

LEG. FINANCE - BILLS 1985 - 1986 2160

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1 specified in the declaration; (2) for cumulative voting only for the
2 purpose of electing members of the executive board; and (3) for class
3 voting on specified issues affecting the class if necessary to protect
4 valid interests of the class. A declarant may not utilize cumulative
5 or class voting for the purpose of evading any limitation imposed on
6 declarants by this chapter nor may units constitute a class because
7 they are owned by a declarant.

8 (2) Except for minor variations due to rounding, the sum of the
9 common expense liabilities and, in a condominium, the sum of the
10 undivided interests in the common elements allocated at any time to
11 all the units must each equal one if stated as a fraction or 100
12 percent if stated as a percentage. In the event of discrepancy be-
13 tween an allocated interest and the result derived from application of
14 the pertinent formula, the allocated interest prevails.

15 (f) In a condominium, the common elements are not subject to
16 partition, and any purported conveyance, encumbrance, judicial sale,
17 or other voluntary or involuntary transfer of an undivided interest in
18 the common elements made without the unit to which that interest is
19 allocated is void.

20 (g) In a cooperative, any purported conveyance, encumbrance,
21 judicial sale, or other voluntary or involuntary transfer of an owner-
22 ship interest in the association made without the possessory interest
23 in the unit to which that interest is related is void.

24 Sec. 34.08.160. LIMITED COMMON ELEMENTS. (a) Except for the
25 limited common elements described in AS 34.08.100(2) and (4), the
26 declaration must specify to which unit or units each limited common
27 element is allocated. An allocation may not be altered without the
28 consent of the unit owners whose units are affected.

29 (b) Except as the declaration otherwise provides, a limited

1 common element may be reallocated by an amendment to the declaration
2 executed by the unit owners between or among whose units the realloca-
3 tion is made. The persons executing the amendment shall provide a
4 copy of the amendment to the association, which shall record it. The
5 amendment must be recorded in the names of the parties and the common
6 interest community.

7 (c) A common element not previously allocated as a limited
8 common element may be allocated as a limited common element only under
9 provisions in the declaration adopted under AS 34.08.130(a)(7). The
10 allocation must be made by an amendment to the declaration.

11 Sec. 34.08.170. PLATS AND PLANS. (a) Plats and plans are a
12 part of the declaration and are required for all common interest
13 communities except cooperatives. Separate plats and plans are not
14 required by this chapter if the information required by this section
15 is contained in either a plat or plan. Each plat and plan must be
16 clear and legible and contain a certification that the plat or plan
17 contains the information required by this section.

18 (b) Each plat must show:

19 (1) the name and a survey or general schematic map of the
20 entire common interest community;

21 (2) the location and dimensions of the real estate not
22 subject to development rights or subject only to the development right
23 to withdraw, and the location and dimensions of each existing improve-
24 ment within the real estate;

25 (3) a legally sufficient description of the real estate
26 subject to development rights, labeled to identify the rights applica-
27 ble to each parcel;

28 (4) the extent of each encroachment by or upon a portion of
29 the common interest community;

1 (5) to the extent feasible, a legally sufficient descrip-
2 tion of each easement serving or burdening a portion of the common
3 interest community;

4 (6) the location and dimensions of any vertical unit bound-
5 aries not shown or projected on plans recorded under (d) of this
6 section and the identifying number of the unit;

7 (7) the location with reference to an established datum of
8 any horizontal unit boundaries not shown or projected on plans re-
9 corded under (d) of this section and the identifying number of the
10 unit;

11 (8) a legally sufficient description of any real estate in
12 which the unit owners will own only an estate for years, labeled as
13 "leasehold real estate";

14 (9) the distance between noncontiguous parcels of real
15 estate comprising the common interest community;

16 (10) the location and dimensions of limited common elements,
17 including porches, decks, balconies and patios, other than parking
18 spaces and the other limited common elements described in AS 34.08.-
19 100(2) and (4);

20 (11) in the case of real estate not subject to development
21 rights, all other matters customarily shown on land surveys.

22 (c) A plat may also show the intended location and dimensions of
23 a contemplated improvement to be constructed within the common inter-
24 est community. A contemplated improvement shown must be labeled
25 either "MUST BE BUILT" or "NEED NOT BE BUILT".

26 (d) To the extent not shown or projected on the plats, plans of
27 the units must show or project:

28 (1) the location and dimensions of the vertical boundaries
29 of each unit, and the identifying number of the unit;

CORRECTION

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HAS BEEN REPHOTOGRAPHED
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1 (5) to the extent feasible, a legally sufficient descrip-
2 tion of each easement serving or burdening a portion of the common
3 interest community;

4 (6) the location and dimensions of any vertical unit bound-
5 aries not shown or projected on plans recorded under (d) of this
6 section and the identifying number of the unit;

7 (7) the location with reference to an established datum of
8 any horizontal unit boundaries not shown or projected on plans re-
9 corded under (d) of this section and the identifying number of the
10 unit;

11 (8) a legally sufficient description of any real estate in
12 which the unit owners will own only an estate for years, labeled as
13 "leasehold real estate";

14 (9) the distance between noncontiguous parcels of real
15 estate comprising the common interest community;

16 (10) the location and dimensions of limited common elements,
17 including porches, decks, balconies and patios, other than parking
18 spaces and the other limited common elements described in AS 34.08.-
19 100(2) and (4);

20 (11) in the case of real estate not subject to development
21 rights, all other matters customarily shown on land surveys.

22 (c) A plat may also show the intended location and dimensions of
23 a contemplated improvement to be constructed within the common inter-
24 est community. A contemplated improvement shown must be labeled
25 either "MUST BE BUILT" or "NEED NOT BE BUILT".

26 (d) To the extent not shown or projected on the plats, plans of
27 the units must show or project:

28 (1) the location and dimensions of the vertical boundaries
29 of each unit, and the identifying number of the unit;

1 (2) any horizontal unit boundaries, with reference to an
2 established datum, and the identifying number of the unit; and

3 (3) each unit in which the declarant has reserved the right
4 to create additional units or common elements, identified appropri-
5 ately.

6 (e) Unless the declaration provides otherwise, the horizontal
7 boundaries of part of a unit located outside a building have the same
8 elevation as the horizontal boundaries of the inside part and need not
9 be depicted on the plats and plans.

10 (f) Upon the exercise of any development right, the declarant
11 shall either record new plats and plans necessary to conform to the
12 requirements of (a), (b), and (d) of this section, or record new
13 certifications of plats and plans previously recorded if the plats and
14 plans otherwise conform to the requirements of (a), (b), and (d) of
15 this section.

16 (g) A certification of a plat or plan required by this section
17 or AS 34.08.090(b) shall be made by an independent registered
18 surveyor, architect, or engineer.

19 (h) The state recorder shall prescribe the style, size, form,
20 and quality of plats and plans filed under this chapter.

21 Sec. 34.08.180. EXERCISE OF DEVELOPMENT RIGHTS. (a) To exer-
22 cise a development right reserved under AS 34.08.130(a)(8), a decla-
23 rant shall prepare, execute, and record an amendment to the declara-
24 tion and, in a condominium or planned community, comply with AS 34.-
25 08.170. The declarant is the unit owner of the units created under
26 the amendment. The amendment to the declaration must assign an iden-
27 tifying number to each new unit created, and, except in the case of
28 subdivision or conversion of units described in (b) of this section,
29 reallocate the allocated interests among all units. The amendment

1 must describe any common elements and any limited common elements
2 created under the amendment and, in the case of limited common ele-
3 ments, designate the unit to which each is allocated to the extent
4 required by AS 34.08.160.

5 (b) A development right may be reserved within any real estate
6 added to the common interest community if the amendment adding the
7 real estate includes the matters required by AS 34.08.130 or 34.08.-
8 140, and, in a condominium or planned community, if the plats and
9 plans include the matters required by AS 34.08.170. This provision
10 does not extend the time limit on the exercise of development rights
11 imposed by the declaration under AS 34.08.130(a)(8).

12 (c) Whenever a declarant exercises a development right to subdivi-
13 de or convert a unit previously created into additional units,
14 common elements, or both:

15 (1) if the declarant converts the unit entirely to common
16 elements, the amendment to the declaration must reallocate all the
17 allocated interests of the unit among the other units as if that unit
18 had been taken by eminent domain; and

19 (2) if the declarant subdivides the unit into two or more
20 units, whether or not any part of the unit is converted into common
21 elements, the amendment to the declaration must reallocate all the
22 allocated interests of the unit among the units created by the subdivi-
23 sion in any reasonable manner prescribed by the declarant.

24 (d) If the declaration under AS 34.08.130(a)(8) provides that
25 all or a portion of the real estate is subject to a right of withdraw-
26 al:

27 (1) if all of the real estate is subject to withdrawal and
28 the declaration does not describe separate portions of real estate
29 subject to the right, none of the real estate may be withdrawn after a

1 unit has been conveyed to a purchaser; and

2 (2) if a portion is subject to withdrawal, it may not be
3 withdrawn after a unit in the portion has been conveyed to a pur-
4 chaser.

5 (e) A declarant may terminate development rights by an amendment
6 to the declaration.

7 Sec. 34.08.190. ALTERATIONS OF UNITS. Subject to the provisions
8 of the declaration and other provisions of law, a unit owner (1) may
9 make an improvement or alteration to the unit that does not impair the
10 structural integrity or mechanical systems or lessen the support of a
11 portion of the common interest community; (2) may not change the
12 appearance of the common elements or the exterior appearance of a unit
13 or any portion of the common interest community without permission of
14 the association; (3) after acquiring an adjoining unit or an
15 adjoining part of an adjoining unit, may remove or alter an
16 intervening partition or create apertures in the partition even if the
17 partition in whole or in part is a common element, if the removal or
18 alteration does not impair the structural integrity or mechanical
19 systems or lessen the support of a portion of the common interest
20 community and is completed according to applicable codes and in a
21 workmanlike manner. Removal of partitions or creation of apertures
22 under this paragraph is not an alteration of boundaries.

23 Sec. 34.08.200. RELOCATION OF BOUNDARIES BETWEEN ADJOINING
24 UNITS. (a) Subject to the provisions of the declaration and other
25 provisions of law, the boundaries between adjoining units may be
26 relocated by an amendment to the declaration upon application to the
27 association by the owners of the units. If the owners of the ad-
28 joining units have specified a reallocation between their units of
29 their allocated interests, the application must state the proposed

1 reallocations. Unless the executive board determines within 30 days
2 that the reallocations are unreasonable, the association shall prepare
3 an amendment that identifies the units involved and states the reallo-
4 cations. The amendment must be executed by those unit owners, contain
5 words of conveyance between them, and, on recording, be indexed in the
6 name of the grantor, the grantee, and the association.

7 (b) The association

8 (1) in a condominium or planned community shall prepare and
9 record plats or plans necessary to show the altered boundaries between
10 adjoining units, and their dimensions and identifying numbers; and

11 (2) in a cooperative shall prepare and record amendments to
12 the declaration, including any plans, necessary to show or describe
13 the altered boundaries between adjoining units, and their dimensions
14 and identifying numbers.

15 Sec. 34.08.210. SUBDIVISION OF UNITS. (a) If the declaration
16 expressly permits it, a unit may be subdivided into two or more units.
17 Upon application of a unit owner to subdivide a unit, the association
18 shall, subject to the provisions of the declaration and other pro-
19 visions of law, prepare, execute, and record an amendment to the
20 declaration, including in a condominium or planned community the plats
21 and plans, subdividing the unit.

22 (b) The amendment to the declaration must be executed by the
23 owner of the unit to be subdivided, assign an identifying number to
24 each unit created, and reallocate the allocated interests formerly
25 allocated to the subdivided unit to the new units in any reasonable
26 manner prescribed by the owner of the subdivided unit.

27 Sec. 34.08.220. EASEMENT FOR ENCROACHMENTS. If a unit or common
28 element encroaches on another unit or common element, a valid easement
29 for the encroachment exists. The easement does not relieve a unit

1 owner of liability in case of wilful misconduct nor relieve a declar-
2 ant or any other person of liability for failure to adhere to any
3 plats and plans or, in a cooperative, to any representation in the
4 public offering statement.

5 Sec. 34.08.230. USE FOR SALES PURPOSES. (a) A declarant may
6 maintain sales offices, management offices, and models in units or on
7 common elements in the common interest community only if the declara-
8 tion permits it and specifies the rights of a declarant with regard to
9 their number, size, location, and relocation. In a cooperative or
10 condominium, a sales office, management office, or model not desig-
11 nated a unit by the declaration is a common element. A declarant who
12 ceases to be a unit owner ceases to have any rights under this section
13 unless the unit is removed promptly from the common interest community
14 under a right to remove reserved in the declaration. A declarant may
15 maintain signs on the common elements advertising the common interest
16 community subject to any limitations in the declaration.

17 (b) Rights granted under this section are subject to state law
18 and to municipal ordinances.

19 Sec. 34.08.240. EASEMENT RIGHTS. (a) Subject to the provisions
20 of the declaration, a declarant has an easement through the common
21 elements as may be reasonably necessary for the purpose of discharging
22 the declarant's obligations or exercising special declarant rights,
23 whether arising under this chapter or reserved in the declaration.

24 (b) In a planned community, subject to the provisions of AS 34.-
25 08.320(a)(6) and 34.08.430, a unit owner has an easement

26 (1) in the common elements for purposes of access to their
27 units; and

28 (2) to use the common elements and all real estate that
29 must become common elements for all other purposes.

1 Sec. 34.08.250. AMENDMENT OF DECLARATION. (a) Except for
2 amendments that may be executed by a declarant under AS 34.08.170(b)
3 or 34.08.180, or by the association under AS 34.08.140(d), 34.08.-
4 160(c), 34.08.200(a), 34.08.210, or 34.08.740, or by certain unit
5 owners under AS 34.08.160(b), 34.08.200(a), 34.08.210(b), or 34.08.-
6 260(b), and except as limited by (d) of this section, a declaration,
7 including any required plats and plans, may be amended only by vote or
8 agreement of unit owners of units comprising either at least 67 per-
9 cent of the allocated interests in the association or a larger per-
10 centage specified in the declaration. A declaration may not specify a
11 smaller number unless all of the units are restricted exclusively to
12 nonresidential use.

