LEG. FINANCE - BILLS 1985 - 1986 2159

CSSB 43 - SB 44

2159

COMMITTEE REPORT

HOUSE

(11)

5/1/85

FURTHER:

Date: ____________________

The Committee on FINANCE has had CSSB 43(Jud)
"An Act establishing a Legislative Research Division Agency; and providing for an effective date."

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for ____________ [ ] same title [ ] new title

and recommends ____________________

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the ____________________ Committee

MEMBERS SIGNING DO PASS

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____

MEMBERS HAVING OTHER RECOMMENDATIONS:

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CHAIRMAN

Offered: 2/8/85
Referred: Finance

Original sponsors: Rodey, Sturgulewski, V.Fischer, et al

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 43 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a Legislative Research Division
7 within the Legislative Affairs Agency; and providing
8 for an effective date."

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

10 * Section 1. AS 24.20 is amended by adding a new section to read:

11 Sec. 24.20.071. LEGISLATIVE RESEARCH DIVISION. There is estab-
12 lished within the Legislative Affairs Agency a permanent research
13 staff with a research director, to be known as the Legislative Re-
14 search Division. The establishment of the agency recognizes the need
15 for nonpartisan, objective research to support the legislature in its
16 decision making. The research director is appointed by the Executive
17 Director of the Agency.

18 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
19 10.070(c).

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COPY

Official Business

Alaska State Legislature

Senate

Pouch V
State Capitol
Juneau, Alaska 99811

April 30, 1985

LETTER OF INTENT
ON
CS FOR SENATE BILL NO. 43 (Jud)

It is the intent of the Legislature that the Executive Director of Legislative Affairs shall be the appointing officer of the employees of the agency.

Adopted by the Senate April 30, 1985.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 4/4/85

REQUEST
Bill/Resolution No.: CSSB 43 (Jud
Title: Establishing a Legislative Research Agency; efd.
Sponsor: Senator Rodey
Requestor: Senate Finance Committee
Date of Request: 4/4/85

FISCAL DETAIL
Agency Affected: Legislative Affairs Agency
Program Category Affected: General Government
BRU, Program or Subprogram(s) Affected: Senate Advisory Council
House Research Agency

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND		-0-				
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Jan Faiks, Co-chairman Phone: 465-4523
Division: Senate Finance Committee Date: 4/4/85

Approved by Commissioner: Date:
Agency:

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: SB No. 43
Title: An Act establishing a Legislative Research Agency, eff. date
Sponsor: Senator Patrick Rodey
Requestor: Senator Patrick Rodey
Date of Request: 1/21/85

FISCAL DETAIL
Agency Affected: Legislative Affairs
Program Category Affected: General Government
BRU, Program or Subprogram(s) Affected: Senate Advisory Council
House Research Agency

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
100 PERSONAL SERVICES	<42.8>	<85.8>				
200 TRAVEL	-0-	<18.0>				
300 CONTRACTUAL	20.0	10.0				
400 SUPPLIES	-0-	-0-				
500 EQUIPMENT	12.0	-0-				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	<10.8>	<93.8>				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND	<10.8>	<93.8>				
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

If a Legislative Research Agency is formed by merging the existing House Research Agency and the Senate Advisory Council, there would be a cost savings of approximately $10.8 in FY 85 and $93.8 in FY 86. The director position is currently vacant at Senate Advisory Council. If the position remains vacant after the merger, it accounts for the cost savings in personal services. If other vacancies occur in personal services, this would mean additional savings or less funding necessary for FY 86. Costs in the merger would be for moving, office space consolidation, and a new phone system.

Prepared By: Pamela A. Calhoon, Manager Phone: 465-3350
Division: Administratives Services Date: 1/22/85

Approved by Dep. Exec. Director: Don Fisher Date: 1/22/85
Agency: Legislative Affairs Agency

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

Fin

Senate Letter & latest F/note 55#14 1/30/85 Zero fund note 4/4/85

adopted 4/30/85

ALASKA STATE LEGISLATURE
14TH Legislature FIRST Session
SENATE BILL NO. 43
By RODEY, STURGULEWSKI, V. FISCHER, KELLY, FAIKS, JOSEPHSON, KERTTULA
"An Act establishing a Legislative Research Agency; and providing for an effective date."
Introduced in the Senate 1/14, 19 85

HISTORY IN THE SENATE

19 85		
		Read first time and referred to Committee on
1	14	Judiciary and Finance
2	8	Reported back with Judiciary recommendation that: report w/CS, F.Y. note, 3 do pass to Finance.
4	26	Fin: 5 do pass Jud CS, new zero FN to Rules
4	29	Rules calendar
4	29	Read second time and CS (Jud) adopted w/new title adopted
4	29	Read third time and
4	30	Letter of Intent adopted. Reconsid taken up
4	29	PASSed Yeas - 16 Nays - 3 Absent - 1 Excused - 0; Effective Date same
4	29	Recon Reconsideration
4	30	PASSed Yeas — 19 Nays — 1 Absent — Excused —; Effective Date Yeas same
4	30	Reported correctly engrossed
	30	Signed by President
	30	Sent to House

Peggy Mulligan
SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19 85		
		Read first time and referred to Committee on
May	1	Finance
		Reported back with recommendation that
		Read second time and
		Read third time and
		PASS Yeas Nays Absent Excused; Effective Date Yeas Nays Absent Excused
		Reconsideration
		PASS Yeas Nays Absent Excused; Effective Date Yeas Nays Absent Excused
		Reported correctly engrossed
		Signed by Speaker
		Returned to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19		
		Received from House
		To enrolling
		Reported correctly enrolled
		Sent to Governor
		.... by Governor
		Filed with Lt. Governor
		Chapter No. ....

1-001

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

BY RODEY, STURGULEWSKI, V.FISCHER, KELLY, FAIKS, JOSEPHSON AND KERTTULA

1 IN THE SENATE

2 SENATE BILL NO. 43

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a Legislative Research Agency;

7 and providing for an effective date."

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

9 * Section 1. AS 24.20 is amended by adding a new section to read:

10 ARTICLE 5. LEGISLATIVE RESEARCH AGENCY.

11 Sec. 24.20.575. LEGISLATIVE RESEARCH AGENCY. (a) There is

12 established a permanent research staff with a research director, to be

13 known as the Legislative Research Agency. The establishment of the

14 agency recognizes the need for nonpartisan, objective research to

15 support the legislature in its decision making.

16 (b) A permanent interim committee is established to set policies

17 for the agency. The committee consists of the president of the

18 senate, the speaker of the house, the minority leader of the senate,

19 the minority leader of the house, and the chair and vice-chair of the

20 Legislative Council. If a presiding officer is chair or vice-chair of

21 the Legislative Council, another member of the Legislative Council

22 from that house shall be appointed by the presiding officer as a

23 member of the committee.

24 (c) The director and members of the professional and clerical

25 staff may not join or support a partisan political organization. This

26 prohibition does not prevent the director or members of the staff from

27 joining social organizations, expressing private opinion, registering

28 as to party, or voting.

29 * Sec. 2. This Act takes effect immediately in accordance with

1 AS 01.10.070(c).

SENATE JUDICIARY COMMITTEE MEETING
Invitational Work Session
SB 44, Uniform Common Interest Act
February 5, 1984

Meeting called to order by Senator Rodey.
Attendance at meeting: Senator Faiks, Senator Halford, Senator Kelly, Senator Ziegler. Senator Rodey, Chair.

Senator Rodey: We will be taking up Senate Bill 44. The Committee has discussed the bill. Many of the people here are quite familiar with the bill. The bill has been discussed in Committee and we discussed it totally. We have, fortunately, several people with us today. Perhaps the first thing to do is to call Mr. Don Buck, to take the witness chair.

Senator Faiks: Mr. Chairman, because of a conflict in the Senate Finance, I am going to have to leave the committee right now, but I promise to be in on the next one.

Senator Rodey: I know that you have to take care of our money. What little we have left. Thank you Senator. Mr. Buck you have the floor, sir.

(012)
Don Buck: May I suggest perhaps that Mr. McNall could join us and we could have an interchange.

Senator Rodey: Good suggestion. Mr. McNall would you please. I would like to point out to the committee that Mr. McNall is an Anchorage attorney who has considerable experience with this area of law, such as it is in the Alaska Statutes. Mr. Buck is a very well known attorney nationally in this field and heads the Bar Association Committee in this area. Identify both yourselves for the record.

(021)

Don Buck: My name is Gurdon Buck. I'm with the law firm of Robinson & Cole in Hartford, Connecticut. I'm a lawyer. I'm also a Realtor. As a background, I've also been a developer. I'm also presently the vice-chairman of the Committee on Condominiums, Cooperatives and Home-owners Associations of the American Bar Association. I'm a Trustee of Community Associations Institute and professionally I write documents for common interest communities in Connecticut and undertake the representation of developers, although I do have municipalities and

associations as clients in the common interest community field.

Bill McNall: My name is Bill McNall. I'm attorney that does a lot of association work. I work with some brokers, some developers. I'm president of the Alaska Chapter of Community Association Institute.

Rodey: Mr. Buck could you give us kind of a brief statement of why you're familiar with the Alaska law and give the committee, as well as the other group that is here, your idea why it is important that we adopt this piece of legislation.

Mr. Buck: Certainly, this is a barely modified version of the Common Interest Ownership Act which was passed in 1982, by the National Conference of Commissioners on Uniform State Laws. UCIOA, as it is called, is a combined act combining the provisions of the Uniform Condominium Act (originally passed in 1977, and modified in 1980), the Uniform Planned Community Act passed by the Commissioners in 1980, and the Model Real Estate Cooperative Act passed in 1981. They pushed them all together in 1982 as a single act which covers condominiums, cooperatives and any common interest community which is not a condominium or cooperative, which is called a planned community under the act.

The purpose of the bill is to supplant the Alaska Horizontal Properties Act as to condominiums declared effective after the Act, which is January 1, 1986. It also applies the same statutory framework of condominiums to cooperatives and planned unit developments or cluster housing, and every other form of common interest community. The central provision of the Act is the definition of common interest community In short, it is a community whereby the ownership of a unit mandates the payment of maintenance assessments for property other than a unit. A unit is defined as a parcel or physical division of land. It could be: a lot, it could be a marina slip, it could be a stable, it could be an apartment, a building, a house, or a shop. It could be almost any form of real estate that can be divided and set aside for individual ownership or occupancy. It also applies in approximately a dozen sections, pursuant to its section 40, to pre-existing common interest communities whether they were formed under the Horizontal Properties Act, or formed under the Common Law such as the planned unit developments, or formed under one form or another under corporation law such as cooperatives.

The Act is based almost entirely on the Uniform Common Interest Ownership Act which was developed through the

National Conference of Commissioners of Uniform State Laws, promoted by the National Institution of Real Estate. It's consumer interest, title interest folks, association people to provide a uniform and balanced statute to represent all interests and provide for free interstate commerce, and uniform mortgage and sales instruments, and to solve the myriad of problems that have arisen since FHA originally promulgated its model statute for apartment ownership in 1962, which was adopted by Alaska in 1963. It was last revised by FHA in 1965 and basically what has happened since that period of time is the states have been monkeying around with their statutes in all different directions. The Uniform Law Commissioners felt that it was important that there be a uniform law throughout the United States.

They started the Uniform Condominium Act, but realized that the same problems were arising in cooperatives and arising in planned unit developments and a Uniform Condominium Act alone does not solve the problems in these other forms of ownership. So the Commissioners decided to merge the three acts which had been designed to merge in 1982. The structure of the Act is relatively simple. It begins at the beginning and ends at the end and then stops. The Alaska bill is similar but shifts some of the definitions to the end, which is in course with the statutory practice, so it goes back to the beginning again. One of the great advantages of the act is that you can find things in it. There is an order to it, and going through in a general overview you can begin finding where solutions to problems occur by knowing approximately how the act is arranged.

The first Article, which is the applicability article, provides for applications and exemptions of various communities. It divides communities into classes: new communities which are created or declared after the effective date of the Act, in which the entire act applies; small or limited expense communities, which are of such a small nature that the imposition of the Act would be cumbersome; 12 units or less, or where their annual assessments is $100 or less per unit (adjusted by the CPI which tends to be $140 this year); and old communities which were declared before the effective date of the Act, in which, as I explained, certain provisions of the Act apply to them but only with respect to acts and occurrences happening after its effective date and only provided that the initial documents of the project are not contrary to the statutes.

In respect to old communities, the statute is overridden by the documents because of the contract

clause of the constitution. In respect to new communities, the statute overrides the document if they are otherwise contrary. It applies to nonresidential communities with a very limited aspect, unless the developer opts to take advantage of all the various provisions of the act, and there is a very large number of those provisions which are very useful. It applies to out-of-state communities with respect to offers or sales made within the state and in which case then a public offering statement is required.

(101)

Article II, is the beginning: creation, alteration, and termination of the community. This is basically the developers'/draftsmens' article. It has a whole tool box of useful provisions that can be used by a draftsman in creating an act to follow the desires of an individual developer or project which is being contemplated. It allows the developer to flex the condominium in a wide range of varying ways, to create units in common elements, to add land, to withdraw land, to subdivide units into sub-units such as in office buildings. These particular flexing powers allow a developer to sensitively respond to the market. Not to commit him or herself to a particular format or formula, and discover that the market does not like a walk-up two bedroom flat and be stuck with 15 of them. The concept of flexing units, I think the most useful concepts of the act, has been done in varying ways or mucked up in other various ways by developers using common law covenants, and couldn't be done under the old act. In addition, there are some substantial lender protection provisions put into the Act, under Section 270, which provide for things that lenders have been wanting for a long time, the right to participate in major association decisions.

(120)

Article III is management provision. We have now created a community and now we are going to operate it. Management, Sections 300 through 500, include the powers of the association, giving broad and flexible rights to the association to enforce and develop the activities of the common interest community. It includes some interesting new powers: the right to collect fines and late charges; the right to sue and be sued; which is an interesting problem in some of the common interest communities as whether they can sue on behalf of the owners. It gives some very interesting and powerful remedies in collection. Probably one of the most useful remedies that are in the Act is the so called superlien, giving the association the right to collect up to six months of regularly budgeted assessments that accrued prior to commencement of

collection ahead of first mortgages on the property. This gives a very, very substantial financial viability to the association, high levels of credit, and the ability to obtain funds quickly and easily for the operations of the association. It provides protection of the board of directors from liability, however, imposes upon the developer fiduciary responsibilities during the period of development control.

It has a detailed provision on the transfer of the association control, which was not in the uniform act but a version of it was in the Connecticut act, and this particular provision is adopted from the Florida provisions. It has a detail of the transfer of special declarant rights. That's the developers' rights to undertake a project and allows a construction lender to be assigned these development rights, but not use them, and therefore not be subject to liability and then thaw them out, as they say, after the successor developer comes along and gives the successor developer the liabilities and not expose the lenders. It gives some interesting provisions on corporate duties, including assignment of assessment of income, a new source of credit for associations. As parking lots are beginning to fail and roofs need to be reroofed, and major structural components are needed, the ability of the association to borrow money on the assignments assessment income is necessary and gives them this source of credit. It has a detailed provision on insurance, which is a mess that has needed clarification since the first act was promulgated. There is a relatively simplistic approach, that is, the association is obligated to insure what is it obligated to repair.

There are two kinds of classes of associations: those with horizontal boundaries, have ceilings and floors, in which case, all buildings and improvements, including the areas within the units, kitchen cabinets and the like, have to be insured. Those without horizontal boundaries, that is, with no boundary that interferes between the center of the earth and the heaven. I'm thinking in that case as a house lot, in which case the insurance only has to be on the common elements and optionally the association can choose to insure all the buildings.

