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CS for SB 25

Dealing With: Common interest community managers

Sponsors: ■ FAIKS

Cost: \$9,400 per year

Supporters/ Opponents:

Description:

Requires The licensing of Common interest Community managers.

There have been cases of embezzling.

community beyond the number stated in the original declaration under AS 34.08.130(a)(4), (§ 1 ch 95 SLA 1985)

Article 3. Management of the Common Interest Community.

Section	Section
310. Organization of unit owners' association	400. Quorums
320. Powers of unit owners' association	410. Voting and proxies
330. Executive board members and officers	420. Tort and contract liability
340. Transfer of association control	430. Conveyance or encumbrance of common elements
350. Transfer of special declarant rights	440. Insurance
360. Termination of contracts and leases of declarant	450. Surplus funds
370. Bylaws	460. Assessments for common expenses
380. Upkeep of common interest community	470. Lien for assessments
390. Meetings	480. Other liens
	490. Association records
	500. Association as trustee

Effective date of article. — Section 4, ch. 95, SLA 1985 provides: "This Act takes effect January 1, 1986."

Sec. 34.08.310. Organization of unit owners' association. An association of unit owners must be organized no later than the date on which the first unit in the common interest community is conveyed. The membership of the association at all times consists exclusively of all unit owners or, following termination of the common interest community, of all former unit owners entitled to distributions of proceeds under AS 34.08.260 or their heirs, successors, or assigns. The association must be organized as a profit or nonprofit corporation, trust, or partnership. (§ 1 ch 95 SLA 1985)

Sec. 34.08.320. Powers of unit owners' association. (a) Except as provided in (b) of this section and subject to the provisions of the declaration, the association may:

- (1) adopt and amend bylaws and rules and regulations;
- (2) adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;
- (3) hire and discharge managing agents and other employees, agents, and independent contractors;
- (4) institute, defend, or intervene in litigation or administrative proceedings or seek injunctive relief for violations of its declaration, bylaws or rules in its own name on behalf of itself or two or more unit owners on matters affecting the common interest community;

(5) make contracts and incur liabilities;

(6) regulate the use, maintenance, repair, replacement, and modification of common elements;

(7) cause additional improvements to be made as a part of the common elements;

(8) acquire, hold, encumber, and convey in its own name any right, title, or interest to real estate or personal property, except that

(A) common elements in a condominium or planned community may be conveyed or subjected to a security interest only under AS 34.08.430; and

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

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

(10) impose and receive a payment, fee, or charge for the use, rental, or operation of the common elements, other than limited common elements described in AS 34.08.100(2) and (4), and for services provided to unit owners;

(11) impose a reasonable charge for late payment of assessments and, after notice and an opportunity to be heard, levy a reasonable fine for a violation of the declaration, bylaws, rules, and regulations of the association;

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

(13) provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;

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

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

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

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

(b) The declaration may not impose limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons. (§ 1 ch 95 SLA 1985)

Sec. 34.08.330. Executive board members and officers. (a) Except as provided in the declaration, the bylaws, (b) of this section, or other provisions of this chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board are required to exercise the care required of fiduciaries of the unit owners.

(b) The executive board may not act on behalf of the association to amend the declaration, to terminate the common interest community, to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members, but the executive board may fill vacancies in its membership for the unexpired portion of a term.

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

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

(e) Not later than 60 days after conveyance of 25 percent of the units that may be created to unit owners other than a declarant, at least one member and not less than 25 percent of the members of the executive board must be elected by unit owners other than the declarant. Not later than 60 days after conveyance of 50 percent of the units that may be created to unit owners other than a declarant, not less than $33\frac{1}{3}$ percent of the members of the executive board must be elected by unit owners other than the declarant.

