that the problems encountered with the current law can be cleared up in this session.

Sincerely,



Lucille Stietz
President

LS:ga

ALASKA MORTGAGE BANKERS ASSOCIATION
P.O. BOX 4-2691 / ANCHORAGE, ALASKA 99509

May 8, 1986

Honorable Mike Miller
Chairman, House Judiciary Committee
Pouch V (MS 3100)
Juneau, Alaska 99801

Re: SB 470
Uniform Common Interest Ownership Act

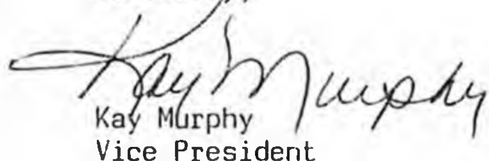
Dear Representative Miller:

The Alaska Mortgage Bankers Association [illegible] worked closely with various industry groups over the past four [illegible] seek amendments to the Uniform Common Interest Ownership Act. [illegible] purpose of these efforts was to have a law providing full disclosu[illegible] al estate purchases yet, at the same time, protect Homeowners Associa[illegible] nd maintain the ability to finance and insure common interest properties.

We understand there are concerns by some about the repeal of the non-judicial foreclosure presently available to Homeowners Associations i[illegible] the event of default in payment of dues by a unit owner. The purpose of this letter is to inform you that it would be in the best interest of a lender, as either a loan servicer or holder of the mortgage, to work with Homeowner's Associations when a default in payment of dues occurs. Counseling of the borrowers regarding their obligation to pay homeowners dues and assisting the association in collection of the dues would be a prudent consideration of any mortgage servicer.

As has been indicated in our previous written testimony regarding SB 470, we urge a quick passage of this bill so that financing and insuring of properties in common interest communities can continue without restriction. We understand that additional amendments may be desired; however, SB 470, in its present form, takes care of the majority of concerns brought forth since the effective date of the Act.

Sincerely,



Kay Murphy
Vice President

KM:rm

ALASKA MORTGAGE BANKERS ASSOCIATION
P.O. BOX 4-2691/ANCHORAGE, ALASKA 99509

April 4, 1986

Members
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Senate Bill 470

Honorable Senators and Representatives:

The Alaska Mortgage Bankers Association recommends passage of Senate Bill 470.

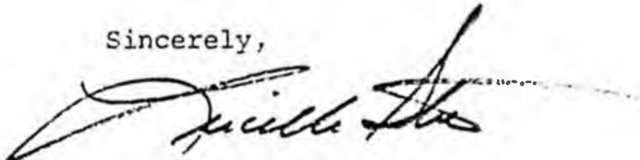
The Uniform Common Interest Ownership Act took effect on January 1, 1986. The law provides for disclosure of certain information to purchasers of property in common interest communities as well as defining those communities. We support the intent of the law and the disclosure requirements on large and/or structured common interest communities.

It became apparent when implementing the law that certain refinements were needed, especially as regards small and/or limited common interest communities. Our Association, along with others in the real estate industry have worked with legislative staff toward a goal of amending the law. Senate Bill 470 incorporates the refinements the industry felt were needed and should solve the problems encountered by the real estate industry, title companies, lenders and consumers in working with the Uniform Common Interest Ownership Act.

We feel passage of the bill would result in a workable law which encompasses the intent of the legislature and the intent of the Model Act.

Should you have any questions, we will be happy to discuss this at your convenience.

Sincerely,



Lucille Stietz
Vice President
07-265-2860

Alaska HOUSING FINANCE CORPORATION

P.O. Box 101020, Anchorage, Alaska 99510

TO: Elizabeth Hickerson DATE: March 11, 1986

FROM: Betty M. Cook
Mortgage Operations Director

Re: UCIOA - AHFC's Recommended Changes
AS 34.08

Alaska Housing Finance Corporation is not opposed to the deletion of the words "or financing from the AHFC" from sections 34.08.020 and 34.08.030. Our testimony last year was not a request to have such language included, but a concern for disclosure protection for purchasers of units in small projects. If the legislators agree that these purchasers need the protection of this law, then purchasers need that protection whether or not AHFC is financing the project.

