

LEG. FINANCE - BILLS 1985 - 1986 2161

SB 44 cont.

2161

Sec. 34.08.250. AMENDMENT OF DECLARATION. This section recognizes that the declaration may be amended by various parties at various times in the life of the project. The basic rule is that the declaration, including the plats and plans, may only be amended by a vote of 67% of the unit owners.

The declaration may be amended by a declarant upon exercising any development right or by the association in cases of eminent domain, reallocations following the termination or expiration of a lease, common element reallocated as limited common elements, relocation of boundaries between adjoining units, or subdivision of units. Unit owners may amend a declaration in cases of reallocation of limited common elements, relocation of boundaries between units, subdivision of units, or termination of common interest community.

A declarant is not permitted to use any device, such as powers of attorney executed by purchasers at closing, to circumvent requirements of unanimous consent under subsection (d). Each amendment to the declaration must be properly prepared, executed, recorded, certified and indexed.

Sec. 34.08.260. TERMINATION OF COMMON INTEREST COMMUNITY.

As a general rule, 80% of the votes in the association is required for termination of a project. The declaration may require a larger percentage of the votes and in a nonresidential project a smaller percentage is permitted. A termination agreement is effective only upon recordation, and may provide that all of the common elements and units of the common interest community be sold. Until the sale has been concluded and the proceeds distributed in accordance with this section, the association continues in existence with all powers it had before termination.

Calculations and priorities for creditors which might result upon termination of a common interest community are outlined. This involves competing claims of first mortgage holders on individual units, other secured and unsecured creditors of individual unit owners, judgment creditors of the association, creditors of the association to whom a security interest in the common elements has been granted and unsecured creditors of the association. Different treatment for these interest is provided depending upon the type of common interest community involved.

Sec. 34.08.270. RIGHTS OF SECURED LENDERS. A lender's security may be dramatically affected by acts of the association. For that reason this section permits the declaration to provide that lenders ratify specified actions of the association. No requirement for approval may operate to:

1. prohibit control over the general administrative affairs of the association;
2. prevent the association or executive board from commencing, intervening in, or settling any litigation or proceeding; or,
3. prevent any insurance trustee or the association from receiving and distributing any insurance proceeds except as provided under

this chapter.

Sec. 34.08.280. MASTER ASSOCIATIONS. It is common in large or multiphased condominiums or planned communities for the declarant to create a master or umbrella association which provides management services or decision-making functions for a series of smaller projects. This section details the requirements of a master association. Generally, the powers of a unit owners' association may only be exercised by, or delegated to, a master association if the declaration for the common interest community permits that result. Provisions on notice, voting, quorums, records, meetings and other matters which apply to the unit owner's association would apply to a master association.

Sec. 34.08.290. MERGER OR CONSOLIDATION OF COMMON INTEREST COMMUNITIES. There may be circumstances where common interest communities may wish to merge or consolidate their activities by the creation of a single common interest community; this section provides for that possibility. A merger or consolidation agreement must be prepared, executed, recorded and certified, and must provide for the reallocations of the allocated interests in the new association.

Sec. 34.08.300. ADDITION OF UNSPECIFIED REAL ESTATE. This section was designed to allow developers the ability to add after-acquired parcels of real estate to planned communities. This power is available only if the declarant makes clear in the original declaration that this development right has been reserved. The declarant may impose his/her own time limit on the period during which this development right may be exercised. To foreclose the possibility of an increase in the density of the project beyond that which was originally contemplated, the number of units is limited to the amount specified in the original declaration and the amount of real estate added may not exceed 10% of the real estate originally subjected to the declaration.

#### ARTICLE III: MANAGEMENT OF THE COMMON INTEREST COMMUNITY.

Sec. 34.08.310. ORGANIZATION OF UNIT OWNERS' ASSOCIATION. A unit owners' association must be organized no later than the date the first unit in the common interest community is conveyed. The first purchaser of a unit is entitled to have in place the legal structure of the unit owners' association. The existence of the structure clarifies the relationship between the developer and other unit owners and makes it easy for the developer to involve unit owners in the governance of the common interest community even during a period of declarant control.

Sec. 34.08.320. POWERS OF UNIT OWNERS' ASSOCIATION. Subject to the provisions of the declaration, the powers of the association are enumerated under this section, and include, the right to: adopt and amend bylaws, rules, regulations, budgets; collect assessments; hire and discharge managing agents, employees, agents, contractor; institute, defend or intervene in litigation; make contracts and incur liabilities; regulate the common elements; acquire, hold, encumber and convey right, title or interest to real estate or personal property; grant easements, leases, licenses and concessions through or over the

common elements; and assign its right to future income. The declaration may extend the powers of the association.

Sec. 34.08.330. EXECUTIVE BOARD MEMBERS AND OFFICERS. Except as provided in the declaration, bylaws, or other provisions of this chapter, the executive board may act in all instances on behalf of the association and are liable as fiduciaries of the unit owners with respect to their actions or omissions as members of the board. A high standard of duty is imposed on the board members because they are vested with great powers over the property interests of unit owners. The duties and powers of the board members and officers are listed. Highlights include:

adoption of proposed budgets and presentation to the unit owners for ratification;

termination of declarant control no later than the earlier of:  
60 days after conveyance of 75% of the units,  
2 years after all declarants have ceased to offer units for sale, or  
2 years after any right to add new units was last exercised.

Sec. 34.08.340. TRANSFER OF ASSOCIATION CONTROL. Before, and not more than 60 days after the termination of declarant's control, the declarant shall relinquish control of the common interest community and the unit owners shall accept control. At this time the declarant must deliver to the community all property of the unit owners and the common interest community held or controlled by the declarant. A list of items that must be transferred is provided. The records must be reviewed by an independent certified public accountant. Before the transfer an inspection of the common areas and limited common areas must be completed by a certified architect or engineer. The transfer of control to the association shall be based upon the declarant's obligation to complete all repairs and finish all incomplete work within a reasonable time after transfer.

Sec. 34.08.350. TRANSFER OF SPECIAL DECLARANT RIGHTS. This section deals with the manner in which obligations and liabilities imposed upon a declarant by this chapter are transferred to a third party by a transfer of the declarant's interest in a common interest community. This section strikes a balance between the obvious need to protect the interests of unit owners and the equally important need to protect innocent successors to the declarant's rights, especially persons such as mortgagees. The general scheme of the section is to impose upon a declarant continuing obligations and liabilities for promises, acts, or omissions undertaken during the period that he/she was in control of the community, while relieving a declarant, who transfers all or part of his/her special declarant rights in a project, of the responsibilities of a successor over whom he/she has no control.

Sec. 34.08.360. TERMINATION OF CONTRACTS AND LEASES OF DECLARANT. This section deals with a common problem in the development of common interest community projects: the temptation on the part of the developer, while in control of the association, to enter into, on behalf

of the association, long-term contracts and leases with himself/herself or with an affiliated entity. Management and employment contracts, leases of recreational or parking areas or facilities; other contracts or lease between the association and a declarant or an affiliate of a declarant; or any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the existing circumstances may be terminated.

Sec. 34.08.370. BYLAWS. The bylaws of an association must provide: for the number of members of the executive board, and titles of the officers of the association; for the election of the officers of the association; for the qualifications, powers, and duties, terms of office and manner of electing and removing executive board member and officers and filling vacancies; which, if any, of its powers the executive board or officers may delegate; which of its officers may prepare, execute, certify and record amendments to the declaration; for a method of amending the bylaw; and other matters allowable under the declaration.

Sec. 34.08.380. UPKEEP OF COMMON INTEREST COMMUNITY. In the absence of any provision in the declaration, maintenance responsibility follows ownership of the unit or rests with the association in the case of common elements. Limited common elements are treated as common elements, unless the declaration provides otherwise.

Sec. 34.08.390. MEETINGS. A meeting of the association must be held at least once each year. Other special meetings may be held. Notice of meetings must be given to all unit owners and must state the items on the agenda.

Sec. 34.08.400. QUORUMS. Unless the bylaws provide otherwise, a quorum is present throughout a meeting if persons entitled to cast 20% of the votes for election of the board are present in person or by proxy at the beginning of the meeting. Unless the bylaws specify a larger percentage, a quorum is considered present throughout a meeting of the board if persons entitled to cast 50% of the votes on the board are present at the beginning of the meeting.

Sec. 34.08.410. VOTING AND PROXIES. Votes allocated to a unit may be cast under a proxy duly executed by a unit owner. Other provisions regarding proxies are included. Provisions for lessee voting is included. Votes allocated to a unit owned by the association may not be cast.

Sec. 34.08.420. TORT AND CONTRACT LIABILITY. This section provides that any action in tort or contract arising out of acts or omissions of the association shall be brought against the association and not against the individual unit owners. The association or any unit owner has a right of action against the declarant for any losses suffered as a result of an action based upon a tort or breach of contract arising during any period of declarant control.

Sec. 34.08.430. CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS. A condominium or planned community association may sell or encumber

portions of the common elements and a cooperative association may sell part, or encumber all of the cooperative.

Sec. 34.08.440. INSURANCE. The association shall maintain, to the extent reasonably available, property and liability insurance on the common elements. Association insurance on "stacked" units is required.

Sec. 34.08.450. SURPLUS FUNDS. Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of common expenses and reserves must be paid or credited to the unit owners proportionately.

Sec. 34.08.460. ASSESSMENTS FOR COMMON EXPENSES. Assessments must be made at least annually, and based on a budget adopted at least annually by the association. Assessment rules are provided. Any common expense caused by the misconduct of any unit owner may be assessed by the association against that unit exclusively.

Sec. 34.08.470. LIEN FOR ASSESSMENTS. To ensure prompt and efficient enforcement of the association's lien for unpaid assessments, such liens enjoy statutory priority over all other liens and encumbrances except those recorded prior to the recordation of the declaration, those imposed for real estate taxes or other governmental assessments or charges against the unit, and first security interests recorded before the date the assessment became delinquent. As to first security interest the association's lien does have priority for 6 months' assessments based on the periodic budget. A significant departure from existing practice, the 6 months' priority for the assessment lien strikes an equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the security interests of lenders. If the lender wishes, an escrow for assessments can be required. Other foreclosure provisions are included.

Sec. 34.08.480. OTHER LIENS. Provisions are included for other liens with special procedures and requirements for condominiums, planned communities and cooperatives.

