

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 that 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'/draftsmen's 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 throw 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 to 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 managerial 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, develop , 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 interest 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

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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.

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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.

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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 statute 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 a lot 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,

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and a part 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

Side 2, Tape 1

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 in fact 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 35 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 of the associations. It will allow a wide range of new remedies 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 unit owners 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 than 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

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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 nonexistent. 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.

(527)

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 it 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

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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

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 particular 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 -- applicability to small pre-existing cooperatives and planned communities -- indicates that if it is a small community and it is less than 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 apply -- 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 remains. 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. This gives secured lenders some additional protection.

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.

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 declarant's 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 rescission 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 rescission under Section 580 is spelled out.

Section 590, which is also a Section 40 section -- resale. 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 financeable 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.

FJLL 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 than 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.....

COMMITTEE REPORT
SENATE

FURTHER:

4/21/85

Date 4/19/85

Mr. President

The Committee on FINANCE considered SB 44

Uniform Common Interest Ownership Act; efd.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SB 44 (Jud)
- new title
- same title and recommends "do pass"
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Rich Hargrave

McClary

Chairman

Chairman recommendation

Offered: 4/11/85
Referred: Finance

Original sponsors: Halford, Faiks,
Sturgulewski and Kerttula

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2

CS FOR SENATE BILL NO. 44 (Judiciary)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

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

7

8

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

9

* Section 1. AS 34 is amended by adding a new chapter to read:

10

CHAPTER 8. COMMON INTEREST OWNERSHIP.

11

ARTICLE I. APPLICABILITY.

12

Sec. 34.08.010. APPLICABILITY GENERALLY. Except as provided in
AS 34.08.020 and 34.08.030, this chapter applies to each common inter-
est community created within the state after the effective date of
this Act. The provisions of AS 10.15 and AS 34.07 do not apply to
common interest communities created after the effective date of this
Act.

17

18

Sec. 34.08.020. APPLICABILITY TO SMALL COOPERATIVES. If a
cooperative contains only units restricted to nonresidential use or
contains no more than 12 units and is not subject to any development
rights or financing from the Alaska Housing Finance Corporation, it is
subject only to AS 34.08.720 - 34.08.740 unless the declaration
provides that the entire chapter is applicable.

23

24

Sec. 34.08.030. APPLICABILITY TO SMALL AND LIMITED EXPENSE
LIABILITY COMMON INTEREST COMMUNITIES. If a common interest community
contains no more than 12 units and is not subject to any development
rights or financing from the Alaska Housing Finance Corporation or
provides, in its declaration, that the annual average common expense
liability of all units restricted to residential purposes, exclusive

29
S

1 of optional user fees and any insurance premiums paid by the associa-
2 tion, may not exceed \$100, as adjusted under AS 34.08.820, the common
3 interest community is subject only to AS 34.08.720 - 34.08.740 unless
4 the declaration provides that the entire chapter is applicable. A
5 declarant may not subdivide real property under single ownership into
6 two or more common interest communities to avoid the application of
7 this chapter.

8 Sec. 34.08.040. APPLICABILITY TO PREEXISTING COMMON INTEREST
9 COMMUNITIES. Except as provided in AS 34.08.050, the provisions of
10 AS 34.08.110, 34.08.120, 34.08.290, 34.08.320(1) - (6) and (11) -
11 (16), 34.08.420, 34.08.470, 34.08.490, 34.08.590, 34.08.670, 34.08.-
12 720, 34.08.730, 34.08.740, and 34.08.990, to the extent necessary in
13 construing any of those sections, apply to all common interest commu-
14 nities created in the state before the effective date of this Act
15 except that the sections apply only with respect to events and circum-
16 stances occurring after the effective date of this Act and do not
17 invalidate existing provisions of the declaration, bylaws, or plats or
18 plans of the common interest communities.

19 Sec. 34.08.050. APPLICABILITY TO SMALL PREEXISTING COOPERATIVES
20 AND PLANNED COMMUNITIES. If a cooperative or planned community cre-
21 ated within the state before the effective date of this Act contains
22 no more than 12 units and is not subject to any development rights, it
23 is subject only to AS 34.08.720 - 34.08.740, unless the declaration is
24 amended in conformity with law and with the procedures and require-
25 ments of the declaration to take advantage of the provisions of
26 AS 34.08.060, in which case all the sections enumerated in AS 34.08.-
27 040 apply to the cooperative or planned community.

28 Sec. 34.08.060. AMENDMENTS TO GOVERNING INSTRUMENTS. (a) In
29 amendments to the declaration, bylaws, or plats and plans of a common

1 interest community created before the effective date of this Act:

2 (1) if the result accomplished by the amendment was per-
3 mitted by law prior to this chapter, the amendment may be made either
4 in accordance with the former law, in which case that law applies to
5 that amendment, or it may be made under this chapter; and

6 (2) if the result accomplished by the amendment is permit-
7 ted by this chapter and was not permitted by law before the effective
8 date of this Act, the amendment may be made under this chapter.

9 (b) An amendment to the declaration, bylaws, or plats and plans
10 authorized by this chapter must be adopted in conformity with law and
11 with the procedures and requirements specified by the declaration,
12 bylaws, or plats and plans. If an amendment grants a person any
13 right, power, or privilege permitted by this chapter, each correlative
14 obligation, liability, and restriction in this chapter also applies to
15 the person.

16 Sec. 34.08.070. APPLICABILITY TO NONRESIDENTIAL COMMON INTEREST
17 COMMUNITIES. (a) With the exception of AS 34.08.720 - 34.08.740,
18 this chapter does not apply to a common interest community in which
19 each unit is restricted exclusively to nonresidential use unless the
20 declaration provides that the chapter does apply to the common
21 interest community.

22 (b) This chapter applies to a common interest community
23 containing some units that are restricted exclusively to
24 nonresidential use and other units that are not restricted exclusively
25 to nonresidential use only if the declaration provides that the
26 chapter applies to the common interest community or the real estate
27 comprising the units that may be used for residential purposes would
28 be a common interest community in the absence of the units that may
29 not be used for residential purposes.

1 Sec. 34.08.080. APPLICABILITY TO OUT-OF-STATE COMMON INTEREST
2 COMMUNITIES. This chapter does not apply to a common interest commu-
3 nity or unit located outside the state, but AS 34.08.520 - 34.08.580
4 apply to a contract for the disposition of a common interest community
5 or unit that is signed in the state by a party unless the disposition
6 is exempt under AS 34.08.510(b).

7 ARTICLE 2. CREATION, ALTERATION, AND TERMINATION OF
8 COMMON INTEREST COMMUNITIES.

9 Sec. 34.08.090. CREATION OF COMMON INTEREST COMMUNITIES. (a) A
10 common interest community may be created under this chapter only by
11 recording a declaration executed in the same manner as a deed and, in
12 a cooperative, by conveying the real estate subject to the declaration
13 to the association. The declaration must be recorded in each record-
14 ing district in which a portion of the common interest community is
15 located and must be indexed in the grantee's index in the name of the
16 common interest community and the association and in the grantor's
17 index in the name of each person executing the declaration.

18 (b) In a condominium, a declaration or an amendment to a decla-
19 ration that adds a unit may not be recorded unless the structural
20 components and mechanical systems of each building containing or
21 comprising a unit of the condominium is completed substantially in
22 accordance with the plans, as evidenced by a certificate of completion
23 recorded with the declaration or amendment to the declaration and
24 executed by

25 (1) an independent registered engineer, architect, or land
26 surveyor;

27 (2) an appraiser with the designation of Senior Residential
28 Appraiser, Senior Real Property Appraiser or Senior Real Estate
29 Analyst of the Society of Real Estate Appraisers;

1 (3) a Residential Member or Member, Appraisal Institute, of
2 the American Institute of Real Estate Appraisers; or

3 (4) an individual with a designation established by
4 regulation of the Alaska Housing Finance Corporation for fee
5 appraisers who certify the completion of construction.

6 Sec. 34.08.100. UNIT BOUNDARIES. Except as provided by the
7 declaration

8 (1) if walls, floors, or ceilings are designated as bound-
9 aries of a unit, the lath, furring, wallboard, plasterboard, plaster,
10 paneling, tiles, wallpaper, paint, finished flooring, and other mate-
11 rials constituting a part of the finished surfaces of the walls,
12 floors, or ceiling are a part of the unit, and all other portions of
13 the walls, floors, or ceilings are a part of the common elements;

14 (2) if a chute, flue, duct, wire, conduit, bearing wall,
15 bearing column, or other fixture lies partially within and partially
16 outside the designated boundaries of a unit, the portion serving only
17 the unit is a limited common element allocated solely to the unit, and
18 any portion serving more than one unit or a portion of the common
19 elements is a part of the common elements;

20 (3) subject to (2) of this section, spaces, interior parti-
21 tions, and other fixtures and improvements within the boundaries of a
22 unit are a part of the unit;

23 (4) any shutters, awnings, window boxes, doorsteps, stoops,
24 porches, decks, balconies, patios, and each exterior door and window
25 or other fixture designed to serve a single unit that is located
26 outside the boundaries of the unit, are limited common elements allo-
27 cated exclusively to the unit.

28 Sec. 34.08.110. CONSTRUCTION AND VALIDITY OF DECLARATION AND
29 BYLAWS. (a) Each provision of the declaration and bylaws is

1 severable.

2 (b) The rule against perpetuities does not defeat any provision
3 of the declaration, bylaws, rules, or regulations adopted under
4 AS 34.08.320(a)(1).

5 (c) In a conflict between the provisions of the declaration and
6 the bylaws, the declaration prevails unless the declaration is incon-
7 sistent with this chapter.

8 (d) Title to a unit and common elements is not rendered un-
9 marketable or otherwise affected by reason of an insubstantial failure
10 of the declaration to comply with this chapter. Whether a substantial
11 failure impairs marketability is not affected by this chapter.

12 Sec. 34.08.120. DESCRIPTION OF UNITS. A description of a unit
13 that sets out the name of the common interest community, the recording
14 data for the declaration, the recording district in which the common
15 interest community is located, and the identifying number of the unit,
16 is a legally sufficient description of the unit and all rights, obli-
17 gations, and interests appurtenant to the unit that were created by
18 the declaration or bylaws.

19 Sec. 34.08.130. CONTENTS OF DECLARATION. (a) The declaration
20 must contain:

21 (1) the names of the common interest community and the
22 association and a statement that the common interest community is
23 either a condominium, cooperative, or planned community;

24 (2) the name of each recording district in which a part of
25 the common interest community is situated;

26 (3) a legally sufficient description of the real estate
27 included in the common interest community;

28 (4) a statement of the maximum number of units that the
29 declarant reserves the right to create;

1 (5) in a condominium or planned community, a description of
2 the boundaries of each unit created by the declaration, including the
3 identifying number of the unit, or in a cooperative, a description,
4 which may be by plats or plans, of each unit created by the declara-
5 tion, including the identifying number of the unit, its size or number
6 of rooms, and its location within a building if it is within a build-
7 ing containing more than one unit;

8 (6) a description of any limited common elements, other
9 than those specified in AS 34.08.100(2) and (4) or 34.08.170(b)(10)
10 and, in a planned community, any real estate that is or must become
11 common elements;

12 (7) a description of any real estate, except real estate
13 subject to development rights, that may be allocated subsequently as
14 limited common elements, other than limited common elements specified
15 in AS 34.08.100(2) and (4), together with a statement that the desig-
16 nated real estate may be allocated;

17 (8) a description of any development rights or other spe-
18 cial declarant rights reserved by the declarant, together with a
19 legally sufficient description of the real estate to which each of the
20 rights applies, and a time limit within which each of the rights must
21 be exercised;

22 (9) if a development right may be exercised with respect to
23 different parcels of real estate at different times, a statement to
24 that effect together with

25 (A) either a statement fixing the boundaries of the
26 portions and regulating the order in which the portions may be
27 subjected to the exercise of each development right or a state-
28 ment that assurances are not made with regard to matters under
29 this paragraph; and

1 (B) a statement as to whether, if a development right
2 is exercised in a portion of the real estate subject to the
3 development right, the development right must be exercised in all
4 or in any other portion of the remainder of that real estate;

5 (10) any other condition or limitation under which the
6 rights described in (8) of this subsection may be exercised or will
7 lapse;

8 (11) an allocation to each unit of the allocated interests
9 in the manner described in AS 34.08.150;

10 (12) any restrictions

11 (A) on use, occupancy, and alienation of the units;

12 and

13 (B) on the amount for which a unit may be sold or on
14 the amount that may be received by a unit owner on sale, condem-
15 nation, or casualty loss to the unit or to the common interest
16 community, or on termination of the common interest community;

17 (13) the recording data for recorded easements and licenses
18 appurtenant to or included in the common interest community or to
19 which any portion of the common interest community is or may become
20 subject by virtue of a reservation in the declaration; and

21 (14) each matter required by AS 34.08.140, 34.08.150, 34.-
22 08.160, 34.08.170, 34.08.230, 34.08.240 and 34.08.330(d).

23 (b) A declaration may contain other matters the declarant con-
24 siders appropriate.

25 Sec. 34.08.140. LEASEHOLD COMMON INTEREST COMMUNITIES. (a) If
26 the expiration or termination of a lease or a memorandum of the lease
27 will terminate the common interest community or reduce its size, the
28 lease or a memorandum of the lease must be recorded. In a condominium
29 or planned community, the lessor of each lease described in this

1 subsection shall sign the declaration. The declaration must state:

2 (1) the recording data for the lease or a summary of the
3 complete lease;

4 (2) the date on which the lease is scheduled to expire;

5 (3) a legally sufficient description of the real estate
6 subject to the lease;

7 (4) any right of the unit owners to redeem the reversion
8 and the manner in which the rights may be exercised, or a statement
9 that the unit owners do not have a right to redeem the reversion;

10 (5) any right of the unit owners to remove any improvements
11 within a reasonable time after the expiration or termination of the
12 lease, or a statement that the unit owners do not have the right to
13 remove improvements after the expiration or termination of the lease;
14 and

15 (6) any right of the unit owners to renew the lease and the
16 conditions of the renewal, or a statement that the unit owners do not
17 have the right to renew the lease.

18 (b) After the declaration for a leasehold condominium or lease-
19 hold planned community is recorded, neither the lessor nor the succes-
20 sor in interest of the lessor may terminate the leasehold interest of
21 a unit owner who makes timely payment of a unit owner's share of the
22 rent and otherwise complies with the covenants that, if violated,
23 would entitle the lessor to terminate the lease. The leasehold inter-
24 est of a unit owner in a condominium or planned community is not af-
25 fected by the failure of any other person to pay rent or fulfill a
26 covenant.

27 (c) The acquisition of the leasehold interest of a unit owner by
28 the owner of the reversion or remainder does not merge the leasehold
29 and fee simple interests unless the leasehold interests of all unit

1 owners subject to that reversion or remainder are acquired.

2 (d) If the expiration or termination of a lease decreases the
3 number of units in a common interest community, the allocated inter-
4 ests must be reallocated under AS 34.08.740(a) as if the units had
5 been taken by eminent domain. The reallocation must be confirmed by
6 an amendment to the declaration prepared, executed, and recorded by
7 the association of unit owners.

8 Sec. 34.08.150. ALLOCATION OF ALLOCATED INTERESTS. (a) The
9 declaration must allocate

10 (1) to each unit in a condominium, a fraction or percentage
11 of undivided interests in the common elements and in the common ex-
12 penses of the association and a portion of the votes in the associa-
13 tion;

14 (2) to each unit in a cooperative, an ownership interest in
15 the association, a fraction or percentage of the common expenses of
16 the association and a portion of the votes in the association; and

17 (3) to each unit in a planned community, a fraction or
18 percentage of the common expenses of the association and a portion of
19 the votes in the association.

20 (b) The declaration must state the formulas used to establish
21 allocations of interests. The allocations may not discriminate in
22 favor of units owned by the declarant or an affiliate of the decla-
23 rant.

24 (c) If a unit may be added to or withdrawn from the common
25 interest community, the declaration must state the formulas to be used
26 to reallocate the allocated interests among the units included in the
27 common interest community after the addition or withdrawal.

28 (d) The declaration may provide: (1) that different alloca-
29 tions of votes shall be made to the units on particular matters

1 specified in the declaration; (2) for cumulative voting only for the
2 purpose of electing members of the executive board; and (3) for class
3 voting on specified issues affecting the class if necessary to protect
4 valid interests of the class. A declarant may not utilize cumulative
5 or class voting for the purpose of evading any limitation imposed on
6 declarants by this chapter nor may units constitute a class because
7 they are owned by a declarant.

8 (2) Except for minor variations due to rounding, the sum of the
9 common expense liabilities and, in a condominium, the sum of the
10 undivided interests in the common elements allocated at any time to
11 all the units must each equal one if stated as a fraction or 100
12 percent if stated as a percentage. In the event of discrepancy be-
13 tween an allocated interest and the result derived from application of
14 the pertinent formula, the allocated interest prevails.

15 (f) In a condominium, the common elements are not subject to
16 partition, and any purported conveyance, encumbrance, judicial sale,
17 or other voluntary or involuntary transfer of an undivided interest in
18 the common elements made without the unit to which that interest is
19 allocated is void.

20 (g) In a cooperative, any purported conveyance, encumbrance,
21 judicial sale, or other voluntary or involuntary transfer of an owner-
22 ship interest in the association made without the possessory interest
23 in the unit to which that interest is related is void.

24 Sec. 34.08.160. LIMITED COMMON ELEMENTS. (a) Except for the
25 limited common elements described in AS 34.08.100(2) and (4), the
26 declaration must specify to which unit or units each limited common
27 element is allocated. An allocation may not be altered without the
28 consent of the unit owners whose units are affected.

29 (b) Except as the declaration otherwise provides, a limited

1 common element may be reallocated by an amendment to the declaration
2 executed by the unit owners between or among whose units the realloca-
3 tion is made. The persons executing the amendment shall provide a
4 copy of the amendment to the association, which shall record it. The
5 amendment must be recorded in the names of the parties and the common
6 interest community.

7 (c) A common element not previously allocated as a limited
8 common element may be allocated as a limited common element only under
9 provisions in the declaration adopted under AS 34.08.130(a)(7). The
10 allocation must be made by an amendment to the declaration.

11 Sec. 34.08.170. PLATS AND PLANS. (a) Plats and plans are a
12 part of the declaration and are required for all common interest
13 communities except cooperatives. Separate plats and plans are not
14 required by this chapter if the information required by this section
15 is contained in either a plat or plan. Each plat and plan must be
16 clear and legible and contain a certification that the plat or plan
17 contains the information required by this section.

18 (b) Each plat must show:

19 (1) the name and a survey or general schematic map of the
20 entire common interest community;

21 (2) the location and dimensions of the real estate not
22 subject to development rights or subject only to the development right
23 to withdraw, and the location and dimensions of each existing improve-
24 ment within the real estate;

25 (3) a legally sufficient description of the real estate
26 subject to development rights, labeled to identify the rights applica-
27 ble to each parcel;

28 (4) the extent of each encroachment by or upon a portion of
29 the common interest community;

1 (5) to the extent feasible, a legally sufficient descrip-
2 tion of each easement serving or burdening a portion of the common
3 interest community;

4 (6) the location and dimensions of any vertical unit bound-
5 aries not shown or projected on plans recorded under (d) of this
6 section and the identifying number of the unit;

7 (7) the location with reference to an established datum of
8 any horizontal unit boundaries not shown or projected on plans re-
9 corded under (d) of this section and the identifying number of the
10 unit;

11 (8) a legally sufficient description of any real estate in
12 which the unit owners will own only an estate for years, labeled as
13 "leasehold real estate";

14 (9) the distance between noncontiguous parcels of real
15 estate comprising the common interest community;

16 (10) the location and dimensions of limited common elements,
17 including porches, decks, balconies and patios, other than parking
18 spaces and the other limited common elements described in AS 34.08.-
19 100(2) and (4);

20 (11) in the case of real estate not subject to development
21 rights, all other matters customarily shown on land surveys.

22 (c) A plat may also show the intended location and dimensions of
23 a contemplated improvement to be constructed within the common inter-
24 est community. A contemplated improvement shown must be labeled
25 either "MUST BE BUILT" or "NEED NOT BE BUILT".

26 (d) To the extent not shown or projected on the plats, plans of
27 the units must show or project:

28 (1) the location and dimensions of the vertical boundaries
29 of each unit, and the identifying number of the unit;

1 (2) any horizontal unit boundaries, with reference to an
2 established datum, and the identifying number of the unit; and

3 (3) each unit in which the declarant has reserved the right
4 to create additional units or common elements, identified appropri-
5 ately.

6 (e) Unless the declaration provides otherwise, the horizontal
7 boundaries of part of a unit located outside a building have the same
8 elevation as the horizontal boundaries of the inside part and need not
9 be depicted on the plats and plans.

10 (f) Upon the exercise of any development right, the declarant
11 shall either record new plats and plans necessary to conform to the
12 requirements of (a), (b), and (d) of this section, or record new
13 certifications of plats and plans previously recorded if the plats and
14 plans otherwise conform to the requirements of (a), (b), and (d) of
15 this section.

16 (g) A certification of a plat or plan required by this section
17 or AS 34.08.090(b) shall be made by an independent registered
18 surveyor, architect, or engineer.

19 (h) The state recorder shall prescribe the style, size, form,
20 and quality of plats and plans filed under this chapter.

21 Sec. 34.08.180. EXERCISE OF DEVELOPMENT RIGHTS. (a) To exer-
22 cise a development right reserved under AS 34.08.130(a)(8), a decla-
23 rant shall prepare, execute, and record an amendment to the declara-
24 tion and, in a condominium or planned community, comply with AS 34.-
25 08.170. The declarant is the unit owner of the units created under
26 the amendment. The amendment to the declaration must assign an iden-
27 tifying number to each new unit created, and, except in the case of
28 subdivision or conversion of units described in (b) of this section,
29 reallocate the allocated interests among all units. The amendment

1 must describe any common elements and any limited common elements
2 created under the amendment and, in the case of limited common ele-
3 ments, designate the unit to which each is allocated to the extent
4 required by AS 34.08.160.

5 (b) A development right may be reserved within any real estate
6 added to the common interest community if the amendment adding the
7 real estate includes the matters required by AS 34.08.130 or 34.08.-
8 140, and, in a condominium or planned community, if the plats and
9 plans include the matters required by AS 34.08.170. This provision
10 does not extend the time limit on the exercise of development rights
11 imposed by the declaration under AS 34.08.130(a)(8).

12 (c) Whenever a declarant exercises a development right to subdi-
13 vide or convert a unit previously created into additional units,
14 common elements, or both:

15 (1) if the declarant converts the unit entirely to common
16 elements, the amendment to the declaration must reallocate all the
17 allocated interests of the unit among the other units as if that unit
18 had been taken by eminent domain; and

19 (2) if the declarant subdivides the unit into two or more
20 units, whether or not any part of the unit is converted into common
21 elements, the amendment to the declaration must reallocate all the
22 allocated interests of the unit among the units created by the subdi-
23 vision in any reasonable manner prescribed by the declarant.

24 (d) If the declaration under AS 34.08.130(a)(8) provides that
25 all or a portion of the real estate is subject to a right of withdraw-
26 al:

27 (1) if all of the real estate is subject to withdrawal and
28 the declaration does not describe separate portions of real estate
29 subject to the right, none of the real estate may be withdrawn after a

1 unit has been conveyed to a purchaser; and

2 (2) if a portion is subject to withdrawal, it may not be
3 withdrawn after a unit in the portion has been conveyed to a pur-
4 chaser.

5 (e) A declarant may terminate development rights by an amendment
6 to the declaration.

7 Sec. 34.08.190. ALTERATIONS OF UNITS. Subject to the provisions
8 of the declaration and other provisions of law, a unit owner (1) may
9 make an improvement or alteration to the unit that does not impair the
10 structural integrity or mechanical systems or lessen the support of a
11 portion of the common interest community; (2) may not change the
12 appearance of the common elements or the exterior appearance of a unit
13 or any portion of the common interest community without permission of
14 the association; (3) after acquiring an adjoining unit or an
15 adjoining part of an adjoining unit, may remove or alter an
16 intervening partition or create apertures in the partition even if the
17 partition in whole or in part is a common element, if the removal or
18 alteration does not impair the structural integrity or mechanical
19 systems or lessen the support of a portion of the common interest
20 community and is completed according to applicable codes and in a
21 workmanlike manner. Removal of partitions or creation of apertures
22 under this paragraph is not an alteration of boundaries.

23 Sec. 34.08.200. RELOCATION OF BOUNDARIES BETWEEN ADJOINING
24 UNITS. (a) Subject to the provisions of the declaration and other
25 provisions of law, the boundaries between adjoining units may be
26 relocated by an amendment to the declaration upon application to the
27 association by the owners of the units. If the owners of the ad-
28 joining units have specified a reallocation between their units of
29 their allocated interests, the application must state the proposed

1 reallocations. Unless the executive board determines within 30 days
2 that the reallocations are unreasonable, the association shall prepare
3 an amendment that identifies the units involved and states the reallo-
4 cations. The amendment must be executed by those unit owners, contain
5 words of conveyance between them, and, on recording, be indexed in the
6 name of the grantor, the grantee, and the association.

7 (b) The association

8 (1) in a condominium or planned community shall prepare and
9 record plats or plans necessary to show the altered boundaries between
10 adjoining units, and their dimensions and identifying numbers; and

11 (2) in a cooperative shall prepare and record amendments to
12 the declaration, including any plans, necessary to show or describe
13 the altered boundaries between adjoining units, and their dimensions
14 and identifying numbers.

15 Sec. 34.08.210. SUBDIVISION OF UNITS. (a) If the declaration
16 expressly permits it, a unit may be subdivided into two or more units.
17 Upon application of a unit owner to subdivide a unit, the association
18 shall, subject to the provisions of the declaration and other pro-
19 visions of law, prepare, execute, and record an amendment to the
20 declaration, including in a condominium or planned community the plats
21 and plans, subdividing the unit.

22 (b) The amendment to the declaration must be executed by the
23 owner of the unit to be subdivided, assign an identifying number to
24 each unit created, and reallocate the allocated interests formerly
25 allocated to the subdivided unit to the new units in any reasonable
26 manner prescribed by the owner of the subdivided unit.

27 Sec. 34.08.220. EASEMENT FOR ENCROACHMENTS. If a unit or common
28 element encroaches on another unit or common element, a valid easement
29 for the encroachment exists. The easement does not relieve a unit

1 owner of liability in case of wilful misconduct nor relieve a declar-
2 ant or any other person of liability for failure to adhere to any
3 plats and plans or, in a cooperative, to any representation in the
4 public offering statement.

5 Sec. 34.08.230. USE FOR SALES PURPOSES. (a) A declarant may
6 maintain sales offices, management offices, and models in units or on
7 common elements in the common interest community only if the declara-
8 tion permits it and specifies the rights of a declarant with regard to
9 their number, size, location, and relocation. In a cooperative or
10 condominium, a sales office, management office, or model not desig-
11 nated a unit by the declaration is a common element. A declarant who
12 ceases to be a unit owner ceases to have any rights under this section
13 unless the unit is removed promptly from the common interest community
14 under a right to remove reserved in the declaration. A declarant may
15 maintain signs on the common elements advertising the common interest
16 community subject to any limitations in the declaration.

17 (b) Rights granted under this section are subject to state law
18 and to municipal ordinances.

19 Sec. 34.08.240. EASEMENT RIGHTS. (a) Subject to the provisions
20 of the declaration, a declarant has an easement through the common
21 elements as may be reasonably necessary for the purpose of discharging
22 the declarant's obligations or exercising special declarant rights,
23 whether arising under this chapter or reserved in the declaration.

24 (b) In a planned community, subject to the provisions of AS 34.-
25 08.320(a)(6) and 34.08.430, a unit owner has an easement

26 (1) in the common elements for purposes of access to their
27 units; and

28 (2) to use the common elements and all real estate that
29 must become common elements for all other purposes.

1 Sec. 34.08.250. AMENDMENT OF DECLARATION. (a) Except for
2 amendments that may be executed by a declarant under AS 34.08.170(b)
3 or 34.08.180, or by the association under AS 34.08.140(d), 34.08.-
4 160(c), 34.08.200(a), 34.08.210, or 34.08.740, or by certain unit
5 owners under AS 34.08.160(b), 34.08.200(a), 34.08.210(b), or 34.08.-
6 260(b), and except as limited by (d) of this section, a declaration,
7 including any required plats and plans, may be amended only by vote or
8 agreement of unit owners of units comprising either at least 67 per-
9 cent of the allocated interests in the association or a larger per-
10 centage specified in the declaration. A declaration may not specify a
11 smaller number unless all of the units are restricted exclusively to
12 nonresidential use.

13 (b) An action to challenge the validity of an amendment adopted
14 by the association under this section may not be brought more than one
15 year after the amendment is recorded.

16 (c) Each amendment to the declaration must be recorded in each
17 recording district in which a portion of the common interest community
18 is located and the amendment is effective only upon recording. An
19 amendment, except an amendment under AS 34.08.200(a), must be indexed
20 in the name of the common interest community and the association and
21 in the name of the parties executing the amendment.

22 (d) Except to the extent expressly permitted or required by
23 other provisions of this chapter, an amendment may not create or
24 increase special declarant rights, increase the number of units,
25 change the boundaries of a unit, the allocated interests of a unit, or
26 the uses to which a unit is restricted, in the absence of unanimous
27 consent of the unit owners.

28 (e) An amendment to the declaration required by this chapter to
29 be recorded by the association must be prepared, executed, recorded,

1 and certified on behalf of the association by an officer of the asso-
2 ciation designated for that purpose or, in the absence of designation,
3 by the president of the association.

4 Sec. 34.08.260. TERMINATION OF COMMON INTEREST COMMUNITY. (a)

5 Unless all units are taken by eminent domain, or unless there has been
6 a foreclosure of a security interest that has priority over the decla-
7 ration against an entire cooperative, a common interest community may
8 be terminated only by agreement of unit owners of units comprising
9 either at least 80 percent of the votes in the association or any
10 larger percentage specified in the declaration. The declaration may
11 specify a smaller percentage only if all of the units are restricted
12 exclusively to nonresidential uses.

13 (b) An agreement to terminate must be evidenced by the execution
14 of a termination agreement or ratification of an agreement to termi-
15 nate, in the same manner as a deed is executed by the required number
16 of unit owners. The termination agreement must specify a date after
17 which the agreement will be void unless it is recorded before that
18 date. A termination agreement and each ratification of the termina-
19 tion agreement must be recorded in each recording district in which a
20 portion of the common interest community is situated. A termination
21 agreement is effective only upon recording.

22 (c) If a condominium or planned community contains only units
23 having horizontal boundaries described in the declaration, a termina-
24 tion agreement may provide that all of the common elements and units
25 of the common interest community must be sold following termination.
26 If, under the agreement, any real estate in the common interest commu-
27 nity is to be sold following termination, the termination agreement
28 must set out the minimum terms of the sale.

29 (d) If a condominium or planned community contains a unit not

1 having horizontal boundaries described in the declaration, a termina-
2 tion agreement may provide for sale of the common elements, but it may
3 not require that the unit be sold following termination unless the
4 declaration as originally recorded provided otherwise or unless all
5 unit owners consent to the sale.

6 (e) The association, on behalf of the unit owners, may contract
7 for the sale of real estate in a common interest community, but the
8 contract is not binding on the unit owners until approved under (a)
9 and (b) of this section. If real estate is to be sold following
10 termination, title to the real estate, upon termination, vests in the
11 association as trustee for the holders of all interests in the units.
12 The association has at that time all powers necessary and appropriate
13 to effect the sale. Until the sale has been concluded and the pro-
14 ceeds of the sale distributed, the association continues in existence
15 with all powers it had before termination. Proceeds of the sale must
16 be distributed to unit owners and lien holders as their interests may
17 appear under (h), (i), and (j) of this section. Unless otherwise
18 specified in the termination agreement, as long as the association
19 holds title to the real estate, each unit owner and the successor in
20 interest of each unit owner has an exclusive right to occupancy of the
21 portion of the real estate that formerly constituted the unit. During
22 the period of that occupancy, each unit owner and the successors in
23 interest of each unit owner remain liable for all assessments and
24 other obligations imposed on unit owners by this chapter or the decla-
25 ration.

26 (f) In a condominium or planned community, if the real estate
27 constituting the common interest community is not to be sold following
28 termination, title to the common elements and, in a common interest
29 community containing only units having horizontal boundaries described

1 in the declaration, title to all the real estate in the common inter-
2 est community, vests in the unit owners upon termination as tenants in
3 common in proportion to their respective interests under (j) of this
4 section, and liens on the units shift accordingly. While the tenancy
5 in common exists, each unit owner and the successors in interest of
6 each unit owner has an exclusive right to occupancy of the portion of
7 the real estate that formerly constituted the unit.

8 (g) Following termination of the common interest community, the
9 proceeds of any sale of real estate, together with the assets of the
10 association, are held by the association as trustee for unit owners
11 and holders of liens on the units as their interests may appear.