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

(g) Notwithstanding any provision of the declaration or bylaws to the contrary, following notice under AS 34.08.390, the unit owners, by a two-thirds vote of all persons present and entitled to vote at a meeting of the unit owners at which a quorum is present, may remove a member of the executive board with or without cause, other than a member appointed by the declarant. (§ 1 ch 95 SLA 1985)

Sec. 34.08.340. Transfer of association control. (a) Before or not more than 60 days after the termination of declarant control, the declarant shall relinquish control of the common interest community and the unit owners shall accept control. At the same time, the declarant shall deliver to the common interest community all property of the unit owners and of the common interest community held or controlled by the declarant including, but not limited to

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

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

(3) a copy of the bylaws;

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

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

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

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

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

(9) all tangible personal property that is property of the common interest community, represented by the declarant to be the property of the association or ostensibly the property of the association and an inventory of the property;

(10) a copy of the plans and specifications utilized in the construction or remodeling of improvements and the supplying of equipment to the common interest community and in the construction and installation of all mechanical components serving the improvements and the site, with a certificate in affidavit form of the declarant or an architect or engineer authorized to practice in the state that the plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the common interest community property and for the construction and installation of the mechanical components serving the improvements;

(11) insurance policies;

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

(13) any other permits issued by governmental bodies applicable to the common interest community property in force or issued within one year before the date the unit owners other than the declarant take control of the common interest community;

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

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

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

(17) employment contracts or service contracts in which the common interest community is one of the contracting parties or service contracts in which the common interest community or the unit owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person performing the service;

(18) all other contracts to which the common interest community is a party.

(b) The records shall be reviewed by an independent certified public accountant. The minimum report required shall be a review in accordance with generally accepted accounting standards as defined by regulation by the Board of Public Accountancy. The accountant performing the review shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for the common interest community purposes and the billings, cash receipts, and related records to determine that the declarant was charged and paid the proper amounts of assessments.

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

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

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

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

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

(d) A report shall be prepared indicating the incomplete work and repairs needed and the method of completing the work and making the repairs. 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 of control under representations in the public offering statement. (§ 1 ch 95 SLA 1985)

Sec. 34.08.350. Transfer of special declarant rights. (a) A special declarant right created or reserved under this chapter may be transferred only by an instrument evidencing the transfer that has been recorded in each recording district in which any portion of the common interest community is located. The instrument is not effective unless executed by the transferee.

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

(1) a transferor is not relieved of an obligation or liability arising before the transfer and remains liable for warranty obligations imposed by this chapter; lack of privity does not deprive a unit owner of standing to maintain an action to enforce an obligation of the transferor;

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

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

(4) a transferor is not liable for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage instrument, deed of trust, or other agreement creating a security interest, on the foreclosure of a security interest, sale by a trustee under an

agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Act or receivership proceedings of a unit owned by a declarant or of real estate in a common interest community subject to development rights, the person acquiring title to the property being foreclosed or sold, but only upon the request of the person, succeeds either (1) to the special declarant rights related to the property held by the declarant, or (2) only to any rights reserved in the declaration under AS 34.08.230 and held by that declarant to maintain models, sales offices, and signs. The judgment or instrument conveying title must provide for transfer of only the special declarant rights requested.

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

- (1) the declarant ceases to have special declarant rights, and
- (2) the period of declarant control terminates unless the judgment or instrument conveying title provides for transfer of the special declarant rights held by the declarant to a successor declarant.

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

(1) a successor to any special declarant right who is an affiliate of a declarant is subject to the obligations and liabilities imposed on the transferor by this chapter or by the declaration;

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

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

(B) on the transferor, other than:

(i) misrepresentations by a previous declarant;

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

(iii) breach of a fiduciary obligation by a previous declarant or the appointees of a previous declarant to the executive board; or

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

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

(4) a successor to the special declarant rights held by a transferor who succeeded to the rights under a deed or other instrument of

conveyance in lieu of foreclosure or under a judgment or instrument conveying title under (c) of this section may declare in a recorded instrument, including one conveying title under (c) of this section

(A) an intention to hold the rights solely for transfer to another person; or

(B) an intention to hold the rights for transfer to another person after making, finishing, or completing improvements in conformity with the declaration, consistent with the public offering statement, plans, and overall development scheme of the common interest community for purposes of preserving or improving the common interest community.

(f) Until transferring the special declarant rights to a person acquiring title to a unit or real estate subject to the development rights owned by the successor, or until recording an instrument permitting exercise of all those rights, the successor may not exercise any of the rights other than those specified in (e)(4)(B) of this section and the right held by the transferor of the successor to control the executive board under AS 34.08.330(d) for the duration of any period of declarant control and an attempted exercise of rights is void.