(156)

Article IV, after we have the management completed, is the protection of the purchasers, Section 510 and following. It provides for two kinds of consumer protection of great substance and works it through disclosure, that would be it licensing and registration that would be due. You have a heavy disclosure provision on the developer by the preparation and

presentation of a public offering statement. If it is a simple straight forward, one building condominium, there are 20 questions that have to be answered, like the quiz show. If it is a complex project, where there is going to be an addition of units, or an addition of land, or development rights are reserved undertaking a change of the project, there are a dozen more questions that have be answered to predict the developer's actions. If the project is time share, there are four questions that are added to the public offering statement that have to be answered with respect to time share activities and plans. If it is a conversion building, there are three questions that must be answered having to do with the physical characteristics of the common interest community at the time it is offered for sale.

The second area where consumer protection is put in a major area, is in resales. A seller of common interest community unit must obtain from his or her association a resale certificate and disclosure package. It consists of 14 questions having to do with the financing, the financial viability, lawsuits and matters having to do with the operation of the condominium. Three of which are really optional, that is, if there is a municipal project or limited equity project under the co-ops, and it has to include a declaration, the bylaws and rules and regulations.

(181)

Article V, which is an extract actually of Article I of the Uniform Act, contains general provisions, and includes one of the most important provisions, the definitions. The definitions are very carefully spelled out and as I explained, one of the most important definitions is the definition of the common interest community. That's probably where we should start with what a common interest community is and what a unit is.

To give you an outline and the scope of the Act, I have a few examples of what I would consider the outlying frontiers of the area. This act can cover and provide solutions to problems. One of the areas would be older people in an apartment who wish to stabilize their housing costs. Apartments could be bought as investments by relatives using gifts as downpayment and can undertake some advantageous estate planning. Groups of investors are interested in commercial property, but they have different equity interests. This has become quite prominent in the medical field where some of the doctors are retiring, some of them wish to remain as investors and some wish to remaining as owner occupants. There may be owner-occupancy.

There may be industrial revenue bond financing. There may be tax exempt financing. There may be investment without occupancy. There may be various corporate estate and limited partnership requirements indicating each of the sections of the given property. It would be useful if it was divided into separate ownership with financing capability. The Act permits that and permits a wide variety of flexibility in doing that.

Presently doing that is the city of New Haven. Providing an office building, a city hall, a parking garage, a shopping center, and an underground highway, each having separate ownership, separate financing and they are tied together under common ownership activity. It looks like, if it is done right, they are going to get a free city hall. State bond money is paying for the highway, so it had to have separate ownership. The state highway department actually owns it, while the parking garage is owned by the parking authority. The office building is owned by a private investment developer with a combination of Urban Development Acceptance Corporation (UDAC) and certain kinds of industrial revenue financing. And, of course, city hall is owned by the city using general obligation bond financing. We had to title them all separately. We had to relate it and they had a series of common elements just to hold these things in the air. It was done through using the Common Interest Ownership Act as a method of financing this.

Industrial high technology parks are now in a situation where they require architectural controls. They incorporate common utilities, private slopes and open space, life style amenities and matters of that nature. Industrial people or high technology people will not run and move in where these controls exist. Under common interest communities the Act permits a reasoned method of combining the common facilities.

Student housing, apartments in the vicinities of universities, are built by private investors and sold to parents who then give the children the rent. They have the depreciation shelter, reallocation income to children that can be a good investment. These are occurring all over the country.

Municipal and local government protection. Where municipal (indiscernible) amenities such as fragile wet lands and eco-systems, protections of drainage systems, detention basin and stream encroachment zones, historic facades, and central sewer systems. All require common maintenance, common control, and financially viable associations. This Act gives financially viable association so that the municipality can be assured of the continued maintenance of these amenities at the

expense of the particular properties that are creating the burden.

(226)

Marina condominiums. Interesting issue. They are not an apartment, because they are not in a closed space within a building as the old act required. They are a slip. They are actually a portion of reparation rights. A very interesting metaphysical concept which is a unit with common maintenance. The consumer would purchase the uplands as tenants in common or as a condominium. The slips would become units. Consumers would purchase these in order to get stability of and assurances of a slip, particularly where they are restricted. Although, in many cases, there seems to be little chance of equity growth, the values are going up and obviously because there is more value of the increments of the marinas, then there is value from a cash flow basis, and so we are forming a number of those. They all can be mixed. Presently, in some 24 projects I did last year, over half of them had mixed uses: professional units, marina units, commercial units, mixed in with residential. The common interest act permits this and allows the documents to be developed.

That's some of the things. It is not just an apartment act. It's an act that has a great deal of excitement. It's a bold venture and I certainly commend it to your favorable consideration. I think at this time I would like to consider it on a section-by-section basis and I'll turn it over to Bill.

(244)

Bill McNall: Thank you, Mr. Chairman. After hearing everything that can be done with the new act, I'm embarrassed to say that under the old act, I have clients that come to talk with me about the problems they have in their associations, and because an association may be a PUD, for example, I can't give them any help. PUDs simply are not covered by our statutes. Our statutes only apply to condominiums in the traditional sense and there is no case law in our state. There are no regulations, so I am afraid that if the association I'm trying to deal with is a PUD I simply have no place to go for information.

I would also like to point out that most of our current statute has literally no help for associations that are having manageral problems in the day-to-day problem solving that the board of directors and association managers have to face. Among these issues sometimes you find that the association was never properly formed by the developer. The units have been sold. The

declaration requires automatic membership in those units. The corporation process has never occurred. The association has gone on, and now the unit owners are taking over and trying to find out what's happened to the money. They are trying to find out what their rights are. They are trying to figure out why it is they are not members of an association. The statutes simply do not speak to those type of problems. All these problems have been addressed in the new act and more. I have numerous examples that I can share with you and should probably do so as we go through specific portions of the bill.

I am in favor of the new act because it simply gives me some tremendous flexibility to help the associations that I'm working with, either after the fact or trying to solve problems that the association itself has. Where if I'm representing realtors, who I think have some substantial protections under this act, I can assist them, or for that matter, develope , in avoiding problems that I know will come up at a later point in time. Last but not least, I would like to point out that I think the new act is a substantial help to the Alaska Housing Finance Corporation who is asked to look at projects that are not covered by any statutory guidelines, and are asked to assist in the development of those projects without appropriate statutory guidelines. I simply don't know how AHFC is going to be able to do that without getting into the regulation drafting process. I think that this new act will also help substantially at that level. Thank you.

(281)
Senator Rodey: Just a reminder to other members of the Committee that we are on Teleconference. A number of our constituents in Anchorage and Mat-Su Valley are listening and if we could use our microphones when we talk it would be very helpful. There are a number of proposed amendments to the bill. Have you had a chance to review them?

Buck: Yes.

Rodey: We have talked previously about the Act and got a very good overview of the act. And perhaps it would be appropriate at this time, because it is a uniform act, to talk about some of the changes that make it a nonuniform act, at least in that sense.

Buck: There were a number of changes. I can't pull them all out from the uniform act. Generally, we've made some comparisons from the act. There're some other changes, however, the act itself is still substantially uniform with respect to interstate commerce, forms and

activities. The proposed changes, perhaps we could do them when we go on a section by section bases, or we could suggest that they be introduced and described in whole. Taking them out of context does tend to make it a little difficult to deal with.

Senator Halford: Mr. Chairman, there is one set of changes that was in our packet and we also have another set of changes that are somewhat related to drafting in the second handout. I don't know whether we should maybe go through section by section, but I think that they know where those changes apply. If they could point them out to us as they go through that section then we could request that the substitute to include all the changes.

Rodey: Senator Kelly.

Senator Kelly: I'm under the impression that the first pages of changes are incorporated in the second pages of changes. Is that correct? The second set of changes contains all the changes we're looking at?

Buck: I have one set of changes, that is correct.

Halford: Yes. The second set of changes includes the first set of changes. We can go through the sectional analysis with the changes and the bill at the same time. I think we're all familiar with the changes.

Rodey: Perhaps the best way to do that is to start out at the beginning, as you say, and go through the end.

Buck: What Bill and I sort of agreed to do was go through the sections and he will come up with specific Alaska examples to which these would apply. I'll discuss the relationship of the uniform act and perhaps some of the drafting reasons for coming up with this particular provision.

The first section which is Section 34.08.010, General Applicability, is a uniform provision and it indicates essentially that the act is applicable to all common interests communities after its effective date. The provisions of the existing law do not apply to common interest communities after the effective date of this act. The existing law, pursuant to a change that we are submitting, will not be repealed. It still exists. It is the enabling statute for existing condominiums. Connecticut went through the horrible experience in 1976 of inadvertently repealing the old condominium law at the time they passed the new one, having the new one only effective for condominiums declared after its effective date. Thus leaving 300 projects with no

enabling statute at all. It was chaos and nine months later the legislature cured it. Therefore, one of the recommended changes to the bill, before you, is that you do not repeal the existing horizontal properties act. You follow the applicability provision as suggested, indicating that the provisions of the existing act do not apply to common interest communities created after its effective date and it still remains on the books.

Rodey: A question on the applicable law regarding those projects which been created and are functioning.

Buck: The applicability is picked up in section 40. Perhaps we can jump over 20 and 30, because of the applicability of the portions of this act to existing communities. I'll go over that and list, what I call the section 40 sections. Portions of this act apply to existing communities and solve some of the problems which Bill will come to.

With the Chairman's permission, I'll cover 20 and 30 quickly and we can go to 40 which will take some discussion.

Rodey: Please do. You have the broadest possible latitude in explaining this. You are the expert, we're not, and we will be guided by your experience.

Buck: Thank you. Section 20, Applicability of Small Cooperatives, indicates that if the cooperative contains only units restricted to nonresidential use or contains no more than 12 units, and is not subject to any development rights, and not subject to any financing from AHFC, it is only subject to Sections 720 730, and 740. We're proposing an amendment to add 720 in there. The universal sections which are at the back of the act are very important and at this point we'll skip to them to give you an idea what they are.

They essentially include those particular provisions that should apply to all common interest communities no matter how large they are, how small they are, residential or nonresidential and no matter what their structure is.

There are separate titles and taxation (34.08.720), indicating that each unit, no matter how it is structured, as a condominium unit or a planned community unit is separately taxable. It also provides in cases of a condominium, in a planned community, that there is no separate tax bill for the common elements. This has been a problem. The Community Association Institute feels that throughout the country, where

people are assessed the full value of a house in a planned unit development, and then the town will tax the common elements which are obviously included in the value of the house. After great arguments, usually in almost every case, the town municipal tax assessor has been persuaded to reduce the assessment on the common elements to an nominal amount because he is picking up the taxes in the house taxes. This settles that problem, clear and simple. It just says that there are no taxes on the common elements.

Cooperatives are treated somewhat differently in the universal section, because obviously there is a single tax bill for the whole cooperative. The unit is not for taxation purposes, considered to be separate. There is a single bill, and in the concept of credit pools, where everybody pools their credit in a cooperative, this is a slight difference between the functions of the cooperative and the condominium. This universal section is on page 76, section 720.

There is another important provision, although with respect to the small portions there is no problem. If a developer has reserved development rights, that is the right to unilaterally change the project by adding units, subtracting units, withdrawing units or subdividing, that portion on which a development right is reserved is separately taxed and assessed against the declarant and the declarant alone is liable. It's part of the the overall structure and it is also part of the reason that the declarant wants to get rid of the development rights as soon as they have used them, that is to create the units, withdraw the land or done whatever they predicted they would do, because they are liable for expenses and taxes on it.

And finally, if there is no unit owner other than the declarant, the estate is taxed as a whole, in the same way it would be taxed no matter if it was another form. So if there is a declaration on the land records, the estate is taxed in the same way. The whole estate is taxed in the same way it would be taxed if it were an apartment building or whatever until there is a unit sold.

Halford: Is that the way they are currently taxed in Anchorage for example?

McNall: The documents that I have seen from the Anchorage Municipality indicate that there is a tax bill generated, and there is in fact a tax assessed. If the association manager is on top of it, he will go down and talk to the Municipality, who will then reduce that to zero.

Halford: So the Municipality has agreed with this position in terms of allocating that tax from the common areas to the individual units.

McNall: Yes. according to the two experiences I have had.

Rodey: We should get a formal statement from the assessor's office and it would behoove us to also contact the other municipalities that would or could levy property on cooperative housing and receive a statement from them.

Halford: We don't necessarily want to know whether they would like to be able to tax both. We want to know what they are doing and what they end up in court able to do under existing law.

Buck: Under the condominium statutes, since the common elements are not owned by anyone except unit owners, there is no separate tax on common elements in condominiums. I have seen tax assessors try to do that too, set a tax for the club house even though it is owned by everybody else. So essentially what we are doing is unifying the treatment of condominiums and planned communities so that there is a tax bill on the unit and there is not on the common elements. The whole concept of unifying these forms of ownerships is evidenced here. In subsection D, of the universal section (34.08.720) indicating as I stated, is a shelf conversion. If no units have been sold it would be taxed as any unitary property.

The applicability of local ordinances, regulations and building codes indicates that a building code cannot impose a requirement on a structure in a common interest community that the building code cannot impose in a physically identical development. Thus if it is an apartment house, it's an apartment house, it's an apartment house, it does not matter whether it is owned by 13 orthodontists from Brooklyn or owned as a condominium or owned as a cooperative or as a planned community. The same code requirements apply across the board. This does not waive the code requirements, but it does in fact, mean that the code will not put additional burdens, such as extra fire walls, merely because of the form of ownership. The idea being unified management, unified control of the project is provided in all forms.

Rodey: Let me get back to my original question which was, the applicability of this act to those condominiums that are presently in existence. Actually the most important thing is the management structure. One that Mr. McNall has had a great deal of experience with.

The question will be asked by constituents of mine and by the real estate community and developers: "How will this effect the management and operation of existing condominium projects and liabilities of all parties involved?"

(478)
Buck: Because by virtue of what I described as the universal sections, these particular provisions, Sections 720, 730 and 740 are one of section 40 sections applying to old condominiums, cooperatives and planned communities, and thus it will settle elements with respect to old projects. It cannot, however, override the decision of an existing document, but with respect to the fact the documents are silent these particular provisions will then apply to the older communities.

Rodey: Essentially then, we are grandfathering in existing condominiums and grandfathering their documents, covenants and maybe bylaws. Everything they have unless they are silent on any particular point. Where they are silent the new law supercedes that silence.

Buck: Yes, the new law would and it does solve problems, because obviously the documentation cannot impose assessment practice on a municipality. In a PUD this will solve the problem because in most cases the documents are silent.

Rodey: I wonder if the State of Alaska can impose assessments upon requirements on municipal documents.

Buck: The State can on the individual documents, but the project can't. That's what we're doing, is saying OK where we have an old project where this is unclear, there can't be a separate tax on the common elements.

Finally, another universal section is the eminent domain provision. The eminent domain provision merely answers a lot of questions that a lot of people have had in condemnations. When you have a partial condemnation of a condominium, say affecting the unit and not affecting a units, or not affecting the units affecting the common elements only, affecting some of the units, some of the common elements. How is the pot wacked up? This particular provision gives that answer. It is essential and those who have gotten involved in partial condemnations of condominiums will find that this is just a can of worms and definitely needs a solution and this bill does a fairly good job.

(517)

McNall: Mr. Chairman, I have just been contacted by an association that exists out on the Dimond Boulevard widening area, and in fact they are having a partial taking and are trying to figure out right now what is a fair value. The present statute addresses the issues but not to any great extent. There are two halves to it. The association is having some common area property taken, and the individual unit owners are now discovering that their units will be sitting right on the new highway and will be having some losses. All these factors have to be considered in dealing with taking authority. Any clarification we get out of this statue will be of benefit to both the state, local government and the association.

Rodey: Because of the new highways that are being built in Anchorage I suspect it will be. What is your reading of the law in Alaska now with regard to taking. We have a number of near misses, if you will, by the highway department. We have a possible diminishing value because of the proximity of a high speed highway. Are any recoveries being had, or any payments being made in that case now.

