

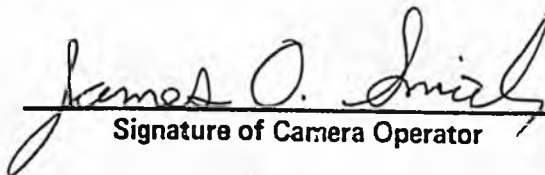
ALASKA LEGISLATURE COMMITTEE FILES 1900-1900

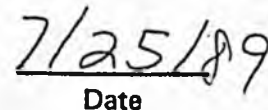
3296 HJUD HB 152 - HB 155



# RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

  
Signature of Camera Operator

  
Date

H B

I B R



STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: HB 152  
 Title: Status of Board Members Whose  
Term of Office has Expired  
 Sponsor: Rules/Governor  
 Requestor: Governor  
 Date of Request: 1/21/85

FISCAL DETAIL

Agency Affected: Office of the Governor  
 Program Category Affected: Executive Operations  
 BRU, Program or Subprogram(s) Affected:  
Executive Office

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

<b>CAPITAL</b>		-0-				
----------------	--	-----	--	--	--	--

<b>REVENUE</b>		-0-				
----------------	--	-----	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		-0-				

POSITIONS:

FULL-TIME		-0-				
PART-TIME		-0-				
TEMPORARY		-0-				

ANALYSIS: Attach a separate page if necessary

Prepared By: Michael A. Nizich, Director *M.A.N.* Phone: 465-3616  
 Division: Administrative Services Date: Jan. 23, 1985  
 Approved by Commissioner: Laura J. Herman *L.J.H.* Date: Jan. 23, 1985  
 Agency: Office of the Governor

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

7/1/84



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 30, 1985

The Honorable Ben Grussendorf  
Speaker of the House  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would permit appointees to certain boards and commissions to hold office beyond the expiration of their term until a successor is appointed. It also makes some incidental style changes in the statute's wording.

Because of the proliferation of boards and commissions since statehood, the task of appointing enough qualified persons to keep all boards up to full strength is an impossible one. There are approximately 1,000 appointments to State boards and commissions. Approximately 75 percent of all appointments to be made are highly restricted by law as to the backgrounds, location, and professional expertise of the individuals that can be considered. As a result, the recruitment and review process that must be accomplished prior to appointment has become more time consuming than in the past years.

As a result, I am proposing the expedient of permitting incumbent board members to hold over until a successor is appointed by the Governor. There is a certain amount of precedence for recommending this. Several statutes specific to certain boards have allowed for continued service in the event an appointment cannot be made in time to coincide with an expiration date. In cases where the statute specifically allows this practice, it has proven very helpful to the operations of the boards and commissions in reducing problems with quorum and the legality of votes taken on official matters. This holdover rule does not apply to a board or commission that serves as the head of a principal department.

It is extremely difficult to find qualified Alaskans who are willing to serve on the many boards and commissions established by law. Any delay could materially affect the ability of many boards to constitute a quorum for doing business. I believe that this bill offers a simple method for solving that problem.

Sincerely,

A handwritten signature in cursive script that reads "Bill Sheffield". The signature is written in dark ink and is positioned above the typed name.

Bill Sheffield  
Governor



Official Business

# Alaska State Legislature

## House of Representatives

### Committee on State Affairs

Pouch V  
State Capitol  
Juneau, Alaska 99811

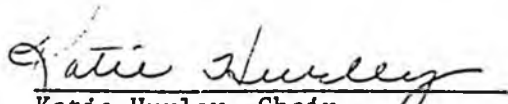
(907) 465-4883

HOUSE STATE AFFAIRS COMMITTEE  
LETTER OF INTENT  
FOR  
HB 152

It is the intent of the House State Affairs Committee that in passing HB 152 that the mechanism for replacing board members established in this legislation be used to retain a functioning board until a suitable replacement is found for a member whose term has expired.

The committee remains concerned, however, that the discretion allowed the Governor through HB 152 in making appointments, could be abused and that there may be substantial constitutional questions in allowing a board member to retain a seat beyond their term of appointment.

It is the wish of the committee, therefore, that the House Judiciary committee, in reviewing HB 152, address these concerns and make any amendments appropriate in addressing these problems.

  
Katie Hurley, Chair  
House State Affairs Committee

NUMBER  
OF  
BOARDS  
AND  
COMMISSIONS

100000

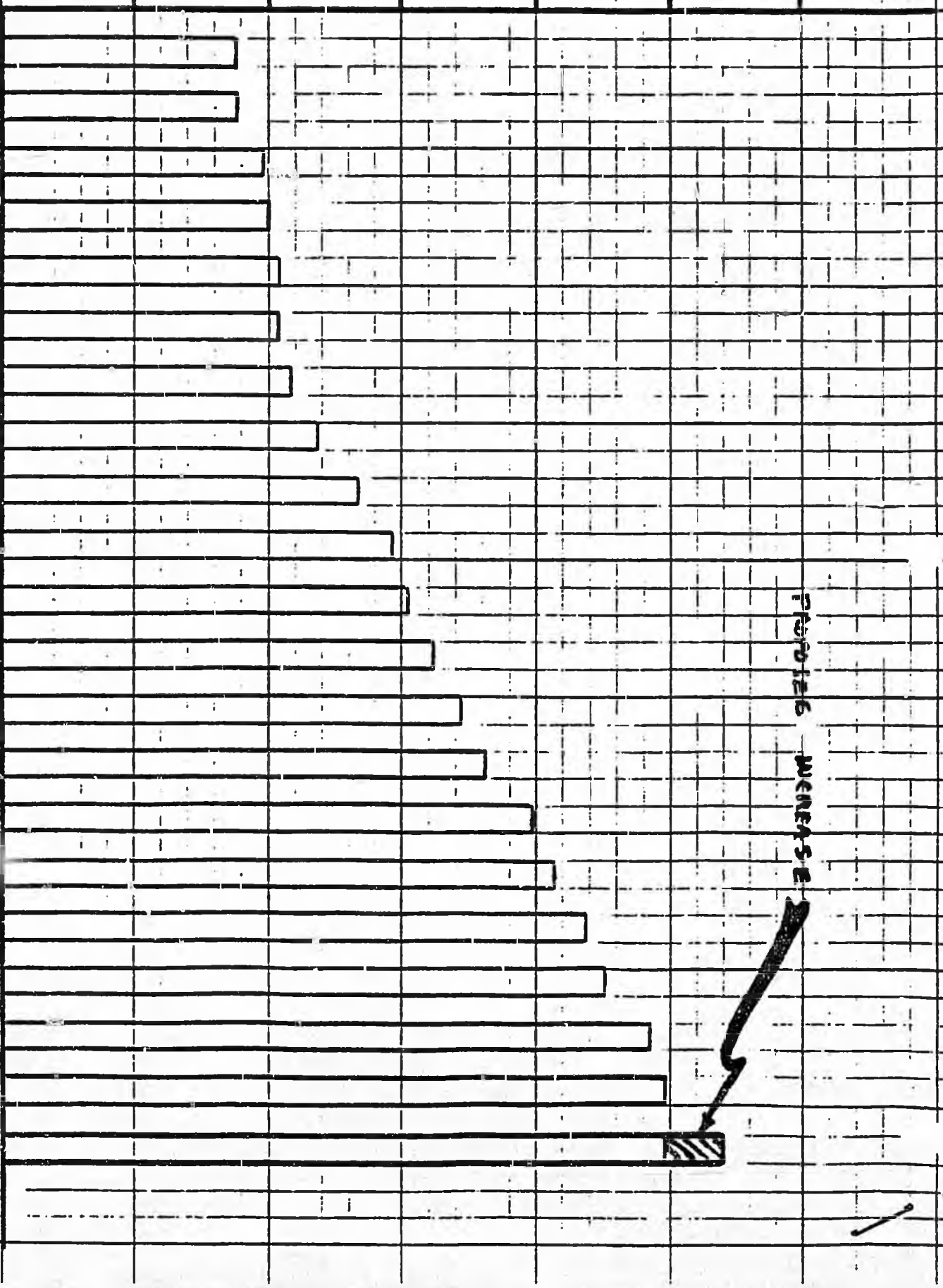
100  
105

PROBES WCREASE

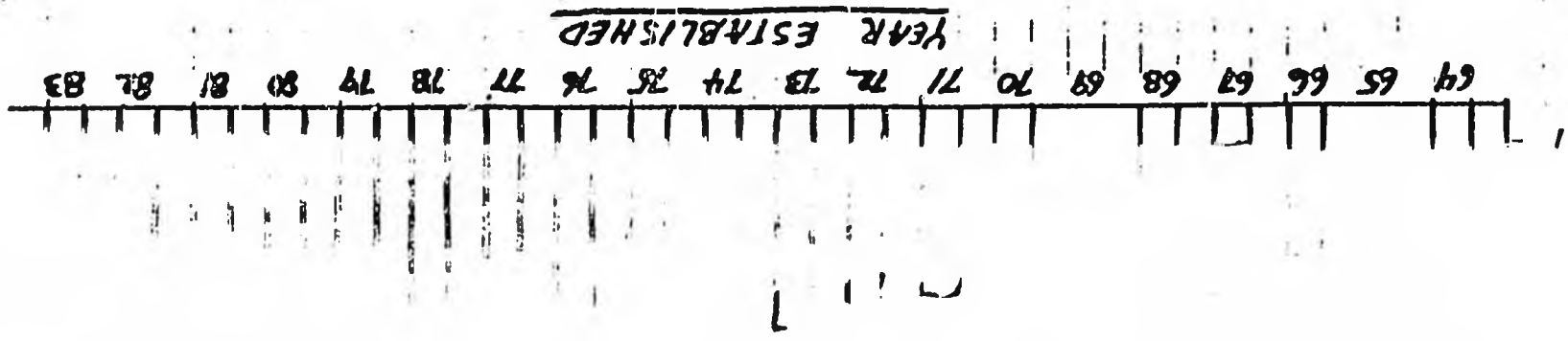
BOARDS  
AND COMMISSIONS  
TOTAL  
EXISTING OR PROPOSED

64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84

WORKERS / WBS 152



NOTE: THE LIST OF 124 BOARDS/COMMISSIONS FROM WHICH THIS INFORMATION IS GENERATED CONTAINS 31 BOARDS/COMMISSIONS ESTABLISHED PRIOR TO 1964.



NEW BOARDS AND COMMISSIONS ESTABLISHED BETWEEN 1964 AND 1983

BOARDS + COMMISSIONS

COMMITTEE REPORT  
HOUSE

2/15

( 7 )

FURTHER: JUDICIARY

1/30/85

Date: 2-14-85

The Committee on STATE AFFAIRS has had HB 152

"An Act relating to the status of board members whose term of office has expired; and providing for an effective date."

under consideration and recommends:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for \_\_\_\_\_  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation  Zero Fiscal Note Attached
- referred to the \_\_\_\_\_ Committee APPROVES PREVIOUS

MEMBERS SIGNING  
DO-PASS

[Signature]

[Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

No Rec. Katie Anderson

No Rec. [Signature]

\_\_\_\_\_

No Rec. [Signature]

No Rec. [Signature]

\_\_\_\_\_

[Signature]  
CHAIRMAN



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

MEMORANDUM

TO: House Judiciary Committee

FROM: Carol A. Derfner *C. Derfner*  
Special Staff Assistant  
Boards and Commissions

DATE: April 2, 1985

RE: House Bill No. 152 - Status of board members  
whose terms expire

In recent research undertaken by my office, we discovered that of 110 active boards and commissions currently on the books, 27 of the boards have statutory language providing for an automatic extension of terms for the members. This language is contained in the individual creating authorities for the 27 boards and reads one of three ways:

1. "...shall hold office UNTIL (emphasis added) his successor shall be appointed and qualified."
2. "...shall serve for the duration of his term AND UNTIL (emphasis added) his successor is appointed and qualified."
3. "...shall serve for the duration of his term OR UNTIL (emphasis added) his successor is appointed and qualified."

A list of the 27 boards containing this provision is attached for your information.

Attachment

25. Alaska Public Utilities Commission
26. Board of Veterinary Examiners
27. Western Interstate Commission for Higher Education

DEPT	BOARD
DCED	Accountancy, Alaska State Board of Public
DNR	Agricultural Revolving Loan Fund Board
DOR	Alcoholic Beverage Control Board
DHSS	Alcoholism, Review Board on
DCED	Architects, Engineers, and Land Surveyors, State Board of Registration for
DOE	Arts, Alaska State Council on the
DOR	Assessment Review Board, State
DCED	Athletic Commission
DNR	Bald Eagle Preserve Advisory Council, Alaska Chilkat
GOV	Bar, Board of Governors of the Alaska
DCED	Barbers and Hairdressers, Board of
DOE	Block Grants Advisory Committee, Education and Consolidation and Improvement Act
DOA	Broadcasting Commission, Alaska Public
DHSS	Catastrophic Illness Committee
DOR	Child Support Enforcement Commission
DCED	Chiropractic Examiners, Board of
GOV	Coastal Policy Council, Alaska
LEG	Code Revision Commission, Alaska
DFG	Commercial Fisheries Entry Commission, Alaska
NONE	Commercial Fishing and Agriculture Bank, Board of Directors
LAW	Controlled Substances Advisory Committee
DOC	Correctional Industries Commission
DCED	Dental Examiners, Board of
DOA	Disability Review Board, Public Employees' and Teachers'
DCED	Dispensing Opticians, Board of
DPS	Domestic Violence and Sexual Assault, Council on
DHSS	Drug Abuse, Advisory Board on
DOE	Education, Board of
DOE	Education Commission on the States
DCED	Electrical Examiners, Board of
DHSS	Emergency Medical Services, Advisory Council on
DGE	Employment of Handicapped, Governor's Committee on
DOL	Employment Security Advisory Council
DNR	Federal Areas in Alaska, Citizens' Advisory Commission on
DFG	Fisheries, Board of
DOL	Fishermen's Fund Advisory and Appeals Council
DNR	Forestry, Board of
DFG	Game, Board of