I believe our concern for small projects, especially those with high budgets, is still a valid and troublesome concern. I urge you not to delete "or financing from AHFC" without some compensating addition. This can be accomplished by changing the word "or" at the end of line 27 (Sec. 34.08.030) to "and." This will exclude communities that are both under 12 units and have budgets of less than $100 per year/per unit rather than excluding projects that are either under 12 units or under $100 per year.

If the legislators do not want to change the word "or" to "and", I strongly suggest some other method be found to require resale disclosure in small, high budget projects before AHFC is taken out.

Attached is an analysis of which projects would need to comply with the law as it currently reads; with "AHFC" deleted; and with "AHFC" deleted and the word "or" changed to "and." This analysis is general in nature and acknowledges that all projects fall under some provisions of the law (.720-.740). The chart was made to analyze the main concerns of the realtors and lenders.

su

Attachment

CS SB 470 (Judiciary)
An Act Relating to the Uniform Common Interest Ownership Act

The Uniform Common Interest Ownership Act became law last year. According to the realtors, bankers, title companies and homeowners associations, the law is working very well, particularly for condominiums.

The only real problem that has arisen involves certain planned communities, such as subdivisions, which have minimal responsibilities for road maintenance, common wells and septic systems. Homeowners associations have in many cases never existed or functioned.

This bill provides certain exceptions for these planned communities:

1. If the planned community has no development rights and its annual assessments per unit are less than $100, then only three sections of the act apply: separate title and taxation; applicability of local ordinances; and eminent domain.

2. An alternative means of disclosure is allowed where there is no functioning association. The buyer can provide disclosures through an affidavit.

Certain housekeeping measures are also contained in the bill:

Associations may petition the court to amend their documents;

Associations must judicially foreclose their liens;

In addition, all newly created condominiums and cooperatives, regardless of size, are subject to the act. This is necessary because condominiums and cooperatives are creatures of statutory law, and therefor if these entities were not subject to the act, there is no common law under which they can be created.

This bill has been endorsed by:

Alaska Mortgage Bankers Association
Alaska Land Title Association
Alaska Association of Realtors
Consumer Protection
AHFC
Attorneys who represent Associations

JUDICIARY COMMITTEE SUBSTITUTE
SENATE BILL 470
Sectional Analysis

Section 1.

AS 34.08.010 is amended to include the regulation of all residential condominiums and cooperatives under the common interest ownership act.

Section 2.

AS 34.08.030 is amended to apply only to planned communities in which there are no development rights and whose annual assessments are limited to $100 per unit.

Section 3.

The wording of this new section was contained in the original AS 34.08.030. Due to the modifications to that section, the drafter recommended a new section be created.

Section 4.

AS 34.08.040 is amended to include AS 34.08.510 as an applicable section to preexisting common interest communities. AS 34.08.510 is referenced in AS 34.08.590 (Resale certificates) but was not included under AS 34.08.040. This addition clarifies the applicable sections.

Section 5.

A new section is added that gives associations the ability to petition the court in order to amend declarations. This is needed to modify declarations which have no provisions for amendments or whose declarations require a high percentage of unit owners to vote on amendments. Adequate due process provisions are included. This is adopted from the California law.

Section 6.

A new section is added that gives associations the ability to petition the court in order to extend the termination date of the declaration. This is needed where no provisions for extension are provided in declarations. Adequate due process provisions are included. This is adopted from the California law.

Section 7.

AS 34.08.470 is amended by repealing the nonjudicial lien foreclosure procedures under AS 34.20.070 (Deed of Trust) as apply to condominiums and planned communities. The remedy available under the Deed of Trust statute was intended to be available only to the

original parties to the deed, and thus is inappropriate for nonparties, particularly condominiums and planned communities.

Section 8.

AS 34.08.590 is amended by adding an alternative resale certificate for planned communities where there is no association or officers and where no assessments are collected.

Section 9.

This section was added in order to comply with the revisions to AS 34.08.020 and AS 34.08.030.

Section 10.

AS 34.08.020 is repealed. Cooperatives by nature are creatures of statutory law and should be regulated by the Common Interest Ownership Act.