13 (b) An action to challenge the validity of an amendment adopted
14 by the association under this section may not be brought more than one
15 year after the amendment is recorded.

16 (c) Each amendment to the declaration must be recorded in each
17 recording district in which a portion of the common interest community
18 is located and the amendment is effective only upon recording. An
19 amendment, except an amendment under AS 34.08.200(a), must be indexed
20 in the name of the common interest community and the association and
21 in the name of the parties executing the amendment.

22 (d) Except to the extent expressly permitted or required by
23 other provisions of this chapter, an amendment may not create or
24 increase special declarant rights, increase the number of units,
25 change the boundaries of a unit, the allocated interests of a unit, or
26 the uses to which a unit is restricted, in the absence of unanimous
27 consent of the unit owners.

28 (e) An amendment to the declaration required by this chapter to
29 be recorded by the association must be prepared, executed, recorded,

1 and certified on behalf of the association by an officer of the asso-
2 ciation designated for that purpose or, in the absence of designation,
3 by the president of the association.

4 Sec. 34.08.260. TERMINATION OF COMMON INTEREST COMMUNITY. (a)

5 Unless all units are taken by eminent domain, or unless there has been
6 a foreclosure of a security interest that has priority over the decla-
7 ration against an entire cooperative, a common interest community may
8 be terminated only by agreement of unit owners of units comprising
9 either at least 80 percent of the votes in the association or any
10 larger percentage specified in the declaration. The declaration may
11 specify a smaller percentage only if all of the units are restricted
12 exclusively to nonresidential uses.

13 (b) An agreement to terminate must be evidenced by the execution
14 of a termination agreement or ratification of an agreement to termi-
15 nate, in the same manner as a deed is executed by the required number
16 of unit owners. The termination agreement must specify a date after
17 which the agreement will be void unless it is recorded before that
18 date. A termination agreement and each ratification of the termina-
19 tion agreement must be recorded in each recording district in which a
20 portion of the common interest community is situated. A termination
21 agreement is effective only upon recording.

22 (c) If a condominium or planned community contains only units
23 having horizontal boundaries described in the declaration, a termina-
24 tion agreement may provide that all of the common elements and units
25 of the common interest community must be sold following termination.
26 If, under the agreement, any real estate in the common interest commu-
27 nity is to be sold following termination, the termination agreement
28 must set out the minimum terms of the sale.

29 (d) If a condominium or planned community contains a unit not

1 having horizontal boundaries described in the declaration, a termina-
2 tion agreement may provide for sale of the common elements, but it may
3 not require that the unit be sold following termination unless the
4 declaration as originally recorded provided otherwise or unless all
5 unit owners consent to the sale.

6 (e) The association, on behalf of the unit owners, may contract
7 for the sale of real estate in a common interest community, but the
8 contract is not binding on the unit owners until approved under (a)
9 and (b) of this section. If real estate is to be sold following
10 termination, title to the real estate, upon termination, vests in the
11 association as trustee for the holders of all interests in the units.
12 The association has at that time all powers necessary and appropriate
13 to effect the sale. Until the sale has been concluded and the pro-
14 ceeds of the sale distributed, the association continues in existence
15 with all powers it had before termination. Proceeds of the sale must
16 be distributed to unit owners and lien holders as their interests may
17 appear under (h), (i), and (j) of this section. Unless otherwise
18 specified in the termination agreement, as long as the association
19 holds title to the real estate, each unit owner and the successor in
20 interest of each unit owner has an exclusive right to occupancy of the
21 portion of the real estate that formerly constituted the unit. During
22 the period of that occupancy, each unit owner and the successors in
23 interest of each unit owner remain liable for all assessments and
24 other obligations imposed on unit owners by this chapter or the decla-
25 ration.

26 (f) In a condominium or planned community, if the real estate
27 constituting the common interest community is not to be sold following
28 termination, title to the common elements and, in a common interest
29 community containing only units having horizontal boundaries described

1 in the declaration, title to all the real estate in the common inter-
2 est community, vests in the unit owners upon termination as tenants in
3 common in proportion to their respective interests under (j) of this
4 section, and liens on the units shift accordingly. While the tenancy
5 in common exists, each unit owner and the successors in interest of
6 each unit owner has an exclusive right to occupancy of the portion of
7 the real estate that formerly constituted the unit.

8 (g) Following termination of the common interest community, the
9 proceeds of any sale of real estate, together with the assets of the
10 association, are held by the association as trustee for unit owners
11 and holders of liens on the units as their interests may appear.

12 (h) Following termination of a condominium or planned community,
13 a creditor of the association holding a lien on the units that was
14 reduced to judgment and recorded before termination, may enforce the
15 lien in the same manner as any other lien holder. Each other creditor
16 of the association shall be treated as if the creditor had perfected a
17 lien on the units immediately before termination.

18 (i) In a cooperative, the declaration may provide that each
19 creditor of the association has priority over the interests of unit
20 owners and creditors of unit owners. In that event, following termi-
21 nation, a creditor of the association holding a lien on the coopera-
22 tive that was reduced to judgment and recorded before termination may
23 enforce the lien in the same manner as a lien holder, and each other
24 creditor of the association shall be treated as if the creditor had
25 perfected a lien against the cooperative immediately before termina-
26 tion. Unless the declaration provides that all creditors of the
27 association have that priority (1) the lien of each creditor of the
28 association that was perfected against the association before termi-
29 nation becomes, upon termination, a lien against the interest of each

1 unit owner in the unit as of the date the lien was perfected; (2) any
2 other creditor of the association shall be treated upon termination as
3 if the creditor had perfected a lien against the interest of each unit
4 owner immediately before termination; (3) the amount of the lien of an
5 association's creditor described in (1) and (2) of this subsection
6 against the interest of each unit owner must be proportionate to the
7 ratio which the common expense liability of each unit bears to the
8 common expense liability of all of the units; (4) the lien of each
9 creditor of each unit owner that was perfected before termination
10 continues as a lien against the unit as of the date the lien was
11 perfected; and (5) the assets of the association must be distributed
12 to each unit owner and each lien holder as their interests may appear
13 in the order described in this section. Creditors of the association
14 are not entitled to payment from a unit owner in excess of the amount
15 of the creditor's lien against the interest of the unit owner.

16 (j) The respective interests of each unit owner referred to in
17 (e) - (i) of this section are as follows:

18 (1) except as provided in (2) of this subsection, the
19 respective interest of each unit owner is the fair market value of the
20 unit, allocated interests, and any limited common elements immediately
21 before the termination, as determined by one or more independent
22 appraisers selected by the association; the decision of the indepen-
23 dent appraisers must be distributed to the unit owners and becomes
24 final unless disapproved within 30 days after distribution by unit
25 owners of units comprising 25 percent of the allocated interests in
26 the association; the proportion of each unit owner's interest to that
27 of all unit owners is determined by dividing the fair market value of
28 the unit and its allocated interests by the total fair market value of
29 all units and their allocated interests;

1 (2) if a unit or a limited common element is destroyed to
2 the extent that an appraisal of the fair market value of the unit or
3 the limited common interest before destruction cannot be made, the
4 interests of all unit owners are:

5 (A) in a condominium, their respective common element
6 interests immediately before the termination;

7 (B) in a cooperative, their respective ownership
8 interests immediately before the termination; and

9 (C) in a planned community, their respective common
10 expense liabilities immediately before the termination.

11 (k) In a condominium or planned community, except as provided in
12 (1) of this section, foreclosure or enforcement of a lien or encum-
13 brance against the entire common interest community does not, of
14 itself, terminate the common interest community, and foreclosure or
15 enforcement of a lien or encumbrance against a portion of the common
16 interest community, other than withdrawable real estate, does not
17 withdraw the portion from the common interest community. Foreclosure
18 or enforcement of a lien or encumbrance against withdrawable real
19 estate does not withdraw, of itself, the real estate from the common
20 interest community, but the person taking title to the real estate may
21 require from the association, upon request, an amendment excluding the
22 real estate from the common interest community.

23 (1) In a condominium or planned community, if a lien or encum-
24 brance against a portion of the real estate comprising the common
25 interest community has priority over the declaration and the lien or
26 encumbrance has not been partially released, the parties foreclosing
27 the lien or encumbrance, upon foreclosure, may record an instrument
28 excluding the real estate subject to the lien or encumbrance from the
29 common interest community.

1 Sec. 34.08.270. RIGHTS OF SECURED LENDERS. A declaration may
2 require that all or a specified number or percentage of the lenders
3 who hold security interests encumbering the units approve specified
4 actions of the unit owners or the association as a condition to the
5 effectiveness of the action, but a requirement for approval does not
6 operate to

7 (1) deny or delegate control over the general administra-
8 tive affairs of the association by the unit owners or the executive
9 board;

10 (2) prevent the association or the executive board from
11 commencing, intervening in, or settling any litigation or proceeding;
12 or

13 (3) prevent an insurance trustee or the association from
14 receiving and distributing insurance proceeds except under AS 34.08.-
15 440.

16 Sec. 34.08.280. MASTER ASSOCIATIONS. (a) If the declaration
17 provides that a power described in AS 34.08.320 is to be exercised by
18 or may be delegated to a profit or nonprofit corporation that exer-
19 cises those or other powers on behalf of one or more common interest
20 communities or for the benefit of the unit owners of one or more
21 common interest communities, each provision of this chapter applicable
22 to a unit owners' association applies to the corporation, except as
23 modified by this section.

24 (b) Unless it is acting in the capacity of an association de-
25 scribed in AS 34.08.310, a master association may exercise the powers
26 set out in AS 34.08.320(a)(2) only to the extent expressly permitted
27 in the declarations of common interest communities that are part of
28 the master association or expressly described in the delegation of
29 power from the common interest communities to the master association.

1 (c) If the declaration of a common interest community provides
2 that the executive board may delegate certain powers to a master
3 association, the members of the executive board of the common interest
4 community are not liable for an act or omission of the master associa-
5 tion with respect to the delegated powers following the delegation.

6 (d) The rights and responsibilities of unit owners with respect
7 to the unit owners' association under AS 34.08.330, 34.08.390, 34.08.-
8 400, 34.08.410, and 34.08.430 apply in the conduct of the affairs of a
9 master association only to persons who elect the board of a master
10 association, whether or not those persons are otherwise unit owners
11 within the meaning of this chapter.

12 (e) If a master association is also an association described in
13 AS 34.08.310, the certificate of incorporation or other instrument
14 creating the master association and each declaration of a common
15 interest community that had assigned powers by the declaration or that
16 has delegated powers to the master association, may provide that the
17 executive board of the master association must be elected after the
18 period of declarant control in one of the following ways:

19 (1) each unit owner of all common interest communities
20 subject to the master association may elect all members of the execu-
21 tive board of the master association;

22 (2) the members of the executive boards of all common
23 interest communities subject to the master association may elect the
24 members of the executive board of the master association;

25 (3) the unit owners of each common interest community
26 subject to the master association may elect specified members of the
27 executive board of the master association;

28 (4) the members of the executive board of each common
29 interest community subject to the master association may elect

1 specified members of the executive board of the master association.

2 Sec. 34.08.290. MERGER OR CONSOLIDATION OF COMMON INTEREST
3 COMMUNITIES. (a) Any two or more common interest communities of the
4 same form of ownership, by agreement of the unit owners under (b) of
5 this section, may be merged or consolidated into a single common
6 interest community. On the merger or consolidation, unless the agree-
7 ment otherwise provides, the resulting common interest community is
8 the legal successor, for all purposes, of the preexisting common
9 interest communities, and the operations and activities of each asso-
10 ciation of the preexisting common interest communities are merged or
11 consolidated into a single association that holds all powers, rights,
12 obligations, assets, and liabilities of all preexisting associations.

13 (b) An agreement of two or more common interest communities to
14 merge or consolidate under (a) of this section must be evidenced by an
15 agreement prepared, executed, recorded, and certified by the president
16 of the association of each of the preexisting common interest communi-
17 ties following approval by owners of units comprising the percentage
18 of votes in each common interest community required to terminate the
19 common interest community. The agreement must be recorded in each
20 recording district in which a portion of the common interest community
21 is located and is not effective until recorded.

22 (c) Each merger or consolidation agreement must provide for the
23 reallocation of the allocated interests in the new association among
24 the units of the resultant common interest community either (1) by
25 stating the reallocations or the formulas upon which they are based or
26 (2) by stating the percentage of overall allocated interests of the
27 new common interest community that are allocated to all of the units
28 comprising each of the preexisting common interest communities, and
29 providing that the portion of the percentages allocated to each unit

1 formerly comprising a part of the preexisting common interest communi-
2 ty must be equal to the percentages of allocated interests allocated
3 to the unit by the declaration of the preexisting common interest
4 community.

5 Sec. 34.08.300. ADDITION OF UNSPECIFIED REAL ESTATE. In a
6 planned community, if the right is originally reserved in the declara-
7 tion, the declarant, in addition to any other development right, may
8 amend the declaration at any time during as many years as are speci-
9 fied in the declaration for adding additional real estate to the
10 planned community without describing the location of the real estate
11 in the original declaration. The amount of real estate added to the
12 planned community under this section may not exceed 10 percent of the
13 real estate described in AS 34.08.130(a)(3) and the declarant may not
14 in any event increase the number of units in the planned community
15 beyond the number stated in the original declaration under AS 34.08.-
16 130(a)(5).

17 ARTICLE 3. MANAGEMENT OF THE COMMON INTEREST COMMUNITY.

18 Sec. 34.08.310. ORGANIZATION OF UNIT OWNERS' ASSOCIATION. An
19 association of unit owners must be organized no later than the date on
20 which the first unit in the common interest community is conveyed.
21 The membership of the association at all times consists exclusively of
22 all unit owners or, following termination of the common interest
23 community, of all former unit owners entitled to distributions of
24 proceeds under AS 34.08.260 or their heirs, successors, or assigns.
25 The association must be organized as a profit or nonprofit corpora-
26 tion, trust, or partnership.