12 (h) Following termination of a condominium or planned community,
13 a creditor of the association holding a lien on the units that was
14 reduced to judgment and recorded before termination, may enforce the
15 lien in the same manner as any other lien holder. Each other creditor
16 of the association shall be treated as if the creditor had perfected a
17 lien on the units immediately before termination.

18 (i) In a cooperative, the declaration may provide that each
19 creditor of the association has priority over the interests of unit
20 owners and creditors of unit owners. In that event, following termi-
21 nation, a creditor of the association holding a lien on the coopera-
22 tive that was reduced to judgment and recorded before termination may
23 enforce the lien in the same manner as a lien holder, and each other
24 creditor of the association shall be treated as if the creditor had
25 perfected a lien against the cooperative immediately before termina-
26 tion. Unless the declaration provides that all creditors of the
27 association have that priority (1) the lien of each creditor of the
28 association that was perfected against the association before termi-
29 nation becomes, upon termination, a lien against the interest of each

1 unit owner in the unit as of the date the lien was perfected; (2) any
2 other creditor of the association shall be treated upon termination as
3 if the creditor had perfected a lien against the interest of each unit
4 owner immediately before termination; (3) the amount of the lien of an
5 association's creditor described in (1) and (2) of this subsection
6 against the interest of each unit owner must be proportionate to the
7 ratio which the common expense liability of each unit bears to the
8 common expense liability of all of the units; (4) the lien of each
9 creditor of each unit owner that was perfected before termination
10 continues as a lien against the unit as of the date the lien was
11 perfected; and (5) the assets of the association must be distributed
12 to each unit owner and each lien holder as their interests may appear
13 in the order described in this section. Creditors of the association
14 are not entitled to payment from a unit owner in excess of the amount
15 of the creditor's lien against the interest of the unit owner.

16 (j) The respective interests of each unit owner referred to in
17 (e) - (i) of this section are as follows:

18 (1) except as provided in (2) of this subsection, the
19 respective interest of each unit owner is the fair market value of the
20 unit, allocated interests, and any limited common elements immediately
21 before the termination, as determined by one or more independent
22 appraisers selected by the association; the decision of the indepen-
23 dent appraisers must be distributed to the unit owners and becomes
24 final unless disapproved within 30 days after distribution by unit
25 owners of units comprising 25 percent of the allocated interests in
26 the association; the proportion of each unit owner's interest to that
27 of all unit owners is determined by dividing the fair market value of
28 the unit and its allocated interests by the total fair market value of
29 all units and their allocated interests;

1 (2) if a unit or a limited common element is destroyed to
2 the extent that an appraisal of the fair market value of the unit or
3 the limited common interest before destruction cannot be made, the
4 interests of all unit owners are:

5 (A) in a condominium, their respective common element
6 interests immediately before the termination;

7 (B) in a cooperative, their respective ownership
8 interests immediately before the termination; and

9 (C) in a planned community, their respective common
10 expense liabilities immediately before the termination.

11 (k) In a condominium or planned community, except as provided in
12 (1) of this section, foreclosure or enforcement of a lien or encum-
13 brance against the entire common interest community does not, of
14 itself, terminate the common interest community, and foreclosure or
15 enforcement of a lien or encumbrance against a portion of the common
16 interest community, other than withdrawable real estate, does not
17 withdraw the portion from the common interest community. Foreclosure
18 or enforcement of a lien or encumbrance against withdrawable real
19 estate does not withdraw, of itself, the real estate from the common
20 interest community, but the person taking title to the real estate may
21 require from the association, upon request, an amendment excluding the
22 real estate from the common interest community.

23 (1) In a condominium or planned community, if a lien or encum-
24 brance against a portion of the real estate comprising the common
25 interest community has priority over the declaration and the lien or
26 encumbrance has not been partially released, the parties foreclosing
27 the lien or encumbrance, upon foreclosure, may record an instrument
28 excluding the real estate subject to the lien or encumbrance from the
29 common interest community.

1 Sec. 34.08.270. RIGHTS OF SECURED LENDERS. A declaration may
2 require that all or a specified number or percentage of the lenders
3 who hold security interests encumbering the units approve specified
4 actions of the unit owners or the association as a condition to the
5 effectiveness of the action, but a requirement for approval does not
6 operate to

7 (1) deny or delegate control over the general administra-
8 tive affairs of the association by the unit owners or the executive
9 board;

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

13 (3) prevent an insurance trustee or the association from
14 receiving and distributing insurance proceeds except under AS 34.08.-
15 440.

16 Sec. 34.08.280. MASTER ASSOCIATIONS. (a) If the declaration
17 provides that a power described in AS 34.08.320 is to be exercised by
18 or may be delegated to a profit or nonprofit corporation that exer-
19 cises those or other powers on behalf of one or more common interest
20 communities or for the benefit of the unit owners of one or more
21 common interest communities, each provision of this chapter applicable
22 to a unit owners' association applies to the corporation, except as
23 modified by this section.

24 (b) Unless it is acting in the capacity of an association de-
25 scribed in AS 34.08.310, a master association may exercise the powers
26 set out in AS 34.08.320(a)(2) only to the extent expressly permitted
27 in the declarations of common interest communities that are part of
28 the master association or expressly described in the delegation of
29 power from the common interest communities to the master association.

1 (c) If the declaration of a common interest community provides
2 that the executive board may delegate certain powers to a master
3 association, the members of the executive board of the common interest
4 community are not liable for an act or omission of the master associa-
5 tion with respect to the delegated powers following the delegation.

6 (d) The rights and responsibilities of unit owners with respect
7 to the unit owners' association under AS 34.08.330, 34.08.390, 34.08.-
8 400, 34.08.410, and 34.08.430 apply in the conduct of the affairs of a
9 master association only to persons who elect the board of a master
10 association, whether or not those persons are otherwise unit owners
11 within the meaning of this chapter.

12 (e) If a master association is also an association described in
13 AS 34.08.310, the certificate of incorporation or other instrument
14 creating the master association and each declaration of a common
15 interest community that had assigned powers by the declaration or that
16 has delegated powers to the master association, may provide that the
17 executive board of the master association must be elected after the
18 period of declarant control in one of the following ways:

19 (1) each unit owner of all common interest communities
20 subject to the master association may elect all members of the execu-
21 tive board of the master association;

22 (2) the members of the executive boards of all common
23 interest communities subject to the master association may elect the
24 members of the executive board of the master association;

25 (3) the unit owners of each common interest community
26 subject to the master association may elect specified members of the
27 executive board of the master association;

28 (4) the members of the executive board of each common
29 interest community subject to the master association may elect

1 specified members of the executive board of the master association.

2 Sec. 34.08.290. MERGER OR CONSOLIDATION OF COMMON INTEREST
3 COMMUNITIES. (a) Any two or more common interest communities of the
4 same form of ownership, by agreement of the unit owners under (b) of
5 this section, may be merged or consolidated into a single common
6 interest community. On the merger or consolidation, unless the agree-
7 ment otherwise provides, the resulting common interest community is
8 the legal successor, for all purposes, of the preexisting common
9 interest communities, and the operations and activities of each asso-
10 ciation of the preexisting common interest communities are merged or
11 consolidated into a single association that holds all powers, rights,
12 obligations, assets, and liabilities of all preexisting associations.

13 (b) An agreement of two or more common interest communities to
14 merge or consolidate under (a) of this section must be evidenced by an
15 agreement prepared, executed, recorded, and certified by the president
16 of the association of each of the preexisting common interest communi-
17 ties following approval by owners of units comprising the percentage
18 of votes in each common interest community required to terminate the
19 common interest community. The agreement must be recorded in each
20 recording district in which a portion of the common interest community
21 is located and is not effective until recorded.

22 (c) Each merger or consolidation agreement must provide for the
23 reallocation of the allocated interests in the new association among
24 the units of the resultant common interest community either (1) by
25 stating the reallocations or the formulas upon which they are based or
26 (2) by stating the percentage of overall allocated interests of the
27 new common interest community that are allocated to all of the units
28 comprising each of the preexisting common interest communities, and
29 providing that the portion of the percentages allocated to each unit

1 formerly comprising a part of the preexisting common interest communi-
2 ty must be equal to the percentages of allocated interests allocated
3 to the unit by the declaration of the preexisting common interest
4 community.

5 Sec. 34.08.300. ADDITION OF UNSPECIFIED REAL ESTATE. In a
6 planned community, if the right is originally reserved in the declara-
7 tion, the declarant, in addition to any other development right, may
8 amend the declaration at any time during as many years as are speci-
9 fied in the declaration for adding additional real estate to the
10 planned community without describing the location of the real estate
11 in the original declaration. The amount of real estate added to the
12 planned community under this section may not exceed 10 percent of the
13 real estate described in AS 34.08.130(a)(3) and the declarant may not
14 in any event increase the number of units in the planned community
15 beyond the number stated in the original declaration under AS 34.08.-
16 130(a)(5).

17 ARTICLE 3. MANAGEMENT OF THE COMMON INTEREST COMMUNITY.

18 Sec. 34.08.310. ORGANIZATION OF UNIT OWNERS' ASSOCIATION. An
19 association of unit owners must be organized no later than the date on
20 which the first unit in the common interest community is conveyed.
21 The membership of the association at all times consists exclusively of
22 all unit owners or, following termination of the common interest
23 community, of all former unit owners entitled to distributions of
24 proceeds under AS 34.08.260 or their heirs, successors, or assigns.
25 The association must be organized as a profit or nonprofit corpora-
26 tion, trust, or partnership.

27 Sec. 34.08.320. POWERS OF UNIT OWNERS' ASSOCIATION. (a) Except
28 as provided in (b) of this section and subject to the provisions of
29 the declaration, the association may:

- 1 (1) adopt and amend bylaws and rules and regulations;
- 2 (2) adopt and amend budgets for revenues, expenditures, and
3 reserves and collect assessments for common expenses from unit owners;
- 4 (3) hire and discharge managing agents and other employees,
5 agents, and independent contractors;
- 6 (4) institute, defend, or intervene in litigation or ad-
7 ministrative proceedings or seek injunctive relief for violations of
8 its declaration, bylaws or rules in its own name on behalf of itself
9 or two or more unit owners on matters affecting the common interest
10 community;
- 11 (5) make contracts and incur liabilities;
- 12 (6) regulate the use, maintenance, repair, replacement, and
13 modification of common elements;
- 14 (7) cause additional improvements to be made as a part of
15 the common elements;
- 16 (8) acquire, hold, encumber, and convey in its own name any
17 right, title, or interest to real estate or personal property, except
18 that
- 19 (A) common elements in a condominium or planned commu-
20 nity may be conveyed or subjected to a security interest only
21 under AS 34.08.430; and
- 22 (B) part of a cooperative may be conveyed or all or
23 part of a cooperative may be subjected to a security interest
24 only under AS 34.08.430;
- 25 (9) grant easements, leases, licenses, and concessions
26 through or over the common elements;
- 27 (10) impose and receive a payment, fee, or charge for the
28 use, rental, or operation of the common elements, other than limited
29 common elements described in AS 34.08.100(2) and (4), and for services

1 provided to unit owners;

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

6 (12) impose a reasonable charge for the preparation and
7 recording of an amendment to the declaration, resale certificate
8 required by AS 34.08.590, or a statement of unpaid assessments;

9 (13) provide for the indemnification of its officers and
10 executive board and maintain directors' and officers' liability insur-
11 ance;

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

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

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

19 (17) exercise any other power necessary and proper for the
20 governance and operation of the association.

21 (b) The declaration may not impose limitations on the power of
22 the association to deal with the declarant that are more restrictive
23 than the limitations imposed on the power of the association to deal
24 with other persons.

25 Sec. 34.08.330. EXECUTIVE BOARD MEMBERS AND OFFICERS. (a)
26 Except as provided in the declaration, the bylaws, (b) of this sec-
27 tion, or other provisions of this chapter, the executive board may act
28 in all instances on behalf of the association. In the performance of
29 their duties, the officers and members of the executive board are

1 required to exercise the care required of fiduciaries of the unit
2 owners.

3 (b) The executive board may not act on behalf of the association
4 to amend the declaration, to terminate the common interest community,
5 or to elect members of the executive board or determine the qualifica-
6 tions, powers and duties, or terms of office of executive board mem-
7 bers, but the executive board may fill vacancies in its membership for
8 the unexpired portion of a term.

9 (c) Within 30 days after adoption of a proposed budget for the
10 common interest community, the executive board shall provide a summary
11 of the budget to each unit owner, and shall set a date for a meeting
12 of the unit owners to consider ratification of the budget not less
13 than 14 nor more than 30 days after mailing of the summary. Unless at
14 that meeting a majority of all unit owners or any larger vote spec-
15 ified in the declaration reject the budget, the budget is ratified,
16 whether or not a quorum is present. If the proposed budget is reject-
17 ed, the periodic budget last ratified by the unit owners continues
18 until the unit owners ratify a budget proposed by the executive board.

19 (d) Subject to (e) of this section, the declaration may provide
20 for a period of declarant control of the association, during which a
21 declarant or persons designated by the declarant may appoint and
22 remove the officers and members of the executive board. Regardless of
23 the period provided in the declaration, a period of declarant control
24 terminates no later than the earlier of: (1) 60 days after conveyance
25 of 75 percent of the units that may be created to unit owners other
26 than a declarant; (2) two years after all declarants have ceased to
27 offer units for sale in the ordinary course of business; or (3) two
28 years after any right to add new units was last exercised. A de-
29 clarant may voluntarily surrender the right to appoint and remove

1 officers and members of the executive board before termination of the
2 periods established in this subsection, but in that event the de-
3 clarant may require, for the duration of the period of declarant
4 control, that specified actions of the association or executive board,
5 as described in a recorded instrument executed by the declarant, be
6 approved by the declarant before they become effective.

7 (e) Not later than 60 days after conveyance of 25 percent of the
8 units that may be created to unit owners other than a declarant, at
9 least one member and not less than 25 percent of the members of the
10 executive board must be elected by unit owners other than the decla-
11 rant. Not later than 60 days after conveyance of 50 percent of the
12 units that may be created to unit owners other than a declarant, not
13 less than 33 1/3 percent of the members of the executive board must be
14 elected by unit owners other than the declarant.

15 (f) Except as otherwise provided in AS 34.08.280(e), not later
16 than the termination of any period of declarant control, the unit
17 owners shall elect an executive board. The executive board consists
18 of at least three members, except that if there are fewer than 12
19 units in the common interest community, the declaration may provide
20 for an executive board with one or two members. At least a majority
21 of the members of the executive board must be unit owners. The
22 executive board shall elect the officers. The executive board members
23 and officers take office upon election.

24 (g) Notwithstanding any provision of the declaration or bylaws
25 to the contrary, following notice under AS 34.08.390, the unit owners,
26 by a two-thirds vote of all persons present and entitled to vote at a
27 meeting of the unit owners at which a quorum is present, may remove a
28 member of the executive board with or without cause, other than a
29 member appointed by the declarant.

1 Sec. 34.08.340. TRANSFER OF ASSOCIATION CONTROL. (a) Before or
2 not more than 60 days after the termination of declarant control, the
3 declarant shall relinquish control of the common interest community
4 and the unit owners shall accept control. At the same time, the
5 declarant shall deliver to the common interest community all property
6 of the unit owners and of the common interest community held or
7 controlled by the declarant including, but not limited to

8 (1) the original or a photocopy of the recorded declaration
9 and each amendment to the declaration; if a photocopy is provided, it
10 shall be certified by affidavit of the declarant, or an officer or
11 agent of the declarant, as being a complete copy of the actual record-
12 ed declaration;

13 (2) a certified copy of the common interest community
14 articles of incorporation, trust or partnership agreement;

15 (3) a copy of the bylaws;

16 (4) the minute books, including all minutes, and other
17 books and records of the common interest community;

18 (5) any rules and regulations that have been adopted;

19 (6) resignations of officers and members of the executive
20 board who are required to resign because the declarant is required to
21 relinquish control of the common interest community;

22 (7) the financial records, including financial statements
23 of the common interest community, and source documents since the
24 incorporation of the common interest community through the date of
25 turnover;

26 (8) common interest community funds or control of the funds
27 of the common interest community;

28 (9) all tangible personal property that is property of the
29 common interest community, represented by the declarant to be the

1 property of the association or ostensibly the property of the
2 association and an inventory of the property;

3 (10) a copy of the plans and specifications utilized in the
4 construction or remodeling of improvements and the supplying of equip-
5 ment to the common interest community and in the construction and
6 installation of all mechanical components serving the improvements and
7 the site, with a certificate in affidavit form of the declarant or an
8 architect or engineer authorized to practice in the state that the
9 plans and specifications represent, to the best of their knowledge and
10 belief, the actual plans and specifications utilized in the construc-
11 tion and improvement of the common interest community property and for
12 the construction and installation of the mechanical components serving
13 the improvements;

14 (11) insurance policies;

15 (12) copies of any certificates of occupancy that may have
16 been issued for the common interest community property;

17 (13) any other permits issued by governmental bodies appli-
18 cable to the common interest community property in force or issued
19 within one year before the date the unit owners other than the de-
20 clarant take control of the common interest community;

21 (14) all written warranties of the contractor, subcontractors,
22 suppliers, and manufacturers, if any, that are still effective;

23 (15) a roster of unit owners and their addresses and tele-
24 phone numbers, if known, as shown on the declarant's records;

25 (16) leases of the common elements and other leases to which
26 the association is a party;

27 (17) employment contracts or service contracts in which the
28 common interest community is one of the contracting parties or service
29 contracts in which the common interest community or the unit owners

1 have an obligation or responsibility, directly or indirectly, to pay
2 some or all of the fee or charge of the person performing the service;

3 (18) all other contracts to which the common interest commu-
4 nity is a party.

5 (b) The records shall be reviewed by an independent certified
6 public accountant. The minimum report required shall be a review in
7 accordance with generally accepted accounting standards as defined by
8 regulation by the Board of Public Accountancy. The accountant per-
9 forming the review shall examine to the extent necessary supporting
10 documents and records, including the cash disbursements and related
11 paid invoices to determine if expenditures were for the common inter-
12 est community purposes and the billings, cash receipts, and related
13 records to determine that the declarant was charged and paid the
14 proper amounts of assessments.

15 (c) Before the transfer of control from the declarant to the
16 association, an inspection of the common areas and limited common
17 areas subject to the association's control shall be completed by

18 (1) an independent registered engineer, architect, or land
19 surveyor;

20 (2) an appraiser with the designation of Senior Residential
21 Appraiser, Senior Real Property Appraiser or Senior Real Estate
22 Analyst of the Society of Real Estate Appraisers;

23 (3) a Residential Member or Member, Appraisal Institute, of
24 the American Institute of Real Estate Appraisers; or

25 (4) an individual with a designation established by
26 regulation of the Alaska Housing Finance Corporation for fee
27 appraisers who certify the completion of construction.

28 (d) A report shall be prepared indicating the incomplete work
29 and repairs needed and the method of completing the work and making

1 the repairs. The transfer of control to the association shall be
2 based upon the declarant's obligation to complete all repairs and
3 finish all incomplete work within a reasonable time after transfer of
4 control under representations in the public offering statement.

5 Sec. 34.08.350. TRANSFER OF SPECIAL DECLARANT RIGHTS. (a) A
6 special declarant right created or reserved under this chapter may be
7 transferred only by an instrument evidencing the transfer that has
8 been recorded in each recording district in which any portion of the
9 common interest community is located. The instrument is not effective
10 unless executed by the transferee.

11 (b) Upon transfer of any special declarant right, the liability
12 of a transferor declarant is as follows:

13 (1) a transferor is not relieved of an obligation or lia-
14 bility arising before the transfer and remains liable for warranty
15 obligations imposed by this chapter; lack of privity does not deprive
16 a unit owner of standing to maintain an action to enforce an obliga-
17 tion of the transferor;

18 (2) if a successor to a special declarant right is an
19 affiliate of a declarant, the transferor is jointly and severally
20 liable with the successor for an obligation or liability of the suc-
21 cessor relating to the common interest community;

22 (3) if a transferor retains a special declarant right but
23 transfers other special declarant rights to a successor who is not an
24 affiliate of the declarant, the transferor is liable for an obligation
25 or liability imposed on a declarant by this chapter or by the declara-
26 tion relating to the retained special declarant right and arising
27 after the transfer;

28 (4) a transferor is not liable for any act or omission or
29 any breach of a contractual or warranty obligation arising from the

1 exercise of a special declarant right by a successor declarant who is
2 not an affiliate of the transferor.

3 (c) Unless otherwise provided in a mortgage instrument, deed of
4 trust, or other agreement creating a security interest, on the fore-
5 closure of a security interest, sale by a trustee under an agreement
6 creating a security interest, tax sale, judicial sale, or sale under
7 Bankruptcy Act or receivership proceedings of a unit owned by a de-
8 clarant or of real estate in a common interest community subject to
9 development rights, the person acquiring title to the property being
10 foreclosed or sold, but only upon the request of the person, succeeds
11 either (1) to the special declarant rights related to the property
12 held by the declarant, or (2) only to any rights reserved in the
13 declaration under AS 34.08.230 and held by that declarant to maintain
14 models, sales offices, and signs. The judgment or instrument convey-
15 ing title must provide for transfer of only the special declarant
16 rights requested.

17 (d) Upon foreclosure of a security interest, sale by a trustee
18 under an agreement creating a security interest, tax sale, judicial
19 sale, or sale under Bankruptcy Act or receivership proceedings, of the
20 interests in a common interest community owned by a declarant:

21 (1) the declarant ceases to have special declarant rights,
22 and

23 (2) the period of declarant control terminates unless the
24 judgment or instrument conveying title provides for transfer of the
25 special declarant rights held by the declarant to a successor declar-
26 ant.

27 (e) The liabilities and obligations of a person who succeeds to
28 special declarant rights are as follows:

29 (1) a successor to any special declarant right who is an

1 affiliate of a declarant is subject to the obligations and liabilities
2 imposed on the transferor by this chapter or by the declaration;

3 (2) a successor to any special declarant right, other than
4 a successor described in (3) or (4) of this subsection or a successor
5 who is an affiliate of a declarant, is subject to the obligations and
6 liabilities imposed by this chapter or the declaration

7 (A) on a declarant that relate to the successor's
8 exercise or nonexercise of special declarant rights; or

9 (B) on the transferor, other than:

10 (i) misrepresentations by a previous declarant;

11 (ii) warranty obligations on improvements made by
12 a previous declarant or made before the common interest
13 community was created;

14 (iii) breach of a fiduciary obligation by a previ-
15 ous declarant or the appointees of a previous declarant to
16 the executive board; or

17 (iv) a liability or obligation imposed on the
18 transferor as a result of the acts or omissions of the
19 transferor after the transfer;

20 (3) a successor to a right reserved in the declaration only
21 to maintain models, sales offices, and signs may not exercise any
22 other special declarant right and is not subject to liability or
23 obligation as a declarant except the obligation to provide a public
24 offering statement, and any liability arising as a result of the
25 statement;

26 (4) a successor to the special declarant rights held by a
27 transferor who succeeded to the rights under a deed or other instru-
28 ment of conveyance in lieu of foreclosure or under a judgment or
29 instrument conveying title under (c) of this section may declare in a

1 recorded instrument an intention to hold the rights solely for trans-
2 fer to another person; until transferring the special declarant rights
3 to a person acquiring title to a unit or real estate subject to de-
4 velopment rights owned by the successor, or until recording an instru-
5 ment permitting exercise of all those rights, the successor may not
6 exercise any of the rights other than a right held by the transferor
7 of the successor to control the executive board under AS 34.08.330(d)
8 for the duration of any period of declarant control and an attempted
9 exercise of the rights is void; so long as a successor declarant may
10 not exercise special declarant rights under this subsection, the
11 successor declarant is not subject to liability or obligation as a
12 declarant other than liability for acts and omissions under AS 34.08.-
13 330(d).

14 (f) Nothing in this section subjects a successor to a special
15 declarant right to a claim against or other obligation of a transferor
16 declarant, other than a claim or obligation arising under this chapter
17 or the declaration.

18 Sec. 34.08.360. TERMINATION OF CONTRACTS AND LEASES OF DECLAR-
19 ANT. (a) If entered into before the executive board elected by the
20 unit owners under AS 34.08.330(f) takes office (1) a management con-
21 tract, employment contract, or lease of recreational or parking areas
22 or facilities; (2) a contract or lease between the association and a
23 declarant or an affiliate of a declarant; or (3) a contract or lease
24 that is not bona fide or was unconscionable to the unit owners at the
25 time entered into under the circumstances then prevailing may be
26 terminated without penalty by the association at any time after the
27 executive board elected by the unit owners under AS 34.08.330(f) takes
28 office upon not less than 90 days' notice to the other party.

29 (b) This section does not apply to

1 (1) a lease if a termination of the lease would terminate
2 the common interest community or reduce its size, unless the real
3 estate subject to the lease was included in the common interest commu-
4 nity for the purpose of avoiding the right of the association to
5 terminate a lease under this section; or

6 (2) a proprietary lease.

7 Sec. 34.08.370. BYLAWS. (a) The bylaws of the association must
8 provide

9 (1) for the number of the members of the executive board
10 and for the titles of the officers of the association;

11 (2) for the election by the executive board of a president,
12 treasurer, secretary, and other officers of the association specified
13 by the bylaws;

14 (3) for the qualifications, powers and duties, terms of
15 office, and manner of electing and removing executive board members
16 and officers and filling vacancies;

17 (4) which, if any, of its powers the executive board or
18 officers may delegate to other persons or to a managing agent;

19 (5) which of its officers may prepare, execute, certify,
20 and record amendments to the declaration on behalf of the association;
21 and

22 (6) for a method of amending the bylaws.

23 (b) Subject to the provisions of the declaration, the bylaws may
24 provide for any other matters the association considers necessary and
25 appropriate.

26 Sec. 34.08.380. UPKEEP OF COMMON INTEREST COMMUNITY. (a)
27 Except to the extent provided by the declaration, by (b) of this
28 section, or by AS 34.08.440(h), the association is responsible for the
29 maintenance, repair, and replacement of the common elements, and each

1 unit owner is responsible for the maintenance, repair, and replacement
2 of the unit. Each unit owner shall afford to the association, the
3 other unit owners, and to their agents or employees, access through
4 the unit that is reasonably necessary for maintenance and repair of
5 the unit. If damage is inflicted on the common elements or on any
6 unit through which access is taken, the unit owner responsible for the
7 damage, or the association if it is responsible, is liable for the
8 prompt repair of the damage.

9 (b) In addition to the liability that a declarant as a unit
10 owner has under this chapter, a declarant is solely liable for the ex-
11 penses in connection with real estate subject to development rights.
12 No other unit owner and no other portion of the common interest commu-
13 nity is subject to a claim for payment of expenses in connection with
14 development rights. Unless the declaration provides otherwise, the
15 income and proceeds from real estate subject to development rights
16 inures to the declarant.

17 (c) In a planned community, when all development rights have
18 expired with respect to real estate, the declarant remains liable for
19 the expenses of the real estate unless, upon expiration, the declara-
20 tion provides that the real estate becomes common elements or units.

21 Sec. 34.08.390. MEETINGS. A meeting of the association must be
22 held at least once each year. A special meeting of the association
23 may be called by the president, by a majority of the members of the
24 executive board, or by unit owners comprising either 20 percent or a
25 lower percentage specified in the bylaws of the votes in the associa-
26 tion. Not less than 10 nor more than 60 days in advance of a meeting,
27 the secretary or other officer specified in the bylaws shall cause
28 notice to be hand-delivered or sent prepaid by United States mail to
29 the mailing address of each unit or to the mailing address designated

1 in writing by the unit owner. The notice of a meeting must state the
2 time and place of the meeting and the items on the agenda, including
3 the general nature of a proposed amendment to the declaration or
4 bylaws, budget changes, and a proposal to remove an officer or member
5 of the executive board.

6 Sec. 34.08.400. QUORUMS. (a) Unless the bylaws provide other-
7 wise, a quorum is present throughout a meeting of the association if
8 persons entitled to cast 20 percent of the votes that may be cast for
9 election of the executive board are present in person or by proxy at
10 the beginning of the meeting.

11 (b) Unless the bylaws specify a larger percentage, a quorum is
12 considered present throughout a meeting of the executive board if
13 persons entitled to cast 50 percent of the votes on the board are
14 present at the beginning of the meeting.

15 Sec. 34.08.410. VOTING AND PROXIES. (a) If only one of several
16 owners of a unit is present at a meeting of the association, the owner
17 present is entitled to cast all the votes allocated to the unit. If
18 more than one of the owners are present, the votes allocated to the
19 unit may be cast only in accordance with the agreement of a majority
20 in interest of the owners, unless the declaration expressly provides
21 otherwise. There is majority agreement if any one of the owners casts
22 the votes allocated to the unit without protest being made promptly to
23 the person presiding over the meeting by another owner of the unit.

24 (b) Votes allocated to a unit may be cast under a proxy duly
25 executed by a unit owner. If a unit is owned by more than one person,
26 each owner of the unit may vote or register protest to the casting of
27 votes by the other owners of the unit through a duly executed proxy.
28 A unit owner may revoke a proxy given under this section only by
29 actual notice of revocation to the person presiding over a meeting of

1 the association. A proxy is void if it is not dated or purports to be
2 revocable without notice. A proxy terminates one year after its date,
3 unless it specifies a shorter term.

4 (c) If the declaration requires that votes on specified matters
5 affecting the common interest community be cast by lessees rather than
6 unit owners of leased units: (1) the provisions of (a) and (b) of
7 this section apply to lessees as if they were unit owners; (2) unit
8 owners who have leased their units to other persons may not cast votes
9 on the specified matters; and (3) lessees are entitled to notice of
10 meetings, access to records, and other rights respecting the matters
11 as if they were unit owners. Unit owners must also be given notice
12 under AS 34.08.390, of all meetings at which lessees are entitled to
13 vote.

14 (d) Votes allocated to a unit owned by the association may not
15 be cast.

16 Sec. 34.08.420. TORT AND CONTRACT LIABILITY. Neither the asso-
17 ciation nor any unit owner except the declarant is liable for the
18 torts of the declarant in connection with any part of the common
19 interest community that the declarant has the responsibility to main-
20 tain. An action alleging a wrong done by the association must be
21 brought against the association and not against a unit owner. If the
22 wrong occurred during a period of declarant control and the associa-
23 tion gives the declarant reasonable notice of and an opportunity to
24 defend against the action, the declarant who then controlled the
25 association is liable to the association or to a unit owner for (1)
26 tort losses not covered by insurance suffered by the association or
27 the unit owner, and (2) each cost that the association would not have
28 incurred but for a breach of contract or other wrongful act or omis-
29 sion. If the declarant is liable to the association under this

1 section, the declarant is liable for the expenses of litigation
2 incurred by the association. A statute of limitation affecting the
3 right of action of the association under this section is tolled until
4 the period of declarant control terminates. A unit owner is not
5 precluded from maintaining an action under this section because the
6 person is a unit owner or a member or officer of the association. A
7 lien resulting from a judgment against the association is governed by
8 AS 34.08.480.

9 Sec. 34.08.430. CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS.

10 (a) In a condominium or planned community, portions of the common
11 elements may be conveyed or subjected to a security interest by the
12 association if persons entitled to cast at least 80 percent of the
13 votes in the association, including 80 percent of the votes allocated
14 to units not owned by a declarant, or any larger percentage the decla-
15 ration specifies, agree to the action, but each owner of a unit to
16 which a limited common element is allocated must agree in order to
17 convey the limited common element or subject it to a security inter-
18 est. The declaration may specify a smaller percentage only if each of
19 the units is restricted exclusively to nonresidential uses. The
20 proceeds of the sale and proceeds of a loan secured by encumbrancing a
21 common area are an asset of the association.

22 (b) Part of a cooperative may be conveyed and all or part of a
23 cooperative may be subjected to a security interest by the association
24 if persons entitled to cast at least 80 percent of the votes in the
25 association, including 80 percent of the votes allocated to units not
26 owned by a declarant, or any larger percentage the declaration speci-
27 fies, agree to the action, but, if fewer than all of the units or
28 limited common elements are to be conveyed or subjected to a security
29 interest, then each unit owner or the units to which the limited

1 common elements are allocated must agree in order to convey the units
2 or limited common elements or subject them to a security interest.
3 The declaration may specify a smaller percentage only if each of the
4 units is restricted exclusively to nonresidential uses. The proceeds
5 of the sale and proceeds of a loan secured by encumbering a common
6 area are an asset of the association. A purported conveyance or other
7 voluntary transfer of an entire cooperative, unless made under AS 34.
8 08.260, is void.

9 (c) An agreement to convey common elements in a condominium or
10 planned community or to subject the common elements to a security
11 interest and an agreement to convey any part of a cooperative or
12 subject the cooperative to a security interest must be evidenced by
13 the execution of an agreement, or ratifications of the agreement, in
14 the same manner as a deed by the requisite number of unit owners. The
15 agreement must specify a date after which the agreement will be void
16 unless recorded before the date. The agreement and each ratification
17 of the agreement must be recorded in each recording district in which
18 a portion of the common interest community is situated and is effec-
19 tive only upon recording.