Sec. 34.08.490. ASSOCIATION RECORDS. The association shall keep sufficiently detailed financial records and these must be available for reasonable examination. Association records in the possession of managers, agents, accountants, or any other person under contract with the association, must be returned to the association within 5 days of the termination of such contract.

Sec. 34.08.500. ASSOCIATION AS TRUSTEE. This section outlines the relationship between third persons dealing with the association.

#### ARTICLE IV: PROTECTION OF PURCHASERS

Sec. 34.08.510. APPLICABILITY. This section permits waiver or modification of Article IV protections in common interest communities where all units are restricted to nonresidential use. Public offering statements and resale certificates are not required on:

gratuitous disposition of a unit;

disposition pursuant to court order;

disposition by a government or governmental agency;

disposition by foreclosure;

disposition to a dealer;

disposition that may be canceled at any time and for any reason by the purchaser without penalty; or,

disposition of a unit in a planned community if the declaration limits the maximum annual assessment of any unit to \$300 and if the declarant has a good faith belief that the stated maximum will be sufficient to pay the expenses of the association.

Sec. 34.08.520 LIABILITY FOR PUBLIC OFFERING STATEMENT REQUIREMENTS. This section permits declarant to transfer responsibility for preparation of a public offering statement to successor declarants or dealers, provided the declarant furnishes the information needed by the successor or dealer to complete the statement. The person who prepares the public offering statement is liable for his/her own misrepresentations and material omissions. A person who delivers a public offering statement prepared by others is responsible for any such deficiencies only to the extent he knows or reasonably should have known of them.

Sec. 34.08.530. PUBLIC OFFERING STATEMENTS GENERALLY. This section protects the purchaser by giving him/her an opportunity to understand the nature of the unit which is being purchased. A lengthy list of information must be provided to each purchaser before a contract is signed.

Sec. 34.08.540. COMMON INTEREST COMMUNITIES SUBJECT TO DEVELOPMENT RIGHTS. This section requires disclosure in the public offering statement of the manner in which the declarant's exercise of development rights may affect purchasers who acquire units before those rights have been full exercised. The purpose is to put the purchaser on notice.

Sec. 34.08.550. TIME SHARES. This section requires additional disclosure in the public offering statement for ownership or occupancy of any units in time shares.

Sec. 34.08.560. COMMON INTEREST COMMUNITIES CONTAINING CONVERSION PROPERTY. In the case of common interest community containing conversion property, the disclosure of additional information relating to the condition of this property is required in the public offering statement. This is because of the difficulty inherent in a single purchaser attempting to determine the condition of what is likely to be older property being renovated for the purpose of common interest community sales.

Sec. 34.08.570. COMMON INTEREST COMMUNITY SECURITIES. The purpose of this section is to permit the declarant to file or deliver, in lieu of a

public offering statement specifically prepared to comply with the provision of this chapter, the prospectus filed with and distributed pursuant to the regulation of the U. S. Securities and Exchange Commission. A security interest in a common interest community is not subject to the registration requirements of AS 45.55.

Sec. 34.08.580. PURCHASER'S RIGHT TO CANCEL. This section provides a "cooling off" period for purchasers. Purchasers must be given a public offering statement and all amendments prior to the time that the unit is conveyed. If there is a contract for the sale of the unit, these documents must be provided not later than the date of the contract. Any amendments to the public offering statement prepared between the date of any contract and the date of conveyance must be provided to the purchaser. Unless the purchaser is given the public offering statement more than 15 days before execution of a contract, the purchaser may cancel the contract within 15 days after first receiving it.

Sec. 34.08.590. RESALE OF UNITS. In the case of resale of a unit by a private unit owner who is not a declarant or a person in the business of selling real estate, a public offering statement need not be provided. However, before the execution of any contract of sale, a copy of the declaration, bylaws, and rules and regulation of the association and a variety of fiscal, insurance and other information concerning the common interest community and the unit must be provided.

Sec. 34.08.600. ESCROW OF DEPOSITS. This section applies to the sale by persons required to furnish public offering statements of residential units and of nonresidential units unless waived. It does not apply to resales of units between private parties.

Sec. 34.08.610. RELEASE OF LIENS. In the case of a sale of a unit where a delivery of a public offering statement is required, a seller, before conveying a unit, shall record or furnish to the purchaser releases of all liens. Exceptions are provided for real estate that a declarant has a right to withdraw from the common interest community.

Sec. 34.08.620. CONVERSION PROPERTY. This section is an attempt to strike a fair balance between the competing interests of rental tenants and prospective owners. When a declarant decides to convert a property to common interest ownership, 180 days notice of the conversion with a public offering statement must be given to the residential tenants and subtenants. If the conversion property consists of a mobile home park notice of the conversion and delivery of the public offering statement must be provided no later than one year before the tenant and any subtenant in possession is required to vacate. If the building or mobile home park will be converted to residential use, the tenants must also be given a opportunity to purchase their units. The declarant is not required to offer residential tenants the right to purchase commercial units or to offer to sell to the tenants if the dimensions of their previous apartment have been substantially altered.

Sec. 34.08.630. EXPRESS WARRANTIES OF QUALITY. Expectations of the purchaser created by the particular conduct (facts, promises, rights, models, descriptions, etc.) of the declarant in connection with the inducement of the sale create express warranties of quality. This is

based on the principle that once it is established that the declarant has acted to create particular expectations in the purchaser, warranty should be found unless it is clear that, prior to the time of final agreement, the declarant has negated the conduct which created the expectation. Statement of mere opinion or commendation of the real estate or its value does not create a warranty.

Sec. 34.08.640. IMPLIED WARRANTIES OF QUALITY. The principal warranty imposed under this section is that of suitability of both the unit and common elements for ordinary uses of real estate of similar type, and of quality of construction. Both of these warranties are imposed only against declarants and dealers and not against unit owners selling their units to others.

Sec. 34.08.650. EXCLUSION OR MODIFICATION OF IMPLIED WARRANTIES OF QUALITY. Under this section implied warranties of quality may be disclaimed, however, the disclaimer to each defect or failure must be in a signed instrument. This is designed to insure that the declarant sufficiently calls each defect or failure to the purchaser's attention and that the purchaser has the opportunity to consider the effect of the particular defect or failure upon the bargain.

Sec. 34.08.660. STATUTE OF LIMITATIONS FOR WARRANTIES. Unless otherwise agreed to in a separate instrument executed by the purchaser, breach of any warranty obligations must be brought within 6 years after the cause of action arises.

Sec. 34.08.670. EFFECT OF VIOLATIONS ON RIGHTS OF ACTION. This section provides a general cause of action or claim for relief for failure to comply with this chapter by either a declarant or any other person subject to the chapter's provisions.

Sec. 34.08.680. LABELING OF PROMOTIONAL MATERIAL. This section requires the labeling of improvements depicted on promotional material to assure that purchasers are not deceived about improvements the declarant intends to make.

Sec. 34.08.690. DECLARANT'S OBLIGATION TO COMPLETE AND RESTORE. Except for improvements labeled "NEED NOT BE BUILT", the declarant must complete all improvements depicted on plans, representations, and promotional materials. The declarant is also liable for prompt repair and restoration of the common interest community following the exercise of any rights reserved or created to exercise a development right, alter units, relocate boundaries, subdivide, use units or common elements for sales purposes or exercise of easement rights.

Sec. 34.08.700. SUBSTANTIAL COMPLETION OF UNITS. The purpose of this section is to assure that the declarant is not able to obtain use of the purchaser's money until the purchaser is able to get a completed unit.

#### ARTICLE V. GENERAL PROVISIONS.

Sec. 34.08.710. VARIATION BY AGREEMENT. This chapter is generally designed to provide great flexibility in the creation of common interest

Sec. 34.08.820. ADJUSTMENT OF DOLLAR AMOUNTS. Calculation are outlined for adjustment of dollar amounts discussed in other sections.

Sec. 34.08.830. TRANSFER OF A UNIT IN A COOPERATIVE. If a unit in a cooperative is transferred by the unit owner the interest in the unit that is transferred is the right to possession of the unit under a proprietary lease coupled with the allocated interest of the unit. The association's interest in the unit is not affected by the transfer.

Sec. 34.08.990. DEFINITIONS.

Sections 2 and 3 make necessary revisions to other sections of Title 34.

NOTE: Under the proposed committee substitute, the Horizontal Property Regimes Act is not repealed. This is due to the fact that condominiums now in existence were formed under the old act and will continue to be regulated in part under that law. Unless existing declarations are amended to provide regulation under the Common Interest Ownership Act, only future occurrences or actions after the effective date of this chapter are governed by this new chapter.

Section 5 makes this act effect January 1, 1986.

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

1/14/85

Date 4-4-85

Mr. President

The Committee on JUDICIARY considered SB 44 relating to the Uniform Common Interest Ownership Act; efd.

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

- [ ] do pass
[ ] do pass with attached amendment(s)
[X] replace with/or adopt CS for SB 44 (Judiciary)
[ ] new title
[ ] same title and recommends
[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE
[ ] reports it back without recommendation
[ ] recommends referral to Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS

Handwritten signatures: Tom Kelly, Jan Ficker, Rick Holford

Blank lines for other recommendations

1 / Tom Kelly - Acting Vice-Chairman

Do Pass Chairman recommendation

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

BY HALFORD, FAIKS,  
STURGULEWSKI AND  
KERTTULA

1 IN THE SENATE

2 SENATE BILL NO. 44

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

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

10 CHAPTER 8. COMMON INTEREST OWNERSHIP.

11 ARTICLE I. APPLICABILITY.

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

18 Sec. 34.08.020. APPLICABILITY TO SMALL COOPERATIVES. If a  
19 cooperative contains only units restricted to nonresidential use or  
20 contains no more than 12 units and is not subject to any development  
21 rights, or if it is then subject to financing from the Alaska Housing  
22 Finance Corporation it is subject only to AS 34.08.850 and 34.08.860  
23 unless the declaration provides that the entire chapter is applicable.

24 Sec. 34.08.030. APPLICABILITY TO SMALL AND LIMITED EXPENSE  
25 LIABILITY PLANNED COMMUNITIES. If a planned community contains no  
26 more than 12 units and is not subject to any development rights or if  
27 it is then subject to financing from the Alaska Housing Finance Corpo-  
28 ration or provides, in its declaration, that the annual average common

1 expense liability of all units restricted to residential purposes,  
2 exclusive of optional user fees and any insurance premiums paid by the  
3 association, may not exceed \$100, as adjusted under AS 34.08.820, the  
4 planned community is subject only to AS 34.08.710, 34.08.730, and  
5 34.08.740, unless the declaration provides that the entire chapter is  
6 applicable.