27 Sec. 34.08.320. POWERS OF UNIT OWNERS' ASSOCIATION. (a) Except
28 as provided in (b) of this section and subject to the provisions of
29 the declaration, the association may:

- 1 (1) adopt and amend bylaws and rules and regulations;
- 2 (2) adopt and amend budgets for revenues, expenditures, and
3 reserves and collect assessments for common expenses from unit owners;
- 4 (3) hire and discharge managing agents and other employees,
5 agents, and independent contractors;
- 6 (4) institute, defend, or intervene in litigation or ad-
7 ministrative proceedings or seek injunctive relief for violations of
8 its declaration, bylaws or rules in its own name on behalf of itself
9 or two or more unit owners on matters affecting the common interest
10 community;
- 11 (5) make contracts and incur liabilities;
- 12 (6) regulate the use, maintenance, repair, replacement, and
13 modification of common elements;
- 14 (7) cause additional improvements to be made as a part of
15 the common elements;
- 16 (8) acquire, hold, encumber, and convey in its own name any
17 right, title, or interest to real estate or personal property, except
18 that
- 19 (A) common elements in a condominium or planned commu-
20 nity may be conveyed or subjected to a security interest only
21 under AS 34.08.430; and
- 22 (B) part of a cooperative may be conveyed or all or
23 part of a cooperative may be subjected to a security interest
24 only under AS 34.08.430;
- 25 (9) grant easements, leases, licenses, and concessions
26 through or over the common elements;
- 27 (10) impose and receive a payment, fee, or charge for the
28 use, rental, or operation of the common elements, other than limited
29 common elements described in AS 34.08.100(2) and (4), and for services

1 provided to unit owners;

2 (11) impose a reasonable charge for late payment of assess-
3 ments and, after notice and an opportunity to be heard, levy a reason-
4 able fine for a violation of the declaration, bylaws, rules, and
5 regulations of the association;

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

9 (13) provide for the indemnification of its officers and
10 executive board and maintain directors' and officers' liability insur-
11 ance;

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

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

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

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

21 (b) The declaration may not impose limitations on the power of
22 the association to deal with the declarant that are more restrictive
23 than the limitations imposed on the power of the association to deal
24 with other persons.

25 Sec. 34.08.330. EXECUTIVE BOARD MEMBERS AND OFFICERS. (a)
26 Except as provided in the declaration, the bylaws, (b) of this sec-
27 tion, or other provisions of this chapter, the executive board may act
28 in all instances on behalf of the association. In the performance of
29 their duties, the officers and members of the executive board are

1 required to exercise the care required of fiduciaries of the unit
2 owners.

3 (b) The executive board may not act on behalf of the association
4 to amend the declaration, to terminate the common interest community,
5 or to elect members of the executive board or determine the qualifica-
6 tions, powers and duties, or terms of office of executive board mem-
7 bers, but the executive board may fill vacancies in its membership for
8 the unexpired portion of a term.

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

19 (d) Subject to (e) of this section, the declaration may provide
20 for a period of declarant control of the association, during which a
21 declarant or persons designated by the declarant may appoint and
22 remove the officers and members of the executive board. Regardless of
23 the period provided in the declaration, a period of declarant control
24 terminates no later than the earlier of: (1) 60 days after conveyance
25 of 75 percent of the units that may be created to unit owners other
26 than a declarant; (2) two years after all declarants have ceased to
27 offer units for sale in the ordinary course of business; or (3) two
28 years after any right to add new units was last exercised. A de-
29 clarant may voluntarily surrender the right to appoint and remove

1 officers and members of the executive board before termination of the
2 periods established in this subsection, but in that event the de-
3 clarant may require, for the duration of the period of declarant
4 control, that specified actions of the association or executive board,
5 as described in a recorded instrument executed by the declarant, be
6 approved by the declarant before they become effective.

7 (e) Not later than 60 days after conveyance of 25 percent of the
8 units that may be created to unit owners other than a declarant, at
9 least one member and not less than 25 percent of the members of the
10 executive board must be elected by unit owners other than the decla-
11 rant. Not later than 60 days after conveyance of 50 percent of the
12 units that may be created to unit owners other than a declarant, not
13 less than 33 1/3 percent of the members of the executive board must be
14 elected by unit owners other than the declarant.

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

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

1 Sec. 34.08.340. TRANSFER OF ASSOCIATION CONTROL. (a) Before or
2 not more than 60 days after the termination of declarant control, the
3 declarant shall relinquish control of the common interest community
4 and the unit owners shall accept control. At the same time, the
5 declarant shall deliver to the common interest community all property
6 of the unit owners and of the common interest community held or
7 controlled by the declarant including, but not limited to

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

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

15 (3) a copy of the bylaws;

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

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

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

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

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

28 (9) all tangible personal property that is property of the
29 common interest community, represented by the declarant to be the

1 property of the association or ostensibly the property of the
2 association and an inventory of the property;

3 (10) a copy of the plans and specifications utilized in the
4 construction or remodeling of improvements and the supplying of equip-
5 ment to the common interest community and in the construction and
6 installation of all mechanical components serving the improvements and
7 the site, with a certificate in affidavit form of the declarant or an
8 architect or engineer authorized to practice in the state that the
9 plans and specifications represent, to the best of their knowledge and
10 belief, the actual plans and specifications utilized in the construc-
11 tion and improvement of the common interest community property and for
12 the construction and installation of the mechanical components serving
13 the improvements;

14 (11) insurance policies;

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

17 (13) any other permits issued by governmental bodies appli-
18 cable to the common interest community property in force or issued
19 within one year before the date the unit owners other than the de-
20 clarant take control of the common interest community;

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

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

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

27 (17) employment contracts or service contracts in which the
28 common interest community is one of the contracting parties or service
29 contracts in which the common interest community or the unit owners

1 have an obligation or responsibility, directly or indirectly, to pay
2 some or all of the fee or charge of the person performing the service;

3 (18) all other contracts to which the common interest commu-
4 nity is a party.

5 (b) The records shall be reviewed by an independent certified
6 public accountant. The minimum report required shall be a review in
7 accordance with generally accepted accounting standards as defined by
8 regulation by the Board of Public Accountancy. The accountant per-
9 forming the review shall examine to the extent necessary supporting
10 documents and records, including the cash disbursements and related
11 paid invoices to determine if expenditures were for the common inter-
12 est community purposes and the billings, cash receipts, and related
13 records to determine that the declarant was charged and paid the
14 proper amounts of assessments.

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

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

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

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

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

28 (d) A report shall be prepared indicating the incomplete work
29 and repairs needed and the method of completing the work and making

1 the repairs. The transfer of control to the association shall be
2 based upon the declarant's obligation to complete all repairs and
3 finish all incomplete work within a reasonable time after transfer of
4 control under representations in the public offering statement.

5 Sec. 34.08.350. TRANSFER OF SPECIAL DECLARANT RIGHTS. (a) A
6 special declarant right created or reserved under this chapter may be
7 transferred only by an instrument evidencing the transfer that has
8 been recorded in each recording district in which any portion of the
9 common interest community is located. The instrument is not effective
10 unless executed by the transferee.

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

13 (1) a transferor is not relieved of an obligation or lia-
14 bility arising before the transfer and remains liable for warranty
15 obligations imposed by this chapter; lack of privity does not deprive
16 a unit owner of standing to maintain an action to enforce an obliga-
17 tion of the transferor;

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

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

28 (4) a transferor is not liable for any act or omission or
29 any breach of a contractual or warranty obligation arising from the

1 exercise of a special declarant right by a successor declarant who is
2 not an affiliate of the transferor.

3 (c) Unless otherwise provided in a mortgage instrument, deed of
4 trust, or other agreement creating a security interest, on the fore-
5 closure of a security interest, sale by a trustee under an agreement
6 creating a security interest, tax sale, judicial sale, or sale under
7 Bankruptcy Act or receivership proceedings of a unit owned by a de-
8 clarant or of real estate in a common interest community subject to
9 development rights, the person acquiring title to the property being
10 foreclosed or sold, but only upon the request of the person, succeeds
11 either (1) to the special declarant rights related to the property
12 held by the declarant, or (2) only to any rights reserved in the
13 declaration under AS 34.08.230 and held by that declarant to maintain
14 models, sales offices, and signs. The judgment or instrument convey-
15 ing title must provide for transfer of only the special declarant
16 rights requested.

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

21 (1) the declarant ceases to have special declarant rights,
22 and

23 (2) the period of declarant control terminates unless the
24 judgment or instrument conveying title provides for transfer of the
25 special declarant rights held by the declarant to a successor declar-
26 ant.

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

29 (1) a successor to any special declarant right who is an

1 affiliate of a declarant is subject to the obligations and liabilities
2 imposed on the transferor by this chapter or by the declaration;

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

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

9 (B) on the transferor, other than:

10 (i) misrepresentations by a previous declarant;

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

14 (iii) breach of a fiduciary obligation by a previ-
15 ous declarant or the appointees of a previous declarant to
16 the executive board; or

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

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

26 (4) a successor to the special declarant rights held by a
27 transferor who succeeded to the rights under a deed or other instru-
28 ment of conveyance in lieu of foreclosure or under a judgment or
29 instrument conveying title under (c) of this section may declare in a

1 recorded instrument an intention to hold the rights solely for trans-
2 fer to another person; until transferring the special declarant rights
3 to a person acquiring title to a unit or real estate subject to de-
4 velopment rights owned by the successor, or until recording an instru-
5 ment permitting exercise of all those rights, the successor may not
6 exercise any of the rights other than a right held by the transferor
7 of the successor to control the executive board under AS 34.08.330(d)
8 for the duration of any period of declarant control and an attempted
9 exercise of the rights is void; so long as a successor declarant may
10 not exercise special declarant rights under this subsection, the
11 successor declarant is not subject to liability or obligation as a
12 declarant other than liability for acts and omissions under AS 34.08.-
13 330(d).

14 (f) Nothing in this section subjects a successor to a special
15 declarant right to a claim against or other obligation of a transferor
16 declarant, other than a claim or obligation arising under this chapter
17 or the declaration.

18 Sec. 34.08.360. TERMINATION OF CONTRACTS AND LEASES OF DECLAR-
19 ANT. (a) If entered into before the executive board elected by the
20 unit owners under AS 34.08.330(f) takes office (1) a management con-
21 tract, employment contract, or lease of recreational or parking areas
22 or facilities; (2) a contract or lease between the association and a
23 declarant or an affiliate of a declarant; or (3) a contract or lease
24 that is not bona fide or was unconscionable to the unit owners at the
25 time entered into under the circumstances then prevailing may be
26 terminated without penalty by the association at any time after the
27 executive board elected by the unit owners under AS 34.08.330(f) takes
28 office upon not less than 90 days' notice to the other party.

29 (b) This section does not apply to

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

6 (2) a proprietary lease.

7 Sec. 34.08.370. BYLAWS. (a) The bylaws of the association must
8 provide

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

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

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

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

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

22 (6) for a method of amending the bylaws.

23 (b) Subject to the provisions of the declaration, the bylaws may
24 provide for any other matters the association considers necessary and
25 appropriate.

26 Sec. 34.08.380. UPKEEP OF COMMON INTEREST COMMUNITY. (a)
27 Except to the extent provided by the declaration, by (b) of this
28 section, or by AS 34.08.440(h), the association is responsible for the
29 maintenance, repair, and replacement of the common elements, and each

1 unit owner is responsible for the maintenance, repair, and replacement
2 of the unit. Each unit owner shall afford to the association, the
3 other unit owners, and to their agents or employees, access through
4 the unit that is reasonably necessary for maintenance and repair of
5 the unit. If damage is inflicted on the common elements or on any
6 unit through which access is taken, the unit owner responsible for the
7 damage, or the association if it is responsible, is liable for the
8 prompt repair of the damage.

9 (b) In addition to the liability that a declarant as a unit
10 owner has under this chapter, a declarant is solely liable for the ex-
11 penses in connection with real estate subject to development rights.
12 No other unit owner and no other portion of the common interest commu-
13 nity is subject to a claim for payment of expenses in connection with
14 development rights. Unless the declaration provides otherwise, the
15 income and proceeds from real estate subject to development rights
16 inures to the declarant.

17 (c) In a planned community, when all development rights have
18 expired with respect to real estate, the declarant remains liable for
19 the expenses of the real estate unless, upon expiration, the declara-
20 tion provides that the real estate becomes common elements or units.

21 Sec. 34.08.390. MEETINGS. A meeting of the association must be
22 held at least once each year. A special meeting of the association
23 may be called by the president, by a majority of the members of the
24 executive board, or by unit owners comprising either 20 percent or a
25 lower percentage specified in the bylaws of the votes in the associa-
26 tion. Not less than 10 nor more than 60 days in advance of a meeting,
27 the secretary or other officer specified in the bylaws shall cause
28 notice to be hand-delivered or sent prepaid by United States mail to
29 the mailing address of each unit or to the mailing address designated

1 in writing by the unit owner. The notice of a meeting must state the
2 time and place of the meeting and the items on the agenda, including
3 the general nature of a proposed amendment to the declaration or
4 bylaws, budget changes, and a proposal to remove an officer or member
5 of the executive board.

6 Sec. 34.08.400. QUORUMS. (a) Unless the bylaws provide other-
7 wise, a quorum is present throughout a meeting of the association if
8 persons entitled to cast 20 percent of the votes that may be cast for
9 election of the executive board are present in person or by proxy at
10 the beginning of the meeting.

11 (b) Unless the bylaws specify a larger percentage, a quorum is
12 considered present throughout a meeting of the executive board if
13 persons entitled to cast 50 percent of the votes on the board are
14 present at the beginning of the meeting.

15 Sec. 34.08.410. VOTING AND PROXIES. (a) If only one of several
16 owners of a unit is present at a meeting of the association, the owner
17 present is entitled to cast all the votes allocated to the unit. If
18 more than one of the owners are present, the votes allocated to the
19 unit may be cast only in accordance with the agreement of a majority
20 in interest of the owners, unless the declaration expressly provides
21 otherwise. There is majority agreement if any one of the owners casts
22 the votes allocated to the unit without protest being made promptly to
23 the person presiding over the meeting by another owner of the unit.

24 (b) Votes allocated to a unit may be cast under a proxy duly
25 executed by a unit owner. If a unit is owned by more than one person,
26 each owner of the unit may vote or register protest to the casting of
27 votes by the other owners of the unit through a duly executed proxy.
28 A unit owner may revoke a proxy given under this section only by
29 actual notice of revocation to the person presiding over a meeting of

1 the association. A proxy is void if it is not dated or purports to be
2 revocable without notice. A proxy terminates one year after its date,
3 unless it specifies a shorter term.