20 (d) The association on behalf of the unit owners may contract to
21 convey an interest in a common interest community under (a) of this
22 section, but the contract is not enforceable against the association
23 until approved under (a) - (c) of this section. After approval under
24 (a) - (c) of this section, the association has the powers necessary
25 and appropriate to effect the conveyance or encumbrance, including the
26 power to execute a deed or other instrument.

27 (e) Unless made under this section, a purported conveyance,
28 encumbrance, judicial sale, or other voluntary transfer of common
29 elements or of any other part of a cooperative is void.

1 (f) A conveyance or encumbrance of common elements or of a
2 cooperative under this section does not deprive a unit of its right of
3 access and support.

4 (g) Unless the declaration provides otherwise, a conveyance or
5 encumbrance of common elements under this section does not affect the
6 priority or validity of preexisting encumbrances.

7 (h) In a cooperative, the association may acquire, hold, encum-
8 ber, or convey a proprietary lease without complying with this sec-
9 tion.

10 Sec. 34.08.440. INSURANCE. (a) Commencing not later than the
11 first conveyance of a unit to a person other than a declarant, the
12 association shall maintain, to the extent reasonably available:

13 (1) property insurance on the common elements and, in a
14 planned community, on property that must become common elements,
15 insuring against all risks of direct physical loss commonly insured
16 against or, in the case of conversion property, against fire and
17 extended coverage perils and the total amount of insurance after
18 application of any deductibles must be not less than 100 percent of
19 the actual cash value of the insured property at the time the insur-
20 ance is purchased and at each renewal date, exclusive of land, excava-
21 tions, foundations, and other items normally excluded from property
22 policies; and

23 (2) liability insurance, including medical payments insur-
24 ance, in an amount determined by the executive board but not less than
25 an amount specified in the declaration, covering all occurrences
26 commonly insured against for death, bodily injury, and property damage
27 arising out of or in connection with the use, ownership, or mainte-
28 nance of the common elements and, in cooperatives, of each unit.

29 (b) In the case of a building that is part of a cooperative or

1 that contains a unit having horizontal boundaries described in the
2 declaration, the insurance maintained under (a)(1) of this section, to
3 the extent reasonably available, must include the unit, but need not
4 include improvements and betterments installed by a unit owner.

5 (c) If the insurance described in (a) and (b) of this section is
6 not reasonably available, the association promptly shall cause notice
7 of the fact to be hand-delivered or sent prepaid by United States mail
8 to each unit owner. The declaration may require the association to
9 carry other insurance, and the association in any event may carry
10 other insurance it considers appropriate to protect the association or
11 the unit owners.

12 (d) Insurance policies carried under (a) and (b) of this section
13 must provide that

14 (1) each unit owner is an insured person under the policy
15 with respect to liability arising out of interest of the unit owner in
16 the common elements or membership in the association;

17 (2) the insurer waives the right to subrogation under the
18 policy against a unit owner or member of the household of a unit
19 owner;

20 (3) an act or omission by a unit owner, unless acting
21 within the scope of the unit owner's authority on behalf of the asso-
22 ciation, will not void the policy or be a condition to recovery under
23 the policy; and

24 (4) if, at the time of a loss under the policy, there is
25 other insurance in the name of a unit owner covering the same risk
26 covered by the policy, the policy of the association provides primary
27 insurance.

28 (e) A loss covered by the property policy under (a)(1) and (b)
29 of this section must be adjusted with the association, but the

1 insurance proceeds for the loss are payable to an insurance trustee
2 designated for the purpose or to the association and not to a holder
3 of a security interest. The insurance trustee or the association
4 shall hold insurance proceeds in trust for the association, unit
5 owners, and lien holders as their interests may appear. Subject to
6 the provisions of (h) of this section, the proceeds must be disbursed
7 first for the repair or restoration of the damaged property, and the
8 association, unit owners, and lien holders are not entitled to receive
9 payment of a portion of the proceeds unless there is a surplus of
10 proceeds after the property has been completely repaired or restored
11 or unless the common interest community is terminated.

12 (f) An insurance policy issued to the association does not
13 prevent a unit owner from obtaining insurance for the benefit of the
14 unit owner.

15 (g) An insurer that has issued an insurance policy under this
16 section shall issue certificates or memoranda of insurance to the
17 association and, upon written request, to a unit owner or holder of a
18 security interest. The insurer issuing the policy may not cancel or
19 refuse to renew it until 30 days after notice of the proposed cancel-
20 lation or nonrenewal has been mailed to the association, each unit
21 owner and each holder of a security interest to whom a certificate or
22 memorandum of insurance has been issued at their last known addresses.

23 (h) A portion of the common interest community for which insur-
24 ance is required under this section that is damaged or destroyed must
25 be repaired or replaced promptly by the association unless (1) the
26 common interest community is terminated and AS 34.08.260 applies, (2)
27 repairs or replacement would be illegal under a state statute or
28 municipal ordinance governing health or safety, or (3) 80 percent of
29 the unit owners, including each owner of a unit or assigned limited

1 common element that will not be rebuilt, vote not to rebuild. The
2 cost of repair or replacement in excess of insurance proceeds and
3 reserves is a common expense. If the entire common interest community
4 is not repaired or replaced, (1) the insurance proceeds attributable
5 to the damaged common elements must be used to restore the damaged
6 area to a condition compatible with the remainder of the common inter-
7 est community, and (2) except to the extent that other persons will be
8 distributees, (A) the insurance proceeds attributable to a unit and
9 limited common elements that is not rebuilt must be distributed to the
10 owner of the unit and the owner of the unit to which the limited
11 common elements were allocated, or to lien holders, as their interests
12 may appear, and (B) the remainder of the proceeds must be distributed
13 to each unit owner or lien holder, as their interests may appear, as
14 follows: (i) in a condominium, in proportion to the common element
15 interest of all the units and (ii) in a cooperative or planned commu-
16 nity, in proportion to the common expense liabilities of all the
17 units. If the unit owners vote not to rebuild a unit, the allocated
18 interests of the unit are reallocated upon the vote as if the unit had
19 been condemned under AS 34.08.860(a), and the association promptly
20 shall prepare, execute, and record an amendment to the declaration
21 reflecting the reallocations.

22 (i) The provisions of this section may be varied or waived in a
23 common interest community if all of the units are restricted to non-
24 residential use.

25 Sec. 34.08.450. SURPLUS FUNDS. Unless otherwise provided in the
26 declaration, surplus funds of the association remaining after payment
27 of or provision for common expenses and prepayment of reserves must be
28 paid to the unit owners in proportion to common expense liabilities or
29 credited to them to reduce future common expense assessments.

1 Sec. 34.08.460. ASSESSMENTS FOR COMMON EXPENSES. (a) Until the
2 association makes a common expense assessment, the declarant shall pay
3 all common expenses. After an assessment has been made by the associ-
4 ation, assessments must be made at least annually, based on a budget
5 adopted at least annually by the association.

6 (b) Except for assessments under (c) - (e) of this section, all
7 common expenses must be assessed against each unit in accordance with
8 the allocations set out in the declaration under AS 34.08.150(a) and
9 (b). A past due common expense assessment or an installment of the
10 assessment bears interest at the rate established by the association
11 not exceeding 18 percent per year.

12 (c) To the extent required by the declaration

13 (1) a common expense associated with the maintenance,
14 repair, or replacement of a limited common element must be assessed
15 against each unit to which that limited common element is assigned,
16 equally, or in proportion provided by the declaration;

17 (2) a common expense or portion of the common expense
18 benefiting fewer than all of the units must be assessed exclusively
19 against the units benefited;

20 (3) the costs of insurance must be assessed in proportion
21 to risk; and

22 (4) the costs of utilities that can be determined must be
23 assessed in proportion to usage and if the costs of utilities cannot
24 be determined, the cost of nondeterminable utilities shall be shared
25 as a common expense.

26 (d) An assessment to pay a judgment against the association may
27 be made only against the units in the common interest community at the
28 time the judgment was entered, in proportion to their common expense
29 liabilities.

1 (e) If a common expense is caused by the misconduct of a unit
2 owner, the association may assess that expense exclusively against the
3 unit.

4 (f) If common expense liabilities are reallocated, common ex-
5 pense assessments and any installment of the assessment not yet due
6 must be recalculated in accordance with the reallocated common expense
7 liabilities.

8 Sec. 34.08.470. LIEN FOR ASSESSMENTS. (a) The association has
9 a lien on a unit for an assessment levied against the unit or fines
10 imposed against its unit owner from the time the assessment or fine
11 becomes due. Unless the declaration otherwise provides, fees,
12 charges, late charges, fines, and interest charged under AS 34.08.-
13 320(a)(10) - (12) are enforceable as assessments under this section.
14 If an assessment is payable in installments, the full amount of the
15 assessment is a lien from the time the first installment becomes due.

16 (b) A lien under this section is prior to all other liens and
17 encumbrances on a unit except (1) a lien and encumbrance recorded
18 before the recordation of the declaration and, in a cooperative, a
19 lien and encumbrance which the association creates, assumes, or takes
20 subject to; (2) a first security interest on the unit recorded before
21 the date on which the assessment sought to be enforced became delin-
22 quent, or, in a cooperative, the first security interest encumbering
23 only the interest of the unit owner and perfected before the date on
24 which the assessment sought to be enforced became delinquent; and (3)
25 a lien for real estate taxes and other governmental assessments or
26 charges against the unit or cooperative. A lien under this section is
27 also prior to all security interests described in (2) of this subsec-
28 tion if the common expense assessments based on the periodic budget
29 adopted by the association under AS 34.08.460(a) would have become due

1 in the absence of acceleration during the six months immediately
2 preceding institution of an action to enforce the lien. This subsec-
3 tion does not affect the priority of a mechanic's or materialman's
4 lien, or the priority of a lien for other assessments made by the
5 association. A lien under this section is not subject to the pro-
6 visions of AS 09.38.010.

7 (c) Unless the declaration provides otherwise, if two or more
8 associations have liens for assessments created at any time on the
9 same property, each lien has equal priority.

10 (d) The recording of the declaration constitutes record notice
11 and perfection of the lien. Further recording of a claim of lien for
12 assessment under this section is not required.

13 (e) A lien for an unpaid assessment is extinguished unless pro-
14 ceedings to enforce the lien are instituted within three years after
15 the full amount of the assessment becomes due.

16 (f) This section does not prohibit an action to recover sums for
17 which (a) of this section creates a lien or prohibit an association
18 from taking a deed in lieu of foreclosure.

19 (g) A judgment or decree in an action brought under this section
20 is enforceable by execution under AS 09.35.010.

21 (h) The association upon written request shall furnish to a unit
22 owner a statement setting out the amount of unpaid assessments against
23 the unit. If the interest of the unit owner is real estate, the
24 statement must be in recordable form. The statement must be furnished
25 within 10 business days after receipt of the request and is binding on
26 the association, the executive board, and each unit owner.

27 (i) In a cooperative, upon nonpayment of an assessment on a
28 unit, a unit owner may be evicted in the same manner as provided by
29 law in the case of an unlawful holdover by a commercial tenant, and

1 the lien may be foreclosed under this section.

2 (j) The association's lien may be foreclosed under this sub-
3 section:

4 (1) in a condominium or planned community, the lien of the
5 association must be foreclosed as a mortgage or deed of trust on real
6 estate is foreclosed, or as a lien is foreclosed under AS 34.35.005;

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

11 (3) in a cooperative whose unit owners' interests in the
12 units are personal property, the lien of the association must be
13 foreclosed as a security interest under AS 45.09; or

14 (4) in the case of foreclosure under AS 34.20.070, the
15 association shall give reasonable notice of its action to each lien
16 holder of a unit whose interest would be affected.

17 (k) In a cooperative, if the interest of the unit owner in a
18 unit is real estate,

19 (1) the association, upon nonpayment of an assessment and
20 compliance with this subsection, may sell the unit at a public sale or
21 by private negotiation, and at any time and place; each aspect of the
22 sale, including the method, advertising, time, place, and terms must
23 be reasonable; the association shall give reasonable written notice to
24 the unit owner and a lessee of the unit owner of the time and place of
25 the public sale or, if a private sale is intended, of the intention of
26 entering into a contract to sell and of the time after which a private
27 disposition may be made; the same notice must also be sent to any
28 other person who has a recorded interest in the unit that would be cut
29 off by the sale, but only if the recorded interest was on record seven

1 weeks before the date specified in the notice as the date of a public
2 sale or seven weeks before the date specified in the notice as the
3 date after which a private sale may be made; the notices required by
4 this subsection may be sent to any address reasonable in the cir-
5 cumstances; sale may not be held until five weeks after the sending of
6 the notice; the association may buy at a public sale and, if the sale
7 is conducted by a fiduciary or other person not related to the asso-
8 ciation, at a private sale;

9 (2) unless otherwise agreed, the debtor is liable for any
10 deficiency in a foreclosure sale under AS 09.45.170;

11 (3) the proceeds of a foreclosure sale must be applied in
12 the following order:

13 (A) the reasonable expenses of sale;

14 (B) the reasonable expenses of securing possession
15 before sale including holding, maintaining, and preparing the
16 unit for sale, payment of taxes and other governmental charges,
17 premiums on hazard and liability insurance;

18 (C) satisfaction of the lien of the association;

19 (D) satisfaction in the order of priority of a subor-
20 dinate claim of record; and

21 (E) remittance of any excess to the unit owner.

22 (4) a good faith purchaser for value acquires the unit free
23 of the association's debt that gave rise to the lien under which the
24 foreclosure sale occurred and any subordinate interest, even though
25 the association or other person conducting the sale failed to comply
26 with the requirements of this section; the person conducting the sale
27 shall execute a conveyance to the purchaser sufficient to convey the
28 unit and stating that it is executed after a foreclosure of the ass-
29 ciation's lien by power of sale and that person conducting the sale

1 was empowered to make the sale; signature and title or authority of
2 the person signing the conveyance as grantor and a recital of the
3 facts of nonpayment of the assessment and of the giving of the notices
4 required by this subsection are sufficient proof of the facts recited
5 and of the authority of the person to sign; further proof of authority
6 is not required even if the association is named as grantee in the
7 conveyance;

8 (5) at any time before the association has disposed of a
9 unit in a cooperative or entered into a contract for its disposition
10 under the power of sale, the unit owner or the holder of a subordinate
11 security interest may cure the default of the unit owner and prevent
12 sale or other disposition by tendering the performance due under the
13 security agreement, including an amount due because of exercise of a
14 right to accelerate, plus the reasonable expenses of proceeding to
15 foreclosure incurred to the time of tender.

16 Sec. 34.08.480. OTHER LIENS. (a) In a condominium or planned
17 community,

18 (1) except as provided in (2) of this subsection, a record-
19 ed judgment for money against the association is not a lien on the
20 common elements, but is a lien in favor of the judgment lien holder
21 against the units in the common interest community at the time the
22 judgment was entered and no other property of a unit owner is subject
23 to the claims of creditors of the association;

24 (2) if the association has granted a security interest in
25 the common elements to a creditor of the association under AS 34.08.-
26 430, the holder of the security interest shall exercise its right
27 against the common elements before its judgment lien on a unit may be
28 enforced;

29 (3) whether perfected before or after the creation of the

1 common interest community, if a lien, other than a deed of trust or
2 mortgage including a judgment lien or lien attributable to work
3 performed or materials supplied before creation of the common interest
4 community, becomes effective against two or more units, the unit owner
5 of an affected unit may pay to the lien holder the amount of the lien
6 attributable to the unit, and the lien holder, upon receipt of pay-
7 ment, shall promptly deliver a release of the lien covering the unit;
8 the amount of the payment must be proportionate to the ratio that the
9 unit owner's common expense liability bears to the common expense
10 liabilities of all unit owners whose units are subject to the lien;
11 after payment, the association may not assess or have a lien against
12 the unit owner's unit for any portion of the common expenses incurred
13 in connection with the lien;

14 (4) a judgment against the association must be indexed in
15 the name of the common interest community and the association and,
16 when so indexed, is notice of the lien against the units.

17 (b) In a cooperative,

18 (1) if the association receives notice of an impending
19 foreclosure on all or a portion of the association's real estate, the
20 association shall promptly transmit a copy of the notice to each unit
21 owner of a unit located within the real estate to be foreclosed; a
22 failure of the association to transmit the notice does not affect the
23 validity of the foreclosure;

24 (2) whether or not the property of a unit owner is subject
25 to the claims of creditors of the association, other property of a
26 unit owner is not subject to the claims.

27 Sec. 34.08.490. ASSOCIATION RECORDS. (a) The association shall
28 keep financial records sufficiently detailed to enable the association
29 to comply with AS 34.08.590. Financial and other records must be made

1 reasonably available for examination by a unit owner and an authorized
2 agent of a unit owner.

3 (b) A professional manager, managing agent, accountant, or other
4 person with whom the association has contracted for services shall
5 return all association records within five days of the termination of
6 the contract. If the association records are not returned within five
7 days, the association may sue for their return and for damages.

8 Sec. 34.08.500. ASSOCIATION AS TRUSTEE. If a third person deals
9 with the association in the capacity of the association as a trustee,
10 the existence of trust powers and their proper exercise by the asso-
11 ciation may be assumed without inquiry. A third person is not bound
12 to inquire whether the association has power to act as trustee or is
13 properly exercising trust powers. A third person, without actual
14 knowledge that the association is exceeding or improperly exercising
15 its powers, is fully protected in dealing with the association as if
16 it possessed and properly exercised the powers it purports to exer-
17 cise. A third person is not bound to assure the proper application of
18 trust assets paid or delivered to the association in its capacity as
19 trustee.

20 ARTICLE 4. PROTECTION OF PURCHASERS.

21 Sec. 34.08.510. APPLICABILITY. (a) The provisions of AS 34.-
22 08.510 - 34.08.700 apply to all units subject to this chapter, except
23 as provided in (b) of this section or as modified or waived by agree-
24 ment of purchasers of units in a common interest community in which
25 each unit is restricted to nonresidential use.

26 (b) A public offering statement and a resale certificate is not
27 required to be prepared or delivered on

- 28 (1) a gratuitous disposition of a unit;
29 (2) a disposition under a court order;

- 1 (3) a disposition by a governmental agency;
- 2 (4) a disposition by foreclosure or deed in lieu of fore-
3 closure;
- 4 (5) a disposition to a dealer;
- 5 (6) a disposition that may be canceled at any time and for
6 any reason by the purchaser without penalty; or
- 7 (7) a disposition of a unit in a planned community in which
8 the declaration limits the maximum annual assessment of a unit to not
9 more than \$300, as adjusted under AS 34.08.820, if
- 10 (A) the declarant has a reasonable and good faith
11 belief that the maximum stated assessment will be sufficient to
12 pay the expenses of the planned community;
- 13 (B) the declaration cannot be amended to increase the
14 assessment during the period of declarant control without the
15 consent of all unit owners; and
- 16 (C) the planned community is not subject to develop-
17 ment rights.
- 18 Sec. 34.08.520. LIABILITY FOR PUBLIC OFFERING STATEMENT REQUIRE-
19 MENTS. (a) Except as provided in (b) of this section, a declarant,
20 before offering an interest in a unit to the public, shall prepare a
21 public offering statement conforming to the requirements of AS 34.08.-
22 530, 34.08.540, 34.08.550, and 34.08.560.
- 23 (b) A declarant may transfer responsibility for preparation of
24 all or a part of the public offering statement to a successor de-
25 clarant or to a dealer who intends to offer units in the common inter-
26 est community. On the transfer of responsibility, the transferor
27 shall provide the transferee with information necessary to enable the
28 transferee to fulfill the requirements of (a) of this section.
- 29 (c) A declarant or dealer who offers a unit to a purchaser shall

1 deliver a public offering statement in the manner required by AS 34.-
2 08.580(a). The person who prepared all or a part of the public offer-
3 ing statement is liable under AS 34.08.580 and 34.08.670 for any false
4 or misleading statement set out in the statement or for any omission
5 of a material fact from the statement with respect to the portion of
6 the public offering statement that the person prepared. If a
7 declarant did not prepare any part of a public offering statement the
8 declarant is not liable for a false or misleading statement set out in
9 the statement or for an omission of a material fact from the statement
10 unless the declarant had actual knowledge of the statement or omission
11 or, in the exercise of reasonable care, should have known of the
12 statement or omission.

13 (d) If a unit is part of a common interest community and is part
14 of a real estate regime where a public offering statement is required
15 under the laws of the state before the unit is offered for sale, a
16 single public offering statement conforming to the requirements of
17 AS 34.08.530, 34.08.540, 34.08.550, and 34.08.560 may be prepared and
18 delivered in lieu of providing two or more public offering statements.

19 Sec. 34.08.530. PUBLIC OFFERING STATEMENTS GENERALLY. (a)
20 Except as provided in (b) of this section, a public offering statement
21 must fully and accurately contain or disclose

22 (1) the name and principal address of the declarant and of
23 the common interest community and indicate whether the common interest
24 community is a condominium, cooperative, or planned community;

25 (2) a general description of the common interest community,
26 including, in a building constructed for residential purposes with
27 horizontal boundaries, the area of the interior surface of floors
28 available for residential purposes and, to the extent possible, the
29 types, number, and declarant's schedule for the commencement and

1 completion of construction of buildings and amenities that the
2 declarant anticipates including in the common interest community;

3 (3) the number of units in the common interest community;

4 (4) copies and a brief narrative description of the signif-
5 icant features of the declaration, other than plats and plans, and

6 (A) any recorded covenants, conditions, restrictions,
7 and reservations affecting the common interest community;

8 (B) the bylaws, and any rules or regulations of the
9 association;

10 (C) copies of any contracts and leases to be signed by
11 purchasers at closing; and

12 (D) a brief narrative description of any contracts or
13 leases that will or may be subject to cancellation by the asso-
14 ciation under AS 34.08.360;

15 (5) any current balance sheet and a projected budget for
16 the association, either within or as an exhibit to the public offering
17 statement, for one year after the date of the first conveyance to a
18 purchaser, and the current budget of the association, the name of the
19 person who prepared the budget, and a statement of the budget's as-
20 sumptions concerning occupancy, assumptions concerning the calculation
21 of the amount of reserves certified by a certified architect or engi-
22 neer, and inflation factors, including, without limitation,

23 (A) a statement of the amount included in the budget
24 as a reserve for repairs and replacement including the estimated
25 cost of repair or replacement cost and the estimated useful life
26 of the asset to be repaired or replaced.

27 (B) a statement of any other reserves;

28 (C) the projected common expense assessment by cate-
29 gory of expenditures for the association; and

1 (D) the projected monthly common expense assessment
2 for each type of unit;

3 (6) any services not reflected in the budget that the
4 declarant provides, or expenses that the declarant pays and that the
5 declarant expects may become a common expense of the association at a
6 subsequent time and the projected common expense assessment attribut-
7 able to each of those services or expenses for the association and for
8 each type of unit;

9 (7) any initial or special fee due from the purchaser at
10 closing, together with a description of the purpose and method of
11 calculating the fee;

12 (8) a description of liens, defects, or encumbrances on or
13 affecting the title to the common interest community;

14 (9) a description of financing offered or arranged by the
15 declarant;

16 (10) the terms and significant limitations of warranties
17 provided by the declarant, including statutory warranties and limita-
18 tions on the enforcement of the warranties or on damages;

19 (11) a statement that

20 (A) within 15 days after receipt of a public offering
21 statement a purchaser, before conveyance, may cancel any contract
22 for purchase of a unit from a declarant;

23 (B) if a declarant fails to provide a public offering
24 statement to a purchaser before conveying a unit, the purchaser
25 may recover from the declarant 10 percent of the sales price of
26 the unit plus 10 percent of the share, proportionate to the
27 common expense liability of the unit, of any indebtedness of the
28 association secured by security interests encumbering the common
29 interest community; and

1 (C) a purchaser who receives the public offering
2 statement more than 15 days before signing a contract cannot
3 cancel the contract;

4 (12) a statement of any unsatisfied judgments or pending
5 suits against the association, and the status of any pending suits
6 material to the common interest community of which a declarant has
7 actual knowledge;

8 (13) a statement that a deposit made in connection with the
9 purchase of a unit will be held in an escrow account until closing and
10 will be returned to the purchaser if the purchaser cancels the con-
11 tract under AS 34.08.580, together with the name and address of the
12 escrow agent;

13 (14) any restraints on alienation of any portion of the
14 common interest community and any restrictions

15 (A) on use, occupancy, and alienation of the unit; and

16 (B) on the amount for which a unit may be sold or on
17 the amount that may be received by a unit owner on sale, condem-
18 nation, or casualty loss to the unit or to the common interest
19 community, or on termination of the common interest community;

20 (15) a description of the insurance coverage provided for
21 the benefit of unit owners;

22 (16) current or expected fees or charges to be paid by a
23 unit owner for the use of the common elements and other facilities
24 related to the common interest community;

25 (17) the extent to which financial arrangements have been
26 provided for completion of improvements that the declarant is obligat-
27 ed to build under AS 34.08.690;

28 (18) a brief narrative description of zoning and other land
29 use requirements affecting the common interest community;

1 (19) each unusual and material circumstance, feature, or
2 characteristic of the common interest community and the units; and

3 (20) in a cooperative,

4 (A) whether each unit owner will be entitled, for
5 federal, state, and local income tax purposes, to a pass-through
6 of deductions for payments made by the association for real
7 estate taxes and interest paid the holder of a security interest
8 encumbering the cooperative; and

9 (B) a statement as to the effect on each unit owner if
10 the association fails to pay real estate taxes or payments due
11 the holder of a security interest encumbering the cooperative.

12 (b) If a common interest community composed of not more than 12
13 units is not subject to any development rights and power is not re-
14 served to a declarant to make the common interest community part of a
15 larger common interest community, group of common interest communi-
16 ties, or other real estate, a public offering statement may but need
17 not include the information required by (a)(9), (10) and (15) - (19)
18 of this section and the narrative descriptions of documents required
19 by (a)(4) of this section.

20 (c) A declarant promptly shall amend the public offering state-
21 ment to report any material change in the information required by this
22 section.

23 Sec. 34.08.540. COMMON INTEREST COMMUNITIES SUBJECT TO DEVELOP-
24 MENT RIGHTS. If the declaration provides that a common interest
25 community is subject to development rights, the public offering state-
26 ment must disclose, in addition to the information required by AS 34.-
27 08.530,

28 (1) the maximum number of units, and the maximum number of
29 units per acre, that may be created.

1 (2) a statement of the number or the percentage of the
2 units that may be created that will be restricted exclusively to
3 residential use, or a statement that representations have not been
4 made regarding use restrictions;

5 (3) if any of the units that may be built within real
6 estate subject to development rights are not to be restricted exclu-
7 sively to residential use, a statement, with respect to each portion
8 of the real estate, of the maximum percentage of the real estate
9 areas, and the maximum percentage of the floor areas of all units that
10 may be created that are not restricted exclusively to residential use;

11 (4) a brief narrative description of the development rights
12 reserved by a declarant and of any conditions relating to or limita-
13 tions upon the exercise of development rights;

14 (5) a statement of the maximum extent to which the allocat-
15 ed interests of each unit may be changed by the exercise of a develop-
16 ment right described in (3) of this section;

17 (6) a statement of the extent to which a building or other
18 improvement that may be erected under a development right in any part
19 of the common interest community will be compatible with existing
20 buildings and improvements in the common interest community in terms
21 of architectural style, quality of construction, and size, or a state-
22 ment that assurances have not been made in that regard;

23 (7) a general description of each other improvement that
24 may be made and limited common elements that may be created within a
25 part of the common interest community under a development right re-
26 served by the declarant, or a statement that assurances have not been
27 made in that regard;

28 (8) a statement of any limitations as to the location of
29 any building or other improvement that may be made within a part of

1 the common interest community under a development right reserved by
2 the declarant, or a statement that assurances have not been made in
3 that regard;

4 (9) a statement that the limited common elements created
5 under a development right reserved by the declarant will be of the
6 same general type and size as the limited common elements within other
7 parts of the common interest community, or a statement of the type and
8 size planned, or a statement that assurances have not been made in
9 that regard;

10 (10) a statement that the proportion of limited common
11 elements to units created under a development right reserved by the
12 declarant will be approximately equal to the proportion existing
13 within other parts of the common interest community, or a statement of
14 any other assurances in that regard, or a statement that assurances
15 have not been made in that regard;

16 (11) a statement that each restriction in the declaration
17 affecting use, occupancy, and alienation of a unit will apply to each
18 unit created under a development right reserved by the declarant, or a
19 statement of a differentiation that may be made as to the units, or a
20 statement that assurances have not been made in that regard; and

21 (12) a statement of the extent to which an assurance made
22 under this section applies or does not apply if a development right is
23 not exercised by the declarant.

24 Sec. 34.08.550. TIME SHARES. If the declaration provides that
25 ownership or occupancy of a unit is or may be in time shares, the
26 public offering statement shall disclose, in addition to the informa-
27 tion required by AS 34.08.530,

28 (1) the number and identity of units in which time shares
29 may be created;

- 1 (2) the total number of time shares that may be created;
- 2 (3) the minimum duration of any time shares that may be
3 created;
- 4 (4) the extent to which the creation of time shares will or
5 may affect the enforceability of the lien of the association for
6 assessments under AS 34.08.470;
- 7 (5) any restraint on the power of the purchaser of the
8 time-share unit to transfer the interest in the time-share unit;
- 9 (6) whether the time-share unit is included in an exchange
10 program, the present cost and a good faith estimate of the future cost
11 to the purchaser from the exchange program; and
- 12 (7) whether the purchaser is required to become a member of
13 the exchange program.

14 Sec. 34.08.560. COMMON INTEREST COMMUNITIES CONTAINING CONVER-
15 SION PROPERTY. (a) The public offering statement of a common inter-
16 est community containing conversion property must contain, in addition
17 to the information required by AS 34.08.530,

18 (1) a statement by the declarant, based on a report pre-
19 pared by a registered architect or engineer, describing the present
20 condition of all structural components and mechanical and electrical
21 installations material to the use and enjoyment of the property;

22 (2) a statement by the declarant of the expected useful
23 life of each item reported on in (1) of this subsection or a statement
24 that representations have not been made in that regard; and

25 (3) a list of any outstanding notices of uncured violations
26 of building code or other municipal regulations, together with the
27 estimated cost of curing the violations.

28 (b) This section applies only to property that contains a unit
29 that may be occupied for residential use.

1 Sec. 34.08.570. COMMON INTEREST COMMUNITY SECURITIES. If an
2 interest in a common interest community is currently registered with
3 the Securities and Exchange Commission of the United States, a de-
4 clarant satisfies each requirement relating to the preparation of a
5 public offering statement of this chapter if the declarant delivers to
6 the purchaser a copy of the public offering statement filed with the
7 Securities and Exchange Commission. An interest in a common interest
8 community is not subject to the registration requirements of AS 45.55.

9 Sec. 34.08.580. PURCHASER'S RIGHT TO CANCEL. (a) A person
10 required to deliver a public offering statement under AS 34.08.520(c)
11 shall provide each purchaser with a copy of the public offering state-
12 ment and each amendment to the statement before conveyance of the
13 unit, and not later than the date of a contract of sale. If a pur-
14 chaser is not given the public offering statement more than 15 days
15 before execution of a contract for the purchase of a unit, the pur-
16 chaser, before conveyance, may cancel the contract within 15 days of
17 receipt of the public offering statement.

18 (b) A purchaser who wishes to cancel a contract under (a) of
19 this section may cancel the contract by hand delivering notice of the
20 cancellation to the offeror or by mailing notice of the cancellation
21 by prepaid United States mail to the offeror or to the agent for
22 service of process of the offeror. Cancellation is without penalty
23 and each payment made by the purchaser before cancellation must be
24 refunded promptly to the purchaser.

25 (c) If a person required to deliver a public offering statement
26 under AS 34.08.520(c) fails to provide a purchaser to whom a unit has
27 been conveyed with the public offering statement and each amendment to
28 the statement under (a) of this section, the purchaser, in addition to
29 any right to damages or other relief, is entitled to receive from the

1 person an amount equal to 10 percent of the sale price of the unit,
2 plus 10 percent of the share, proportionate to the common expense
3 liability, of an indebtedness of the association secured by security
4 interests encumbering the common interest community.