7 Sec. 34.08.040. APPLICABILITY TO PREEXISTING COMMON INTEREST  
8 COMMUNITIES. Except as provided in AS 34.08.050, the provisions of  
9 AS 34.08.110, 34.08.120, 34.08.290, 34.08.320(1) - (6) and (11) -  
10 (16), 34.08.420, 34.08.470, 34.08.490, 34.08.590, 34.08.670, 34.08.-  
11 720, 34.08.730, 34.08.740, and 34.08.990, to the extent necessary in  
12 construing any of those sections, apply to all common interest commu-  
13 nities created in the state before the effective date of this Act  
14 except that the sections apply only with respect to events and circum-  
15 stances occurring after the effective date of this Act and do not  
16 invalidate existing provisions of the declaration, bylaws, or plats or  
17 plans of the common interest communities.

18 Sec. 34.08.050. APPLICABILITY TO SMALL PREEXISTING COOPERATIVES  
19 AND PLANNED COMMUNITIES. If a cooperative or planned community cre-  
20 ated within the state before the effective date of this Act contains  
21 no more than 12 units and is not subject to any development rights, it  
22 is subject only to AS 34.08.720, 34.08.730, and 34.08.740, unless the  
23 declaration is amended in conformity with law and with the procedures  
24 and requirements of the declaration to take advantage of the pro-  
25 visions of AS 34.08.060, in which case all the sections enumerated in  
26 AS 34.08.040 apply to the cooperative or planned community.

27 Sec. 34.08.060. AMENDMENTS TO GOVERNING INSTRUMENTS. (a) In  
28 amendments to the declaration, bylaws, or plats and plans of a common  
29 interest community created before the effective date of this Act:

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

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

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

15 Sec. 34.08.070. APPLICABILITY TO NONRESIDENTIAL PLANNED COMMUNI-  
16 TIES. (a) This chapter does not apply to a planned community in  
17 which each unit is restricted exclusively to nonresidential use unless  
18 the declaration provides that the chapter does apply to the planned  
19 community.

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

27 Sec. 34.08.080. APPLICABILITY TO OUT-OF-STATE COMMON INTEREST  
28 COMMUNITIES. This chapter does not apply to a common interest commu-  
29 nity or unit located outside the state, but AS 34.08.520 - 34.08.580

1 apply to a contract for the disposition of a common interest community  
2 or unit that is signed in the state by a party unless the disposition  
3 is exempt under AS 34.08.510(b).

4 ARTICLE 2. CREATION, ALTERATION, AND TERMINATION OF  
5 COMMON INTEREST COMMUNITIES.

6 Sec. 34.08.090. CREATION OF COMMON INTEREST COMMUNITIES. (a) A  
7 common interest community may be created under this chapter only by  
8 recording a declaration executed in the same manner as a deed and, in  
9 a cooperative, by conveying the real estate subject to the declaration  
10 to the association. The declaration must be recorded in each record-  
11 ing district in which a portion of the common interest community is  
12 located and must be indexed in the grantee's index in the name of the  
13 common interest community and the association and in the grantor's  
14 index in the name of each person executing the declaration.

15 (b) In a condominium, a declaration or an amendment to a decla-  
16 ration that adds a unit may not be recorded unless the structural  
17 components and mechanical systems of each building containing or  
18 comprising a unit of the condominium is completed substantially in  
19 accordance with the plans, as evidenced by a certificate of completion  
20 executed by an independent registered engineer, surveyor, or architect  
21 recorded with the declaration or amendment to the declaration.

22 Sec. 34.08.100. UNIT BOUNDARIES. Except as provided by the  
23 declaration

24 (1) if walls, floors, or ceilings are designated as bound-  
25 aries of a unit, the lath, furring, wallboard, plasterboard, plaster,  
26 paneling, tiles, wallpaper, paint, finished flooring, and other mate-  
27 rials constituting a part of the finished surfaces of the walls,  
28 floors, or ceiling are a part of the unit, and all other portions of  
29 the walls, floors, or ceilings are a part of the common elements;

1 (2) if a chute, flue, duct, wire, conduit, bearing wall,  
2 bearing column, or other fixture lies partially within and partially  
3 outside the designated boundaries of a unit, the portion serving only  
4 the unit is a limited common element allocated solely to the unit, and  
5 any portion serving more than one unit or a portion of the common  
6 elements is a part of the common elements;

7 (3) subject to (2) of this section, spaces, interior parti-  
8 tions, and other fixtures and improvements within the boundaries of a  
9 unit are a part of the unit;

10 (4) any shutters, awnings, window boxes, doorsteps, stoops,  
11 porches, decks, balconies, patios, and each exterior door and window  
12 or other fixture designed to serve a single unit that is located  
13 outside the boundaries of the unit, are limited common elements allo-  
14 cated exclusively to the unit.

15 Sec. 34.08.110. CONSTRUCTION AND VALIDITY OF DECLARATION AND  
16 BYLAWS. (a) Each provision of the declaration and bylaws is sever-  
17 able.

18 (b) The rule against perpetuities does not defeat any provision  
19 of the declaration, bylaws, rules, or regulations adopted under AS 34.  
20 08.320(a)(1).

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

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

28 Sec. 34.08.120. DESCRIPTION OF UNITS. A description of a unit  
29 that sets out the name of the common interest community, the recording

1 data for the declaration, the recording district in which the common  
2 interest community is located, and the identifying number of the unit,  
3 is a legally sufficient description of the unit and all rights, obli-  
4 gations, and interests appurtenant to the unit that were created by  
5 the declaration or bylaws.

6 Sec. 34.08.130. CONTENTS OF DECLARATION. (a) The declaration  
7 must contain:

8 (1) the names of the common interest community and the  
9 association and a statement that the common interest community is  
10 either a condominium, cooperative, or planned community;

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

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

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

17 (5) in a condominium or planned community, a description of  
18 the boundaries of each unit created by the declaration, including the  
19 identifying number of the unit, or in a cooperative, a description,  
20 which may be by plats or plans, of each unit created by the declara-  
21 tion, including the identifying number of the unit, its size or number  
22 of rooms, and its location within a building if it is within a build-  
23 ing containing more than one unit;

24 (6) a description of any limited common elements, other  
25 than those specified in AS 34.08.100(2) and (4) or 34.08.170(b)(10)  
26 and, in a planned community, any real estate that is or must become  
27 common elements;

28 (7) a description of any real estate, except real estate  
29 subject to development rights, that may be allocated subsequently as

1 limited common elements, other than limited common elements specified  
2 in AS 34.08.100(2) and (4), together with a statement that the design-  
3 nated real estate may be allocated;

4 (8) a description of any development rights or other special  
5 declarant rights reserved by the declarant, together with a  
6 legally sufficient description of the real estate to which each of the  
7 rights applies, and a time limit within which each of the rights must  
8 be exercised;

9 (9) if a development right may be exercised with respect to  
10 different parcels of real estate at different times, a statement to  
11 that effect together with

12 (A) either a statement fixing the boundaries of the  
13 portions and regulating the order in which the portions may be  
14 subjected to the exercise of each development right or a state-  
15 ment that assurances are not made with regard to matters under  
16 this paragraph; and

17 (B) a statement as to whether, if a development right  
18 is exercised in a portion of the real estate subject to the  
19 development right, the development right must be exercised in all  
20 or in any other portion of the remainder of that real estate;

21 (10) any other condition or limitation under which he  
22 rights described in (8) of this subsection may be exercised or will  
23 lapse;

24 (11) an allocation to each unit of the allocated interests  
25 in the manner described in AS 34.08.150;

26 (12) any restrictions

27 (A) on use, occupancy, and alienation of the units;

28 and

29 (B) on the amount for which a unit may be sold or on

1 the amount that may be received by a unit owner on sale, condem-  
2 nation, or casualty loss to the unit or to the common interest  
3 community, or on termination of the common interest community;

4 (13) the recording data for recorded easements and licenses  
5 appurtenant to or included in the common interest community or to  
6 which any portion of the common interest community is or may become  
7 subject by virtue of a reservation in the declaration; and

8 (14) each matter required by AS 34.08.140, 34.08.150, 34.-  
9 08.160, 34.08.170, 34.08.230, 34.08.240 and 34.08.330(d).

10 (b) A declaration may contain other matters the declarant con-  
11 siders appropriate.

12 Sec. 34.08.140. LEASEHOLD COMMON INTEREST COMMUNITIES. (a) If  
13 the expiration or termination of a lease or a memorandum of the lease  
14 will terminate the common interest community or reduce its size, the  
15 lease or a memorandum of the lease must be recorded. In a condominium  
16 or planned community, the lessor of each lease described in this  
17 subsection shall sign the declaration. The declaration must state:

18 (1) the recording data for the lease or a summary of the  
19 complete lease;

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

21 (3) a legally sufficient description of the real estate  
22 subject to the lease;

23 (4) any right of the unit owners to redeem the reversion  
24 and the manner in which the rights may be exercised, or a statement  
25 that the unit owners do not have a right to redeem the reversion;

26 (5) any right of the unit owners to remove any improvements  
27 within a reasonable time after the expiration or termination of the  
28 lease, or a statement that the unit owners do not have the right to  
29 remove improvements after the expiration or termination of the lease;

1 and

2 (6) any right of the unit owners to renew the lease and the  
3 conditions of the renewal, or a statement that the unit owners do not  
4 have the right to renew the lease.

5 (b) After the declaration for a leasehold condominium or lease-  
6 hold planned community is recorded, neither the lessor nor the succes-  
7 sor in interest of the lessor may terminate the leasehold interest of  
8 a unit owner who makes timely payment of a unit owner's share of the  
9 rent and otherwise complies with the covenants that, if violated,  
10 would entitle the lessor to terminate the lease. The leasehold inter-  
11 est of a unit owner in a condominium or planned community is not af-  
12 fected by the failure of any other person to pay rent or fulfill a  
13 covenant.

14 (c) The acquisition of the leasehold interest of a unit owner by  
15 the owner of the reversion or remainder does not merge the leasehold  
16 and fee simple interests unless the leasehold interests of all unit  
17 owners subject to that reversion or remainder are acquired.

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

24 Sec. 34.08.150. ALLOCATION OF ALLOCATED INTERESTS. (a) The  
25 declaration must allocate

26 (1) to each unit in a condominium, a fraction or percentage  
27 of undivided interests in the common elements and in the common ex-  
28 penses of the association and a portion of the votes in the associa-  
29 tion;

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

4           (3) to each unit in a planned community, a fraction or  
5 percentage of the common expenses of the association and a portion of  
6 the votes in the association.