McNall: Mr. Eschbacher, an Anchorage attorney, is representing four of the association owners in this particular matter that I was just describing. He indicates to me that he thinks that they've had some substantial diminution in value that they are going to seek redress for. It's my understanding from our existing statute, that you have to live with the statute and you also have to look very closely at the documentation for the association, because some of the draftsmen have different approaches to condemnation than others. I have seen drafting that has more detailed discussion of partial and total takings in the declaration. I've seen some that just mimic what the present statute says.

(556)
Halford. Just another question to Mr. McNall on the applicability of local ordinances in terms of building codes, zoning, subdivision and all the other local regulations. Is that what's happening with regard to condominiums?

McNall: In Anchorage, the building codes are enforced and inspections occur and the projects are being built pursuant to the uniform building codes adopted by Anchorage. The uniform building codes apply in Eagle River, but there are no inspections for example. In the Valley I'm not sure at this point if they have adopted

any uniform codes at all. So as far as this section is concerned, those codes that are enforced in those areas will continue to be enforced and if the old pre-existing association documents are silent this comes in to protect the associations and brings in those sections.

Halford: The question is, are we limiting anything that is currently going on?

McNall: No, I think as a matter of fact, as I understand it, the application by the State, the State electrical inspector, State plumbing inspector you may be able to bring in some additional protections that are not there now.

Halford: From the State level without cost to the developer?

McNall: That's correct.

Buck: I would like to indicate that in Connecticut they have had some interesting problems because of the fact that the condominium unit is a title line. Some building inspectors have said, well it's a title line, therefore, we need a full fire wall in every apartment. Other building inspectors have said, this is a unified ownership and therefore we don't need fire walls in every apartment, we have them every four apartments. This confusion is simply cleared up by the act and indicates that they be uniform.

Halford: Would they be treated as if they were apartments.

Buck: That's right. They would be treated as an apartment building. It does not invalidate or modify any particular provisions of the zoning codes, it just indicates that there is a uniform provision.

Those are the three universal sections, and I think that they do apply. This moves us on to Section 40 which sections 20 and 30 indicate that with respect to small limited common expense communities, only these universal sections apply. The limited expense of common interest communities that we are proposing be changed from "planned" to "common" interest so that they all get treated in a uniform manner, indicates that when you have a small community of this nature that they do not have to go through the formality of the whole public offering statement, documentation, organization of an incorporated association and everything else that is required unless they opt in. Any planned community can opt. We may find by virtue of the lending practice and requirements, that most

communities will because there are substantial advantages of being subject to the act, because of the fact that you don't get as good and clear defined guidelines under the common law. But many cases in a small community, merely because of informality, it is worthwhile not being in it.

A limited expense common interest community came out of the planned community act. There's a large number of PUDs only maintain a detention basin or a single drainage way or a sign at the end of the street. And in those particular cases with the corporate formalities and record keeping and financial reporting would be a burden on these folks. So again the $100 per year per unit limitation is written into the act. It's modified by the CPI based on a very complex formula and this year it means that it's about $140 because it comes in $10 increments.

Kelly: Is that complex formula something that is easy to figure out?

Buck: Yes. It is the same formula that the uniform commissioners use for every CPI adjustment, Uniform Commercial Code, and the others. It is easy to extend. It is written into the act. It is easy to understand although, it takes a little bit of calculation. It is the same provision in every uniform act, Uniform Condominium Act, Planned Community Act that has been passed in other states. It is one of the uniform provisions that the commissioners would like to remain uniform so that everybody will know what's equally exempt in every state. It can be calculated, as I say, it is in $10 increments and now it uses a 1976 base which is the Virginia act. Thus all the states which are adjusting their provisions are adjusting on the same base.

Section 40 is an important provision. It's probably one of the most important provisions and one that will create most of the trauma if at all, by the passage of the bill. This is the applicability of certain provisions to pre-existing common interest communities. There are 12 sections plus the definitions. A round dozen sections which apply to pre-existing common interest communities. These are provisions which will go ahead and cure alot of the problems that Bill is coming up with and provide definitions where no definitions have been provided. Give uniformity as to activities within these areas, new powers and all kinds of very useful activities to the associations.

The Section 40 sections are very important. I would like to perhaps suggest doing, as a matter of order,

and d.part from beginning at the beginning go through the end and stop routinely and go through the Section 40 sections. Because these are the ones that your existing communities will be subject to, as I said, unless the declaration or documents provide otherwise. These are the ones that they will have to conform to and these will be the ones that will be the most surprised when they discover the existence of the act. No matter how much news we put out a lot of them won't.

Kelly: Surprises should be reserved for Christmas and birthdays.

Buck: I think that we are doing this for New Year's. But, I think that there are some very important provisions

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that validate a lot of sloppy documents, a very, very important provision. I would like to defer to Bill to talk about some of the Alaskan provisions with respect to section 110 and perhaps this particular provision will assist.

McNall: The number of times that I have seen documents drafted back in the early 70's that have maybe eight pages, six pages of which are legal descriptions, one page is a dedication of the property, leaving one page to deal with association management, assessments, and so forth. Gives you an idea that the documents are not very complete. As a result, we have to either go back and try to substantially amend, which is a very expensive process for the associations. When allowing these sections to come into play we simply do not have to go through that drill. They may want to anyway, but they don't have to because most of these statements are written with the statement that says, "if and unless the declaration states otherwise these sections apply", "these definitions apply", "this statutory provision applies". So those will apply where the document is silent, which will help substantially when I have to sit down and try to work with an association and figure out what the answer to a problem is. I'd be willing to bet that of the pre-76 documents that I've seen probably all of them will benefit from this provision.

Buck: There are a number of things in here, one of them is the title insurance provision in 110. This is the bail out title insurance company provision which indicates that the title of the unit common elements is not rendered unmarketable rather or otherwise effected by reason of insubstantial failure of the declaration to comply with the chapter. Where a substantial failure,

of course of marketability, is not effected by this chapter but it does allow title insurance people to sleep a little better. But it was put in at the insistence of the title insurance folks. It covers the rules of against perpetuities, which in some of our more obscure provisions, that only lawyers who took first year property know about, indicate that it not defeat any portion and it makes the sense that the declaration is superior to the bylaws. It's just sort of a useful housekeeping item.

Halford: Run by that title insurance again. It says that basically an unimportant, insignificant violation of something or other does not effect the title of the property.

Buck: That's right, so if there is an insubstantial failure to comply with the act the purchaser can't say "I'm going to walk away because a 't' hasn't been crossed or an 'i' hasn't been dotted." Now the difference between substantial and insubstantial is the difference between reasonable and unreasonable which we leave to the courts. I think it was left ambiguous. It was the kind of thing that you have to look at the facts. And thus this particular provision is an ambiguous provision, but it is the kind of thing that the courts can deal with if they have to.

Rodey: The Alaska courts have been good about dealing with that topic but we haven't had anything major, at least that I am aware of relating to condominium titles. Correct me if I'm wrong, are you familiar with dealing with title documents for condominiums?

McNall: No. The only Alaskan case that deals with condominiums at all is Carroll vs. Eldorado Estates out of Fairbanks that was dealing with notice requirements in the declaration of bylaws. That also was, by the way, the case that suggested Uniform Condominium Act and the Model Real Estate Cooperative Act for guidance in this area.

Buck: The section 120 is another housekeeping item that basically says that a simple description in the purchase agreement which sets out: the name of the common interest community, the recording information of the declaration, and the district in which it is recorded and identifying number of the unit is all you need to legally describe the unit. You don't have to go into great detail in order to have a legal description.

Section 290 is another universal section, which, is a merger or consolidation section, permits existing and

new common interest communities of the same type. That is condominiums with condominiums, planned communities with planned communities, cooperatives with cooperatives to merge or consolidate their activities under a single association and gives a technique for doing it, providing essentially for a negotiated merger agreement which will take care of most of the problems.

The powers' section, Section 320, subsections 1 through 6 and 11 through 16, add to the powers of the associations. Very important powers, that many of them don't have, including the power to levy fines, late charges, charge fees, charge assessments, bring law suits and undertake some other types of activities that are in question under the condominium act. If a PUD is operating under the corporation laws it may or may not have powers to represent its members or shareholders in actions of common interest. These powers are an excellent and superkind of a provision, and should be in there and applicable to all projects.

McNall: Most of the property management firms in Anchorage right now impose fines and attempt to work with boards to assure collections of unpaid assessments. They have fines, late fees and so forth. As to whether or not these will ever be enforced by our courts, I will leave for the courts to decide because it is not clear from the existing statutes. Most declarations allow it and state that you can impose these, but the statutes are silent on that particular issue.

Buck: There has been some argument since the lien is proportioned to the percentage interest allocated in the documents. A fine is not proportioned to that, and there may not be a statutory lien for a fine, so this cures it. Yes, that kind of a prophylactic activity which I seriously commend for your favorable consideration.

Section 420, the tort and contract liability, has some fairly interesting aspects in it. It does generate a corporate limited liability provisions to protect the association, but does impose some liabilities on the declarant with respect to torts while the declarant is in the control of the association. It's basically an insurance provision, but it does clarify that the declarant does have this particular liability. It will infact have some significant impact on existing associations with respect to developers, because it provides, for instance, that a statute of limitation is tolled until a period of declarant control terminates. Thus if you are working under a warranty provision or a tort provision, and a declarant is in control, you

don't lose your right of action merely because the declarant controlled the right to bring the action. There have been some unfortunate cases. I consider them unfortunate even as a developer's representative, where in short statutes (one, two or three years), the right to bring an action simply has disappeared, and the action was against the declarant while the declarant was in control and he didn't sue himself, surprisingly. There is a provision in this tort contract liability provision which I think is going to be very useful in existing associations.

McNall: Often a board will come in after the transition has occurred and the developer said, "You are now in control." They will then raise issues of common area maintenance or common construction problems, only to be told that their one year warranty has lapsed, and they really don't have any rights to sue the developer for any of these types of problems. All the help we can get to clarify those types of issues, including the warranty language, we have contained in the new proposed act will be of benefit.

Rodey: What effect will this have on the liability of developers for existing projects. The law is silent on that now.

Buck: There is a problem with this area. It is the kind of problem that 35 pages of legislation will be needed to be draft, that's the straddle problem, where the statute of limitation is running and then the act passes and then it fails and then controls transfer. We come up with a whole series of permutations and combinations of this which probably will ultimately end up being worked out on a case by case situation. The act only applies with respect to Section 40 sections as to events and occurrences after its effective date. So the termination of the statute of limitations is that an event or a circumstance? I don't know the answer.

Rodey: So for any existing project there is still a murky question of liability?

Buck: There always was, there will be, but after the act gets older and older that question will become more and more put in the past.

Section 470, the lien for assessments, is applied to existing associations and is a very, very powerful remedy, probably one of the more exciting and excellent provisions of the statute. This particular provision indicates that the association has a lien for an assessment to be levied on a unit for common expenses.

It doesn't matter whether the common expenses are proportioned to allocated interest or fines, whether they are payable in installments or not, the lien exists. It's prior to all other liens or encumbrances except mortgages and taxes. With respect to mortgages, it is prior to mortgages up to the amount of six months of regularly budgeted assessments that have come due prior to the institution of an action to enforce the lien.

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This super lien, which gives priority to the association assessments, will provide for quick collections. It will provide for excellent financial credit of the associations. It will allow a wide range of new remedies available to the association to get their association fees in on a timely manner. In Connecticut, it is probably one of the aspects that has most reformed the condominium practice. That is, that collection now occurs following a letter to the bank, and the bank helps by sending the check or bringing the borrower in and making the borrower send a check. That's the end of it. We don't go through the formality of filing a notice of lien on the land records, commencing a foreclosure action, or going to small claims waiting for this to happen, and then have at the end, because many times when these liens aren't paid the borrower is in trouble and we find that the bank forecloses out the whole thing at the end. The attorney's fees, the time, and all the accumulated assessments are lost and laid off on the rest of the unit owners. With many cases they can ill afford it.

McNall: The situation in Anchorage is identical to what has just been described by Mr. Buck. Associations that have, say, ten unit owners who are in arrears, finally lose patience with the [illegible]ises to pay and bring those in for small claims cou[illegible]. Either I'll file it or the association manager might file it, or some associations can file it themselves. If I do it, of course, it will cost money and this situation can be avoided under the new act. The disadvantage to the association, of course, is if I've gone through the process, and if I get a judgement against that unit owner and can't collect that judgement because the unit owner is unemployed or whatever reason, as long as the bank is receiving its mortgage payment, the banker is not going to be involved in the collection efforts. It is up to the association to attempt to collect. I have numerous examples where we have judgements, attempts to collect the money, and we cannot. The association comes back and says let's attempt to foreclose and attempts to file an action for foreclosure. Judge Johnstone

refused to let me foreclose on behalf of an association because he didn't think that it was appropriate to foreclose for $1,700. He gave me a continuing judgement against the unit owner, which to this day, we have not collected because she simply is not going to pay and we have no place to go for money.

I think that if this super lien will work to cut down those costs to the association it will be of benefit. Also the cost incurred by that association, money that you don't collect, winds up to be a common expense to all those other unit owners to share. I have unfortunate situations where associations are out many tens of thousands of dollars which are going to be foisted upon folks who cannot afford to pick up a prorata share of a huge special assessment to cover that, particularly where it's a HOF project. There have been some great disasters for example within a HOF project, where these folks are going to be tagged for $200 to $300 apiece, and they are not able to afford probably even $20 a month in additional assessments.

Buck: This particular six months super lien is the law in ten of thirteen states that have passed the Uniform Condominium Act. It's been accepted by Fannie Mae, Freddie Mac, VA, FHA as an appropriate method of assuring the financial viability of the association. The fact that they are going to sacrifice potentially the priority of six months' assessments, and only regular budget assessments, not special assessments, not fines, not collection costs, is minor compared to the financial viability of the whole system. They have accepted it and are now accepting it quite enthusiastically.

McNall: In addition to the problems that associations have in this particular area, any time a unit is listed for sale, the realtor that is representing that seller had better make sure that there is a thorough understanding of what those unpaid assessments are. That is affirmative representation and of course something the buyer would want to know.

I did have a situation out in Muldoon where a young lady came to me. She had closed on a Friday, and on the following Friday received a special assessment notice for $6,000. She had spent every dime she had in purchasing her unit, and did not have any money to hire an attorney. I sent her to the Real Estate Commission to file a surety fund claim against the realtor who should have gotten that information from the association and disclosed it. This act of course, takes care of that entire issue.

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Buck: That brings us to the next two sections. There are two sections that should be read together, section 490 and section 590, association records and and resales. Section 490 fairly simply says that the association has to maintain sufficient records to provide resale disclosures. Which brings us to the resale disclosures. This particular provision, although it is a simple one, is probably the provision that had the greatest amount of trauma at the time of the passage of the Connecticut Act. There are a lot of planned communities that simply don't maintain records and they have to get them together. They learn about this requirement when a realtor shows up with a written request for a resale certificate and then they scratch around. In the early days it took more then ten statutory days to come up with these records but they did. In about six months virtually all the community associations in the state are now in compliance, their records have been improved immeasurably and resale purchasers are finding that the whole management quality of these small communities has increased by virtue of the fact of the requirements of regular record keeping, budgeting, financial statements and that the money is being handled. This goes back to the definition of the common interest community. That is ownership of the unit requires contribution to a common fund for the maintenance of other property. The disclosure of where this money goes and the control of where this money goes is central to the philosophy of the common interest ownership act. This particular provision, the resale provision, gives the seller the information of where the money is going.