SB470

Alaska State Legislature

CO-CHAIRMAN
FINANCE COMMITTEE
907-465-3740

JAN FAIKS
POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

Senate

March 27, 1986

MEMORANDUM

TO: Senate Finance Committee Members

FROM: Jan Faiks, Co-Chairman
Senate Finance Committee

SUBJECT: Finance Committee Sponsored Bill

With the committee's concurrence, I would like to introduce a committee sponsored bill which makes several amendments to the Uniform Common Interest Ownership Act which was approved by the Legislature last session.

The amendments are the result of recommendations offered by a joint industry committee consisting of representatives from the Alaska Realtors Association, AHFC, Alaska Land Title Association and the Association of Mortgage Bankers. Basically, the bill will do the following:

1. Clarifies the procedures which must be followed in planned communities (especially single family units) where there is limited common elements such as road maintenance and/or common wells. In planned communities, typically there is no homeowners association thereby making it not possible to comply with some of UCIOA's provisions such as the Association providing a re-sale certificate. Instead, the amendment provides for an alternative means of disclosing to potential buyers all obligations associated with the real estate.

2. Makes all condominiums subject to the Act (currently it pertains to those with 12 or more units).

OUT OF SESSION
1024 WEST SIXTH AVENUE, SUITE 302 ANCHORAGE, ALASKA 99501 907-274-6611

3. Provides an Association with the ability to go to court when it has a problem in amending its declarations (such as the inability to get 100% of the homeowners to agree due to absence from the property). This is patterned after a California law.

I would like to introduce the legislation on Friday, March 28th. As a result, would you please let me know if you have any problems associated with the committee's sponsorship of it.

Attached is a sectional analysis as well as draft of the bill. Should you have any additional questions, please let me know.

Thank you.

TO: SENATOR JAN FAIKS
SENATOR RICK HALFORD

FROM: ELIZABETH J. HICKERSON

SUBJECT: UCIOA AMENDMENTS

DATE: MARCH 26, 1986

During the last month I have met on a number of occasions with representatives from the Joint Industry Committee which was formed to make recommendations concerning UCIOA. Based on their concerns and with legal advise from Don Buck and numerous Alaska lawyers that are engaged in the real estate practice, the attached draft bill was developed.

The following is a sectional analysis of the draft.

Section 1. AS 34.08.020 is amended as follows:

it is made clear that this section applies to cooperatives that are created after January 1, 1986; and,

financing from AHFC is deleted.

Problem solved: It is now clear which cooperatives are only subject to the universal sections, AS 34.08.720 - 740 (nonresidential or 12 units and no development rights). Financing from AHFC was a problem because as a practical matter, all cooperatives are or might be subject to this type of financing, and therefore the intent of the uniform act was frustrated.

Cooperatives in Alaska are few - three or four statewide - according to the people in the industry, so there will be little affect. However, if a cooperative is created after January 1, 1986, the declarant may opt in under the entire act.

Section 2. AS 34.08.030 is amended as follows:

the exemption only applies to planned communities not subject to development rights or whose assessments are limited to $100 per unit annually;

financing from AHFC is deleted; and,

condominiums regardless of size are subject to the entire act under AS 34.08.010.

Problem solved: Planned communities with limited assessments and no development rights which are created after the date of this amendment are only subject to the universal sections. The entities which are

exempted must still provide disclosures based on the common law if they decide not to opt into the entire act.

Section 3. The provisions of this section were included under AS 34.08.030. With the amendments to that section, it was the determination of the drafter that a separate section be created.

Section 4. AS 34.08.040 is amended to include AS 34.08.510 as an applicable section for preexisting common interest communities.

Problem solved: This clarifies that AS 34.08.510 applies to preexisting communities. While this section is referenced in AS 34.08.590, which is an applicable section, this amendment removes any doubt.

A planned community which limits its annual assessments to $300 in its declaration is not required to provide a public offering statement or a resale certificate under AS 34.08.510. This solves a number of problems for planned communities with limited responsibilities which do not have the ability to provide resale certificates.

