

COMMITTEE REPORT

SENATE

FURTHER:

4/11/86

Date 4/17/86

Mr. President

The Committee on FINANCE considered SB 470

relating to the Uniform Common Interest Ownership Act.

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 470 (Jud)
- new title
- same title and recommends " DO PASS "
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
SFC
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

[Signature]

Rich Halford

Paul Thib.

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

co-Chairman

do pass

Chairman recommendation

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date : _____

REQUEST

Bill/Resolution No. : CSSB 470 (Jud)
 Title : Uniform Common Interest
Ownership Act
 Sponsor : Finance Committee
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : ALL
 BRU : _____
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : _____
 Division : Senator Jan Paiks, Co-chairman
Senate Finance Committee

Phone : 465-4523
 Date : 4/17/86

Approved by Commissioner : _____
 Agency : _____

Date : _____

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Offered: 4/11/86
Referred: Finance

Original sponsor: Finance Committee

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 CS FOR SENATE BILL NO. 470 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION
5 A BILL
6 For an Act entitled: "An Act relating to the Uniform Common Interest
7 Ownership Act."
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
9 * Section 1. AS 34.08.010 is amended to read:
10 Sec 34.08.010. APPLICABILITY GENERALLY. Except as provided in
11 AS [34.08.020 AND] 34.08.030, this chapter applies to each common
12 interest community created within the state after January 1, 1986.
13 The provisions of AS 10.15 and AS 34.07 do not apply to common
14 interest communities created after January 1, 1986.
15 * Sec. 2. AS 34.08.030 is amended to read:
16 Sec. 34.08.030. APPLICABILITY TO [SMALL AND] LIMITED EXPENSE
17 LIABILITY PLANNED [COMMON INTEREST] COMMUNITIES. If a planned [COM-
18 MON INTEREST] community created after January 1, 1986, [CONTAINS NO
19 MORE THAN 12 UNITS AND] is not subject to any development rights and
20 [OR FINANCING FROM THE ALASKA HOUSING FINANCE CORPORATION OR] pro-
21 vides, in its declaration, that the annual average common expense
22 liability of all units restricted to residential purposes, exclusive
23 of optional user fees and any insurance premiums paid by the asso-
24 ciation, may not exceed \$100, as adjusted under AS 34.08.820, the
25 planned [COMMON INTEREST] community is subject only to AS 34.08.720 -
26 34.08.740 unless the declaration provides that the entire chapter is
27 applicable. [A DECLARANT MAY NOT SUBDIVIDE REAL PROPERTY UNDER SINGLE
28 OWNERSHIP INTO TWO OR MORE COMMON INTEREST COMMUNITIES TO AVOID THE
29 APPLICATION OF THIS CHAPTER.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (6) the amendment is reasonable; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (3) providing the purchaser a copy of

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

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

20 (C) a brief narrative description of

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

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

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

1 * Sec. 10. AS 34.08.020 is repealed.

PROPOSED JUDICIARY COMMITTEE SUBSTITUTE
SENATE BILL 470
Sectional Analysis

Section 1.

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

Section 2.

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

Section 3.

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

Section 4.

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

Section 5.

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

Section 6.

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

Section 7.

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

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

Section 8.

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

Section 9.

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

Offered: 4/11/86
Referred: Finance

Original sponsor: Finance Committee

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20 [OR FINANCING FROM THE ALASKA HOUSING FINANCE CORPORATION OR] pro-
21 vides, in its declaration, that the annual average common expense
22 liability of all units restricted to residential purposes, exclusive
23 of optional user fees and any insurance premiums paid by the asso-
24 ciation, may not exceed \$100, as adjusted under AS 34.08.820, the
25 planned [COMMON INTEREST] community is subject only to AS 34.08.720 -
26 34.08.740 unless the declaration provides that the entire chapter is
27 applicable. [A DECLARANT MAY NOT SUBDIVIDE REAL PROPERTY UNDER SINGLE
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21 single class voting structure or unit owners having more than 50
22 percent of the votes in more than one class in a voting structure with
23 more than one class to vote in favor of an amendment in order to amend
24 a declaration, the association or a unit owner may petition the supe-
25 rior court for the judicial district in which the common interest
26 community is located for an order reducing the percentage of the
27 affirmative votes necessary for the adoption of the amendment. The
28 petition shall describe the efforts that have been made to solicit the
29 approval of the unit owners in the association in the manner required

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

- 7 (1) the governing documents;
- 8 (2) a complete text of the amendments;
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10 used in the solicitation of the approval of the amendment by the unit
11 owners;
- 12 (4) an explanation of the reason for the amendment;
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14 the court.

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

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

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

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

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

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

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

14 (6) the amendment is reasonable; and

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

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

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

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

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

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

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

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

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7 mortgage or the beneficiary of a deed of trust without the approval of
8 the percentage of the mortgagees and beneficiaries specified in the
9 declaration if the declaration requires the approval of a specified
10 percentage of the mortgagees and beneficiaries.