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McNall: I would like to add a comment as far as the resale certificates are concerned. One of the problems that the real estate industry has right now is that they are looked at as the ultimate deep pocket in every transaction. The seller may be gone, the builder may be gone, you always have the real estate firm as the agents involved. The resale certificate is required to be given by the seller of the unit to the buyer of the unit, which means that information obligation is on the seller not the realtor. The information that is needed to be disclosed is the type of information for which agents are now being sued. By making the unit owner, which is trying to resell his unit, disclose this information, I think is going to provide some measure of protection for the realtors involved. I believe that the real estate industry at this point needs to have this protection.

Buck: I'd like to make one small correction to Mr. McNall's provisions. The seller is responsible for obtaining the information. The association is responsible for its accuracy. The seller must request the information but once they get the information from the association the seller is not responsible for any inaccuracy that the association may have put in there, however, the association may be responsible for that. It does mean that the associations have to be quite careful as to the preparation of these resale disclosures and the result has been that the records have been brought up to date very quickly. In the planned unit development field they were in terrible shape. Condominiums have been better, principally because there was an old statutory structure. There was a formal association and in many cases the realtors knew it was a condominium and the purchaser would ask for a documents of some sort so they could take a look at it, thus the associations were maintaining it. But even in the small ones, the financial records were a mess.

This has been probably an area of impact which took my lecturing to 35 sessions of training for realtors in the state of Connecticut. There were about 200 realtors in every session, to get them to understand what the resale disclosures looked like, how to ask for them, how to present them to the purchaser and giving them some idea of their format. There was one amendment proposed for section 470 which has to do with association records proposing on page 56 line 3 that a professional manager, agent, accountant or party with whom the association has contracted for services, must return all association records within five days of termination of the contract. In the event that the association records are not returned the association may bring a claim. This is under association records, but it does have the effect by being put in one of the section 40 sections of applying this provision to old projects.

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McNall: This gets around to the problem where the association manager may be terminated and refused to return the documents for any number of reasons, the bill's not paid, the dispute or whatever it might be, and allows the association to get those records back very quickly and turn them over to new management or to take them over themselves. This is more important in the sense that the association is now required to provide the resale certificate information within ten days. It was felt by several of the associations that I talked with and several of the managers who have been asked to take over from another manager that this

section protection needs to be put in for the associations.

Buck: The whole resale process I think has been one of the areas that we would really commend the act for in Connecticut. It took a great deal of shaking up when it got started. But now it is in effect, the realtors don't mind it. It was the portion that they were objecting to, because in Connecticut there's still a little bit of caveat emptor left in the law. The realtors were not responsible for innocent misrepresentations and they would just as soon not have to go through this particular trauma. But now that they are accepting it, they are happy with it, and they were threatening that they were going to move for the repeal of the resale section. They did a survey of the multiple listing service in the state of Connecticut, some 11,000 transactions that occurred last year, to discover how many had to be relisted on the computer because people had walked away by virtue of the resale rescission and the answer was two. People don't rescind but they get the opportunity to review. It's an indication that the process is more prophylactic than a threat of rescission.

(260)

Section 670 is a very, very powerful section and it is something that applies to old as well as new and it is in the section 40 sections. It essentially cuts through a lot of problems that have occurred in the past throughout the United States where the question is, "who has the right to sue the declarant in the case of a warranty provision." "Who has a right to appear before a tribunal on an action effecting a common interest community." "Can the association represent the unit owners?" "Can a unit owner undertake an action which is really an action of the association even though there has been loses?" "Do you have to have some kind of relationship between the two parties, for instance, a failure of a particular act to occur in the loss of the real estate commission?" It's possible that the realtor can sue the actual person who caused the failure, rather than having to go through the whole contract change or recheck. The section 670 provision essentially says that any person has the right to sue any person for failure to comply with the act if there are damages, and it allows punitive damages to be awarded for willful failure to comply with the chapter. It does mean that the lawyers' dance, dos-a-dos as to jurisdiction at the courthouse steps, is eliminated and they are right in there discussing the actual case. It is very useful and as I say a very powerful provision.

We've gone over sections 720, 730 and 740 the universal sections, and now come to the definitions in section 990. The definitions in this particular act are extremely important and there are a number of important definitions that I would like to go over. Not just because they are applicable to old projects, because as we deal with the entire act these definitions become extremely important.

The concept of "allocated interest." We don't have something called the percentage interest in the common elements. If we do it doesn't have any effect. Two important allocated interests are the votes and the common expense liabilities. Those two provisions can be different. They could not under the old act. If anybody has conducted a condominium election where one person has 8.13756 votes and the next person has 9.1234 votes and you try to count the votes, at the end, you need a major computer. The ability to separate the votes from the percentage interest in the common elements is something that every manager will be enthusiastic about. Obviously it doesn't override existing documents. Existing condominiums are still stuck with it and in a challenged election having to virtually get a computer to determine who won. But in new communities it certainly will be useful. It allows to have one resident, one vote, or one person, one vote, depending what the documents provide. It also, by virtue of another provision in the act with respect to new communities, allows voting to be split up between different classes of people. In Virginia there are some cases where tenants have partial votes, which is an interesting way of bringing tenants into the opportunity of running the community.

The other aspect to common expense liability is one of the allocated interests that is quite important. It basically is allocated in proportion to burden. How much burden does a particular unit have in a condominium association? It can be under any fair method, it does not discriminate in favor of the declarant. It's a marketing decision. It can be based on values, or square footage as the existing act provides. It can be based upon the number of the square feet of parking lot that have to be maintained, size of the roof, heating bills, a whole masses of areas could go on in that. The allocated interest run through the act and the whole concept of sharing the burden based upon expense burden, rather than value is a possibility which is important.

In a condominium it includes the undivided interest in the common elements, however, the undivided interest in the common elements have no effect. It's really

something that is left over from the old condominium act. It's there because there is a tendency in common element ownership, and a feeling among common law lawyers that there has to be a fraction somewhere so that everybody will know how much they own. But it virtually has no effect except in one instance the combination. If you can't figure out how much the value is it is a residual thing that people fall back on. That is an important aspect.

The "common interest community", very important definition, I've referred to several times. It is central to the act. The obligation to pay for property other than the unit is the obligation which is what we are regulating. The financial relationship between unit owners in common for cooperative efforts, activities, fun and games, is the kind of thing that we feel is important and that's what we are looking at. Almost everything else becomes secondary to that cooperative effort.

A condominium essentially is a common interest community where the common elements are owned as undivided interests as tenants in common. A cooperative is a common interest community where the entire community is owned by the association. A planned community is a common interest community that is not a condominium or a cooperative. It exhausts the various definitions.

A "declarant" is an important definition because is a person who essentially is a sponsor, interestingly enough, the declarant need not declare. The declarant is a person who offers the sale as part of his regular business and thus is like a sponsor in a securities act concept and is a very important definition as the person upon who certain burdens are involved. "Special declarant rights" and "development rights" are important, in that the special declarant rights are the rights to develop the project, maintain model signs, convey easements and do things of that nature. The declarant only has special declarant rights that are different from unit owners. The basic rule is that every unit owner is equal, except in those animal farms, some are more equal than others. Declarants have special declarant rights. It's felt that these are the only rights that they need. Thus, they cannot have other overriding rights that they can write into the documents that are outside of these particular aspects.

One of the special declarant rights is the development right which is the right to unilaterally change the community by adding units, by adding land, by

withdrawing land, by subdividing units based on the unilateral filing of an amendment of the declarant themselves. This ability to flex the flexible condominium is one of the new and exciting aspects of the act, and one of the things that the developers really like and it also indicates that they do not have to commit to anything more than they have to market at a given time. Under the law, if the unit is within a building you can't create it until the building is finished. Thus what you do is start on a major project such as a 100 unit project. You create 15 units by finishing a building with 15 units in it. Market them, and create development rights or have development rights to create additional units. In a project we are dealing with at the moment, a 150 unit project formed under the old law, we opted to come under the new law for this very reason. We completed 55 units, sold them all so essentially the title for the entire project is done. We have development rights to create 95 more units. These development rights are just merely a right to build a building and locate a unit in various locations on empty land in the project. Technically, as we say, all the interest in the community has been sold except development rights. We are selling those development rights, 25 to one person, 35 to another person. We have a mortgage on the balance which has been assigned to the bank. It's an entirely new concept in the form of ownership and it's a very useful form of ownership for development purposes.

(384)

Halford: In the past when they wanted to do that, did they subdivide the property and go ahead with one section, and that was the common interest to that one. And then go on to the next section and that was the common interest to itself, and the next section an common interest to itself and then somehow recombine them later.

Buck: They never recombine them except that basically that's the way that it was done. There were two or three methods of doing it. One of which was a method whereby the developer would reserve a power of attorney from every purchaser to vote the vote of the purchaser in amending the documents to bring on new units. An irrevocable power of attorney always makes people nervous. Because people die, people sell, and there is a potential error. That's one method. Another method is to have a multiple chain of independent condominiums under an umbrella association which would maintain the common facilities. In one particular project, which we are amending to come under the act, there are seven condominiums each with five directors. Each

A couple of othe[r] provi[sions] ... "Ow[ner] ... inclu[des]
provisions. One provi[sion], page 86,
which is item 22, page 86, ... interest, ... a unit und[er]
not include a leasehold interest
options, of less than 20 years in a unit under ... In
present bill, that's the uniform provision.

CORRECTION

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HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

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condominium has 20 units or less and there are nine members of the master association. In a 150 unit project we have 44 officers. We can't even fill the vacancies. We are now merging them altogether using the common interest ownership act.

Another method that was done is the so called "Chinese menu" system, whereby a developer predicts that he would have 20 units. When he has 20 units there is a percentage allocated to each of the 20 units. At a later date he has 20 more. In column B he puts 40 units and then a different percentage is allocated and then he allocates another 20 units. In column C he has 60 units with a different percentage. He predicted up front. He says what his plans will be, what his construction quality will be, and he sort of predicts ahead of time that automatically there will be a jump from column to column. It's done without statutory authority but it's been insured by title insurance so people can follow the "Chinese menu". In every case when a condominium has been created they are locked into some form of design, except in the chain of multiple condominiums. In that case they declare all the units on paper, some are finished. The paper units sit out there having to contribute to their common expense assessment but are nonexisting. They are just ready to be built around. It has been cumbersome and it has been a problem. The ability to flex the condominium under development rights is one of the big advances in the act.

(423)

Halford: But all the development rights provisions are in the offering statement, so anyone that's buying knows that instead of getting something that's going to grow later from some other source, he knows exactly the growth pattern will be because it's in the offering statement.

Buck: That's correct. If there are development rights, there are an additional 12 questions that must be answered in the public offering statement. Essentially disclosing what plans, or no assurances that there are any plans, that the developer has with respect to the exercise of these development rights. We've found interestingly enough, that the 12 questions have made the developers plan, because they don't want to say that they have no idea what's going to happen in the rest of the development rights property. It could be a hazardous waste dump, or a dried egg factory, or whatever they choose, although, in the old days that's what they would like to reserve the right to do. Now they have to say it, and anything can be done in the adjoining property. They say that they don't want to

say that so they go ahead and plan it. Again the disclosure has had a salutary effect on the planning aspects of developers just because they had to plan.

McNall: The problem that the developers in Alaska have had is that they have attempted to phase through 25 units to test the market. If they are successful, they want to do a phase two and a phase three. Capitol Ring, for example, has got a phase one, phase two and I think phase three on the Old Seward Highway. Phasing was not actually allowed under our statutes, and I know that developer's counsel who are trying to phase have long and hard arguments trying to get phasing accepted by the lenders, because our statutes simply did not speak to how you do that. This simply takes that problem away from everybody. All you have to do is say what you are going to do. Disclose that you are going to put this in segments of 25 units apiece and get around that entire issue.

Buck: I must obviously hasten to indicate that although the definitions apply to old projects, they only apply to with respect to defining terms. They don't generate the development rignts to the old projects. Because of this flexibility I think you will find that a number of projects will wait until the act passes in order to be declared. This has been the effect in a lot of the states. There isn't a rush to the land records to get ahead of it. Because of the developers' goodies that are given in the act the developers say, "Ah, we finally can do what we want to do and we'll wait until the act is effective," before they put it on the land records. There will possible be a rush to the land records with respect to simple planned unit developments that don't want a public offering statement. In those cases they will be required to give a resale certificate, because interestingly enough, a resale certificate is not just for resales, it's where ever there is a sale of a common interest community unit that a public offering statement is not required. Old projects which are being sold by the developer will have to come up with resale statements within the five day rescission period after the effective date of this act. Nobody gets away unscathed by rushing to the land records. The act itself offers so many goodies that it may be that you'll find in more complex projects they will actually wait for it's effective date.

A couple of other, what I consider, important provisions. One provision we're proposing a change in which is item 22, page 86, "ownership of a unit" does not include a leasehold interest, including renewable options, of less than 20 years in a unit under this present bill, that's the uniform provision. In

Connecticut we found that we picked up a lot of communities that had ten year leases and two five year options, clearly intended to be lease hold relationships, not long term equity relationships and so Connecticut has increased it to 40 years. I've recommended that and that is one of the bill provisions that has been submitted to you as a change in definition.

I think those are probably are some of the fundamental definitions that we probably should go through before we go through the rest of the act and the section 990 is the last of the section 40 sections that apply to existing condominiums.

Rodey: Let's stop for just a second, we have with us Linda O'Bannon who has been the chief attorney in the Consumer Protection Division. Perhaps this might be an appropriate time to ask Linda if she has any questions with regard to any of the commentary that has gone on previously on the act. Linda O'Bannon has been in private practice in Anchorage and as I suspect is experienced like the rest of us do with regard to this issue.

Linda O'Bannon: Thank you Mr. Chairman. Yes, I want to second some of the opinions that Mr. McNall has expressed, in that in our Consumer Protection Section of the Department of Law, we have received numerous consumer complaints particularly from condominium purchasers concerning their association assessments that they weren't planning for. Particularly first time condominium buyers who are perhaps unsophisticated, not aware of what was going on and the fact that there were such poor disclosures made at the time of purchasing the unit led to much concern later on when they found out that these problems existed.

Rodey: Will you identify yourself on the record for our tape.

(527)

O'Bannon: My name is Linda O'Bannon, I'm the chief of the Consumer Protection Section of the Department of Law, I'm an assistant Attorney General.

I just want to make some very brief comments that I think is a little break in to the section by section analysis. I've already talked to both Mr. Buck and Mr. McNall earlier today, and Mr. McNall on other occasions. We have been considering certain aspects of the bill. One of the proposed changes was one that I was very concerned about is the definition on interior

space and actual condominium units. That is one of the proposed changes. We had a problem a few years ago with how appraisers and other people involved in real estate business would measure the square footage of condominiums. They were measuring from exterior walls to exterior walls. Our current act, the Horizontal Properties Regime Act, in the definition of an apartment defines the square footage as interior wall to interior wall. I was concerned that this was not accurate, as proposed in SB 44. I talked to Mr. Buck about still allowing the flexibility in forming the type of ownership he was talking about, perhaps for a marina or something, where there actually are no interior walls, but yet providing in the traditional situation of a condominium apartment that the square footage measurement would continue to be from interior wall to interior wall, so that there would not be deception in the market place in the size of the condominium for residential use, which happens often.

Buck: Perhaps if I could add to that. We did discuss this matter. Under the Horizontal Regime the interior measurement of the unit was the basis of allocating the percentage interest in the common elements and had a great deal of significance. Now what we have done is we've put the amendment in the public offering statement so it is disclosed. It doesn't necessarily mean that the percentage interest will be in proportion to that it could be, as we indicated, any burden of common expenses but we now have a uniform system required as one of the questions in the public offering statement to disclose what the interior space is in interior kinds of condominium units, residential buildings with horizontal boundaries. We feel that we are doing it merely as a disclosure, not as a basis for setting assessment or votes or anything of that nature but with the uniform system the uniform disclosure will occur and thus the advertising has to be consistent with the public offering statement and you'll have a system which everybody will be able to compare for evaluation purposes but not for any other purpose.