(g) So long as a successor declarant may not exercise special declarant rights under (e) of this section, and for purposes of (e)(4)(B) of this section so long as the successor declarant transfers within the time period specified in (h) of this section the rights to a subsequent successor declarant who will assume liability for the improvements made by the successor declarant, the successor declarant is not subject to liability or obligation as a declarant other than liability for acts and omissions under AS 34.08.330(d).

(h) If a lender fails to transfer special declarant rights to a successor declarant within one year of the date of recording an instrument under (e)(4)(B) of this section, then the lender becomes subject to the obligations and liabilities imposed by this chapter or the declaration as specified in (e)(2) of this section.

(i) Nothing in this section subjects a successor to a special declarant right to a claim against or other obligation of a transferor declarant, other than a claim or obligation arising under this chapter or the declaration. (§ 1 ch 95 SLA 1985)

Sec. 34.08.360. Termination of contracts and leases of declarant. (a) If entered into before the executive board elected by the unit

owners under AS 34.08.330(f) takes office (1) a management contract, employment contract, or lease of recreational or parking areas or facilities; (2) a contract or lease between the association and a declarant or an affiliate of a declarant; or (3) a contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing may be terminated without penalty by the association at any time after the executive board elected by the unit owners under AS 34.08.330(f) takes office upon not less than 90 days' notice to the other party.

(b) This section does not apply to

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

(2) a proprietary lease. (§ 1 ch 95 SLA 1985)

Sec. 34.08.370. Bylaws. (a) The bylaws of the association must provide

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

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

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

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

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

(6) for a method of amending the bylaws.

(b) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association considers necessary and appropriate. (§ 1 ch 95 SLA 1985)

Sec. 34.08.380. Upkeep of common interest community. (a) Except to the extent provided by the declaration, by (b) of this section, or by AS 34.08.440(h), the association is responsible for the maintenance, repair, and replacement of the common elements, and each unit owner is responsible for the maintenance, repair, and replacement of the unit. Each unit owner shall afford to the association, the other unit owners, and to their agents or employees, access through the unit that is reasonably necessary for maintenance and repair of the unit. If damage is inflicted on the common elements or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair of the damage.

(b) In addition to the liability that a declarant as a unit owner has under this chapter, a declarant is solely liable for the expenses in connection with real estate subject to development rights. No other unit owner and no other portion of the common interest community is subject to a claim for payment of expenses in connection with development rights. Unless the declaration provides otherwise, the income and proceeds from real estate subject to development rights inures to the declarant.

(c) In a planned community, when all development rights have expired with respect to real estate, the declarant remains liable for the expenses of the real estate unless, upon expiration, the declaration provides that the real estate becomes common elements or units. (§ 1 ch 95 SLA 1985)

Sec. 34.08.390. Meetings. A meeting of the association must be held at least once each year. A special meeting of the association may be called by the president, by a majority of the members of the executive board, or by unit owners comprising either 20 percent or a lower percentage specified in the bylaws of the votes in the association. Not less than 10 percent nor more than 60 days in advance of a meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to the mailing address designated in writing by the unit owner. The notice of a meeting must state the time and place of the meeting and the items on the agenda, including the general nature of a proposed amendment to the declaration or bylaws, budget changes, and a proposal to remove an officer or member of the executive board. (§ 1 ch 95 SLA 1985)

Sec. 34.08.400. Quorums. (a) Unless the bylaws provide otherwise, a quorum is present throughout a meeting of the association if persons entitled to cast 20 percent of the votes that may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.

(b) Unless the bylaws specify a larger percentage, a quorum is considered present throughout a meeting of the executive board if persons entitled to cast 50 percent of the votes on the board are present at the beginning of the meeting. (§ 1 ch 95 SLA 1985)

Sec. 34.08.410. Voting and proxies. (a) If only one of several owners of a unit is present at a meeting of the association, the owner present is entitled to cast all the votes allocated to the unit. If more than one of the owners are present, the votes allocated to the unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to the unit without protest being made promptly to the person presiding over the meeting by another owner of the unit.