<u>DEPT</u>	<u>BOARD</u>
DCRA	Geographic Board, State
DCED	Guide Licensing and Control Board
DHSS	Handicapped and Gifted, Governor's Council for the
DNR	Historic Sites Advisory Committee
DOE	Historical Commission, Alaska
NONE	Historical Records Advisory Board, State
DCED	Housing Authority, Alaska State
DOR	Housing Finance Corporation, Alaska
GOV	Human Rights, State Commission for
NONE	Humanities Forum, Alaska
DOR	Industrial Development Authority, Alaska
DCRA	Job Training Coordinating Council, State
CRT	Judicial Conduct, Commission on
CRT	Judicial Council
DHSS	Juvenile Justice and Family Services Advisory Committee
DOA	Labor Relations Agency
GOV	Land Use Council Advisory Committee, Alaska
DOE	Libraries, Advisory Council on
DEC	Litter Control Advisory Council
DCRA	Local Boundary Commission
DCED	Marine Pilots, Board of
DHSS	Medicaid Rate Commission
DCED	Medical Board, State
DOR	Medical Facility Authority, Alaska
DCED	Medical Indemnity Corporation of Alaska
DHSS	Mental Health Advisory Council
DNR	Mining Water Use Review Committee
DOR	Municipal Bond Bank Authority, Alaska
DCED	Nursing Home Administrators, Board of
DCED	Nursing, Board of
DOL	Occupational Safety and Health Review Board
DCED	Oil and Gas Conservation Commission, Alaska
DOA	Older Alaskans Commission
DCED	Optometry, Board of Examiners in
DFG	Pacific Marine Fisheries Commission
DFG	Park and Park Monument Subsistence Resource Commissions, Alaska
DOC	Parole, State Board of

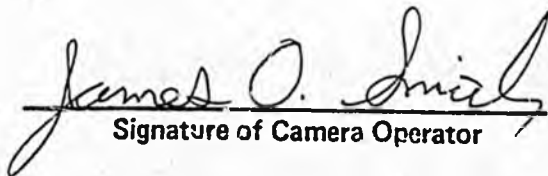
DEPT	BOARD
DOR	Permanent Fund Corporation Board of Trustees, Alaska
DOA	Personnel Board
DCED	Pharmacy, Board of
DCED	Physical Therapy Board, State
DOA	Pioneers' Homes Advisory Board, Alaska
DPS	Police Standards Council, Alaska
DOE	Postsecondary Education, Alaska Commission on
DCED	Power Authority, Alaska
DCRA	Private Industry Council, Alaska
DOE	Professional Teaching Practices Commission
DCED	Psychologist and Psychological Associate Examiners, Board of
DOA	Public Employees Retirement Board
DOA	Public Offices Commission, Alaska
DTPF	Railroad Corporation, Board of Directors for the Alaska
DOA	Railroad Labor Relations Agency
DCED	Real Estate Commission
GOV	Reapportionment Board
NONE	Regents, University of Alaska Board of
DCED	Royalty Oil and Gas Development Advisory Board, Alaska
DOA	Rural Alaska Television Users Network
DOL	Safety Advisory Council, Alaska
DCED	Seafood Marketing Institute, Alaska
DNR	Soil and Water Conservation Board, Alaska
DHSS	Statewide Health Coordinating Council
DOA	Teachers' Retirement Board, Alaska
DCED	Transportation Commission, Alaska
DCED	Utilities Commission, Alaska Public
DCED	Veterinary Examiners, Board of
DPS	Violent Crimes Compensation Board
NONE	Vocational and Career Education, Alaska State Advisory Council on
DEC	Water and Wastewater Works Advisory Board
DNR	Water Resources Board
NONE	Western Interstate Commission for Higher Education
GOV	Women's Commission, Alaska
DNR	Wood-Tikchik State Park Management Council
DOL	Worker's Compensation Board, Alaska

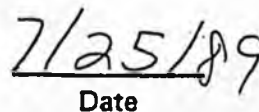


# RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

  
Signature of Camera Operator

  
Date

HB

155

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

*House Judiciary*

*4/3/85*

*1:30 pm*

COMMITTEE REPORT  
HOUSE

4/4

Ruley

(7)

FURTHER:

3/18/85

Date: \_\_\_\_\_

The Committee on JUDICIARY has had HB 155

"An Act permitting the establishment of horizontal property regimes for manufactured housing; and providing for an effective date."

under consideration and recommends:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for HB 155 (JUD)  same title  
 new title
- and recommends it do pass
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation  Zero Fiscal Note Attached
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Signature]

CHAIRMAN

Original sponsors: Ringstad, Duncan,  
Sund, et al

1  
2 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

3 CS FOR HOUSE BILL NO. 155 (Judiciary)

4 IN THE LEGISLATURE OF THE STATE OF ALASKA

5 FOURTEENTH LEGISLATURE - FIRST SESSION

6 A BILL

7 For an Act entitled: "An Act relating to notice requirements on the clo-  
8 sure of mobile home parks and permitting the estab-  
9 lishment of horizontal property regimes for mobile  
10 homes; and providing for an effective date."

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

12 \* Section 1. AS 34.03.225 is amended to read:

13 Sec. 34.03.225. LIMITATIONS ON MOBILE HOME PARK OPERATOR'S  
14 RIGHT TO TERMINATE. A mobile home park operator may evict a mobile  
15 home or a mobile home park dweller or tenant only for one of the  
16 following reasons:

17 (1) the mobile home dweller or tenant has defaulted in the  
18 payment of rent owed;

19 (2) the mobile home dweller or tenant has been convicted of  
20 violating a federal or state law or local ordinance, and that viola-  
21 tion is continuing and is detrimental to the health, safety or welfare  
22 of other dwellers or tenants in the mobile home park;

23 (3) the mobile home dweller or tenant has violated a pro-  
24 vision, enforceable under AS 34.03.130, of the rental agreement or  
25 lease signed by both parties and not prohibited by law including rent  
26 and the terms of agreement; and

27 (4) a change in the use of the land comprising the mobile  
28 home park, or the portion of it on which the mobile home to be evicted  
29 is located; however, all dwellers or tenants so affected by a change  
in land use shall be given at least 180 days' [90 DAYS] notice, or

1 longer if a longer notice period is provided in a valid lease.

2 \* Sec. 2. AS 34.03.225 is amended by adding a new subsection to read:

3 (b) A mobile home park operator may not evict a mobile home or a  
4 mobile home park dweller or tenant because of the age of the mobile  
5 home. This does not prohibit eviction for violation of a provision  
6 enforceable under AS 34.03.130 that requires that a mobile home be in  
7 a fit and habitable condition.

8 \* Sec. 3. AS 34.07 is amended by adding a new section to read:

9 ARTICLE 8. HORIZONTAL PROPERTY REGIME FOR MOBILE HOMES.

10 Sec. 34.07.500. HORIZONTAL PROPERTY REGIME FOR MOBILE HOMES.

11 (a) Notwithstanding the provisions of AS 34.07.010 - 34.07.460, a  
12 horizontal property regime for mobile homes may be established as an  
13 estate in real property consisting of an undivided interest in common  
14 in a portion of the real property together with a separate interest in  
15 space, the boundaries of which are described in a declaration filed by  
16 the sole owner or all of the owners of the property and which complies  
17 to the extent applicable with AS 34.07.020.

18 (b) The portion of the parcel of real property held in undivided  
19 interest may be all of the real property of an existing parcel except  
20 for the separate interests in space without regard to any three-dimen-  
21 sional aspects of the real property if the purpose of the horizontal  
22 property regime is the establishment of a horizontal property regime  
23 for mobile homes.

24 (c) A person who intends to convert a mobile home park into a  
25 horizontal property regime for mobile homes under this section shall  
26 give each tenant and each subtenant in possession of a portion of the  
27 conversion land notice of the conversion no later than 180 days before  
28 the tenant and any subtenant in possession is required to vacate. The  
29 notice must set out generally the rights of tenants and subtenants

1  
2 under this section and must be hand delivered to the tenant or sub-  
3 tenant in possession or mailed by prepaid United States mail to the  
4 tenant and subtenant at the address of the unit or any other mailing  
5 address provided by a tenant. A tenant or subtenant may not be re-  
6 quired to vacate upon less than 180 days' notice except by reason of  
7 nonpayment of rent, waste, or conduct that constitutes a continuing  
8 private nuisance, and the terms of the tenancy may not be altered  
9 during the period. The failure to give notice as required by this  
10 section is a defense to an action for possession.

11 (d) For 60 days after delivery or mailing of the notice des-  
12 cribed in (c) of this section, the person required to give the notice  
13 shall offer to convey the unit or proposed unit to the tenant. If a  
14 tenant fails to purchase the unit during the 60-day period, the  
15 offeror may not offer to dispose of an interest in the unit during the  
16 following 180 days at a price or on terms more favorable to the  
17 offeree than the price or terms offered to the tenant.

18 \* Sec. 4. This Act takes effect immediately in accordance with AS 01.-  
19 10.070(c).

Article 8. Horizontal Property Regime for Mobile Homes.

(c) The owner(s) of property proposed to be converted into a horizontal property regime for mobile homes shall give each residential tenant and each residential subtenant notice of the conversion and provide each person with an offer of sale no later than 120 days before the tenant or subtenant is required to vacate. The failure to give notice as required by this section is a defense to an action for possession.

(d) For 60 days after delivery or notice described in (c) of this section, the person required to give notice shall offer to convey each unit of space or proposed unit occupied for residential use to the tenant who leases the unit. If a tenant fails to purchase the unit during the 60-day period, the owner(s) may not offer to dispose of an interest in the unit during the following 180 days at a price or terms more favorable to the offeree than the price or terms offered to the tenant.

Change (c) to (e).

2/7/85

Good afternoon. my name is Maureen Kennedy; I am the Director of the Alaska Public Interest Research Group. We have 650 members throughout the state, and have been working on housing issues since our beginning in 1974. Mobile home issues have been of concern to us over the years--in the late '70s, we exposed a kickback arrangement between mobile home dealers and park owners which considerably restricted competition and increased costs to citizens back in those days of particularly tight markets. Last year, we worked with AHFC in reworking the mobile home financing and insurance programs.

Like it or not, mobile homes are an important source of low cost housing for many Alaskans. Though the business page articles attest to the fact that vacancy rates are increasing, those improved vacancy rates do not mean that low and moderate income Alaskans are finding housing that is reasonably priced. A state study last year found that 70% of low and moderate income Alaskans are paying more than the now-traditional 35% of income on housing. For many people, especially those with larger families, mobile homes on lots are their only alternative.

The two bills under consideration today ease the pressure on mobile home dwellers. We support HB 148--it promises to save the state time and money by removing the "state as middleman" and allow mobile home owners to more quickly and efficiently protect their interests. It makes sense for the Dept. of Law to oversee this activity.

HB 155 also will help keep mobile homes a viable housing option in many parts of the state. We would support it, however, only if it is amended to include protections for people renting spaces at the time of conversion.

HB 155 is analogous to the condo conversion laws that most other states in the country have passed. Housing that was used for rental units becomes less profitable as it depreciates, and often the owner can do better by selling the units as condos. Fair enough. Housing is being preserved; ownership is just changing. Yet most states recognize that such transfers can impose unreasonable hardships on previous renters--the stereotypical example is the 70 year old widow who has lived in the same apartment for 20 years, has no savings and is on Social Security. She cannot afford the downpayment, or perhaps the mortgage on a unit whose value has increased substantially as a result of the sale. If you exchange the widow for a young, lower income family with no savings and a 5 year old trailer, we're in the same situation.

State laws on condo conversions vary substantially, but nearly all incorporate some advance notice provisions, a first right of refusal to previous tenants (if they can afford the lot, they should be entitled to stay where they are), and special provisions for the elderly and low income to continue renting their apartments. I would suggest that park tenants be entitled to 6 months' notice of eviction, and that they have

24

first right of refusal. I'm sorry I could not prepare more extensively for this hearing; we'd be happy to do some analysis of laws on condo conversions in other states to give you some perspective.

Finally, to give you some perspective right now, let me give you some statistics on mobile home park residents. Though we are a statewide organization, I was only able to track down information for Anchorage this morning.

As you may know, Mayor Knowles has been working out voluntary agreements with mobile home parks to find new housing for displaced residents after conversion. The Community Planning Dept. has identified the displacement problem as a high priority.

There are roughly 6,100 mobile homes in parks, according to Muni. figures. More than 1,500 of these are in district 10 and nearly 3,000 are in district 14. Mobile home park residents tend to have 50% more people per unit than other rental units in the city. People live in mobile homes because they can't afford more expensive housing. If HB 155 passes without this amendment, over the next few years, many of those 6,100 families will be faced with eviction with little notice and no other available space in the area. Then we'll have a real housing problem.

Thanks very much for hearing by testimony, and please let me know if I can be of help in working out an equitable solution to this problem.

HB 155 Supplemental File Contents

From Subcommittee Report

March 13, 1985

- 1) Cover Memo from Subcommittee -- Boucher & Collins -- March 11, 85
- 2) Proposed CS for HB 155 (L & C)
- 3) Sectional Analysis of CS HB 155 (L & C)
- 4) SB 44
- 5) Summary -- The Uniform Common Interest Ownership Act
- 6) Landlord Tenant Act
- 7) Comments on the Common Interest Ownership Act -- January 31, 85  
Memo from William L. McNall to Senator Rodey

# Alaska State Legislature

POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4931

DISTRICT 10  
BOX 111038  
ANCHORAGE, ALASKA 99511  
(907) 349-2192



CHAIRMAN  
Special Committee on  
Telecommunications

MEMBER  
Labor and Commerce  
State Affairs  
Finance--Subcommittee Administration

Representative H. A. "Red" Boucher

## MEMORANDUM

DATE: March 11, 1985

TO: House Labor & Commerce Committee Members

FROM: Representative Boucher  
Representative Collins

SUBJECT: Subcommittee Report on HB 155.

In the last several years the problem of relocation of mobile homes in and around the urban areas of the state has become overwhelming. Anchorage has been especially hard hit by this problem due to an unprecedented amount of growth in the area. It was our concern that the mobile home owners of our District, and the State receive adequate protection under the legislation proposed in HB 155.

In reviewing this bill, however, we also looked at SB 44 which would adopt a national model law called the Common Interest Ownership Act. This Act appears to fill the many holes in existing state law concerning Condominiums, Planned Unit Developments (PUD's), and Cooperatives. It also appears to allow the same type of "condominiumizing" of mobile home parks as is provided for in HB 155 but is far more comprehensive. In addition, SB 44 would supercede the now out-dated Horizontal Property Regimes Act.