O'Bannon: Basically, I am speaking from consumer a outlook. In four ways this act addresses consumer protection. One is the disclosure requirements, one is through the section on warranties, and the particular section on escrow deposits and the section on cancellation rescission rights. I'm sure that Mr. Buck is going to go through each of those sections so I won't repeat that but those are all areas that have come to our attention that are really needed. Particularly, disclosure and cancellation rights if you do not receive a full disclosure within 15 days prior to the contract to purchase the common interest ownership. I suppose that would all my general remarks. There is a

House Bill 138, a bill on time sharing and this common interest ownership act would include time shares. There are some provisions for anyone needing aid that are not currently in SB 44, Mr. Buck talked very briefly about some of those. One would be to provide time shares sales only through a licensed real estate agent regardless of the type of time share interests being offered. Time share is defined in SB 44 in the definition section in paragraph 31. The way it is defined currently it would include interest, it would not necessarily be a real estate interest but it would be what is known as a right to use time share interest. The way that HB 138 is drafted currently, even in that right to use the type of time share it would require a licensed real estate agent to sell that. That is one I would like to see addressed in this bill and the reason would be we could do that through an amendment to AS 08.88, real estate commission section of our statutes. It's been the experience in many states that when people, other than real estate agents, are selling time shares it is much more likely that there will be a great deal of misrepresentation in the actual marketing of the time shares, than when you have a licensee who actually has some interest, of course, in preserving their license. They would be more interested in marketing them in a more honest way. That's basically all the general comments that I have. I don't think that it would be good for me to go through a section by section analysis. Mr. Buck is really doing very good.

Halford: Just a question on time sharing. Are you saying that all sales in time shares have to go through a real estate or are you saying that all professional sales. Can't an individual sell their own time shares under your proposal.

O'Bannon: Of course.

Halford: If the time share is sold professionally for a fee then it has to be sold by a real estate agent.

O'Bannon: Right. Or in the original offering by a developer.

Halford: Then the developer can sell it himself.

O'Bannon: No, we would recommend even in that situation that is be sold through a licensed real estate agent. But I mean either through the original offering or if you are selling for a fee. But if it's someone selling their own without bothering an agent for reselling they could certainly sell on their own. We wouldn't

recommend that they had hired an agent to sell their time share.

Senator Ziegler: Because of other obligations may I ask at what time do you intend to adjourn.

Rodey: I was going to raise that question. The members of this committee have scheduled their day according to a three o'clock adjournment time and Senator Ziegler was checking the accuracy, I believe, not for the reason that he thought that it was inaccurate. Therefore, several of the members of the committee have other commitments. I'll question Senator Halford, the prime sponsor of the bill, how (indiscernible) in terms, obviously there is a great deal of work to be done. We are fortunate to have Mr. Buck with us and (indiscernible) in this room. Senator Halford.

Halford: What I suggest that we do in terms of format is request that the bill be drafted as a potential committee substitute, including these changes. I also request that the Department of Law and the guests and (indiscernible) and when we take it out the next time we've got everything all together. I don't know what the schedule is in terms of, I hate to lose the resource of Mr. Buck, particularly. I think that we have gone through an awful lot of it and have probably brought I (indiscernible).

End of Tape 1.

Tape 2, Side 1.

Rodey: ...for that reason I would like to spend as much time as possible, appoint as many people as possible, and get the best light on the problems. Is there a possibility that you would be able to join us again within a month or so?

Buck: Probably not, basically it's four days to come here for two. I could certainly join you on the telephone.

Rodey: That was my second suggestion, would be to use Alascom's new video teleconferencing system and actually work ...that would be the ideal situation, the ideal way for us to go back and forth. Obviously we will have to settle for a phone connection at this point. ATT and (indiscernible)

Halford: The only other question that I would also have is that people on the teleconference network, I don't know if they came for testimony or listen to an overview. I think that there is a lot of professional interest out there and a lot of people involved just looking over

the list is very exciting. We should at least let them know exactly when they are going to have an opportunity to present testimony.

Rodey: At this point I think that it is appropriate to hold hearings in Anchorage because of the large number of people, particularly in Anchorage, that are concerned about this and again, we ought to start it sooner rather than later...within the next several weeks.

Halford: Could I make a formal request that we have a potential CS drafted with the proposed changes and distribute that to everyone who has shown any interest on your mailing list, Senator Faiks mailing list and my mailing list prior to this so at that point they have the current version prior to the hearing in Anchorage.

Rodey: Yes, I presume that we are going to draft a committee substitute. Mr. Lewis will see to that.

Halford: I assume that we are closing out the day.

Rodey: Yes, I think that we have lost a good portion of the committee except the prime sponsor and the chairman. That's some indication that other members have other obligations. Obviously we are going to spend a great deal more time on this and just to my constituents in Anchorage, we will be providing copies of the committee substitute to Anchorage as soon as possible. I noticed the list and many of them are members of the real estate and legal community and themselves will be important people in disseminating the draft. Hopefully we can rely on the continued guidance of Mr. Buck as well as Mr. McNall. I just wish that he was a little closer. With that I will adjourn the Judiciary Committee.

SB 44

Teleconferenced Testimony
before the Senate Judiciary Committee

February 26, 1985

DON BUCK

My name is Gurdon Buck. I am with a law firm, Robinson and Cole, in Hartford, Connecticut, and I am testifying from Hartford, continuing on the testimony on Senate Bill 44 concerning the Uniform Common Interest Ownership Act.

As a matter of background and to try to catch up from the previous testimony, I am, in addition to being an attorney, a realtor and a national trustee of the Community Associations Institute and the Vice Chairman of the Condominium Committee of the Real Property Section of the American Bar Association. I was also an ABA advisor to the Uniform Law Commissioners Committee that drafted the Uniform Common Interest Ownership Act.

Also as a matter of background, the State of Connecticut passed its version of the Uniform Common Interest Ownership Act effective January 1, 1984 and since that time I have drafted about two dozen sets of documents for projects. As for my interest, I personally principally represent common interest community developers, drafting documents and counseling the acquisition, marketing and transition of control for common interest community projects. We also represent associations, lenders and municipalities in community association matters.

I have been asked to make a brief overview of the Act to try to bring people up to speed. For those of you who are not privy to the testimony earlier on the Act on February 5, the Uniform Common Interest Ownership Act was adopted by the 1982 annual meeting of the National Conference of Commissioners on Uniform State Law. Basically it is an act that regulates three forms of ownership of common interest community projects: the condominium, the cooperative and what used to be called the planned unit development but is now called the planned community in the act.

While there is a common scheme of development (that is, that there is a central community association that provides maintenance and upkeep and services for the units or portions of property within the project and this common scheme is shared by all three forms) the legal consequences flowing from the choice of forms differ substantially. Typically, condominiums have been a regulated form of ownership under statutes -- often, in some states, with consumer protection provided and in Alaska with no substantial consumer protection. Cooperatives and planned unit developments are significantly less regulated and are created by either corporate law or common law covenants in creating the association and the obligation to provide maintenance assessments, often with varying levels of competence with respect to the documents that are provided for the particular associations.

National lenders have found it very difficult to compare laws between states and statutes governing condominiums and

common law rules governing cooperatives and planned communities and they will use varying terminology, varying systems and make it almost impossible to assess the appropriateness of making loans, financing, sale and interstate commerce. Thus the National Conference of Commissioners and Uniform State Laws, in a process starting in 1975, has drafted a series of acts -- the Uniform Condominium Act, the Uniform Planned Community Act, the Model Real Estate Cooperative Act -- and then in 1982 merged all three acts into the Uniform Common Interest Ownership Act regulating all forms of ownership, using unified terminologies, unified systems. The act itself has been passed in one form or another as either the Uniform Condominium Act, the Uniform Planned Community Act or the Model Real Estate Cooperative Act in some 11 states. Oregon has the Uniform Planned Community Act, Virginia has the Model Real Estate Cooperative Act, and the Uniform Condominium Act has been passed in West Virginia, Pennsylvania, New Hampshire, Minnesota, Maine, Missouri, New Mexico, Rhode Island and Nebraska. All of these acts have essentially the same structure but apply only to their form of ownership.

The Uniform Common Interest Ownership Act is presently the law only in Connecticut, but it is being contemplated in West Virginia, Vermont and New Jersey, with significant excerpts being submitted in California. Thus the act itself, as far as its administration, as far as its financibility, its internal operations, has a great deal of experience.

The new aspect of the act, which is the governance of all three forms of ownership, has only had experience in Connecticut, and thus I've been asked to discuss some of the Connecticut experience and to go through the act on a section by section basis, giving a summary and giving some reasons for what's happening and possibly giving some anecdotal information as to what is our experience in Connecticut.

With your permission, I'd like to suggest that as I finish a section, perhaps Bill McNall from Anchorage, who has had a substantial amount of experience in this area of law representing associations and some developers and who was president of the Alaska Chapter of the Community Associations Institute, could step in and perhaps provide some anecdotal support for the needs for some of these particular provisions.

At the February 5th hearing, we went through the Act very generally and then started taking up the bill on a section by section basis. We ended up going through what I call the Section 40 sections. Under Section 38.08.040 -- applicability of pre-existing common interest communities -- there are around a dozen provisions of the Act that apply to all common interest communities that were created in the state before the effective date of the Act, but only with respect to

events or circumstances occurring after this effective date. These particular dozen sections are quite important and we went through them in some detail because they are the ones that we will apply to the existing projects. What I am proposing to do, in order to catch up, is to go through the sections on a sections by section basis, but when I get to one of what I'll call a Section 40 section, I'll gloss over it very quickly because we have gone into it in some detail on February 5th. I hope to try to confine my remarks to no more than another perhaps 45 minutes and then we can answer specific questions with respect to specific elements of the Act itself.

The Act, which is Senate Bill 44, is a proposed revision of the laws applicable to condominiums, planned unit developments and cooperatives. The Act itself is quite orderly. One of its advantages is that the provisions of the Act are in places that you can find them logically. Sort of as I said at the last Testimony, I believe, as the White Queen said, it begins at the beginning, goes through to the end and then stops.

And thus Article 1 covers the general provisions as to the application of t[illegible] Act on various forms of communities. The Act itself, in [illegible]tions 020 and 030, exempts from most of its provisions, s[illegible] communities. The Act is providing, however, that if the community is subject to development rights or subject to financing from the AHFC, the Act does apply. In every case, even in the small communities, a community may opt into the Act by having its declaration indicate that the Act is applicable.

We've gone over Section 40 -- applicability through pre-existing common interest communities -- and that particular provision is the area where in Connecticut, perhaps we had the most adjustment to make on passage of the Act. This was particularly with respect to the resale procedures and record keeping procedures of some of the communities that have been in existence over the years with no records or primitive records at best. But as far as Connecticut is concerned, the resale system has adapted to the existence of the Act. The sale systems have adapted, and at the moment things seem to be going along fairly well.

Section 50 -- applicability to small pre-existing cooperatives and planned communities -- indicates that if it is a small community and it is less that 12 units it is subject to what we call the three Universal Sections: Subsections 720, 730 and 740. These Universal Sections are extremely important. They are those which essentially are essential for existence of a condominium -- because a condominium is a creature of statute -- and are useful for the existence of a cooperative or a planned unit development, because they define the real estate interests and the interest in the

common elements, the applicability of local ordinances, building codes and regulations indicating that you don't discriminate between the various forms of ownership. They also define eminent domain, which in the case of one of these common interest communities, solves a large number of problems. So I'll be referring to those as the three Universal Sections and those sections apply -- no matter how old, how small, how large. Whatever form a common interest community is, it is governed by those universal sections, 720, 730, 740.

Section 60 is a fairly complex provision. It is in there in order to satisfy constitutional requirements. That is, if a declaration is created prior to the existence of the statute and an association wishes to amend its instruments, it has a choice: it can amend its instruments under the previous law if the amendment was made in accordance with the former law, and that law will continue to apply. However, there are a lot of excellent provisions in the new law which old associations would like to be part of. Thus, what it says is, if the amendment is permitted by this chapter and not permitted by law before the effective date of this Act, the amendment will be made under this chapter. It indicates also that if an amendment grants any person any right, power or privilege permitted by this chapter, any obligation or liability will also apply to this person. This particularly focuses at developers because this Act provides a wide range of flexibility for developers for developing and carrying on their project. Three projects in Connecticut are amending their documents to come under the new Act because of its advantages to the developer. However, if they do come under the new Act, the developers would be liable for the public offering statement, for the warranties and the escrows and the other liabilities that the Act applies.

Section 70, the applicability to the nonresidential common interest community, with the exception of the universal sections, indicates that the Act does not apply to the common interest community where all the units are restricted to non-residential use. Parenthetically, in looking at your definitions, you'll discover that the word residential includes the word recreational. This would be under definition 20(h) in the Act in Section 990. Residential includes recreational purposes, so if a campground, a marina, a stables or some other activity which would be of a recreational nature is being contemplated in the common interest community, then the full panoply of public offering statement and protections must apply, even though it is technically a non-residential project. The philosophy is that a recreational project requires similar consumer protections as a residential project. The chapter applies to communities which are mixed use.

Section 80 -- applicability to out of state common interest communities. The chapter does not apply to out of state common interest communities. But the consumer protection provisions (that is, the requirements for a public offering statement) are required where the disposition of a common interest community unit is signed in Alaska by a person, unless it is otherwise exempt.

Now Article 2 -- now that we've gone through the fundamentals of the applicability provisions. Article 2 covers the creation, alteration or termination of common interest communities. Article 2 is principally the developer and the developers' draftsman's article. It provides for the technical provisions as to how to create a common interest community. Very simply, it is created by a declaration. The declaration has a few mandatory items in it. It is relatively easy to create a common interest community. That is, if you describe the community with units and the ownership of the unit mandates the payment of maintenance, insurance or taxes on property or the unit, you have a common interest community. And the instrument, however designated, which creates that obligation is the declaration.

Another element of Article 2 which is important is that it provides bandaids for sloppy draftsmen. That is, if a draftsman created a very simple declaration and didn't define items such as the activities of the association or the boundaries of the unit -- a very important item to an association council (because maintenance boundaries seem to be a continual low level source of irritation) -- the Act goes ahead and writes into the declaration statutory definitions. These may not be the ideal answer, but at least they are answers and settle a lot of disputes. And probably one of the reasons for the length and complexity of the Act is many of these provisions which say "except as provided in the declaration" such as Section 100. These are the definitions. So what they are doing is providing answers to hard questions that the common community association institution has been raising where a draftsman forgets to provide them or where the draftsman is indefinite. And those particular provisions we found to be very useful.

Section 110 is one of the Section 40 sections, and it provides for a number of what I would call prophylactic provisions supporting the validity of the declarations. So only those lawyers who have listened tightly in the first year of law school know all the problems against the rule of perpetuity, but it does indicate that it doesn't defeat any provisions of the declaration -- you don't have to worry about it.

Section 120, the description of the units, provides for a shorthand description. It is another one of the Section 40

sections that will allow the ease of conveyancing of common interest community units after the passage of the Act.

Section 130, the contents of the declaration. The basic contents of the declaration are relatively straight forward. Provided that the declaration is filed with these particular elements in it, it will conform to the statute. Enough information will be given for title purposes in order to create the common interest community.

Subsections 8, 9 and 10 are provisions for development rights. Development rights are a term created by the Uniform Condominium Act of 1980 and the Uniform Planned Community Act of 1980 as well (formerly called additional withdrawable and subdividable land under the original Uniform Condominium Act) whereby a developer or declarant can unilaterally amend the declaration to change the community in order to create new units, add land, withdraw land or subdivide a unit into units in common elements. These particular powers are extremely valuable. They are essentially a new form of real property ownership that can be sold. As I have explained, we have a client who has created 55 condominium units on a parcel of land which is zoned for 150. He has reserved the right to create an additional 95 condominium units on empty land within the project. Those reserve rights are called development rights. He has sold out his 55 units for all intents and purposes, so technically the 55 units together with their assigned interest in the common elements, their vote in the association and everything necessary to run the project, have been sold and are gone, but the development rights unit remains. He has sold 25 development rights units to another builder and is reserving the balance in a bank, so to speak, secured by the mortgage loan. And he doesn't own anything that you can put your hand on. It is a very interesting philosophy. It gives you some idea of the scope and flexibility of the Act and obviously some of the wide ranging powers that the Act permits.