7           (b) The declaration must state the formulas used to establish  
8 allocations of interests. The allocations may not discriminate in  
9 favor of units owned by the declarant or an affiliate of the decla-  
10 rant.

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

15           (d) The declaration may provide: (1) that different alloca-  
16 tions of votes shall be made to the units on particular matters speci-  
17 fied in the declaration; (2) for cumulative voting only for the pur-  
18 pose of electing members of the executive board; and (3) for class  
19 voting on specified issues affecting the class if necessary to protect  
20 valid interests of the class. A declarant may not utilize cumulative  
21 or class voting for the purpose of evading any limitation imposed on  
22 declarants by this chapter nor may units constitute a class because  
23 they are owned by a declarant.

24           (e) Except for minor variations due to rounding, the sum of the  
25 common expense liabilities and, in a condominium, the sum of the  
26 undivided interests in the common elements allocated at any time to  
27 all the units must each equal one if stated as a fraction or 100  
28 percent if stated as a percentage. In the event of discrepancy be-  
29 tween an allocated interest and the result derived from application of

1 the pertinent formula, the allocated interest prevails.

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

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

11 Sec. 34 08.160. LIMITED COMMON ELEMENTS. (a) Except for the  
12 limited common elements described in AS 34.08.100(2) and (4), the  
13 declaration must specify to which unit or units each limited common  
14 element is allocated. An allocation may not be altered without the  
15 consent of the unit owners whose units are affected.

16 (b) Except as the declaration otherwise provides, a limited  
17 common element may be reallocated by an amendment to the declaration  
18 executed by the unit owners between or among whose units the realloca-  
19 tion is made. The persons executing the amendment shall provide a  
20 copy of the amendment to the association, which shall record it. The  
21 amendment must be recorded in the names of the parties and the common  
22 interest community.

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

27 Sec. 34.08.170. PLATS AND PLANS. (a) Plats and plans are a  
28 part of the declaration and are required for all common interest  
29 communities except cooperatives. Separate plats and plans are not

1 required by this chapter if the information required by this section  
2 is contained in either a plat or plan. Each plat and plan must be  
3 clear and legible and contain a certification that the plat or plan  
4 contains the information required by this section.

5 (b) Each plat must show:

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

8 (2) the location and dimensions of the real estate not  
9 subject to development rights or subject only to the development right  
10 to withdraw, and the location and dimensions of each existing improve-  
11 ment within the real estate;

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

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

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

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

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

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

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

3 (10) the location and dimensions of limited common elements,  
4 including porches, decks, balconies and patios, other than parking  
5 spaces and the other limited common elements described in AS 34.08.-  
6 100(2) and (4);

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

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

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

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

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

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

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

26 (f) Upon the exercise of any development right, the declarant  
27 shall either record new plats and plans necessary to conform to the  
28 requirements of (a), (b), and (d) of this section, or record new  
29 certifications of plats and plans previously recorded if the plats and

1 plans otherwise conform to the requirements of (a), (b), and (d) of  
2 this section.

3 (g) Any certification of a plat or plan required by this section  
4 or AS 34.08.090(b) must be made by an independent registered surveyor,  
5 architect, or engineer.

6 Sec. 34.08.180. EXERCISE OF DEVELOPMENT RIGHTS. (a) To exer-  
7 cise a development right reserved under AS 34.08.130(a)(8), a decla-  
8 rant shall prepare, execute, and record an amendment to the declara-  
9 tion and, in a condominium or planned community, comply with AS 34.-  
10 08.170. The declarant is the unit owner of the units created under  
11 the amendment. The amendment to the declaration must assign an iden-  
12 tifying number to each new unit created, and, except in the case of  
13 subdivision or conversion of units described in (b) of this section,  
14 reallocate the allocated interests among all units. The amendment  
15 must describe any common elements and any limited common elements  
16 created under the amendment and, in the case of limited common ele-  
17 ments, designate the unit to which each is allocated to the extent  
18 required by AS 34.08.160.

19 (b) A development right may be reserved within any real estate  
20 added to the common interest community if the amendment adding the  
21 real estate includes the matters required by AS 34.08.130 or 34.08.-  
22 140, and, in a condominium or planned community, if the plats and  
23 plans include the matters required by AS 34.08.170. This provision  
24 does not extend the time limit on the exercise of development rights  
25 imposed by the declaration under AS 34.08.130(a)(8).

26 (c) Whenever a declarant exercises a development right to subdi-  
27 vide or convert a unit previously created into additional units,  
28 common elements, or both:

29 (1) if the declarant converts the unit entirely to common

1 elements, the amendment to the declaration must reallocate all the  
2 allocated interests of the unit among the other units as if that unit  
3 had been taken by eminent domain; and

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

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

12 (1) if all of the real estate is subject to withdrawal and  
13 the declaration does not describe separate portions of real estate  
14 subject to the right, none of the real estate may be withdrawn after a  
15 unit has been conveyed to a purchaser; and

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

19 Sec. 34.08.190. ALTERATIONS OF UNITS. Subject to the provisions  
20 of the declaration and other provisions of law, a unit owner (1) may  
21 make an improvement or alteration to the unit that does not impair the  
22 structural integrity or mechanical systems or lessen the support of a  
23 portion of the common interest community; (2) may not change the  
24 appearance of the common elements or the exterior appearance of a unit  
25 or any portion of the common interest community without permission of  
26 the association; (3) after acquiring an adjoining unit or an  
27 adjoining part of an adjoining unit, may remove or alter an  
28 intervening partition or create apertures in the partition even if the  
29 partition in whole or in part is a common element, if the removal or

1 alteration does not impair the structural integrity or mechanical  
2 systems or lessen the support of a portion of the common interest  
3 community and is completed according to applicable codes and in a  
4 workmanlike manner. Removal of partitions or creation of apertures  
5 under this paragraph is not an alteration of boundaries.

6 Sec. 34.08.200. RELOCATION OF BOUNDARIES BETWEEN ADJOINING  
7 UNITS. (a) Subject to the provisions of the declaration and other  
8 provisions of law, the boundaries between adjoining units may be  
9 relocated by an amendment to the declaration upon application to the  
10 association by the owners of the units. If the owners of the ad-  
11 joining units have specified a reallocation between their units of  
12 their allocated interests, the application must state the proposed  
13 reallocations. Unless the executive board determines within 30 days  
14 that the reallocations are unreasonable, the association shall prepare  
15 an amendment that identifies the units involved and states the reallo-  
16 cations. The amendment must be executed by those unit owners, contain  
17 words of conveyance between them, and, on recording, be indexed in the  
18 name of the grantor, the grantee, and the association.

19 (b) The association

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

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

27 Sec. 34.08.210. SUBDIVISION OF UNITS. (a) If the declaration  
28 expressly permits it, a unit may be subdivided into two or more units.  
29 Upon application of a unit owner to subdivide a unit, the association

1 shall, subject to the provisions of the declaration and other pro-  
2 visions of law, prepare, execute, and record an amendment to the  
3 declaration, including in a condominium or planned community the plats  
4 and plans, subdividing the unit.

5 (b) The amendment to the declaration must be executed by the  
6 owner of the unit to be subdivided, assign an identifying number to  
7 each unit created, and reallocate the allocated interests formerly  
8 allocated to the subdivided unit to the new units in any reasonable  
9 manner prescribed by the owner of the subdivided unit.

10 Sec. 34.08.220. EASEMENT FOR ENCROACHMENTS. If a unit or common  
11 element encroaches on another unit or common element, a valid easement  
12 for the encroachment exists. The easement does not relieve a unit  
13 owner of liability in case of wilful misconduct nor relieve a declar-  
14 ant or any other person of liability for failure to adhere to any  
15 plats and plans or, in a cooperative, to any representation in the  
16 public offering statement.

17 Sec. 34.08.230. USE FOR SALES PURPOSES. (a) A declarant may  
18 maintain sales offices, management offices, and models in units or on  
19 common elements in the common interest community only if the declara-  
20 tion permits it and specifies the rights of a declarant with regard to  
21 their number, size, location, and relocation. In a cooperative or  
22 condominium, a sales office, management office, or model not desig-  
23 nated a unit by the declaration is a common element. A declarant who  
24 ceases to be a unit owner ceases to have any rights under this section  
25 unless the unit is removed promptly from the common interest community  
26 under a right to remove reserved in the declaration. A declarant may  
27 maintain signs on the common elements advertising the common interest  
28 community subject to any limitations in the declaration.

29 (b) Rights granted under this section are subject to state law

1 and to municipal ordinances.

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

7 (b) In a planned community, subject to the provisions of AS 34.-  
8 08.320(a)(6) and 34.08.430, a unit owner has an easement

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

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

13 Sec. 34.08.250. AMENDMENT OF DECLARATION. (a) Except for  
14 amendments that may be executed by a declarant under AS 34.08.170(b)  
15 or 34.08.180, or by the association under AS 34.08.140(d), 34.08.-  
16 160(c), 34.08.200(a), 34.08.210, or 34.08.740, or by certain unit  
17 owners under AS 34.08.160(b), 34.08.200(a), 34.08.210(b), or 34.08.-  
18 260(b), and except as limited by (c) of this section, a declaration,  
19 including any required plats and plans, may be amended only by vote or  
20 agreement of unit owners of units comprising either at least 67 per-  
21 cent of the allocated interests in the association or a larger per-  
22 centage specified in the declaration. A declaration may not specify a  
23 smaller number unless all of the units are restricted exclusively to  
24 nonresidential use.

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

28 (c) Each amendment to the declaration must be recorded in each  
29 recording district in which a portion of the common interest community

1 is located and the amendment is effective only upon recording. An  
2 amendment, except an amendment under AS 34.08.200(a), must be indexed  
3 in the name of the common interest community and the association and  
4 in the name of the parties executing the amendment.

5 (d) Except to the extent expressly permitted or required by  
6 other provisions of this chapter, an amendment may not create or  
7 increase special declarant rights, increase the number of units,  
8 change the boundaries of a unit, the allocated interests of a unit, or  
9 the uses to which a unit is restricted, in the absence of unanimous  
10 consent of the unit owners.

11 (e) An amendment to the declaration required by this chapter to  
12 be recorded by the association must be prepared, executed, recorded,  
13 and certified on behalf of the association by an officer of the asso-  
14 ciation designated for that purpose or, in the absence of designation,  
15 by the president of the association.