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

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

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28 does not contain a provision for the extension of the termination date
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1 (1) by the approval of the unit owners having more than 50
2 percent of the votes in the association;

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

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

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

12 (o) A single extension of the terms of a declaration made under
13 this section may not exceed the initial term of the declaration or 20
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15 occur under this section.

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

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

19 (1) in a condominium or planned community, the lien of the
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21 ESTATE IS FORECLOSED, OR] as a lien is foreclosed under AS 34.35.005;

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

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

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

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

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

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

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

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14 no officers or executive board exists; and

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

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

20 (C) a brief narrative description of

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

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

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

1 * Sec. 10. AS 34.08.020 is repealed.

Introduced: 4/1/86
Referred: Judiciary and
Finance

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2

SENATE BILL NO. 470

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the Uniform Common Interest
7 Ownership Act."

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

9 * Section 1. AS 34.08.020 is amended to read:

10 Sec. 34.08.020. APPLICABILITY TO SMALL COOPERATIVES. If a
11 cooperative created after January 1, 1986 contains only units re-
12 stricted to nonresidential use or contains no more than 12 units and
13 is not subject to any development rights [OR FINANCING FROM THE ALASKA
14 HOUSING FINANCE CORPORATION], it is subject only to AS 34.08.720 -
15 34.08.740 unless the declaration provides that the entire chapter is
16 applicable.

17 * Sec. 2. AS 34.08.030 is amended to read:

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

1 TWO OR MORE COMMON INTEREST COMMUNITIES TO AVOID THE APPLICATION OF
2 THIS CHAPTER.]

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

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

7 * Sec. 4. AS 34.08.040 is amended to read:

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, 34.08.510, 34.08.590, 34.08.-
12 670, 34.08.720, 34.08.730, 34.08.740, and 34.08.990, to the extent
13 necessary in construing any of those sections, apply to all common
14 interest communities created in the state before January 1, 1986,
15 except that the sections apply only with respect to events and circum-
16 stances occurring after January 1, 1986, and do not invalidate exist-
17 ing provisions of the declaration, bylaws, or plats or plans of the
18 common interest communities.

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

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

1 petition shall describe the efforts that have been made to solicit the
2 approval of the unit owners in the association in the manner required
3 by the declaration, the number of affirmative and negative votes
4 actually received, the number or percentage of affirmative votes
5 required to adopt the amendment under the declaration, and any other
6 matter the petitioner considers relevant to the determination of the
7 court. The petition must include as exhibits to the petition a copy
8 of

9 (1) the governing documents;

10 (2) a complete text of the amendments;

11 (3) a copy of each notice and the solicitation materials
12 used in the solicitation of the approval of the amendment by the unit
13 owners;

14 (4) an explanation of the reason for the amendment;

15 (5) other documentation relevant to the determination by
16 the court.

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

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

23 (1) the petitioner has given not less than 15 days' written
24 notice of the court hearing to

25 (A) each unit owner in the association;

26 (B) a mortgagee of a mortgage or beneficiary of a deed
27 of trust that is entitled to notice under the provisions of the
28 declaration; and

29 (C) the municipality in which the common interest

1 community is located if it is entitled to notice under the decla-
2 ration;

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

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

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

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

16 (6) the amendment is reasonable; and

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

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

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

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

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

29 (1) would change the provision in a declaration requiring

1 the approval of unit owners having more than 50 percent of the votes
2 in more than one class to vote in favor of an amendment unless more
3 than 50 percent of the unit owners in each affected class of unit
4 owners approve the amendment;

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

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

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

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

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

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

1 may be extended

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

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

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

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

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

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

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

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

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

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

1 (4) IN THE CASE OF FORECLOSURE UNDER AS 34.20.070, THE
2 ASSOCIATION SHALL GIVE REASONABLE NOTICE OF ITS ACTION TO EACH LIEN
3 HOLDER OF A UNIT WHOSE INTEREST WOULD BE AFFECTED].

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

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

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

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

16 (3) providing the purchaser a copy of

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

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

21 (C) a brief narrative description of

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

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

27 * Sec. 9. In a condominium created after January 1, 1986, and before
28 the effective date of the amendment to AS 34.08.030 made by sec. 2 of this
29 Act, the provisions of AS 34.08.040 apply to events and occurrences con-

1 cerning the condominium occurring after the effective date of the amendment
2 to AS 34.08.030.

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

4/1/86

Date 4/10/86

Mr. President

The Committee on JUDICIARY considered SB 470 relating to the Uniform Common Interest Ownership Act.

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

- [x] do pass
[] do pass with attached amendment(s)
[x] replace with/or adopt CS for SB 470 (JUD)
[] new title
[x] 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

Handwritten signatures: Tom Kelly, Rick Hallford, 3 others

MEMBERS HAVING

OTHER RECOMMENDATIONS

Blank lines for other recommendations

Handwritten signature of Patrick Rydley

Chairman

DO PASS

Chairman recommendation