5 Sec. 34.08.590. RESALES OF UNITS. (a) Except for a sale in
6 which delivery of a public offering statement is required, or unless
7 the sale is exempt under AS 34.08.510(b), a unit owner shall furnish
8 to a purchaser before execution of a contract for sale of a unit or
9 before conveyance a copy of the declaration, as amended, the bylaws,
10 the rules or regulations of the association, and a certificate con-
11 taining a statement disclosing

12 (1) the effect on the proposed disposition of a right of
13 first refusal or other restraint on the free alienability of the unit;

14 (2) the amount of the monthly common expense assessment and
15 any unpaid common expense or special assessment currently due and
16 payable from the selling unit owner;

17 (3) any other fee payable by unit owners;

18 (4) any capital expenditures in excess of \$3,000 approved
19 by the executive board for the current and two next succeeding fiscal
20 years;

21 (5) the amount of reserves for capital expenditures and of
22 any portions of the reserves designated by the association for a
23 specified project;

24 (6) the most recent regularly prepared balance sheet and
25 income and expense statement, if any, of the association;

26 (7) the current operating budget of the association;

27 (8) any unsatisfied judgment against the association and
28 the status of any pending suit in which the association is a defen-
29 dant;

1 (9) any insurance coverage provided for the benefit of unit
2 owners;

3 (10) whether the executive board has knowledge that any
4 alterations or improvements to the unit or to the limited common
5 elements assigned to the unit violate any provision of the declara-
6 tion;

7 (11) whether the executive board has knowledge of any viola-
8 tion of a health or building code with respect to the unit, the limit-
9 ed common elements assigned to the unit, or any other portion of the
10 common interest community;

11 (12) a statement of the remaining term of a leasehold estate
12 affecting the common interest community and the provisions governing
13 an extension or renewal of the lease;

14 (13) a statement of any restrictions in the declaration
15 affecting the amount that may be received by a unit owner upon sale,
16 condemnation, casualty loss to the unit or the common interest commu-
17 nity, or termination of the common interest community; and

18 (14) in a cooperative, an accountant's statement, if any was
19 prepared, as to the deductibility for federal income tax purposes by
20 the unit owner of real estate taxes and interest paid by the associ-
21 ation.

22 (b) The association, within 10 days after a written request by a
23 unit owner and the payment of a reasonable fee, shall furnish a
24 certificate containing the information necessary to enable the unit
25 owner to comply with this section. A unit owner providing a
26 certificate under (a) of this section is not liable to the purchaser
27 for erroneous information provided by the association and included in
28 the certificate.

29 (c) A purchaser is not liable for an unpaid assessment or fee

1 greater than the amount set out in the certificate prepared by the
2 association. A unit owner is not liable to a purchaser for the fail-
3 ure or delay of the association to provide the certificate in a timely
4 manner, but the purchase contract is voidable by the purchaser until
5 the certificate has been provided and for five days after the certifi-
6 cate was provided or until conveyance, whichever occurs first.

7 Sec. 34.08.600. ESCROW OF DEPOSITS. A deposit made in connec-
8 tion with the purchase or reservation of a unit from a person required
9 to deliver a public offering statement under AS 34.08.520(c) must be
10 placed in escrow and held either in this state or in the state where
11 the unit is located in an account designated solely for that purpose
12 by a licensed title insurance company, an attorney, a licensed real
13 estate broker, an independent bonded escrow company, or an institution
14 whose accounts are insured by a governmental agency or instrumentality
15 until

16 (1) delivered to the declarant at closing;

17 (2) delivered to the declarant because of the purchaser's
18 default under a contract to purchase the unit; or

19 (3) refunded to the purchaser.

20 Sec. 34.08.610. RELEASE OF LIENS. (a) In a sale of a unit
21 where delivery of a public offering statement is required under
22 AS 34.08.520(c), a seller before conveying a unit, shall record or
23 furnish to the purchaser a release of each lien, except a lien on real
24 estate that a declarant has the right to withdraw from the common
25 interest community, that the purchaser does not expressly agree to
26 take subject to or assume and that encumbers

27 (1) in a condominium, the unit and its common element
28 interest; or

29 (2) in a cooperative or planned community, the unit and any

1 limited common elements assigned to the unit.

2 (b) Before conveying real estate to the association, the de-
3 clarant shall have the real estate released from

4 (1) each lien the foreclosure of which would deprive unit
5 owners of a right of access to or easement of support of their units;
6 and

7 (2) each other lien on the real estate unless the public
8 offering statement describes certain real estate that may be conveyed
9 subject to liens in specified amounts.

10 Sec. 34.08.620. CONVERSION PROPERTY. (a) A declarant of a
11 common interest community containing conversion property, and any
12 dealer who intends to offer units in a common interest community
13 containing conversion units, shall give each residential tenant and
14 each residential subtenant in possession of a portion of conversion
15 property notice of the conversion and provide each person with the
16 public offering statement no later than 180 days before the tenant and
17 any subtenant in possession is required to vacate. If the conversion
18 property consists of a mobile home park, notice of the conversion and
19 delivery of a public offering statement shall be provided no later
20 than one year before the tenant and any subtenant in possession is
21 required to vacate. The notice must set out generally the rights of
22 tenants and subtenants under this section and shall be hand delivered
23 to the unit or mailed by prepaid United States mail to the tenant and
24 subtenant at the address of the unit or any other mailing address
25 provided by a tenant. A tenant or subtenant may not be required to
26 vacate upon less than 180 days' notice and a tenant and a subtenant in
27 possession in a mobile home park may not be required to vacate upon
28 less than one year's notice except by reason of nonpayment of rent,
29 waste, or conduct that disturbs other tenants' peaceful enjoyment of

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

4 (b) For 90 days after delivery or mailing of the notice de-
5 scribed in (a) of this section, the person required to give the notice
6 shall offer to convey each unit or proposed unit occupied for residen-
7 tial use to the tenant who leases the unit. If a tenant fails to
8 purchase the unit during the 90-day period, the offeror may not offer
9 to dispose of an interest in the unit during the following 180 days at
10 a price or on terms more favorable to the offeree than the price or
11 terms offered to the tenant. This subsection does not apply to a unit
12 in conversion property if the unit will be restricted exclusively to
13 nonresidential use or if the boundaries of the converted unit do not
14 substantially conform to the dimensions of the residential unit before
15 conversion.

16 (c) If a seller, in violation of (b) of this section, conveys a
17 unit for value to a purchaser who has no knowledge of the violation,
18 the recording of the deed conveying the unit or, in a cooperative, the
19 conveyance of the unit, extinguishes any right a tenant may have under
20 (b) of this section to purchase the unit if the deed states that the
21 seller has complied with (b) of this section, but the conveyance does
22 not affect the right of a tenant to recover damages from the seller
23 for a violation of (b) of this section.

24 (d) If a notice of conversion specifies a date by which a unit
25 or proposed unit must be vacated and otherwise complies with the
26 provisions of AS 09.45.060 - 09.45.160, the notice also constitutes a
27 notice to quit.

28 (e) Nothing in this section permits termination of a lease by a
29 declarant in violation of its terms.

1 Sec. 34.08.630. EXPRESS WARRANTIES OF QUALITY. (a) An express
2 warranty made by a seller to a purchaser of a unit, if relied upon by
3 the purchaser, is created as follows:

4 (1) any affirmation of fact or promise that relates to the
5 unit, its use, or rights appurtenant to the unit, area improvements to
6 the common interest community that would directly benefit the unit, or
7 the right to use or have the benefit of facilities not located in the
8 common interest community, creates an express warranty that the unit
9 and related rights and uses will conform to the affirmation or prom-
10 ise;

11 (2) a model or description of the physical characteristics
12 of the common interest community, including plans and specifications
13 of or for improvements, creates an express warranty that the common
14 interest community will conform to the model or description;

15 (3) a description of the quantity or extent of the real
16 estate comprising the common interest community, including plats or
17 surveys, creates an express warranty that the common interest communi-
18 ty will conform to the description, subject to customary tolerances;
19 and

20 (4) a provision that a purchaser may put a unit only to a
21 specified use is an express warranty that the specified use is lawful.

22 (b) Formal words such as "warranty" or "guarantee" and the
23 specific intention to make a warranty are not necessary to create an
24 express warranty of quality, but a statement purporting to be merely
25 an opinion or commendation of the real estate or its value does not
26 create a warranty.

27 (c) A conveyance of a unit transfers to the purchaser each
28 express warranty of quality made by a previous seller.

29 Sec. 34.08.640. IMPLIED WARRANTIES OF QUALITY. (a) A declarant

1 and a dealer warrants that a unit will be in at least as good condi-
2 tion at the earlier of the time of the conveyance or delivery of
3 possession as it was at the time of contracting, reasonable wear and
4 tear excepted.

5 (b) A declarant and a dealer impliedly warrants that a unit and
6 the common elements in the common interest community are suitable for
7 the ordinary uses of real estate of its type and that any improvements
8 made or contracted for by the declarant or dealer, or made by any
9 person before the creation of the common interest community, will be

10 (1) free from defective materials; and

11 (2) constructed in accordance with applicable law, accord-
12 ing to sound engineering and construction standards, and in a workman-
13 like manner.

14 (c) A declarant and a dealer warrants to a purchaser of a unit
15 that may be used for residential use that an existing use, continua-
16 tion of which is contemplated by the parties, does not violate appli-
17 cable law at the earlier of the time of conveyance or delivery of
18 possession.

19 (d) Warranties imposed by this section may be excluded or modi-
20 fied under AS 34.08.650.

21 (e) For purposes of this section, improvements made or contract-
22 ed for by an affiliate of a declarant are made or contracted for by
23 the declarant.

24 (f) A conveyance of a unit transfers to the purchaser all of the
25 declarant's implied warranties of quality.

26 Sec. 34.08.650. EXCLUSION OR MODIFICATION OF IMPLIED WARRANTIES
27 OF QUALITY. (a) Except as limited by (b) of this section with re-
28 spect to a purchaser of a unit that may be used for residential use,
29 implied warranties of quality

1 (1) may be excluded or modified by agreement of the par-
2 ties; and

3 (2) are excluded by an expression of disclaimer such as "as
4 is," "with all faults," or other language that in common understanding
5 calls the attention of the purchaser to the exclusion of warranties.

6 (b) With respect to a purchaser of a unit that may be occupied
7 for residential use, a general disclaimer of implied warranties of
8 quality is not effective, but a declarant and a dealer may disclaim
9 liability in an instrument signed by the purchaser for a specified
10 defect or specified failure to comply with applicable law, if the
11 defect or failure entered into and became a part of the basis of the
12 bargain.

13 Sec. 34.08.660. STATUTE OF LIMITATIONS FOR WARRANTIES. (a) A
14 judicial proceeding for breach of an obligation arising under AS 34.-
15 08.650 or this section must be commenced within six years after the
16 cause of action accrues, but the parties may agree to reduce the
17 period of limitation to not less than two years. If the unit may be
18 occupied for residential use, an agreement to reduce the period of
19 limitation must be evidenced by a separate instrument executed by the
20 purchaser.

21 (b) Subject to (c) of this section, a cause of action for breach
22 of warranty of quality, regardless of the purchaser's lack of knowl-
23 edge of the breach, accrues

24 (1) as to a unit, at the time the purchaser to whom the
25 warranty is first made enters into possession if a possessory interest
26 was conveyed or at the time of acceptance of the instrument of convey-
27 ance if a nonpossessory interest was conveyed; and

28 (2) as to each common element, at the time the common
29 element is completed or, if later, as to

1 (A) a common element that may be added to the common
2 interest community or a portion of the common interest community,
3 at the time the first unit is conveyed to a bona fide purchaser;
4 or

5 (B) a common element within any other portion of the
6 common interest community, at the time the first unit is conveyed
7 to a bona fide purchaser.

8 (c) If a warranty of quality explicitly extends to future per-
9 formance or duration of an improvement or component of the common
10 interest community, the cause of action accrues at the time the breach
11 is discovered or at the end of the warranty period, whichever is
12 earlier.

13 Sec. 34.08.670. EFFECT OF VIOLATIONS ON RIGHTS OF ACTION. If a
14 declarant or any other person subject to this chapter fails to comply
15 with a provision of this chapter or with a provision of the declara-
16 tion or bylaws, a person or class of persons adversely affected by the
17 failure to comply has a claim for appropriate relief. Punitive dam-
18 ages may be awarded for a wilful failure to comply with this chapter.

19 Sec. 34.08.680. LABELING OF PROMOTIONAL MATERIAL. Promotional
20 material may not be displayed or delivered to a prospective purchaser
21 that describes or portrays an improvement that is not in existence
22 unless the description or portrayal of the improvement in the promo-
23 tional material is conspicuously labeled or identified either as "MUST
24 BE BUILT" or as "NEED NOT BE BUILT."

25 Sec. 34.08.690. DECLARANT'S OBLIGATION TO COMPLETE AND RESTORE.
26 (a) Except for an improvement labeled "NEED NOT BE BUILT," the de-
27 clarant shall complete each improvement depicted on a site plan or
28 other graphic representation, including any plats or plans prepared
29 under AS 34.08.180, whether or not the site plan or other graphic

1 representation is contained in the public offering statement or in
2 promotional material distributed by or for the declarant.

3 (b) The declarant is liable for the prompt repair and restora-
4 tion, to a condition compatible with the remainder of the common
5 interest community, of a portion of the common interest community af-
6 fected by the exercise of rights reserved under or created by AS 34.-
7 08.180, 34.08.190, 34.08.200, 34.08.210, 34.08.230, or 34.08.240.

8 Sec. 34.08.700. SUBSTANTIAL COMPLETION OF UNITS. In the sale of
9 a unit for which delivery of a public offering statement is required,
10 a contract of sale may be executed, but an interest in the unit may
11 not be conveyed until the declaration is recorded and the unit is
12 substantially completed as evidenced by issuance of a certificate of
13 occupancy authorized by law or by a recorded certificate of
14 substantial completion executed by

15 (1) an independent registered engineer, architect, or land
16 surveyor;

17 (2) an appraiser with the designation of senior residential
18 appraiser, senior real property appraiser or senior real estate
19 analyst of the Society of Real Estate Appraisers;

20 (3) a residential member or member, appraisal institute, of
21 the American Institute of Real Estate Appraisers; or

22 (4) an individual with a designation established by
23 regulation of the Alaska Housing Finance Corporation for fee
24 appraisers who certify the completion of construction.

25 ARTICLE 5. GENERAL PROVISIONS.

26 Sec. 34.08.710. VARIATION BY AGREEMENT. Except as expressly
27 provided in this chapter the provisions of this chapter may not be
28 varied by agreement and rights conferred by this chapter may not be
29 waived. A declarant may not act under a power of attorney or use any

1 other device to evade the limitations or prohibitions of this chapter
2 or a declaration recorded under it.

3 Sec. 34.08.720. SEPARATE TITLES AND TAXATION. (a) In a cooper-
4 ative, the interest of a unit owner in a unit and its allocated
5 interests is real estate for all purposes, except that the real estate
6 constituting the cooperative shall be assessed and taxed as a whole
7 and the interest of a unit owner may not be separately taxed.

8 (b) In a condominium or planned community,

9 (1) if there is a unit owner other than a declarant, each
10 unit that has been created, together with its interest in the common
11 elements, constitutes for all purposes a separate parcel of real
12 estate;

13 (2) if there is a unit owner other than a declarant, each
14 unit shall be separately taxed and assessed, and a separate tax or
15 assessment may not be rendered against any common elements for which a
16 declarant has reserved no development rights.

17 (c) Any portion of the common elements for which the declarant
18 has reserved a development right shall be separately taxed and
19 assessed against the declarant and the declarant alone is liable for
20 payment of the taxes.

21 (d) If there is no unit owner other than a declarant, the real
22 estate comprising the common interest community may be taxed and
23 assessed in any manner provided by law.

24 Sec. 34.08.730. APPLICABILITY OF LOCAL ORDINANCES, REGULATIONS,
25 AND BUILDING CODES. (a) A building code may not impose a requirement
26 upon a structure in a common interest community that the building code
27 would not impose upon a physically identical development under a
28 different form of ownership.

29 (b) A zoning, subdivision, or other real estate use law,

1 ordinance, or regulation may not prohibit the condominium or
2 cooperative form of ownership or impose a requirement upon a
3 condominium or cooperative that it would not impose upon a physically
4 identical development under a different form of ownership.

5 (c) Except as provided in (a) and (b) of this section, the
6 provisions of this chapter do not invalidate or modify a provision of
7 a building code, zoning, subdivision, or other real estate use law,
8 ordinance, or regulation governing the use of real estate.

9 Sec. 34.08.740. EMINENT DOMAIN. (a) If a unit is acquired by
10 eminent domain or part of a unit is acquired by eminent domain leaving
11 the unit owner with a remnant that may not practically or lawfully be
12 used for any purpose permitted by the declaration, the award must
13 include compensation to the unit owner for that unit and its allocated
14 interests, whether or not any common elements are acquired. Upon
15 acquisition, unless the decree otherwise provides, the allocated
16 interests of the unit are automatically reallocated to the remaining
17 units in proportion to the respective allocated interests of those
18 units before the taking, and the association shall promptly prepare,
19 execute, and record an amendment to the declaration reflecting the re-
20 allocations. A remnant of a unit remaining after part of a unit is
21 taken under this subsection is a common element from that time.

22 (b) Except as provided in (a) of this section, if part of a unit
23 is acquired by eminent domain, the award must compensate the unit
24 owner for the reduction in value of the unit and its interest in the
25 common elements, whether or not any common elements are acquired.
26 Upon acquisition, unless the decree provides otherwise,

27 (1) the allocated interests of the unit are reduced either
28 in proportion to the reduction in the size of the unit or on the basis
29 specified in the declaration; and

1 (2) the portion of the allocated interests divested from
2 the partially acquired unit are automatically reallocated to the unit
3 and to the remaining units in proportion to the respective allocated
4 interests of the units before the taking, with the partially-acquired
5 unit participating in the reallocation on the basis of its reduced
6 allocated interests.

7 (c) If part of the common elements is acquired by eminent do-
8 main, the portion of the award attributable to the common elements
9 taken must be paid to the association. Unless the declaration pro-
10 vides otherwise, any portion of the award attributable to the acquisi-
11 tion of a limited common element must be equally divided among the
12 owners of the units to which that limited common element was allocated
13 at the time of acquisition.

14 (d) The court decree must be recorded in each recording district
15 in which any portion of the common interest community is located.

16 (e) On a condemnation of a unit or common area, an award or
17 decree must include a reasonable amount to cover the cost of reallo-
18 cating the allocatable interests of the unit owners.

19 Sec. 34.08.750. SUPPLEMENTAL GENERAL PRINCIPLES OF LAW APPLIC-
20 ABLE. The principles of law and equity, including the law of corpora-
21 tions and unincorporated associations, the law of real property, and
22 the law relative to capacity to contract, principal and agent, eminent
23 domain, estoppel, fraud, misrepresentation, duress, coercion, mistake,
24 receivership, substantial performance, or other validating or invali-
25 dating cause supplement the provisions of this chapter except to the
26 extent inconsistent with this chapter.

27 Sec. 34.08.760. CONSTRUCTION AGAINST IMPLICIT REPEAL. This
28 chapter is a general act intended as a unified coverage of its subject
29 matter and a part of the chapter may not be construed to be impliedly

1 repealed by subsequent legislation if that construction can reasonably
2 be avoided.

3 Sec. 34.08.770. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
4 This chapter shall be applied and construed so as to effectuate its
5 general purpose to make uniform the law with respect to the subject of
6 the chapter among states enacting it.

7 Sec. 34.08.780. SEVERABILITY. If a provision of this chapter or
8 its application to any person or circumstance is held invalid, the
9 invalidity does not affect other provisions or applications of this
10 chapter that can be given effect without the invalid provision or
11 application, and to this end the provisions of this chapter are sever-
12 able.

13 Sec. 34.08.790. UNCONSCIONABLE AGREEMENT OR TERM OF CONTRACT.
14 (a) Upon finding as a matter of law that a contract or contract
15 clause was unconscionable at the time the contract was made, a court
16 may refuse to enforce the contract, may enforce the remainder of the
17 contract without the unconscionable clause, or may limit the applica-
18 tion of the unconscionable clause in order to avoid an unconscionable
19 result.

20 (b) Whenever it is claimed or appears to the court that a con-
21 tract or a contract clause is or may be unconscionable, the parties,
22 in order to aid the court in making the determination, must be afford-
23 ed a reasonable opportunity to present evidence as to (1) the commer-
24 cial setting of the negotiations; (2) whether a party has knowingly
25 taken advantage of the inability of another party reasonably to pro-
26 tect personal interests by reason of physical or mental infirmity,
27 illiteracy, inability to understand the language of the agreement, or
28 similar factors; (3) the effect and purpose of the contract or clause;
29 and (4) any gross disparity, if a sale, at the time of contracting,

1 between the amount charged for the property and the value of the
2 property measured by the price at which similar property was readily
3 obtainable in similar transactions. A disparity between the contract
4 price and the value of the property measured by the price at which
5 similar property was readily obtainable in similar transactions does
6 not, of itself, render the contract unconscionable.

7 Sec. 34.08.800. OBLIGATION OF GOOD FAITH. A contract or duty
8 governed by this chapter imposes an obligation of good faith in its
9 performance or enforcement.

10 Sec. 34.08.810. REMEDIES TO BE LIBERALLY ADMINISTERED. (a) The
11 remedies provided by this chapter shall be liberally administered to
12 the end that the aggrieved party is put in as good a position as if
13 the other party had fully performed. Consequential, special, or
14 punitive damages may not be awarded except as specifically provided in
15 this chapter or by other rule of law.

16 (b) A right or obligation declared by this chapter is enforce-
17 able by judicial proceeding.

18 Sec. 34.08.820. ADJUSTMENT OF DOLLAR AMOUNTS. (a) The dollar
19 amounts specified in AS 34.08.030 and 34.08.510(b)(7) change under (b)
20 and (c) of this section, according to and to the extent of changes in
21 the Consumer Price Index for Urban Wage Earners and Clerical Workers:
22 U.S. City Average, All Items 1967 equal 100, compiled by the Bureau of
23 Labor Statistics, United States Department of Labor, (the "Index").
24 The Index for December, 1979, which was 230, is the Reference Base
25 Index.

26 (b) The dollar amounts specified in AS 34.08.030 and 34.08.-
27 510(b)(7) and any amount stated in the declaration pursuant to those
28 sections change on July 1 of each year if the percentage of change,
29 calculated to the nearest whole percentage point, between the Index at

1 the end of the preceding year and the Reference Base Index is 10
2 percent or more, except that

3 (1) the portion of the percentage change in the Index in
4 excess of a multiple of 10 percent shall be disregarded and the dollar
5 amounts shall change only in multiples of 10 percent of the amounts
6 appearing in this chapter on the effective date of this Act;

7 (2) the dollar amounts may not change if the amounts re-
8 quired by this section are those currently in effect under this chap-
9 ter as a result of an earlier application of this section; and

10 (3) in no event may the dollar amounts be reduced below the
11 amounts appearing in this chapter on the effective date of this Act.

12 (c) If the Index is revised after December 1979, the percentage
13 of change under this section shall be calculated on the basis of the
14 revised Index. If the revision of the Index changes the Reference
15 Base Index, a revised Reference Base Index must be determined by
16 multiplying the Reference Base Index then applicable by the rebasing
17 factor furnished by the Bureau of Labor Statistics. If the Index is
18 superseded, the index referred to in this section is the one repre-
19 sented by the Bureau of Labor Statistics as reflecting most accurately
20 changes in the purchasing power of the dollar for consumers.

21 Sec. 34.08.830. TRANSFER OF UNIT IN A COOPERATIVE. If a unit in
22 a cooperative is owned by a unit owner or is sold, conveyed, volun-
23 tarily or involuntarily encumbered, or otherwise transferred by the
24 unit owner, the interest in the unit that is owned, sold, conveyed,
25 encumbered, or otherwise transferred is the right to possession of the
26 unit under a proprietary lease, coupled with the allocated interests
27 of the unit, and the association's interest in the unit is not affect-
28 ed by the transfer.

29 Sec. 34.08.990. DEFINITIONS. In this chapter,

1 (1) "affiliate of a declarant"

2 (A) means a person who controls, is controlled by, or
3 is under common control with a declarant;

4 (B) as used in this paragraph, a person "controls" a
5 declarant if the person

6 (i) is a general partner, officer, director, or
7 employer of the declarant;

8 (ii) directly or indirectly or acting in concert
9 with one or more other persons, or through one or more
10 subsidiaries, owns, controls, holds with power to vote, or
11 holds proxies representing more than 20 percent of the
12 voting interest in the declarant;

13 (iii) controls in any manner the election of a
14 majority of the directors of the declarant; or

15 (iv) has contributed more than 20 percent of the
16 capital of the declarant;

17 (C) as used in this paragraph, a person "is controlled
18 by" a declarant if the declarant

19 (i) is a general partner, officer, director, or
20 employer of the person;

21 (ii) directly or indirectly or acting in concert
22 with one or more other persons, or through one or more
23 subsidiaries, owns, controls, holds with power to vote, or
24 holds proxies representing, more than 20 percent of the
25 voting interest in the person;

26 (iii) controls in any manner the election of a
27 majority of the directors of the person; or

28 (iv) has contributed more than 20 percent of the
29 capital of the person;

1 (D) as used in this paragraph, "control" does not
2 exist if the powers described in this paragraph are held solely
3 as security for an obligation and are not exercised;

4 (2) "allocated interests" means the following interests
5 allocated to each unit:

6 (A) in a condominium, the undivided interest in the
7 common elements, the common expense liability, and votes in the
8 association;

9 (B) in a cooperative, the common expense liability and
10 the ownership interest and votes in the association; and

11 (C) in a planned community, the common expense liability
12 and votes in the association;

13 (3) "association" or "unit owners' association" means the
14 unit owners' association organized under AS 34.08.310;

15 (4) "common elements" means

16 (A) in a condominium or cooperative, each portion of
17 the common interest community other than a unit; and

18 (B) in a planned community, the real estate within a
19 planned community owned or leased by the association, other than
20 a unit;

21 (5) "common expenses" means expenditures made by, or finan-
22 cial liabilities of, the association, together with any allocations to
23 reserves;

24 (6) "common expense liability" means the liability for
25 common expenses allocated to each unit under AS 34.08.150;

26 (7) "common interest community" means real estate with
27 respect to which a person, by virtue of ownership of a unit, is obli-
28 gated to pay for real estate taxes, insurance premiums, maintenance,
29 or improvement of other real estate described in a declaration;

1 (8) "condominium" means a common interest community in
2 which

3 (A) portions of the real estate are designated for
4 separate ownership;

5 (B) the remainder of the real estate is designated for
6 common ownership solely by the owners of those portions; and

7 (C) the undivided interests in the common elements are
8 vested in the unit owners;

9 (9) "conversion property" means real estate that before
10 creation of the common interest community, was occupied wholly or
11 partially by persons other than purchasers and persons who occupy with
12 the consent of purchasers;

13 (10) "cooperative" means a common interest community in
14 which the real estate is owned by an association, each of whose mem-
15 bers is entitled by virtue of an ownership interest in the association
16 to exclusive possession of a unit;

17 (11) "dealer" means a person who owns either six or more
18 units in a common interest community or 50 percent or more of the
19 units in a common interest community;

20 (12) "declarant" means a person or a group of persons acting
21 in concert who

22 (A) as part of a common promotional plan, offers to
23 dispose of its interest in a unit not previously disposed of; or

24 (B) reserves or succeeds to a special declarant right;

25 (13) "declaration"

26 (A) means an instrument, however described, that
27 creates a common interest community; and

28 (B) includes amendments to a declaration;

29 (14) "development right" means a right or a combination of

- 1 rights reserved by a declarant in the declaration to
- 2 (A) add real estate to a common interest community;
- 3 (B) create units, common elements, or limited common
- 4 elements within a common interest community;
- 5 (C) subdivide units or convert units into common
- 6 elements; or
- 7 (D) withdraw real estate from a common interest commu-
- 8 nity;
- 9 (15) "dispose" or "disposition"
- 10 (A) means a voluntary transfer to a purchaser of any
- 11 legal or equitable interest in a unit;
- 12 (B) does not include the transfer or release of a
- 13 security interest;
- 14 (16) "executive board" means the body designated in the
- 15 declaration to act on behalf of the association;
- 16 (17) "identifying number" means a symbol or address that
- 17 identifies only one unit in a common interest community;
- 18 (18) "leasehold common interest community" means a common
- 19 interest community in which all or a portion of the real estate is
- 20 subject to a lease that, on its expiration or termination, will termi-
- 21 nate the common interest community or reduce its size;
- 22 (19) "limited common element" means the portion of the
- 23 common elements allocated for the exclusive use of one or more but
- 24 fewer than all of the units by the declaration or by operation of
- 25 AS 34.08.100(2) or (4);
- 26 (20) "master association" means an organization described in
- 27 AS 34.08.280 whether or not it is also an association described in
- 28 AS 34.08.310;
- 29 (21) "offering"

1 (A) means an advertisement, inducement, solicitation,
2 or attempt to encourage a person to acquire an interest in a
3 unit, other than as security for an obligation;

4 (B) does not include an advertisement in a newspaper
5 or other periodical of general circulation, or in any other
6 broadcast medium to the general public describing a common inter-
7 est community not located in the state if the advertisement
8 states that an offering may be made only in compliance with the
9 law of the jurisdiction in which the common interest community is
10 located;

11 (22) "ownership of a unit" does not include a leasehold
12 interest, including renewal options, of less than 40 years in a unit;

13 (23) "person" means

14 (A) an individual, corporation, business trust,
15 estate, trust, partnership, association, joint venture, govern-
16 ment, government subdivision or agency, or other legal or commer-
17 cial entity;

18 (B) in the case of a land trust, the beneficiary of
19 the land trust and not the land trust or its trustee;

20 (24) "planned community" means a common interest community
21 that is not a condominium or a cooperative although a condominium or
22 cooperative may be part of a planned community;

23 (25) "proprietary lease" means the agreement with the
24 association under which a member is entitled to exclusive possession
25 of a unit in a cooperative;

26 (26) "purchaser" means a person, other than a declarant or a
27 dealer, who by means of a voluntary transfer acquires a legal or
28 equitable interest in a unit other than

29 (A) a leasehold interest, including renewal options,

1 of less than 40 years; or

2 (B) as security for an obligation;

3 (27) "real estate"

4 (A) means a leasehold or other estate or interest in,
5 over, or under land, including structures, fixtures, and other
6 improvements and interests that by custom, usage, or law pass
7 with a conveyance of land though not described in the contract of
8 sale or instrument of conveyance;

9 (B) includes parcels with or without upper or lower
10 boundaries, and spaces that may be filled with air or water;

11 (28) "residential purposes" means use for dwelling or recre-
12 ational purposes, or both;

13 (29) "security interest"

14 (A) means an interest in real estate or personal
15 property, created by contract or conveyance, that secures payment
16 or performance of an obligation;

17 (B) includes a lien created by a mortgage, deed of
18 trust, trust deed, security deed, contract for deed, land sales
19 contract, lease intended as security, assignment of lease or
20 rents intended as security, pledge of an ownership interest in an
21 association, and any other consensual lien or title retention
22 contract intended as security for an obligation;

23 (30) "special declarant rights" means the right reserved for
24 the benefit of a declarant to

25 (A) complete improvements indicated on plats and plans
26 filed with the declaration or, in a cooperative, to complete
27 improvements described in the public offering statement pursuant
28 to AS 34.08.530(a)(2);

29 (B) exercise a development right;

1 (C) maintain sales offices, management offices, signs
2 advertising the common interest community, and models;

3 (D) use easements through the common elements for the
4 purpose of making improvements within the common interest commu-
5 nity or within real estate that may be added to the common inter-
6 est community;

7 (E) make the common interest community subject to a
8 master association;

9 (F) merge or consolidate a common interest community
10 with another common interest community of the same form of owner-
11 ship; or

12 (G) appoint or remove an officer of the association or
13 a master association or an executive board member during a period
14 of declarant control;

15 (31) "time share" means a right to occupy a unit or any of
16 several units during five or more separated time periods over a period
17 of at least five years, including renewal options, whether or not
18 coupled with an estate or interest in a common interest community or a
19 specified portion of a common interest community;

20 (32) "unit" means a physical portion of the common interest
21 community designated for separate ownership or occupancy, the bound-
22 aries of which are described under AS 34.08.130(a)(5);

23 (33) "unit owner"

24 (A) means

25 (i) a declarant;

26 (ii) a person who owns a unit;

27 (iii) a person who leases a unit in a leasehold
28 common interest community whose lease expires simultaneously
29 with any lease that on its expiration or termination will

1 remove the unit from the common interest community;
2 (B) does not include a person having an interest in a
3 unit solely as security for an obligation;
4 (C) includes
5 (i) in a condominium or planned community, the
6 declarant as the owner of any unit created by the declara-
7 tion;
8 (ii) in a cooperative, the declarant as the owner
9 of any unit to which allocated interests have been allocated
10 until that unit has been conveyed to another person.

11 Sec. 34.08.995. SHORT TITLE. This Act may be cited as the
12 Uniform Common Interest Ownership Act.

13 * Sec. 2. AS 34.35.071(f) is amended to read:

14 (f) After recording a common interest community [CONDOMINIUM]
15 declaration under AS 34.08 [AS PROVIDED IN AS 34.07.010 - 34.07.460
16 (HORIZONTAL PROPERTY REGIMES ACT)], an owner may record a notice of
17 completion under this section as to each unit [APARTMENT] after com-
18 pletion of the original construction of each unit of the common inter-
19 est community [CONDOMINIUM APARTMENT].