16 Sec. 34.08.260. TERMINATION OF COMMON INTEREST COMMUNITY. (a)  
17 Unless all units are taken by eminent domain, or unless there has been  
18 a foreclosure of a security interest that has priority over the decla-  
19 ration against an entire cooperative, a common interest community may  
20 be terminated only by agreement of unit owners of units comprising  
21 either at least 80 percent of the votes in the association or any  
22 larger percentage specified in the declaration. The declaration may  
23 specify a smaller percentage only if all of the units are restricted  
24 exclusively to nonresidential uses.

25 (b) An agreement to terminate must be evidenced by the execution  
26 of a termination agreement or ratification of an agreement to termi-  
27 nate, in the same manner as a deed is executed by the required number  
28 of unit owners. The termination agreement must specify a date after  
29 which the agreement will be void unless it is recorded before that

1 date. A termination agreement and each ratification of the termina-  
2 tion agreement must be recorded in each recording district in which a  
3 portion of the common interest community is situated. A termination  
4 agreement is effective only upon recording.

5 (c) If a condominium or planned community contains only units  
6 having horizontal boundaries described in the declaration, a termina-  
7 tion agreement may provide that all of the common elements and units  
8 of the common interest community must be sold following termination.  
9 If, under the agreement, any real estate in the common interest commu-  
10 nity is to be sold following termination, the termination agreement  
11 must set out the minimum terms of the sale.

12 (d) If a condominium or planned community contains a unit not  
13 having horizontal boundaries described in the declaration, a termina-  
14 tion agreement may provide for sale of the common elements, but it may  
15 not require that the unit be sold following termination unless the  
16 declaration as originally recorded provided otherwise or unless all  
17 unit owners consent to the sale.

18 (e) The association, on behalf of the unit owners, may contract  
19 for the sale of real estate in a common interest community, but the  
20 contract is not binding on the unit owners until approved under (a)  
21 and (b) of this section. If real estate is to be sold following  
22 termination, title to the real estate, upon termination, vests in the  
23 association as trustee for the holders of all interests in the units.  
24 The association has at that time all powers necessary and appropriate  
25 to effect the sale. Until the sale has been concluded and the pro-  
26 ceeds of the sale distributed, the association continues in existence  
27 with all powers it had before termination. Proceeds of the sale must  
28 be distributed to unit owners and lien holders as their interests may  
29 appear under (h), (i), and (j) of this section. Unless otherwise

1 specified in the termination agreement, as long as the association  
2 holds title to the real estate, each unit owner and the successor in  
3 interest of each unit owner has an exclusive right to occupancy of the  
4 portion of the real estate that formerly constituted the unit. During  
5 the period of that occupancy, each unit owner and the successors in  
6 interest of each unit owner remain liable for all assessments and  
7 other obligations imposed on unit owners by this chapter or the decla-  
8 ration.

9 (f) In a condominium or planned community, if the real estate  
10 constituting the common interest community is not to be sold following  
11 termination, title to the common elements and, in a common interest  
12 community containing only units having horizontal boundaries described  
13 in the declaration, title to all the real estate in the common inter-  
14 est community, vests in the unit owners upon termination as tenants in  
15 common in proportion to their respective interests under (j) of this  
16 section, and liens on the units shift accordingly. While the tenancy  
17 in common exists, each unit owner and the successors in interest of  
18 each unit owner has an exclusive right to occupancy of the portion of  
19 the real estate that formerly constituted the unit.

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

24 (h) Following termination of a condominium or planned community,  
25 a creditor of the association holding a lien on the units that was  
26 reduced to judgment and recorded before termination, may enforce the  
27 lien in the same manner as any other lien holder. Each other creditor  
28 of the association shall be treated as if the creditor had perfected a  
29 lien on the units immediately before termination.

1 (i) In a cooperative, the declaration may provide that each  
2 creditor of the association has priority over the interests of unit  
3 owners and creditors of unit owners. In that event, following termi-  
4 nation, a creditor of the association holding a lien on the coopera-  
5 tive that was reduced to judgment and recorded before termination may  
6 enforce the lien in the same manner as a lien holder, and each other  
7 creditor of the association shall be treated as if the creditor had  
8 perfected a lien against the cooperative immediately before termina-  
9 tion. Unless the declaration provides that all creditors of the  
10 association have that priority (1) the lien of each creditor of the  
11 association that was perfected against the association before termi-  
12 nation becomes, upon termination, a lien against the interest of each  
13 unit owner in the unit as of the date the lien was perfected; (2) any  
14 other creditor of the association shall be treated upon termination as  
15 if the creditor had perfected a lien against the interest of each unit  
16 owner immediately before termination; (3) the amount of the lien of an  
17 association's creditor described in (1) and (2) of this subsection  
18 against the interest of each unit owner must be proportionate to the  
19 ratio which the common expense liability of each unit bears to the  
20 common expense liability of all of the units; (4) the lien of each  
21 creditor of each unit owner that was perfected before termination  
22 continues as a lien against the unit as of the date the lien was  
23 perfected; and (5) the assets of the association must be distributed  
24 to each unit owner and each lien holder as their interests may appear  
25 in the order described in this section. Creditors of the association  
26 are not entitled to payment from a unit owner in excess of the amount  
27 of the creditor's lien against the interest of the unit owner.

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

1 (1) except as provided in (2) of this subsection, the  
2 respective interest of each unit owner is the fair market value of the  
3 unit, allocated interests, and any limited common elements immediately  
4 before the termination, as determined by one or more independent  
5 appraisers selected by the association; the decision of the indepen-  
6 dent appraisers must be distributed to the unit owners and becomes  
7 final unless disapproved within 30 days after distribution by unit  
8 owners of units comprising 25 percent of the allocated interests in  
9 the association; the proportion of each unit owner's interest to that  
10 of all unit owners is determined by dividing the fair market value of  
11 the unit and its allocated interests by the total fair market value of  
12 all units and their allocated interests;

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

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

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

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

23 (k) In a condominium or planned community, except as provided in  
24 (1) of this section, foreclosure or enforcement of a lien or encum-  
25 brance against the entire common interest community does not, of  
26 itself, terminate the common interest community, and foreclosure or  
27 enforcement of a lien or encumbrance against a portion of the common  
28 interest community, other than withdrawable real estate, does not  
29 withdraw the portion from the common interest community. Foreclosure

1 or may be delegated to a profit or nonprofit corporation that exer-  
2 cises those or other powers on behalf of one or more common interest  
3 communities or for the benefit of the unit owners of one or more  
4 common interest communities, each provision of this chapter applicable  
5 to a unit owners' association applies to the corporation, except as  
6 modified by this section.

7 (b) Unless it is acting in the capacity of an association de-  
8 scribed in AS 34.08.310, a master association may exercise the powers  
9 set out in AS 34.08.320(a)(2) only to the extent expressly permitted  
10 in the declarations of common interest communities that are part of  
11 the master association or expressly described in the delegation of  
12 power from the common interest communities to the master association.

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

18 (d) The rights and responsibilities of unit owners with respect  
19 to the unit owners' association under AS 34.08.330, 34.08.390, 34.08.-  
20 400, 34.08.410, and 34.08.430 apply in the conduct of the affairs of a  
21 master association only to persons who elect the board of a master  
22 association, whether or not those persons are otherwise unit owners  
23 within the meaning of this chapter.

24 (e) If a master association is also an association described in  
25 AS 34.08.310, the certificate of incorporation or other instrument  
26 creating the master association and each declaration of a common  
27 interest community that had assigned powers by the declaration or that  
28 has delegated powers to the master association, may provide that the  
29 executive board of the master association must be elected after the

1 period of declarant control in one of the following ways:

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

5 (2) the members of the executive boards of all common  
6 interest communities subject to the master association may elect the  
7 members of the executive board of the master association;

8 (3) the unit owners of each common interest community  
9 subject to the master association may elect specified members of the  
10 executive board of the master association;

11 (4) the members of the executive board of each common  
12 interest community subject to the master association may elect speci-  
13 fied members of the executive board of the master association.

14 Sec. 34.08.290. MERGER OR CONSOLIDATION OF COMMON INTEREST  
15 COMMUNITIES. (a) Any two or more common interest communities of the  
16 same form of ownership, by agreement of the unit owners under (b) of  
17 this section, may be merged or consolidated into a single common  
18 interest community. On the merger or consolidation, unless the agree-  
19 ment otherwise provides, the resulting common interest community is  
20 the legal successor, for all purposes, of the preexisting common  
21 interest communities, and the operations and activities of each asso-  
22 ciation of the preexisting common interest communities are merged or  
23 consolidated into a single association that holds all powers, rights,  
24 obligations, assets, and liabilities of all preexisting associations.

25 (b) An agreement of two or more common interest communities to  
26 merge or consolidate under (a) of this section must be evidenced by an  
27 agreement prepared, executed, recorded, and certified by the president  
28 of the association of each of the preexisting common interest communi-  
29 ties following approval by owners of units comprising the percentage

1 of votes in each common interest community required to terminate the  
2 common interest community. The agreement must be recorded in each  
3 recording district in which a portion of the common interest community  
4 is located and is not effective until recorded.

5 (c) Each merger or consolidation agreement must provide for the  
6 reallocation of the allocated interests in the new association among  
7 the units of the resultant common interest community either (1) by  
8 stating the reallocations or the formulas upon which they are based or  
9 (2) by stating the percentage of overall allocated interests of the  
10 new common interest community that are allocated to all of the units  
11 comprising each of the preexisting common interest communities, and  
12 providing that the portion of the percentages allocated to each unit  
13 formerly comprising a part of the preexisting common interest communi-  
14 ty must be equal to the percentages of allocated interests allocated  
15 to the unit by the declaration of the preexisting common interest  
16 community.

17 Sec. 34.08.300. ADDITION OF UNSPECIFIED REAL ESTATE. In a  
18 planned community, if the right is originally reserved in the declara-  
19 tion, the declarant, in addition to any other development right, may  
20 amend the declaration at any time during as many years as are speci-  
21 fied in the declaration for adding additional real estate to the  
22 planned community without describing the location of the real estate  
23 in the original declaration. The amount of real estate added to the  
24 planned community under this section may not exceed 10 percent of the  
25 real estate described in AS 34.08.130(a)(3) and the declarant may not  
26 in any event increase the number of units in the planned community  
27 beyond the number stated in the original declaration under AS 34.08.-  
28 130(a)(5).