Section 140 permits leasehold common interest communities. Like the Section 130, they have to be disclosed, there has to be a sufficient information and there are some elements of consumer protection: if an individual unit owner makes timely payment on that unit owner's share of the rent, the leasehold cannot be terminated and everybody thrown out. However, it does permit the development of leasehold common interest communities.

Section 150, on Page 9, the allocation of allocated interest. Allocated interests are a new term created by the Common Interest Ownership Act. Under the Condominium Act, there was something called a "percentage interest in the common elements". With a percentage interest in the common elements, you received a vote and you received a proportionate share in the common expense liability and they all had to

equal the percentage interest in the common elements. There is no real rhyme or reason for doing that. What the Act does is allow these three interests to be allocated differently. However, the fraction or percentage interest in the common elements for a condominium has no practical effect under the Act and is just there because we common law lawyers like to think that when there is a tenancy in common there is a fractional interest that is spelled out somewhere.

In reality, the practical impacts of the allocated interest are in the percentage interest of common expenses and the percentage interest in the votes, and it can be a fraction or a percentage. They can be different. And they can be under any formula, provided they do not discriminate in favor of the units owned by the declarant or the affiliate of the declarant. So, any rational method of allocating the allocated interest would be spelled out in the declaration and based upon the market and the desires and the kind and quality of the units.

Whether they are garages, marinas, storage, office units, professional units, parking space units, the allocation would describe the formula which is used to establish these allocations and would describe, for the initial created community, what the allocated interests are for the first units being created. It is again a very flexible aspect and it has a well thought out approach to a problem. And, typically in Connecticut, what we are doing is that we're having an allocated interest in the common interest in the expenses which is based upon the burden that the particular unit imposes upon the community -- sometimes based on bedrooms, sometimes on square footage, sometimes on the square footage of roof, sometimes on the value and sometimes on the amount of siding that is put up. Sometimes, in many cases, we are doing it equal. In almost every case, the voting, however, is on a one unit one vote basis, but it can be one person one vote or any other method that is non discriminatory.

There are a few other interesting allocations under Section 150. The declaration can provide that different allocations can be provided to units on different matters. In Virginia there is one project where the tenants have a partial vote and the occupant has a partial vote and if it's an owner-occupant they have a whole vote. This brings tenants into the voting of the affairs of the association and that's permitted under the Act if somebody is so interested. Then there are some general provisions prohibiting partition and, in the cooperative, indicating that the ownership interest can't be made without possessory interest in the unit, so they are never separated.

Section 160, the limited common elements, permits an allocation of specific portions of the common elements to persons less than all the persons in the project, so it takes

care of balconies and other elements of that nature. It is also possible to allocate common expense liabilities based upon common elements burdens so there are a number of ways that common element expense can be allocated besides basic fraction which is a residual number under the declaration.

Plats and plans under Section 170 is a fairly complex provision. We've prepared checklists, which Bill McNall has, giving the surveyors, engineers and architects instructions as to how to prepare the plats and how to prepare the plans. Technically, a plat is a survey which would be prepared by a surveyor, that is a picture of the property as it existed at the time of the creation of the first units, and then the time of creation of subsequent units. A plan is a drawing showing what contemplated units are going to be looking like. A plat may show the intended locations and dimensions of contemplated improvements, in which case that particular provision should probably be done by a planner. Any contemplated improvements must be labeled with the words "must be built" or "need not be built". On Page 13, this is the first reference to those very, very important consumer protection provisions. That is, we are making statutory representations to purchasers and to anybody who comes in contact with the plats and plans, over what the developers are committing to and what they need not build and thus are not committing to. It is one of the essential disclosures of the Act. In advertisement, as you'll discover later on, if something is not labeled "need not be built", it must be built -- it becomes an affirmative representation.

The plans for the units under Subsection D are essentially floor plans, which we used to call building plans, wherein the dimensions of the unit are specifically identified and those particular dimensions are laid out on the plans so that boundaries of the units, which are described in the declaration by narrative, are now shown in a physical, graphic manner. The requirement of Subsection (g), certification of the plan, must be made by an independent surveyor, architect or engineer. The intent of this is that the particular disciplines which undertake the particular aspects, whether surveying, whether engineering or whether architecture, would be the ones who would certify as to their own professional discipline. And in the case of a subdivision -- for instance a cluster subdivision where all you have is the subdivision map, units consisting of house lots and common elements possibly consisting of a well site or a private road -- the entire certification would be made by a surveyor. However, where there is architecture and engineering data appearing, their disciplines may require that the engineer or architect sign it.

Section 180 is the exercise of the development rights that I have described. As developers unilaterally exercise their development rights (and it is important to indicate that they cannot exercise a development right unless they have reserved

it in a declaration) they prepare and record amendments to the declaration. Thus, whatever the development right was, they create units or they withdraw land or they add land. If they create units, the declarant is the unit owner automatically of those units. The process of exercising development rights is usually undertaken by a one or two page amendment. A new plat or plan is appropriate showing where the new property is. It can be done fairly quickly and easily with a fairly simple amendment provided it has been adequately protected in the documents.

If property is subject to development rights -- that is, if there is a project whereby a portion of the property will be subject to the right of the developer to add or create units (in most cases most of the property when it begins) -- the developer is liable for all of the expenses allocated to the property subject to development rights. Thus developers may terminate the rights and would probably want to terminate the rights as soon as they had used them up. And it is to the interest of the developer to terminate the development rights as soon as they are used because of the obligation for maintenance, tort liability and taxes on the development rights land.

Page 15, on alterations to the units: unit owners may in fact have a specific power to alter units and may under Page 16, under Section 200, relocate boundaries between units. In Section 120, if the declaration permits, it may be subdivided into two or more units. In the commercial context, this is a very useful provision. In California and Connecticut, prior to the existence of the Act, when you had a commercial or an office condominium you had to divide it up into little mini-units of one square foot apiece and then you would assign as many of these as were needed to a given office and then allow people to buy these units back and forth. Very cumbersome. And sure enough, somebody would want six inches instead of a foot and thus they would discover their documents prohibited it. Subdivision makes it very easy.

Section 220 is the easement for encroachments, indicating that it is quite likely that the building when finished will not exactly comply with the plans. This provides an easement for these minor encroachments that may occur by virtue of construction, sinking or shifting of a unit. There is still a requirement to adhere to the plans.

There are certain powers (Section 230) used for sales purposes, that the declarant has the right to maintain sales and management and models. These are the only rights that declarants can reserve that discriminate in their favor. They are, for all intents and purposes, essentially appropriate for the declarant.

Section 240, the easement rights, are other special declarant rights for use of the easements for the property.

Section 250 provides for amendment process which is uniform. There have been a number of declarations which have been created merely by reference to a master deed requiring 100 percent to amend, which we call the bullet proof project. Conditions do change, but an amendment is necessary. They're detailed as to how the amendment is done in Section 250.

Section 260 is termination. There is a substantial provision on termination in Section 260. Suffice it to say virtually all the permutations and combinations of termination are described in great detail -- as to how they are voted in by an 80 percent vote, how the proceeds are whacked up, how they are re-submitted and what happens to subordinate lienors and with adequate protection for any kind of secured lender involved.

Which brings us up to Section 270, the rights of the secured lender.

This is basically what the rights of the secured lender are not. However, it does permit, as the old statutes did not in many states permit, that there be a condition that a specified percentage of those holding security interest approve certain actions of the unit owners. But they cannot deny or delegate control of the administrative affairs or prevent the executive board from settling litigation or prevent an insurance trustee from receiving or distributing insurance proceeds.

In many cases, you'll read the old statutes and you'll discover for instance that the amendment process must occur by the vote of (x) percent, 70 percent, or whatever of the unit owners. You'll then discover that the lenders are not mentioned. There is a likely possibility that by not mentioning them, they are left out. Thus if the unit owners go ahead and do it without the lenders' consent the lenders may not have the ability to object. The lenders are concerned about this. This gives secured lenders some additional protection.

The Act itself, as we have described, gives things to people that they need. It takes away things as well and it represents a compromise in the drafting because of the large number of interest that were involved: lenders, developers, associations, consumers and folks of this nature.

Section 280, master associations, permits the delegation of certain powers from a sub-association to a master association. Now, under the old act, in order to get flexibility, many developers created a chain of independent condominiums, all governed by a master association and there was simply no

authority to delegate the board of directors powers to the master association. This cures that.

Section 290, merger or consolidation, is one of the Section 40 sections applicable to old as well as new condominiums and allows the merger or consolidation of common interest communities. In many cases where you have a multi-phase project of multiple condominiums, the ability to merge them all, even in the old concept, is very useful.

Section 310 is the first section of Article 3, management. We've gone through now what I call the developers' articles, the creation, alteration and termination -- the developers' and lawyers' article. We now go to the day to day management. This is an area where even the most sophisticated states, until the passage of the Uniform Condominium Act, had virtually no law. They were giving the associations virtually no powers and no specific remedies for the activities that the association had to undertake in order to fulfill its governance responsibilities. Article 3 is probably one of the articles that is most useful as far as the ongoing operation of the associations is concerned.

It provides that an association must be organized no later than the date on which the first unit is conveyed. There have been projects where the developer will convey the unit and organize the association at a later date and find that all the financing, covenant powers, the responsibilities and rights, the accountability and everything is all muddled up. This makes it very clear to organize first.

Section 320 is partially -- through Section 6 and from 11 on -- a Section 40 section. It specifically grants to the unit owners association a number of powers which the association really does need. Many of them were granted by the non-stock or stock corporation laws, if the developer for them was under the stock or non-stock corporation law. Many were not. There are always questions whether or not the association could adequately represent unit owners as a class, whether it could go into litigation on matters of common interest, contracting powers, regulatory powers, the acquiring of real estate and personal property and all of these other powers which were not in the original statutes and in many cases were left to question. Section 320 gives the association this power and is a very important one to recommend to you.

Section 330, executive board members and officers, basically gives the executive board virtually the carte blanche to run the association except as otherwise limited in the declaration. Thus the executive board is given virtually all the powers to run the association except to amend the documents and to elect themselves. And then the declaration can divide the powers appropriately between the executive board

and the association, depending upon the size and style of the association.

Section 340, transfer of association control. The termination of declarant control is a word of art. This is not in the Uniform Act. It is something we highly recommend. Connecticut has a similar provision. It is adopted from the Florida statute and it does give a list of items that the declarant must transfer to the unit owners at the time they relinquish control. The control is relinquished under the powers -- Section (e) on Page 31, which indicates that not later than 60 days after conveyance of 25 percent, one quarter of the members of the executive board must be elected by unit owners. After conveyance of 50 percent of the units that may be created, not less than one third must be elected by unit owners. Then under Section (d), 60 days after conveyance of 75 percent of the units, or two years after declarants have ceased to offer units for sale, or two years after the right to add units was exercised, the declarant must call a meeting and the unit owners may elect the members of the board. Interestingly enough, the declarant can vote at that meeting but cannot vote at the earlier provisions. But the termination of the developer declarant control is a term that is actually defined in Section 330, subparagraph (d), and at that point, then the developer or declarant must transfer a list of essential items to allow the association to operate in a meaningful manner, including financial statements and the source documents for the financial statements from the beginning of the incorporation of the common interest community.

This particular provision has created a lot of heat and light because of the fact that developers have been operating under the concept of form and forget. Then all of a sudden control gets transferred and the developer for the first time in years brings out the books of the association and tries to figure out what he was supposed to have been doing. Now it makes it very clear from the beginning that the developer will have a transition process that is reasonable. He can prepare for it in an orderly manner. This is not a Section 40 section, so it applies only to those projects declared after its effective date and they'll still have to muddle along with the old ones. It's probably the only way it can be done.

Section 350, the transfer of declarant rights, permits a declarant essentially to assign or transfer the declarant rights to a successor who need not be the declarant. That is he puts the declarants rights into deep freeze. The successor, who more likely than not is a foreclosing mortgage lender, can keep the declarant rights in deep freeze without being tarred with the liabilities of the declarant until they bring a successor on line, thaw the declarant rights out and give them to a successor. Successors then have the full

powers of exercising special development rights and things of that nature -- at which time they assume all the liabilities.

Section 360 terminates contracts and leases of the declarant and its affiliate where the association votes after the termination of the declarant control, but not less than ninety days after. This would obviate the possibility of long-term management contracts between developer and his relatives and friends, long term Muzak contracts where the developer's only liable to change the cassette once a month and receives $1000 per month for the purpose. This particular provision allows that kind of contract to be terminated.

The by-laws are a fairly short document under Section 370. It provides for a minimum number of corporate pieces of information which we would most likely find in a corporate set of by-laws. Interestingly enough, the by-laws can be amended any way that the declarant says they are. In the model forms we have opted to indicate that the by-laws can be amended by the association executive board upon notice, comment and a vote of a larger than the normal majority of executive board members. Thus it means anything of permanent nature appears in the declaration. The by-laws are generally a day to day operating chart of the project. And unlike the former Act, they need not be recorded.

The Section 380 is a very basic section indicating that the association is responsible for the common elements. It goes into some detail, with the exception as I explained before, that the declarant is liable for the expenses in connection with real estate subject to development rights. There is a meeting. There is a new provision in this particular Act which is somewhat surprising to associations that the association must have a meeting once a year. This is even during the period of declarant control.

In addition, there is a provision for budgetary provisions. The budget must be submitted to the meeting. By a percentage appearing in the documents, the association can provide for a veto to unit owners for the budget. So, even during the period of declarant control there has to be an annual meeting. An interesting issue.

Under quorums, there is an automatic quorum of 20 percent if the by-laws are silent but, likewise, the by-laws can provide a larger percentage by quorum, and the executive board is 50 percent. It is possible, and in Connecticut, under our quorum provisions, we provide in our standard by-laws that a quorum consists of the person present, provided that there has been full notice to the unit owners. Because we have found in many cases the establishment of a quorum particularly in a condominium such as a marina or a recreational

facility is quite difficult to obtain, even the small percentage of 10 percent.

Section 410, tort contract liability, is essentially a limitation of liability on unit owners. It is a Section 40 section, applicable to old projects and is very useful.

Section 430 is something that's brand new. It's a whole new idea in a condominium and it's very rare in a planned community. It permits portions of the common elements to be conveyed or subjected to a security interest by a vote of 80 percent of the votes of the association. (This parenthetically is the same number that we would require to terminate the common interest community.) It allows, for instance, the clubhouse or the well or the sewer plant to be secured by a security interest with an agreement to the particular entity loaning the money and allows a partial sale. Obviously that's one of those amendments that lenders would want to have a voice in and they can under the statute. It's a very useful technique. It's not been used yet in Connecticut that I know of because the general power to assign the interest of the association in the common assessments is allowing the association to give a wide variety of credit and the collateral assignment of assessment income now allows an association to provide for credit. Most of them are taking their loans out using a cycle of assessment income rather than security of interest on the common elements.

Section 440 is an insurance -- more of a housekeeping item -- and it provides for the kind of insurance an association should maintain. There's a dichotomy in here. That is, a common interest community with horizontal boundaries (i.e. floors and ceilings) must provide insurance covering the entire common interest community including all buildings and improvements including those within the units. If it does not have horizontal boundaries, that is, if it is something like a house lot where the boundaries extend from the center of the earth and the heavens, blanket insurance is optional. It doesn't matter whether it is a condominium or planned community or coop, these rules apply across the board.

Section 450, on surplus funds. They are basically divided, of course, into common expense liabilities.

