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5-1419B
Bradley
3/11/88

Original sponsor: Faiks

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 438 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to common interest community man-
7 agers."

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

9 * Section 1. AS 08.01.010 is amended by adding a new paragraph to read:

10 (28) common interest community managers.

11 * Sec. 2. AS 08.01.050(a) is amended to read:

12 (a) The department shall perform the following administrative
13 and budgetary services when appropriate:

14 (1) collect and record fees;

15 (2) maintain records and files;

16 (3) issue and receive application forms;

17 (4) notify applicants of acceptance or rejection as deter-
18 mined by the board or as determined by the department under AS 08.11
19 for audiologists, under AS 08.15 for common interest community man-
20 agers, under AS 08.40 for electrical administrators, under AS 08.45
21 for naturopaths, or under AS 08.55 for hearing aid dealers;

22 (5) designate dates examinations are to be held and notify
23 applicants;

24 (6) publish notice of examinations and proceedings;

25 (7) arrange space for holding examinations and proceedings;

26 (8) notify applicants of results of examinations;

27 (9) issue licenses or temporary licenses as authorized by
28 the board or as authorized by the department under AS 08.11 for audi-
29 ologists, under AS 08.15 for common interest community managers, under

1 AS 08.40 for electrical administrators, under AS 08.45 for naturo-
2 paths, or under AS 08.55 for hearing aid dealers;

3 (10) issue duplicate licenses upon submission of a written
4 request by the licensee attesting to loss of or the failure to receive
5 the original and payment by the licensee of a fee established by
6 regulation adopted by the department;

7 (11) notify licensees of renewal dates at least 30 days
8 before the expiration date of their licenses;

9 (12) compile and maintain a current register of licensees;

10 (13) answer routine inquiries;

11 (14) maintain files relating to individual licensees;

12 (15) arrange for printing and advertising;

13 (16) purchase supplies;

14 (17) employ additional help when needed;

15 (18) perform other services that may be requested by the
16 board;

17 (19) provide inspection, enforcement, and investigative
18 services to the boards and for the occupations listed in AS 08.01.010,
19 regarding all licenses issued by or through the department;

20 (20) retain and safeguard the official seal of a board and
21 prepare, sign, and affix a board seal, as appropriate, for licenses
22 approved by a board.

23 * Sec. 3. AS 08 is amended by adding a new chapter to read:

24 CHAPTER 15. COMMON INTEREST COMMUNITY MANAGERS.

25 Sec. 08.15.010. QUALIFICATIONS FOR A COMMON INTEREST COMMUNITY
26 MANAGER LICENSE. (a) The commissioner shall license as a common
27 interest community manager an individual who

28 (1) is managing a common interest community established
29 under AS 34.07 or AS 34.08;

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(4-24-1978)
M. H. HARRIS
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1 (2) is 18 years of age or older;
2 (3) applies on a form provided by the department;
3 (4) pays the fee required under AS 08.15.030; and
4 (5) furnishes evidence satisfactory to the department that
5 the person has not engaged in conduct that is a ground for imposing
6 disciplinary sanctions under AS 08.15.040.

7 (b) An individual licensed under (a) of this section may renew
8 the license upon evidence satisfactory to the commissioner that the
9 individual has completed continuing education of not less than 24
10 hours per year in courses approved by the commissioner in the law of
11 common interest communities or in business or accounting.

12 Sec. 08.15.020. EXEMPTIONS FROM REQUIREMENT OF LICENSURE. (a)
13 An officer or employee of the Alaska Housing Finance Corporation or of
14 a bank or other financial institution, when acting as a common in-
15 terest community manager, is not required to be licensed under AS 08.-
16 15.010.

17 (b) An individual who is licensed under AS 08.08, when acting as
18 a common interest community manager, is not required to be licensed
19 under AS 08.15.010.

20 (c) An individual who is an officer or a member of the executive
21 board of a common interest community established under AS 34.08 or an
22 officer or a member of the board of directors of a horizontal property
23 regime established under AS 34.07 is not required to be licensed under
24 AS 08.15.010 to manage that common interest community or horizontal
25 property regime.

26 (d) Except for the manager of a common interest community estab-
27 lished under AS 34.07 or AS 34.08, an employee of a common interest
28 community is not required to be licensed under AS 08.15.010.