20 * Sec. 3. AS 34.35.119 is amended to read:

21 Sec. 34.35.119. WAIVER OF LIENS ON UNSOLD COMMON INTEREST COMMU-
22 NITY UNITS [CONDOMINIUM APARTMENTS]. (a) A lien [LIENS] created
23 under AS 34.35.050 - 34.35.120 arising out of original construction
24 that [WHICH] becomes subject to AS 34.07 or AS 34.08 [THE HORIZONTAL
25 PROPERTY REGIMES ACT (AS 34.07.010 - 34.07.460)] before the first sale
26 of a unit within a common interest community [ANY PORTION OF THE
27 PROPERTY] after commencement of construction shall be subject to the
28 provisions of this section.

29 (b) Subject to (c) of this section, a claimant who claims a lien

1 against an entire common interest community [THE ENTIRE BUILDING]
2 shall release that portion of the [HIS] lien claim that [WHICH] re-
3 lates to a particular unit within a common interest community [CONDO-
4 MINIMUM APARTMENT] selected by the owner of the unsold common interest
5 community units [CONDOMINIUM APARTMENTS] after the claimant receives a
6 partial payment of the [HIS] lien claim that [WHICH] is equal to 115
7 percent of the amount determined

8 (1) if the common interest community has been established
9 under AS 34.07 by [:]

10 (A) [(1)] dividing the surface area of the common
11 areas and facilities attendant to the common interest community
12 unit [CONDOMINIUM APARTMENT] by the surface area of all common
13 areas and facilities of the common interest community building;
14 and

15 (B) [(2)] multiplying the result obtained in (A)
16 [(1)] of this subsection by the total amount of the claimant's
17 lien claim;

18 (2) by the allocated interest in the common expenses if the
19 common interest community has been established under AS 34.08.

20 (c) A lien claimant is not required to waive a portion of the
21 [HIS] lien claim under this section unless the amount of indebtedness
22 secured by a prior encumbrance against the common interest community
23 building held by a construction lender is also reduced by an amount
24 calculated in the same manner as provided in (b) of this section.

25 * Sec. 4. This Act takes effect January 1, 1986.

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, defend 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 or 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

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 existing 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.

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

1/14/85

Date 4-4-85

Mr. President

The Committee on JUDICIARY considered SB 44 relating to the Uniform Common Interest Ownership Act; efd.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- [] do pass
[] do pass with attached amendment(s)
[X] replace with/or adopt CS for SB 44 (Judiciary)
[] new title
[] same title and recommends
[] and attached a "LETTER OF INTENT" [] NEW FISCAL NOTE
[] reports it back without recommendation
[] recommends referral to Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS

Handwritten signatures: Tom Kelly, Jan Ficker, Rick Holford

Blank lines for other recommendations

1 / Tom Kelly - Acting Vice-Chairman

Do Pass Chairman recommendation

Introduced: 1/14/85
Referred: Judiciary and
Finance

BY HALFORD, FAIKS,
STURGULEWSKI AND
KERTTULA

1 IN THE SENATE

2 SENATE BILL NO. 44

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Uniform Common Interest
7 Ownership Act; and providing for an effective date."

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

9 * Section 1. AS 34 is amended by adding a new chapter to read:

10 CHAPTER 8. COMMON INTEREST OWNERSHIP.

11 ARTICLE I. APPLICABILITY.

12 Sec. 34.08.010. APPLICABILITY GENERALLY. Except as provided in
13 AS 34.08.020 and 34.08.030, this chapter applies to each common inter-
14 est community created within the state after the effective date of
15 this Act. The provisions of AS 10.15 and AS 34.07 do not apply to
16 common interest communities created after the effective date of this
17 Act.

18 Sec. 34.08.020. APPLICABILITY TO SMALL COOPERATIVES. If a
19 cooperative contains only units restricted to nonresidential use or
20 contains no more than 12 units and is not subject to any development
21 rights, or if it is then subject to financing from the Alaska Housing
22 Finance Corporation it is subject only to AS 34.08.850 and 34.08.860
23 unless the declaration provides that the entire chapter is applicable.

24 Sec. 34.08.030. APPLICABILITY TO SMALL AND LIMITED EXPENSE
25 LIABILITY PLANNED COMMUNITIES. If a planned community contains no
26 more than 12 units and is not subject to any development rights or if
27 it is then subject to financing from the Alaska Housing Finance Corpo-
28 ration or provides, in its declaration, that the annual average common

1 expense liability of all units restricted to residential purposes,
2 exclusive of optional user fees and any insurance premiums paid by the
3 association, may not exceed \$100, as adjusted under AS 34.08.820, the
4 planned community is subject only to AS 34.08.710, 34.08.730, and
5 34.08.740, unless the declaration provides that the entire chapter is
6 applicable.

7 Sec. 34.08.040. APPLICABILITY TO PREEXISTING COMMON INTEREST
8 COMMUNITIES. Except as provided in AS 34.08.050, the provisions of
9 AS 34.08.110, 34.08.120, 34.08.290, 34.08.320(1) - (6) and (11) -
10 (16), 34.08.420, 34.08.470, 34.08.490, 34.08.590, 34.08.670, 34.08.-
11 720, 34.08.730, 34.08.740, and 34.08.990, to the extent necessary in
12 construing any of those sections, apply to all common interest commu-
13 nities created in the state before the effective date of this Act
14 except that the sections apply only with respect to events and circum-
15 stances occurring after the effective date of this Act and do not
16 invalidate existing provisions of the declaration, bylaws, or plats or
17 plans of the common interest communities.

18 Sec. 34.08.050. APPLICABILITY TO SMALL PREEXISTING COOPERATIVES
19 AND PLANNED COMMUNITIES. If a cooperative or planned community cre-
20 ated within the state before the effective date of this Act contains
21 no more than 12 units and is not subject to any development rights, it
22 is subject only to AS 34.08.720, 34.08.730, and 34.08.740, unless the
23 declaration is amended in conformity with law and with the procedures
24 and requirements of the declaration to take advantage of the pro-
25 visions of AS 34.08.060, in which case all the sections enumerated in
26 AS 34.08.040 apply to the cooperative or planned community.

27 Sec. 34.08.060. AMENDMENTS TO GOVERNING INSTRUMENTS. (a) In
28 amendments to the declaration, bylaws, or plats and plans of a common
29 interest community created before the effective date of this Act:

1 (1) if the result accomplished by the amendment was per-
2 mitted by law prior to this chapter, the amendment may be made either
3 in accordance with the former law, in which case that law applies to
4 that amendment, or it may be made under this chapter; and

5 (2) if the result accomplished by the amendment is permit-
6 ted by this chapter and was not permitted by law before the effective
7 date of this Act, the amendment may be made under this chapter.

8 (b) An amendment to the declaration, bylaws, or plats and plans
9 authorized by this chapter must be adopted in conformity with law and
10 with the procedures and requirements specified by the declaration,
11 bylaws, or plats and plans. If an amendment grants a person any
12 right, power, or privilege permitted by this chapter, each correlative
13 obligation, liability, and restriction in this chapter also applies to
14 the person.

15 Sec. 34.08.070. APPLICABILITY TO NONRESIDENTIAL PLANNED COMMUNI-
16 TIES. (a) This chapter does not apply to a planned community in
17 which each unit is restricted exclusively to nonresidential use unless
18 the declaration provides that the chapter does apply to the planned
19 community.

20 (b) This chapter applies to a planned community containing some
21 units that are restricted exclusively to nonresidential use and other
22 units that are not restricted exclusively to nonresidential use only
23 if the declaration provides that the chapter applies to the planned
24 community or the real estate comprising the units that may be used for
25 residential purposes would be a planned community in the absence of
26 the units that may not be used for residential purposes.

27 Sec. 34.08.080. APPLICABILITY TO OUT-OF-STATE COMMON INTEREST
28 COMMUNITIES. This chapter does not apply to a common interest commu-
29 nity or unit located outside the state, but AS 34.08.520 - 34.08.580

1 apply to a contract for the disposition of a common interest community
2 or unit that is signed in the state by a party unless the disposition
3 is exempt under AS 34.08.510(b).

4 ARTICLE 2. CREATION, ALTERATION, AND TERMINATION OF
5 COMMON INTEREST COMMUNITIES.

6 Sec. 34.08.090. CREATION OF COMMON INTEREST COMMUNITIES. (a) A
7 common interest community may be created under this chapter only by
8 recording a declaration executed in the same manner as a deed and, in
9 a cooperative, by conveying the real estate subject to the declaration
10 to the association. The declaration must be recorded in each record-
11 ing district in which a portion of the common interest community is
12 located and must be indexed in the grantee's index in the name of the
13 common interest community and the association and in the grantor's
14 index in the name of each person executing the declaration.

15 (b) In a condominium, a declaration or an amendment to a decla-
16 ration that adds a unit may not be recorded unless the structural
17 components and mechanical systems of each building containing or
18 comprising a unit of the condominium is completed substantially in
19 accordance with the plans, as evidenced by a certificate of completion
20 executed by an independent registered engineer, surveyor, or architect
21 recorded with the declaration or amendment to the declaration.

22 Sec. 34.08.100. UNIT BOUNDARIES. Except as provided by the
23 declaration

24 (1) if walls, floors, or ceilings are designated as bound-
25 aries of a unit, the lath, furring, wallboard, plasterboard, plaster,
26 paneling, tiles, wallpaper, paint, finished flooring, and other mate-
27 rials constituting a part of the finished surfaces of the walls,
28 floors, or ceiling are a part of the unit, and all other portions of
29 the walls, floors, or ceilings are a part of the common elements;

1 (2) if a chute, flue, duct, wire, conduit, bearing wall,
2 bearing column, or other fixture lies partially within and partially
3 outside the designated boundaries of a unit, the portion serving only
4 the unit is a limited common element allocated solely to the unit, and
5 any portion serving more than one unit or a portion of the common
6 elements is a part of the common elements;

7 (3) subject to (2) of this section, spaces, interior parti-
8 tions, and other fixtures and improvements within the boundaries of a
9 unit are a part of the unit;

10 (4) any shutters, awnings, window boxes, doorsteps, stoops,
11 porches, decks, balconies, patios, and each exterior door and window
12 or other fixture designed to serve a single unit that is located
13 outside the boundaries of the unit, are limited common elements allo-
14 cated exclusively to the unit.

15 Sec. 34.08.110. CONSTRUCTION AND VALIDITY OF DECLARATION AND
16 BYLAWS. (a) Each provision of the declaration and bylaws is sever-
17 able.

18 (b) The rule against perpetuities does not defeat any provision
19 of the declaration, bylaws, rules, or regulations adopted under AS 34.
20 08.320(a)(1).

21 (c) In a conflict between the provisions of the declaration and
22 the bylaws, the declaration prevails unless the declaration is incon-
23 sistent with this chapter.

24 (d) Title to a unit and common elements is not rendered un-
25 marketable or otherwise affected by reason of an insubstantial failure
26 of the declaration to comply with this chapter. Whether a substantial
27 failure impairs marketability is not affected by this chapter.

28 Sec. 34.08.120. DESCRIPTION OF UNITS. A description of a unit
29 that sets out the name of the common interest community, the recording

1 data for the declaration, the recording district in which the common
2 interest community is located, and the identifying number of the unit,
3 is a legally sufficient description of the unit and all rights, obli-
4 gations, and interests appurtenant to the unit that were created by
5 the declaration or bylaws.

6 Sec. 34.08.130. CONTENTS OF DECLARATION. (a) The declaration
7 must contain:

8 (1) the names of the common interest community and the
9 association and a statement that the common interest community is
10 either a condominium, cooperative, or planned community;

11 (2) the name of each recording district in which a part of
12 the common interest community is situated;

13 (3) a legally sufficient description of the real estate
14 included in the common interest community;

15 (4) a statement of the maximum number of units that the
16 declarant reserves the right to create;

17 (5) in a condominium or planned community, a description of
18 the boundaries of each unit created by the declaration, including the
19 identifying number of the unit, or in a cooperative, a description,
20 which may be by plats or plans, of each unit created by the declara-
21 tion, including the identifying number of the unit, its size or number
22 of rooms, and its location within a building if it is within a build-
23 ing containing more than one unit;

24 (6) a description of any limited common elements, other
25 than those specified in AS 34.08.100(2) and (4) or 34.08.170(b)(10)
26 and, in a planned community, any real estate that is or must become
27 common elements;

28 (7) a description of any real estate, except real estate
29 subject to development rights, that may be allocated subsequently as

1 limited common elements, other than limited common elements specified
2 in AS 34.08.100(2) and (4), together with a statement that the design-
3 nated real estate may be allocated;

4 (8) a description of any development rights or other special
5 declarant rights reserved by the declarant, together with a
6 legally sufficient description of the real estate to which each of the
7 rights applies, and a time limit within which each of the rights must
8 be exercised;

9 (9) if a development right may be exercised with respect to
10 different parcels of real estate at different times, a statement to
11 that effect together with

12 (A) either a statement fixing the boundaries of the
13 portions and regulating the order in which the portions may be
14 subjected to the exercise of each development right or a state-
15 ment that assurances are not made with regard to matters under
16 this paragraph; and

17 (B) a statement as to whether, if a development right
18 is exercised in a portion of the real estate subject to the
19 development right, the development right must be exercised in all
20 or in any other portion of the remainder of that real estate;

21 (10) any other condition or limitation under which he
22 rights described in (8) of this subsection may be exercised or will
23 lapse;

24 (11) an allocation to each unit of the allocated interests
25 in the manner described in AS 34.08.150;

26 (12) any restrictions

27 (A) on use, occupancy, and alienation of the units;

28 and

29 (B) on the amount for which a unit may be sold or on

1 the amount that may be received by a unit owner on sale, condem-
2 nation, or casualty loss to the unit or to the common interest
3 community, or on termination of the common interest community;

4 (13) the recording data for recorded easements and licenses
5 appurtenant to or included in the common interest community or to
6 which any portion of the common interest community is or may become
7 subject by virtue of a reservation in the declaration; and

8 (14) each matter required by AS 34.08.140, 34.08.150, 34.-
9 08.160, 34.08.170, 34.08.230, 34.08.240 and 34.08.330(d).

10 (b) A declaration may contain other matters the declarant con-
11 siders appropriate.

12 Sec. 34.08.140. LEASEHOLD COMMON INTEREST COMMUNITIES. (a) If
13 the expiration or termination of a lease or a memorandum of the lease
14 will terminate the common interest community or reduce its size, the
15 lease or a memorandum of the lease must be recorded. In a condominium
16 or planned community, the lessor of each lease described in this
17 subsection shall sign the declaration. The declaration must state:

18 (1) the recording data for the lease or a summary of the
19 complete lease;

20 (2) the date on which the lease is scheduled to expire;

21 (3) a legally sufficient description of the real estate
22 subject to the lease;

23 (4) any right of the unit owners to redeem the reversion
24 and the manner in which the rights may be exercised, or a statement
25 that the unit owners do not have a right to redeem the reversion;

26 (5) any right of the unit owners to remove any improvements
27 within a reasonable time after the expiration or termination of the
28 lease, or a statement that the unit owners do not have the right to
29 remove improvements after the expiration or termination of the lease;

1 and

2 (6) any right of the unit owners to renew the lease and the
3 conditions of the renewal, or a statement that the unit owners do not
4 have the right to renew the lease.

5 (b) After the declaration for a leasehold condominium or lease-
6 hold planned community is recorded, neither the lessor nor the succes-
7 sor in interest of the lessor may terminate the leasehold interest of
8 a unit owner who makes timely p ent of a unit owner's share of the
9 rent and otherwise complies with the covenants that, if violated,
10 would entitle the lessor to terminate the lease. The leasehold inter-
11 est of a unit owner in a condominium or planned community is not af-
12 fected by the failure of any other person to pay rent or fulfill a
13 covenant.

14 (c) The acquisition of the leasehold interest of a unit owner by
15 the owner of the reversion or remainder does not merge the leasehold
16 and fee simple interests unless the leasehold interests of all unit
17 owners subject to that reversion or remainder are acquired.

18 (d) If the expiration or termination of a lease decreases the
19 number of units in a common interest community, the allocated inter-
20 ests must be reallocated under AS 34.08.740(a) as if the units had
21 been taken by eminent domain. The reallocation must be confirmed by
22 an amendment to the declaration prepared, executed, and recorded by
23 the association of unit owners.

24 Sec. 34.08.150. ALLOCATION OF ALLOCATED INTERESTS. (a) The
25 declaration must allocate

26 (1) to each unit in a condominium, a fraction or percentage
27 of undivided interests in the common elements and in the common ex-
28 penses of the association and a portion of the votes in the associa-
29 tion;

1 (2) to each unit in a cooperative, an ownership interest in
2 the association, a fraction or percentage of the common expenses of
3 the association and a portion of the votes in the association; and

4 (3) to each unit in a planned community, a fraction or
5 percentage of the common expenses of the association and a portion of
6 the votes in the association.

7 (b) The declaration must state the formulas used to establish
8 allocations of interests. The allocations may not discriminate in
9 favor of units owned by the declarant or an affiliate of the decla-
10 rant.

11 (c) If a unit may be added to or withdrawn from the common
12 interest community, the declaration must state the formulas to be used
13 to reallocate the allocated interests among the units included in the
14 common interest community after the addition or withdrawal.

15 (d) The declaration may provide: (1) that different alloca-
16 tions of votes shall be made to the units on particular matters speci-
17 fied in the declaration; (2) for cumulative voting only for the pur-
18 pose of electing members of the executive board; and (3) for class
19 voting on specified issues affecting the class if necessary to protect
20 valid interests of the class. A declarant may not utilize cumulative
21 or class voting for the purpose of evading any limitation imposed on
22 declarants by this chapter nor may units constitute a class because
23 they are owned by a declarant.

24 (e) Except for minor variations due to rounding, the sum of the
25 common expense liabilities and, in a condominium, the sum of the
26 undivided interests in the common elements allocated at any time to
27 all the units must each equal one if stated as a fraction or 100
28 percent if stated as a percentage. In the event of discrepancy be-
29 tween an allocated interest and the result derived from application of

1 the pertinent formula, the allocated interest prevails.

2 (f) In a condominium, the common elements are not subject to
3 partition, and any purported conveyance, encumbrance, judicial sale,
4 or other voluntary or involuntary transfer of an undivided interest in
5 the common elements made without the unit to which that interest is
6 allocated is void.

7 (g) In a cooperative, any purported conveyance, encumbrance,
8 judicial sale, or other voluntary or involuntary transfer of an owner-
9 ship interest in the association made without the possessory interest
10 in the unit to which that interest is related is void.

11 Sec. 34 08.160. LIMITED COMMON ELEMENTS. (a) Except for the
12 limited common elements described in AS 34.08.100(2) and (4), the
13 declaration must specify to which unit or units each limited common
14 element is allocated. An allocation may not be altered without the
15 consent of the unit owners whose units are affected.

16 (b) Except as the declaration otherwise provides, a limited
17 common element may be reallocated by an amendment to the declaration
18 executed by the unit owners between or among whose units the realloca-
19 tion is made. The persons executing the amendment shall provide a
20 copy of the amendment to the association, which shall record it. The
21 amendment must be recorded in the names of the parties and the common
22 interest community.

23 (c) A common element not previously allocated as a limited
24 common element may be allocated as a limited common element only under
25 provisions in the declaration adopted under AS 34.08.130(a)(7). The
26 allocation must be made by an amendment to the declaration.

27 Sec. 34.08.170. PLATS AND PLANS. (a) Plats and plans are a
28 part of the declaration and are required for all common interest
29 communities except cooperatives. Separate plats and plans are not

1 required by this chapter if the information required by this section
2 is contained in either a plat or plan. Each plat and plan must be
3 clear and legible and contain a certification that the plat or plan
4 contains the information required by this section.

5 (b) Each plat must show:

6 (1) the name and a survey or general schematic map of the
7 entire common interest community;

8 (2) the location and dimensions of the real estate not
9 subject to development rights or subject only to the development right
10 to withdraw, and the location and dimensions of each existing improve-
11 ment within the real estate;

12 (3) a legally sufficient description of the real estate
13 subject to development rights, labeled to identify the rights applica-
14 ble to each parcel;

15 (4) the extent of each encroachment by or upon a portion of
16 the common interest community;

17 (5) to the extent feasible, a legally sufficient descrip-
18 tion of each easement serving or burdening a portion of the common
19 interest community;

20 (6) the location and dimensions of any vertical unit bound-
21 aries not shown or projected on plans recorded under (d) of this
22 section and the identifying number of the unit;

23 (7) the location with reference to an established datum of
24 any horizontal unit boundaries not shown or projected on plans re-
25 corded under (d) of this section and the identifying number of the
26 unit;

27 (8) a legally sufficient description of any real estate in
28 which the unit owners will own only an estate for years, labeled as
29 "leasehold real estate";

1 (9) the distance between noncontiguous parcels of real
2 estate comprising the common interest community;

3 (10) the location and dimensions of limited common elements,
4 including porches, decks, balconies and patios, other than parking
5 spaces and the other limited common elements described in AS 34.08.-
6 100(2) and (4);

7 (11) in the case of real estate not subject to development
8 rights, all other matters customarily shown on land surveys.

9 (c) A plat may also show the intended location and dimensions of
10 a contemplated improvement to be constructed within the common inter-
11 est community. A contemplated improvement shown must be labeled
12 either "MUST BE BUILT" or "NEED NOT BE BUILT".

13 (d) To the extent not shown or projected on the plats, plans of
14 the units must show or project:

15 (1) the location and dimensions of the vertical boundaries
16 of each unit, and the identifying number of the unit;

17 (2) any horizontal unit boundaries, with reference to an
18 established datum, and the identifying number of the unit; and

19 (3) each unit in which the declarant has reserved the right
20 to create additional units or common elements, identified appropri-
21 ately.

22 (e) Unless the declaration provides otherwise, the horizontal
23 boundaries of part of a unit located outside a building have the same
24 elevation as the horizontal boundaries of the inside part and need not
25 be depicted on the plats and plans.

26 (f) Upon the exercise of any development right, the declarant
27 shall either record new plats and plans necessary to conform to the
28 requirements of (a), (b), and (d) of this section, or record new
29 certifications of plats and plans previously recorded if the plats and

1 plans otherwise conform to the requirements of (a), (b), and (d) of
2 this section.

3 (g) Any certification of a plat or plan required by this section
4 or AS 34.08.090(b) must be made by an independent registered surveyor,
5 architect, or engineer.

6 Sec. 34.08.180. EXERCISE OF DEVELOPMENT RIGHTS. (a) To exer-
7 cise a development right reserved under AS 34.08.130(a)(8), a decla-
8 rant shall prepare, execute, and record an amendment to the declara-
9 tion and, in a condominium or planned community, comply with AS 34.-
10 08.170. The declarant is the unit owner of the units created under
11 the amendment. The amendment to the declaration must assign an iden-
12 tifying number to each new unit created, and, except in the case of
13 subdivision or conversion of units described in (b) of this section,
14 reallocate the allocated interests among all units. The amendment
15 must describe any common elements and any limited common elements
16 created under the amendment and, in the case of limited common ele-
17 ments, designate the unit to which each is allocated to the extent
18 required by AS 34.08.160.

19 (b) A development right may be reserved within any real estate
20 added to the common interest community if the amendment adding the
21 real estate includes the matters required by AS 34.08.130 or 34.08.-
22 140, and, in a condominium or planned community, if the plats and
23 plans include the matters required by AS 34.08.170. This provision
24 does not extend the time limit on the exercise of development rights
25 imposed by the declaration under AS 34.08.130(a)(8).

26 (c) Whenever a declarant exercises a development right to subdi-
27 vide or convert a unit previously created into additional units,
28 common elements, or both:

29 (1) if the declarant converts the unit entirely to common

1 elements, the amendment to the declaration must reallocate all the
2 allocated interests of the unit among the other units as if that unit
3 had been taken by eminent domain; and

4 (2) if the declarant subdivides the unit into two or more
5 units, whether or not any part of the unit is converted into common
6 elements, the amendment to the declaration must reallocate all the
7 allocated interests of the unit among the units created by the subdivi-
8 sion in any reasonable manner prescribed by the declarant.

9 (d) If the declaration under AS 34.08.130(a)(8) provides that
10 all or a portion of the real estate is subject to a right of withdraw-
11 al:

12 (1) if all of the real estate is subject to withdrawal and
13 the declaration does not describe separate portions of real estate
14 subject to the right, none of the real estate may be withdrawn after a
15 unit has been conveyed to a purchaser; and

16 (2) if a portion is subject to withdrawal, it may not be
17 withdrawn after a unit in the portion has been conveyed to a pur-
18 chaser.

19 Sec. 34.08.190. ALTERATIONS OF UNITS. Subject to the provisions
20 of the declaration and other provisions of law, a unit owner (1) may
21 make an improvement or alteration to the unit that does not impair the
22 structural integrity or mechanical systems or lessen the support of a
23 portion of the common interest community; (2) may not change the
24 appearance of the common elements or the exterior appearance of a unit
25 or any portion of the common interest community without permission of
26 the association; (3) after acquiring an adjoining unit or an
27 adjoining part of an adjoining unit, may remove or alter an
28 intervening partition or create apertures in the partition even if the
29 partition in whole or in part is a common element, if the removal or

1 alteration does not impair the structural integrity or mechanical
2 systems or lessen the support of a portion of the common interest
3 community and is completed according to applicable codes and in a
4 workmanlike manner. Removal of partitions or creation of apertures
5 under this paragraph is not an alteration of boundaries.

6 Sec. 34.08.200. RELOCATION OF BOUNDARIES BETWEEN ADJOINING
7 UNITS. (a) Subject to the provisions of the declaration and other
8 provisions of law, the boundaries between adjoining units may be
9 relocated by an amendment to the declaration upon application to the
10 association by the owners of the units. If the owners of the ad-
11 joining units have specified a reallocation between their units of
12 their allocated interests, the application must state the proposed
13 reallocations. Unless the executive board determines within 30 days
14 that the reallocations are unreasonable, the association shall prepare
15 an amendment that identifies the units involved and states the reallo-
16 cations. The amendment must be executed by those unit owners, contain
17 words of conveyance between them, and, on recording, be indexed in the
18 name of the grantor, the grantee, and the association.

19 (b) The association

20 (1) in a condominium or planned community shall prepare and
21 record plats or plans necessary to show the altered boundaries between
22 adjoining units, and their dimensions and identifying numbers; and

23 (2) in a cooperative shall prepare and record amendments to
24 the declaration, including any plans, necessary to show or describe
25 the altered boundaries between adjoining units, and their dimensions
26 and identifying numbers.

27 Sec. 34.08.210. SUBDIVISION OF UNITS. (a) If the declaration
28 expressly permits it, a unit may be subdivided into two or more units.
29 Upon application of a unit owner to subdivide a unit, the association

1 shall, subject to the provisions of the declaration and other pro-
2 visions of law, prepare, execute, and record an amendment to the
3 declaration, including in a condominium or planned community the plats
4 and plans, subdividing the unit.

5 (b) The amendment to the declaration must be executed by the
6 owner of the unit to be subdivided, assign an identifying number to
7 each unit created, and reallocate the allocated interests formerly
8 allocated to the subdivided unit to the new units in any reasonable
9 manner prescribed by the owner of the subdivided unit.

10 Sec. 34.08.220. EASEMENT FOR ENCROACHMENTS. If a unit or common
11 element encroaches on another unit or common element, a valid easement
12 for the encroachment exists. The easement does not relieve a unit
13 owner of liability in case of wilful misconduct nor relieve a declar-
14 ant or any other person of liability for failure to adhere to any
15 plats and plans or, in a cooperative, to any representation in the
16 public offering statement.

17 Sec. 34.08.230. USE FOR SALES PURPOSES. (a) A declarant may
18 maintain sales offices, management offices, and models in units or on
19 common elements in the common interest community only if the declara-
20 tion permits it and specifies the rights of a declarant with regard to
21 their number, size, location, and relocation. In a cooperative or
22 condominium, a sales office, management office, or model not desig-
23 nated a unit by the declaration is a common element. A declarant who
24 ceases to be a unit owner ceases to have any rights under this section
25 unless the unit is removed promptly from the common interest community
26 under a right to remove reserved in the declaration. A declarant may
27 maintain signs on the common elements advertising the common interest
28 community subject to any limitations in the declaration.

29 (b) Rights granted under this section are subject to state law

1 and to municipal ordinances.

2 Sec. 34.08.240. EASEMENT RIGHTS. (a) Subject to the provisions
3 of the declaration, a declarant has an easement through the common
4 elements as may be reasonably necessary for the purpose of discharging
5 the declarant's obligations or exercising special declarant rights,
6 whether arising under this chapter or reserved in the declaration.

7 (b) In a planned community, subject to the provisions of AS 34.-
8 08.320(a)(6) and 34.08.430, a unit owner has an easement

9 (1) in the common elements for purposes of access to their
10 units; and

11 (2) to use the common elements and all real estate that
12 must become common elements for all other purposes.

13 Sec. 34.08.250. AMENDMENT OF DECLARATION. (a) Except for
14 amendments that may be executed by a declarant under AS 34.08.170(b)
15 or 34.08.180, or by the association under AS 34.08.140(d), 34.08.-
16 160(c), 34.08.200(a), 34.08.210, or 34.08.740, or by certain unit
17 owners under AS 34.08.160(b), 34.08.200(a), 34.08.210(b), or 34.08.-
18 260(b), and except as limited by (c) of this section, a declaration,
19 including any required plats and plans, may be amended only by vote or
20 agreement of unit owners of units comprising either at least 67 per-
21 cent of the allocated interests in the association or a larger per-
22 centage specified in the declaration. A declaration may not specify a
23 smaller number unless all of the units are restricted exclusively to
24 nonresidential use.

25 (b) An action to challenge the validity of an amendment adopted
26 by the association under this section may not be brought more than one
27 year after the amendment is recorded.

28 (c) Each amendment to the declaration must be recorded in each
29 recording district in which a portion of the common interest community

1 is located and the amendment is effective only upon recording. An
2 amendment, except an amendment under AS 34.08.200(a), must be indexed
3 in the name of the common interest community and the association and
4 in the name of the parties executing the amendment.

5 (d) Except to the extent expressly permitted or required by
6 other provisions of this chapter, an amendment may not create or
7 increase special declarant rights, increase the number of units,
8 change the boundaries of a unit, the allocated interests of a unit, or
9 the uses to which a unit is restricted, in the absence of unanimous
10 consent of the unit owners.

11 (e) An amendment to the declaration required by this chapter to
12 be recorded by the association must be prepared, executed, recorded,
13 and certified on behalf of the association by an officer of the asso-
14 ciation designated for that purpose or, in the absence of designation,
15 by the president of the association.

16 Sec. 34.08.260. TERMINATION OF COMMON INTEREST COMMUNITY. (a)
17 Unless all units are taken by eminent domain, or unless there has been
18 a foreclosure of a security interest that has priority over the decla-
19 ration against an entire cooperative, a common interest community may
20 be terminated only by agreement of unit owners of units comprising
21 either at least 80 percent of the votes in the association or any
22 larger percentage specified in the declaration. The declaration may
23 specify a smaller percentage only if all of the units are restricted
24 exclusively to nonresidential uses.

25 (b) An agreement to terminate must be evidenced by the execution
26 of a termination agreement or ratification of an agreement to termi-
27 nate, in the same manner as a deed is executed by the required number
28 of unit owners. The termination agreement must specify a date after
29 which the agreement will be void unless it is recorded before that

1 date. A termination agreement and each ratification of the termina-
2 tion agreement must be recorded in each recording district in which a
3 portion of the common interest community is situated. A termination
4 agreement is effective only upon recording.

5 (c) If a condominium or planned community contains only units
6 having horizontal boundaries described in the declaration, a termina-
7 tion agreement may provide that all of the common elements and units
8 of the common interest community must be sold following termination.
9 If, under the agreement, any real estate in the common interest commu-
10 nity is to be sold following termination, the termination agreement
11 must set out the minimum terms of the sale.

12 (d) If a condominium or planned community contains a unit not
13 having horizontal boundaries described in the declaration, a termina-
14 tion agreement may provide for sale of the common elements, but it may
15 not require that the unit be sold following termination unless the
16 declaration as originally recorded provided otherwise or unless all
17 unit owners consent to the sale.