(b) Votes allocated to a unit may be cast under a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may revoke a proxy given under this section only by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.

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

(d) Votes allocated to a unit owned by the association may not be cast. (§ 1 ch 95 SLA 1985)

Sec. 34.08.420. Tort and contract liability. Neither the association nor any unit owner except the declarant is liable for the torts of the declarant in connection with any part of the common interest community that the declarant has the responsibility to maintain. An action alleging a wrong done by the association must be brought against the association and not against a unit owner. If the wrong occurred during a period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to a unit owner for (1) tort losses not covered by insurance suffered by the association or the unit owner, and (2) each cost that the association would not have incurred but for a breach of contract or other wrongful act or omission. If the declarant is liable to the association under this section, the declarant is liable for the expenses of litigation incurred by the association. A statute of limitation affecting the right of action of the association under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from maintaining an action under this section because the person is a unit owner or a member or officer of the association. A lien resulting from a judgment against the association is governed by AS 34.08.480. (§ 1 ch 95 SLA 1985)

Sec. 34.08.430. Conveyance or encumbrance of common elements. (a) In a condominium or planned community, portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least 80 percent of the votes in the association, including 80 percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to the action, but each owner of a unit to which a limited common element is allocated must agree in order to convey the limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if each of the units is restricted exclusively to nonresidential uses. The proceeds of the sale and proceeds of a loan secured by encumbering a common area are an asset of the association.

(b) Part of a cooperative may be conveyed and all or part of a cooperative may be subjected to a security interest by the association if persons entitled to cast at least 80 percent of the votes in the association, including 80 percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to the action, but, if fewer than all of the units or limited common elements are to be conveyed or subjected to a security interest, then each unit owner of the units to which the limited common elements are allocated must agree in order to convey the

units or limited common elements or subject them to a security interest. The declaration may specify a smaller percentage only if each of the units is restricted exclusively to nonresidential uses. The proceeds of the sale and proceeds of a loan secured by encumbering a common area are an asset of the association. A purported conveyance or other voluntary transfer of an entire cooperative, unless made under AS 34.08.260, is void.

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

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

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

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

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

(h) In a cooperative, the association may acquire, hold, encumber, or convey a proprietary lease without complying with this section. (§ 1 ch 95 SLA 1985)

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

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

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

(b) In the case of a building that is part of a cooperative or that contains a unit having horizontal boundaries described in the declaration, the insurance maintained under (a)(1) of this section, to the extent reasonably available, must include the unit, but need not include improvements and betterments installed by a unit owner.

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

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

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

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

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

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

(e) A loss covered by the property policy under (a)(1) and (b) of this section must be adjusted with the association, but the insurance proceeds for the loss are payable to an insurance trustee designated

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

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

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

(h) A portion of the common interest community for which insurance is required under this section that is damaged or destroyed must be repaired or replaced promptly by the association unless (1) the common interest community is terminated and AS 34.05.260 applies, (2) repairs or replacement would be illegal under a state statute or municipal ordinance governing health or safety, or (3) 80 percent of the unit owners, including each owner of a unit or assigned limited common element that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire common interest community is not repaired or replaced, (1) the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the common interest community, and (2) except to the extent that other persons will be distributees, (A) the insurance proceeds attributable to a unit and limited common elements that is not rebuilt must be distributed to the owner of the unit and the owner of the unit to which the limited common elements were allocated, or to lien holders, as their interests may appear, and (B) the remainder of the proceeds must be distributed to each unit owner or lien holder, as their interests may appear, as follows: (i) in a condominium, in proportion to the common element interest of all the units and (ii) in a cooperative or planned community, in proportion to the common expense liabilities of all the units. If the unit owners vote not to rebuild a unit, the allocated interests of the unit are reallocated upon the vote as if the unit had

been condemned under AS 34.08.740(a), and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations.

i) The provisions of this section may be varied or waived in a common interest community if all of the units are restricted to nonresidential use. (§ 1 ch 95 SLA 1985)

Sec. 34.08.450. Surplus funds. Unless otherwise provided in the declaration, surplus funds of the association remaining after payment of or provision for common expenses and prepayment of reserves must be paid to the unit owners in proportion to common expense liabilities or credited to them to reduce future common expense assessments. (§ 1 ch 95 SLA 1985)

Sec. 34.08.460. Assessments for common expenses. (a) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After an assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association.