Section 5. A new section is created which is based on the California law. Under this section, an association or unit owners may petition the court to amend their declaration when it has been impossible to secure the necessary number of votes. The petition must state what efforts have been made to solicit the approval of the unit owners, what amendments are sought, the effect of the amendments, etc. The court may not approve amendments which eliminate a special right, preference or privilege, or that would impair the security interest of a mortgagee. Numerous due process provisions are included.

Problem solved: This makes it possible for declarations to be amended when owners are absent or refuse to participate personally or through a proxy. (McNall recommendation)

Section 6. A new section is added that allows associations or unit owners to petition the court for an extention of the termination date contained in the declaration. This would be accomplished by utilizing the procedures contained in the above referenced Section 4. This is also based on the California statute.

Problem solved: This makes it possible for declarations to be amended when owners are absent or refuse to participate personally or through a proxy. (McNall recommendation)

Section 7. Amends AS34.08.470(j) by repealing the nonjudicial lien foreclosure procedure under AS 34.20.070 (Deed of Trust).

Problem solved: When this section was drafted a legal fiction was created. Associations could use the Deed of Trust provisions which

allow nonjudicial sale of property. The problem with this is that associations are not parties to the Deed of Trust. This drove the title people crazy. Most of the my time over the last week has been spent on this provision, trying to figure out what was the best way to go. After talking to no less than ten attorneys and a superior court judge and reviewing the comments to UCIOA carefully, I determined that this remedy should be repealed. Associations may still proceed under the lien foreclosure provisions of AS 34.35.005 or sue on a breach of contract.

If the banks will cooperate with associations and apply pressure on delinquent unit owners, then court action and its associated expense can be avoided.

Section 8. AS 34.08.590 is amended by adding an alternative resale certificate as follows:

> Unit owners in a planned community that was created after January 1, 1986, not exempt under AS 34.08.050 (communities 12 and under), does not collect assessments and does not have an association or board members, may provide an affidavit instead of a resale certificate.
>
> The affidavit must include:
>
> > a statement that no assessments are collected; date and amount of last assessments; and the reason that assessments ceased;
> >
> > a statement that no association exists or no board/officers exist;
> >
> > copies of the declaration, bylaws, rules, etc.;
> >
> > a brief description of the real estate and all obligations associated with that real estate.

Problem solved: In situations where no associations exists and therefore it is impossible for a resale certificate to be provided, the unit owner is able to provide an affidavit that discloses the vital information associated with the property.

Section 9. A new section is added that concerns those condominiums that were created after January 1, 1986 but before the date of the amendment to AS 34.08.030. These entities relied on the law that existed at the time, and could have been exempted from the majority of the act at time of creation. It protects their interests, but provides that acts and occurrences after the effective date of the amendment will be regulated under AS 34.08.040.

Problem solved: The few condominiums created during this short period will be grandparented in under the provisions for preexisting common interest communities.

I have been told that these amendment will be endorsed by:

Alaska Realtors Association
AHFC
Alaska Land Title Association
Association of Mortgage Bankers

Hayden

LAW OFFICES OF
WILLIAM L. MCNALL
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WILLIAM L. McNALL
W. E. "GENE" BURDEN

LEGAL ASSISTANTS.
PENELOPE J. STANDLEY
ANGEL H. HOLT

AREA CODE 907
TELEPHONE 276-2535

April 22, 1986

The Honorable Pat Pourchot
Alaska State Legislature
House of Representatives
Pouch V
State Capitol
Juneau, AK 99811

Re: Senate Bill 470

Dear Representative Pourchot:

In response to your letter of April 7, 1986, I have reviewed SB 470 and make the following observations.

Section 1: The amendment to AS 34.08.020 removes and clarifys portions of this section which has caused some great confusion in the industry and I find that these corrections will be helpful.

Section 2: AS 34.080.030 is amended to remove the Alaska Housing Finance Corporation language which when reviewed, is very confusing. The lenders, attorneys and others were not sure what the wording "subject to any development rights or financing from the Alaska House Finance Corporation" meant. Since there was substantial room for argument over what that language might possibly mean, it was felt that it was best to leave Alaska Housing to its own discretion in the form of regulations and limitations on loan programs. Also, Section 2 clarifys the difference between a "planned community" and a common interest community such as a condo or coop. Generally speaking, the condominiums and cooperatives have substantial monthly assessments. It is the planned community, which is usually a single family subdivision with a common well, common road maintenance and so forth, which will have much smaller assessments than those of the condo. It was not the intention of the drafters to bring those small associations within the requirements of the act. I find no problems with this change.