29 ARTICLE 3. MANAGEMENT OF THE COMMON INTEREST COMMUNITY.

1           Sec. 34.08.310. ORGANIZATION OF UNIT OWNERS' ASSOCIATION. An  
2 association of unit owners must be organized no later than the date on  
3 which the first unit in the common interest community is conveyed.  
4 The membership of the association at all times consists exclusively of  
5 all unit owners or, following termination of the common interest  
6 community, of all former unit owners entitled to distributions of  
7 proceeds under AS 34.08.260 or their heirs, successors, or assigns.  
8 The association must be organized as a profit or nonprofit corpora-  
9 tion, trust, or partnership.

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

- 13           (1) adopt and amend bylaws and rules and regulations;
- 14           (2) adopt and amend budgets for revenues, expenditures, and  
15 reserves and collect assessments for common expenses from unit owners;
- 16           (3) hire and discharge managing agents and other employees,  
17 agents, and independent contractors;
- 18           (4) institute, defend, or intervene in litigation or ad-  
19 ministrative proceedings or seek injunctive relief for violations of  
20 its declaration, bylaws or rules in its own name on behalf of itself  
21 or two or more unit owners on matters affecting the common interest  
22 community;
- 23           (5) make contracts and incur liabilities;
- 24           (6) regulate the use, maintenance, repair, replacement, and  
25 modification of common elements;
- 26           (7) cause additional improvements to be made as a part of  
27 the common elements;
- 28           (8) acquire, hold, encumber, and convey in its own name any  
29 right, title, or interest to real estate or personal property, except

1           that

2                           (A) common elements in a condominium or planned commu-  
3                           nity may be conveyed or subjected to a security interest only  
4                           under AS 34.08.430; and

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

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

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

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

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

21                           (13) provide for the indemnification of its officers and  
22                           executive board and maintain directors' and officers' liability insur-  
23                           ance;

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

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

29                           (16) exercise any other power that may be exercised in the

1 state by a legal entity of the same type as the association; and

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

4 (b) The declaration may not impose limitations on the power of  
5 the association to deal with the declarant that are more restrictive  
6 than the limitations imposed on the power of the association to deal  
7 with other persons.

8 Sec. 34.08.330. EXECUTIVE BOARD MEMBERS AND OFFICERS. (a)  
9 Except as provided in the declaration, the bylaws, (b) of this sec-  
10 tion, or other provisions of this chapter, the executive board may act  
11 in all instances on behalf of the association. In the performance of  
12 their duties, the officers and members of the executive board are  
13 required to exercise the care required of fiduciaries of the unit  
14 owners.

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

21 (c) Within 30 days after adoption of a proposed budget for the  
22 common interest community, the executive board shall provide a summary  
23 of the budget to each unit owner, and shall set a date for a meeting  
24 of the unit owners to consider ratification of the budget not less  
25 than 14 nor more than 30 days after mailing of the summary. Unless at  
26 that meeting a majority of all unit owners or any larger vote spec-  
27 ified in the declaration reject the budget, the budget is ratified,  
28 whether or not a quorum is present. If the proposed budget is reject-  
29 ed, the periodic budget last ratified by the unit owners continues

1 until the unit owners ratify a budget proposed by the executive board.

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

19 (e) Not later than 60 days after conveyance of 25 percent of the  
20 units that may be created to unit owners other than a declarant, at  
21 least one member and not less than 25 percent of the members of the  
22 executive board must be elected by unit owners other than the decla-  
23 rant. Not later than 60 days after conveyance of 50 percent of the  
24 units that may be created to unit owners other than a declarant, not  
25 less than 33 1/3 percent of the members of the executive board must be  
26 elected by unit owners other than the declarant.

27 (f) Except as otherwise provided in AS 34.08.280(e), not later  
28 than the termination of any period of declarant control, the unit  
29 owners shall elect an executive board of at least three members, at

1 least a majority of whom must be unit owners. The executive board  
2 shall elect the officers. The executive board members and officers  
3 shall take office upon election.

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

10 Sec. 34.08.340. TRANSFER OF ASSOCIATION CONTROL. (a) Before,  
11 or not more than 60 days after, the time that a unit owner other than  
12 the declarant elects a majority of the members of the executive board  
13 of a common interest community, the declarant shall relinquish control  
14 of the common interest community and the unit owners shall accept  
15 control. At the same time, the declarant shall deliver to the common  
16 interest community all property of the unit owners and of the common  
17 interest community held or controlled by the declarant including, but  
18 not limited to, the following items:

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

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

26 (3) a copy of the bylaws;

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

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

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

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

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

10           (9) all tangible personal property that is property of the  
11 common interest community, represented by the declarant to be part of  
12 the common elements or ostensibly part of the common elements, and an  
13 inventory of the property;

14           (10) a copy of the plans and specifications utilized in the  
15 construction or remodeling of improvements and the supplying of equip-  
16 ment to the common interest community and in the construction and  
17 installation of all mechanical components serving the improvements and  
18 the site, with a certificate in affidavit form of the declarant or an  
19 architect or engineer authorized to practice in the state that the  
20 plans and specifications represent, to the best of their knowledge and  
21 belief, the actual plans and specifications utilized in the construc-  
22 tion and improvement of the common interest community property and for  
23 the construction and installation of the mechanical components serving  
24 the improvements;

25           (11) insurance policies;

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

28           (13) any other permits issued by governmental bodies appli-  
29 cable to the common interest community property in force or issued

1 within one year before the date the unit owners other than the de-  
2 clarant take control of the common interest community;

3 (14) all written warranties of the contractor, subcontrac-  
4 tors, suppliers, and manufacturers, if any, that are still effective;

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

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

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

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

16 (b) The records shall be reviewed by an independent certified  
17 public accountant. The minimum report required shall be a review in  
18 accordance with generally accepted accounting standards as defined by  
19 regulation by the Board of Public Accountancy. The accountant per-  
20 forming the review shall examine to the extent necessary supporting  
21 documents and records, including the cash disbursements and related  
22 paid invoices to determine if expenditures were for the common inter-  
23 est community purposes and the billings, cash receipts, and related  
24 records to determine that the declarant was charged and paid the  
25 proper amounts of assessments.

26 (c) Before the transfer of control from the declarant to the  
27 association an inspection of the common areas and limited common areas  
28 subject to the association's control shall be completed by a certified  
29 architect or engineer. A report shall be prepared indicating the

1 incomplete work and repairs needed and the method of completing the  
2 work and making the repairs. The transfer of control to the associa-  
3 tion shall be based upon the declarant's obligation to complete all  
4 repairs and finish all incomplete work within a reasonable time after  
5 transfer of control.

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

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

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

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

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

29 (4) a transferor is not liable for any act or omission or

1 any breach of a contractual or warranty obligation arising from the  
2 exercise of a special declarant right by a successor declarant who is  
3 not an affiliate of the transferor.

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

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

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

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

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

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

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

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

10                   (B) on the transferor, other than:

11                           (i) misrepresentations by a previous declarant;

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

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

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

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

27           (4) a successor to the special declarant rights held by a  
28 transferor who succeeded to the rights under a deed or other instru-  
29 ment of conveyance in lieu of foreclosure or under a judgment or

1 instrument conveying title under (c) of this section may declare in a  
2 recorded instrument an intention to hold the rights solely for trans-  
3 fer to another person; until transferring the special declarant rights  
4 to a person acquiring title to a unit or real estate subject to de-  
5 velopment rights owned by the successor, or until recording an instru-  
6 ment permitting exercise of all those rights, the successor may not  
7 exercise any of the rights other than a right held by the transferor  
8 of the successor to control the executive board under AS 34.08.330(d)  
9 for the duration of any period of declarant control and an attempted  
10 exercise of the rights is void; so long as a successor declarant may  
11 not exercise special declarant rights under this subsection, the  
12 successor declarant is not subject to liability or obligation as a  
13 declarant other than liability for acts and omissions under AS 34.08.-  
14 330(d).

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

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

1 (b) This section does not apply to

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

7 (2) a proprietary lease.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 interest, then each unit owner or the units to which the limited  
2 common elements are allocated must agree in order to convey the units  
3 or limited common elements or subject them to a security interest.  
4 The declaration may specify a smaller percentage only if each of the  
5 units is restricted exclusively to nonresidential uses. The proceeds  
6 of the sale and proceeds of a loan secured by encumbering a common  
7 area are an asset of the association. A purported conveyance or other  
8 voluntary transfer of an entire cooperative, unless made under AS 34.-  
9 08.260, is void.

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

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

28 (e) Unless made under this section, a purported conveyance,  
29 encumbrance, judicial sale, or other voluntary transfer of common

1 elements or of any other part of a cooperative is void.

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

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

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

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

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

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

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

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

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

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

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

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

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

29           (e) A loss covered by the property policy under (a)(1) and (b)

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

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

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

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

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

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

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

1 credited to them to reduce future common expense assessments.

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

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

13 (c) To the extent required by the declaration

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

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

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

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

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

1 liabilities.

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

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

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

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

1        adopted by the association under AS 34.08.460(a) would have become due  
2        in the absence of acceleration during the six months immediately  
3        preceding institution of an action to enforce the lien. This subsec-  
4        tion does not affect the priority of a mechanic's or materialman's  
5        lien, or the priority of a lien for other assessments made by the  
6        association. A lien under this section is not subject to the pro-  
7        visions of AS 09.38.010.

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

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

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

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

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

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

28           (i) In a cooperative, upon nonpayment of an assessment on a  
29       unit, a unit owner may be evicted in the same manner as provided by

1 law in the case of an unlawful holdover by a commercial tenant, and  
2 the lien may be foreclosed under this section.

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

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

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

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

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

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

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

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

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

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

14 (A) the reasonable expenses of sale;

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

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

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

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

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

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

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

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

19 (1) except as provided in (2) of this subsection, a record-  
20 ed judgment for money against the association is not a lien on the  
21 common elements, but is a lien in favor of the judgment lien holder  
22 against the units in the common interest community at the time the  
23 judgment was entered; the property of a unit owner is not subject to  
24 the claims of creditors of the association;

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

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

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

18                   (b) In a cooperative,

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

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

28                   Sec. 34.08.490. ASSOCIATION RECORDS. The association shall keep  
29 financial records sufficiently detailed to enable the association to

1 comply with AS 34.08.590. Financial and other records must be made  
2 reasonably available for examination by a unit owner and an authorized  
3 agent of a unit owner.