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

14 (d) Votes allocated to a unit owned by the association may not
15 be cast.

16 Sec. 34.08.420. TORT AND CONTRACT LIABILITY. Neither the asso-
17 ciation nor any unit owner except the declarant is liable for the
18 torts of the declarant in connection with any part of the common
19 interest community that the declarant has the responsibility to main-
20 tain. An action alleging a wrong done by the association must be
21 brought against the association and not against a unit owner. If the
22 wrong occurred during a period of declarant control and the associa-
23 tion gives the declarant reasonable notice of and an opportunity to
24 defend against the action, the declarant who then controlled the
25 association is liable to the association or to a unit owner for (1)
26 tort losses not covered by insurance suffered by the association or
27 the unit owner, and (2) each cost that the association would not have
28 incurred but for a breach of contract or other wrongful act or omis-
29 sion. If the declarant is liable to the association under this

1 section, the declarant is liable for the expenses of litigation
2 incurred by the association. A statute of limitation affecting the
3 right of action of the association under this section is tolled until
4 the period of declarant control terminates. A unit owner is not
5 precluded from maintaining an action under this section because the
6 person is a unit owner or a member or officer of the association. A
7 lien resulting from a judgment against the association is governed by
8 AS 34.08.480.

9 Sec. 34.08.430. CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS.

10 (a) In a condominium or planned community, portions of the common
11 elements may be conveyed or subjected to a security interest by the
12 association if persons entitled to cast at least 80 percent of the
13 votes in the association, including 80 percent of the votes allocated
14 to units not owned by a declarant, or any larger percentage the decla-
15 ration specifies, agree to the action, but each owner of a unit to
16 which a limited common element is allocated must agree in order to
17 convey the limited common element or subject it to a security inter-
18 est. The declaration may specify a smaller percentage only if each of
19 the units is restricted exclusively to nonresidential uses. The
20 proceeds of the sale and proceeds of a loan secured by encumbrancing a
21 common area are an asset of the association.

22 (b) Part of a cooperative may be conveyed and all or part of a
23 cooperative may be subjected to a security interest by the association
24 if persons entitled to cast at least 80 percent of the votes in the
25 association, including 80 percent of the votes allocated to units not
26 owned by a declarant, or any larger percentage the declaration speci-
27 fies, agree to the action, but, if fewer than all of the units or
28 limited common elements are to be conveyed or subjected to a security
29 interest, then each unit owner or the units to which the limited

1 common elements are allocated must agree in order to convey the units
2 or limited common elements or subject them to a security interest.
3 The declaration may specify a smaller percentage only if each of the
4 units is restricted exclusively to nonresidential uses. The proceeds
5 of the sale and proceeds of a loan secured by encumbering a common
6 area are an asset of the association. A purported conveyance or other
7 voluntary transfer of an entire cooperative, unless made under AS 34.
8 08.260, is void.

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

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

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

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

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

7 (h) In a cooperative, the association may acquire, hold, encum-
8 ber, or convey a proprietary lease without complying with this sec-
9 tion.

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

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

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

29 (b) In the case of a building that is part of a cooperative or

1 that contains a unit having horizontal boundaries described in the
2 declaration, the insurance maintained under (a)(1) of this section, to
3 the extent reasonably available, must include the unit, but need not
4 include improvements and betterments installed by a unit owner.

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

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

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

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

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

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

28 (e) A loss covered by the property policy under (a)(1) and (b)
29 of this section must be adjusted with the association, but the

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

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

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

23 (h) A portion of the common interest community for which insur-
24 ance is required under this section that is damaged or destroyed must
25 be repaired or replaced promptly by the association unless (1) the
26 common interest community is terminated and AS 34.08.260 applies, (2)
27 repairs or replacement would be illegal under a state statute or
28 municipal ordinance governing health or safety, or (3) 80 percent of
29 the unit owners, including each owner of a unit or assigned limited

1 common element that will not be rebuilt, vote not to rebuild. The
2 cost of repair or replacement in excess of insurance proceeds and
3 reserves is a common expense. If the entire common interest community
4 is not repaired or replaced, (1) the insurance proceeds attributable
5 to the damaged common elements must be used to restore the damaged
6 area to a condition compatible with the remainder of the common inter-
7 est community, and (2) except to the extent that other persons will be
8 distributees, (A) the insurance proceeds attributable to a unit and
9 limited common elements that is not rebuilt must be distributed to the
10 owner of the unit and the owner of the unit to which the limited
11 common elements were allocated, or to lien holders, as their interests
12 may appear, and (B) the remainder of the proceeds must be distributed
13 to each unit owner or lien holder, as their interests may appear, as
14 follows: (i) in a condominium, in proportion to the common element
15 interest of all the units and (ii) in a cooperative or planned commu-
16 nity, in proportion to the common expense liabilities of all the
17 units. If the unit owners vote not to rebuild a unit, the allocated
18 interests of the unit are reallocated upon the vote as if the unit had
19 been condemned under AS 34.08.860(a), and the association promptly
20 shall prepare, execute, and record an amendment to the declaration
21 reflecting the reallocations.

22 (i) The provisions of this section may be varied or waived in a
23 common interest community if all of the units are restricted to non-
24 residential use.

25 Sec. 34.08.450. SURPLUS FUNDS. Unless otherwise provided in the
26 declaration, surplus funds of the association remaining after payment
27 of or provision for common expenses and prepayment of reserves must be
28 paid to the unit owners in proportion to common expense liabilities or
29 credited to them to reduce future common expense assessments.

1 Sec. 34.08.460. ASSESSMENTS FOR COMMON EXPENSES. (a) Until the
2 association makes a common expense assessment, the declarant shall pay
3 all common expenses. After an assessment has been made by the associ-
4 ation, assessments must be made at least annually, based on a budget
5 adopted at least annually by the association.

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

12 (c) To the extent required by the declaration

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

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

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

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

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

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

4 (f) If common expense liabilities are reallocated, common ex-
5 pense assessments and any installment of the assessment not yet due
6 must be recalculated in accordance with the reallocated common expense
7 liabilities.

8 Sec. 34.08.470. LIEN FOR ASSESSMENTS. (a) The association has
9 a lien on a unit for an assessment levied against the unit or fines
10 imposed against its unit owner from the time the assessment or fine
11 becomes due. Unless the declaration otherwise provides, fees,
12 charges, late charges, fines, and interest charged under AS 34.08.-
13 320(a)(10) - (12) are enforceable as assessments under this section.
14 If an assessment is payable in installments, the full amount of the
15 assessment is a lien from the time the first installment becomes due.

16 (b) A lien under this section is prior to all other liens and
17 encumbrances on a unit except (1) a lien and encumbrance recorded
18 before the recordation of the declaration and, in a cooperative, a
19 lien and encumbrance which the association creates, assumes, or takes
20 subject to; (2) a first security interest on the unit recorded before
21 the date on which the assessment sought to be enforced became delin-
22 quent, or, in a cooperative, the first security interest encumbering
23 only the interest of the unit owner and perfected before the date on
24 which the assessment sought to be enforced became delinquent; and (3)
25 a lien for real estate taxes and other governmental assessments or
26 charges against the unit or cooperative. A lien under this section is
27 also prior to all security interests described in (2) of this subsec-
28 tion if the common expense assessments based on the periodic budget
29 adopted by the association under AS 34.08.460(a) would have become due

1 in the absence of acceleration during the six months immediately
2 preceding institution of an action to enforce the lien. This subsec-
3 tion does not affect the priority of a mechanic's or materialman's
4 lien, or the priority of a lien for other assessments made by the
5 association. A lien under this section is not subject to the pro-
6 visions of AS 09.38.010.

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

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

13 (e) A lien for an unpaid assessment is extinguished unless pro-
14 ceedings to enforce the lien are instituted within three years after
15 the full amount of the assessment becomes due.

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

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

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

27 (i) In a cooperative, upon nonpayment of an assessment on a
28 unit, a unit owner may be evicted in the same manner as provided by
29 law in the case of an unlawful holdover by a commercial tenant, and

1 the lien may be foreclosed under this section.

2 (j) The association's lien may be foreclosed under this sub-
3 section:

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

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

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

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

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

19 (1) the association, upon nonpayment of an assessment and
20 compliance with this subsection, may sell the unit at a public sale or
21 by private negotiation, and at any time and place; each aspect of the
22 sale, including the method, advertising, time, place, and terms must
23 be reasonable; the association shall give reasonable written notice to
24 the unit owner and a lessee of the unit owner of the time and place of
25 the public sale or, if a private sale is intended, of the intention of
26 entering into a contract to sell and of the time after which a private
27 disposition may be made; the same notice must also be sent to any
28 other person who has a recorded interest in the unit that would be cut
29 off by the sale, but only if the recorded interest was on record seven

1 weeks before the date specified in the notice as the date of a public
2 sale or seven weeks before the date specified in the notice as the
3 date after which a private sale may be made; the notices required by
4 this subsection may be sent to any address reasonable in the cir-
5 cumstances; sale may not be held until five weeks after the sending of
6 the notice; the association may buy at a public sale and, if the sale
7 is conducted by a fiduciary or other person not related to the asso-
8 ciation, at a private sale;

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

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

13 (A) the reasonable expenses of sale;

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

18 (C) satisfaction of the lien of the association;

19 (D) satisfaction in the order of priority of a subor-
20 dinate claim of record; and

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

22 (4) a good faith purchaser for value acquires the unit free
23 of the association's debt that gave rise to the lien under which the
24 foreclosure sale occurred and any subordinate interest, even though
25 the association or other person conducting the sale failed to comply
26 with the requirements of this section; the person conducting the sale
27 shall execute a conveyance to the purchaser sufficient to convey the
28 unit and stating that it is executed after a foreclosure of the ass-
29 ciation's lien by power of sale and that person conducting the sale

1 was empowered to make the sale; signature and title or authority of
2 the person signing the conveyance as grantor and a recital of the
3 facts of nonpayment of the assessment and of the giving of the notices
4 required by this subsection are sufficient proof of the facts recited
5 and of the authority of the person to sign; further proof of authority
6 is not required even if the association is named as grantee in the
7 conveyance;

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

16 Sec. 34.08.480. OTHER LIENS. (a) In a condominium or planned
17 community,

18 (1) except as provided in (2) of this subsection, a record-
19 ed judgment for money against the association is not a lien on the
20 common elements, but is a lien in favor of the judgment lien holder
21 against the units in the common interest community at the time the
22 judgment was entered and no other property of a unit owner is subject
23 to the claims of creditors of the association;

24 (2) if the association has granted a security interest in
25 the common elements to a creditor of the association under AS 34.08.-
26 430, the holder of the security interest shall exercise its right
27 against the common elements before its judgment lien on a unit may be
28 enforced;

29 (3) whether perfected before or after the creation of the

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

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

17 (b) In a cooperative,

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

24 (2) whether or not the property of a unit owner is subject
25 to the claims of creditors of the association, other property of a
26 unit owner is not subject to the claims.

27 Sec. 34.08.490. ASSOCIATION RECORDS. (a) The association shall
28 keep financial records sufficiently detailed to enable the association
29 to comply with AS 34.08.590. Financial and other records must be made

1 reasonably available for examination by a unit owner and an authorized
2 agent of a unit owner.

3 (b) A professional manager, managing agent, accountant, or other
4 person with whom the association has contracted for services shall
5 return all association records within five days of the termination of
6 the contract. If the association records are not returned within five
7 days, the association may sue for their return and for damages.

8 Sec. 34.08.500. ASSOCIATION AS TRUSTEE. If a third person deals
9 with the association in the capacity of the association as a trustee,
10 the existence of trust powers and their proper exercise by the asso-
11 ciation may be assumed without inquiry. A third person is not bound
12 to inquire whether the association has power to act as trustee or is
13 properly exercising trust powers. A third person, without actual
14 knowledge that the association is exceeding or improperly exercising
15 its powers, is fully protected in dealing with the association as if
16 it possessed and properly exercised the powers it purports to exer-
17 cise. A third person is not bound to assure the proper application of
18 trust assets paid or delivered to the association in its capacity as
19 trustee.

20 ARTICLE 4. PROTECTION OF PURCHASERS.

21 Sec. 34.08.510. APPLICABILITY. (a) The provisions of AS 34.-
22 08.510 - 34.08.700 apply to all units subject to this chapter, except
23 as provided in (b) of this section or as modified or waived by agree-
24 ment of purchasers of units in a common interest community in which
25 each unit is restricted to nonresidential use.

26 (b) A public offering statement and a resale certificate is not
27 required to be prepared or delivered on

- 28 (1) a gratuitous disposition of a unit;
29 (2) a disposition under a court order;

- 1 (3) a disposition by a governmental agency;
- 2 (4) a disposition by foreclosure or deed in lieu of fore-
3 closure;
- 4 (5) a disposition to a dealer;
- 5 (6) a disposition that may be canceled at any time and for
6 any reason by the purchaser without penalty; or
- 7 (7) a disposition of a unit in a planned community in which
8 the declaration limits the maximum annual assessment of a unit to not
9 more than \$300, as adjusted under AS 34.08.820, if
- 10 (A) the declarant has a reasonable and good faith
11 belief that the maximum stated assessment will be sufficient to
12 pay the expenses of the planned community;
- 13 (B) the declaration cannot be amended to increase the
14 assessment during the period of declarant control without the
15 consent of all unit owners; and
- 16 (C) the planned community is not subject to develop-
17 ment rights.
- 18 Sec. 34.08.520. LIABILITY FOR PUBLIC OFFERING STATEMENT REQUIRE-
19 MENTS. (a) Except as provided in (b) of this section, a declarant,
20 before offering an interest in a unit to the public, shall prepare a
21 public offering statement conforming to the requirements of AS 34.08.-
22 530, 34.08.540, 34.08.550, and 34.08.560.
- 23 (b) A declarant may transfer responsibility for preparation of
24 all or a part of the public offering statement to a successor de-
25 clarant or to a dealer who intends to offer units in the common inter-
26 est community. On the transfer of responsibility, the transferor
27 shall provide the transferee with information necessary to enable the
28 transferee to fulfill the requirements of (a) of this section.
- 29 (c) A declarant or dealer who offers a unit to a purchaser shall

1 deliver a public offering statement in the manner required by AS 34.-
2 08.580(a). The person who prepared all or a part of the public offer-
3 ing statement is liable under AS 34.08.580 and 34.08.670 for any false
4 or misleading statement set out in the statement or for any omission
5 of a material fact from the statement with respect to the portion of
6 the public offering statement that the person prepared. If a
7 declarant did not prepare any part of a public offering statement the
8 declarant is not liable for a false or misleading statement set out in
9 the statement or for an omission of a material fact from the statement
10 unless the declarant had actual knowledge of the statement or omission
11 or, in the exercise of reasonable care, should have known of the
12 statement or omission.