Section 3 is again clarifying language to make sure that the act applies to all those areas that it should apply to and that a creative developer does not believe somehow that he can avoid the application of the act.

Section 4 is designed to avoid confusion over exactly which sections of the act apply to pre-existing communities, although the new section .510 is impliedly applicable because it is referenced in Section .590. Everyone feels more comfortable by specifically including it.

Section 5 is needed to deal with two specific scenarios. One is a situation where the association must have a membership vote to be allowed to do particular task; for example, approve an annual budget, hold an election or amend its documents. The association will have the right to seek the court's help in the event that the association cannot obtain the required quorum or the documents of the association simply don't allow the association to do what it is trying to do I am aware of one specific situation which I have shared with Senators Halford and Faiks previously. The association has a declaration that does not have a clause allowing amendment. The association cannot amend its declaration to do some of the things the association must do. In addition, even if you could argue that if 100% of the unit owners in a subdivision agreed and that they would sign a document consenting to an amendment, that may not be sufficient. In this particular situation, about 5 of the owners were directly opposed to what the board was trying to do. The possibility of getting 100% approval would be impossible. The other scenario that I can share with you is Eaglewood Owner Association, which is an association of 5 phases eventually totaling about 900 homes. There is presently about 700 homes in the subdivision. For this association to take the steps necessary to amend its documents to enjoy some of the benefits of the new act, it must garner approximately 600 votes. This means either a massive proxy solicitation or 600 owners attending a meeting. The board cannot afford to hire the personalities and physical location that it would take to get 600 people there, but, assuming we could have President Reagan show up for our homeowners association meeting, the chances of getting 600 of our 900 people out to the meeting would still be remote. This association has not been able to hold an election for the last three years and is able to proceed only because the documents allow the existing directors to appoint replacement directors for people who resign. At this point we have had unfilled terms that have lasted three years. A most unhappy result unforseen by the developers and the drafters of the documents. This amendment to the act then allows the court to assist those associations.

Section 6 is to deal with documents that for some reason or other may not have an expiration date contained therein and a method for the association's members to continue the existence of the association.

Section 7: This section is the one that causes me the greatest amount of concern and needs some discussion. To collect unpaid assessments, the association really has under the existing law, three alternatives. One, they can file a small claims or district court action which requires retaining an attorney, going to court, getting a judgment, seeking an award of attorneys fees and cost; and then collecting the money, if and when you can locate the non-paying unit owner. This is a time consuming process. Often by the time that the association turns it over to me for collection, there will be 4 or 5 months worth of assessments outstanding. By the time we get into court for a hearing, an additional 3 or 4 month wait is added because of the length of time the legal process takes. By that time, the association will be in court seeking nine months worth of assessments. I would note paranthetically that the courts are not pleased to see the associations bring these claims against the unit owners and do not treat kindly arguments that the association is simply acting as a body of the unit owners responsible for running the association's common business and so on and so forth. The judges simply get frustrated with having to deal with a $1,000 collection case and view the association's claims to enforce rules as "nuisances". I have heard one judge say that he does not believe associations should be allowed legal representation. I suppose this is reflective of an educational process that must go on with our judiciary. However, it is costly and frustrating for the association, as well as myself, to have to be the ones paying either in time or in money to educate our judiciary. The second method that an association has for pursuing collection of its unpaid assessments is to foreclose through a non-judicial deed of trust foreclosure. This is allowed by the Horizontal Property Regime act and that same language was brought forward into the Common Interest Ownership act. Oddly, at this point in time, the title insurance industry has decided to become concerned about this as an appropriate remedy for the associations. They have not been concerned for the last 22 years about this possibility, but seem to be concerned now. They claim that there is an issue related to the insurability of a title that might be obtained by an association through such a foreclosure process. The

arguments are of interest to me in light of the fact that the association is a a third party beneficiary of the contract entered into by the unit owner and the lender. The lender requires as part of its documentation that the unit purchaser agrees to comply with the rules and regulations of the association. As a matter of fact, AS 34.07.360 and .390 requires such compliance. The purchaser automatically becomes a member of the association and is obligated to comply with the association's bylaws, articles, declarations and so forth. All in all, I am not sure why the title insurance industry is taking this position. However, my explanation below might make it a little clearer to you why they might be doing so.