While it seems to be generally agreed that there is a need for the Common Interest Ownership Act, the bill is very lengthy and will likely move slowly through the committee process. In the event that SB 44 does not pass both houses this session, we feel that it will be beneficial to have at least the minimal provisions in place for mobile home owners in the existing Horizontal Property Regimes Act.

Attached is a copy of the proposed Committee Substitute for HB 155 along with a copy of a sectional analysis of the bill. Briefly, the changes we propose would require a 180 day eviction notification for any change in land use, and would ensure a first right of refusal for the mobile home owners in a park when a Horizontal Property Regime is established.

We also suggest that the Labor & Commerce Committee consider introducing a version of the Common Interest Ownership Act in the House to help speed the adoption of this much needed legislation.

*House*

BY THE LABOR AND  
COMMERCE COMMITTEE

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 155 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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12 Sec. 34.03.225. LIMITATIONS ON MOBILE HOME PARK OPERATOR'S  
13 RIGHT TO TERMINATE. A mobile home park operator may evict a mobile  
14 home or a mobile home park dweller or tenant only for one of the  
15 following reasons:

16 (1) the mobile home dweller or tenant has defaulted in the  
17 payment of rent owed;

18 (2) the mobile home dweller or tenant has been convicted of  
19 violating a federal or state law or local ordinance, and that viola-  
20 tion is continuing and is detrimental to the health, safety or welfare  
21 of other dwellers or tenants in the mobile home park;

22 (3) the mobile home dweller or tenant has violated a pro-  
23 vision, enforceable under AS 34.03.130, of the rental agreement or  
24 lease signed by both parties and not prohibited by law including rent  
25 and the terms of agreement; and

26 (4) a change in the use of the land comprising the mobile  
27 home park, or the portion of it on which the mobile home to be evicted  
28 is located; however, all dwellers or tenants so affected by a change  
29 in land use shall be given at least 180 days' [90 DAYS] notice, or

1 longer if a longer notice period is provided in a valid lease.

2 \* Sec. 2. AS 34.07 is amended by adding a new section to read:

3 ARTICLE 8. HORIZONTAL PROPERTY REGIME FOR MOBILE HOMES.

4 Sec. 34.07.500. HORIZONTAL PROPERTY REGIME FOR MOBILE HOMES.

5 (a) Notwithstanding the provisions of AS 34.07.010 - 34.07.460, a  
6 horizontal property regime for mobile homes may be established as an  
7 estate in real property consisting of an undivided interest in common  
8 in a portion of the real property together with a separate interest in  
9 space, the boundaries of which are described in a declaration filed by  
10 the sole owner or all of the owners of the property and which complies  
11 to the extent applicable with AS 34.07.020.

12 (b) The portion of the parcel of real property held in undivided  
13 interest may be all of the real property of an existing parcel except  
14 for the separate interests in space without regard to any three-dimen-  
15 sional aspects of the real property if the purpose of the horizontal  
16 property regime is the establishment of a horizontal property regime  
17 for mobile homes.

18 (c) A person who intends to convert a mobile home park into a  
19 horizontal property regime for mobile homes under this section shall  
20 give each tenant and each subtenant in possession of a portion of the  
21 conversion land notice of the conversion no later than 180 days before  
22 the tenant and any subtenant in possession is required to vacate. The  
23 notice must set out generally the rights of tenants and subtenants  
24 under this section and must be hand delivered to the tenant or sub-  
25 tenant in possession or mailed by prepaid United States mail to the  
26 tenant and subtenant at the address of the unit or any other mailing  
27 address provided by a tenant. A tenant or subtenant may not be re-  
28 quired to vacate upon less than 180 days' notice except by reason of  
29 nonpayment of rent, waste, or conduct that constitutes a continuing

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

4 (d) For 60 days after delivery or mailing of the notice des-  
5 cribed in (c) of this section, the person required to give the notice  
6 shall offer to convey the unit or proposed unit to the tenant. If a  
7 tenant fails to purchase the unit during the 60-day period, the  
8 offeror may not offer to dispose of an interest in the unit during the  
9 following 180 days at a price or on terms more favorable to the  
10 offeree than the price or terms offered to the tenant.

11 \* Sec. 3. This Act takes effect immediately in accordance with AS 01.-  
12 10.070(c).

SECTIONAL ANALYSIS CSHB 155 (PROPOSED)

A title change has been made over HB 155 to include the changes made to the Landlord Tenant Act on notification requirements.

SECTION 1 - The section amends A.S. 34.03.225(4) of the Landlord Tenant Act to provide 180 days eviction notice for mobile home owners when any change in land use is to be made. This provision is designed to provide the same level of protection to the mobile home owner during conversion to a non-horizontal property regime as is provided for in conversion to a horizontal property regime.

SECTION 2 - This section has been expanded from the original bill by changing "manufactured housing" to "mobile homes" and deleting the old subsection (c) and adding new sections (c) and (d). The new subsection (c) requires that 180 days notice be given prior to the eviction date and that the notice include the rights of the tenant under this section. The new subsection (d) gives the tenant or subtenant of a mobile home first right of refusal on the land and states that if the offer is not accepted then the offeror may not offer the land at a better price or terms for 180 days following.

SECTION 3 - Immediate effective date.

Introduced: 1/30/85  
Referred: Labor & Commerce  
and Judiciary

BY RINGSTAD, DUNCAN, SUND,  
JENKINS, UEHLING AND MARROU

1 IN THE HOUSE

2 HOUSE BILL NO. 155

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act permitting the establishment of horizontal  
7 property regimes for manufactured housing; and pro-  
8 viding for an effective date."

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

10 \* Section 1. AS 34.07 is amended by adding a new section to read:

11 ARTICLE 8. HORIZONTAL PROPERTY REGIME FOR MANUFACTURED HOUSING.

12 Sec. 34.07.500. HORIZONTAL PROPERTY REGIME FOR MANUFACTURED  
13 HOUSING. (a) Notwithstanding the provisions of AS 34.07.010 -  
14 34.07.460, a horizontal property regime for manufactured housing may  
15 be established as an estate in real property consisting of an  
16 undivided interest in common in a portion of the real property  
17 together with a separate interest in space, the boundaries of which  
18 are described in a declaration filed by the sole owner or all of the  
19 owners of the property and which complies to the extent applicable  
20 with AS 34.07.020.

21 (b) The portion of the parcel of real property held in undivided  
22 interest may be all of the real property of an existing parcel except  
23 for the separate interests in space without regard to any three-  
24 dimensional aspects of the real property if the purpose of the hori-  
25 zontal property regime is the establishment of a horizontal property  
26 regime for manufactured housing.

27 (c) Except to the extent that AS 34.07.010 - 34.07.460 is in-  
28 applicable to a horizontal property regime for manufactured housing,  
29 the provisions of AS 34.07.010 - 34.07.460 apply to a horizontal

1           property regime established for manufactured housing.

2           \* Sec. 2. This Act takes effect immediately in accordance with AS 01.-

3 10.070(c).

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

**REQUEST**

Bill/Resolution No.: HB 155  
 Title: "An Act permitting...horizontal property regimes...manufactured housing..."  
 Sponsor: Repr. Ringstad  
 Requestor: House Labor & Commerce  
 Date of Request: 2/1/85

**FISCAL DETAIL**

Agency Affected: Department of Law  
 Program Category Affected: Public Protection  
 BRU, Program or Subprogram(s) Affected: Consumer Protection

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

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

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

**ANALYSIS:** Attach a separate page if necessary

This bill would amend AS 34.07 to permit condominium mobile homes. The Department of Law would only be involved to the extent that sales of some condominiums might result in complaints of Mobile Home Warranty Act. Such complaints are not expected to exceed the complaint rate for the mobile home industry as a whole and they do not warrant fiscal note costs.

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Date: 2/4/85  
 Approved by Commissioner: Norman C. Gorsuch Date: 2/4/85  
 Agency: Department of Law

**Distribution (by Agency preparing fiscal note):**

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

7/1/84

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 6, 1985

SUBJECT: Manufactured housing condominia  
(HB 155)

TO: Representative John Ringstad  
Chairman, House

FROM: Richard A. Bradley  
Legislative Counsel **B**

You have requested a brief analysis of HB 155.

As a preliminary matter, note that any analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

The predecessor to HB 155 in the Thirteenth Legislature was a sequel to the rather long bill that was drafted to permit the establishment of the "horizontal property regime," (i.e., condominia) for mobile home parks. The problem was that the typical word used throughout AS 34.07, the chapter dealing with condominia, to describe what is owned in a condominium by the individual owner is "apartment" and it was thought that that word did not quite accurately describe the condominium estate that would result in a condominium for mobile homes. I assume that a condominium for mobile homes would consist of land improved by utility connections for the individual mobile homes-- but not much more is required.

The phrase "manufactured housing" seems to describe "mobile homes" generically.

The provisions of sec. 500(a) describe the condominium estate ("an estate in real property consisting of an undivided interest in common in a portion of real property

Representative John Ringstad  
February 6, 1985  
Page 2

together with a separate interest in space") with reference to the needs of a condominium for manufactured housing.

Sec. 500(b) acknowledges the fact that a condominium regime for manufactured housing will not have any "three-dimensional aspects" to the real property owned.

And sec. 500(c) states the intent of the legislature that unless the provisions of AS 34.07.010 - 34.07.460 are "inapplicable" to a condominium regime for manufactured housing, the provisions of that chapter apply.

If I may be of further assistance, please advise.

RAH:ojb  
J11/062

HB 155 File Contents

February 20, 1985

Initial materials on February 7, 1985

- 1) Bill Summary -- Legislative Reporting Service
- 2) Overview -- Committee Staff Memo
- 3) Bill Analysis -- Legislative Legal Counsel Memo 2/6/85
- 4) Fiscal Note -- Dept. of Law, Administrative Servs. 2/4/85
- 5) Backup -- Packet on Last Year's CSSB 464 (Finance), including Minutes of Senate Finance Committee testimony on the bill. -- Provided by Rep. Ringstad

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Added February 20, 1985 Wednesday

- 6) Proposed CS by sponsor Ringstad
- 7) Number of Mobile Homes in Anchorage -- From AKPIRG
  - a. By Community Council area
  - b. By Election District
- 8) Written testimony of Maureen Kennedy -AKPIRG Director

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Added February 25, 1985 Monday

- 9) Proposed Amendments -- Alaska Public Interest Research Group

	Mobile Hms in Parks	On Lots	# of Apartments
District 7 (Szymanski)	3 <sup>1</sup>	316	830
District 8 (Cowdery and Pestinger)	44 <sup>1</sup>	394	828
District 9 (Hayes and Flood)	0	87	1805
District 10 (Bussell and Lindauer)	1543	144	5222
District 11 (Abood and Tischer)	109	42	1346
District 12 (Clocksin and Uehling)	130	8	5904
District 13 (Ward and Martin)	853	31	4431
District 14 (Barnes and Furnace)	2852	211	4362
District D (partial P. Fischer & Gilman)	542 <sup>9</sup>	292 316	830
District E (Pettyjohn, Faiks)	489 <sup>97</sup>	481	2633
District F (Sturgulewski, Rodey)	1652	150	5768
District G (Josephson, Fischer, V.)	953 877	39	10335
District H (Halford, Kelly partial)	137	351	500 672
District 15 (Phillips and Liska, partial)	187	381	650 550

MUNICIPALITY OF ANCHORAGE  
 COMMUNITY PLANNING DEPARTMENT  
 RESEARCH SECTION

1983 POPULATION BY COMMUNITY COUNCIL AND STRUCTURE TYPE

CODE	COMMUNITY COUNCIL NAME	SINGLE FAMILY	DUPLEX	3-4 UNITS	5-19 UNITS	20+ UNITS	MOBILE HOME PARKS	HOME LOTS	RV'S	GROUP QUARTERS	HOTELS/MOTELS	TOTAL
1	ABBOTT LOOP	5262	1311	833	344	536	1378	793	12	43	0	10512
2	AIRPORT HEIGHTS	3000	1026	331	274	0	0	0	0	40	0	4671
3	BIRCHWOOD	1705	80	36	44	0	0	309	12	0	0	2185
4	CAMPBELL PARK	2518	350	260	485	1034	1016	54	0	4	0	5721
5	CHUCIAK	4496	160	104	114	47	302	666	131	0	0	6022
6	DOWNTOWN	322	33	32	308	435	0	0	0	201	16	1347
7	EAGLE RIVER	4276	125	222	616	0	199	238	0	276	0	5902
8	EAGLE RIVER VALLEY AND SOUTH FORK	7202	418	50	44	0	0	121	4	0	0	7827
9	ELMENDORF-FORT RICHARDSON	0	0	0	0	0	0	0	0	16574	0	16574
10	BAYSHORE-KLATT	4054	734	307	508	86	37	304	244	10	0	6234
11	FAIRVIEW	2428	818	2337	2210	1888	233	16	116	151	87	10263
12	CIRDWOOD VALLEY	909	29	27	10	52	25	16	0	0	0	1073
13	GOVERNMENT HILL	440	353	21	228	1689	0	7	0	0	0	2739
14	HILLSIDE EAST	3490	32	0	0	0	9	90	0	0	0	3621
15	HUFFMAN O'MALLEY	4591	57	24	10	0	0	268	0	31	0	4961
16	MID-HILLSIDE	3495	47	0	0	0	0	4	0	4	0	3564
17	NORTHEAST	10285	2661	1737	1518	319	6425	495	93	21	0	23554
18	NORTH MOUNTAIN VIEW	1775	694	2221	1572	316	229	19	89	20	7	6950
19	NORTH STAR	477	520	221	320	352	73	0	0	0	0	1993
20	OLD SEWARD-OCEANVIEW	4247	249	240	94	0	0	227	279	0	0	5336
21	RABBIT CREEK	4010	47	0	0	0	0	175	0	10	0	4242
22	ROGERS PARK	2347	140	81	568	0	0	0	0	15	0	4151
23	RUSSIAN JACK PARK	2573	1054	1463	2154	987	1478	28	178	30	1	9945
24	SAND LAKE	11824	2079	1672	1555	493	0	233	0	48	0	17904
25	SCENIC PARK AREA	2813	1330	481	253	0	0	3	0	8	0	5893
26	SOUTH ADDITION	1998	1240	503	326	654	0	0	0	227	0	4958
27	SPENARD	6404	1466	1923	2023	2834	2099	186	68	288	6	18287
28	TAKU CAMPBELL	4616	1251	1245	1175	222	1595	150	130	19	0	10403
29	TUDOR AREA	1207	455	187	154	0	24	2	0	14	0	2043
30	TURNAGAIN	5096	1789	1209	1441	534	231	84	0	6	30	10360
31	UNIVERSITY AREA	3452	1021	813	1031	905	929	64	0	302	0	8817
32	CLEN ALPS	385	5	0	0	0	0	3	0	0	0	343
33	TURNAGAIN ARM	319	3	0	0	0	0	35	2	0	0	359
999	REMAINDER OF THE AREA	260	10	31	236	284	1001	7	0	88	4	1921
TOTAL		114264	21527	18671	20940	13669	17273	4591	1358	18392	159	230846

RV'S = RECREATIONAL VEHICLES USED AS RESIDENTIAL HOUSING UNITS

HOTELS/MOTELS = THE NUMBER OF RESIDENT PERSONS LIVING IN ROOMS RENTED ON A MONTHLY BASIS

SOURCE: OFFICIAL 1983 MUNICIPAL HOUSEHOLD SURVEY

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

BY HALFORD, FAIKS,  
STURGULEWSKI AND  
KERTULA

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

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

18

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

24

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

SENATE BILL 44  
Sectional Analysis  
(includes changes proposed in committee substitute)

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

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

ARTICLE I. APPLICABILITY

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

Exceptions exist to the general rule of applicability:

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

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

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

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

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

the cooperative's declaration makes the entire chapter applicable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 BUILDINGS.** In the case of common interest community containing one or more conversion buildings, the disclosure of additional information relating to the condition of those buildings 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 an older building 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

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;

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 communities, and therefore this section permits the parties to vary many provisions. In many instances, however, provisions of the chapter may not be varied because of the need to protect purchasers, lenders, and

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.