13 (d) If a unit is part of a common interest community and is part
14 of a real estate regime where a public offering statement is required
15 under the laws of the state before the unit is offered for sale, a
16 single public offering statement conforming to the requirements of
17 AS 34.08.530, 34.08.540, 34.08.550, and 34.08.560 may be prepared and
18 delivered in lieu of providing two or more public offering statements.

19 Sec. 34.08.530. PUBLIC OFFERING STATEMENTS GENERALLY. (a)
20 Except as provided in (b) of this section, a public offering statement
21 must fully and accurately contain or disclose

22 (1) the name and principal address of the declarant and of
23 the common interest community and indicate whether the common interest
24 community is a condominium, cooperative, or planned community;

25 (2) a general description of the common interest community,
26 including, in a building constructed for residential purposes with
27 horizontal boundaries, the area of the interior surface of floors
28 available for residential purposes and, to the extent possible, the
29 types, number, and declarant's schedule for the commencement and

1 completion of construction of buildings and amenities that the
2 declarant anticipates including in the common interest community;

3 (3) the number of units in the common interest community;

4 (4) copies and a brief narrative description of the signif-
5 icant features of the declaration, other than plats and plans, and

6 (A) any recorded covenants, conditions, restrictions,
7 and reservations affecting the common interest community;

8 (B) the bylaws, and any rules or regulations of the
9 association;

10 (C) copies of any contracts and leases to be signed by
11 purchasers at closing; and

12 (D) a brief narrative description of any contracts or
13 leases that will or may be subject to cancellation by the asso-
14 ciation under AS 34.08.360;

15 (5) any current balance sheet and a projected budget for
16 the association, either within or as an exhibit to the public offering
17 statement, for one year after the date of the first conveyance to a
18 purchaser, and the current budget of the association, the name of the
19 person who prepared the budget, and a statement of the budget's as-
20 sumptions concerning occupancy, assumptions concerning the calculation
21 of the amount of reserves certified by a certified architect or engi-
22 neer, and inflation factors, including, without limitation,

23 (A) a statement of the amount included in the budget
24 as a reserve for repairs and replacement including the estimated
25 cost of repair or replacement cost and the estimated useful life
26 of the asset to be repaired or replaced.

27 (B) a statement of any other reserves;

28 (C) the projected common expense assessment by cate-
29 gory of expenditures for the association; and

1 (D) the projected monthly common expense assessment
2 for each type of unit;

3 (6) any services not reflected in the budget that the
4 declarant provides, or expenses that the declarant pays and that the
5 declarant expects may become a common expense of the association at a
6 subsequent time and the projected common expense assessment attribut-
7 able to each of those services or expenses for the association and for
8 each type of unit;

9 (7) any initial or special fee due from the purchaser at
10 closing, together with a description of the purpose and method of
11 calculating the fee;

12 (8) a description of liens, defects, or encumbrances on or
13 affecting the title to the common interest community;

14 (9) a description of financing offered or arranged by the
15 declarant;

16 (10) the terms and significant limitations of warranties
17 provided by the declarant, including statutory warranties and limita-
18 tions on the enforcement of the warranties or on damages;

19 (11) a statement that

20 (A) within 15 days after receipt of a public offering
21 statement a purchaser, before conveyance, may cancel any contract
22 for purchase of a unit from a declarant;

23 (B) if a declarant fails to provide a public offering
24 statement to a purchaser before conveying a unit, the purchaser
25 may recover from the declarant 10 percent of the sales price of
26 the unit plus 10 percent of the share, proportionate to the
27 common expense liability of the unit, of any indebtedness of the
28 association secured by security interests encumbering the common
29 interest community; and

1 (C) a purchaser who receives the public offering
2 statement more than 15 days before signing a contract cannot
3 cancel the contract;

4 (12) a statement of any unsatisfied judgments or pending
5 suits against the association, and the status of any pending suits
6 material to the common interest community of which a declarant has
7 actual knowledge;

8 (13) a statement that a deposit made in connection with the
9 purchase of a unit will be held in an escrow account until closing and
10 will be returned to the purchaser if the purchaser cancels the con-
11 tract under AS 34.08.580, together with the name and address of the
12 escrow agent;

13 (14) any restraints on alienation of any portion of the
14 common interest community and any restrictions

15 (A) on use, occupancy, and alienation of the unit; and

16 (B) on the amount for which a unit may be sold or on
17 the amount that may be received by a unit owner on sale, condem-
18 nation, or casualty loss to the unit or to the common interest
19 community, or on termination of the common interest community;

20 (15) a description of the insurance coverage provided for
21 the benefit of unit owners;

22 (16) current or expected fees or charges to be paid by a
23 unit owner for the use of the common elements and other facilities
24 related to the common interest community;

25 (17) the extent to which financial arrangements have been
26 provided for completion of improvements that the declarant is obligat-
27 ed to build under AS 34.08.690;

28 (18) a brief narrative description of zoning and other land
29 use requirements affecting the common interest community;

1 (19) each unusual and material circumstance, feature, or
2 characteristic of the common interest community and the units; and

3 (20) in a cooperative,

4 (A) whether each unit owner will be entitled, for
5 federal, state, and local income tax purposes, to a pass-through
6 of deductions for payments made by the association for real
7 estate taxes and interest paid the holder of a security interest
8 encumbering the cooperative; and

9 (B) a statement as to the effect on each unit owner if
10 the association fails to pay real estate taxes or payments due
11 the holder of a security interest encumbering the cooperative.

12 (b) If a common interest community composed of not more than 12
13 units is not subject to any development rights and power is not re-
14 served to a declarant to make the common interest community part of a
15 larger common interest community, group of common interest communi-
16 ties, or other real estate, a public offering statement may but need
17 not include the information required by (a)(9), (10) and (15) - (19)
18 of this section and the narrative descriptions of documents required
19 by (a)(4) of this section.

20 (c) A declarant promptly shall amend the public offering state-
21 ment to report any material change in the information required by this
22 section.

23 Sec. 34.08.540. COMMON INTEREST COMMUNITIES SUBJECT TO DEVELOP-
24 MENT RIGHTS. If the declaration provides that a common interest
25 community is subject to development rights, the public offering state-
26 ment must disclose, in addition to the information required by AS 34.-
27 08.530,

28 (1) the maximum number of units, and the maximum number of
29 units per acre, that may be created.

1 (2) a statement of the number or the percentage of the
2 units that may be created that will be restricted exclusively to
3 residential use, or a statement that representations have not been
4 made regarding use restrictions;

5 (3) if any of the units that may be built within real
6 estate subject to development rights are not to be restricted exclu-
7 sively to residential use, a statement, with respect to each portion
8 of the real estate, of the maximum percentage of the real estate
9 areas, and the maximum percentage of the floor areas of all units that
10 may be created that are not restricted exclusively to residential use;

11 (4) a brief narrative description of the development rights
12 reserved by a declarant and of any conditions relating to or limita-
13 tions upon the exercise of development rights;

14 (5) a statement of the maximum extent to which the allocat-
15 ed interests of each unit may be changed by the exercise of a develop-
16 ment right described in (3) of this section;

17 (6) a statement of the extent to which a building or other
18 improvement that may be erected under a development right in any part
19 of the common interest community will be compatible with existing
20 buildings and improvements in the common interest community in terms
21 of architectural style, quality of construction, and size, or a state-
22 ment that assurances have not been made in that regard;

23 (7) a general description of each other improvement that
24 may be made and limited common elements that may be created within a
25 part of the common interest community under a development right re-
26 served by the declarant, or a statement that assurances have not been
27 made in that regard;

28 (8) a statement of any limitations as to the location of
29 any building or other improvement that may be made within a part of

1 the common interest community under a development right reserved by
2 the declarant, or a statement that assurances have not been made in
3 that regard;

4 (9) a statement that the limited common elements created
5 under a development right reserved by the declarant will be of the
6 same general type and size as the limited common elements within other
7 parts of the common interest community, or a statement of the type and
8 size planned, or a statement that assurances have not been made in
9 that regard;

10 (10) a statement that the proportion of limited common
11 elements to units created under a development right reserved by the
12 declarant will be approximately equal to the proportion existing
13 within other parts of the common interest community, or a statement of
14 any other assurances in that regard, or a statement that assurances
15 have not been made in that regard;

16 (11) a statement that each restriction in the declaration
17 affecting use, occupancy, and alienation of a unit will apply to each
18 unit created under a development right reserved by the declarant, or a
19 statement of a differentiation that may be made as to the units, or a
20 statement that assurances have not been made in that regard; and

21 (12) a statement of the extent to which an assurance made
22 under this section applies or does not apply if a development right is
23 not exercised by the declarant.

24 Sec. 34.08.550. TIME SHARES. If the declaration provides that
25 ownership or occupancy of a unit is or may be in time shares, the
26 public offering statement shall disclose, in addition to the informa-
27 tion required by AS 34.08.530,

28 (1) the number and identity of units in which time shares
29 may be created;

- 1 (2) the total number of time shares that may be created;
- 2 (3) the minimum duration of any time shares that may be
3 created;
- 4 (4) the extent to which the creation of time shares will or
5 may affect the enforceability of the lien of the association for
6 assessments under AS 34.08.470;
- 7 (5) any restraint on the power of the purchaser of the
8 time-share unit to transfer the interest in the time-share unit;
- 9 (6) whether the time-share unit is included in an exchange
10 program, the present cost and a good faith estimate of the future cost
11 to the purchaser from the exchange program; and
- 12 (7) whether the purchaser is required to become a member of
13 the exchange program.

14 Sec. 34.08.560. COMMON INTEREST COMMUNITIES CONTAINING CONVER-
15 SION PROPERTY. (a) The public offering statement of a common inter-
16 est community containing conversion property must contain, in addition
17 to the information required by AS 34.08.530,

18 (1) a statement by the declarant, based on a report pre-
19 pared by a registered architect or engineer, describing the present
20 condition of all structural components and mechanical and electrical
21 installations material to the use and enjoyment of the property;

22 (2) a statement by the declarant of the expected useful
23 life of each item reported on in (1) of this subsection or a statement
24 that representations have not been made in that regard; and

25 (3) a list of any outstanding notices of uncured violations
26 of building code or other municipal regulations, together with the
27 estimated cost of curing the violations.

28 (b) This section applies only to property that contains a unit
29 that may be occupied for residential use.

1 Sec. 34.08.570. COMMON INTEREST COMMUNITY SECURITIES. If an
2 interest in a common interest community is currently registered with
3 the Securities and Exchange Commission of the United States, a de-
4 clarant satisfies each requirement relating to the preparation of a
5 public offering statement of this chapter if the declarant delivers to
6 the purchaser a copy of the public offering statement filed with the
7 Securities and Exchange Commission. An interest in a common interest
8 community is not subject to the registration requirements of AS 45.55.

9 Sec. 34.08.580. PURCHASER'S RIGHT TO CANCEL. (a) A person
10 required to deliver a public offering statement under AS 34.08.520(c)
11 shall provide each purchaser with a copy of the public offering state-
12 ment and each amendment to the statement before conveyance of the
13 unit, and not later than the date of a contract of sale. If a pur-
14 chaser is not given the public offering statement more than 15 days
15 before execution of a contract for the purchase of a unit, the pur-
16 chaser, before conveyance, may cancel the contract within 15 days of
17 receipt of the public offering statement.

18 (b) A purchaser who wishes to cancel a contract under (a) of
19 this section may cancel the contract by hand delivering notice of the
20 cancellation to the offeror or by mailing notice of the cancellation
21 by prepaid United States mail to the offeror or to the agent for
22 service of process of the offeror. Cancellation is without penalty
23 and each payment made by the purchaser before cancellation must be
24 refunded promptly to the purchaser.

25 (c) If a person required to deliver a public offering statement
26 under AS 34.08.520(c) fails to provide a purchaser to whom a unit has
27 been conveyed with the public offering statement and each amendment to
28 the statement under (a) of this section, the purchaser, in addition to
29 any right to damages or other relief, is entitled to receive from the

1 person an amount equal to 10 percent of the sale price of the unit,
2 plus 10 percent of the share, proportionate to the common expense
3 liability, of an indebtedness of the association secured by security
4 interests encumbering the common interest community.

5 Sec. 34.08.590. RESALES OF UNITS. (a) Except for a sale in
6 which delivery of a public offering statement is required, or unless
7 the sale is exempt under AS 34.08.510(b), a unit owner shall furnish
8 to a purchaser before execution of a contract for sale of a unit or
9 before conveyance a copy of the declaration, as amended, the bylaws,
10 the rules or regulations of the association, and a certificate con-
11 taining a statement disclosing

12 (1) the effect on the proposed disposition of a right of
13 first refusal or other restraint on the free alienability of the unit;

14 (2) the amount of the monthly common expense assessment and
15 any unpaid common expense or special assessment currently due and
16 payable from the selling unit owner;

17 (3) any other fee payable by unit owners;

18 (4) any capital expenditures in excess of \$3,000 approved
19 by the executive board for the current and two next succeeding fiscal
20 years;

21 (5) the amount of reserves for capital expenditures and of
22 any portions of the reserves designated by the association for a
23 specified project;

24 (6) the most recent regularly prepared balance sheet and
25 income and expense statement, if any, of the association;

26 (7) the current operating budget of the association;

27 (8) any unsatisfied judgment against the association and
28 the status of any pending suit in which the association is a defen-
29 dant;

- 1 (9) any insurance coverage provided for the benefit of unit
- 2 owners;
- 3 (10) whether the executive board has knowledge that any
- 4 alterations or improvements to the unit or to the limited common
- 5 elements assigned to the unit violate any provision of the declara-
- 6 tion;
- 7 (11) whether the executive board has knowledge of any viola-
- 8 tion of a health or building code with respect to the unit, the limit-
- 9 ed common elements assigned to the unit, or any other portion of the
- 10 common interest community;
- 11 (12) a statement of the remaining term of a leasehold estate
- 12 affecting the common interest community and the provisions governing
- 13 an extension or renewal of the lease;
- 14 (13) a statement of any restrictions in the declaration
- 15 affecting the amount that may be received by a unit owner upon sale,
- 16 condemnation, casualty loss to the unit or the common interest commu-
- 17 nity, or termination of the common interest community; and
- 18 (14) in a cooperative, an accountant's statement, if any was
- 19 prepared, as to the deductibility for federal income tax purposes by
- 20 the unit owner of real estate taxes and interest paid by the associ-
- 21 ation.
- 22 (b) The association, within 10 days after a written request by a
- 23 unit owner and the payment of a reasonable fee, shall furnish a
- 24 certificate containing the information necessary to enable the unit
- 25 owner to comply with this section. A unit owner providing a
- 26 certificate under (a) of this section is not liable to the purchaser
- 27 for erroneous information provided by the association and included in
- 28 the certificate.
- 29 (c) A purchaser is not liable for an unpaid assessment or fee

1 greater than the amount set out in the certificate prepared by the
2 association. A unit owner is not liable to a purchaser for the fail-
3 ure or delay of the association to provide the certificate in a timely
4 manner, but the purchase contract is voidable by the purchaser until
5 the certificate has been provided and for five days after the certifi-
6 cate was provided or until conveyance, whichever occurs first.