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

c) To the extent required by the declaration

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

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

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

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

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

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

(f) If common expense liabilities are reallocated, common expense assessments and any installment of the assessment not yet due must be recalculated in accordance with the reallocated common expense liabilities. (S 1 ch 95 SLA 1985)

Sec. 34.08.470. Lien for assessments. (a) The association has a lien on a unit for an assessment levied against the unit or fines imposed against its unit owner from the time the assessment or fine becomes due. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged under AS 34.08.320(a)(10)—(12) are enforceable as assessments under this section. If an assessment is payable in instalments, the full amount of the assessment is a lien from the time the first installment becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except (1) a lien and encumbrance recorded before the recording of the declaration and, in a cooperative, a lien and encumbrance which the association creates, assumes, or takes subject to; (2) a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, the first security interest encumbering only the interest of the unit owner and perfected before the date on which the assessment sought to be enforced became delinquent; and (3) a lien for real estate taxes and other governmental assessments or charges against the unit or cooperative. A lien under this section is also prior to all security interests described in (2) of this subsection if the common expense assessments based on the periodic budget adopted by the association under AS 34.08.460(a) would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of a mechanic's or materialman's lien, or the priority of a lien for other assessments made by the association. A lien under this section is not subject to the provisions of AS 09.38.010.

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

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

(e) A lien for an unpaid assessment is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessment becomes due.

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

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

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

(i) In a cooperative, upon nonpayment of an assessment on a unit, a unit owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed under this section.

(j) The association's lien may be foreclosed under this subsection:

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

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

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

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

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

(1) the association, upon nonpayment of an assessment and compliance with this subsection, may sell the unit at a public sale or by private negotiation, and at any time and place: each aspect of the sale, including the method, advertising, time, place, and terms must be reasonable; the association shall give reasonable written notice to the unit owner and a lessee of the unit owner of the time and place of the public sale or, if a private sale is intended, of the intention of entering into a contract to sell and of the time after which a private disposition may be made: the same notice must also be sent to any other person who has a recorded interest in the unit that would be cut off by the sale, but only if the recorded interest was on record seven weeks before the date specified in the notice as the date of a public sale or seven weeks before the date specified in the notice as the date after which a private sale may be made; the notices required by this subsection may be sent to any address reasonable in the circumstances; sale may not be held until five weeks after the sending of the notice; the association may buy at a public sale and, if the sale is conducted by a fiduciary or other person not related to the association, at a private sale;

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

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

(A) the reasonable expenses of sale;

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

(C) satisfaction of the lien of the association;

(D) satisfaction in the order of priority of a subordinate claim of record; and

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

(4) a good faith purchaser for value acquires the unit free of the association's debt that gave rise to the lien under which the foreclosure sale occurred and any subordinate interest, even though the association or other person conducting the sale failed to comply with the requirements of this section; the person conducting the sale shall execute a conveyance to the purchaser sufficient to convey the unit and stating that it is executed after a foreclosure of the association's lien by power of sale and that person conducting the sale was empowered to make the sale; signature and title or authority of the person signing the conveyance as grantor and a recital of the facts of nonpayment of the assessment and of the giving of the notices required by this subsection are sufficient proof of the facts recited and of the authority of the person to sign; further proof of authority is not required even if the association is named as grantee in the conveyance;

(5) at any time before the association has disposed of a unit in a cooperative or entered into a contract for its disposition under the power of sale, the unit owner or the holder of a subordinate security interest may cure the default of the unit owner and prevent sale or other disposition by tendering the performance due under the security agreement, including an amount due because of exercise of a right to accelerate, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender. (§ 1 ch 95 SLA 1985)

Sec. 34.08.480. Other liens. (a) In a condominium or planned community,

(1) except as provided in (2) of this subsection, a recorded judgment for money against the association is not a lien on the common elements, but is a lien in favor of the judgment lien holder against the units in the common interest community at the time the judgment was entered and no other property of a unit owner is subject to the claims of creditors of the association:

(2) if the association has granted a security interest in the common elements to a creditor of the association under AS 34.08.430, the holder of the security interest shall exercise its right against the common elements before its judgment lien on a unit may be enforced;

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

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

(b) In a cooperative,

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

(2) whether or not the property of a unit owner is subject to the claims of creditors of the association, other property of a unit owner is not subject to the claims. (§ 1 ch 95 SLA 1985)

Sec. 34.08.490. Association records. (a) The association shall keep financial records sufficiently detailed to enable the association to comply with AS 34.08.590. Financial and other records must be made reasonably available for examination by a unit owner and an authorized agent of a unit owner.

(b) A professional manager, managing agent, accountant, or other person with whom the association has contracted for services shall return all association records within five days of the termination of the contract. If the association records are not returned within five days, the association may sue for their return and for damages. (§ 1 ch 95 SLA 1985)

Sec. 34.08.500. Association as trustee. If a third person deals with the association in the capacity of the association as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee. (§ 1 ch 95 SLA 1985)

Article 4. Protection of Purchasers.

Section	Section
510. Applicability	610. Release of liens
520. Liability for public offering statement requirements	620. Conversion property
530. Public offering statements generally	630. Express warranties of quality
540. Common interest communities subject to development rights	640. Implied warranties of quality
550. Time shares	650. Exclusion or modification of implied warranties of quality
560. Common interest communities containing conversion property	660. Statute of limitations for warranties
570. Common interest community securities	670. Effect of violations on rights of action
580. Purchaser's right to cancel	680. Labeling of promotional material
590. Resales of units	690. Declarant's obligation to complete and restore
600. Escrow of deposits	700. Substantial completion of units

Effective date of article. — Section 4, ch. 95, SLA 1985 provides: "This Act takes effect January 1, 1985"

FISCAL NOTE

REQUEST:

Revision Date: 2/3/89
Title: An Act relating to common interest community managers.
Sponsor: Senator Faiks
Requestor: Senate Labor & Commerce

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		7.9	7.9	7.9	7.9	7.9
TRAVEL						
CONTRACTUAL		1.5	1.5	1.5	1.5	1.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		9.4	9.4	9.4	9.4	9.4

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		9.4	9.4	9.4	9.4	9.4
TOTAL		9.4	9.4	9.4	9.4	9.4

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 five new applicants each year. The revenues to be generated are assuming licensees will pay \$50.00 per year and renew on a biennial cycle.

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144
Division: Occupational Licensing Date: 2/6/89

Approved by Commissioner: Larry Mercurieff Date: 2/3/89
Agency: Department of Commerce & Economic Development

Distribution (by preparer):

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

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 25

The differences in revenues and costs are expected to be covered by the division's operating budget until the fees are reassessed.

Calculations for this fiscal note assume that common interest community managers, like all other licensing programs, will be responsible for sharing in the administrative costs of the division. Therefore, based on 50 licensees, common interest community managers will be responsible for covering .19% of the administrative costs. The .19% is derived by dividing the anticipated number of licensees (50) into the total number of licensees (26,995), not including business licenses.

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 6, 1989

FURTHER REFERRALS: JUDICIARY

FINANCE

4/29

Date of Committee Action: 4-28-89

The LABOR & COMMERCE Committee considered:

SSB 25(L&C)

CS FOR SENATE BILL NO. 25 (L&C)

[COMMON INTEREST COMMUNITY MANAGERS]

"An Act relating to common interest community managers."

RECOMMENDATIONS:

- [] be replaced with _____ [] the same title
- [] have attached amendment(s) [] a new title
- [] do pass
- [] do not pass
- [] no recommendation
- [] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent.