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 BUILDINGS. 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 building or mobile home park to common interest ownership, 120 days notice of the conversion with a public offering statement must be given to the residential tenants and subtenants. 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

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 effective January 1, 1986.

declarants. This section adopts the approach of prohibiting variation by agreement except in those cases where it is expressly permitted by the terms of the chapter.

Sec. 34.08.720. SEPARATE TITLES AND TAXATION. A unit owner's interest in cooperatives is real estate. In condominiums or planned communities, each unit and its interest in the common elements constitutes a separate parcel of real estate. Each unit must be separately taxed and assessed. Any portion of the common elements for which the declarant has reserved any development right must be separately taxed and assessed against the declarant. If there is no unit owner other than a declarant, the real estate comprising the common interest community may be taxed and assessed in any manner provided by law.

Sec. 34.08.730. APPLICABILITY OF LOCAL ORDINANCES, REGULATIONS, AND BUILDING CODES. The purpose of this section is to resolve the relative roles of the state and local communities in regulating the creation of common interest communities. The underlying concept is to make clear that the local government has a legitimate interest in regulating the use of real estate, in accordance with established zoning, building codes and similar practices, and that such practices continue to have equal applicability to common interest communities.

Sec. 34.08.740. EMINENT DOMAIN. The provisions of this chapter is not intended to supplant the usual rules of eminent domain but merely to supplement those rules in addressing the unique problems which eminent domain raises in the context of a common interest community.

Sec. 34.08.750. SUPPLEMENTAL GENERAL PRINCIPLES OF LAW APPLICABLE. This chapter displaces existing law relating to common interest communities and other law only as stated by specific sections and by reasonable implication therefrom. Unless specifically displaced, common law rights are retained.

Sec. 34.08.760. CONSTRUCTION AGAINST IMPLICIT REPEAL.

Sec. 34.08.770. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

Sec. 34.08.780. SEVERABILITY.

Sec. 34.08.790. UNCONSCIONABLE AGREEMENT OR TERM OF CONTRACT. Upon finding that a contract or contract clause was unconscionable at the time the contract was made, a court may refuse to enforce the contract in whole or part.

Sec. 34.08.800. OBLIGATION OF GOOD FAITH. This section sets forth a basic principle running throughout this chapter: in transactions involving common interest communities, good faith is required in the performance and enforcement of all agreements and duties.

Sec. 34.08.810. REMEDIES TO BE LIBERALLY ADMINISTERED.

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

S U M M A R Y

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The Uniform Common Interest  
Ownership Act

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## UNIFORM COMMON INTEREST OWNERSHIP ACT

Between 1977 and 1981, the National Conference of Commissioners on Uniform State Laws (ULC) promulgated three Acts dealing with multiple-ownership forms of real estate. These were the Uniform Condominium Act, the Uniform Planned Community Act, and the Model Real Estate Cooperative Act. Each form of ownership involves a different organization of ownership interests. In condominiums, owners have title to their units and undivided shares in the common elements. A planned community has owners who own their own units, but the common elements are owned by the owners' association. Every owner is a member of the owners' association. In a cooperative, the association owns all the real estate. Cooperative members own shares in the association, and lease their individual units from the association. These are the principal differences between these forms of multiple ownership.

But these forms are greatly similar to each other, as well, and the similarities have greater practical significance than the differences. For all of them, there is an owners' association responsible for the affairs of the community. Every owner belongs, and has voting rights and the opportunity to participate in the governing board. The community, in all cases, assesses the owners for common expenses and maintenance. The association, in all cases, contracts for management and services for the whole project. The documentation for any multiple-ownership project during its life, although some language may vary slightly, is much the same. Any multiple-ownership form requires some kind of creation document or declaration, as an example, and these documents have much the same function, no matter the form. In short, the technical questions of ownership do not create an enormous difference between these forms when it comes down to matters of operation of a project. And the three earlier Acts by the ULC look very much alike.

So why not one Act that includes all forms within its scope? In response in 1982, the ULC has produced the Uniform Common Interest Ownership Act. It encompasses all forms of multiple or "common interest" ownership.

The major obstacle to such an Act is, basically, definitional. The Common Interest Ownership Act uses the new term "common interest community." It means "real estate with respect to which any person, by virtue of his ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in the declaration. 'Ownership of a unit' does not include holding a leasehold interest of less than [20] years in a unit, including renewal options." The basic determinant of applicability is obligation for assessments. All multiple-ownership arrangements call for assessments.

Then, the sub-forms, such as condominiums, planned communities, and cooperatives, are defined as kinds of common interest communities. So a developer may choose any form for his project, initially, designating that particular form in the declaration.

The Act then treats the subject of common interest communities, comprehensively, as the earlier Acts treated the individual forms, comprehensively. A comprehensive statute deals with the creation, financing, management and termination of these communities. It also provides for consumer protection and regulation. These subjects must be included before any legislation on common interest real estate can be considered comprehensive.

Creation begins with a declaration, which is the fundamental property document describing the common interest project and identifying it. This document is filed in the land records of the locality. The Act deals with a great number of issues relating to creation, such as unit and common element boundaries, allocation of common element interests and voting rights, rights of the developer in the property while sales of units go on, and procedures for amendment of the declaration. Of special interest is the concept of development rights, which permits the developer to reserve the right to add or subtract real estate, and to add units and common elements, in the declaration. This permits the developer to plan phased common interest projects as long as all effects upon owners' interests are described and disclosed at the outset.

This Act also provides for the other end of any common interest project in time. How can such a project be terminated and when it is desirable and necessary? The answer

is to provide a procedure for termination and some rules to protect owners' specific rights. Actual termination requires the agreement of a substantial number of owners (suggested is 80% of the total number). The agreement must be recorded in the land records. Once the termination is authorized, the association, as trustee, oversees the actual termination of the declaration, the sale, if any, and the distribution of proceeds, if any. Owners receive exactly their share of the total interest, whether that be proceeds or an individual interest in the real estate. Without the termination procedure, there is no assurance that a project can be terminated or that ownership interests will be protected.

This Act, further, deals with the substantial interests of those who finance common interest projects. There are three key things it does. The Act limits any control of the project or the owners' association by lenders that adversely affect owners. It establishes clear priorities for liens or secured interests against the project or individual owners' interests. It allows the developer's lender or lenders to assume declarant rights so that failure of the developer does not, necessarily, mean failure of the project. The Act defines rights and obligations between lenders and others, generally, to keep the project going, once it has been launched.

The management provisions of the Common Interest Ownership Act establish a workable basis for the ongoing community which the project must become. A common interest ownership community is like a small municipality. It must be governed, and it must be governed democratically. The developer must establish the owners' association at least by the time the first sale is made. Every owner becomes a member upon purchase. The governing body is the Executive Board, elected by the owners on a regular basis. The Executive Board has all of the powers essential to governing the community, including the power to make and enforce assessments. Its members are, also, accountable to the owners as fiduciaries, and are held to that higher standard of care.

The developer has a strong interest in the governance of the community, diminished in proportion to the units he sells. He can, therefore, appoint the initial Executive Board and control it until his interest diminishes sufficiently. Under this Act, he relinquishes control by stages - giving up his Executive Board members at given times during the sell-out. He must relinquish total control at a specific

time, either at a given percentage of the sell-out (75% suggested) or within a specific time (2 years suggested), whichever comes first. Then, the developer may not capture the government of the community beyond the span of his own legitimate interests.

Since the developer, also, makes the initial contracts for maintenance and services, this Act, in addition, permits the association to repudiate his contracts after control passes to the owners. Developers and contractors are put on notice that burdensome, sweetheart contracts will not survive, if they are attempted.

The Act and the project declaration act as a kind of constitution for the community. For example, the Act establishes liability and allocation of risk for insurance purposes for all communities. These are basic provisions to which any common interest project is subject. The Act also empowers the Association to make its bylaws which function as the statutes of the community. The association governs itself, mostly, through its bylaws. The object of the Act is to make each community as autonomous a self-governing entity as possible. These various documents, coupled with the enabling provisions of this Act, are simply the tools to accomplish this purpose.

Consumer protection is accomplished with four basic controls on the sale from developer to purchaser, but it is important to note that this Act tries to provide stability in all phases of common interest ownership development. That stability is the most important characteristic of any project to any buyer. But the specific provisions to protect buyers fall into readily identifiable categories: disclosure, warranties, escrow of deposits, and rescission rights.

This Act requires an extensive public offering statement which must be delivered to a purchaser of a unit in any common interest project before a sales contract can be concluded. The statement must give the customer all the information essential to an adequate purchase decision. That kind of information includes accurate identification of the developer, information about the significant features of the project, and balance sheets and budgets, as examples. However, drafters of these documents are encouraged to summarize those items that may be summarized, in an effort to keep public offering statements more reasonable in volume and weight.

The public offering statement is linked to the buyer's recission rights, another important aspect of buyer protection. Every buyer has a 15-day period from the time the public offering statement is delivered, within which any sales contract may be cancelled. This right gives the buyer time to consider the character of the purchase and to review his commitment - a cooling off period for the purchase decision. In addition, these recission rights are part of the disclosure requirements so that the buyer is made aware of them before they accrue.

Tied, also, to the recission rights and disclosure is the escrow requirement. Any deposit made in connection with a purchase must be placed in an appropriate escrow account. It is not possible, then, for deposits to be dissipated before buyers close on the purchase of a unit. If the buyer wishes to exercise his or her recission right, or is faced with the seller's default in any way, deposits are safe.

What remains, then, for consumer protection is a remedy for defects that are the responsibility of the developer. This Act provides both express and implied warranties of sale. The seller is bound by any representation made with respect to quality of the project. In addition, whatever is affirmed expressly, and unless adequately disclaimed, the developer must deliver the unit in at least as good a condition as at the time of contracting. It must also be suitable for the ordinary uses to which such property may be put, and free of defects. For residential property, the developer warrants that the existing use does not violate any applicable law when conveyed to, or possessed by, the buyer. If seller and purchaser specifically agree, implied warranties may be waived. For other than residential property, the seller may use a general disclaimer of warranties. And warranties are subject to a statute of limitations in order to encourage timely litigation or settlement of any claims.

The Common Interest Ownership Act also provides for agency supervision of condominium development. The agency has the power to review disclosure. It has investigative and enforcement powers to protect purchasers. It should be noted, however, that the agency article is offered as an optional addition to this Act. Many states do not want to create new agencies or increase the authority and responsibility of old ones. Fiscal constraints underlie such decisions, for the most part. This Act tries to enhance self-enforcement by purchasers as much as possible. Purchasers

can sue for any violation of the Act and ask for attorney's fees. So, an agency presence is not mandatory, and may be considered as an extra element of protection to be added at a jurisdiction's desire.

It is not possible to describe all aspects of a comprehensive act's provisions. It is important to emphasize the need for comprehensiveness. If these kinds of common interest communities are to survive over time, the law must give to them a definite, discernible character. They must know what they are and what they can do. Only a comprehensive act addressing all of the major issues in a careful and complementary way can do the job fully. This is that Act.

## UNIFORM COMMON INTEREST OWNERSHIP ACT

The Committee that acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Common Interest Ownership Act was as follows:

MARION W. BENFIELD, JR., University of Illinois, College of Law,  
Champaign, IL 61820, *Co-Chairman*  
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*President (Member Ex Officio)*  
CARLYLE C. RING, JR., 710 Ring Building, Washington, DC 20036,  
*Chairman, Executive Committee*  
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*Chairman, Division G (Member Ex Officio)*

### Technical Assistance:

DAVID D. BIKLEN and DAVID L. HEMOND, *Connecticut Law Revision Commission*

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### Uniform Condominium Act

GUS BAUMAN, *National Association of Home Builders*  
ROBERT C. COON, *Loan Guaranty Service, Veterans Administration*  
WILLIAM E. CUMBERLAND, *Mortgage Bankers Association of America*  
THOMAS J. DAVIS, JR., *Resort Timesharing Council*  
NORRIS EVANS, SR., *U.S. Department of Housing and Urban Development*  
EDWIN H. FRANK, JR., *American Bar Association, Section of Real Property, Probate and Trust Law*

Model  
1952

**PREFATORY NOTE**

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UCIOA represents the culmination of the Conference's 9-year effort to offer comprehensive legislation to the States which provides a common structural and regulatory scheme equally applicable to all three forms of common ownership.