7 Sec. 34.08.600. ESCROW OF DEPOSITS. A deposit made in connec-
8 tion with the purchase or reservation of a unit from a person required
9 to deliver a public offering statement under AS 34.08.520(c) must be
10 placed in escrow and held either in this state or in the state where
11 the unit is located in an account designated solely for that purpose
12 by a licensed title insurance company, an attorney, a licensed real
13 estate broker, an independent bonded escrow company, or an institution
14 whose accounts are insured by a governmental agency or instrumentality
15 until

16 (1) delivered to the declarant at closing;

17 (2) delivered to the declarant because of the purchaser's
18 default under a contract to purchase the unit; or

19 (3) refunded to the purchaser.

20 Sec. 34.08.610. RELEASE OF LIENS. (a) In a sale of a unit
21 where delivery of a public offering statement is required under
22 AS 34.08.520(c), a seller before conveying a unit, shall record or
23 furnish to the purchaser a release of each lien, except a lien on real
24 estate that a declarant has the right to withdraw from the common
25 interest community, that the purchaser does not expressly agree to
26 take subject to or assume and that encumbers

27 (1) in a condominium, the unit and its common element
28 interest; or

29 (2) in a cooperative or planned community, the unit and any

1 limited common elements assigned to the unit.

2 (b) Before conveying real estate to the association, the de-
3 clarant shall have the real estate released from

4 (1) each lien the foreclosure of which would deprive unit
5 owners of a right of access to or easement of support of their units;
6 and

7 (2) each other lien on the real estate unless the public
8 offering statement describes certain real estate that may be conveyed
9 subject to liens in specified amounts.

10 Sec. 34.08.620. CONVERSION PROPERTY. (a) A declarant of a
11 common interest community containing conversion property, and any
12 dealer who intends to offer units in a common interest community
13 containing conversion units, shall give each residential tenant and
14 each residential subtenant in possession of a portion of conversion
15 property notice of the conversion and provide each person with the
16 public offering statement no later than 180 days before the tenant and
17 any subtenant in possession is required to vacate. If the conversion
18 property consists of a mobile home park, notice of the conversion and
19 delivery of a public offering statement shall be provided no later
20 than one year before the tenant and any subtenant in possession is
21 required to vacate. The notice must set out generally the rights of
22 tenants and subtenants under this section and shall be hand delivered
23 to the unit or mailed by prepaid United States mail to the tenant and
24 subtenant at the address of the unit or any other mailing address
25 provided by a tenant. A tenant or subtenant may not be required to
26 vacate upon less than 180 days' notice and a tenant and a subtenant in
27 possession in a mobile home park may not be required to vacate upon
28 less than one year's notice except by reason of nonpayment of rent,
29 waste, or conduct that disturbs other tenants' peaceful enjoyment of

1 the premises and the terms of the tenancy may not be altered during
2 the period. The failure to give notice as required by this section is
3 a defense to an action for possession.

4 (b) For 90 days after delivery or mailing of the notice de-
5 scribed in (a) of this section, the person required to give the notice
6 shall offer to convey each unit or proposed unit occupied for residen-
7 tial use to the tenant who leases the unit. If a tenant fails to
8 purchase the unit during the 90-day period, the offeror may not offer
9 to dispose of an interest in the unit during the following 180 days at
10 a price or on terms more favorable to the offeree than the price or
11 terms offered to the tenant. This subsection does not apply to a unit
12 in conversion property if the unit will be restricted exclusively to
13 nonresidential use or if the boundaries of the converted unit do not
14 substantially conform to the dimensions of the residential unit before
15 conversion.

16 (c) If a seller, in violation of (b) of this section, conveys a
17 unit for value to a purchaser who has no knowledge of the violation,
18 the recording of the deed conveying the unit or, in a cooperative, the
19 conveyance of the unit, extinguishes any right a tenant may have under
20 (b) of this section to purchase the unit if the deed states that the
21 seller has complied with (b) of this section, but the conveyance does
22 not affect the right of a tenant to recover damages from the seller
23 for a violation of (b) of this section.

24 (d) If a notice of conversion specifies a date by which a unit
25 or proposed unit must be vacated and otherwise complies with the
26 provisions of AS 09.45.060 - 09.45.160, the notice also constitutes a
27 notice to quit.

28 (e) Nothing in this section permits termination of a lease by a
29 declarant in violation of its terms.

1 Sec. 34.08.630. EXPRESS WARRANTIES OF QUALITY. (a) An express
2 warranty made by a seller to a purchaser of a unit, if relied upon by
3 the purchaser, is created as follows:

4 (1) any affirmation of fact or promise that relates to the
5 unit, its use, or rights appurtenant to the unit, area improvements to
6 the common interest community that would directly benefit the unit, or
7 the right to use or have the benefit of facilities not located in the
8 common interest community, creates an express warranty that the unit
9 and related rights and uses will conform to the affirmation or prom-
10 ise;

11 (2) a model or description of the physical characteristics
12 of the common interest community, including plans and specifications
13 of or for improvements, creates an express warranty that the common
14 interest community will conform to the model or description;

15 (3) a description of the quantity or extent of the real
16 estate comprising the common interest community, including plats or
17 surveys, creates an express warranty that the common interest communi-
18 ty will conform to the description, subject to customary tolerances;
19 and

20 (4) a provision that a purchaser may put a unit only to a
21 specified use is an express warranty that the specified use is lawful.

22 (b) Formal words such as "warranty" or "guarantee" and the
23 specific intention to make a warranty are not necessary to create an
24 express warranty of quality, but a statement purporting to be merely
25 an opinion or commendation of the real estate or its value does not
26 create a warranty.

27 (c) A conveyance of a unit transfers to the purchaser each
28 express warranty of quality made by a previous seller.

29 Sec. 34.08.640. IMPLIED WARRANTIES OF QUALITY. (a) A declarant

1 and a dealer warrants that a unit will be in at least as good condi-
2 tion at the earlier of the time of the conveyance or delivery of
3 possession as it was at the time of contracting, reasonable wear and
4 tear excepted.

5 (b) A declarant and a dealer impliedly warrants that a unit and
6 the common elements in the common interest community are suitable for
7 the ordinary uses of real estate of its type and that any improvements
8 made or contracted for by the declarant or dealer, or made by any
9 person before the creation of the common interest community, will be

10 (1) free from defective materials; and

11 (2) constructed in accordance with applicable law, accord-
12 ing to sound engineering and construction standards, and in a workman-
13 like manner.

14 (c) A declarant and a dealer warrants to a purchaser of a unit
15 that may be used for residential use that an existing use, continua-
16 tion of which is contemplated by the parties, does not violate appli-
17 cable law at the earlier of the time of conveyance or delivery of
18 possession.

19 (d) Warranties imposed by this section may be excluded or modi-
20 fied under AS 34.08.650.

21 (e) For purposes of this section, improvements made or contract-
22 ed for by an affiliate of a declarant are made or contracted for by
23 the declarant.

24 (f) A conveyance of a unit transfers to the purchaser all of the
25 declarant's implied warranties of quality.

26 Sec. 34.08.650. EXCLUSION OR MODIFICATION OF IMPLIED WARRANTIES
27 OF QUALITY. (a) Except as limited by (b) of this section with re-
28 spect to a purchaser of a unit that may be used for residential use,
29 implied warranties of quality

1 (1) may be excluded or modified by agreement of the par-
2 ties; and

3 (2) are excluded by an expression of disclaimer such as "as
4 is," "with all faults," or other language that in common understanding
5 calls the attention of the purchaser to the exclusion of warranties.

6 (b) With respect to a purchaser of a unit that may be occupied
7 for residential use, a general disclaimer of implied warranties of
8 quality is not effective, but a declarant and a dealer may disclaim
9 liability in an instrument signed by the purchaser for a specified
10 defect or specified failure to comply with applicable law, if the
11 defect or failure entered into and became a part of the basis of the
12 bargain.

13 Sec. 34.08.660. STATUTE OF LIMITATIONS FOR WARRANTIES. (a) A
14 judicial proceeding for breach of an obligation arising under AS 34.-
15 08.650 or this section must be commenced within six years after the
16 cause of action accrues, but the parties may agree to reduce the
17 period of limitation to not less than two years. If the unit may be
18 occupied for residential use, an agreement to reduce the period of
19 limitation must be evidenced by a separate instrument executed by the
20 purchaser.

21 (b) Subject to (c) of this section, a cause of action for breach
22 of warranty of quality, regardless of the purchaser's lack of knowl-
23 edge of the breach, accrues

24 (1) as to a unit, at the time the purchaser to whom the
25 warranty is first made enters into possession if a possessory interest
26 was conveyed or at the time of acceptance of the instrument of convey-
27 ance if a nonpossessory interest was conveyed; and

28 (2) as to each common element, at the time the common
29 element is completed or, if later, as to

1 (A) a common element that may be added to the common
2 interest community or a portion of the common interest community,
3 at the time the first unit is conveyed to a bona fide purchaser;
4 or

5 (B) a common element within any other portion of the
6 common interest community, at the time the first unit is conveyed
7 to a bona fide purchaser.

8 (c) If a warranty of quality explicitly extends to future per-
9 formance or duration of an improvement or component of the common
10 interest community, the cause of action accrues at the time the breach
11 is discovered or at the end of the warranty period, whichever is
12 earlier.

13 Sec. 34.08.670. EFFECT OF VIOLATIONS ON RIGHTS OF ACTION. If a
14 declarant or any other person subject to this chapter fails to comply
15 with a provision of this chapter or with a provision of the declara-
16 tion or bylaws, a person or class of persons adversely affected by the
17 failure to comply has a claim for appropriate relief. Punitive dam-
18 ages may be awarded for a wilful failure to comply with this chapter.

19 Sec. 34.08.680. LABELING OF PROMOTIONAL MATERIAL. Promotional
20 material may not be displayed or delivered to a prospective purchaser
21 that describes or portrays an improvement that is not in existence
22 unless the description or portrayal of the improvement in the promo-
23 tional material is conspicuously labeled or identified either as "MUST
24 BE BUILT" or as "NEED NOT BE BUILT."

25 Sec. 34.08.690. DECLARANT'S OBLIGATION TO COMPLETE AND RESTORE.
26 (a) Except for an improvement labeled "NEED NOT BE BUILT," the de-
27 clarant shall complete each improvement depicted on a site plan or
28 other graphic representation, including any plats or plans prepared
29 under AS 34.08.180, whether or not the site plan or other graphic

1 representation is contained in the public offering statement or in
2 promotional material distributed by or for the declarant.

3 (b) The declarant is liable for the prompt repair and restora-
4 tion, to a condition compatible with the remainder of the common
5 interest community, of a portion of the common interest community af-
6 fected by the exercise of rights reserved under or created by AS 34.-
7 08.180, 34.08.190, 34.08.200, 34.08.210, 34.08.230, or 34.08.240.

8 Sec. 34.08.700. SUBSTANTIAL COMPLETION OF UNITS. In the sale of
9 a unit for which delivery of a public offering statement is required,
10 a contract of sale may be executed, but an interest in the unit may
11 not be conveyed until the declaration is recorded and the unit is
12 substantially completed as evidenced by issuance of a certificate of
13 occupancy authorized by law or by a recorded certificate of
14 substantial completion executed by

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

17 (2) an appraiser with the designation of senior residential
18 appraiser, senior real property appraiser or senior real estate
19 analyst of the Society of Real Estate Appraisers;

20 (3) a residential member or member, appraisal institute, of
21 the American Institute of Real Estate Appraisers; or

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

25 ARTICLE 5. GENERAL PROVISIONS.

26 Sec. 34.08.710. VARIATION BY AGREEMENT. Except as expressly
27 provided in this chapter the provisions of this chapter may not be
28 varied by agreement and rights conferred by this chapter may not be
29 waived. A declarant may not act under a power of attorney or use any

1 other device to evade the limitations or prohibitions of this chapter
2 or a declaration recorded under it.

3 Sec. 34.08.720. SEPARATE TITLES AND TAXATION. (a) In a cooper-
4 ative, the interest of a unit owner in a unit and its allocated
5 interests is real estate for all purposes, except that the real estate
6 constituting the cooperative shall be assessed and taxed as a whole
7 and the interest of a unit owner may not be separately taxed.

8 (b) In a condominium or planned community,

9 (1) if there is a unit owner other than a declarant, each
10 unit that has been created, together with its interest in the common
11 elements, constitutes for all purposes a separate parcel of real
12 estate;

13 (2) if there is a unit owner other than a declarant, each
14 unit shall be separately taxed and assessed, and a separate tax or
15 assessment may not be rendered against any common elements for which a
16 declarant has reserved no development rights.

17 (c) Any portion of the common elements for which the declarant
18 has reserved a development right shall be separately taxed and
19 assessed against the declarant and the declarant alone is liable for
20 payment of the taxes.