18 (e) The association, on behalf of the unit owners, may contract
19 for the sale of real estate in a common interest community, but the
20 contract is not binding on the unit owners until approved under (a)
21 and (b) of this section. If real estate is to be sold following
22 termination, title to the real estate, upon termination, vests in the
23 association as trustee for the holders of all interests in the units.
24 The association has at that time all powers necessary and appropriate
25 to effect the sale. Until the sale has been concluded and the pro-
26 ceeds of the sale distributed, the association continues in existence
27 with all powers it had before termination. Proceeds of the sale must
28 be distributed to unit owners and lien holders as their interests may
29 appear under (h), (i), and (j) of this section. Unless otherwise

1 specified in the termination agreement, as long as the association
2 holds title to the real estate, each unit owner and the successor in
3 interest of each unit owner has an exclusive right to occupancy of the
4 portion of the real estate that formerly constituted the unit. During
5 the period of that occupancy, each unit owner and the successors in
6 interest of each unit owner remain liable for all assessments and
7 other obligations imposed on unit owners by this chapter or the decla-
8 ration.

9 (f) In a condominium or planned community, if the real estate
10 constituting the common interest community is not to be sold following
11 termination, title to the common elements and, in a common interest
12 community containing only units having horizontal boundaries described
13 in the declaration, title to all the real estate in the common inter-
14 est community, vests in the unit owners upon termination as tenants in
15 common in proportion to their respective interests under (j) of this
16 section, and liens on the units shift accordingly. While the tenancy
17 in common exists, each unit owner and the successors in interest of
18 each unit owner has an exclusive right to occupancy of the portion of
19 the real estate that formerly constituted the unit.

20 (g) Following termination of the common interest community, the
21 proceeds of any sale of real estate, together with the assets of the
22 association, are held by the association as trustee for unit owners
23 and holders of liens on the units as their interests may appear.

24 (h) Following termination of a condominium or planned community,
25 a creditor of the association holding a lien on the units that was
26 reduced to judgment and recorded before termination, may enforce the
27 lien in the same manner as any other lien holder. Each other creditor
28 of the association shall be treated as if the creditor had perfected a
29 lien on the units immediately before termination.

1 (i) In a cooperative, the declaration may provide that each
2 creditor of the association has priority over the interests of unit
3 owners and creditors of unit owners. In that event, following termi-
4 nation, a creditor of the association holding a lien on the coopera-
5 tive that was reduced to judgment and recorded before termination may
6 enforce the lien in the same manner as a lien holder, and each other
7 creditor of the association shall be treated as if the creditor had
8 perfected a lien against the cooperative immediately before termina-
9 tion. Unless the declaration provides that all creditors of the
10 association have that priority (1) the lien of each creditor of the
11 association that was perfected against the association before termi-
12 nation becomes, upon termination, a lien against the interest of each
13 unit owner in the unit as of the date the lien was perfected; (2) any
14 other creditor of the association shall be treated upon termination as
15 if the creditor had perfected a lien against the interest of each unit
16 owner immediately before termination; (3) the amount of the lien of an
17 association's creditor described in (1) and (2) of this subsection
18 against the interest of each unit owner must be proportionate to the
19 ratio which the common expense liability of each unit bears to the
20 common expense liability of all of the units; (4) the lien of each
21 creditor of each unit owner that was perfected before termination
22 continues as a lien against the unit as of the date the lien was
23 perfected; and (5) the assets of the association must be distributed
24 to each unit owner and each lien holder as their interests may appear
25 in the order described in this section. Creditors of the association
26 are not entitled to payment from a unit owner in excess of the amount
27 of the creditor's lien against the interest of the unit owner.

28 (j) The respective interests of each unit owner referred to in
29 (e) - (i) of this section are as follows:

1 (1) except as provided in (2) of this subsection, the
2 respective interest of each unit owner is the fair market value of the
3 unit, allocated interests, and any limited common elements immediately
4 before the termination, as determined by one or more independent
5 appraisers selected by the association; the decision of the indepen-
6 dent appraisers must be distributed to the unit owners and becomes
7 final unless disapproved within 30 days after distribution by unit
8 owners of units comprising 25 percent of the allocated interests in
9 the association; the proportion of each unit owner's interest to that
10 of all unit owners is determined by dividing the fair market value of
11 the unit and its allocated interests by the total fair market value of
12 all units and their allocated interests;

13 (2) if a unit or a limited common element is destroyed to
14 the extent that an appraisal of the fair market value of the unit or
15 the limited common interest before destruction cannot be made, the
16 interests of all unit owners are:

17 (A) in a condominium, their respective common element
18 interests immediately before the termination;

19 (B) in a cooperative, their respective ownership
20 interests immediately before the termination; and

21 (C) in a planned community, their respective common
22 expense liabilities immediately before the termination.

23 (k) In a condominium or planned community, except as provided in
24 (1) of this section, foreclosure or enforcement of a lien or encum-
25 brance against the entire common interest community does not, of
26 itself, terminate the common interest community, and foreclosure or
27 enforcement of a lien or encumbrance against a portion of the common
28 interest community, other than withdrawable real estate, does not
29 withdraw the portion from the common interest community. Foreclosure

1 or may be delegated to a profit or nonprofit corporation that exer-
2 cises those or other powers on behalf of one or more common interest
3 communities or for the benefit of the unit owners of one or more
4 common interest communities, each provision of this chapter applicable
5 to a unit owners' association applies to the corporation, except as
6 modified by this section.

7 (b) Unless it is acting in the capacity of an association de-
8 scribed in AS 34.08.310, a master association may exercise the powers
9 set out in AS 34.08.320(a)(2) only to the extent expressly permitted
10 in the declarations of common interest communities that are part of
11 the master association or expressly described in the delegation of
12 power from the common interest communities to the master association.

13 (c) If the declaration of a common interest community provides
14 that the executive board may delegate certain powers to a master
15 association, the members of the executive board of the common interest
16 community are not liable for an act or omission of the master associa-
17 tion with respect to the delegated powers following the delegation.

18 (d) The rights and responsibilities of unit owners with respect
19 to the unit owners' association under AS 34.08.330, 34.08.390, 34.08.-
20 400, 34.08.410, and 34.08.430 apply in the conduct of the affairs of a
21 master association only to persons who elect the board of a master
22 association, whether or not those persons are otherwise unit owners
23 within the meaning of this chapter.

24 (e) If a master association is also an association described in
25 AS 34.08.310, the certificate of incorporation or other instrument
26 creating the master association and each declaration of a common
27 interest community that had assigned powers by the declaration or that
28 has delegated powers to the master association, may provide that the
29 executive board of the master association must be elected after the

1 period of declarant control in one of the following ways:

2 (1) each unit owner of all common interest communities
3 subject to the master association may elect all members of the execu-
4 tive board of the master association;

5 (2) the members of the executive boards of all common
6 interest communities subject to the master association may elect the
7 members of the executive board of the master association;

8 (3) the unit owners of each common interest community
9 subject to the master association may elect specified members of the
10 executive board of the master association;

11 (4) the members of the executive board of each common
12 interest community subject to the master association may elect speci-
13 fied members of the executive board of the master association.

14 Sec. 34.08.290. MERGER OR CONSOLIDATION OF COMMON INTEREST
15 COMMUNITIES. (a) Any two or more common interest communities of the
16 same form of ownership, by agreement of the unit owners under (b) of
17 this section, may be merged or consolidated into a single common
18 interest community. On the merger or consolidation, unless the agree-
19 ment otherwise provides, the resulting common interest community is
20 the legal successor, for all purposes, of the preexisting common
21 interest communities, and the operations and activities of each asso-
22 ciation of the preexisting common interest communities are merged or
23 consolidated into a single association that holds all powers, rights,
24 obligations, assets, and liabilities of all preexisting associations.

25 (b) An agreement of two or more common interest communities to
26 merge or consolidate under (a) of this section must be evidenced by an
27 agreement prepared, executed, recorded, and certified by the president
28 of the association of each of the preexisting common interest communi-
29 ties following approval by owners of units comprising the percentage

1 of votes in each common interest community required to terminate the
2 common interest community. The agreement must be recorded in each
3 recording district in which a portion of the common interest community
4 is located and is not effective until recorded.

5 (c) Each merger or consolidation agreement must provide for the
6 reallocation of the allocated interests in the new association among
7 the units of the resultant common interest community either (1) by
8 stating the reallocations or the formulas upon which they are based or
9 (2) by stating the percentage of overall allocated interests of the
10 new common interest community that are allocated to all of the units
11 comprising each of the preexisting common interest communities, and
12 providing that the portion of the percentages allocated to each unit
13 formerly comprising a part of the preexisting common interest communi-
14 ty must be equal to the percentages of allocated interests allocated
15 to the unit by the declaration of the preexisting common interest
16 community.

17 Sec. 34.08.300. ADDITION OF UNSPECIFIED REAL ESTATE. In a
18 planned community, if the right is originally reserved in the declara-
19 tion, the declarant, in addition to any other development right, may
20 amend the declaration at any time during as many years as are speci-
21 fied in the declaration for adding additional real estate to the
22 planned community without describing the location of the real estate
23 in the original declaration. The amount of real estate added to the
24 planned community under this section may not exceed 10 percent of the
25 real estate described in AS 34.08.130(a)(3) and the declarant may not
26 in any event increase the number of units in the planned community
27 beyond the number stated in the original declaration under AS 34.08.-
28 130(a)(5).

29 ARTICLE 3. MANAGEMENT OF THE COMMON INTEREST COMMUNITY.

1 Sec. 34.08.310. ORGANIZATION OF UNIT OWNERS' ASSOCIATION. An
2 association of unit owners must be organized no later than the date on
3 which the first unit in the common interest community is conveyed.
4 The membership of the association at all times consists exclusively of
5 all unit owners or, following termination of the common interest
6 community, of all former unit owners entitled to distributions of
7 proceeds under AS 34.08.260 or their heirs, successors, or assigns.
8 The association must be organized as a profit or nonprofit corpora-
9 tion, trust, or partnership.

10 Sec. 34.08.320. POWERS OF UNIT OWNERS' ASSOCIATION. (a) Except
11 as provided in (b) of this section and subject to the provisions of
12 the declaration, the association may:

- 13 (1) adopt and amend bylaws and rules and regulations;
- 14 (2) adopt and amend budgets for revenues, expenditures, and
15 reserves and collect assessments for common expenses from unit owners;
- 16 (3) hire and discharge managing agents and other employees,
17 agents, and independent contractors;
- 18 (4) institute, defend, or intervene in litigation or ad-
19 ministrative proceedings or seek injunctive relief for violations of
20 its declaration, bylaws or rules in its own name on behalf of itself
21 or two or more unit owners on matters affecting the common interest
22 community;
- 23 (5) make contracts and incur liabilities;
- 24 (6) regulate the use, maintenance, repair, replacement, and
25 modification of common elements;
- 26 (7) cause additional improvements to be made as a part of
27 the common elements;
- 28 (8) acquire, hold, encumber, and convey in its own name any
29 right, title, or interest to real estate or personal property, except

1 that

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

5 (B) part of a cooperative may be conveyed or all or
6 part of a cooperative may be subjected to a security interest
7 only under AS 34.08.430;

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

10 (10) impose and receive a payment, fee, or charge for the
11 use, rental, or operation of the common elements, other than limited
12 common elements described in AS .4.08.100(2) and (4), and for services
13 provided to unit owners;

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

18 (12) impose a reasonable charge for the preparation and
19 recording of an amendment to the declaration, resale certificate
20 required by AS 34.08.590, or a statement of unpaid assessments;

21 (13) provide for the indemnification of its officers and
22 executive board and maintain directors' and officers' liability insur-
23 ance;

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

27 (15) exercise any other powers conferred by the declaration
28 or bylaws;

29 (16) exercise any other power that may be exercised in the

1 state by a legal entity of the same type as the association; and

2 (17) exercise any other power necessary and proper for the
3 governance and operation of the association.

4 (b) The declaration may not impose limitations on the power of
5 the association to deal with the declarant that are more restrictive
6 than the limitations imposed on the power of the association to deal
7 with other persons.

8 Sec. 34.08.330. EXECUTIVE BOARD MEMBERS AND OFFICERS. (a)
9 Except as provided in the declaration, the bylaws, (b) of this sec-
10 tion, or other provisions of this chapter, the executive board may act
11 in all instances on behalf of the association. In the performance of
12 their duties, the officers and members of the executive board are
13 required to exercise the care required of fiduciaries of the unit
14 owners.

15 (b) The executive board may not act on behalf of the association
16 to amend the declaration, to terminate the common interest community,
17 or to elect members of the executive board or determine the qualifica-
18 tions, powers and duties, or terms of office of executive board mem-
19 bers, but the executive board may fill vacancies in its membership for
20 the unexpired portion of a term.

21 (c) Within 30 days after adoption of a proposed budget for the
22 common interest community, the executive board shall provide a summary
23 of the budget to each unit owner, and shall set a date for a meeting
24 of the unit owners to consider ratification of the budget not less
25 than 14 nor more than 30 days after mailing of the summary. Unless at
26 that meeting a majority of all unit owners or any larger vote spec-
27 ified in the declaration reject the budget, the budget is ratified,
28 whether or not a quorum is present. If the proposed budget is reject-
29 ed, the periodic budget last ratified by the unit owners continues

1 until the unit owners ratify a budget proposed by the executive board.

2 (d) Subject to (e) of this section, the declaration may provide
3 for a period of declarant control of the association, during which a
4 declarant or persons designated by the declarant may appoint and
5 remove the officers and members of the executive board. Regardless of
6 the period provided in the declaration, a period of declarant control
7 terminates no later than the earlier of: (1) 60 days after conveyance
8 of 75 percent of the units that may be created to unit owners other
9 than a declarant; (2) two years after all declarants have ceased to
10 offer units for sale in the ordinary course of business; or (3) two
11 years after any right to add new units was last exercised. A de-
12 clarant may voluntarily surrender the right to appoint and remove
13 officers and members of the executive board before termination of the
14 periods established in this subsection, but in that event the de-
15 clarant may require, for the duration of the period of declarant
16 control, that specified actions of the association or executive board,
17 as described in a recorded instrument executed by the declarant, be
18 approved by the declarant before they become effective.

19 (e) Not later than 60 days after conveyance of 25 percent of the
20 units that may be created to unit owners other than a declarant, at
21 least one member and not less than 25 percent of the members of the
22 executive board must be elected by unit owners other than the decla-
23 rant. Not later than 60 days after conveyance of 50 percent of the
24 units that may be created to unit owners other than a declarant, not
25 less than 33 1/3 percent of the members of the executive board must be
26 elected by unit owners other than the declarant.

27 (f) Except as otherwise provided in AS 34.08.280(e), not later
28 than the termination of any period of declarant control, the unit
29 owners shall elect an executive board of at least three members, at

1 least a majority of whom must be unit owners. The executive board
2 shall elect the officers. The executive board members and officers
3 shall take office upon election.

4 (g) Notwithstanding any provision of the declaration or bylaws
5 to the contrary, following notice under AS 34.08.390, the unit owners,
6 by a two-thirds vote of all persons present and entitled to vote at a
7 meeting of the unit owners at which a quorum is present, may remove a
8 member of the executive board with or without cause, other than a
9 member appointed by the declarant.

10 Sec. 34.08.340. TRANSFER OF ASSOCIATION CONTROL. (a) Before,
11 or not more than 60 days after, the time that a unit owner other than
12 the declarant elects a majority of the members of the executive board
13 of a common interest community, the declarant shall relinquish control
14 of the common interest community and the unit owners shall accept
15 control. At the same time, the declarant shall deliver to the common
16 interest community all property of the unit owners and of the common
17 interest community held or controlled by the declarant including, but
18 not limited to, the following items:

19 (1) the original or a photocopy of the recorded declaration
20 and each amendment to the declaration; if a photocopy is provided, it
21 shall be certified by affidavit of the declarant, or an officer or
22 agent of the declarant, as being a complete copy of the actual record-
23 ed declaration;

24 (2) a certified copy of the common interest community
25 articles of incorporation, trust or partnership agreement;

26 (3) a copy of the bylaws;

27 (4) the minute books, including all minutes, and other
28 books and records of the common interest community;

29 (5) any rules and regulations that have been adopted;

1 (6) resignations of officers and members of the executive
2 board who are required to resign because the declarant is required to
3 relinquish control of the common interest community;

4 (7) the financial records, including financial statements
5 of the common interest community, and source documents since the
6 incorporation of the common interest community through the date of
7 turnover;

8 (8) common interest community funds or control of the funds
9 of the common interest community;

10 (9) all tangible personal property that is property of the
11 common interest community, represented by the declarant to be part of
12 the common elements or ostensibly part of the common elements, and an
13 inventory of the property;

14 (10) a copy of the plans and specifications utilized in the
15 construction or remodeling of improvements and the supplying of equip-
16 ment to the common interest community and in the construction and
17 installation of all mechanical components serving the improvements and
18 the site, with a certificate in affidavit form of the declarant or an
19 architect or engineer authorized to practice in the state that the
20 plans and specifications represent, to the best of their knowledge and
21 belief, the actual plans and specifications utilized in the construc-
22 tion and improvement of the common interest community property and for
23 the construction and installation of the mechanical components serving
24 the improvements;

25 (11) insurance policies;

26 (12) copies of any certificates of occupancy that may have
27 been issued for the common interest community property;

28 (13) any other permits issued by governmental bodies appli-
29 cable to the common interest community property in force or issued

1 within one year before the date the unit owners other than the de-
2 clarant take control of the common interest community;

3 (14) all written warranties of the contractor, subcontrac-
4 tors, suppliers, and manufacturers, if any, that are still effective;

5 (15) a roster of unit owners and their addresses and tele-
6 phone numbers, if known, as shown on the declarant's records;

7 (16) leases of the common elements and other leases to which
8 the association is a party;

9 (17) employment contracts or service contracts in which the
10 common interest community is one of the contracting parties or service
11 contracts in which the common interest community or the unit owners
12 have an obligation or responsibility, directly or indirectly, to pay
13 some or all of the fee or charge of the person performing the service;

14 (18) all other contracts to which the common interest commu-
15 nity is a party.

16 (b) The records shall be reviewed by an independent certified
17 public accountant. The minimum report required shall be a review in
18 accordance with generally accepted accounting standards as defined by
19 regulation by the Board of Public Accountancy. The accountant per-
20 forming the review shall examine to the extent necessary supporting
21 documents and records, including the cash disbursements and related
22 paid invoices to determine if expenditures were for the common inter-
23 est community purposes and the billings, cash receipts, and related
24 records to determine that the declarant was charged and paid the
25 proper amounts of assessments.

26 (c) Before the transfer of control from the declarant to the
27 association an inspection of the common areas and limited common areas
28 subject to the association's control shall be completed by a certified
29 architect or engineer. A report shall be prepared indicating the

1 incomplete work and repairs needed and the method of completing the
2 work and making the repairs. The transfer of control to the associa-
3 tion shall be based upon the declarant's obligation to complete all
4 repairs and finish all incomplete work within a reasonable time after
5 transfer of control.

6 Sec. 34.08.350. TRANSFER OF SPECIAL DECLARANT RIGHTS. (a) A
7 special declarant right created or reserved under this chapter may be
8 transferred only by an instrument evidencing the transfer that has
9 been recorded in each recording district in which any portion of the
10 common interest community is located. The instrument is not effective
11 unless executed by the transferee.

12 (b) Upon transfer of any special declarant right, the liability
13 of a transferor declarant is as follows:

14 (1) a transferor is not relieved of an obligation or lia-
15 bility arising before the transfer and remains liable for warranty
16 obligations imposed by this chapter; lack of privity does not deprive
17 a unit owner of standing to maintain an action to enforce an obliga-
18 tion of the transferor;

19 (2) if a successor to a special declarant right is an
20 affiliate of a declarant, the transferor is jointly and severally
21 liable with the successor for an obligation or liability of the suc-
22 cessor relating to the common interest community;

23 (3) if a transferor retains a special declarant right but
24 transfers other special declarant rights to a successor who is not an
25 affiliate of the declarant, the transferor is liable for an obligation
26 or liability imposed on a declarant by this chapter or by the declara-
27 tion relating to the retained special declarant right and arising
28 after the transfer;

29 (4) a transferor is not liable for any act or omission or

1 any breach of a contractual or warranty obligation arising from the
2 exercise of a special declarant right by a successor declarant who is
3 not an affiliate of the transferor.

4 (c) Unless otherwise provided in a mortgage instrument, deed of
5 trust, or other agreement creating a security interest, on the fore-
6 closure of a security interest, sale by a trustee under an agreement
7 creating a security interest, tax sale, judicial sale, or sale under
8 Bankruptcy Act or receivership proceedings of a unit owned by a de-
9 clarant or of real estate in a common interest community subject to
10 development rights, the person acquiring title to the property being
11 foreclosed or sold, but only upon the request of the person, succeeds
12 either (1) to the special declarant rights related to the property
13 held by the declarant, or (2) only to any rights reserved in the
14 declaration under AS 34.08.230 and held by that declarant to maintain
15 models, sales offices, and signs. The judgment or instrument convey-
16 ing title must provide for transfer of only the special declarant
17 rights requested.

18 (d) Upon foreclosure of a security interest, sale by a trustee
19 under an agreement creating a security interest, tax sale, judicial
20 sale, or sale under Bankruptcy Act or receivership proceedings, of the
21 interests in a common interest community owned by a declarant:

22 (1) the declarant ceases to have special declarant rights,
23 and

24 (2) the period of declarant control terminates unless the
25 judgment or instrument conveying title provides for transfer of the
26 special declarant rights held by the declarant to a successor declar-
27 ant.

28 (e) The liabilities and obligations of a person who succeeds to
29 special declarant rights are as follows:

1 (1) a successor to any special declarant right who is an
2 affiliate of a declarant is subject to the obligations and liabilities
3 imposed on the transferor by this chapter or by the declaration;

4 (2) a successor to any special declarant right, other than
5 a successor described in (3) or (4) of this subsection or a successor
6 who is an affiliate of a declarant, is subject to the obligations and
7 liabilities imposed by this chapter or the declaration

8 (A) on a declarant that relate to the successor's
9 exercise or nonexercise of special declarant rights; or

10 (B) on the transferor, other than:

11 (i) misrepresentations by a previous declarant;

12 (ii) warranty obligations on improvements made by
13 a previous declarant or made before the common interest
14 community was created;

15 (iii) breach of a fiduciary obligation by a previ-
16 ous declarant or the appointees of a previous declarant to
17 the executive board; or

18 (iv) a liability or obligation imposed on the
19 transferor as a result of the acts or omissions of the
20 transferor after the transfer;

21 (3) a successor to a right reserved in the declaration only
22 to maintain models, sales offices, and signs may not exercise any
23 other special declarant right and is not subject to liability or
24 obligation as a declarant except the obligation to provide a public
25 offering statement, and any liability arising as a result of the
26 statement;

27 (4) a successor to the special declarant rights held by a
28 transferor who succeeded to the rights under a deed or other instru-
29 ment of conveyance in lieu of foreclosure or under a judgment or

1 instrument conveying title under (c) of this section may declare in a
2 recorded instrument an intention to hold the rights solely for trans-
3 fer to another person; until transferring the special declarant rights
4 to a person acquiring title to a unit or real estate subject to de-
5 velopment rights owned by the successor, or until recording an instru-
6 ment permitting exercise of all those rights, the successor may not
7 exercise any of the rights other than a right held by the transferor
8 of the successor to control the executive board under AS 34.08.330(d)
9 for the duration of any period of declarant control and an attempted
10 exercise of the rights is void; so long as a successor declarant may
11 not exercise special declarant rights under this subsection, the
12 successor declarant is not subject to liability or obligation as a
13 declarant other than liability for acts and omissions under AS 34.08.-
14 330(d).

15 (f) Nothing in this section subjects a successor to a special
16 declarant right to a claim against or other obligation of a transferor
17 declarant, other than a claim or obligation arising under this chapter
18 or the declaration.

19 Sec. 34.08.360. TERMINATION OF CONTRACTS AND LEASES OF DECLAR-
20 ANT. (a) If entered into before the executive board elected by the
21 unit owners under AS 34.08.330(f) takes office (1) a management con-
22 tract, employment contract, or lease of recreational or parking areas
23 or facilities; (2) a contract or lease between the association and a
24 declarant or an affiliate of a declarant; or (3) a contract or lease
25 that is not bona fide or was unconscionable to the unit owners at the
26 time entered into under the circumstances then prevailing may be
27 terminated without penalty by the association at any time after the
28 executive board elected by the unit owners under AS 34.08.330(f) takes
29 office upon not less than 90 days' notice to the other party.

1 (b) This section does not apply to

2 (1) a lease if a termination of the lease would terminate
3 the common interest community or reduce its size, unless the real
4 estate subject to the lease was included in the common interest commu-
5 nity for the purpose of avoiding the right of the association to
6 terminate a lease under this section; or

7 (2) a proprietary lease.

8 Sec. 34.08.370. BYLAWS. (a) The bylaws of the association must
9 provide

10 (1) for the number of the members of the executive board
11 and for the titles of the officers of the association;

12 (2) for the election by the executive board of a president,
13 treasurer, secretary and other officers of the association specified
14 by the bylaws;

15 (3) for the qualifications, powers and duties, terms of
16 office, and manner of electing and removing executive board members
17 and officers and filling vacancies;

18 (4) which, if any, of its powers the executive board or
19 officers may delegate to other persons or to a managing agent;

20 (5) which of its officers may prepare, execute, certify,
21 and record amendments to the declaration on behalf of the association;
22 and

23 (6) for a method of amending the bylaws.

24 (b) Subject to the provisions of the declaration, the bylaws may
25 provide for any other matters the association considers necessary and
26 appropriate.

27 Sec. 34.08.380. UPKEEP OF COMMON INTEREST COMMUNITY. (a)
28 Except to the extent provided by the declaration, by (b) of this
29 section, or by AS 34.08.440(h), the association is responsible for the

1 maintenance, repair, and replacement of the common elements, and each
2 unit owner is responsible for the maintenance, repair, and replacement
3 of the unit. Each unit owner shall afford to the association, the
4 other unit owners, and to their agents or employees, access through
5 the unit that is reasonably necessary for maintenance and repair of
6 the unit. If damage is inflicted on the common elements or on any
7 unit through which access is taken, the unit owner responsible for the
8 damage, or the association if it is responsible, is liable for the
9 prompt repair of the damage.

10 (b) In addition to the liability that a declarant as a unit
11 owner has under this chapter, a declarant is solely liable for the ex-
12 penses in connection with real estate subject to development rights.
13 No other unit owner and no other portion of the common interest commu-
14 nity is subject to a claim for payment of expenses in connection with
15 development rights. Unless the declaration provides otherwise, the
16 income and proceeds from real estate subject to development rights
17 inures to the declarant.

18 (c) In a planned community, when all development rights have
19 expired with respect to real estate, the declarant remains liable for
20 the expenses of the real estate unless, upon expiration, the declara-
21 tion provides that the real estate becomes common elements or units.

22 Sec. 34.08.390. MEETINGS. A meeting of the association must be
23 held at least once each year. A special meeting of the association
24 may be called by the president, by a majority of the members of the
25 executive board, or by unit owners comprising either 20 percent or a
26 lower percentage specified in the bylaws of the votes in the associa-
27 tion. Not less than 10 nor more than 60 days in advance of a meeting,
28 the secretary or other officer specified in the bylaws shall cause
29 notice to be hand-delivered or sent prepaid by United States mail to

1 the mailing address of each unit or to the mailing address designated
2 in writing by the unit owner. The notice of a meeting must state the
3 time and place of the meeting and the items on the agenda, including
4 the general nature of a proposed amendment to the declaration or
5 bylaws, budget changes, and a proposal to remove an officer or member
6 of the executive board.

7 Sec. 34.08.400. QUORUMS. (a) Unless the bylaws provide other-
8 wise, a quorum is present throughout a meeting of the association if
9 persons entitled to cast 20 percent of the votes that may be cast for
10 election of the executive board are present in person or by proxy at
11 the beginning of the meeting.

12 (b) Unless the bylaws specify a larger percentage, a quorum is
13 considered present throughout a meeting of the executive board if
14 persons entitled to cast 50 percent of the votes on the board are
15 present at the beginning of the meeting.

16 Sec. 34.08.410. VOTING AND PROXIES. (a) If only one of several
17 owners of a unit is present at a meeting of the association, the owner
18 present is entitled to cast all the votes allocated to the unit. If
19 more than one of the owners are present, the votes allocated to the
20 unit may be cast only in accordance with the agreement of a majority
21 in interest of the owners, unless the declaration expressly provides
22 otherwise. There is majority agreement if any one of the owners casts
23 the votes allocated to the unit without protest being made promptly to
24 the person presiding over the meeting by another owner of the unit.

25 (b) Votes allocated to a unit may be cast under a proxy duly
26 executed by a unit owner. If a unit is owned by more than one person,
27 each owner of the unit may vote or register protest to the casting of
28 votes by the other owners of the unit through a duly executed proxy.
29 A unit owner may revoke a proxy given under this section only by

1 actual notice of revocation to the person presiding over a meeting of
2 the association. A proxy is void if it is not dated or purports to be
3 revocable without notice. A proxy terminates one year after its date,
4 unless it specifies a shorter term.

5 (c) If the declaration requires that votes on specified matters
6 affecting the common interest community be cast by lessees rather than
7 unit owners of leased units: (1) the provisions of (a) and (b) of
8 this section apply to lessees as if they were unit owners; (2) unit
9 owners who have leased their units to other persons may not cast votes
10 on the specified matters; and (3) lessees are entitled to notice of
11 meetings, access to records, and other rights respecting the matters
12 as if they were unit owners. Unit owners must also be given notice
13 under AS 34.08.390, of all meetings at which lessees are entitled to
14 vote.

15 (d) Votes allocated to a unit owned by the association may not
16 be cast.

17 Sec. 34.08.420. TORT AND CONTRACT LIABILITY. Neither the asso-
18 ciation nor any unit owner except the declarant is liable for the
19 torts of the declarant in connection with any part of the common
20 interest community that the declarant has the responsibility to main-
21 tain. An action alleging a wrong done by the association must be
22 brought against the association and not against a unit owner. If the
23 wrong occurred during a period of declarant control and the associa-
24 tion gives the declarant reasonable notice of and an opportunity to
25 defend against the action, the declarant who then controlled the
26 association is liable to the association or to a unit owner for (1)
27 tort losses not covered by insurance suffered by the association or
28 the unit owner, and (2) each cost that the association would not have
29 incurred but for a breach of contract or other wrongful act or

1 omission. If the declarant is liable to the association under this
2 section, the declarant is liable for the expenses of litigation
3 incurred by the association. A statute of limitation affecting the
4 right of action of the association under this section is tolled until
5 the period of declarant control terminates. A unit owner is not
6 precluded from maintaining an action under this section because the
7 person is a unit owner or a member or officer of the association. A
8 lien resulting from a judgment against the association is governed by
9 AS 34.08.480.

10 Sec. 34.08.430. CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS.

11 (a) In a condominium or planned community, portions of the common
12 elements may be conveyed or subjected to a security interest by the
13 association if persons entitled to cast at least 80 percent of the
14 votes in the association, including 80 percent of the votes allocated
15 to units not owned by a declarant, or any larger percentage the decla-
16 ration specifies, agree to the action, but each owner of a unit to
17 which a limited common element is allocated must agree in order to
18 convey the limited common element or subject it to a security inter-
19 est. The declaration may specify a smaller percentage only if each of
20 the units is restricted exclusively to nonresidential uses. The
21 proceeds of the sale and proceeds of a loan secured by encumbrancing a
22 common area are an asset of the association.

23 (b) Part of a cooperative may be conveyed and all or part of a
24 cooperative may be subjected to a security interest by the association
25 if persons entitled to cast at least 80 percent of the votes in the
26 association, including 80 percent of the votes allocated to units not
27 owned by a declarant, or any larger percentage the declaration speci-
28 fies, agree to the action, but, if fewer than all of the units or
29 limited common elements are to be conveyed or subjected to a security

1 interest, then each unit owner or the units to which the limited
2 common elements are allocated must agree in order to convey the units
3 or limited common elements or subject them to a security interest.
4 The declaration may specify a smaller percentage only if each of the
5 units is restricted exclusively to nonresidential uses. The proceeds
6 of the sale and proceeds of a loan secured by encumbering a common
7 area are an asset of the association. A purported conveyance or other
8 voluntary transfer of an entire cooperative, unless made under AS 34.-
9 08.260, is void.

10 (c) An agreement to convey common elements in a condominium or
11 planned community or to subject the common elements to a security
12 interest and an agreement to convey any part of a cooperative or
13 subject the cooperative to a security interest must be evidenced by
14 the execution of an agreement, or ratifications of the agreement, in
15 the same manner as a deed by the requisite number of unit owners. The
16 agreement must specify a date after which the agreement will be void
17 unless recorded before the date. The agreement and each ratification
18 of the agreement must be recorded in each recording district in which
19 a portion of the common interest community is situated and is effec-
20 tive only upon recording.

21 (d) The association on behalf of the unit owners may contract to
22 convey an interest in a common interest community under (a) of this
23 section, but the contract is not enforceable against the association
24 until approved under (a) - (c) of this section. After approval under
25 (a) - (c) of this section, the association has the powers necessary
26 and appropriate to effect the conveyance or encumbrance, including the
27 power to execute a deed or other instrument.