NORMAN G. . . *American Bar Association*  
JOHN GOODE, *American Land Title Association*  
GEORGE W. GRAPE, *American Insurance Association*  
WAYNE S. HYATT, *Community Associations Institute*  
HENRY L. JUDY, *Federal Home Loan Mortgage Corporation*  
GERALD LEVINE, *U.S. Department of Housing and Urban Development*  
JAMES D. McLAUGHLIN, *American Bankers Association*  
GEORGE D. MOERMAN, *Veterans Administration*  
JAMES E. MURRAY, *Federal National Mortgage Association*  
WILLIAM V. NORTH, *National Association of Realtors*  
JAMES M. PEDOWITZ, *American Land Title Association*  
DUANE L. SEARLES, *National Association of Home Builders*  
EARL A. TALBOT, *National Association of Realtors*

#### Uniform Planned Community Act

GUS BAUMAN, *National Association of Home Builders*  
GURDON H. BUCK, *American Land Development Association*  
WILLIAM E. CUMBERLAND, *Mortgage Bankers Association of America*  
JOHN P. DONOHUE, New York, NY  
NORMAN GEIS, *American Bar Association*  
JOHN GOODE, *American Land Title Association*  
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WAYNE S. HYATT, *Community Associations Institute*  
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JOHN R. LINTON, *National Association of Realtors*  
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GEORGE D. MOERMAN, *Veterans Administration*  
JAMES E. MURRAY, *Federal National Mortgage Association*  
W. PAUL O'MARA, *The Urban Land Institute*  
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#### Model Real Estate Cooperative Act

GEORGE P. BARKER, *Community Associations Institute*  
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JAMES E. MURRAY, *Federal National Mortgage Association*  
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Copies of all Uniform and Model Acts and other printed matter issued by the Conference may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS  
645 North Michigan Avenue, Suite 510  
Chicago, Illinois 60611

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EDWIN H. FRANK, JR., *American Bar Association, Section of Real Property, Probate and Trust Law*

Model  
1982

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## DEVELOPMENT OF THE ACT

*Condominiums*

The first Uniform Act in the field was the Uniform Condominium Act (UCA), adopted by the Conference in 1977.

All states have statutes which provide for the creation of condominiums and establish some rules concerning their governance. The first statute in the United States was adopted in 1953 in Puerto Rico, and many present state statutes are patterned after that 1953 statute, or after the 1962 Federal Housing Administration model condominium statute. As the condominium form of ownership became widespread, however, many states realized that these early statutes were inadequate to deal with the growing condominium industry. In particular, many states perceived a need for additional consumer protection, as well as a need for more flexibility in the creation and use of condominiums. As a result, some states have enacted more detailed and comprehensive "second generation" statutes. Many actual or potential problems, however, involving such matters as termination of condominiums, eminent domain, insurance, and the rights and obligations of lenders upon foreclosure of a condominium project, had not been satisfactorily addressed by any existing condominium statute. Moreover, the statutes differ widely from state to state. The Uniform Condominium Act was drafted primarily to resolve those various problems.

*Planned Communities*

The Uniform Planned Community Act (UPCA) was adopted at the 1980 Annual Meeting of the Conference.

While the historical development of condominiums can be traced to early statutory enactments at the state level supported by the conveyancing bar and national lending institutions, planned communities, historically, developed as a zoning concept at the local level. As single family subdivisions were increasingly supplanted in land planning theory by "clustering" to enhance the availability of shared open space, local governments required a zoning mechanism responsive to the implications of this new concept. That device, frequently, was the "planned unit development" or PUD zone, in which cluster housing could be built, at the same or greater density than the land in question would support as single family homes on individual lots. This zoning device typically permitted local zoning authorities wide discretion in reviewing and approving designs for the dwelling units as well as the common facilities.

The growing acceptance of PUD zoning techniques by local governments in turn created new interest in an old form of real estate ownership: the multi-unit residential "planned community" served by common area facilities owned and operated by a homeowners' association. Although such developments are remarkably similar to condominiums, they have operated for years under the common law without the benefit of statutory enablement and, in virtually all states, without the regulatory burdens and consumer protection benefits applicable to condominiums.

The homeowner associations that administer such common law planned communities often perform exactly the same functions as the condominium associations that administer statutory condominium regimes. They derive their powers from a declaration of covenants, conditions and restrictions (CC&R declaration) which is recorded at the beginning of the project and which relies for its enforceability on the state common law governing covenants which "run with the land". Not surprisingly, large portions of such CC&R declarations are indistinguishable from condominium declarations. The only basis on which CC&R regimes are exempted from state and local condominium regulation is that title to the common areas is held in the name of the homeowners' association instead of being divided among the unit owners as tenants in common.

These common-law homeowner association regimes take many forms. They include not only planned residential developments, which follow the classic models described in the Homes Association Handbook promulgated in 1962 by the Urban Land Institute and which inspired FHA Form 100, but also various forms of co-operative ownership based on corporate forms, some real estate, some trust and many other combinations of real and personal property ownership. In addition, new communities now are being formed which contain multiple layers of community associations having, at different levels, condominium, PUD or master association governance in as many combinations as there are draftsmen and problems to be solved.

Each of these multi-owner forms involve all of the important issues of consumer protection and association management, and many of the complex title matters, such as termination and eminent domain, which had been addressed by the Conference in the condominium field through the Uniform Condominium Act. Ironically, however, while all of those questions are of equal importance in these forms of multiple ownership, and while various states have begun to address these problems for condominiums, almost no legislative attention has focused on planned communities, except to the extent that they are swept up in general home warranty statutes, or addressed on an *ad hoc* basis by local zoning officials.

The Conference was also mindful of the increasing and understandable inclination of developers in the face of changing condominium legislation, to choose these alternative forms of developing multi-owner projects. This avoidance process acknowledged the often superior multi-owner arrangements possible under a homeowner association structure that avoids fractionalizing ownership of the common elements. The process also represents, however, an economic decision by developers to avoid, when possible, additional costs imposed by condominium legislation in the form of disclosure, escrow requirements, or restricted practices. The Conference believed that the states should have available for their consideration a uniform act which reflected the same public policies as are contained in the Uniform Condominium Act. In this way, a state could extend the same public policies reflected in UCA to this very common form of real estate development. This need for parallelism whenever appropriate was a major factor in the drafting of the Act as finally adopted.

The result of this process was a comprehensive Act which closely paralleled UCA, and thus would yield the same consumer protections, regulatory structure, and administrative benefits to multi-owners in most multi-owner developments, regardless of how title to the common elements had been treated.

*The 1980 UCA Amendments*

As a result of the legislative process in the various states considering UCA from 1977 to 1980, and after review of UCA by the Drafting Committee on UPCA, a substantial number of amendments to the 1977 UCA were proposed to the Conference.

Many of these amendments were adopted at the 1980 annual meeting of the Conference, and were included in the current version of UCA. Most of those amendments were of a minor, non-substantial nature: they were intended to resolve insignificant technical questions, or to clarify the meaning of provisions susceptible to misinterpretation. A few amendments were adopted which resulted in more significant changes, either on particular matters of substance, or in the use of terms throughout the Act which simplified the structure and readability of the Act. A summary of the more significant amendments may be obtained from the Headquarters Office of the NCCUSL, Suite 510, 645 North Michigan Avenue, Chicago, Illinois 60611.

A second category of changes resulted from a decision of the Conference at its 1978 annual meeting that the Condominium and Planned Community Acts should contain identical provisions wherever possible, in order to facilitate the future consolidation of the two Acts. This required a large number of textual changes with no substantive effect.

*Real Estate Cooperatives*

One year after adoption of UPCA and the UCA amendments, the Model Real Estate Cooperative Act (MRECA) was adopted at the 1981 Annual Meeting of the Conference. It closely tracked its two predecessor Acts, since consolidation of the three Acts was anticipated by the Conference. Accordingly, MRECA, like the other Acts, was designed principally to insure that, to the extent practicable and consistent with the differences inherent in the various forms of ownership, consumers, developers and lenders would be able to identify a coherent and consistent pattern of rights and obligations applicable to all "common interest" developments, whether organized as condominiums, planned communities or cooperatives.

That Act contains comprehensive provisions designed to provide a unified and modern law applicable to the co-operative form of ownership of real estate. The Act has no applicability to the many cooperatives formed for such purposes as commodity marketing or consumer services. Moreover, while principally applicable to the ownership of residential real estate, a common form of ownership in many jurisdictions, the Act contemplates that, in appropriate cases, it may but need not be used for industrial or commercial real estate as well.

## COMMON INTEREST OWNERSHIP

Real estate cooperatives are a very common form of apartment ownership in several jurisdictions; in other states, however, they are virtually unknown, save in areas where they have been created pursuant to a variety of low income housing programs sponsored by the United States Department of Housing and Urban Development. Although cooperatives are similar in a number of ways to condominiums and other forms of multiply owned real estate regimes, they have operated for years under the corporate law without the benefit of specific statutory enablement, and in virtually all states, without the regulatory burdens and consumer protection benefits available to condominiums.

As with planned communities, the associations that administer such cooperatives often perform exactly the same functions as condominiums. They typically derive their powers from a declaration of covenants, conditions and restrictions or some familiar form of instruments, be it in an offering plan, bylaws of the corporation, or a proprietary lease between the corporation which holds title to the property, and the tenants of that corporation who in fact hold the beneficial interest in the corporation and the property which it owns. Commonly, but by no means uniformly, the instruments which create the co-operative form of ownership are not recorded, and the enforceability of the instrument depends principally on the law of landlord and tenant, state corporate trust law, or other law peculiar to the form under which the cooperative was organized. Not surprisingly, large portions of the instruments which create the cooperative are indistinguishable from similar provisions in condominium or planned community declarations, since the instruments are obliged to resolve many of the same issues which arise in those forms of ownership.

Each of these multi-owner forms involve all of the important issues of consumer protection and association management, and many of the complex title matters, such as termination and eminent domain, which had been addressed by the Conference in the condominium field through the Uniform Condominium Act and the planned community field by the Uniform Planned Community Act. Ironically, however, as in the case of planned communities, while all of those questions are of equal importance in these forms of multiple ownership, and while various states have begun to address these problems for condominiums, almost no legislative attention has been focused on cooperatives.

### THE UNDERLYING CONCEPT OF UCIOA

Nearly without exception, UCIOA achieves the goal of uniformity among all three forms of ownership simply by consolidating the three prior Acts of the Conference and adding a very few generic definitions. The principal new definition is "common interest community."

Because of the use of consistent definitions and policies in the three Acts preceding UCIOA, consolidation of the three in the merged Act was a relatively simple task. The section numbering system of UCIOA is entirely parallel with the other 3 Acts, and the language of UCIOA tracks, as applicable, with the cognate sections of those 3 Acts. Differences in result between the 3 Acts are preserved where appropriate. At the same time, during the drafting of UCIOA, in a few instances, it became clear that some differences in result were of form rather than legitimate substance. In those cases, the substantive result of one or more of the 3 Acts was changed to reflect a policy generally applicable in all forms.

The result is that a state wishing to consider legislation in the common interest ownership field has a range of choices from which to select. Many states will wish to adopt comprehensive legislation, providing maximum flexibility and certainty to all developers, lenders, and title insurers, while at the same time providing all unit purchasers and their associations a uniform level of disclosure, warranty protection, and other rights. In those states, the consolidated Act is a workable and desirable long-term solution. Other states may wish simply to adopt a modern condominium statute to replace an existing but plainly outdated, statutory structure. In those states, UCA alone is the obvious choice. Finally, in states where existing "second" or "third" generation condominium statutes are seen as satisfactory, but a need for additional certainty and structure is desirable for planned communities or cooperatives, the 2 Acts governing those forms of ownership are available. Following adoption of one of the 3 constituent Acts, it would be very feasible, by a few carefully considered amendments, to adopt UCIOA and thereby extend coverage to include all forms of ownership in the field.

## COMMON INTEREST OWNERSHIP

### UNIFORM COMMON INTEREST OWNERSHIP ACT

#### ARTICLE 1

#### GENERAL PROVISIONS

##### Part I

##### Definitions and Other General Provisions

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| 1-102. | Applicability.  |
| 1-103. | Definitions.  |
| 1-104. | Variation by Agreement.   |
| 1-105. | Separate Titles and Taxation.                                       |
| 1-106. | Applicability of Local Ordinances, Regulations, and Building Codes. |
| 1-107. | Eminent Domain.   |
| 1-108. | Supplemental General Principles of Law Applicable.                  |
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##### Part II

##### APPLICABILITY

- |        |  |
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| 1-205. | Same; Exception for Small Pre-existing Cooperatives and Planned Communities. |
| 1-206. | Same; Amendments to Governing Instruments.                                   |
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|        | [ALTERNATIVE B] Monuments as Boundaries.             |
| 2-116. | Use for Sales Purposes.                              |

- |        |   |
|--------|---|
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#### [OPTIONAL]

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# § 1-10' COMMON INTEREST OWNERSHIP

Sec. 6-102.	Registration Application for Approval of Unit.	Registration Required for Uncompleted Order of Registration.	Sec. 5-107.	General Powers and Duties of Agency.
6-103.	Receipt of Application of Registration.	Order of Registration.	5-108.	Investigative Powers of Agency.
6-105.	Cease and Desist Orders.		5-109.	Annual Report and Amendments.
6-106.	Revocation of Registration.		5-110.	Agency Regulation of Public Offering Statement.

## ARTICLE 1

### GENERAL PROVISIONS

#### PART 1

#### DEFINITIONS AND OTHER GENERAL PROVISIONS

§ 1-101. Short Title  
This [Act] may be cited as the Uniform Common Interest Ownership Act.

§ 1-102. Applicability  
Applicability of this [Act] is governed by Part II of this Article.

§ 1-103. Definitions  
In the declaration and bylaws (Section 3-100), unless specifically provided otherwise or the context otherwise requires, and in this [Act]:  
(1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person (i) is a general partner, officer, director, or employer of the declarant, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the declarant, (iii) controls in any manner the election of a majority of the directors of the declarant, or (iv) has contributed more than 20 percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant (i) is a general partner, officer, director, or employer of the person, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the person, (iii) controls in any manner the election of a majority of the directors of the person, or (iv) has contributed more than 20 percent of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

(2) "Allocated interests" means the following interests allocated to each unit: (i) in a condominium, the undivided interest in the common elements, the common expense liability, and votes in the association; (ii) in a cooperative, the common expense liability and the ownership interest and votes in the association; and (iii) in a planned community, the common expense liability and votes in the association.

(3) "Association" or "unit owners' association" means the unit owners' association organized under Section 3-101.