21 (d) If there is no unit owner other than a declarant, the real
22 estate comprising the common interest community may be taxed and
23 assessed in any manner provided by law.

24 Sec. 34.08.730. APPLICABILITY OF LOCAL ORDINANCES, REGULATIONS,
25 AND BUILDING CODES. (a) A building code may not impose a requirement
26 upon a structure in a common interest community that the building code
27 would not impose upon a physically identical development under a
28 different form of ownership.

29 (b) A zoning, subdivision, or other real estate use law,

1 ordinance, or regulation may not prohibit the condominium or
2 cooperative form of ownership or impose a requirement upon a
3 condominium or cooperative that it would not impose upon a physically
4 identical development under a different form of ownership.

5 (c) Except as provided in (a) and (b) of this section, the
6 provisions of this chapter do not invalidate or modify a provision of
7 a building code, zoning, subdivision, or other real estate use law,
8 ordinance, or regulation governing the use of real estate.

9 Sec. 34.08.740. EMINENT DOMAIN. (a) If a unit is acquired by
10 eminent domain or part of a unit is acquired by eminent domain leaving
11 the unit owner with a remnant that may not practically or lawfully be
12 used for any purpose permitted by the declaration, the award must
13 include compensation to the unit owner for that unit and its allocated
14 interests, whether or not any common elements are acquired. Upon
15 acquisition, unless the decree otherwise provides, the allocated
16 interests of the unit are automatically reallocated to the remaining
17 units in proportion to the respective allocated interests of those
18 units before the taking, and the association shall promptly prepare,
19 execute, and record an amendment to the declaration reflecting the re-
20 allocations. A remnant of a unit remaining after part of a unit is
21 taken under this subsection is a common element from that time.

22 (b) Except as provided in (a) of this section, if part of a unit
23 is acquired by eminent domain, the award must compensate the unit
24 owner for the reduction in value of the unit and its interest in the
25 common elements, whether or not any common elements are acquired.
26 Upon acquisition, unless the decree provides otherwise,

27 (1) the allocated interests of the unit are reduced either
28 in proportion to the reduction in the size of the unit or on the basis
29 specified in the declaration; and

1 (2) the portion of the allocated interests divested from
2 the partially acquired unit are automatically reallocated to the unit
3 and to the remaining units in proportion to the respective allocated
4 interests of the units before the taking, with the partially-acquired
5 unit participating in the reallocation on the basis of its reduced
6 allocated interests.

7 (c) If part of the common elements is acquired by eminent do-
8 main, the portion of the award attributable to the common elements
9 taken must be paid to the association. Unless the declaration pro-
10 vides otherwise, any portion of the award attributable to the acquisi-
11 tion of a limited common element must be equally divided among the
12 owners of the units to which that limited common element was allocated
13 at the time of acquisition.

14 (d) The court decree must be recorded in each recording district
15 in which any portion of the common interest community is located.

16 (e) On a condemnation of a unit or common area, an award or
17 decree must include a reasonable amount to cover the cost of reallo-
18 cating the allocatable interests of the unit owners.

19 Sec. 34.08.750. SUPPLEMENTAL GENERAL PRINCIPLES OF LAW APPLIC-
20 ABLE. The principles of law and equity, including the law of corpora-
21 tions and unincorporated associations, the law of real property, and
22 the law relative to capacity to contract, principal and agent, eminent
23 domain, estoppel, fraud, misrepresentation, duress, coercion, mistake,
24 receivership, substantial performance, or other validating or invali-
25 dating cause supplement the provisions of this chapter except to the
26 extent inconsistent with this chapter.

27 Sec. 34.08.760. CONSTRUCTION AGAINST IMPLICIT REPEAL. This
28 chapter is a general act intended as a unified coverage of its subject
29 matter and a part of the chapter may not be construed to be impliedly

1 repealed by subsequent legislation if that construction can reasonably
2 be avoided.

3 Sec. 34.08.770. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
4 This chapter shall be applied and construed so as to effectuate its
5 general purpose to make uniform the law with respect to the subject of
6 the chapter among states enacting it.

7 Sec. 34.08.780. SEVERABILITY. If a provision of this chapter or
8 its application to any person or circumstance is held invalid, the
9 invalidity does not affect other provisions or applications of this
10 chapter that can be given effect without the invalid provision or
11 application, and to this end the provisions of this chapter are sever-
12 able.

13 Sec. 34.08.790. UNCONSCIONABLE AGREEMENT OR TERM OF CONTRACT.
14 (a) Upon finding as a matter of law that a contract or contract
15 clause was unconscionable at the time the contract was made, a court
16 may refuse to enforce the contract, may enforce the remainder of the
17 contract without the unconscionable clause, or may limit the applica-
18 tion of the unconscionable clause in order to avoid an unconscionable
19 result.

20 (b) Whenever it is claimed or appears to the court that a con-
21 tract or a contract clause is or may be unconscionable, the parties,
22 in order to aid the court in making the determination, must be afford-
23 ed a reasonable opportunity to present evidence as to (1) the commer-
24 cial setting of the negotiations; (2) whether a party has knowingly
25 taken advantage of the inability of another party reasonably to pro-
26 tect personal interests by reason of physical or mental infirmity,
27 illiteracy, inability to understand the language of the agreement, or
28 similar factors; (3) the effect and purpose of the contract or clause;
29 and (4) any gross disparity, if a sale, at the time of contracting,

1 between the amount charged for the property and the value of the
2 property measured by the price at which similar property was readily
3 obtainable in similar transactions. A disparity between the contract
4 price and the value of the property measured by the price at which
5 similar property was readily obtainable in similar transactions does
6 not, of itself, render the contract unconscionable.

7 Sec. 34.08.800. OBLIGATION OF GOOD FAITH. A contract or duty
8 governed by this chapter imposes an obligation of good faith in its
9 performance or enforcement.

10 Sec. 34.08.810. REMEDIES TO BE LIBERALLY ADMINISTERED. (a) The
11 remedies provided by this chapter shall be liberally administered to
12 the end that the aggrieved party is put in as good a position as if
13 the other party had fully performed. Consequential, special, or
14 punitive damages may not be awarded except as specifically provided in
15 this chapter or by other rule of law.

16 (b) A right or obligation declared by this chapter is enforce-
17 able by judicial proceeding.

18 Sec. 34.08.820. ADJUSTMENT OF DOLLAR AMOUNTS. (a) The dollar
19 amounts specified in AS 34.08.030 and 34.08.510(b)(7) change under (b)
20 and (c) of this section, according to and to the extent of changes in
21 the Consumer Price Index for Urban Wage Earners and Clerical Workers:
22 U.S. City Average, All Items 1967 equal 100, compiled by the Bureau of
23 Labor Statistics, United States Department of Labor, (the "Index").
24 The Index for December, 1979, which was 230, is the Reference Base
25 Index.

26 (b) The dollar amounts specified in AS 34.08.030 and 34.08.-
27 510(b)(7) and any amount stated in the declaration pursuant to those
28 sections change on July 1 of each year if the percentage of change,
29 calculated to the nearest whole percentage point, between the Index at

1 the end of the preceding year and the Reference Base Index is 10
2 percent or more, except that

3 (1) the portion of the percentage change in the Index in
4 excess of a multiple of 10 percent shall be disregarded and the dollar
5 amounts shall change only in multiples of 10 percent of the amounts
6 appearing in this chapter on the effective date of this Act;

7 (2) the dollar amounts may not change if the amounts re-
8 quired by this section are those currently in effect under this chap-
9 ter as a result of an earlier application of this section; and

10 (3) in no event may the dollar amounts be reduced below the
11 amounts appearing in this chapter on the effective date of this Act.

12 (c) If the Index is revised after December 1979, the percentage
13 of change under this section shall be calculated on the basis of the
14 revised Index. If the revision of the Index changes the Reference
15 Base Index, a revised Reference Base Index must be determined by
16 multiplying the Reference Base Index then applicable by the rebasing
17 factor furnished by the Bureau of Labor Statistics. If the Index is
18 superseded, the index referred to in this section is the one repre-
19 sented by the Bureau of Labor Statistics as reflecting most accurately
20 changes in the purchasing power of the dollar for consumers.

21 Sec. 34.08.830. TRANSFER OF UNIT IN A COOPERATIVE. If a unit in
22 a cooperative is owned by a unit owner or is sold, conveyed, volun-
23 tarily or involuntarily encumbered, or otherwise transferred by the
24 unit owner, the interest in the unit that is owned, sold, conveyed,
25 encumbered, or otherwise transferred is the right to possession of the
26 unit under a proprietary lease, coupled with the allocated interests
27 of the unit, and the association's interest in the unit is not affect-
28 ed by the transfer.

29 Sec. 34.08.990. DEFINITIONS. In this chapter,

1 (1) "affiliate of a declarant"

2 (A) means a person who controls, is controlled by, or
3 is under common control with a declarant;

4 (B) as used in this paragraph, a person "controls" a
5 declarant if the person

6 (i) is a general partner, officer, director, or
7 employer of the declarant;

8 (ii) directly or indirectly or acting in concert
9 with one or more other persons, or through one or more
10 subsidiaries, owns, controls, holds with power to vote, or
11 holds proxies representing more than 20 percent of the
12 voting interest in the declarant;

13 (iii) controls in any manner the election of a
14 majority of the directors of the declarant; or

15 (iv) has contributed more than 20 percent of the
16 capital of the declarant;

17 (C) as used in this paragraph, a person "is controlled
18 by" a declarant if the declarant

19 (i) is a general partner, officer, director, or
20 employer of the person;

21 (ii) directly or indirectly or acting in concert
22 with one or more other persons, or through one or more
23 subsidiaries, owns, controls, holds with power to vote, or
24 holds proxies representing, more than 20 percent of the
25 voting interest in the person;

26 (iii) controls in any manner the election of a
27 majority of the directors of the person; or

28 (iv) has contributed more than 20 percent of the
29 capital of the person;

1 (D) as used in this paragraph, "control" does not
2 exist if the powers described in this paragraph are held solely
3 as security for an obligation and are not exercised;

4 (2) "allocated interests" means the following interests
5 allocated to each unit:

6 (A) in a condominium, the undivided interest in the
7 common elements, the common expense liability, and votes in the
8 association;

9 (B) in a cooperative, the common expense liability and
10 the ownership interest and votes in the association; and

11 (C) in a planned community, the common expense liability
12 and votes in the association;

13 (3) "association" or "unit owners' association" means the
14 unit owners' association organized under AS 34.08.310;

15 (4) "common elements" means

16 (A) in a condominium or cooperative, each portion of
17 the common interest community other than a unit; and

18 (B) in a planned community, the real estate within a
19 planned community owned or leased by the association, other than
20 a unit;

21 (5) "common expenses" means expenditures made by, or finan-
22 cial liabilities of, the association, together with any allocations to
23 reserves;

24 (6) "common expense liability" means the liability for
25 common expenses allocated to each unit under AS 34.08.150;

26 (7) "common interest community" means real estate with
27 respect to which a person, by virtue of ownership of a unit, is obli-
28 gated to pay for real estate taxes, insurance premiums, maintenance,
29 or improvement of other real estate described in a declaration;

1 (8) "condominium" means a common interest community in
2 which

3 (A) portions of the real estate are designated for
4 separate ownership;

5 (B) the remainder of the real estate is designated for
6 common ownership solely by the owners of those portions; and

7 (C) the undivided interests in the common elements are
8 vested in the unit owners;

9 (9) "conversion property" means real estate that before
10 creation of the common interest community, was occupied wholly or
11 partially by persons other than purchasers and persons who occupy with
12 the consent of purchasers;

13 (10) "cooperative" means a common interest community in
14 which the real estate is owned by an association, each of whose mem-
15 bers is entitled by virtue of an ownership interest in the association
16 to exclusive possession of a unit;

17 (11) "dealer" means a person who owns either six or more
18 units in a common interest community or 50 percent or more of the
19 units in a common interest community;

20 (12) "declarant" means a person or a group of persons acting
21 in concert who

22 (A) as part of a common promotional plan, offers to
23 dispose of its interest in a unit not previously disposed of; or

24 (B) reserves or succeeds to a special declarant right;

25 (13) "declaration"

26 (A) means an instrument, however described, that
27 creates a common interest community; and

28 (B) includes amendments to a declaration;

29 (14) "development right" means a right or a combination of

- 1 rights reserved by a declarant in the declaration to
- 2 (A) add real estate to a common interest community;
- 3 (B) create units, common elements, or limited common
- 4 elements within a common interest community;
- 5 (C) subdivide units or convert units into common
- 6 elements; or
- 7 (D) withdraw real estate from a common interest commu-
- 8 nity;
- 9 (15) "dispose" or "disposition"
- 10 (A) means a voluntary transfer to a purchaser of any
- 11 legal or equitable interest in a unit;
- 12 (B) does not include the transfer or release of a
- 13 security interest;
- 14 (16) "executive board" means the body designated in the
- 15 declaration to act on behalf of the association;
- 16 (17) "identifying number" means a symbol or address that
- 17 identifies only one unit in a common interest community;
- 18 (18) "leasehold common interest community" means a common
- 19 interest community in which all or a portion of the real estate is
- 20 subject to a lease that, on its expiration or termination, will termi-
- 21 nate the common interest community or reduce its size;
- 22 (19) "limited common element" means the portion of the
- 23 common elements allocated for the exclusive use of one or more but
- 24 fewer than all of the units by the declaration or by operation of
- 25 AS 34.08.100(2) or (4);
- 26 (20) "master association" means an organization described in
- 27 AS 34.08.280 whether or not it is also an association described in
- 28 AS 34.08.310;
- 29 (21) "offering"

1 (A) means an advertisement, inducement, solicitation,
2 or attempt to encourage a person to acquire an interest in a
3 unit, other than as security for an obligation;

4 (B) does not include an advertisement in a newspaper
5 or other periodical of general circulation, or in any other
6 broadcast medium to the general public describing a common inter-
7 est community not located in the state if the advertisement
8 states that an offering may be made only in compliance with the
9 law of the jurisdiction in which the common interest community is
10 located;

11 (22) "ownership of a unit" does not include a leasehold
12 interest, including renewal options, of less than 40 years in a unit;

13 (23) "person" means

14 (A) an individual, corporation, business trust,
15 estate, trust, partnership, association, joint venture, govern-
16 ment, government subdivision or agency, or other legal or commer-
17 cial entity;