29 Sec. 08.15.030. FEES. The department shall set fees under

1 AS 08.01.065 for each of the following:

- 2 (1) application and license;
3 (2) application for renewal of license;
4 (3) delinquency;
5 (4) application for reinstatement;
6 (5) duplicate license.

7 Sec. 08.15.040. GROUNDS FOR IMPOSITION OF DISCIPLINARY SANCTIONS
8 ON A COMMON INTEREST COMMUNITY MANAGER. After a hearing, the depart-
9 ment may impose a disciplinary sanction on a common interest community
10 manager when the department finds that the licensee

11 (1) secured a license through deceit, fraud, or intentional
12 misrepresentation;

13 (2) engaged in deceit, fraud, or intentional misrepresenta-
14 tion as a common interest community manager;

15 (3) has been convicted of a felony or other crime that
16 affects the person's ability to continue to act as a common interest
17 community manager;

18 (4) failed to comply with a provision of this chapter or a
19 regulation adopted under this chapter, or an order of the department.

20 Sec. 08.15.050. DISCIPLINARY SANCTIONS. (a) When it finds that
21 a common interest community manager has committed an act listed in
22 AS 08.15.040, the department may impose the following sanctions singly
23 or in combination:

- 24 (1) permanently revoke a license;
25 (2) suspend a license for a determinate period of time;
26 (3) censure a licensee;
27 (4) issue a letter of reprimand; or
28 (5) impose limitations or conditions on the work of a li-

29 censee.

1 (b) The department may withdraw a revocation, suspension, limi-
 2 tation, condition, or probationary status if it finds that the defi-
 3 ciency that required the sanction has been remedied.

4 Sec. 08.15.060. PROCEDURES. The Administrative Procedure Act
 5 (AS 44.62) applies to regulations and proceedings under this chapter.

6 * Sec. 4. AS 34.08.490(b) is amended to read:

7 (b) A manager licensed under AS 08.15 or [PROFESSIONAL MANAGER,
 8 MANAGING AGENT,] accountant, or other person with whom the association
 9 has contracted for services shall return all association records
 10 within five days of the termination of the contract. If the associa-
 11 tion records are not returned within five days, the association may
 12 sue for their return and for damages.

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Alaska State Legislature

SENATE

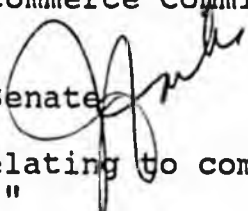
Office of the President

P.O. Box V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

March 7, 1988

TO: Senator Tim Kelly, Chairman
Senate Labor and Commerce Committee

FROM: Senator Jan Faiks
President of the Senate 

SUBJECT: SB 438 "An Act relating to common interest community managers."

Senate Bill 438 is currently before the Senate Labor and Commerce Committee. This bill adds a new chapter to Title 8 of the Alaska Statutes, requiring the licensing of common interest community managers.

Common interest communities are regulated in AS 34.07 (horizontal property regimes) and 34.08 (common interest communities). These communities include properties in which the owners of individual units in a building or other real property jointly own the common areas. The most common example is the condominium.

Common interest communities frequently employ a professional manager to handle the affairs of the community association. As you know, AS 34.07 and 34.08 are complex, and impose many legal requirements on the operation of common interest communities. Most larger community associations hire professional managers, and various businesses bid to obtain these contracts. Unfortunately, at the present time only a small percentage of persons working as professional managers are really qualified to do so.

Moreover, managers frequently have sole-signature authority over the reserve accounts of community associations. In Alaska, these accounts can total several hundred thousand dollars. There have already been cases of managers embezzling significant sums from local community associations.

For these reasons, I believe that those who act as the professional managers of community associations should be licensed by the state. SB 438 does the following:

Section 1 Makes AS 08.01, relating to centralized licensing, applicable to common interest community managers.

Section 2 Gives the Department of Commerce and Economic Development the authority to perform all necessary administrative duties with respect to the licensing of managers. No independent board is created to perform this function.

Section 3 Adds a new chapter to AS 08:

Sec. 08.15.010 (a) An individual, 18 years of age or older, who is managing a common interest community, shall be licensed by the department on payment of a fee and proof that the individual has not engaged in conduct that is grounds for imposing disciplinary sanctions under AS 08.15.040.