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

- [] fiscal impact _____ [] fiscal note(\$/ Senate CEO (Date/Dept) 3/89)
- [] zero fiscal note _____ [] zero fiscal note(s) _____
- [] zero with analysis _____ [] zero fn/+ analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

	Do Not Pass	No PC
<u>David Donley</u> DONLEY		
<u>John C. Boucher</u> BOUCHER		
<u>Rew A. Lemay</u> LEMAY		
<u>Cliff Finkelstein</u> FINKELSTEIN		
<u>Richard L. ...</u>		
<u>Richard ...</u>		

David Donley
Chairman's signature

Alaska State Legislature

Chairman
(907) 465-4523



Jan Faiks
Post Office Box V
Juneau, Alaska 99811

Senate Judiciary Committee

March 10, 1989

MEMORANDUM

TO: Representative Dave Donley, Chairman
House Labor and Commerce Committee

FROM: Senator Jan Faiks, Chairman
Senate Judiciary Committee

SUBJECT: SB 25 "An Act relating to common interest community managers."

CSSB 25 (L&C) has been referred to the House Labor and Commerce Committee for consideration. This bill adds a new chapter to Title 8 of the Alaska Statutes, requiring the licensing of common interest community managers. It is almost identical to CSSB 438 (Fin) which was considered by the Labor and Commerce Committee last session, and reported from committee with four "do pass" recommendations.

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, and various businesses bid to obtain these contracts. As you know, AS 34.07 and 34.08 are complex, and impose many legal requirements on the operation of common interest communities. 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

Members

Mike Szymanski, Vice-Chairman • Rick Halford • Drue Pearce • Pat Rodey

Out of Session

3111 C Street, Anchorage, Alaska 99503 • (907) 561-7610

already been cases of managers embezzling significant sums from local community associations.

To make certain that those who act as professional managers possess the minimum necessary level of knowledge, and to ensure that certain standards of integrity are maintained, I believe that the professional managers of community associations should be licensed by the state. CSSB 25 (L&C) accomplishes these goals.

Following are some commonly asked questions about this legislation, and the answers to them:

1. What does a common interest community manager do?

The manager is responsible for the day-to-day operation of the association. This includes collecting dues, dealing with mortgagors, arranging for maintenance and repair on the common areas, perfecting liens, and keeping the books.

2. Is an independent board created to regulate managers?

No, the Department of Commerce and Economic Development is given this authority.

3. Do all persons who manage community associations have to be licensed?

No, only persons who contract with community associations to act as professional managers. Smaller associations which are managed in-house by officers or board members of the association are unaffected by this bill, since those persons are exempted from licensure.

4. How many people does this bill effect?

At the present time, it is estimated that approximately 50 persons are acting as the professional managers of community associations in Alaska.

5. Are persons currently acting as managers required to take classes in the law of common interest communities before receiving their initial license?

No. Since no classes are yet approved by the department, it is impossible to require this. Education is only required for renewal of the the initial license. The department has the discretion, however, to require first-time licensees to take classes in the future, when this becomes practical.

Specifically, the bill makes the following changes and additions to current law:

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.

Section 3 Adds a new chapter to AS 08:

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

(b) An individual licensed under (a) may renew the license if the person takes 12 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) an attorney licensed in the state; (c) an officer or member of the board of a common interest community who is managing that community; or (d) 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 Prohibits persons who are not licensed or exempted from licensure from managing a common interest community.

Sec. 08.15.070 Makes violations of 08.15.060 a class B misdemeanor.

Sec. 08.15.080 Authorizes the department to adopt regulations to implement this chapter.

Sec. 08.15.100 Defines "department" as the Department of Commerce and Economic Development.

Section 4 Makes a technical change to AS 24.08.490(b).

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

Thank you.



Representative Dave Donley, Chair House Labor & Commerce Committee

DATE: 4-28-89

PLACE: C#17

SUBJECT OF MEETING:

HB 284

SB 25

HB 13

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
JENNIFER STRICKLER	DCED DIV. OF OCC. LICENSING	P.O. Box D-LIC., JNO.	99811		465-2444	<input checked="" type="radio"/> N	SB 25
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	

FISCAL NOTE

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GRANTS, CLAIMS						
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CAPITAL						
REVENUE		5.0	.5	6.0	.5	7.0

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GENERAL FUND						
FEDERAL FUNDS						
OTHER		9.4	9.4	9.4	9.4	9.4
TOTAL		9.4	9.4	9.4	9.4	9.4

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Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144
 Division: Occupational Licensing Date: 2/6/89

Approved by Commissioner: Larry Mercurieff Date: 2/2/89
 Agency: Department of Commerce & Economic Development

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