28 (e) Unless made under this section, a purported conveyance,
29 encumbrance, judicial sale, or other voluntary transfer of common

1 elements or of any other part of a cooperative is void.

2 (f) A conveyance or encumbrance of common elements or of a
3 cooperative under this section does not deprive a unit of its right of
4 access and support.

5 (g) Unless the declaration provides otherwise, a conveyance or
6 encumbrance of common elements under this section does not affect the
7 priority or validity of preexisting encumbrances.

8 (h) In a cooperative, the association may acquire, hold, encum-
9 ber, or convey a proprietary lease without complying with this sec-
10 tion.

11 Sec. 34.08.440. INSURANCE. (a) Commencing not later than the
12 first conveyance of a unit to a person other than a declarant, the
13 association shall maintain, to the extent reasonably available:

14 (1) property insurance on the common elements and, in a
15 planned community, on property that must become common elements,
16 insuring against all risks of direct physical loss commonly insured
17 against or, in the case of a conversion building, against fire and
18 extended coverage perils and the total amount of insurance after
19 application of any deductibles must be not less than 100 percent of
20 the actual cash value of the insured property at the time the insur-
21 ance is purchased and at each renewal date, exclusive of land, excava-
22 tions, foundations, and other items normally excluded from property
23 policies; and

24 (2) liability insurance, including medical payments insur-
25 ance, in an amount determined by the executive board but not less than
26 an amount specified in the declaration, covering all occurrences
27 commonly insured against for death, bodily injury, and property damage
28 arising out of or in connection with the use, ownership, or mainte-
29 nance of the common elements and, in cooperatives, of each unit.

1 (b) In the case of a building that is part of a cooperative or
2 that contains a unit having horizontal boundaries described in the
3 declaration, the insurance maintained under (a)(1) of this section, to
4 the extent reasonably available, must include the unit, but need not
5 include improvements and betterments installed by a unit owner.

6 (c) If the insurance described in (a) and (b) of this section is
7 not reasonably available, the association promptly shall cause notice
8 of the fact to be hand-delivered or sent prepaid by United States mail
9 to each unit owner. The declaration may require the association to
10 carry other insurance, and the association in any event may carry
11 other insurance it considers appropriate to protect the association or
12 the unit owners.

13 (d) Insurance policies carried under (a) and (b) of this section
14 must provide that

15 (1) each unit owner is an insured person under the policy
16 with respect to liability arising out of interest of the unit owner in
17 the common elements or membership in the association;

18 (2) the insurer waives the right to subrogation under the
19 policy against a unit owner or member of the household of a unit
20 owner;

21 (3) an act or omission by a unit owner, unless acting
22 within the scope of the unit owner's authority on behalf of the asso-
23 ciation, will not void the policy or be a condition to recovery under
24 the policy; and

25 (4) if, at the time of a loss under the policy, there is
26 other insurance in the name of a unit owner covering the same risk
27 covered by the policy, the policy of the association provides primary
28 insurance.

29 (e) A loss covered by the property policy under (a)(1) and (b)

1 of this section must be adjusted with the association, but the insur-
2 ance proceeds for the loss are payable to an insurance trustee des-
3 ignated for the purpose or to the association and not to a holder of a
4 security interest. The insurance trustee or the association shall
5 hold insurance proceeds in trust for the association, unit owners, and
6 lien holders as their interests may appear. Subject to the provisions
7 of (h) of this section, the proceeds must be disbursed first for the
8 repair or restoration of the damaged property, and the association,
9 unit owners, and lien holders are not entitled to receive payment of a
10 portion of the proceeds unless there is a surplus of proceeds after
11 the property has been completely repaired or restored or unless the
12 common interest community is terminated.

13 (f) An insurance policy issued to the association does not
14 prevent a unit owner from obtaining insurance for the benefit of the
15 unit owner.

16 (g) An insurer that has issued an insurance policy under this
17 section shall issue certificates or memoranda of insurance to the
18 association and, upon written request, to a unit owner or holder of a
19 security interest. The insurer issuing the policy may not cancel or
20 refuse to renew it until 30 days after notice of the proposed cancel-
21 lation or nonrenewal has been mailed to the association. Each unit
22 owner and each holder of a security interest to whom a certificate or
23 memorandum of insurance has been issued at their last known addresses.

24 (h) A portion of the common interest community for which insur-
25 ance is required under this section that is damaged or destroyed must
26 be repaired or replaced promptly by the association unless (1) the
27 common interest community is terminated and AS 34.08.260 applies, (2)
28 repairs or replacement would be illegal under a state statute or
29 municipal ordinance governing health or safety, or (3) 80 percent of

1 the unit owners, including each owner of a unit or assigned limited
2 common element that will not be rebuilt, vote not to rebuild. The
3 cost of repair or replacement in excess of insurance proceeds and
4 reserves is a common expense. If the entire common interest community
5 is not repaired or replaced, (1) the insurance proceeds attributable
6 to the damaged common elements must be used to restore the damaged
7 area to a condition compatible with the remainder of the common inter-
8 est community, and (2) except to the extent that other persons will be
9 distributees, (A) the insurance proceeds attributable to a unit and
10 limited common elements that is not rebuilt must be distributed to the
11 owner of the unit and the owner of the unit to which the limited
12 common elements were allocated, or to lien holders, as their interests
13 may appear, and (B) the remainder of the proceeds must be distributed
14 to each unit owner or lien holder, as their interests may appear, as
15 follows: (i) in a condominium, in proportion to the common element
16 interest of all the units and (ii) in a cooperative or planned commu-
17 nity, in proportion to the common expense liabilities of all the
18 units. If the unit owners vote not to rebuild a unit, the allocated
19 interests of the unit are reallocated upon the vote as if the unit had
20 been condemned under AS 34.08.860(a), and the association promptly
21 shall prepare, execute, and record an amendment to the declaration
22 reflecting the reallocations.

23 (i) The provisions of this section may be varied or waived in a
24 common interest community if all of the units are restricted to non-
25 residential use.

26 Sec. 34.08.450. SURPLUS FUNDS. Unless otherwise provided in the
27 declaration, surplus funds of the association remaining after payment
28 of or provision for common expenses and prepayment of reserves must be
29 paid to the unit owners in proportion to common expense liabilities or

1 credited to them to reduce future common expense assessments.

2 Sec. 34.08.460. ASSESSMENTS FOR COMMON EXPENSES. (a) Until the
3 association makes a common expense assessment, the declarant shall pay
4 all common expenses. After an assessment has been made by the associ-
5 ation, assessments must be made at least annually, based on a budget
6 adopted at least annually by the association.

7 (b) Except for assessments under (c) - (e) of this section, all
8 common expenses must be assessed against each unit in accordance with
9 the allocations set out in the declaration under AS 34.08.150(a) and
10 (b). A past due common expense assessment or an installment of the
11 assessment bears interest at the rate established by the association
12 not exceeding 18 percent per year.

13 (c) To the extent required by the declaration

14 (1) a common expense associated with the maintenance,
15 repair, or replacement of a limited common element must be assessed
16 against each unit to which that limited common element is assigned,
17 equally, or in proportion provided by the declaration;

18 (2) a common expense or portion of the common expense
19 benefiting fewer than all of the units must be assessed exclusively
20 against the units benefited;

21 (3) the costs of insurance must be assessed in proportion
22 to risk; and

23 (4) the costs of utilities that can be determined must be
24 assessed in proportion to usage and if the costs of utilities cannot
25 be determined, the cost of nondeterminable utilities shall be shared
26 as a common expense.

27 (d) An assessment to pay a judgment against the association may
28 be made only against the units in the common interest community at the
29 time the judgment was entered, in proportion to their common expense

1 liabilities.

2 (e) If a common expense is caused by the misconduct of a unit
3 owner, the association may assess that expense exclusively against the
4 unit.

5 (f) If common expense liabilities are reallocated, common ex-
6 pense assessments and any installment of the assessment not yet due
7 must be recalculated in accordance with the reallocated common expense
8 liabilities.

9 Sec. 34.08.470. LIEN FOR ASSESSMENTS. (a) The association has
10 a lien on a unit for an assessment levied against the unit or fines
11 imposed against its unit owner from the time the assessment or fine
12 becomes due. Unless the declaration otherwise provides, fees,
13 charges, late charges, fines, and interest charged under AS 34.08.-
14 320(a)(10) - (12) are enforceable as assessments under this section.
15 If an assessment is payable in installments, the full amount of the
16 assessment is a lien from the time the first installment becomes due.

17 (b) A lien under this section is prior to all other liens and
18 encumbrances on a unit except (1) a lien and encumbrance recorded
19 before the recordation of the declaration and, in a cooperative, a
20 lien and encumbrance which the association creates, assumes, or takes
21 subject to; (2) a first security interest on the unit recorded before
22 the date on which the assessment sought to be enforced became delin-
23 quent, or, in a cooperative, the first security interest encumbering
24 only the interest of the unit owner and perfected before the date on
25 which the assessment sought to be enforced became delinquent; and (3)
26 a lien for real estate taxes and other governmental assessments or
27 charges against the unit or cooperative. A lien under this section is
28 also prior to all security interests described in (2) of this subsec-
29 tion if the common expense assessments based on the periodic budget

1 adopted by the association under AS 34.08.460(a) would have become due
2 in the absence of acceleration during the six months immediately
3 preceding institution of an action to enforce the lien. This subsec-
4 tion does not affect the priority of a mechanic's or materialman's
5 lien, or the priority of a lien for other assessments made by the
6 association. A lien under this section is not subject to the pro-
7 visions of AS 09.38.010.

8 (c) Unless the declaration provides otherwise, if two or more
9 associations have liens for assessments created at any time on the
10 same property, each lien has equal priority.

11 (d) The recording of the declaration constitutes record notice
12 and perfection of the lien. Further recording of a claim of lien for
13 assessment under this section is not required.

14 (e) A lien for an unpaid assessment is extinguished unless pro-
15 ceedings to enforce the lien are instituted within three years after
16 the full amount of the assessment becomes due.

17 (f) This section does not prohibit an action to recover sums for
18 which (a) of this section creates a lien or prohibit an association
19 from taking a deed in lieu of foreclosure.

20 (g) A judgment or decree in an action brought under this section
21 is enforceable by execution under AS 09.35.010.

22 (h) The association upon written request shall furnish to a unit
23 owner a statement setting out the amount of unpaid assessments against
24 the unit. If the interest of the unit owner is real estate, the
25 statement must be in recordable form. The statement must be furnished
26 within 10 business days after receipt of the request and is binding on
27 the association, the executive board, and each unit owner.

28 (i) In a cooperative, upon nonpayment of an assessment on a
29 unit, a unit owner may be evicted in the same manner as provided by

1 law in the case of an unlawful holdover by a commercial tenant, and
2 the lien may be foreclosed under this section.

3 (j) The association's lien may be foreclosed under this sub-
4 section:

5 (1) in a condominium or planned community, the lien of the
6 association must be foreclosed as a mortgage or deed of trust on real
7 estate is foreclosed, or as a lien is foreclosed under AS 34.35.005;

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

12 (3) in a cooperative whose unit owners' interests in the
13 units are personal property, the lien of the association must be
14 foreclosed as a security interest under AS 45.09; or

15 (4) in the case of foreclosure under AS 34.20.070, the
16 association shall give reasonable notice of its action to each lien
17 holder of a unit whose interest would be affected.

18 (k) In a cooperative, if the interest of the unit owner in a
19 unit is real estate,

20 (1) the association, upon nonpayment of an assessment and
21 compliance with this subsection, may sell the unit at a public sale or
22 by private negotiation, and at any time and place; each aspect of the
23 sale, including the method, advertising, time, place, and terms must
24 be reasonable; the association shall give reasonable written notice to
25 the unit owner and a lessee of the unit owner of the time and place of
26 the public sale or, if a private sale is intended, of the intention of
27 entering into a contract to sell and of the time after which a private
28 disposition may be made; the same notice must also be sent to any
29 other person who has a recorded interest in the unit that would be cut

1 off by the sale, but only if the recorded interest was on record seven
2 weeks before the date specified in the notice as the date of a public
3 sale or seven weeks before the date specified in the notice as the
4 date after which a private sale may be made; the notices required by
5 this subsection may be sent to any address reasonable in the cir-
6 cumstances; sale may not be held until five weeks after the sending of
7 the notice; the association may buy at a public sale and, if the sale
8 is conducted by a fiduciary or other person not related to the asso-
9 ciation, at a private sale;

10 (2) unless otherwise agreed, the debtor is liable for any
11 deficiency in a foreclosure sale under AS 09.45.170;

12 (3) the proceeds of a foreclosure sale must be applied in
13 the following order:

14 (A) the reasonable expenses of sale;

15 (B) the reasonable expenses of securing possession
16 before sale including holding, maintaining, and preparing the
17 unit for sale, payment of taxes and other governmental charges,
18 premiums on hazard and liability insurance;

19 (C) satisfaction of the lien of the association;

20 (D) satisfaction in the order of priority of a subor-
21 dinate claim of record; and

22 (E) remittance of any excess to the unit owner.

23 (4) a good faith purchaser for value acquires the unit free
24 of the association's debt that gave rise to the lien under which the
25 foreclosure sale occurred and any subordinate interest, even though
26 the association or other person conducting the sale failed to comply
27 with the requirements of this section; the person conducting the sale
28 shall execute a conveyance to the purchaser sufficient to convey the
29 unit and stating that it is executed after a foreclosure of the

1 association's lien by power of sale and that person conducting the
2 sale was empowered to make the sale; signature and title or authority
3 of the person signing the conveyance as grantor and a recital of the
4 facts of nonpayment of the assessment and of the giving of the notices
5 required by this subsection are sufficient proof of the facts recited
6 and of the authority of the person to sign; further proof of authority
7 is not required even if the association is named as grantee in the
8 conveyance;

9 (5) at any time before the association has disposed of a
10 unit in a cooperative or entered into a contract for its disposition
11 under the power of sale, the unit owner or the holder of a subordinate
12 security interest may cure the default of the unit owner and prevent
13 sale or other disposition by tendering the performance due under the
14 security agreement, including an amount due because of exercise of a
15 right to accelerate, plus the reasonable expenses of proceeding to
16 foreclosure incurred to the time of tender.

17 Sec. 34.08.480. OTHER LIENS. (a) In a condominium or planned
18 community,

19 (1) except as provided in (2) of this subsection, a record-
20 ed judgment for money against the association is not a lien on the
21 common elements, but is a lien in favor of the judgment lien holder
22 against the units in the common interest community at the time the
23 judgment was entered; the property of a unit owner is not subject to
24 the claims of creditors of the association;

25 (2) if the association has granted a security interest in
26 the common elements to a creditor of the association under AS 34.08.-
27 430, the holder of the security interest shall exercise its right
28 against the common elements before its judgment lien on a unit may be
29 enforced;

1 (3) whether perfected before or after the creation of the
2 common interest community, if a lien, other than a deed of trust or
3 mortgage including a judgment lien or lien attributable to work
4 performed or materials supplied before creation of the common interest
5 community, becomes effective against two or more units, the unit owner
6 of an affected unit may pay to the lien holder the amount of the lien
7 attributable to the unit, and the lien holder, upon receipt of pay-
8 ment, shall promptly deliver a release of the lien covering the unit;
9 the amount of the payment must be proportionate to the ratio that the
10 unit owner's common expense liability bears to the common expense
11 liabilities of all unit owners whose units are subject to the lien;
12 after payment, the association may not assess or have a lien against
13 the unit owner's unit for any portion of the common expenses incurred
14 in connection with the lien;

15 (4) a judgment against the association must be indexed in
16 the name of the common interest community and the association and,
17 when so indexed, is notice of the lien against the units.

18 (b) In a cooperative,

19 (1) if the association receives notice of an impending
20 foreclosure on all or a portion of the association's real estate, the
21 association shall promptly transmit a copy of the notice to each unit
22 owner of a unit located within the real estate to be foreclosed; a
23 failure of the association to transmit the notice does not affect the
24 validity of the foreclosure;

25 (2) whether or not the property of a unit owner is subject
26 to the claims of creditors of the association, other property of a
27 unit owner is not subject to the claims.

28 Sec. 34.08.490. ASSOCIATION RECORDS. The association shall keep
29 financial records sufficiently detailed to enable the association to

1 comply with AS 34.08.590. Financial and other records must be made
2 reasonably available for examination by a unit owner and an authorized
3 agent of a unit owner.

4 Sec. 34.08.500. ASSOCIATION AS TRUSTEE. If a third person deals
5 with the association in the capacity of the association as a trustee,
6 the existence of trust powers and their proper exercise by the asso-
7 ciation may be assumed without inquiry. A third person is not bound
8 to inquire whether the association has power to act as trustee or is
9 properly exercising trust powers. A third person, without actual
10 knowledge that the association is exceeding or improperly exercising
11 its powers, is fully protected in dealing with the association as if
12 it possessed and properly exercised the powers it purports to exer-
13 cise. A third person is not bound to assure the proper application of
14 trust assets paid or delivered to the association in its capacity as
15 trustee.

16 ARTICLE 4. PROTECTION OF PURCHASERS.

17 Sec. 34.08.510. APPLICABILITY. (a) The provisions of AS 34.-
18 08.510 - 34.08.700 apply to all units subject to this chapter, except
19 as provided in (b) of this section or as modified or waived by agree-
20 ment of purchasers of units in a common interest community in which
21 each unit is restricted to nonresidential use.

22 (b) A public offering statement and a resale certificate is not
23 required to be prepared or delivered on

- 24 (1) a gratuitous disposition of a unit;
25 (2) a disposition under a court order;
26 (3) a disposition by a governmental agency;
27 (4) a disposition by foreclosure or deed in lieu of fore-
28 closure;
29 (5) a disposition to a dealer;

1 (6) a disposition that may be canceled at any time and for
2 any reason by the purchaser without penalty; or

3 (7) a disposition of a unit in a planned community in which
4 the declaration limits the maximum annual assessment of a unit to not
5 more than \$300, as adjusted under AS 34.08.820, if

6 (A) the declarant has a reasonable and good faith
7 belief that the maximum stated assessment will be sufficient to
8 pay the expenses of the planned community;

9 (B) the declaration cannot be amended to increase the
10 assessment during the period of declarant control without the
11 consent of all unit owners; and

12 (C) the planned community is not subject to develop-
13 ment rights.

14 Sec. 34.08.520. LIABILITY FOR PUBLIC OFFERING STATEMENT REQUIRE-
15 MENTS. (a) Except as provided in (b) of this section, a declarant,
16 before offering an interest in a unit to the public, shall prepare a
17 public offering statement conforming to the requirements of AS 34.08.-
18 530, 34.08.540, 34.08.550, and 34.08.560.

19 (b) A declarant may transfer responsibility for preparation of
20 all or a part of the public offering statement to a successor de-
21 clarant or to a dealer who intends to offer units in the common inter-
22 est community. On the transfer of responsibility, the transferor
23 shall provide the transferee with information necessary to enable the
24 transferee to fulfill the requirements of (a) of this section.

25 (c) A declarant or dealer who offers a unit to a purchaser shall
26 deliver a public offering statement in the manner required by AS 34.-
27 08.580(a). The person who prepared all or a part of the public offer-
28 ing statement is liable under AS 34.08.580 and 34.08.670 for any false
29 or misleading statement set out in the statement or for any omission

1 of a material fact from the statement with respect to the portion of
2 the public offering statement that the person prepared. If a
3 declarant did not prepare any part of a public offering statement the
4 declarant is not liable for a false or misleading statement set out in
5 the statement or for an omission of a material fact from the statement
6 unless the declarant had actual knowledge of the statement or omission
7 or, in the exercise of reasonable care, should have known of the
8 statement or omission.

9 (d) If a unit is part of a common interest community and is part
10 of a real estate regime where a public offering statement is required
11 under the laws of the state before the unit is offered for sale, a
12 single public offering statement conforming to the requirements of
13 AS 34.08.530, 34.08.540, 34.08.550, and 34.08.560 may be prepared and
14 delivered in lieu of providing two or more public offering statements.

15 Sec. 34.08.530. PUBLIC OFFERING STATEMENTS GENERALLY. (a)
16 Except as provided in (b) of this section, a public offering statement
17 must fully and accurately contain or disclose

18 (1) the name and principal address of the declarant and of
19 the common interest community and indicate whether the common interest
20 community is a condominium, cooperative, or planned community;

21 (2) a general description of the common interest community,
22 including, to the extent possible, the types, number, and declarant's
23 schedule for the commencement and completion of construction of build-
24 ings and amenities that the declarant anticipates including in the
25 common interest community;

26 (3) the number of units in the common interest community;

27 (4) copies and a brief narrative description of the signif-
28 icant features of the declaration, other than plats and plans, and

29 (A) any recorded covenants, conditions, restrictions,

1 and reservations affecting the common interest community;

2 (B) the bylaws, and any rules or regulations of the
3 association;

4 (C) copies of any contracts and leases to be signed by
5 purchasers at closing; and

6 (D) a brief narrative description of any contracts or
7 leases that will or may be subject to cancellation by the asso-
8 ciation under AS 34.08.360;

9 (5) any current balance sheet and a projected budget for
10 the association, either within or as an exhibit to the public offering
11 statement, for one year after the date of the first conveyance to a
12 purchaser, and the current budget of the association, the name of the
13 person who prepared the budget, and a statement of the budget's as-
14 sumptions concerning occupancy, assumptions concerning the calculation
15 of the amount of reserves certified by a certified architect or engi-
16 neer, and inflation factors, including, without limitation,

17 (A) a statement of the amount included in the budget
18 as a reserve for repairs and replacement including the estimated
19 cost of repair or replacement cost and the estimated useful life
20 of the asset to be repaired or replaced.

21 (B) a statement of any other reserves;

22 (C) the projected common expense assessment by cate-
23 gory of expenditures for the association; and

24 (D) the projected monthly common expense assessment
25 for each type of unit;

26 (6) any services not reflected in the budget that the
27 declarant provides, or expenses that the declarant pays and that the
28 declarant expects may become a common expense of the association at a
29 subsequent time and the projected common expense assessment

1 attributable to each of those services or expenses for the association
2 and for each type of unit;

3 (7) any initial or special fee due from the purchaser at
4 closing, together with a description of the purpose and method of
5 calculating the fee;

6 (8) a description of liens, defects, or encumbrances on or
7 affecting the title to the common interest community;

8 (9) a description of financing offered or arranged by the
9 declarant;

10 (10) the terms and significant limitations of warranties
11 provided by the declarant, including statutory warranties and limita-
12 tions on the enforcement of the warranties or on damages;

13 (11) a statement that

14 (A) within 15 days after receipt of a public offering
15 statement a purchaser, before conveyance, may cancel any contract
16 for purchase of a unit from a declarant;

17 (B) if a declarant fails to provide a public offering
18 statement to a purchaser before conveying a unit, the purchaser
19 may recover from the declarant 10 percent of the sales price of
20 the unit plus 10 percent of the share, proportionate to the
21 common expense liability of the unit, of any indebtedness of the
22 association secured by security interests encumbering the common
23 interest community; and

24 (C) a purchaser who receives the public offering
25 statement more than 15 days before signing a contract cannot
26 cancel the contract;

27 (12) a statement of any unsatisfied judgments or pending
28 suits against the association, and the status of any pending suits
29 material to the common interest community of which a declarant has

1 actual knowledge;

2 (13) a statement that a deposit made in connection with the
3 purchase of a unit will be held in an escrow account until closing and
4 will be returned to the purchaser if the purchaser cancels the con-
5 tract under AS 34.08.580, together with the name and address of the
6 escrow agent;

7 (14) any restraints on alienation of any portion of the
8 common interest community and any restrictions

9 (A) on use, occupancy, and alienation of the unit; and

10 (B) on the amount for which a unit may be sold or on
11 the amount that may be received by a unit owner on sale, condem-
12 nation, or casualty loss to the unit or to the common interest
13 community, or on termination of the common interest community;

14 (15) a description of the insurance coverage provided for
15 the benefit of unit owners;

16 (16) current or expected fees or charges to be paid by a
17 unit owner for the use of the common elements and other facilities
18 related to the common interest community;

19 (17) the extent to which financial arrangements have been
20 provided for completion of improvements that the declarant is obligat-
21 ed to build under AS 34.08.690;

22 (18) a brief narrative description of zoning and other land
23 use requirements affecting the common interest community;

24 (19) each unusual and material circumstance, feature, or
25 characteristic of the common interest community and the units; and

26 (20) in a cooperative,

27 (A) whether each unit owner will be entitled, for
28 federal, state, and local income tax purposes, to a pass-through
29 of deductions for payments made by the association for real

1 estate taxes and interest paid the holder of a security interest
2 encumbering the cooperative; and

3 (B) a statement as to the effect on each unit owner if
4 the association fails to pay real estate taxes or payments due
5 the holder of a security interest encumbering the cooperative.

6 (b) If a common interest community composed of not more than 12
7 units is not subject to any development rights and power is not re-
8 served to a declarant to make the common interest community part of a
9 larger common interest community, group of common interest communi-
10 ties, or other real estate, a public offering statement may but need
11 not include the information required by (a)(9), (10) and (15) - (19)
12 of this section and the narrative descriptions of documents required
13 by (a)(4) of this section.

14 (c) A declarant promptly shall amend the public offering state-
15 ment to report any material change in the information required by this
16 section.

17 Sec. 34.08.540. COMMON INTEREST COMMUNITIES SUBJECT TO DEVELOP-
18 MENT RIGHTS. If the declaration provides that a common interest
19 community is subject to development rights, the public offering state-
20 ment must disclose, in addition to the information required by AS 34.-
21 08.530,

22 (1) the maximum number of units, and the maximum number of
23 units per acre, that may be created;

24 (2) a statement of the number or the percentage of the
25 units that may be created that will be restricted exclusively to
26 residential use, or a statement that representations have not been
27 made regarding use restrictions;

28 (3) if any of the units that may be built within real
29 estate subject to development rights are not to be restricted

1 exclusively to residential use, a statement, with respect to each
2 portion of the real estate, of the maximum percentage of the real
3 estate areas, and the maximum percentage of the floor areas of all
4 units that may be created that are not restricted exclusively to resi-
5 dential use;

6 (4) a brief narrative description of the development rights
7 reserved by a declarant and of any conditions relating to or limita-
8 tions upon the exercise of development rights;

9 (5) a statement of the maximum extent to which the allocat-
10 ed interests of each unit may be changed by the exercise of a develop-
11 ment right described in (3) of this section;

12 (6) a statement of the extent to which a building or other
13 improvement that may be erected under a development right in any part
14 of the common interest community will be compatible with existing
15 buildings and improvements in the common interest community in terms
16 of architectural style, quality of construction, and size, or a state-
17 ment that assurances have not been made in that regard;

18 (7) a general description of each other improvement that
19 may be made and limited common elements that may be created within a
20 part of the common interest community under a development right re-
21 served by the declarant, or a statement that assurances have not been
22 made in that regard;

23 (8) a statement of any limitations as to the location of
24 any building or other improvement that may be made within a part of
25 the common interest community under a development right reserved by
26 the declarant, or a statement that assurances have not been made in
27 that regard;

28 (9) a statement that the limited common elements created
29 under a development right reserved by the declarant will be of the

1 same general type and size as the limited common elements within other
2 parts of the common interest community, or a statement of the type and
3 size planned, or a statement that assurances have not been made in
4 that regard;

5 (10) a statement that the proportion of limited common
6 elements to units created under a development right reserved by the
7 declarant will be approximately equal to the proportion existing
8 within other parts of the common interest community, or a statement of
9 any other assurances in that regard, or a statement that assurances
10 have not been made in that regard;

11 (11) a statement that each restriction in the declaration
12 affecting use, occupancy, and alienation of a unit will apply to each
13 unit created under a development right reserved by the declarant, or a
14 statement of a differentiation that may be made as to the units, or a
15 statement that assurances have not been made in that regard; and

16 (12) a statement of the extent to which an assurance made
17 under this section applies or does not apply if a development right is
18 not exercised by the declarant.

19 Sec. 34.08.550. TIME SHARES. If the declaration provides that
20 ownership or occupancy of a unit, is or may be in time shares, the
21 public offering statement shall disclose, in addition to the informa-
22 tion required by AS 34.08.530,

23 (1) the number and identity of units in which time shares
24 may be created;

25 (2) the total number of time shares that may be created;

26 (3) the minimum duration of any time shares that may be
27 created; and

28 (4) the extent to which the creation of time shares will or
29 may affect the enforceability of the lien of the association for

1 assessments under AS 34.08.470.

2 Sec. 34.08.560. COMMON INTEREST COMMUNITIES CONTAINING CONVER-
3 SION BUILDINGS. (a) The public offering statement of a common inter-
4 est community containing a conversion building must contain, in addi-
5 tion to the information required by AS 34.08.530,

6 (1) a statement by the declarant, based on a report pre-
7 pared by a registered architect or engineer, describing the present
8 condition of all structural components and mechanical and electrical
9 installations material to the use and enjoyment of the building;

10 (2) a statement by the declarant of the expected useful
11 life of each item reported on in (1) of this subsection or a statement
12 that representations have not been made in that regard; and

13 (3) a list of any outstanding notices of uncured violations
14 of building code or other municipal regulations, together with the
15 estimated cost of curing the violations.

16 (b) This section applies only to a building that contains a unit
17 that may be occupied for residential use.

18 Sec. 34.08.570. COMMON INTEREST COMMUNITY SECURITIES. If an
19 interest in a common interest community is currently registered with
20 the Securities and Exchange Commission of the United States, a de-
21 clarant satisfies each requirement relating to the preparation of a
22 public offering statement of this chapter if the declarant delivers to
23 the purchaser a copy of the public offering statement filed with the
24 Securities and Exchange Commission. An interest in a common interest
25 community is not a security under AS 45.55.

26 Sec. 34.08.580. PURCHASER'S RIGHT TO CANCEL. (a) A person
27 required to deliver a public offering statement under AS 34.08.520(c)
28 shall provide each purchaser with a copy of the public offering state-
29 ment and each amendment to the statement before conveyance of the

1 unit, and not later than the date of a contract of sale. If a pur-
2 chaser is not given the public offering statement more than 15 days
3 before execution of a contract for the purchase of a unit, the pur-
4 chaser, before conveyance, may cancel the contract within 15 days of
5 receipt of the public offering statement.

6 (b) A purchaser who wishes to cancel a contract under (a) of
7 this section may cancel the contract by hand delivering notice of the
8 cancellation to the offeror or by mailing notice of the cancellation
9 by prepaid United States mail to the offeror or to the agent for
10 service of process of the offeror. Cancellation is without penalty
11 and each payment made by the purchaser before cancellation must be
12 refunded promptly to the purchaser.

13 (c) If a person required to deliver a public offering statement
14 under AS 34.08.520(c) fails to provide a purchaser to whom a unit has
15 been conveyed with the public offering statement and each amendment to
16 the statement under (a) of this section, the purchaser, in addition to
17 any right to damages or other relief, is entitled to receive from the
18 person an amount equal to 10 percent of the sale price of the unit,
19 plus 10 percent of the share, proportionate to the common expense
20 liability, of an indebtedness of the association secured by security
21 interests encumbering the common interest community.

22 Sec. 34.08.590. RESALES OF UNITS. (a) Except for a sale in
23 which delivery of a public offering statement is required, or unless
24 the sale is exempt under AS 34.08.510(b), a unit owner shall furnish
25 to a purchaser before execution of a contract for sale of a unit or
26 before conveyance a copy of the declaration, as amended, the bylaws,
27 the rules or regulations of the association, and a certificate con-
28 taining a statement disclosing

29 (1) the effect on the proposed disposition of a right of

- 1 first refusal or other restraint on the free alienability of the unit;
- 2 (2) the amount of the monthly common expense assessment and
3 any unpaid common expense or special assessment currently due and
4 payable from the selling unit owner;
- 5 (3) any other fee payable by unit owners;
- 6 (4) any capital expenditures in excess of \$3,000 approved
7 by the executive board for the current and two next succeeding fiscal
8 years;
- 9 (5) the amount of reserves for capital expenditures and of
10 any portions of the reserves designated by the association for a
11 specified project;
- 12 (6) the most recent regularly prepared balance sheet and
13 income and expense statement, if any, of the association;
- 14 (7) the current operating budget of the association;
- 15 (8) any unsatisfied judgment against the association and
16 the status of any pending suit in which the association is a defen-
17 dant;
- 18 (9) any insurance coverage provided for the benefit of unit
19 owners;
- 20 (10) whether the executive board has knowledge that any
21 alterations or improvements to the unit or to the limited common
22 elements assigned to the unit violate any provision of the declara-
23 tion;
- 24 (11) whether the executive board has knowledge of any viola-
25 tion of a health or building code with respect to the unit, the limit-
26 ed common elements assigned to the unit, or any other portion of the
27 common interest community;
- 28 (12) a statement of the remaining term of a leasehold estate
29 affecting the common interest community and the provisions governing

1 an extension or renewal of the lease;

2 (13) a statement of any restrictions in the declaration
3 affecting the amount that may be received by a unit owner upon sale,
4 condemnation, casualty loss to the unit or the common interest commu-
5 nity, or termination of the common interest community; and

6 (14) in a cooperative, an accountant's statement, if any was
7 prepared, as to the deductibility for federal income tax purposes by
8 the unit owner of real estate taxes and interest paid by the associ-
9 ation.