Section 460 is the assessment for common interests, with particular provisions for reallocations of common expenses in accordance with specific burdens that are imposed -- such as judgments or assessments -- or specific services that are provided by a unit owners. Interestingly enough, all of these are common expense assessments, all of them are lienable, all of them are collectible under the statutory lien. It is a very useful element because in many cases they are not proportionate to percentage interest in the common elements as they were in the condominium.

Under Section 470, the lien for assessments. This is a very powerful remedy indicating the lien is perfected at the time of the filing of the declaration. This is a Section 40 section. It applies to old communities as well as new communities. It also provides that the lien is superior to the lien of first mortgage interests to the extent of six months of assessments that would have become due prior to the institution of actions that would force the lien.

This super lien is now the law in most of the states that have passed the Uniform Condominium Act. It is acceptable to the Fannie Mae, Freddie Mac and the FHA. All of them recognize that the institutional powers to collect a few months of assessments that are there and keep the financial viability of the association above water is more important than perhaps, as I say, just a few months or six months of assessments which might be ahead of the first mortgage loans. It obviously has facilitated collection of liens because the lender is interested in those payments, as is the individual unit owner.

The procedure for collection and foreclosure I'll skim over because it is relatively technical. Suffice it to say that there is no longer a necessity to file a notice of lien. The lien exists by virtue of the declaration. Upon commencement of foreclosure and the appropriate remedies, the lien can be undertaken.

Section 480 is the divisions of various kinds of attachments, mechanics liens and items of that nature, judgments liens and how it is undertaken.

Section 490 is another Section 40 section, on association records. It is very simple. They are required to keep financial records sufficient for the association to provide resale certificate. In Alaska you have added what I think is an excellent provision. It provides that the professional manager or managing agent or other person with whom the association has contracted for services must return all association records within five days of termination of contract. Because of the responsibility of an association to provide a resale statement within ten days, they obviously need the records. If they're having a dispute with their financial manager and he won't give them the records, this obviously has some substantial provisions.

Section 500 is a housekeeping item where the association is acting as trustee as they often do in an insurance provision.

Article 4 is the consumer protection provisions. I'll run through them fairly quickly because I can see my allocated time is running out.

Article 4, Section 510 applies to all units which are subject to this chapter. However, there are a number of exemptions -- that is, the sale of the unit that is non-residential, for instance, or disposition of the unit where the declaration limits the maximum assessment to $300 per year per unit. In those particular cases, the public offering statement is not required.

There is substantial liability when the public offering statement is prepared. It has to be delivered to a purchaser who offers a unit to a purchaser before sale. The public offering statement then gives the purchaser a 15 day recision period, during which time he can walk away from the deal after reviewing the public offering statement.

Section 550. These are the basic questions that a public offering statement should supply. There are 20 questions, just like in the old quiz game. Those 20 questions must be answered for every common interest unit where a public offering statement is required. In addition, there is another round dozen of questions under Section 540 that must be answered if development rights are reserved. Because of the unilateral power of a developer to change the condominium or the common interest community, those 12 questions describe what the plans are in the future. Or, they give assurances that there are no plans and anything can happen with respect to the development rights plans.

With the same effect, time share gives four questions out of the Uniform Act and three additional questions which I would commend to you with respect to time sharing. The result of this is, in Connecticut, that if in fact time sharing is not contemplated, it is prohibited in the declaration, because the developers don't want to go through the answers of these questions which would require planning of something that is not contemplated. So technically, in Connecticut, in most of our cases where we're not contemplating time sharing, we prohibit it. And that gets us out from under answering those questions which come up under Section 550.

In Section 560, there are three basic questions having to do with the engineering aspect and the useful life and the cost of curing the outstanding notices of violation where there is a conversion building. Conversion buildings are buildings that were occupied by tenants before the common interest community was offered as a common interest community. And thus, if it is a used building, the declarant is obligated to provide certain engineering, code and useful like items with respect to the provisions here.

This is a very important provision. It is one of the reasons -- the tenant protections and the tenant information -- Connecticut passed the Uniform Common Interest Ownership Act. It wanted this particular information as a tenant

protection to be given to conversion tenants in all forms of common interest communities.

Section 570. If it is registered with the United States, the registration satisfies the public offering statement.

The 15 day recision under Section 580 is spelled out.

Section 590, which is also a Section 40 section -- resales. It provides for when a unit is being sold where a public offering statement is not required. This will encumber the sale of units in old communities and even new sales by developers if there was a community declared before the effective date of the Act. There is a requirement in that particular case for the answers to some 14 questions. They give a statement of the community's financial activities and affairs, what is going on, and a general coverage of the character of the community, including the declaration, the by-laws and the rules.

The association is responsible for delivering this particular resale statement within ten days after a written request and the payment of a fee to the association. And the purchaser is not liable for any unpaid assessments greater than the amounts set forth in the certificate. Thus the association has to be fairly careful with the delivery of these resale statements. Now, it is important to emphasize that this applies to old communities as well as new communities because it is a Section 40 section.

And it applies when a public offering statement is not delivered. So in every sale of a common interest community in Alaska you will get either a public offering statement or a resale statement (unless it is exempt because it is non-residential or less than $300 per unit.)

Section 600 provides for escrow deposits until delivered to the declarant at closing or by default or by refund. The release of liens indicates that any lien that the purchaser doesn't agree to has to be released at closing. The conversion building element in Section 320 gives some specific rights to residential tenants, the residential sub- tenant, to purchase their particular unit. They're obligated to receive a full public offering statement not later than 120 days before the tenant is required to vacate. And for the first 60 days they have the first right to purchase.

This ameliorates the trauma of conversions and is one of the provisions, as I said, that called for Connecticut to pass the Act covering all forms of ownership.

Section 630, the express warranties of quality, is a fairly carefully drafted situation providing for express warranties. It indicates that models, descriptions,

affirmations of facts or promises create an express warranty. Section 640 develops the implied warranties which basically are spelled out in some detail. I'll skim over those even though I know there may be some questions and some important sections.

Section 650 indicates the implied warranties may be excluded provided that they're fully disclosed. But a simple general disclaimer is not sufficient to disclaim the implied warranties. And then there is a specific statute of limitations of Section 660, allowing for enforcement. But it also allows for the shut off of these warranties, which could possibly run forever.

Section 670 is one of the most interesting and most powerful provisions of the Act. It is a Section 40 section covering old condominiums and communities. It essentially says that anybody -- or any class of people adversely affected for failure to comply with the Act -- has a cause of action against any other person. You don't have to worry about the issues of standing or any of the other areas that lawyers do their dances over at the threshold of the court house. The question is, if there has been damage, if they have been adversely affected, they have a claim for appropriate relief.

Section 680, labelling of materials, another consumer protection provision, indicates that promotional materials showing a contemplated improvement must be conspicuously labeled "must be" or "need not be" built. And if they have not labeled it "need not be built", under Section 690 it is assumed that they must build it.

Section 700 requires an architect's certificate of completion if the unit is to be conveyed if a public offering statement is required. And that means that no unit can essentially be conveyed until the unit has been created and the building is complete.

Article 5, the general provisions, which in the Uniform Act were in Article 1, gives some fairly general activities which can be undertaken and shows the applicability of the various aspects of the Act. It gives some very powerful positions to the Act itself with respect to other laws, with respect to documents. It indicates that the Act in most cases is supreme unless the Act specifically provides for those particular provisions where they can be varied.

I would commend to your attention the commentary to this particular provision in the Uniform Act where it lists the number of provisions which may be varied by the declaration or the by-laws or by agreement. And they're very large. It turns out that probably 2/3rd of the Act may be varied, but

where they cannot be varied, obviously this particular provision means that the Act is supreme.

The separate titles and taxation in the proposed bill changes the common interest ownership provision indicating that in a cooperative the unit owners' interest in the unit and allocated interest are real property for all purposes.

The Connecticut provision makes the unit in a cooperative financable and subject to real estate mortgages. But it does create a certain amount of problems which can be solved by sensitive drafting (some problems with respect to the chain of title allocated to a cooperative unit owner's interest) but the declaration can be filed and, as I say, sensitive drafting can cure that. In the Uniform Common Interest Ownership Act there is the alternative of having a cooperative unit's interest being personal property, which in some cases may be relatively useful.

The separate titles and taxation section -- 720 -- like 730 and 740, is universal, and has solved a number of problems in Connecticut with respect to taxation of common elements, indicating the unit owner's interest is real estate and is taxable and it can be separately conveyed. This makes the title insurance people happy.

Section 730 is a Section 40 section and a universal section, as a matter of fact. It indicates that the application of local ordinances and building codes doesn't discriminate between physically identical portions and kinds of property. This is quite useful because it means the building inspectors won't require full scale firewalls in an apartment building that happens to be a condominium but not in an apartment building that does not happen to be a condominium.

Section 750 is an important section. It supplements general principles of law so that you can create contract rights.

Section 760, 770, 780 are basically boiler plate contracts and appear in universally all uniform laws.

Section 790, an unconscionability provision. Very powerful with respect to overwhelming developers who decide to write documents that are totally one-sided. The court can go and look at it to find out if they are unconscionable. This is a provision that comes out of the uniform laws and a number of uniform laws have it.

Likewise, Sections 800, 810. These are uniform law provisions. Adjustment of dollar amounts (that is, the $100 threshold under 820 and the $300 threshold in the Section 510) are adjusted based upon a 1979 index which is now the uniform index used for all the uniform condominium acts

throughout the United States. That is the reason why that very strange formula is in there. That formula also is a standard formula used by the Uniform Law Commissioners for CPI adjustments in other uniform acts providing for CPI's.

That brings us to the definitions. There are a number of important items in here. I'll skip through.

You should review the "affiliate of a declarant". It is quite important.

The Alaska bill has added an excellent one in Definition 9 on Page 84, indicating that a conversion building includes a mobile home site as well as a building that was occupied by persons other than the purchasers. So the conversion protections are now offered for mobile home sites as well as buildings.

The definition of a "declarant" isn't necessarily the person who declares. It is the person who sponsors or actually offers the units for sale as a regular course of business.

"Ownership" interestingly enough does not include just owning, but also includes leases in excess of 40 years in a unit in Definition 22 on Page 87. On Page 87 there is a mistake that should be corrected -- on Line 21, 20 years should be 40 years to be consistent with the 40 years on Line 3.

The definition on Page 88 of "special declarant rights" is very important with respect to developers. Those are the rights which the developer may reserve for the developer's benefit and no others and thus there can be no additional unilateral rights reserved. But we have found that those rights are all the developer needs. They include development rights to exercise the development right under subsection (b). And they include a number of other special declarant rights which, as long as they are held by a person, that person is declarant and subject to the liability and obligations. But they all can be held. There is a relatively good summary of those things that the developer really needs and in fact that they need no more.

Page 89, "time share" definition under Section 31 is the definition that comes from the Uniform Real Estate Time Share Act and is similar to the one in the National Association of Real Estate Licensing Law Officials Act indicating how a time share operates.

The "unit owner" includes the declarant. There's some clarifying language in there. It basically indicates someone who owns a unit. All right, there are a few provisions under Section 2 of the Act on Page 90 to conform this act and integrate it into the Horizontal Properties Regimes Act.

However, it is important the Horizontal Regimes Act be recognized as still being in effect and still acting as the fundamental law operating for the existing condominiums in Alaska, subject only to the Section 40 provisions.

BILL McNALL: The importance of several of these sections cannot be minimized in light of the current state of law in Alaska vis a vis, among other things, realtor liability.

Section 170 specifically talks about identifying projects which either "must be built" or "not be built". As things stand right now, if there is a representation being made in some form of document and it turns out to be inconsistent with the project as completed, the realtor who was out there listing or selling those units may be potentially liable. If the developer has perchance left the state in the process of development, of course the realtor is sitting out here being the only one around.

Organizing the associations -- Section 310. I have handled numerous cases where the association was not developed until long after half the units had been sold, often times not until the 75th percentile of ownership had been conveyed, at which time the developer then created the association. This means that essentially unit owners that were members of the association at the time of the conveyance because of mandatory membership were paying assessments into the association that simply didn't exist. The process of trying to determine through an accounting process afterwards is often very difficult. Developers, of course, do not understand why the owners are upset.

I have even seen documents that were prepared to establish upon the developer the obligation to create the associations after the 75th percentile of ownership had been conveyed. Totally inconsistent with how corporations are supposed to operate. I have also recently seen a document that required the association to have its first annual meeting three years after the development process was started.

During the operation of the association, this is probably the biggest problem area that I've had to deal with. There seems to be constant conflict between the developers and the association directors as to how the association is to be operated. Our existing statutes give us no protection whatsoever, no assistance whatsoever, in devising these boards. Section 330 is going to be a substantial benefit.

The transition from developer control section -- Section 340 -- is going to eliminate many of the problems that we have been asked to handle in the past. Developers often times do not want to turn over documents or simply have lost them in the process somehow. Quite frankly, associations

need to have copies of plats and specifications, of underground site locations, so that if they're doing any sort of work or repair they know where the pipes and gas lines are and that sort of thing. They need to have copies of the books, they need to have copies of the checks.

We have presently been asked to straighten out a situation where the developer has entered into a lease with the firm providing the washer and dryer for the project unfortunately didn't bother to enter into that on behalf of the association, but simply did it himself -- and the fees being charged are exorbitant. The association wants to get rid of those and I'm afraid that this is a case that's going to wind up going to court because the parties cannot agree on how to handle it. It simply could have been avoided by, in part the transition statute. as well as the part I'll get to in a bit -- allowing the association to void the contract as reached by the developer.

As far as the encumbrance of the common elements is concerned, I think you'll find that in future associations you're going to have the ability to assign their future income ranks or encumber their common elements -- whatever is going to require you to allow them to borrow money from lenders and to be able to do some of those repairs. Often times, the reserve process that the association must go through to raise the money is not adequate. Or you'll have an emergency situation which means that some unit owners will have a huge assessment which they can ill afford. The ability to go to the lending institutions to borrow the money is something that this Act contemplates and I think reality in the practical world will require associations and the lenders to work it out in the future.

Public offering statement. I think this, of course, is very important. It specifically sets the board's requirements for the information that must go to the consuming public. This is, of course, important in light of the fact that right now those making those representations are a lot of real estate people who are trying to guess what the developer is going to really do. Public offering statements make the developer commit. It makes him make the decisions or reserve the right to make those decisions.

(Indiscernible) along the same lines as resale certificates requiring the association and the seller to make specific (inaudible) important because this is going to limit some of the litigation that is presently out there.

I like the idea of expressed warranties and implied warranties, the modification of warranties being spelled by statute. Presently we have only case law to guide us and it is, in my opinion, inadequate. Everybody winds up guessing whether or not there is a warranty present or how long it might last.

The eminent domain issue. I have just been asked again with an eminent domain matter where the declaration is inconsistent with our present statute and the association is trying to figure out how to divide the money up between the lenders, itself and the unit owners that are damaged. And, it being most difficult, this section 740 certainly will assist them.

MARK BARNES. This is Mark Barnes. I am from the Alaska Banker's Association. I would like to raise an issue with the Committee which I think it should be aware of.

The bill seems like a good bill in the sense... (and I'm not representing, right now, the banker's position on this. I understand lenders have had some input as to legislation.) Under the current status in Alaska law, a lender who is simply participating as a routine lender in a real estate transaction, normally is not held to be liable for subsequent defects in the real estate. Normally, warranties, if they exist, are accrued to the developer. My only concern is what kind of new liabilities would Alaska lenders assume under this legislation? It appears to me they don't seem to assume any new liabilities, but that doesn't seem to be entirely clear. The case law in our state is that unless they're an active participant in the development, (in other words, if they have some kind of management or participatory development with the developer), then they're normally held liable for these defects that subsequently show up in the real estate. (...) Is there any intent for a lender to assume new liabilities under this Act?