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

16 ARTICLE 4. PROTECTION OF PURCHASERS.

17 Sec. 34.08.510. APPLICABILITY. (a) The provisions of AS 34.-  
18 08.510 - 34.08.700 apply to all units subject to this chapter, except  
19 as provided in (b) of this section or as modified or waived by agree-  
20 ment of purchasers of units in a common interest community in which  
21 each unit is restricted to nonresidential use.

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

- 24 (1) a gratuitous disposition of a unit;  
25 (2) a disposition under a court order;  
26 (3) a disposition by a governmental agency;  
27 (4) a disposition by foreclosure or deed in lieu of fore-  
28 closure;  
29 (5) a disposition to a dealer;

1           (6) a disposition that may be canceled at any time and for  
2 any reason by the purchaser without penalty; or

3           (7) a disposition of a unit in a planned community in which  
4 the declaration limits the maximum annual assessment of a unit to not  
5 more than \$300, as adjusted under AS 34.08.820, if

6                   (A) the declarant has a reasonable and good faith  
7 belief that the maximum stated assessment will be sufficient to  
8 pay the expenses of the planned community;

9                   (B) the declaration cannot be amended to increase the  
10 assessment during the period of declarant control without the  
11 consent of all unit owners; and

12                   (C) the planned community is not subject to develop-  
13 ment rights.

14           Sec. 34.08.520. LIABILITY FOR PUBLIC OFFERING STATEMENT REQUIRE-  
15 MENTS. (a) Except as provided in (b) of this section, a declarant,  
16 before offering an interest in a unit to the public, shall prepare a  
17 public offering statement conforming to the requirements of AS 34.08.-  
18 530, 34.08.540, 34.08.550, and 34.08.560.

19                   (b) A declarant may transfer responsibility for preparation of  
20 all or a part of the public offering statement to a successor de-  
21 clarant or to a dealer who intends to offer units in the common inter-  
22 est community. On the transfer of responsibility, the transferor  
23 shall provide the transferee with information necessary to enable the  
24 transferee to fulfill the requirements of (a) of this section.

25                   (c) A declarant or dealer who offers a unit to a purchaser shall  
26 deliver a public offering statement in the manner required by AS 34.-  
27 08.580(a). The person who prepared all or a part of the public offer-  
28 ing statement is liable under AS 34.08.580 and 34.08.670 for any false  
29 or misleading statement set out in the statement or for any omission

1 of a material fact from the statement with respect to the portion of  
2 the public offering statement that the person prepared. If a  
3 declarant did not prepare any part of a public offering statement the  
4 declarant is not liable for a false or misleading statement set out in  
5 the statement or for an omission of a material fact from the statement  
6 unless the declarant had actual knowledge of the statement or omission  
7 or, in the exercise of reasonable care, should have known of the  
8 statement or omission.

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

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

18 (1) the name and principal address of the declarant and of  
19 the common interest community and indicate whether the common interest  
20 community is a condominium, cooperative, or planned community;

21 (2) a general description of the common interest community,  
22 including, to the extent possible, the types, number, and declarant's  
23 schedule for the commencement and completion of construction of build-  
24 ings and amenities that the declarant anticipates including in the  
25 common interest community;

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

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

29 (A) any recorded covenants, conditions, restrictions,

1 and reservations affecting the common interest community;

2 (B) the bylaws, and any rules or regulations of the

3 association;

4 (C) copies of any contracts and leases to be signed by

5 purchasers at closing; and

6 (D) a brief narrative description of any contracts or

7 leases that will or may be subject to cancellation by the asso-

8 ciation under AS 34.08.360;

9 (5) any current balance sheet and a projected budget for

10 the association, either within or as an exhibit to the public offering

11 statement, for one year after the date of the first conveyance to a

12 purchaser, and the current budget of the association, the name of the

13 person who prepared the budget, and a statement of the budget's as-

14 sumptions concerning occupancy, assumptions concerning the calculation

15 of the amount of reserves certified by a certified architect or engi-

16 neer, and inflation factors, including, without limitation,

17 (A) a statement of the amount included in the budget

18 as a reserve for repairs and replacement including the estimated

19 cost of repair or replacement cost and the estimated useful life

20 of the asset to be repaired or replaced.

21 (B) a statement of any other reserves;

22 (C) the projected common expense assessment by cate-

23 gory of expenditures for the association; and

24 (D) the projected monthly common expense assessment

25 for each type of unit;

26 (6) any services not reflected in the budget that the

27 declarant provides, or expenses that the declarant pays and that the

28 declarant expects may become a common expense of the association at a

29 subsequent time and the projected common expense assessment

1     attributable to each of those services or expenses for the association  
2     and for each type of unit;

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

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

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

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

13            (11) a statement that

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

17                    (B) if a declarant fails to provide a public offering  
18     statement to a purchaser before conveying a unit, the purchaser  
19     may recover from the declarant 10 percent of the sales price of  
20     the unit plus 10 percent of the share, proportionate to the  
21     common expense liability of the unit, of any indebtedness of the  
22     association secured by security interests encumbering the common  
23     interest community; and

24                    (C) a purchaser who receives the public offering  
25     statement more than 15 days before signing a contract cannot  
26     cancel the contract;

27            (12) a statement of any unsatisfied judgments or pending  
28     suits against the association, and the status of any pending suits  
29     material to the common interest community of which a declarant has

1 actual knowledge;

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

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

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

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

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

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

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

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

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

26 (20) in a cooperative,

27 (A) whether each unit owner will be entitled, for  
28 federal, state, and local income tax purposes, to a pass-through  
29 of deductions for payments made by the association for real

1 estate taxes and interest paid the holder of a security interest  
2 encumbering the cooperative; and

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

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

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

17 Sec. 34.08.540. COMMON INTEREST COMMUNITIES SUBJECT TO DEVELOP-  
18 MENT RIGHTS. If the declaration provides that a common interest  
19 community is subject to development rights, the public offering state-  
20 ment must disclose, in addition to the information required by AS 34.-  
21 08.530,

22 (1) the maximum number of units, and the maximum number of  
23 units per acre, that may be created;

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

28 (3) if any of the units that may be built within real  
29 estate subject to development rights are not to be restricted

1 exclusively to residential use, a statement, with respect to each  
2 portion of the real estate, of the maximum percentage of the real  
3 estate areas, and the maximum percentage of the floor areas of all  
4 units that may be created that are not restricted exclusively to resi-  
5 dential use;

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

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

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

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

23 (8) a statement of any limitations as to the location of  
24 any building or other improvement that may be made within a part of  
25 the common interest community under a development right reserved by  
26 the declarant, or a statement that assurances have not been made in  
27 that regard;

28 (9) a statement that the limited common elements created  
29 under a development right reserved by the declarant will be of the

1 same general type and size as the limited common elements within other  
2 parts of the common interest community, or a statement of the type and  
3 size planned, or a statement that assurances have not been made in  
4 that regard;

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

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

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

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

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

25 (2) the total number of time shares that may be created;

26 (3) the minimum duration of any time shares that may be  
27 created; and

28 (4) the extent to which the creation of time shares will or  
29 may affect the enforceability of the lien of the association for

1 assessments under AS 34.08.470.

2 Sec. 34.08.560. COMMON INTEREST COMMUNITIES CONTAINING CONVER-  
3 SION BUILDINGS. (a) The public offering statement of a common inter-  
4 est community containing a conversion building must contain, in addi-  
5 tion to the information required by AS 34.08.530,

6 (1) a statement by the declarant, based on a report pre-  
7 pared by a registered architect or engineer, describing the present  
8 condition of all structural components and mechanical and electrical  
9 installations material to the use and enjoyment of the building;

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

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

16 (b) This section applies only to a building that contains a unit  
17 that may be occupied for residential use.

18 Sec. 34.08.570. COMMON INTEREST COMMUNITY SECURITIES. If an  
19 interest in a common interest community is currently registered with  
20 the Securities and Exchange Commission of the United States, a de-  
21 clarant satisfies each requirement relating to the preparation of a  
22 public offering statement of this chapter if the declarant delivers to  
23 the purchaser a copy of the public offering statement filed with the  
24 Securities and Exchange Commission. An interest in a common interest  
25 community is not a security under AS 45.55.

26 Sec. 34.08.580. PURCHASER'S RIGHT TO CANCEL. (a) A person  
27 required to deliver a public offering statement under AS 34.08.520(c)  
28 shall provide each purchaser with a copy of the public offering state-  
29 ment and each amendment to the statement before conveyance of the

1 unit, and not later than the date of a contract of sale. If a pur-  
2 chaser is not given the public offering statement more than 15 days  
3 before execution of a contract for the purchase of a unit, the pur-  
4 chaser, before conveyance, may cancel the contract within 15 days of  
5 receipt of the public offering statement.

6 (b) A purchaser who wishes to cancel a contract under (a) of  
7 this section may cancel the contract by hand delivering notice of the  
8 cancellation to the offeror or by mailing notice of the cancellation  
9 by prepaid United States mail to the offeror or to the agent for  
10 service of process of the offeror. Cancellation is without penalty  
11 and each payment made by the purchaser before cancellation must be  
12 refunded promptly to the purchaser.

13 (c) If a person required to deliver a public offering statement  
14 under AS 34.08.520(c) fails to provide a purchaser to whom a unit has  
15 been conveyed with the public offering statement and each amendment to  
16 the statement under (a) of this section, the purchaser, in addition to  
17 any right to damages or other relief, is entitled to receive from the  
18 person an amount equal to 10 percent of the sale price of the unit,  
19 plus 10 percent of the share, proportionate to the common expense  
20 liability, of an indebtedness of the association secured by security  
21 interests encumbering the common interest community.