10 (b) The association, within 10 days after a request by a unit
11 owner, shall furnish a certificate containing the information neces-
12 sary to enable the unit owner to comply with this section. A unit
13 owner providing a certificate under (a) of this section is not liable
14 to the purchaser for erroneous information provided by the association
15 and included in the certificate.

16 (c) A purchaser is not liable for an unpaid assessment or fee
17 greater than the amount set out in the certificate prepared by the
18 association. A unit owner is not liable to a purchaser for the fail-
19 ure or delay of the association to provide the certificate in a timely
20 manner, but the purchase contract is voidable by the purchaser until
21 the certificate has been provided and for five days after the certifi-
22 cate was provided or until conveyance, whichever occurs first.

23 Sec. 34.08.600. ESCROW OF DEPOSITS. A deposit made in connec-
24 tion with the purchase or reservation of a unit from a person required
25 to deliver a public offering statement under AS 34.08.520(c) must be
26 placed in escrow and held either in this state or in the state where
27 the unit is located in an account designated solely for that purpose
28 by a licensed title insurance company, an attorney, a licensed real
29 estate broker, an independent bonded escrow company, or an institution

1 whose accounts are insured by a governmental agency or instrumentality
2 until

- 3 (1) delivered to the declarant at closing;
- 4 (2) delivered to the declarant because of the purchaser's
5 default under a contract to purchase the unit; or
- 6 (3) refunded to the purchaser.

7 Sec. 34.08.610. RELEASE OF LIENS. (a) In a sale of a unit
8 where delivery of a public offering statement is required under
9 AS 34.08.520(c), a seller before conveying a unit, shall record or
10 furnish to the purchaser a release of each lien, except a lien on real
11 estate that a declarant has the right to withdraw from the common
12 interest community, that the purchaser does not expressly agree to
13 take subject to or assume and that encumbers

- 14 (1) in a condominium, the unit and its common element
15 interest; or
- 16 (2) in a cooperative or planned community, the unit and any
17 limited common elements assigned to the unit.

18 (b) Before conveying real estate to the association, the de-
19 clarant shall have the real estate released from

- 20 (1) each lien the foreclosure of which would deprive unit
21 owners of a right of access to or easement of support of their units;
22 and
- 23 (2) each other lien on the real estate unless the public
24 offering statement describes certain real estate that may be conveyed
25 subject to liens in specified amounts.

26 Sec. 34.08.620. CONVERSION BUILDINGS. (a) A declarant of a
27 common interest community containing a conversion building, and any
28 dealer who intends to offer units in a common interest community
29 containing conversion units, shall give each residential tenant and

1 each residential subtenant in possession of a portion of a conversion
2 building notice of the conversion and provide each person with the
3 public offering statement no later than 120 days before the tenant and
4 any subtenant in possession is required to vacate. The notice must
5 set out generally the rights of tenants and subtenants under this
6 section and must be hand delivered to the unit or mailed by prepaid
7 United States mail to the tenant and subtenant at the address of the
8 unit or any other mailing address provided by a tenant. A tenant or
9 subtenant may not be required to vacate upon less than 120 days'
10 notice except by reason of nonpayment of rent, waste, or conduct that
11 disturbs other tenants' peaceful enjoyment of the premises and the
12 terms of the tenancy may not be altered during the period. The fail-
13 ure to give notice as required by this section is a defense to an
14 action for possession.

15 (b) For 60 days after delivery or mailing of the notice de-
16 scribed in (a) of this section, the person required to give the notice
17 shall offer to convey each unit or proposed unit occupied for residen-
18 tial use to the tenant who leases the unit. If a tenant fails to
19 purchase the unit during the 60-day period, the offeror may not offer
20 to dispose of an interest in the unit during the following 180 days at
21 a price or on terms more favorable to the offeree than the price or
22 terms offered to the tenant. This subsection does not apply to a unit
23 in a conversion building if the unit will be restricted exclusively to
24 nonresidential use or if the boundaries of the converted unit do not
25 substantially conform to the dimensions of the residential unit before
26 conversion.

27 (c) If a seller, in violation of (b) of this section, conveys a
28 unit for value to a purchaser who has no knowledge of the violation,
29 the recording of the deed conveying the unit or, in a cooperative, the

1 conveyance of the unit, extinguishes any right a tenant may have under
2 (b) of this section to purchase the unit if the deed states that the
3 seller has complied with (b) of this section, but the conveyance does
4 not affect the right of a tenant to recover damages from the seller
5 for a violation of (b) of this section.

6 (d) If a notice of conversion specifies a date by which a unit
7 or proposed unit must be vacated and otherwise complies with the
8 provisions of AS 09.45.060 - 09.45.160, the notice also constitutes a
9 notice to quit.

10 (e) Nothing in this section permits termination of a lease by a
11 declarant in violation of its terms.

12 Sec. 34.08.630. EXPRESS WARRANTIES OF QUALITY. (a) An express
13 warranty made by a seller to a purchaser of a unit, if relied upon by
14 the purchaser, is created as follows:

15 (1) any affirmation of fact or promise that relates to the
16 unit, its use, or rights appurtenant to the unit, area improvements to
17 the common interest community that would directly benefit the unit, or
18 the right to use or have the benefit of facilities not located in the
19 common interest community, creates an express warranty that the unit
20 and related rights and uses will conform to the affirmation or prom-
21 ise;

22 (2) a model or description of the physical characteristics
23 of the common interest community, including plans and specifications
24 of or for improvements, creates an express warranty that the common
25 interest community will conform to the model or description;

26 (3) a description of the quantity or extent of the real
27 estate comprising the common interest community, including plats or
28 surveys, creates an express warranty that the common interest communi-
29 ty will conform to the description, subject to customary tolerances;

1 and

2 (4) a provision that a purchaser may put a unit only to a
3 specified use is an express warranty that the specified use is lawful.

4 (b) Formal words such as "warranty" or "guarantee" and the
5 specific intention to make a warranty are not necessary to create an
6 express warranty of quality, but a statement purporting to be merely
7 an opinion or commendation of the real estate or its value does not
8 create a warranty.

9 (c) A conveyance of a unit transfers to the purchaser each
10 express warranty of quality made by a previous seller.

11 Sec. 34.08.640. IMPLIED WARRANTIES OF QUALITY. (a) A declarant
12 and a dealer warrants that a unit will be in at least as good condi-
13 tion at the earlier of the time of the conveyance or delivery of
14 possession as it was at the time of contracting, reasonable wear and
15 tear excepted.

16 (b) A declarant and a dealer impliedly warrants that a unit and
17 the common elements in the common interest community are suitable for
18 the ordinary uses of real estate of its type and that any improvements
19 made or contracted for by the declarant or dealer, or made by any
20 person before the creation of the common interest community, will be

21 (1) free from defective materials; and

22 (2) constructed in accordance with applicable law, accord-
23 ing to sound engineering and construction standards, and in a workman-
24 like manner.

25 (c) A declarant and a dealer warrants to a purchaser of a unit
26 that may be used for residential use that an existing use, continua-
27 tion of which is contemplated by the parties, does not violate appli-
28 cable law at the earlier of the time of conveyance or delivery of
29 possession.

1 (d) Warranties imposed by this section may be excluded or modi-
2 fied under AS 34.08.650.

3 (e) For purposes of this section, improvements made or contract-
4 ed for by an affiliate of a declarant are made or contracted for by
5 the declarant.

6 (f) A conveyance of a unit transfers to the purchaser all of the
7 declarant's implied warranties of quality.

8 Sec. 34.08.650. EXCLUSION OR MODIFICATION OF IMPLIED WARRANTIES
9 OF QUALITY. (a) Except as limited by (b) of this section with re-
10 spect to a purchaser of a unit that may be used for residential use,
11 implied warranties of quality

12 (1) may be excluded or modified by agreement of the par-
13 ties; and

14 (2) are excluded by an expression of disclaimer such as "as
15 is," "with all faults," or other language that in common understanding
16 calls the attention of the purchaser to the exclusion of warranties.

17 (b) With respect to a purchaser of a unit that may be occupied
18 for residential use, a general disclaimer of implied warranties of
19 quality is not effective, but a declarant and a dealer may disclaim
20 liability in an instrument signed by the purchaser for a specified
21 defect or specified failure to comply with applicable law, if the
22 defect or failure entered into and became a part of the basis of the
23 bargain.

24 Sec. 34.08.66. STATUTE OF LIMITATIONS FOR WARRANTIES. (a) A
25 judicial proceeding for breach of an obligation arising under AS 34.-
26 08.650 or 34.08.660 must be commenced within six years after the cause
27 of action accrues, but the parties may agree to reduce the period of
28 limitation to not less than two years. If the unit may be occupied
29 for residential use, an agreement to reduce the period of limitation

1 must be evidenced by a separate instrument executed by the purchaser.

2 (b) Subject to (c) of this section, a cause of action for breach
3 of warranty of quality, regardless of the purchaser's lack of knowl-
4 edge of the breach, accrues

5 (1) as to a unit, at the time the purchaser to whom the
6 warranty is first made enters into possession if a possessory interest
7 was conveyed or at the time of acceptance of the instrument of convey-
8 ance if a nonpossessory interest was conveyed; and

9 (2) as to each common element, at the time the common
10 element is completed or, if later, as to

11 (A) a common element that may be added to the common
12 interest community or a portion of the common interest community,
13 at the time the first unit is conveyed to a bona fide purchaser;
14 or

15 (B) a common element within any other portion of the
16 common interest community, at the time the first unit is conveyed
17 to a bona fide purchaser.

18 (c) If a warranty of quality explicitly extends to future per-
19 formance or duration of an improvement or component of the common
20 interest community, the cause of action accrues at the time the breach
21 is discovered or at the end of the warranty period, whichever is
22 earlier.

23 Sec. 34.08.670. EFFECT OF VIOLATIONS ON RIGHTS OF ACTION. If a
24 declarant or any other person subject to this chapter fails to comply
25 with a provision of this chapter or with a provision of the declara-
26 tion or bylaws, a person or class of persons adversely affected by the
27 failure to comply has a claim for appropriate relief. Punitive dam-
28 ages may be awarded for a wilful failure to comply with this chapter.

29 Sec. 34.08.680. LABELING OF PROMOTIONAL MATERIAL. Promotional

1 material may not be displayed or delivered to a prospective purchaser
2 that describes or portrays an improvement that is not in existence
3 unless the description or portrayal of the improvement in the promo-
4 tional material is conspicuously labeled or identified either as "MUST
5 BE BUILT" or as "NEED NOT BE BUILT."

6 Sec. 34.08.690. DECLARANT'S OBLIGATION TO COMPLETE AND RESTORE.
7 (a) Except for an improvement labeled "NEED NOT BE BUILT," the de-
8 clarant shall complete each improvement depicted on a site plan or
9 other graphic representation, including any plats or plans prepared
10 under AS 34.08.180, whether or not the site plan or other graphic
11 representation is contained in the public offering statement or in
12 promotional material distributed by or for the declarant.

13 (b) The declarant is liable for the prompt repair and restora-
14 tion, to a condition compatible with the remainder of the common
15 interest community, of a portion of the common interest community af-
16 fected by the exercise of rights reserved under or created by AS 34.-
17 08.180, 34.08.190, 34.08.200, 34.08.210, 34.08.230, or 34.08.240.

18 Sec. 34.08.700. SUBSTANTIAL COMPLETION OF UNITS. In the sale of
19 a unit for which delivery of a public offering statement is required,
20 a contract of sale may be executed, but an interest in the unit may
21 not be conveyed until the declaration is recorded and the unit is
22 substantially completed as evidenced by a recorded certificate of
23 substantial completion executed by an independent registered archi-
24 tect, surveyor or engineer, or by issuance of a certificate of occu-
25 pancy authorized by law.

26 ARTICLE 5. GENERAL PROVISIONS.

27 Sec. 34.08.710. VARIATION BY AGREEMENT. Except as expressly
28 provided in this chapter the provisions of this chapter may not be
29 varied by agreement and rights conferred by this chapter may not be

1 - waived. A declarant may not act under a power of attorney or use any
2 other device to evade the limitations or prohibitions of this chapter
3 or a declaration recorded under it.

4 Sec. 34.08.720. SEPARATE TITLES AND TAXATION. (a) In a cooper-
5 ative, unless the declaration provides that the interest of a unit
6 owner in a unit and its allocated interests is real estate for all
7 purposes, the interest is personal property. The interest is subject
8 to AS 09.38.010, even if the interest is personal property.

9 (b) In a condominium or planned community,

10 (1) if there is a unit owner other than a declarant, each
11 unit that has been created, together with its interest in the common
12 elements, constitutes for all purposes a separate parcel of real
13 estate;

14 (2) if there is a unit owner other than a declarant, each
15 unit must be separately taxed and assessed, and a separate tax or
16 assessment may not be rendered against any common elements for which a
17 declarant has reserved no development rights.

18 (c) Any portion of the common elements for which the declarant
19 has reserved a development right must be separately taxed and assessed
20 against the declarant and the declarant alone is liable for payment of
21 the taxes.

22 (d) If there is no unit owner other than a declarant, the real
23 estate comprising the common interest community may be taxed and
24 assessed in any manner provided by law.

25 Sec. 34.08.730. APPLICABILITY OF LOCAL ORDINANCES, REGULATIONS,
26 AND BUILDING CODES. (a) A building code may not impose a requirement
27 upon a structure in a common interest community that the building code
28 would not impose upon a physically identical development under a
29 different form of ownership.

1 (b) A zoning, subdivision, or other real estate use law, ordi-
2 nance, or regulation may not prohibit the condominium or cooperative
3 form of ownership or impose a requirement upon a condominium or co-
4 operative that it would not impose upon a physically identical devel-
5 opment under a different form of ownership.

6 (c) Except as provided in (a) and (b) of this section, the
7 provisions of this chapter do not invalidate or modify a provision of
8 a building code, zoning, subdivision, or other real estate use law,
9 ordinance, or regulation governing the use of real estate.

10 Sec. 34.08.740. EMINENT DOMAIN. (a) If a unit is acquired by
11 eminent domain or part of a unit is acquired by eminent domain leaving
12 the unit owner with a remnant that may not practically or lawfully be
13 used for any purpose permitted by the declaration, the award must
14 include compensation to the unit owner for that unit and its allocated
15 interests, whether or not any common elements are acquired. Upon
16 acquisition, unless the decree otherwise provides, the allocated
17 interests of the unit are, as a matter of law, reallocated to the
18 remaining units in proportion to the respective allocated interests of
19 those units before the taking, and the association shall promptly
20 prepare, execute, and record an amendment to the declaration reflect-
21 ing the reallocations. A remnant of a unit remaining after part of a
22 unit is taken under this subsection is a common element from that
23 time.

24 (b) Except as provided in (a) of this section, if part of a unit
25 is acquired by eminent domain, the award must compensate the unit
26 owner for the reduction in value of the unit and its interest in the
27 common elements, whether or not any common elements are acquired.
28 Upon acquisition, unless the decree provides otherwise,

29 (1) the allocated interests of the unit are reduced either

1 in proportion to the reduction in the size of the unit or on the basis
2 specified in the declaration; and

3 (2) the portion of the allocated interests divested from
4 the partially acquired unit are, as a matter of law, reallocated to
5 the unit and to the remaining units in proportion to the respective
6 allocated interests of the units before the taking, with the
7 partially-acquired unit participating in the reallocation on the basis
8 of its reduced allocated interests.

9 (c) If part of the common elements is acquired by eminent do-
10 main, the portion of the award attributable to the common elements
11 taken must be paid to the association. Unless the declaration pro-
12 vides otherwise, any portion of the award attributable to the acquisi-
13 tion of a limited common element must be equally divided among the
14 owners of the units to which that limited common element was allocated
15 at the time of acquisition.

16 (d) The court decree must be recorded in each recording district
17 in which any portion of the common interest community is located.

18 (e) On a condemnation of a unit or common area, an award or
19 decree must include a reasonable amount to cover the cost of reallo-
20 cating the allocatable interests of the unit owners.

21 Sec. 34.08.750. SUPPLEMENTAL GENERAL PRINCIPLES OF LAW APPLICA-
22 BLE. The principles of law and equity, including the law of corpora-
23 tions and unincorporated associations, the law of real property, and
24 the law relative to capacity to contract, principal and agent, eminent
25 domain, estoppel, fraud, misrepresentation, duress, coercion, mistake,
26 receivership, substantial performance, or other validating or invali-
27 dating cause supplement the provisions of this chapter except to the
28 extent inconsistent with this chapter.

29 Sec. 34.08.760. CONSTRUCTION AGAINST IMPLICIT REPEAL. This

1 chapter is a general act intended as a unified coverage of its subject
2 matter and a part of the chapter may not be construed to be impliedly
3 repealed by subsequent legislation if that construction can reasonably
4 be avoided.

5 Sec. 34.08.770. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
6 This chapter shall be applied and construed so as to effectuate its
7 general purpose to make uniform the law with respect to the subject of
8 the chapter among states enacting it.

9 Sec. 34.08.780. SEVERABILITY. If a provision of this chapter or
10 its application to any person or circumstance is held invalid, the
11 invalidity does not affect other provisions or applications of this
12 chapter that can be given effect without the invalid provision or
13 application, and to this end the provisions of this chapter are sever-
14 able.

15 Sec. 34.08.790. UNCONSCIONABLE AGREEMENT OR TERM OF CONTRACT.
16 (a) Upon finding as a matter of law that a contract or contract
17 clause was unconscionable at the time the contract was made, a court
18 may refuse to enforce the contract, may enforce the remainder of the
19 contract without the unconscionable clause, or may limit the applica-
20 tion of the unconscionable clause in order to avoid an unconscionable
21 result.

22 (b) Whenever it is claimed or appears to the court that a con-
23 tract or a contract clause is or may be unconscionable, the parties,
24 in order to aid the court in making the determination, must be afford-
25 ed a reasonable opportunity to present evidence as to (1) the commer-
26 cial setting of the negotiations; (2) whether a party has knowingly
27 taken advantage of the inability of another party reasonably to pro-
28 tect personal interests by reason of physical or mental infirmity,
29 illiteracy, inability to understand the language of the agreement, or

1 similar factors; (3) the effect and purpose of the contract or clause;
2 and (4) any gross disparity, if a sale, at the time of contracting,
3 between the amount charged for the property and the value of the
4 property measured by the price at which similar property was readily
5 obtainable in similar transactions. A disparity between the contract
6 price and the value of the property measured by the price at which
7 similar property was readily obtainable in similar transactions does
8 not, of itself, render the contract unconscionable.

9 Sec. 34.08.800. OBLIGATION OF GOOD FAITH. A contract or duty
10 governed by this chapter imposes an obligation of good faith in its
11 performance or enforcement.

12 Sec. 34.08.810. REMEDIES TO BE LIBERALLY ADMINISTERED. (a) The
13 remedies provided by this chapter shall be liberally administered to
14 the end that the aggrieved party is put in as good a position as if
15 the other party had fully performed. Consequential, special, or
16 punitive damages may not be awarded except as specifically provided in
17 this chapter or by other rule of law.

18 (b) A right or obligation declared by this chapter is enforce-
19 able by judicial proceeding.

20 Sec. 34.08.820. ADJUSTMENT OF DOLLAR AMOUNTS. (a) The dollar
21 amounts specified in AS 34.08.030 and 34.08.510(b)(7) change under (b)
22 and (c) of this section, according to and to the extent of changes in
23 the Consumer Price Index for Urban Wage Earners and Clerical Workers:
24 U.S. City Average, All Items 1967 equal 100, compiled by the Bureau of
25 Labor Statistics, United States Department of Labor, (the "Index").
26 The Index for December, 1979, which was 230, is the Reference Base
27 Index.

28 (b) The dollar amounts specified in AS 34.08.030 and 34.08.-
29 510(b)(7) and any amount stated in the declaration pursuant to those

1 sections change on July 1 of each year if the percentage of change,
2 calculated to the nearest whole percentage point, between the Index at
3 the end of the preceding year and the Reference Base Index is 10
4 percent or more, except that

5 (1) the portion of the percentage change in the Index in
6 excess of a multiple of 10 percent shall be disregarded and the dollar
7 amounts shall change only in multiples of 10 percent of the amounts
8 appearing in this chapter on the effective date of this Act;

9 (2) the dollar amounts may not change if the amounts re-
10 quired by this section are those currently in effect under this chap-
11 ter as a result of an earlier application of this section; and

12 (3) in no event may the dollar amounts be reduced below the
13 amounts appearing in this chapter on the effective date of this Act.

14 (c) If the Index is revised after December 1979, the percentage
15 of change under this section shall be calculated on the basis of the
16 revised Index. If the revision of the Index changes the Reference
17 Base Index, a revised Reference Base Index must be determined by
18 multiplying the Reference Base Index then applicable by the rebasing
19 factor furnished by the Bureau of Labor Statistics. If the Index is
20 superseded, the index referred to in this section is the one repre-
21 sented by the Bureau of Labor Statistics as reflecting most accurately
22 changes in the purchasing power of the dollar for consumers.

23 Sec. 34.08.830. TRANSFER OF UNIT IN A COOPERATIVE. If a unit in
24 a cooperative is owned by a unit owner or is sold, conveyed, volun-
25 tarily or involuntarily encumbered, or otherwise transferred by the
26 unit owner, the interest in the unit that is owned, sold, conveyed,
27 encumbered, or otherwise transferred is the right to possession of the
28 unit under a proprietary lease, coupled with the allocated interests
29 of the unit, and the association's interest in the unit is not

1 affected by the transfer.

2 Sec. 34.08.990. DEFINITIONS. In this chapter,

3 (1) "affiliate of a declarant"

4 (A) means a person who controls, is controlled by, or
5 is under common control with a declarant;

6 (B) as used in this paragraph, a person "controls" a
7 declarant if the person

8 (i) is a general partner, officer, director, or
9 employer of the declarant;

10 (ii) directly or indirectly or acting in concert
11 with one or more other persons, or through one or more
12 subsidiaries, owns, controls, holds with power to vote, or
13 holds proxies representing more than 20 percent of the
14 voting interest in the declarant;

15 (iii) controls in any manner the election of a
16 majority of the directors of the declarant; or

17 (iv) has contributed more than 20 percent of the
18 capital of the declarant;

19 (C) as used in this paragraph, a person "is controlled
20 by" a declarant if the declarant

21 (i) is a general partner, officer, director, or
22 employer of the person;

23 (ii) directly or indirectly or acting in concert
24 with one or more other persons, or through one or more
25 subsidiaries, owns, controls, holds with power to vote, or
26 holds proxies representing, more than 20 percent of the
27 voting interest in the person;

28 (iii) controls in any manner the election of a
29 majority of the directors of the person; or

1 (iv) has contributed more than 20 percent of the
2 capital of the person;

3 (D) as used in this paragraph, "control" does not
4 exist if the powers described in this paragraph are held solely
5 as security for an obligation and are not exercised;

6 (2) "allocated interests" means the following interests
7 allocated to each unit:

8 (A) in a condominium, the undivided interest in the
9 common elements, the common expense liability, and votes in the
10 association;

11 (B) in a cooperative, the common expense liability and
12 the ownership interest and votes in the association; and

13 (C) in a planned community, the common expense liabil-
14 ity and votes in the association;

15 (3) "association" or "unit owners' association" means the
16 unit owners' association organized under AS 34.08.310;

17 (4) "common elements" means

18 (A) in a condominium or cooperative, each portion of
19 the common interest community other than a unit; and

20 (B) in a planned community, the real estate within a
21 planned community owned or leased by the association, other than
22 a unit;

23 (5) "common expenses" means expenditures made by, or finan-
24 cial liabilities of, the association, together with any allocations to
25 reserves;

26 (6) "common expense liability" means the liability for
27 common expenses allocated to each unit under AS 34.08.150;

28 (7) "common interest community" means real estate with
29 respect to which a person, by virtue of ownership of a unit, is

1 obligated to pay for real estate taxes, insurance premiums, mainte-
2 nance, or improvement of other real estate described in a declaration;

3 (8) "condominium" means a common interest community in
4 which

5 (A) portions of the real estate are designated for
6 separate ownership;

7 (B) the remainder of the real estate is designated for
8 common ownership solely by the owners of those portions; and

9 (C) the undivided interests in the common elements are
10 vested in the unit owners;

11 (9) "conversion building" means a building that, before
12 creation of the common interest community, was occupied wholly or
13 partially by persons other than purchasers and persons who occupy with
14 the consent of purchasers;

15 (10) "cooperative" means a common interest community in
16 which the real estate is owned by an association, each of whose mem-
17 bers is entitled by virtue of an ownership interest in the association
18 to exclusive possession of a unit;

19 (11) "dealer" means a person engaged in the business of
20 selling units who is not an owner of a common interest community or of
21 a unit within a common interest community;

22 (12) "declarant" means a person or a group of persons acting
23 in concert who

24 (A) as part of a common promotional plan, offers to
25 dispose of its interest in a unit not previously disposed of; or

26 (B) reserves or succeeds to a special declarant right;

27 (13) "declaration"

28 (A) means an instrument, however described, that
29 creates a common interest community; and

1 (B) includes amendments to a declaration;

2 (14) "development right" means a right or a combination of
3 rights reserved by a declarant in the declaration to
4 (A) add real estate to a common interest community;
5 (B) create units, common elements, or limited common
6 elements within a common interest community;
7 (C) subdivide units or convert units into common
8 elements; or
9 (D) withdraw real estate from a common interest commu-
10 nity;

11 (15) "dispose" or "disposition"
12 (A) means a voluntary transfer to a purchaser of any
13 legal or equitable interest in a unit;
14 (B) does not include the transfer or release of a
15 security interest;

16 (16) "executive board" means the body designated in the
17 declaration to act on behalf of the association;

18 (17) "identifying number" means a symbol or address that
19 identifies only one unit in a common interest community;

20 (18) "leasehold common interest community" means a common
21 interest community in which all or a portion of the real estate is
22 subject to a lease that, on its expiration or termination, will termi-
23 nate the common interest community or reduce its size;

24 (19) "limited common element" means the portion of the
25 common elements allocated for the exclusive use of one or more but
26 fewer than all of the units by the declaration or by operation of
27 AS 34.08.100(2) or (4);

28 (20) "master association" means an organization described in
29 AS 34.08.280 whether or not it is also an association described in

1 AS 34.08.310;

2 (21) "offering"

3 (A) means an advertisement, inducement, solicitation,
4 or attempt to encourage a person to acquire an interest in a
5 unit, other than as security for an obligation;

6 (B) does not include an advertisement in a newspaper
7 or other periodical of general circulation, or in any other
8 broadcast medium to the general public describing a common inter-
9 est community not located in the state if the advertisement
10 states that an offering may be made only in compliance with the
11 law of the jurisdiction in which the common interest community is
12 located;

13 (22) "ownership of a unit" does not include a leasehold
14 interest, including renewal options, of less than 20 years in a unit;

15 (23) "person" means

16 (A) an individual, corporation, business trust,
17 estate, trust, partnership, association, joint venture, govern-
18 ment, government subdivision or agency, or other legal or commer-
19 cial entity;

20 (B) in the case of a land trust, the beneficiary of
21 the land trust and not the land trust or its trustee;

22 (24) "planned community" means a common interest community
23 that is not a condominium or a cooperative although a condominium or
24 cooperative may be part of a planned community;

25 (25) "proprietary lease" means the agreement with the
26 association under which a member is entitled to exclusive possession
27 of a unit in a cooperative;

28 (26) "purchaser" means a person, other than a declarant or a
29 dealer, who by means of a voluntary transfer acquires a legal or

1 equitable interest in a unit other than

2 (A) a leasehold interest, including renewal options,
3 of less than 20 years; or

4 (B) as security for an obligation;

5 (27) "real estate"

6 (A) means a leasehold or other estate or interest in,
7 over, or under land, including structures, fixtures, and other
8 improvements and interests that by custom, usage, or law pass
9 with a conveyance of land though not described in the contract of
10 sale or instrument of conveyance;

11 (B) includes parcels with or without upper or lower
12 boundaries, and spaces that may be filled with air or water;

13 (28) "residential purposes" means use for dwelling or recre-
14 ational purposes, or both;

15 (29) "security interest"

16 (A) means an interest in real estate or personal
17 property, created by contract or conveyance, that secures payment
18 or performance of an obligation;

19 (B) includes a lien created by a mortgage, deed of
20 trust, trust deed, security deed, contract for deed, land sales
21 contract, lease intended as security, assignment of lease or
22 rents intended as security, pledge of an ownership interest in an
23 association, and any other consensual lien or title retention
24 contract intended as security for an obligation;

25 (30) "special declarant rights" means the right reserved for
26 the benefit of a declarant to

27 (A) complete improvements indicated on plats and plans
28 filed with the declaration or, in a cooperative, to complete
29 improvements described in the public offering statement pursuant

1 to AS 34.08.530(a)(2);

2 (B) exercise a development right;

3 (C) maintain sales offices, management offices, signs
4 advertising the common interest community, and models;

5 (D) use easements through the common elements for the
6 purpose of making improvements within the common interest commu-
7 nity or within real estate that may be added to the common inter-
8 est community;

9 (E) make the common interest community subject to a
10 master association;

11 (F) merge or consolidate a common interest community
12 with another common interest community of the same form of owner-
13 ship; or

14 (G) appoint or remove an officer of the association or
15 a master association or an executive board member during a period
16 of declarant control;

17 (31) "time share" means a right to occupy a unit or any of
18 several units during five or more separated time periods over a period
19 of at least five years, including renewal options, whether or not
20 coupled with an estate or interest in a common interest community or a
21 specified portion of a common interest community;

22 (32) "unit" means a physical portion of the common interest
23 community designated for separate ownership or occupancy, the bound-
24 aries of which are described under AS 34.08.130(a)(5);

25 (33) "unit owner"

26 (A) means a declarant or other person who

27 (i) owns a unit; or

28 (ii) leases a unit in a leasehold common interest
29 community whose lease expires simultaneously with any lease

1 that on its expiration or termination will remove the unit
2 from the common interest community;

3 (B) does not include a person having an interest in a
4 unit solely as security for an obligation;

5 (C) includes

6 (i) in a condominium or planned community, the
7 declarant as the owner of any unit created by the declara-
8 tion;

9 (ii) in a cooperative, the declarant as the owner
10 of any unit to which allocated interests have been allocated
11 until that unit has been conveyed to another person.

12 * Sec. 2. AS 34.35.071(f) is amended to read:

13 (f) After recording a common interest community [CONDOMINIUM]
14 declaration under AS 34.08 [AS PROVIDED IN AS 34.07.010 - 34.07.460
15 (HORIZONTAL PROPERTY REGIMES ACT)], an owner may record a notice of
16 completion under this section as to each unit [APARTMENT] after com-
17 pletion of the original construction of each unit of the common inter-
18 est community [CONDOMINIUM APARTMENT].

19 * Sec. 3. AS 34.35.119 is amended to read:

20 Sec. 34.35.119. WAIVER OF LIENS ON UNSOLD COMMON INTEREST COMMU-
21 NITY UNITS [CONDOMINIUM APARTMENTS]. (a) A lien [LIENS] created
22 under AS 34.35.050 - 34.35.120 arising out of original construction
23 that [WHICH] becomes subject to AS 34.08 [THE HORIZONTAL PROPERTY
24 REGIMES ACT (AS 34.07.010 - 34.07.460)] before the first sale of a
25 unit within a common interest community [ANY PORTION OF THE PROPERTY]
26 after commencement of construction shall be subject to the provisions
27 of this section.

28 (b) Subject to (c) of this section, a claimant who claims a lien
29 against an entire common interest community [THE ENTIRE BUILDING]

1 shall release that portion of the [HIS] lien claim that [WHICH] re-
2 lates to a particular unit within a common interest community [CONDO-
3 MINIMUM APARTMENT] selected by the owner of the unsold common interest
4 community units [CONDOMINIUM APARTMENTS] after the claimant receives a
5 partial payment of the [HIS] lien claim that [WHICH] is equal to 115
6 percent of the amount determined by:

7 (1) dividing the surface area of the common areas and
8 facilities attendant to the common interest community unit [CONDOMINI-
9 UM APARTMENT] by the surface area of all common areas and facilities
10 of the common interest community building; and

11 (2) multiplying the result obtained in (1) of this sub-
12 section by the total amount of the claimant's lien claim.

13 (c) A lien claimant is not required to waive a portion of the
14 [HIS] lien claim under this section unless the amount of indebtedness
15 secured by a prior encumbrance against the common interest community
16 building held by a construction lender is also reduced by an amount
17 calculated in the same manner as provided in (b) of this section.

18 * Sec. 4. AS 34.07 is repealed.

19 * Sec. 5. This Act takes effect January 1, 1986.