Buck: No, not at all. As a matter of fact, the deep freeze provision of the Act (which is what I think you're talking about) is the basic provision whereby the lender is specifically held not to be a declarant but is subject to declarant liabilities if as a successor declarant he only takes certain of the declarant rights: the right to sell, the right to put up signs, and models. The Act itself was designed specifically to provide a construction lender who takes over a project with the responsibility only with respect to those particular aspects which were assigned to it in its loans. It was written in by the lenders group. It is Section 350, Page 35 of the revised bill, indicating that the special declarant rights may be transferred only by an instrument. And with the special declarant rights go special declarant obligations.

So unless there is a specific transfer then there are no rights at all with no declarant obligations. Then there is a specific provision upon transfer. Upon Section (d), upon foreclosure, the successor essentially is subject to the rights and obligations under (e) (1), but if he is not subject to the rights and obligations he has only specific limited rights under 3. I believe that's the way the deep freeze is. He is not subject (on Line 27, Page 37) to liability

obligations as declarant. Except the obligation to provide a public offering statement. It was fairly well thought out with respect to construction lenders that they would not be liable.

Now this does not change the common law joint venture. If, however, a lender has exercised the control over the common law that would make him a joint venture, I think this doesn't change it. But I think that they can reserve all the rights that a lender would normally need to take over the rights of a declarant upon foreclosure, but not become a declarant subject to declarant liabilities. So there is no intent that there would be a joint venture predicament coming up on the lender in this Act.

SENATOR HALFORD. Okay Anchorage, do you have any other questions. Does any other person want to testify...If there is any other public comment or testimony from Anchorage, we can go ahead and hear it now.

MODERATOR. We have one other individual who would like to testify.

BETTY COOK. As I testified before, we are in favor of SB 44. We have a couple concerns I'd like to go into. On the first page, we feel that projects of less than 12 units should not be exempt from the entire chapter. Owners of small projects tend to need just as much protection as those in larger projects. (Indiscernible) poorly managed project or misinformation can be just as detrimental to owners of small projects.

And Section 030, we'd like clarification: if the word "or" at the end of line 27 means that projects with annual fees of less than $100 would also be exempt, regardless of the number of units. It is kind of unclear and we would like to know if this is the intent, or if the work "or" should be changed to "and".

BUCK. No, the answer is "or". The intent of the draftsman in that particular case is even if it's a large project of 50 or 60 house lots in it, but its only function is the maintenance of the sign at the end of the street, or the maintenance of a detention area, or maybe a piece of open space, and all it has to do is provide insurance for it -- that it would not have to go through the formalities of this particular Act. Form an association, have annual budget meetings, have annual assessments and have all that. Unless it opted into the Act. So the answer is that the intention of the Act was "or".

The whole issue of de minimum was an issue that was discussed at great length, with great heat and light, by the Uniform Law Commissioners. The number 12 and the $100 was frankly a matter of just attempting to draw a line. There is a recognition, quite clearly, that very small projects, with

very small interests, that are subject to the Act, probably should not have to go through the formality of the Act. The question how small is small. The Uniform Law Commissioners came up with 12. That particular provision, as I say, was a matter of an attempt to draw a line. I think the comment was designed so that even though there may be a lot of units, if the common expense assessments are very small per unit per year, then it would be exempt from the Act. Unless they opted it. It's quite likely that in many cases they will opt in. Alaska Housing Finance Corporation could require as a condition of financing that they opt in because they have the power to do so. But there was a feeling that there is a point where small is too small.

COOK. My comment would be that I disagree with that. I think the philosophy is good behind it that de minimus PUDs do not need to be as concerned. But there are small units out there -- I know of a three-unit project -- that have some very large assessments on their property. The problems with those three people are just as much as the problems with 100 people in a unit. The disclosures are not made. If the projects are that small, the public offering statement would not be that cumbersome to give and it certainly would give protection to those buyers in those units left on a project of less that 10 units.

We would also like to see provisions made for the enforcement of the bill. The bill offers good protection but it offers the consumers no easy way to insure that protection.

The super lien provisions we are in favor of -- although they create a lien that could be superior to the Alaska Housing lien. We feel that it makes for financially health associations and the amount is so minimal that we are in favor of that part of the bill.

We appreciate the opportunity to testify and we've given the bill to our legal counsel to answer the main question that Mr. Barnes brought up and how to conform to the bill if it is passed: what legal problems that it might cause for us. We'd like to be further informed of hearings so that we may testify after we have our legal counsel opinion.

BUCK. I have to admit that the problem of the de minimus project is one that we did wrestle with. And all I can offer is that all the interests were represented in the drafting of the initial Act -- the consumer interest, the developer interest, the lender interest. The municipal officials and governmental officials all came out and finally, sort of reluctantly, said 12 and $100 is probably as fair as we can get. It is a policy question and it certainly, I think legitimately, is a policy question that the Legislature should consider.

I have to indicate that the two-unit common interest community, we all agree (which probably consists only of a party wall) should probably be exempt from the Act.

I would also like to point out that this Act is not going to satisfy the problems for new home warranties. New home warranties is a different battle and a different battlefield. The bill provides some relatively good warranties within its provisions, but perhaps the Legislature should look at the new home warranties provision with respect to single family houses alone. Because many of these problems can occur just because it happens to be a single family house and the building didn't fulfill the builder's promises. I think it provides an orderly system for warranty administration if it happens to be a common interest community. But when it gets down to 12 or under, I think more likely than not, what you're dealing with are problems that are problems that occur with single family house builders, not so much a problem with (indiscernible). Although I admit that if there are three houses and the entire roof goes, all the roofs go. And the fact that it is a common interest community or not isn't going to give it much help.

Had they had a public offering statement and some affirmative representation, they would be getting a better handle.

SENATOR HALFORD. Thank you.....

COMMITTEE REPORT

SENATE

FURTHER:

?/11/85

Date 4/15/86

Mr. President

The Committee on FINANCE considered SB 44

Uniform Common Interest Ownership Act; efd.

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

[ ] do pass

[ ] do pass with attached amendment(s)

[✓] replace with/or adopt CS for SB 44 (Jud)
[ ] new title
[ ] same title and recommends "do pass"

[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to ______ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS
Rick Halford	
McGinnis	

Chairman

Chairman recommendation

Offered: 4/11/85
Referred: Finance

Original sponsors: Halford, Faiks,
Sturgulewski and Kerttula

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 44 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

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

10 CHAPTER 8. COMMON INTEREST OWNERSHIP.

11 ARTICLE I. APPLICABILITY.

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

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

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

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1 of optional user fees and any insurance premiums paid by the association, may not exceed $100, as adjusted under AS 34.08.820, the common
3 interest community is subject only to AS 34.08.720 - 34.08.740 unless
4 the declaration provides that the entire chapter is applicable. A
5 declarant may not subdivide real property under single ownership into
6 two or more common interest communities to avoid the application of
7 this chapter.
8 Sec. 34.08.040. APPLICABILITY TO PREEXISTING COMMON INTEREST
9 COMMUNITIES. Except as provided in AS 34.08.050, the provisions of
10 AS 34.08.110, 34.08.120, 34.08.290, 34.08.320(1) - (6) and (11) -
11 (16), 34.08.420, 34.08.470, 34.08.490, 34.08.590, 34.08.670, 34.08.-
12 720, 34.08.730, 34.08.740, and 34.08.990, to the extent necessary in
13 construing any of those sections, apply to all common interest commu-
14 nities created in the state before the effective date of this Act
15 except that the sections apply only with respect to events and circum-
16 stances occurring after the effective date of this Act and do not
17 invalidate existing provisions of the declaration, bylaws, or plats or
18 plans of the common interest communities.
19 Sec. 34.08.050. APPLICABILITY TO SMALL PREEXISTING COOPERATIVES
20 AND PLANNED COMMUNITIES. If a cooperative or planned community cre-
21 ated within the state before the effective date of this Act contains
22 no more than 12 units and is not subject to any development rights, it
23 is subject only to AS 34.08.720 - 34.08.740, unless the declaration is
24 amended in conformity with law and with the procedures and require-
25 ments of the declaration to take advantage of the provisions of
26 AS 34.08.060, in which case all the sections enumerated in AS 34.08.-
27 040 apply to the cooperative or planned community.
28 Sec. 34.08.060. AMENDMENTS TO GOVERNING INSTRUMENTS. (a) In
29 amendments to the declaration, bylaws, or plats and plans of a common

interest community created before the effective date of this Act:

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

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

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

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

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

1 Sec. 34.08.080. APPLICABILITY TO OUT-OF-STATE COMMON INTEREST
2 COMMUNITIES. This chapter does not apply to a common interest commu-
3 nity or unit located outside the state, but AS 34.08.520 - 34.08.580
4 apply to a contract for the disposition of a common interest community
5 or unit that is signed in the state by a party unless the disposition
6 is exempt under AS 34.08.510(b).
7 ARTICLE 2. CREATION, ALTERATION, AND TERMINATION OF
8 COMMON INTEREST COMMUNITIES.
9 Sec. 34.08.090. CREATION OF COMMON INTEREST COMMUNITIES. (a) A
10 common interest community may be created under this chapter only by
11 recording a declaration executed in the same manner as a deed and, in
12 a cooperative, by conveying the real estate subject to the declaration
13 to the association. The declaration must be recorded in each record-
14 ing district in which a portion of the common interest community is
15 located and must be indexed in the grantee's index in the name of the
16 common interest community and the association and in the grantor's
17 index in the name of each person executing the declaration.
18 (b) In a condominium, a declaration or an amendment to a decla-
19 ration that adds a unit may not be recorded unless the structural
20 components and mechanical systems of each building containing or
21 comprising a unit of the condominium is completed substantially in
22 accordance with the plans, as evidenced by a certificate of completion
23 recorded with the declaration or amendment to the declaration and
24 executed by
25 (1) an independent registered engineer, architect, or land
26 surveyor;
27 (2) an appraiser with the designation of Senior Residential
28 Appraiser, Senior Real Property Appraiser or Senior Real Estate
29 Analyst of the Society of Real Estate Appraisers;

1 (3) a Residential Member or Member, Appraisal Institute, of
2 the American Institute of Real Estate Appraisers; or
3 (4) an individual with a designation established by
4 regulation of the Alaska Housing Finance Corporation for fee
5 appraisers who certify the completion of construction.
6 Sec. 34.08.100. UNIT BOUNDARIES. Except as provided by the
7 declaration
8 (1) if walls, floors, or ceilings are designated as bound-
9 aries of a unit, the lath, furring, wallboard, plasterboard, plaster,
10 paneling, tiles, wallpaper, paint, finished flooring, and other mate-
11 rials constituting a part of the finished surfaces of the walls,
12 floors, or ceiling are a part of the unit, and all other portions of
13 the walls, floors, or ceilings are a part of the common elements;
14 (2) if a chute, flue, duct, wire, conduit, bearing wall,
15 bearing column, or other fixture lies partially within and partially
16 outside the designated boundaries of a unit, the portion serving only
17 the unit is a limited common element allocated solely to the unit, and
18 any portion serving more than one unit or a portion of the common
19 elements is a part of the common elements;
20 (3) subject to (2) of this section, spaces, interior parti-
21 tions, and other fixtures and improvements within the boundaries of a
22 unit are a part of the unit;
23 (4) any shutters, awnings, window boxes, doorsteps, stoops,
24 porches, decks, balconies, patios, and each exterior door and window
25 or other fixture designed to serve a single unit that is located
26 outside the boundaries of the unit, are limited common elements allo-
27 cated exclusively to the unit.
28 Sec. 34.08.110. CONSTRUCTION AND VALIDITY OF DECLARATION AND
29 BYLAWS. (a) Each provision of the declaration and bylaws is

1 severable.

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

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

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

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

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

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

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

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

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

1 (5) in a condominium or planned community, a description of
2 the boundaries of each unit created by the declaration, including the
3 identifying number of the unit, or in a cooperative, a description,
4 which may be by plats or plans, of each unit created by the declara-
5 tion, including the identifying number of the unit, its size or number
6 of rooms, and its location within a building if it is within a build-
7 ing containing more than one unit;
8 (6) a description of any limited common elements, other
9 than those specified in AS 34.08.100(2) and (4) or 34.08.170(b)(10)
10 and, in a planned community, any real estate that is or must become
11 common elements;
12 (7) a description of any real estate, except real estate
13 subject to development rights, that may be allocated subsequently as
14 limited common elements, other than limited common elements specified
15 in AS 34.08.100(2) and (4), together with a statement that the desig-
16 nated real estate may be allocated;
17 (8) a description of any development rights or other spe-
18 cial declarant rights reserved by the declarant, together with a
19 legally sufficient description of the real estate to which each of the
20 rights applies, and a time limit within which each of the rights must
21 be exercised;
22 (9) if a development right may be exercised with respect to
23 different parcels of real estate at different times, a statement to
24 that effect together with
25 (A) either a statement fixing the boundaries of the
26 portions and regulating the order in which the portions may be
27 subjected to the exercise of each development right or a state-
28 ment that assurances are not made with regard to matters under
29 this paragraph; and

1 (B) a statement as to whether, if a development right
2 is exercised in a portion of the real estate subject to the
3 development right, the development right must be exercised in all
4 or in any other portion of the remainder of that real estate;
5 (10) any other condition or limitation under which the
6 rights described in (8) of this subsection may be exercised or will
7 lapse;
8 (11) an allocation to each unit of the allocated interests
9 in the manner described in AS 34.08.150;
10 (12) any restrictions
11 (A) on use, occupancy, and alienation of the units;
12 and
13 (B) on the amount for which a unit may be sold or on
14 the amount that may be received by a unit owner on sale, condem-
15 nation, or casualty loss to the unit or to the common interest
16 community, or on termination of the common interest community;
17 (13) the recording data for recorded easements and licenses
18 appurtenant to or included in the common interest community or to
19 which any portion of the common interest community is or may become
20 subject by virtue of a reservation in the declaration; and
21 (14) each matter required by AS 34.08.140, 34.08.150, 34.-
22 08.160, 34.08.170, 34.08.230, 34.08.240 and 34.08.330(d).
23 (b) A declaration may contain other matters the declarant con-
24 siders appropriate.
25 Sec. 34.08.140. LEASEHOLD COMMON INTEREST COMMUNITIES. (a) If
26 the expiration or termination of a lease or a memorandum of the lease
27 will terminate the common interest community or reduce its size, the
28 lease or a memorandum of the lease must be recorded. In a condominium
29 or planned community, the lessor of each lease described in this

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

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

3 complete lease;

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

5 (3) a legally sufficient description of the real estate

6 subject to the lease;

7 (4) any right of the unit owners to redeem the reversion

8 and the manner in which the rights may be exercised, or a statement

9 that the unit owners do not have a right to redeem the reversion;

10 (5) any right of the unit owners to remove any improvements

11 within a reasonable time after the expiration or termination of the

12 lease, or a statement that the unit owners do not have the right to

13 remove improvements after the expiration or termination of the lease;

14 and

15 (6) any right of the unit owners to renew the lease and the

16 conditions of the renewal, or a statement that the unit owners do not

17 have the right to renew the lease.

18 (b) After the declaration for a leasehold condominium or lease-

19 hold planned community is recorded, neither the lessor nor the succes-

20 sor in interest of the lessor may terminate the leasehold interest of

21 a unit owner who makes timely payment of a unit owner's share of the

22 rent and otherwise complies with the covenants that, if violated,

23 would entitle the lessor to terminate the lease. The leasehold inter-

24 est of a unit owner in a condominium or planned community is not af-

25 fected by the failure of any other person to pay rent or fulfill a

26 covenant.

27 (c) The acquisition of the leasehold interest of a unit owner by

28 the owner of the reversion or remainder does not merge the leasehold

29 and fee simple interests unless the leasehold interests of all unit

1 owners subject to that reversion or remainder are acquired.

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

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

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

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

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

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

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

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