(b) An individual licensed under (a) may renew the license if the person takes 24 hours per year of approved classes in the law of common interest communities or in business or accounting.

Sec. 08.15.020 Exempts certain persons from licensing requirements, including (a) officers or employees of AHFC or of a bank or other financial institution; (b) a certified public accountant or an attorney licensed in the state; or (c) an employee of a common interest community other than the manager.

Sec. 08.15.030 Authorizes the department to set licensing fees.

Sec. 08.15.040 Specifies grounds for imposing disciplinary sanctions on a manager.

Sec. 08.15.050 Specifies the types of sanctions which may be imposed for committing an act under .040.

Sec. 08.15.060 Makes the Administrative Procedure Act applicable to regulations and proceedings under this chapter.

Section 4 Makes a technical change to AS 34.08.490(b).

Please contact my office if you have any questions or comments.

FISCAL NOTE

REQUEST:

Revision Date: _____
Tide: An Act relating to common interest community managers.
Sponsor: Senator Faiks
Requestor: _____

Agency Affected: Commerce & Econ. Dev.
BRU: Occupational Licensing
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		1.5	1.5	1.5	1.5	1.5
SUPPLIES		1.0	1.0	1.0	1.0	1.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		2.5	2.5	2.5	2.5	2.5

CAPITAL						
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REVENUE		5.0	.5	6.0	.5	7.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER		2.5	2.5	2.5	2.5	2.5
TOTAL		2.5	2.5	2.5	2.5	2.5

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This fiscal note is based on the assumption that 50 individuals will be licensed initially, with a growth rate of at least 5 new applicants each year. The revenues to be generated are assuming licensees will pay \$50 per year and renew on a biennial cycle. If expenditures are authorized by program receipts, program costs will be covered by the revenue generated.

Prepared by: Jennifer Strickler, Management Analyst Phone: 465-2144
Division: Occupational Licensing Date: March 9, 1988

Approved by Commissioner: J. Anthony Smith Date: 3/10/88
Agency: Commerce and Economic Development

Distribution (by preparer):

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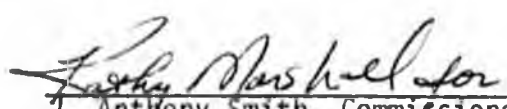
SB 438: An Act relating to common interest community managers.

SB 438 proposes to establish a new category of licensure for common interest community managers and provides that this new licensing program be administered by the Department of Commerce and Economic Development.

Although a relatively simple licensing procedure is established in the bill, we question the rationale behind one section of the bill. Specifically, Section 08.15.020 exempts from licensing as managers certain individuals, including public accountants and attorneys. However, the exemption does not address realtors who act as common interest community managers and who often, like public accountants, serve in that capacity. The practical aspects of daily property management involves much more than accounting skills (as referenced by the continuing education requirements, i.e., law of common interest communities, business, accounting). The department therefore questions the reason for exempting public accountants and attorneys and not realtors, and further suggests that realtors either be included in the exemption or that the exemptions be dropped as inappropriate.

A further concern involves the number of persons who would be required to be licensed by this bill. It has been indicated to the department that this bill will affect only forty or fifty people statewide, because the bill would license only "professional" common interest community managers ("professional managers" are persons apparently employed full-time in the business of property management). However, we are uncomfortable with this information because, in our view, the scope of this bill is considerably more broad. Section 08.15.010 states that the department shall license as a manager any individual who is managing a common interest community established under AS 34.07 or AS 34.08. The language in .010 does not limit the requirement to "professional managers," or to persons whose major source of income comes from property management. The Corporations Section of the department has indicated that a substantial portion of the approximately 4,000 registered nonprofits in this State are homeowner-type associations. We are not opposed to the current language, but wish to draw this matter to the Legislature's attention. We have based our fiscal note on the suggestion that this bill affects only a small number of persons. If that representation is incorrect, it would affect the amount of our fiscal note on this bill.

In summary, the department does not oppose the licensing of common interest community managers, so long as the licensing of common interest community managers can be supported through licensing fees, but we do have the concerns identified above.


J. Anthony Smith, Commissioner
Department of Commerce &
Economic Development

Date: 3/10/88