(4) "Common elements" means (i) in a condominium or cooperative, all portions of the common interest community other than the units; and (ii) in a planned community, any real estate within a planned community owned or leased by the association, other than a unit.

(5) "Common expenses" means expenditures made by, or financial liabilities of, the association, together with any allocations to reserves.

(6) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to Section 2-107.

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(7) "Common interest community" means real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in a declaration. "Ownership of a unit" does not include holding a leasehold interest of less than [20] years in a unit, including renewal options.

(8) "Condominium" means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those portions. A common interest community is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

(9) "Conversion building" means a building that at any time before creation of the common interest community was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

(10) "Cooperative" means a common interest community in which the real estate is owned by an association, each of whose members is entitled by virtue of his ownership interest in the association to exclusive possession of a unit.

(11) "Dealer" means a person in the business of selling units for his own account.

(12) "Declarant" means any person or group of persons acting in concert who (i) as part of a common promotional plan, offers to dispose of his or its interest in a unit not previously disposed of or (ii) reserves or succeeds to any special declarant right [, or (iii) applies for registration of a common interest community under Article 5].

(13) "Declaration" means any instruments, however denominated, that create a common interest community, including any amendments to those instruments.

(14) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to (i) add real estate to a common interest community; (ii) create units, common elements, or limited common elements within a common interest community; (iii) subdivide units or convert units into common elements; or (iv) withdraw real estate from a common interest community.

(15) "Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a unit, but the term does not include the transfer or release of a security interest.

(16) "Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.

(17) "Identifying number" means a symbol or address that identifies only one unit in a common interest community.

(18) "Leasehold common interest community" means a common interest community in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the common interest community or reduce its size.

(19) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of Section 2-102(2) or (4) for the exclusive use of one or more but fewer than all of the units.

(20) "Master association" means an organization described in Section 2-120, whether or not it is also an association described in Section 3-101.

(21) "Offering" means any advertisement, inducement, solicitation, or attempt to encourage any person to acquire any interest in a unit, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a common interest community not located in this State, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the common interest community is located.

(22) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity. [In the case of a land trust, however, "person" means the beneficiary of the trust rather than the trust or the trustee.]

(23) "Planned community" means a common interest community that is not a condominium or a cooperative. A condominium or cooperative may be part of a planned community.

(24) "Proprietary lease" means an agreement with the association pursuant to which a member is entitled to exclusive possession of a unit in a cooperative.

(25) "Purchaser" means a person, other than a declarant or a dealer, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than (i) a leasehold interest (including renewal options) of less than 20 years, or (ii) as security for an obligation.

(26) "Real estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

(27) "Residential purposes" means use for dwelling or recreational purposes, or both.

(28) "Security interest" means an interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

(29) "Special declarant rights" means rights reserved for the benefit of a declarant to (i) complete improvements indicated on plats and plans filed with the declaration (Section 2-100) or, in a cooperative, to complete improvements described in the public offering statement pursuant to Section 4-103(a)(2); (ii) exercise any development right (Section 2-110); (iii) maintain sales offices, management offices, signs advertising the common interest community, and models (Section 2-115); (iv) use easements through the common elements for the purpose of making improvements within the common interest community or within real estate which may be added to the common interest community (Section 2-116); (v) make the common interest community subject to a master association (Section 2-120); (vi) merge or consolidate a common interest community with another common interest community of the same form of ownership (Section 2-121); or (vii) appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control (Section 3-103(d)).

(30) "Time share" means a right to occupy a unit or any of several units during [5] or more separated time periods over a period of at least [5] years, including renewal options, whether or not coupled with an estate or interest in a common interest community or a specified portion thereof.

(31) "Unit" means a physical portion of the common interest community designated for separate ownership or occupancy, the boundaries of which are described pursuant to Section 2-105(a)(5). If a unit in a cooperative is owned by a unit owner or is sold, conveyed, voluntarily or involuntarily encumbered, or otherwise transferred by a unit owner, the interest in that unit which is owned, sold, conveyed, encumbered, or otherwise transferred is the right to possession of that unit under a proprietary lease, coupled with the allocated interests of that unit, and the association's interest in that unit is not thereby affected.

(32) "Unit owner" means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold common interest community whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the common interest community, but does not include a person having an interest in a unit solely as security for an obligation. In a condominium or planned community, the declarant is the owner of any unit created by the declaration. In a cooperative, the declarant is treated as the owner of any unit to which allocated interests have been allocated (Section 2-107) until that unit has been conveyed to another person.

COMMENT

1. The first clause of this Section permits the defined terms used in the Act to be defined differently in the declaration and bylaws. Regardless of how terms are used in those documents, however, terms have an unvarying meaning in the Act, and any restricted practice which depends on the definition of a term is not affected by a changed term in the documents.

EXAMPLE:

A declarant might vary the definition of "unit owner" in the declaration to exclude himself in an attempt to avoid assessments for units which he owns. The attempt would be futile, since the Act defines a declarant who owns a unit as a unit owner and defines the liabilities of a unit owner.

2. The definition of "Affiliate of a declarant" (Section 1-103(1)) is similar to the definition of 12 U.S.C. Section 1730a, which prescribes the authority of the Federal Savings and Loan Insurance Corporation to regulate the activities of savings and loan holding companies, and in 15 U.S.C. Section 78e(a)(18), which defines persons deemed to be associated with a broker or dealer for purposes of the federal securities laws.

The objective standards of the definition permit a ready determination of the existence of affiliate status to be made. Unlike 12 U.S.C. Section 1730a(a)(2)(B), no power is vested in an agency to subjectively determine the existence of "control" necessary to establish affiliate status. Thus, affiliate status does not exist under the Act unless these objective criteria are met.

As a result of this definition, the association may, in some instances, be a declarant. Under the definition of "Affiliate of a declarant," it is possible that 20% of the unit owners may "act in concert" to control the activities of the association. While the mere casting of these votes at an association meeting would not normally constitute "concerted action" by those unit owners, other acts by individual unit owners might constitute such concerted ac-

tion. The consequences of that result are determined under Section 3-104.

3. Definition (2). "Allocated interests," refers to all of the interests which this Act requires the declaration to allocate to the common interest communities.

"Allocated interests" is defined differently with respect to the 3 forms of Ownership.

First, the important interests, common to all projects, are the proportionate shares of common expense liabilities, and votes in the association, allocated to each unit. In either a cooperative, condominium, or planned community, every unit in the project must have a share of the votes and common expense liabilities.

Second, because the common elements are "owned" by the association in a planned community or cooperative, in contrast to a condominium, there is no common element interest allocated to unit owners in a planned community or cooperative.

Third, in a cooperative, because unit owners have traditionally had an ownership interest in the cooperative corporation, either in the form of stock or a membership certificate, the Act continues to require allocation of an "ownership interest in the association" to each unit.

The common element or ownership interest has limited significance. One situation in which the common element interest allocation would be important, however, is the distribution of insurance proceeds following a loss where an entire condominium project is not repaired or replaced and insurance proceeds are distributed to unit owners. See Section 3-113(h). See also 2-118(j)(2).

4. Definition (4). "Common elements" is bifurcated. The Act adopts the UCA and MRECA definition with respect to condominiums or cooperatives. However, the Act adopts UPCA's definition with respect to planned communities.

5. Definitions (1) and (31), treating "Common elements" and "Unit owner"

should be examined in light of Section 2-102, which specifies in detail how the differentiation between units and common elements is to be determined in any given common interest community to the extent that the declaration does not provide a different scheme. No exhaustive list of items comprising the common elements is necessary in this Act or in the declaration, as long as the boundaries between units and common elements can be ascertained with reasonable certainty. The common elements include by definition all of the real estate in the condominium or cooperative not designated as part of the units.

6. Definition (7), "Common interest community," is new to this Act. The term creates one comprehensive definition of those interests governed by the Act. This generic definition, derived from the definition of planned community in UPCA, is used through the Act to refer collectively to the 3 particular forms of common interest community: condominiums, cooperatives and planned communities.

Each of these forms in turn, has a separate definition. "Condominium" and "cooperative" are defined precisely as they are in the Acts which apply to those forms. The definition of "planned community", however, is new, and, under UCIOA, becomes a residual concept. Any ownership arrangement which is a common interest community but which does not meet the definition of either a condominium or cooperative, would be a planned community. Thus, there are but three forms of common interest community: (1) condominiums; (2) cooperatives and (3) everything else.

7. Definition (8), "Condominium" makes clear that, in the real estate title to the common elements is vested in the owners of the units, the project is not a condominium. Thus, for example, if title to the common elements is in an association in which each unit owner is a member, the project is not a condominium, but a planned community.

8. Definition (9), "Conversion building," is important because of the protection which the Act provides in Section 4-112 for tenants of buildings which are being converted into a common interest community. The definition distinguishes between buildings which have never been occupied by any person before the time that the building is submitted to the cooperative form of ownership, and buildings, whether new or old, which have been previously occupied by tenants. In the

former case, because there have been no tenants in the building, the building would not be a conversion building, and no protection of tenants is necessary.

9. Definition (10), "Cooperative," makes clear that the Act applies only to cooperatives which constitute common interest communities. The common interest community real estate, moreover, must be owned by the association, which, under Section 3-101, may be organized as a profit or non-profit corporation, trust, trustee, partnership, or depending on the option adopted in a particular state, as an unincorporated association. In requiring, as does Section 3-101, that the association consist exclusively of "unit owners"—defined in MIRECA as "proprietary lessees"—the definition tracks the usual requirements of cooperative instruments, which exclude from association membership persons who are not owners or proprietary lessees of the units.

The definition also recognizes the fundamental link between association membership and occupancy rights in providing that unit owners who are the members of the association are entitled to exclusive possession of their units under a proprietary lease—see Definition (24)—by virtue of their ownership interests in the assets of the association.

The ownership interest of a cooperative unit owner is a composite interest, which consists of the owner's ownership interests in the association and his right to occupy a unit pursuant to a proprietary lease. This interest, since it includes the proprietary interest under a lease, may, in a theoretical matter, exist until a proprietary lease has in fact been executed by the declarant for the units in the cooperative. The definition "unit" resolves this theoretical gap by providing that the declarant is treated as the owner of cooperative interests which have not yet been created.

10. Definition (11), "Dealer," is a newly defined term in UCIOA. It was not used in any of the 3 separate Acts. It replaces, in many sections, the words "person in the business of selling (either) real estate (or) cooperative interests for his own account." Use of the term in UCIOA does not change the substantive results in any of the 3 Acts.

11. Definition (12), "Declarant," is designed to exclude persons who may be called upon to execute the declaration in order to ratify the creation of the common interest community, but who are not intended to be charged

with the responsibilities imposed on all declarants by this Act if that is all they do. Examples of such persons include holders of pre-existing liens and, in the case of leasehold common interest communities, ground lessors. (Of course, such a person may become a declarant by subsequently succeeding to a Special declarant right). Other persons similarly protected by the narrow wording of this definition include real estate brokers, because they do not offer to dispose of their own interest in a unit. Similarly, unit owners reselling their units are not declarants because these units were "previously disposed of" when originally conveyed.

If the association, itself, or in conjunction with another declarant, is offering units for sale to others, and if those units have not previously been sold or otherwise disposed of, then the association itself is a declarant.

Finally, a person who, while in control of the association, chooses not to exercise that control, is still a declarant.

The last bracketed clause in this definition must be deleted in any state which chooses not to enact Article 5 of the Act.

12. Definition (13), "Declaration," is defined as "any instruments, however denominated, that create a common interest community, including any amendments to those instruments". Thus, the term would not only include the traditional condominium declaration with which most practitioners are familiar, or the declaration of covenants, conditions and restrictions (CC&R's) so common in planned unit developments. It would also include, for example, a series of deeds to units with common mutually beneficial restrictions, or to any other instruments which create the relationship which constitutes a common interest community. If those recorded instruments create that relationship, then those documents constitute a declaration and must contain, for new projects, the information required by Section 2-105.

The Declaration of a cooperative does not include the proprietary leases of the individual units, although a sample of such a lease might be attached as an exhibit to the declaration.

Similarly, the definition of "declaration" of any common interest community does not refer to the bylaws of the association or the documents creating the association. Such documents do not "create" the common interest community, but merely regulate its use after creation. The bylaws may, but

need not be, an exhibit to the declaration.

13. Definition (14), "Development rights," includes a panoply of sophisticated development techniques that have evolved over time throughout the United States and which have been expressly recognized and regulated in the case of condominiums, in an increasing number of jurisdictions, beginning with Virginia in 1974.

The concept of "development rights" lies at the heart of one of the principal goals of the Act, which is to maximize the flexibility available to a developer seeking to adjust the size and mix of a project to the demands of the marketplace, both before and after creation. The principal constraint on that flexibility is the obligation of disclosure, and its impact on marketing. Thus "development rights" include the rights to:

(a) increase the size or density of a project, either by adding real property to it, or by creating new units, common elements or limited common elements on either the original land or within the original buildings, or on any other land or buildings subsequently added;

(b) change the mix of units, common elements and limited common elements, either by subdividing units, or by converting units into common elements or limited common elements; and

(c) reduce the size of a project by withdrawing real property—whether land, entire buildings, or particular units—from it.

As a matter of simple logic, there are few other things that could be done to a real property regime which are not included within the concept of development rights. This great flexibility, particularly when coupled with the broad definitions of "unit" and "real estate", the power to create leasehold projects, and the right to subordinate unit mortgages to blanket mortgage on either the units or common elements, is an important element in the Act.

For example, a declarant may be building (or converting) a 50 unit building on Parcel A with the intention. If all goes well, to "expand" the common interest community by adding an additional building on Parcel B, containing additional units, as part of the same common interest community. If he reserves the right to do so, i. e., to "add real estate to a common interest community," he has reserved a "development right."

In certain cases, however, the declarant may desire, for a variety of reasons, to include both parcels in the common interest community from the outset, even though he may subsequently be obliged to withdraw all or part of one parcel. Assume, for example, that in the example just given the declarant intends to build an underground parking garage that will expand into both parcels. If the project is a success, his documentation will be simpler if both parcels were included in the common interest community from the beginning. If his hopes are not realized, however, and it becomes necessary to withdraw all or part of Parcel B from the common interest community and devote it to some other use, he may do so if he has reserved such a development right "to withdraw real estate from the common interest community." The portion of the garage which extends into Parcel B may be left in the common interest community (separated from the remainder of Parcel B by a horizontal boundary), or the garage may be divided between Parcels A and B with appropriate cross-encumbrance agreements.