18 (B) in the case of a land trust, the beneficiary of
19 the land trust and not the land trust or its trustee;

20 (24) "planned community" means a common interest community
21 that is not a condominium or a cooperative although a condominium or
22 cooperative may be part of a planned community;

23 (25) "proprietary lease" means the agreement with the
24 association under which a member is entitled to exclusive possession
25 of a unit in a cooperative;

26 (26) "purchaser" means a person, other than a declarant or a
27 dealer, who by means of a voluntary transfer acquires a legal or
28 equitable interest in a unit other than

29 (A) a leasehold interest, including renewal options,

1 of less than 40 years; or

2 (B) as security for an obligation;

3 (27) "real estate"

4 (A) means a leasehold or other estate or interest in,
5 over, or under land, including structures, fixtures, and other
6 improvements and interests that by custom, usage, or law pass
7 with a conveyance of land though not described in the contract of
8 sale or instrument of conveyance;

9 (B) includes parcels with or without upper or lower
10 boundaries, and spaces that may be filled with air or water;

11 (28) "residential purposes" means use for dwelling or recre-
12 ational purposes, or both;

13 (29) "security interest"

14 (A) means an interest in real estate or personal
15 property, created by contract or conveyance, that secures payment
16 or performance of an obligation;

17 (B) includes a lien created by a mortgage, deed of
18 trust, trust deed, security deed, contract for deed, land sales
19 contract, lease intended as security, assignment of lease or
20 rents intended as security, pledge of an ownership interest in an
21 association, and any other consensual lien or title retention
22 contract intended as security for an obligation;

23 (30) "special declarant rights" means the right reserved for
24 the benefit of a declarant to

25 (A) complete improvements indicated on plats and plans
26 filed with the declaration or, in a cooperative, to complete
27 improvements described in the public offering statement pursuant
28 to AS 34.08.530(a)(2);

29 (B) exercise a development right;

1 (C) maintain sales offices, management offices, signs
2 advertising the common interest community, and models;

3 (D) use easements through the common elements for the
4 purpose of making improvements within the common interest commu-
5 nity or within real estate that may be added to the common inter-
6 est community;

7 (E) make the common interest community subject to a
8 master association;

9 (F) merge or consolidate a common interest community
10 with another common interest community of the same form of owner-
11 ship; or

12 (G) appoint or remove an officer of the association or
13 a master association or an executive board member during a period
14 of declarant control;

15 (31) "time share" means a right to occupy a unit or any of
16 several units during five or more separated time periods over a period
17 of at least five years, including renewal options, whether or not
18 coupled with an estate or interest in a common interest community or a
19 specified portion of a common interest community;

20 (32) "unit" means a physical portion of the common interest
21 community designated for separate ownership or occupancy, the bound-
22 aries of which are described under AS 34.08.130(a)(5);

23 (33) "unit owner"

24 (A) means

25 (i) a declarant;

26 (ii) a person who owns a unit;

27 (iii) a person who leases a unit in a leasehold
28 common interest community whose lease expires simultaneously
29 with any lease that on its expiration or termination will

1 remove the unit from the common interest community;
2 (B) does not include a person having an interest in a
3 unit solely as security for an obligation;
4 (C) includes
5 (i) in a condominium or planned community, the
6 declarant as the owner of any unit created by the declara-
7 tion;
8 (ii) in a cooperative, the declarant as the owner
9 of any unit to which allocated interests have been allocated
10 until that unit has been conveyed to another person.

11 Sec. 34.08.995. SHORT TITLE. This Act may be cited as the
12 Uniform Common Interest Ownership Act.

13 * Sec. 2. AS 34.35.071(f) is amended to read:

14 (f) After recording a common interest community [CONDOMINIUM]
15 declaration under AS 34.08 [AS PROVIDED IN AS 34.07.010 - 34.07.460
16 (HORIZONTAL PROPERTY REGIMES ACT)], an owner may record a notice of
17 completion under this section as to each unit [APARTMENT] after com-
18 pletion of the original construction of each unit of the common inter-
19 est community [CONDOMINIUM APARTMENT].

20 * Sec. 3. AS 34.35.119 is amended to read:

21 Sec. 34.35.119. WAIVER OF LIENS ON UNSOLD COMMON INTEREST COMMU-
22 NITY UNITS [CONDOMINIUM APARTMENTS]. (a) A lien [LIENS] created
23 under AS 34.35.050 - 34.35.120 arising out of original construction
24 that [WHICH] becomes subject to AS 34.07 or AS 34.08 [THE HORIZONTAL
25 PROPERTY REGIMES ACT (AS 34.07.010 - 34.07.460)] before the first sale
26 of a unit within a common interest community [ANY PORTION OF THE
27 PROPERTY] after commencement of construction shall be subject to the
28 provisions of this section.

29 (b) Subject to (c) of this section, a claimant who claims a lien

1 against an entire common interest community [THE ENTIRE BUILDING]
2 shall release that portion of the [HIS] lien claim that [WHICH] re-
3 lates to a particular unit within a common interest community [CONDO-
4 MINIMUM APARTMENT] selected by the owner of the unsold common interest
5 community units [CONDOMINIUM APARTMENTS] after the claimant receives a
6 partial payment of the [HIS] lien claim that [WHICH] is equal to 115
7 percent of the amount determined

8 (1) if the common interest community has been established
9 under AS 34.07 by [:]

10 (A) [(1)] dividing the surface area of the common
11 areas and facilities attendant to the common interest community
12 unit [CONDOMINIUM APARTMENT] by the surface area of all common
13 areas and facilities of the common interest community building;
14 and

15 (B) [(2)] multiplying the result obtained in (A)
16 [(1)] of this subsection by the total amount of the claimant's
17 lien claim;

18 (2) by the allocated interest in the common expenses if the
19 common interest community has been established under AS 34.08.

20 (c) A lien claimant is not required to waive a portion of the
21 [HIS] lien claim under this section unless the amount of indebtedness
22 secured by a prior encumbrance against the common interest community
23 building held by a construction lender is also reduced by an amount
24 calculated in the same manner as provided in (b) of this section.

25 * Sec. 4. This Act takes effect January 1, 1986.

CS SB 44 (Jud)
Sectional Analysis

This bill creates a new chapter to AS 34, entitled Common Interest Ownership Act, and contains comprehensive provisions designed to unify and modernize the law of common interest communities such as condominiums, cooperatives, planned unit developments, and time shares. Presently, only condominiums are regulated by state law under the Horizontal Property Regimes Act, AS 34.07, which was adopted in 1963. Not only is the Horizontal Property Regimes Act dated, it does not effectively address problems such as: creation, alteration and termination of common interest communities; management of the common interest community; protection of purchasers; warranties; unit boundaries; powers and duties of associations; and numerous other important matters which arise out of the creation, marketing and ownership of common interest property.

The Uniform Common Interest Ownership Act (UCIOA) was adopted at the 1982 Annual Meeting of the National Conference of Commissioners on Uniform State Laws. UCIOA represents the culmination of the Conference's 9 year effort to offer comprehensive legislation to the states which provides a common structural and regulatory scheme equally applicable to all three forms of common ownership. Nearly without exception, UCIOA achieves the goal of uniformity among all three forms of ownership by consolidating the Uniform Condominium Act, Uniform Planned Community Act and the Model Real Estate Cooperative Act.

ARTICLE I. APPLICABILITY

This chapter applies to all common interest communities created in Alaska after the effective date of this act (January 1, 1986). The Alaska Cooperative Corporation Act and the Horizontal Property Regimes Act do not apply to common interest communities created after January 1, 1986. Exclusively nonresidential common interest communities are only subject to Sections 34.08.720, 34.08.730 and 34.08.740 of this chapter, unless they elect to be subject to the entire chapter.

Exceptions exist to the general rule of applicability:

1. A common interest community created prior to the adoption of this chapter may elect, under AS 34.08.060, to have the provisions of this chapter apply. Except for preexisting small cooperatives and planned communities which are not subject to development rights, certain provisions under AS 34.08.040, apply automatically to events and circumstances occurring after the effective date of this act, but do not invalidate existing provisions of declarations, bylaws, or plats or plans.

Provisions that automatically apply include: separate titles and taxation, applicability of local ordinances, regulations and building codes, eminent domain, construction and validity of declaration and bylaws, description of units, merger or consolidation, powers of unit

owners' association, tort and contract liability, lien for assessments, association records, resales, effect of violation on rights of action, and definitions.

2. Small cooperatives (no more than 12 units) created after the effective date of this act, are subject only to the provisions regarding local ordinances, regulations and building codes and eminent domain, unless:

future development right are retained or financing through AHFC is utilized, or,

the cooperative's declaration makes the entire chapter applicable.

3. Small (no more than 12 units and not subject to any development rights or AHFC financing) and limited expense liability common interest communities (as measured by the size of its common expense assessments) created after the effective date of this act, are subject only to provisions relating to separate titles and taxation, local ordinances, regulation and building codes, and eminent domain, unless the declaration provides that the entire chapter applies.

ARTICLE II. CREATION, ALTERATION, AND TERMINATION OF COMMON INTEREST COMMUNITIES.

Sec. 34.08.090. CREATION OF COMMON INTEREST COMMUNITIES. Creation of common interest communities is accomplished by recording a declaration in each recording district in which a portion of the common interest community is located, and indexing in the grantee's and grantor's index. In cases of cooperatives, the declaration must also convey the real estate to the association. In cases of condominiums, substantial structural completion is also required before the condominium is created.

Sec. 34.08.100. UNIT BOUNDARIES. Except as may be provided in a declaration, unit boundaries for common elements and individual units are defined.

Sec. 34.08.110. CONSTRUCTION AND VALIDITY OF DECLARATION AND BYLAWS. Construction and validity of the declaration and bylaws are established. All provisions of the declaration and bylaws are severable. In the event of a conflict between the declaration and the bylaws, the declaration prevails, unless the declaration is inconsistent with this chapter. Title to a unit and common elements is not unmarketable or otherwise affected if the declaration insubstantially fails to comply with this chapter.

Sec. 34.08.120. DESCRIPTION OF UNITS. Sufficient legal description of a unit is detailed.

Sec. 34.08.130. CONTENTS OF DECLARATION. The required contents of a declaration are itemized under this section.

Sec. 34.08.140. LEASEHOLD COMMON INTEREST COMMUNITIES. This section sets out provisions and requirements concerning leasehold common interest communities. Leases which may result in terminating the common interest community or reducing its size, must be recorded. Lessors of those leases in condominiums or planned communities must sign the declaration. Required contents of the declaration are itemized. After the declaration for a leasehold condominium or planned community is recorded, the leasehold interest of a unit owner who timely pays rent and complies with relevant covenants may not be terminated. A unit owner's leasehold interest in a condominium or planned community is not affected by failure of any other person to pay rent or fulfill any other covenant.

The acquisition of the leasehold interest of a unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests, unless the leasehold interest of all unit owners subject to that reversion or remainder are acquired. If the number of units in a common interest community are decreased upon expiration or termination of a lease, the allocated interest must be reallocated and confirmed by an amendment to the declaration.

Sec. 34.08.150. ALLOCATION OF ALLOCATED INTERESTS. The required allocation of allocated interests of each unit (common elements, common expenses of the association, and votes in the association) for condominiums, cooperatives and planned communities are outlined and must be included in the declaration. Formulas used to establish or reallocate allocations of interest must be included in the declaration. The allocation of votes may be different depending upon the subject of the vote.

In a condominium, the common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void. In a cooperative, any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an ownership interest in the association made without the possessory interest in the unit to which that interest is related is void.

Sec. 34.08.160. LIMITED COMMON ELEMENTS. The declaration must specify to which unit or units each limited common element is allocated. An allocation may not be altered without the consent of the affected unit owners. Unless the declaration provides otherwise, a limited common element may be reallocated by an amendment to the declaration, copy to the association and proper recordation. A common element not previously allocated as a limited common element must be allocated according to the declaration. The allocations must be made by amendments to the declaration.

Sec. 34.08.170. PLATS AND PLANS. Plats and plans are a part of the declaration and are required for condominiums and planned communities, but not for cooperative. Items to be included in plats and plans are outlined.

Sec. 34.08.180. EXERCISE OF DEVELOPMENT RIGHTS. This section generally describes the method by which any development rights may be exercised. The development process may continue only within the self-determined constraints originally described by the declarant. Amendments with specific information to the declaration are required to be prepared, executed and recorded. Plats and plans or new certifications must be recorded for condominiums or planned communities.

If the declaration provides that all or a portion of the real estate is subject to a right of withdrawal the following limits apply:

if all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser; and

if any portion is subject to withdrawal, it may not be withdrawn after a unit in that portion has been conveyed to a purchaser.

Sec. 34.08.190. ALTERATIONS OF UNITS. Permissible alterations of the interior of a unit and impermissible alterations of the exterior of a unit and the common elements are detailed under this section. These rules may be varied by the declaration.

Sec. 34.08.200. RELOCATION OF BOUNDARIES BETWEEN ADJOINING UNITS. Subject to the provisions of the declaration and other provisions of law, boundaries between adjoining units may be altered by an amendment to the declaration upon application to the association by the owners of those units. Any reallocation of allocated interests must be specified in the application and determined reasonable by the executive board.

Sec. 34.08.210. SUBDIVISION OF UNITS. Unless subdivision of the units is expressly permitted by the original declaration, a unit may not be subdivided, unless the declaration is amended to permit it.

Sec. 34.08.220. EASEMENT FOR ENCROACHMENTS. If the physical boundaries of any unit or common element encroach on any other unit or common element, an easement exists. The easement does not effect liability that may exist.

Sec. 34.08.230. USE FOR SALES PURPOSES. This section prescribes the circumstances under which portions of the common interest community - either units or common elements - may be used for sales offices, management offices, or models. The declarant must describe the right to maintain such offices in the declaration. This section is subject to the provisions of other state law and to local ordinances.

Sec. 34.08.240. EASEMENT RIGHTS. This section grants to a declarant an easement across the common elements which may be reasonably necessary for the discharging of the declarant's obligations or exercising of special rights, and is subject to any restrictions in the declaration. This section also grants unit owners in a planned community an easement for access, support and enjoyment in the common elements, but these rights may be limited by the declaration.