22 Sec. 34.08.590. RESALES OF UNITS. (a) Except for a sale in  
23 which delivery of a public offering statement is required, or unless  
24 the sale is exempt under AS 34.08.510(b), a unit owner shall furnish  
25 to a purchaser before execution of a contract for sale of a unit or  
26 before conveyance a copy of the declaration, as amended, the bylaws,  
27 the rules or regulations of the association, and a certificate con-  
28 taining a statement disclosing

29 (1) the effect on the proposed disposition of a right of

- 1 first refusal or other restraint on the free alienability of the unit;
- 2 (2) the amount of the monthly common expense assessment and  
3 any unpaid common expense or special assessment currently due and  
4 payable from the selling unit owner;
- 5 (3) any other fee payable by unit owners;
- 6 (4) any capital expenditures in excess of \$3,000 approved  
7 by the executive board for the current and two next succeeding fiscal  
8 years;
- 9 (5) the amount of reserves for capital expenditures and of  
10 any portions of the reserves designated by the association for a  
11 specified project;
- 12 (6) the most recent regularly prepared balance sheet and  
13 income and expense statement, if any, of the association;
- 14 (7) the current operating budget of the association;
- 15 (8) any unsatisfied judgment against the association and  
16 the status of any pending suit in which the association is a defen-  
17 dant;
- 18 (9) any insurance coverage provided for the benefit of unit  
19 owners;
- 20 (10) whether the executive board has knowledge that any  
21 alterations or improvements to the unit or to the limited common  
22 elements assigned to the unit violate any provision of the declara-  
23 tion;
- 24 (11) whether the executive board has knowledge of any viola-  
25 tion of a health or building code with respect to the unit, the limit-  
26 ed common elements assigned to the unit, or any other portion of the  
27 common interest community;
- 28 (12) a statement of the remaining term of a leasehold estate  
29 affecting the common interest community and the provisions governing

1 an extension or renewal of the lease;

2 (13) a statement of any restrictions in the declaration  
3 affecting the amount that may be received by a unit owner upon sale,  
4 condemnation, casualty loss to the unit or the common interest commu-  
5 nity, or termination of the common interest community; and

6 (14) in a cooperative, an accountant's statement, if any was  
7 prepared, as to the deductibility for federal income tax purposes by  
8 the unit owner of real estate taxes and interest paid by the associ-  
9 ation.

10 (b) The association, within 10 days after a request by a unit  
11 owner, shall furnish a certificate containing the information neces-  
12 sary to enable the unit owner to comply with this section. A unit  
13 owner providing a certificate under (a) of this section is not liable  
14 to the purchaser for erroneous information provided by the association  
15 and included in the certificate.

16 (c) A purchaser is not liable for an unpaid assessment or fee  
17 greater than the amount set out in the certificate prepared by the  
18 association. A unit owner is not liable to a purchaser for the fail-  
19 ure or delay of the association to provide the certificate in a timely  
20 manner, but the purchase contract is voidable by the purchaser until  
21 the certificate has been provided and for five days after the certifi-  
22 cate was provided or until conveyance, whichever occurs first.

23 Sec. 34.08.600. ESCROW OF DEPOSITS. A deposit made in connec-  
24 tion with the purchase or reservation of a unit from a person required  
25 to deliver a public offering statement under AS 34.08.520(c) must be  
26 placed in escrow and held either in this state or in the state where  
27 the unit is located in an account designated solely for that purpose  
28 by a licensed title insurance company, an attorney, a licensed real  
29 estate broker, an independent bonded escrow company, or an institution

1 whose accounts are insured by a governmental agency or instrumentality  
2 until

- 3 (1) delivered to the declarant at closing;
- 4 (2) delivered to the declarant because of the purchaser's  
5 default under a contract to purchase the unit; or
- 6 (3) refunded to the purchaser.

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

- 14 (1) in a condominium, the unit and its common element  
15 interest; or
- 16 (2) in a cooperative or planned community, the unit and any  
17 limited common elements assigned to the unit.

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

- 20 (1) each lien the foreclosure of which would deprive unit  
21 owners of a right of access to or easement of support of their units;  
22 and
- 23 (2) each other lien on the real estate unless the public  
24 offering statement describes certain real estate that may be conveyed  
25 subject to liens in specified amounts.

26 Sec. 34.08.620. CONVERSION BUILDINGS. (a) A declarant of a  
27 common interest community containing a conversion building, and any  
28 dealer who intends to offer units in a common interest community  
29 containing conversion units, shall give each residential tenant and

1 each residential subtenant in possession of a portion of a conversion  
2 building notice of the conversion and provide each person with the  
3 public offering statement no later than 120 days before the tenant and  
4 any subtenant in possession is required to vacate. The notice must  
5 set out generally the rights of tenants and subtenants under this  
6 section and must be hand delivered to the unit or mailed by prepaid  
7 United States mail to the tenant and subtenant at the address of the  
8 unit or any other mailing address provided by a tenant. A tenant or  
9 subtenant may not be required to vacate upon less than 120 days'  
10 notice except by reason of nonpayment of rent, waste, or conduct that  
11 disturbs other tenants' peaceful enjoyment of the premises and the  
12 terms of the tenancy may not be altered during the period. The fail-  
13 ure to give notice as required by this section is a defense to an  
14 action for possession.

15 (b) For 60 days after delivery or mailing of the notice de-  
16 scribed in (a) of this section, the person required to give the notice  
17 shall offer to convey each unit or proposed unit occupied for residen-  
18 tial use to the tenant who leases the unit. If a tenant fails to  
19 purchase the unit during the 60-day period, the offeror may not offer  
20 to dispose of an interest in the unit during the following 180 days at  
21 a price or on terms more favorable to the offeree than the price or  
22 terms offered to the tenant. This subsection does not apply to a unit  
23 in a conversion building if the unit will be restricted exclusively to  
24 nonresidential use or if the boundaries of the converted unit do not  
25 substantially conform to the dimensions of the residential unit before  
26 conversion.

27 (c) If a seller, in violation of (b) of this section, conveys a  
28 unit for value to a purchaser who has no knowledge of the violation,  
29 the recording of the deed conveying the unit or, in a cooperative, the

1 conveyance of the unit, extinguishes any right a tenant may have under  
2 (b) of this section to purchase the unit if the deed states that the  
3 seller has complied with (b) of this section, but the conveyance does  
4 not affect the right of a tenant to recover damages from the seller  
5 for a violation of (b) of this section.

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

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

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

15 (1) any affirmation of fact or promise that relates to the  
16 unit, its use, or rights appurtenant to the unit, area improvements to  
17 the common interest community that would directly benefit the unit, or  
18 the right to use or have the benefit of facilities not located in the  
19 common interest community, creates an express warranty that the unit  
20 and related rights and uses will conform to the affirmation or prom-  
21 ise;

22 (2) a model or description of the physical characteristics  
23 of the common interest community, including plans and specifications  
24 of or for improvements, creates an express warranty that the common  
25 interest community will conform to the model or description;

26 (3) a description of the quantity or extent of the real  
27 estate comprising the common interest community, including plats or  
28 surveys, creates an express warranty that the common interest communi-  
29 ty will conform to the description, subject to customary tolerances;

1 and

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

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

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

11 Sec. 34.08.640. IMPLIED WARRANTIES OF QUALITY. (a) A declarant  
12 and a dealer warrants that a unit will be in at least as good condi-  
13 tion at the earlier of the time of the conveyance or delivery of  
14 possession as it was at the time of contracting, reasonable wear and  
15 tear excepted.

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

21 (1) free from defective materials; and

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

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

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

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

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

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

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

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

17 (b) With respect to a purchaser of a unit that may be occupied  
18 for residential use, a general disclaimer of implied warranties of  
19 quality is not effective, but a declarant and a dealer may disclaim  
20 liability in an instrument signed by the purchaser for a specified  
21 defect or specified failure to comply with applicable law, if the  
22 defect or failure entered into and became a part of the basis of the  
23 bargain.

24 Sec. 34.08.66. STATUTE OF LIMITATIONS FOR WARRANTIES. (a) A  
25 judicial proceeding for breach of an obligation arising under AS 34.-  
26 08.650 or 34.08.660 must be commenced within six years after the cause  
27 of action accrues, but the parties may agree to reduce the period of  
28 limitation to not less than two years. If the unit may be occupied  
29 for residential use, an agreement to reduce the period of limitation

1 must be evidenced by a separate instrument executed by the purchaser.

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

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

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

11 (A) a common element that may be added to the common  
12 interest community or a portion of the common interest community,  
13 at the time the first unit is conveyed to a bona fide purchaser;  
14 or

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

18 (c) If a warranty of quality explicitly extends to future per-  
19 formance or duration of an improvement or component of the common  
20 interest community, the cause of action accrues at the time the breach  
21 is discovered or at the end of the warranty period, whichever is  
22 earlier.

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

29 Sec. 34.08.680. LABELING OF PROMOTIONAL MATERIAL. Promotional

1 material may not be displayed or delivered to a prospective purchaser  
2 that describes or portrays an improvement that is not in existence  
3 unless the description or portrayal of the improvement in the promo-  
4 tional material is conspicuously labeled or identified either as "MUST  
5 BE BUILT" or as "NEED NOT BE BUILT."

6 Sec. 34.08.690. DECLARANT'S OBLIGATION TO COMPLETE AND RESTORE.  
7 (a) Except for an improvement labeled "NEED NOT BE BUILT," the de-  
8 clarant shall complete each improvement depicted on a site plan or  
9 other graphic representation, including any plats or plans prepared  
10 under AS 34.08.180, whether or not the site plan or other graphic  
11 representation is contained in the public offering statement or in  
12 promotional material distributed by or for the declarant.

13 (b) The declarant is liable for the prompt repair and restora-  
14 tion, to a condition compatible with the remainder of the common  
15 interest community, of a portion of the common interest community af-  
16 fected by the exercise of rights reserved under or created by AS 34.-  
17 08.180, 34.08.190, 34.08.200, 34.08.210, 34.08.230, or 34.08.240.

18 Sec. 34.08.700. SUBSTANTIAL COMPLETION OF UNITS. In the sale of  
19 a unit for which delivery of a public offering statement is required,  
20 a contract of sale may be executed, but an interest in the unit may  
21 not be conveyed until the declaration is recorded and the unit is  
22 substantially completed as evidenced by a recorded certificate of  
23 substantial completion executed by an independent registered archi-  
24 tect, surveyor or engineer, or by issuance of a certificate of occu-  
25 pancy authorized by law.

26 ARTICLE 5. GENERAL PROVISIONS.

27 Sec. 34.08.710. VARIATION BY AGREEMENT. Except as expressly  
28 provided in this chapter the provisions of this chapter may not be  
29 varied by agreement and rights conferred by this chapter may not be

1 - waived. A declarant may not act under a power of attorney or use any  
2 other device to evade the limitations or prohibitions of this chapter  
3 or a declaration recorded under it.

4 Sec. 34.08.720. SEPARATE TITLES AND TAXATION. (a) In a cooper-  
5 ative, unless the declaration provides that the interest of a unit  
6 owner in a unit and its allocated interests is real estate for all  
7 purposes, the interest is personal property. The interest is subject  
8 to AS 09.38.010, even if the interest is personal property.

9 (b) In a condominium or planned community,

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

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

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

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

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