If the association can not collect through a non-judicial foreclosure, then the next option is to proceed to a judicial foreclosure. The difference between a non-judicial and a judicial foreclosure are set forth in the Statutes. The benefit of a non-judicial foreclosure is that it immediately cuts off the unit owner's right to the premises (no right of redemption) and the foreclosing party would also lose its right to any deficiency judgment. The process takes approximately 120 days and involves the filing a notice of default and requiring the giving of notice to everyone who has an interest in the property as well as anyone who may be in occupancy of the property. Usually for a non-judicial foreclosure, a title insurance company is contacted and a foreclosure guarantee is ordered in which all the parties that have an interest of record are described so that all the appropriate notices can be issued. Cost of such a notice is about $300 and there is no court action necessary.

In a judicial foreclosure, however, an action must be filed with the court wherein the association would ask the court to allow the foreclosure to proceed. This action would be a Superior Court action. Once the other party is served, the action can be commenced. He then can respond and eventually a hearing will be held wherein the court may allow the association to proceed to foreclose on the property. The expense of the judicial foreclosure is several times that of the non-judicial foreclosure. Once the judicial foreclosure has been concluded, the right of the unit owner to redeem the property still must be dealt with. And, if you will review the right of redemption under Title 34, you will notice that the unit owner has up to one year to redeem property after a judicial foreclosure has occurred. As you can see, the

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difference between a judicial and a non-judicial foreclosure is substantial. The benefits to the association in context of foreclosure have been basically been removed and the association's implied threat to the lender under the "super lien" provision has been eliminated. The implied threat to the lender under the "super lien" that I have referenced is that if the lender does not pay the monies that the association is entitled to, the cost of curing the non-judicial foreclosure will be increased by approximately $300 immediately upon the filing of the notice of default as outlined above. Certainly an amount large enough to catch the lender's attention. There would be immediate pressure on the lender to comply. This "threat" has been removed. The association has no real ability to foreclose on the property at this point in time. I can foresee only a few associations who would be inclined to attempt to foreclose in a judicial context. What that leaves the association with then, is a lawsuit in small claims court as its sole remedy, thus defeating one of the major benefits the new act gave the associations, the "super lien". I would note that both the lenders through AMBA, with Kay Murphy and Lucille Steitz testifying, and the title people, through William McKillop of Land Title, were vigorously supportive of this amendment as set forth in Section 7(j)(1). On behalf of the community associations, I testified that it was going to be difficult for the associations to collect their money.

Section 8 is a much needed addition to deal with the way that real estate in Alaska has been developed. There truly are associations that no longer can function. It is going to be necessary that there be a vehicle available to allow the unit owner to sign off on a statement explaining what the association has done and explaining why it is not functioning so that a purchaser will not be mislead as to the scope of the association's activities. I have noticed, however, in preparing some of these resale certificates, for associations who have "limited purpose", that when I fully explain all the responsibilities the association is truly responsible for, that the sellers, buyers and agents are enlightened to some of the responsibilities the association should have been paying for all along. I believe this is a benefit and certainly will remove a lot of the concerns that the real estate industry has expressed.

I had not seen a draft version of SB 470 when I talked to your staff member. I have had an opportunity to have input into the

drafting of this bill but, I believe, I was the sole consumer representative in those meetings. The realtors, lenders and title insurance personnel have their own agendas for these amendments. I believe that taking the foreclosure out of the hands of the associations is to also remove the "super lien" as a meaningful threat and, therefore, the benefit that it was to have been. The remainder of the amendments are necessary.

If I may be of further assistance, please contact me.

Sincerely yours,

LAW OFFICES OF WILLIAM L. McNALL

By: [signature]
William L. McNall

WLM/sd