The right "to create units, common elements, or limited common elements" has frequently been useful in the case of commercial or mixed use common interest communities, where the declarant needs to retain a high degree of flexibility to meet the space requirements of prospective purchasers who may not approach him until the common interest community has already been created. For example, an entire floor of a high-rise building may be intended for commercial buyers, but the declarant may not know in advance whether one purchaser will want to buy the whole floor as a single unit or whether several purchasers will want the floor divided into service units, separated by common element walls and served by a limited common element corridor. This development right is sometimes useful even in purely residential common interest communities, especially those designed to appeal to affluent buyers. Similarly, the development rights "to subdivide units or convert units into common elements" is most often of value in commercial common interest communities, but may be useful in certain kinds of residential common interest communities as well.

14. Definition (15), "Dispose" or "Disposition," includes voluntary transfers to purchasers of any interest in a unit, other than as security for an obligation. Consequently, the grant of a mortgage or other security interest is

not a "disposition," nor is any transfer of any interest to a person who is excluded from the definition of "Purchaser," *infra*. However, the term includes more than conveyances and would, for example, cover contracts of sale.

15. Definition (18), "Leasehold common interest community," should be distinguished from land which is leased to a common interest community but not subjected to the common interest community regime. A leasehold common interest community means, by definition, real estate which has been subjected to the common interest community form of ownership. In such a case, units located on the leasehold real estate are typically leased for long terms. At the expiration of such a lease, the common interest community unit or the real estate underlying the unit would be removed from the common interest community if the lease were not exercised or renewed. On the other hand, real estate may not be subjected to common interest community ownership, but may be leased directly to the association or to one or more unit owners for a term of years.

16. In this Act, in contrast to UPCA, Definition (23), "Planned Community," is a residual concept. That is, any common interest community which fails to fall into the category of a condominium or a cooperative is, by definition, a planned community. The definition also indicates that a planned community may have a condominium or cooperative as a constituent element.

17. Definition (24), "proprietary lease," describes that instrument initially executed by a cooperative association with the purchaser of a unit, granting the right of exclusive occupancy of a unit. The term and its significance is more fully treated in the comments to the definition of "Unit".

18. Definition (25), "Purchaser," includes a person who acquires any interest in a unit, even as a tenant, if the lease including renewal options, entitles him to occupy the premises for more than 20 years. Excluded from the definition, however, are mortgages, declarants and dealers. Persons excluded from the definition of "purchaser" do not receive certain benefits under Article 4, such as the right to a public offering statement (Section 4-102(c)) and the right to rescind (Section 4-108).

19. Definition (20), "Real estate," is very broad, and is very similar to the definition of "real estate" in Section 1-201(10) of the Uniform Land Transactions Act.

Although often thought of in two-dimensional terms, real estate is a three-dimensional concept, and the third dimension is usually important in the condominium and planned community context. Where real estate is described in only two dimensions (length and width), it is correctly assumed that the property extends indefinitely above the earth's surface and downwards to a point in the center of the planet. In most condominium and planned communities, however, as in so-called "air rights" projects, ownership does not extend "from the center of the earth to the heavens" because units are stacked on top of units or units and common elements are interstratified. In such cases, the upper and lower boundaries must be identified with the same precision as the other boundaries.

20. Definition (28), "Security interest," encompasses any interest in real or personal property which secures payment or performance of an obligation. Thus, for example, regardless of whether or not the units in a cooperative are treated as real or personal property pursuant to Section 1-105(a), a lender's interest in a unit securing the debt is a "security interest." This definition is adapted from Sections 3-102 and 3-103 of the Uniform Land Transactions Act.

21. Definition (29), "Special declarant rights," seeks to isolate those rights reserved for the benefit of a declarant which are unique to the declarant and not shared in common with other unit owners. The list, while short, encompasses virtually every significant right which a declarant might seek in the course of creating or expanding a common interest community.

Any person who possesses a special declarant right would be a "declarant," including any who succeed under Section 3-101 to any of those rights. Thus, the concept of special declarant rights triggers the imposition of obligations on those who possess the rights. Under Section 3-101, those obligations vary significantly, depending upon the particular special declarant rights possessed by a particular declarant. These circumstances are described more fully in the comments to Section 3-101.

22. Definition (30), "Time share," is based on Section 1-102(11) and (18) of the Model Real Estate Time-Share Act.

23. Definition (31), "Unit," describes a tangible, physical part of the project rather than a right in, or claim to, a tangible physical part of the

property. Therefore, for example, a "time-share" arrangement in which a unit is sold to 12 different persons, each of whom has the right to occupy the unit for one month does not create 12 new units—there are, rather, 12 owners of the unit. (Under the Section on voting (Section 2-110), a majority of the time-share owners of a unit are entitled to cast the vote assigned to that unit.)

Similarly, in a cooperative, the unit remains a physical part of the real estate; its legal title is vested in the association while the right to possession is held by the unit owner under a proprietary lease. The definition, however, makes it clear that the association's interest in the unit is unaffected by transfers of interests in that unit to or by unit owners. The unit owner's interest is a composite interest, which consists of an ownership interest in the association, coupled with the right to occupy a unit pursuant to a lease.

The definition makes clear that in the case of a cooperative, if a unit owned by a unit owner is sold, conveyed, or encumbered or otherwise transferred by the unit owner, the interest in such unit which is affected is the right to possession of that unit under a proprietary lease, coupled with the allocated interests of that unit. In recognizing the relationship between the physical "unit" and the nature of a unit owner's interest in that unit, and by describing that relationship concisely in the definition, the merged Act was able to delete the definition of "cooperative interest" as it was used in NRECA.

24. Definition (32), "Unit owner," contemplates that a seller under a land installment contract would remain the unit owner until the contract is fulfilled. As between the seller and the buyer, various rights and responsibilities must be assigned to the buyer by the contract itself, but the association would continue to look to the seller (for payment of any arrears in common expense assessments, for example,) as long as the seller holds title.

The definition makes it clear that a declarant, so long as he owns units in a common interest community, is the unit owner of any unit created by the declaration, and is therefore subject to all of the obligations imposed on other unit owners, including the obligation to pay common expense assessments. This provision is designed to resolve ambiguities on this point which have arisen under several existing state statutes.

In the special case of a cooperative, the declarant is treated as the owner of a unit or "potential unit" to which

allocated interests have been allocated, until that unit is conveyed to another.

§ 1-104. Variation by Agreement

Except as expressly provided in this [Act], its provisions may not be varied by agreement, and rights conferred by it may not be waived. A declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of this [Act] or the declaration.

COMMENT

1. The Act is generally designed to provide great flexibility in the creation of common interest communities and, to that end, the Act permits the parties to vary many of its provisions. In many instances, however, provisions of the Act may not be varied, because of the need to protect purchasers, lenders, and declarants. Accordingly, this Section adopts the approach of prohibiting variation by agreement except in those cases where it is expressly permitted by the terms of the Act itself.

2. One of the consumer protections in this Act is the requirement for consent by specified percentages of unit owners to particular actions or changes in the declaration. In order to prevent declarants from evading these requirements by obtaining powers of attorney from all unit owners, or in some other fashion controlling the votes of unit owners, this Section forbids the use by a declarant of any device to evade the limitation or prohibition of the Act or of the declaration.

3. The second sentence of the section is an important limitation upon the rights of a declarant. Today it is the practice in many jurisdictions, particularly those proscribing expansion of a condominium or planned community by statute, for a declarant to secure powers of attorney from all unit purchasers permitting the declarant unilaterally to expand the condominium or planned community by "unanimous consent" to include new units and to reallocate common element interests, common expense liability, and votes. With such powers of attorney, many declarants have purported to comply with the typical provision of "first generation" condominium statutes requiring unanimous consent for amendments of the declaration concerning such matters. The Act bars this practice.

4. The following sections permit variation:

*Section 1-103. (Definitions).* All definitions used in the declaration and bylaws may be varied in the declaration, but not in interpretation of the Act.

*Section 1-105. (Separate Titles and Termination).* This section permits the declarant of a cooperative to determine whether unit owners' interests are real or personal property.

*Section 1-107. (Eminent Domain).* The formulas for reallocation upon taking a part of a unit, and for allocation of proceeds attributable to limited common elements, may be varied.

Article 4, Part II, Sections 1-202, 1-204, 1-205, 1-206, and 1-207, permit a variety of elections to declarants and unit owners with respect to applicability.

*Section 2-102. (Unit Boundaries).* The declaration may vary the distinctions as to what constitutes the units and common element.

*Section 2-105. (Contents of Declaration).* A declarant may add any information he desires to the required content of the declaration.

*Section 2-108. (Limited Common Elements).* The Act permits reallocation of limited common elements unless prohibited by the declaration.

*Section 2-109. (Plats and Plans).* There is a presumption regarding horizontal boundaries of units, unless the declaration provides otherwise.

*Section 2-111. (Alterations Within Units).* Subject to the provisions of the declaration, unit owners may make alterations and improvements to units.

*Section 2-112. (Relocation of Boundaries Between Adjoining Units).* Subject to the provisions of the declaration, boundaries between adjoining units may be relocated by affected unit owners.

*Section 2-113. (Subdivision of Units).* If the declaration expressly so permits, a unit may be subdivided into two or more units.

*Section 2-115. (Use for Sales Purposes).* The declarant may maintain sales offices, management offices, and model units only if the declaration so provides. Unless the declaration provides otherwise, the declarant may maintain advertising on the common elements.

*Section 2-116. (Easement to Facilitate Exercise of Special Declarant Rights).* Subject to the provisions of the declaration, the declarant and unit owners have easements for the purposes described.

*Section 2-117. (Amendment of Declaration).* The declaration of a non-residential common interest community may specify less than a two-thirds vote to amend the declaration. Any declaration may require a larger majority.

*Section 2-118. (Termination).* The declaration may specify a majority larger than 80 percent to terminate and, in a non-residential common interest community, a smaller majority. The declarant may require that the units be sold following termination even though none of them have horizontal boundaries.

In a cooperative, upon termination, the declaration may specify that association creditors have priority over the rights of unit owners, and their creditors.

*Section 2-119. (Rights of Secured Lenders).* The declaration may require lender approval of specified actions of unit owners or the association.

*Section 2-120. (Master Associations).* The declaration may provide for some of the powers of the Executive Board to be exercised by a master association.

*Section 2-122. (Addition of Unspecified Real Estate).* The declaration of a planned community may grant a declarant the right to add additional real estate to the project without stating the location of that real estate in the original declaration.

*Section 3-102. (Powers of the Association).* The declaration may limit the right of the association to exercise any of the listed powers, except in a manner which discriminates in favor of a declarant. The declaration may authorize the association to assign its rights to future income.

*Section 3-103. (Executive Board Members and Officers).* Except as limited by the declaration or bylaws, the Executive Board may act for the association.

*Section 3-106. (Bylaws).* Subject to the provisions of the declaration, the bylaws may contain any matter in addition to that required by the Act.

*Section 3-107. ( upkeep of the Common Interest Community).* Except to the extent otherwise provided by the declaration, maintenance responsibilities are set forth in this section, and income from real estate subject to development rights inures to the declarant.

*Section 3-108. (Meetings).* The bylaws may provide for special meetings at the call of less than 20 percent of the Executive Board or the unit owners.

*Section 3-109. (Quorums).* This section permits statutory quorum requirements to be varied by the bylaws.

*Section 3-110. (Voting; Proxies).* A majority in interest of the multiple owners of a single unit determine how that unit's vote is to be cast unless the declaration provides otherwise. The declaration may require that lessens vote on specified matters.

*Section 3-112. (Conveyance or Encumbrance of Common Elements).* The declaration may vary the percentages of unit owners whose approval is required to convey or encumber common elements.

The declaration may also provide that a conveyance or encumbrance of common elements defeats prior encumbrances on those common elements.

*Section 3-113. (Insurance).* The declaration may vary the provisions of this section in non-residential common interest communities, and may require additional insurance in any community.

*Section 3-114. (Surplus Funds).* Unless otherwise provided in the declaration, surplus funds are paid or credited to unit owners in proportion to their common expense liabilities.

*Section 3-115. (Assessments for Common Expenses).* To the extent provided in the declaration, common expenses for limited common elements must be assessed against the units to which they are assigned, common expenses benefiting fewer than all the units must be assessed only against the units benefited, insurance costs must be assessed in proportion to risk, and utility costs must be assessed in proportion to usage.

*Section 3-116. (Lien for Assessments).* Unless the declaration provides otherwise, fines, late charges, and other fees are treated as assessments for lien purposes.

*Section 3-101. (Applicability; Waiver).* All of Article 4 is modifiable or waivable by agreement in a common interest community restricted to non-residential use.

*Section 3-115. (Warranties).* Implied warranties of quality may be excluded or modified by agreement.

*Section 3-116. (Statute of Limitation on Warranties).* The 6 year limitation may be modified by agreement of the parties.

5. While freedom of contract is a principle of this Act, and variation by agreement is accordingly widely available.

## § 1-104 COMMON INTEREST OWNERSHIP

ble, freedom of contract does not extend so far as to permit parties to disclaim obligations of good faith, see Section 1-113, or to enter into contracts which are unconscionable when

viewed as a whole, or which contain unconscionable terms. See Section 1-112. This Section derives from Section 1-102(3) of the Uniform Commercial Code.

### § 1-105. Separate Titles and Taxation

(a) In a cooperative, unless the declaration provides that a unit owner's interest in a unit and its allocated interests is real estate for all purposes, that interest is personal property. [That interest is subject to the provisions of [insert reference to state homestead exemptions], even if it is personal property.]

(b) In a condominium or planned community:

(1) If there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.

(2) If there is any unit owner other than a declarant, each unit must be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements for which a declarant has reserved no development rights.

(c) Any portion of the common elements for which the declarant has reserved any development right must be separately taxed and assessed against the declarant, and the declarant alone is liable for payment of those taxes.

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

### COMMENT

1. Subsection (a) of this Section follows the MRECA provisions. The classification of the unit and its allocated interests as real property or as personal property is significant for purposes of such matters as tenure, sales, recording, transfer taxes, property tax, estate and inheritance taxes, testamentary succession, mortgage, perfection, priority and enforcement of liens, and rights of redemption.

