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BILL CONTACT/ACTION

DATE	CONTACT/ACTION
4/9	LIZ MICHELSON IS AWARE OF WRITING
	IS ARRANGING PEOPLE TO TESTIFY

Alaska State Legislature



CO-CHAIRMAN
FINANCE COMMITTEE
907-465-3740

JAN FAIKS
POLCH V
CAPITOL BUILDING
JUNEAU ALASKA 99811

Senate

March 27, 1986

MEMORANDUM

TO: Senate Finance Committee Members
FROM: Jan Faiks, Co-Chairman
Senate Finance Committee
SUBJECT: Finance Committee Sponsored Bill

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

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

1. Clarifies the procedures which must be followed in planned communities (especially single family units) where there is limited common elements such as road maintenance and/or common wells. In planned communities, typically there is no homeowners association thereby making it not possible to comply with some of UCIOA's provisions such as the Association providing a re-sale certificate. Instead, the amendment provides for an alternative means of disclosing to potential buyers all obligations associated with the real estate.
2. Makes all condominiums subject to the Act (currently it pertains to those with 12 or more units).

OUT OF SESSION



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

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

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

Thank you.

TO: SENATOR JAN FAIKS
SENATOR RICK HALFORD

FROM: ELIZABETH J. HICKERSON

SUBJECT: UCIOA AMENDMENTS

DATE: MARCH 26, 1986

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

The following is a sectional analysis of the draft.

Section 1. AS 34.08.020 is amended as follows:

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

financing from AHFC is deleted.

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

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

Section 2. AS 34.08.030 is amended as follows:

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

financing from AHFC is deleted; and,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Unit owners in a planned community that was created after January 1, 1986, not exempt under AS 34.08.050 (communities 12 and under), does not collect assessments and does not have an association or board members, may provide an affidavit instead of a resale certificate.

The affidavit must include:

a statement that no assessments are collected; date and amount of last assessments; and the reason that assessments ceased;

a statement that no association exists or no board/officers exist;

copies of the declaration, bylaws, rules, etc.;

a brief description of the real estate and all obligations associated with that real estate.

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

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

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

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

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

ALASKA MUTUAL BANK

April 7, 1986

Patrick Rodey, Chairman
Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

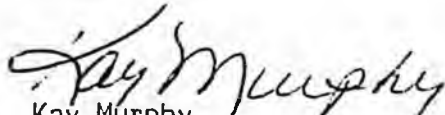
Dear Senator Rodey:

Alaska Mutual Bank recommends passage of Senate Bill 470. We support the basic intent of the Uniform Common Interest Ownership Act (UCIOA) and agree that full disclosure to purchasers of units in common interest communities is appropriate. However, it has become apparent since the effective date of the Act that refinements to UCIOA were necessary.

As it exists now, UCIOA works well in highly structured common interest communities. However, the addition of subparagraph (d) to section 590 is necessary to assist many owners in limited common interest communities in complying with the Act and providing adequate disclosure to purchasers. The inclusion of the wording "... financing from the Alaska Housing Finance Corporation..." had the effect of negating the exemptions found in sections 020 and 030 of the Act.

The amendments to UCIOA are the result of a cooperative effort by members of various real estate industry groups all working toward one goal: a law that is appropriate for the various types of communities in the State and one that will provide adequate disclosure to real estate purchasers. Senate Bill 470 meets that goal.

Sincerely,


Kay Murphy
Vice President

KM:rm



ALASKA MORTGAGE BANKERS ASSOCIATION

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

April 4, 1986

Members
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Senate Bill 470

Honorable Senators and Representatives:

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

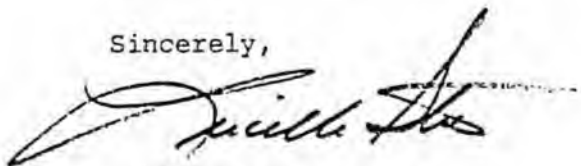
The Uniform Common Interest Ownership Act took effect on January 1, 1986. The law provides for disclosure of certain information to purchasers of property in common interest communities as well as defining those communities. We support the intent of the law and the disclosure requirements on large and/or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

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

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

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

Sincerely,



Lucille Stietz
Vice President
907-265-2860

PROPOSED JUDICIARY COMMITTEE SUBSTITUTE
SENATE BILL 470
Sectional Analysis

Section 1.

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

Section 2.

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

Section 3.

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

Section 4.

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

Section 5.

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

Section 6.

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

Section 7.

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

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

Section 8.

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

Section 9.

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

Section 10.

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

Bradley
4/9/86

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 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.

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.
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