Subsection (a) resolves an important theoretical and practical issue which pervades the cooperative field: whether a unit owner in a cooperative holds interest in real or in personal property. Subsection (a) permits the declarant to decide that issue for each cooperative on a project-by-project basis.

The issue arises from the fact that the unit owner's interest in the cooperative typically has elements of both real and personal property. His interest includes both a beneficial interest in the association—either through stock ownership or membership—which is clearly a personal property interest, and a long term "proprietary" or ownership interest under a proprietary lease in an apartment—clearly an interest in real estate.

While this is in many ways a highly theoretical issue, it has many practical consequences. For example, if the

unit owner's interest is a real estate interest, then that interest—aside from the association's interest—may be subject to real property taxes and conveyance taxes; the recording laws would apply to conveyance of those interests; and real estate foreclosure laws would apply to foreclosure of a lien against those interests. Moreover, a security interest in the unit owner's stock or membership certificate would not be effective against the stock without a security instrument being recorded on the land records. In general, none of Article 9 of the Uniform Commercial Code would be applicable to that interest, and all of the conveyancing rules would apply.

On the other hand, if the interest is a personal property interest—the result required by this Section in the absence of a provision in the declaration that the interest is real property—then all of Article 9 of the Uniform Commercial Code would apply to security interests in the unit, the real estate conveyancing rules would not apply, and the interest would be treated for all purposes as personal property.

2. This act, of course, would apply in all respects regardless of the characterization of the unit owner's interests. Thus, for example, recording of the declaration is required, whether or not the owner's interest in a coopera-

## COMMON INTEREST OWNERSHIP § 1-106

tive interest is real or personal property, because the cooperative itself is the real estate.

3. Whether an institutional lender may lawfully make loans on the unit owner's interest may or may not depend on whether that interest is characterized as real or personal property. That issue is not affected by this Act, however, but by other state law which may permit loans to be made by certain institutional lenders only if secured by an interest in real estate.

4. If a unit owner's interest is a real property interest, recordation of the proprietary lease in the land records is constructive notice of the unit owner's rights. If the unit owner's interest is a personal property interest, recordation of the lease in the land records would be ineffective as constructive notice of that interest, and Article 9 of the Uniform Commercial Code does not provide a mechanism for filing evidence of that ownership interest. It is likely, however, that holders of security interests in units which are personal property would adopt a procedure similar to that followed in Illinois with respect to land trusts, which have been held to be personal property in that state. Under Article 9 of the Uniform Commercial Code and Illinois common law, the secured party files notice of the lien and the lien is thereby perfected for 5 years, when it must be renewed.

5. Subsection (b) integrates the language of UCA and UPCA regarding condominiums and planned communities. A condominium or planned community may be created, by the recordation of a declaration long before the first unit is conveyed. This happens frequently, for example, with existing rental apartment projects which are converted into either condominiums or planned communities. Subsection (d) spurs the local taxing authorities from having to assess each unit separately until such time as the declarant begins conveying units, although separate assessment from the date the common interest community is created may be permitted under general state law, which permits or requires separate

rate taxation of individual parcels of real estate. When separate tax assessments become mandatory under this Section, the assessment for each unit must be based on the value of that individual unit, under whatever uniform assessment mechanism prevails in the state or locality. Importantly, no separate tax bill on the common elements is to be rendered to the association or the unit owners collectively, even though, in the context of planned communities, the common elements owned by the association might be subject to taxation as a separately owned parcel of real estate, in the absence of this provision. Any common element subject to development rights, however, must be separately assessed and taxed to the declarant, see Subsection (c), in recognition of the independent economic value that those development rights have. This would be true even if the real estate subject to development rights is a part of the common interest community and lawfully "owned" by the unit owners in common, since the rights are in fact an asset of the declarant.

6. If there is any doubt in a particular state whether a unit occupied as a residential dwelling is entitled to treatment as any other residential single-family detached dwelling under the homestead status, this Section should be modified to ensure that units are similarly treated.

7. Unlike the law of some states, this Section imposes no limitations on the power of a jurisdiction to tax units based on the fair market value of the individual units, rather than on the project as a whole. In most jurisdictions, experience has shown that upon conversion of an apartment building to a common interest form of ownership, the fair market value of the units exceeds the fair market value of that building prior to conversion. Accordingly, a jurisdiction under this Act may impose real estate taxes on common interest community units which reflect the fair market value of those units in the same way that the jurisdiction taxes other forms of real estate.

### § 1-106. Applicability of Local Ordinances, Regulations, and Building Codes

(a) A building code may not impose any requirement upon any structure in a common interest community which it would not impose upon a physically identical development under a different form of ownership.

(b) In condominiums and cooperatives, no zoning, subdivision, or other real estate use law, ordinance, or regulation may prohibit the condominium or cooperative form of ownership or impose any requirement upon a condominium or cooperative which it would not impose upon a physically identical development under a different form of ownership.

(c) Except as provided in subsections (a) and (b), the provisions of this [Act] do not invalidate or modify any provision of any building code, zoning, subdivision, or other real estate use law, ordinance, rule, or regulation governing the use of real estate.

### COMMENT

1. The purpose of this section is to resolve the relative roles of the state and local communities in regulating the creation of common interest communities. The underlying concept is to make clear that the municipality has a legitimate interest in regulating the use of real estate, in accordance with long established zoning, building code and similar practices, and that such practices continue to have equal applicability to common interest communities as they do to purely rental projects. With respect to forms of ownership, however, this Act, as a state enactment, preempts the field and necessarily, except as provided in the Act, the municipality may not regulate the form of ownership, as opposed to the use of that real estate.

2. Consistent with the concept described in comment 1, subsections (a) prohibits discriminatory application of building codes against common interest communities by local law making authorities. Thus, if a building code imposes a requirement which cannot be met if property is owned as a common interest community but which would not be violated if all of the property constituting the common interest community were owned by a single owner, this Section makes it unlawful to apply that requirement or restriction to the common interest community. For example, in the case of a high-rise apartment building, if a building code requirement imposing a minimum fire wall rating between apartments would not prevent a rental apartment building from being built, this Act would override any requirement that might impose a higher fire wall rating between apartments merely because the same building might be owned as a common interest community.

3. While Subsection (a) prevents discrimination against all forms of common interest communities under building codes, Subsection (b) does not prevent local law making authorities from using zoning, subdivision and other real estate regulations to specifically regulate the planned community

form of ownership, in ways different from rental project, or condominiums. This distinction simply recognizes the existing practice in some communities that permits a local zoning board, as a condition of granting a cluster housing zoning permit, to require the right of prior plan approval. However, such regulations may not be used to prescribe the condominium or cooperative form of ownership, or to discriminate against these two types of common interest communities. Accordingly, a community could not prevent a condominium conversion by applying setback requirements between apartments which would not apply if all the apartments were owned by a single owner, or by requiring more parking for condominiums than for rental apartments.

4. Subsection (c) makes clear that, except for the prohibition on discrimination against common interest communities under building codes, and except for the prohibition on the use of zoning, subdivision and other real estate laws, ordinances, or regulations to ban or discriminate against cooperatives and condominiums, the Act has no effect on real estate or personal property laws. For example, a particular parcel of real estate submitted to the common interest community form of ownership might be of such size that all of the real estate is required to support a proposed density of units or to satisfy minimum setback requirements. Under this Act, part of the submitted real estate might be subject to a development right entitling the declarant to withdraw it from the common interest community, but the mere reservation of this right would not constitute a subdivision of the parcel into separate ownership. If a declarant or foreclosing lender at a later time sought to exercise the option to withdraw the real estate, however, withdrawal would constitute a subdivision and would be illegal if the effect of withdrawal would be to violate setback requirements, or to exceed the density of units permitted on the remaining parcel.

### § 1-107. Eminent Domain

(a) If a unit is acquired by eminent domain or part of a unit is acquired by eminent domain leaving the unit owner with a remnant that may not practically or lawfully be used for any purpose permitted by the declaration, the award must include compensation to the unit owner for that unit and its allocated interests, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(b) Except as provided in subsection (a), if part of a unit is acquired by eminent domain, the award must compensate the unit owner for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, (i) that unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration and (ii) the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and to the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially-acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(c) If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken must be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

(d) The court decree must be recorded in every [county] in which any portion of the common interest community is located.

### COMMENT

1. The provisions of this statute are not intended to supplant the usual rules of eminent domain but merely to supplement those rules in addressing the unique problems which eminent domain raises in the context of a common interest community. Nevertheless, because the law of eminent domain differs widely among the various states, the law of each state should be reviewed to ensure that the eminent domain code and this Section are properly integrated. For example, Subsection (a) uses the words "the award must include compensation to the unit owner". This language, a change first made in MRECA, suggests that, under other state law, compensation for other interests may be required in an appropriate case and the section does not limit that result.

2. When a unit is taken or partially taken by eminent domain, this section provides for a recalculation of the allocated interests of all units.

#### EXAMPLE 1

Suppose that all allocated interests in a 9-unit common interest community were originally allocated to the units

on the basis of size. If eight of the units are all equal in size and one is twice as large as the others, the allocated interests would be 20% for the largest unit and 10% for each of the other eight units.

Suppose that one of the smaller units is removed from the common interest community by a condemning authority. Subsection (a) provides that the allocated interests would automatically shift, at the time of the taking, so that the larger unit would have 22 $\frac{2}{3}$ % while each of the small units would have 11 $\frac{1}{3}$ %.

#### EXAMPLE 2

Suppose, in Example 1, that the condemnation only reduced the size of one of the smaller units by 50%, leaving the remaining half of the unit usable. Subsection (b) provides that the allocated interests would automatically shift to 5 $\frac{1}{3}$ % for the partially taken unit, 24 $\frac{2}{3}$ % for the largest unit, and 10 $\frac{2}{3}$ % for each of the other units. Note that the fact that the partially taken unit was reduced to half its former size does not mean that its allocated interests are only half as large

as before the taking. Rather, that unit participates in the reallocation in proportion to its reduced size. That is why the partially taken units' reallocated interests are  $5\frac{2}{10}\%$  rather than 6%.

3. An important issue raised by this section is whether or not a governmental body acquiring a unit by eminent domain has a right to also take that unit's allocated interests and thereby assume membership in the association by virtue of its power of eminent domain. While there is no question that a governmental body may acquire any real property by eminent domain, there is no case law on the question of whether or not the governmental body may take a unit as part of a common interest community or must take the unit and have the unit excluded from the common interest community.

Subsection (a) merely requires that the taking body compensate the unit owner for all of his unit and its allocated interests, whether or not any common elements are acquired. The Act also requires that the allocated interests be automatically reallocated upon taking to the remaining units unless the decree provides otherwise. Whether or not the decree may constitutionally provide otherwise in the case of a particular taking (for example, by allocating the allocated interests to the government) is an unanswered question.

4. In the circumstances of a taking of part of a unit, it is important to have some objective test by which to measure the portion of allocated interests to be reallocated. Subsection (b) gets forth a formula based on relative size, but permits the declaration to vary that formula to some other more appropriate formula in a particular circumstance. The right to vary the formula in the declaration is important, since it is clear that the formula set forth in the statute may in some instances result in gross inequities.

§ 1-108. Supplemental General Principles of Law Applicable

The principles of law and equity, including the law of corporations (and unincorporated associations), the law of real property, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this [Act], except to the extent inconsistent with this [Act].

EXAMPLE 1

Suppose in a commercial common interest community consisting of four units, each unit consists of a factory and parking lot, and the declaration provides that each unit's common expense liability, including utilities, is equal. Suppose further that the area of the factory building and parking lot in unit number 1 are equal, and that  $\frac{1}{2}$  the parking lot is taken by eminent domain, leaving the factory and  $\frac{1}{2}$  the lot intact. Under the formula set out in the statute, unit number one's common expense liability would be reduced even though its utilities might not be reduced at all, thus resulting in a windfall for the unit owner.

EXAMPLE 2

Suppose that a common interest community contains ten units, each of which is allocated a  $\frac{1}{10}$  undivided interest in the association. Suppose further that a taking by eminent domain reduces the size of one of the units by 50%. In such case, the ownership interest of all the units will be reallocated so that the partially-taken unit has a  $\frac{1}{10}$  undivided interest in the common elements and the remaining 9 units each has a  $\frac{2}{10}$  undivided interest in the common elements. Thus, the partially-taken unit has a common element interest equal to  $\frac{1}{2}$  of the common element interest allocated to each of the other units. Note that this is not equivalent to the partially-taken unit having a 5% undivided interest and the remaining 9 units each having a 10% undivided interest.

5. Even before the amendment formally acknowledging the reallocation of percentages required by this section is recorded, the reallocation is deemed to have occurred simultaneously with the taking. This rule is necessary to avoid the hiatus that otherwise could occur between the taking and the reallocation of interests, votes, and liabilities.

COMMENT

1. This Act displaces existing law relating to common interest communities and other law only as stated by specific sections and by reasonable implication therefrom. Moreover, unless specifically displaced by this statute, common law rights are retained. The listing given in this section is merely

an illustration, no listing could be exhaustive.

2. The bracketed language concerning unincorporated associations should be deleted if the enacting state requires incorporation of a unit owners' association. See the parallel language contained in Section 3-101.

§ 1-109. Construction against Implicit Repeal

This [Act] being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

COMMENT

This section derives from Section 1-104 of the Uniform Commercial Code.

§ 1-110. Uniformity of Application and Construction

This [Act] shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.

COMMENT

This Act should be construed in accordance with its underlying purpose of making the law uniform with respect to all forms of common interest communities, as well as the purposes stated in the Prefatory Note of simplifying, clarifying, and modernizing the law of common interest communities, promoting the interstate flow of funds to common interest communities, and

protecting consumers, purchasers, and borrowers against common interest community practices which may cause unreasonable risk of loss to them. Accordingly, the test of each section should be read in light of the purpose and policy of the rule or principle in question, and also of the Act as a whole.

§ 1-111. Severability

If any provision of this [Act] or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provisions or applications, and to this end the provisions of this [Act] are severable.

§ 1-112. Unconscionable Agreement or Term of Contract

(a) The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result.

(b) Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, must be afforded a reasonable opportunity to present evidence as to:

- (1) the commercial setting of the negotiations;
- (2) whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his interests by reason of physical or mental infirmity, illiteracy, inability to understand the language of the agreement, or similar factors;