ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

3400 HJUD SB 44

2 76

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.

James O. Smith
Signature of Camera Operator

7/25/89
Date

02-519 (REV 8/78)

SB

44

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1986

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

Jeanie Henry

House Judiciary	5/9/85	1:00 pm
" "	5/11/85	1:00 pm
" "	5/12/85	3:00 pm

COMMITTEE REPORT

HOUSE

(7)

4/17/85

FURTHER: Rules

Date: ____________

The Committee on JUDICIARY has had CSSB 44(Jud)

"An Act relating to the Uniform Common Interest Ownership Act; and providing for an effective date."

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with HCS for CSSB 44 (JUD) [✓] same title [ ] new title

and recommends it do pass

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

[ ] reports it back without recommendation

[ ] referred to the ____________ Committee

MEMBERS SIGNING DO PASS

[signatures]

MEMBERS HAVING OTHER RECOMMENDATIONS:

[signature]
CHAIRMAN

Bradley ✓

A M E N D M E N T

Offered in the HOUSE By Clocksin

TO: CSSB 44(Jud)

Page 71, line 25, after "tenant." insert:

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

Page 71, line 28, delete all material after "one year's notice except" through the end of the subsection and insert:

"for one of the following reasons

(1) the tenant or subtenant has defaulted in the payment of rent owed;

(2) the tenant or subtenant has been convicted of violating a federal or state law or local ordinance, and that violation is continuing and is detrimental to the health, safety or welfare of other dwellers or tenants in the mobile home park; and

(3) the tenant or subtenant has violated a provision, enforceable under AS 34.03.130, of the rental agreement or lease signed by both parties and not prohibited by law including rent and the terms of agreement."

5/10/85

CONDO/PUD PROJECTS DECLINED

by AHFC

Rep.	Date Turned Down	Project & Address	Reason for Decline
GRUENBERG JENKINS	2/84	Arctic View 740 W. 47th Avenue Anchorage	insufficient documentation
GRUENBERG JENKINS	3/84*	Woronzof 1113 W. Fireweed Ln. Anchorage	owner-occupancy, unacceptable budget delinquencies
PETTYJOHN RIEGER	3/84	Sunrise Terrace Blackberry Anchorage	insufficient documentation
	11/84	Sunrise Terrace	insufficient documentation
PHILLIPS COTTEN	3/84	Chugach View II Shrub Court Anchorage	inadequte budget, ground sinking problems, insufficient documentation
GRUENBERG JENKINS	4/84	Wells Place 200 W. 34th Avenue Anchorage	insufficient documentation
FURNACE PIGNALBERI	5/84	Brookview Turf Court Anchorage	insufficient documentation
FURNACE PIGNALBERI	4/85	Rainbow Terrace PUD Lunar Court Anchorage	inadequate budget, dues collected do not substantiate budgeted amount, amendment to By-laws unacceptable as it is inconsistent with State Statute
CLOCKSIN UEHLING	4/85	Eastridge IV, Phases I, II, III Lake Otis & 15th Anchorage	insufficient documentation, declarant delinquency, budget & insurance on total project
MARTIN POURCHOT	4/85	Timber Manor E. 12th Anchorage	inadequate budget, deficit not substantiated in proposed budget, high delinquency

*Still ineligible for AHFC financing.

5/7/85

Rep.	Date Turned Down	Project & Address	Reason for Decline
MARTIN POURCHOT	4/85	Contempo One McCarry Street Anchorage	budget unacceptable, inadequate to support expenses
PETTYJOHN RIEGER	3/85	Kandlewood Park Independence Park Anchorage	declarant delinquency, adequate fidelity coverage required
GRUENBERG JENKINS	7/84	Piedmont West Lois Drive Anchorage	inadequate budget, delcarant not paying full assessments, budget AHFC approved not budget Assoc. operated off of, plu. ing and heating problems -budget inad ate
	6/83	Piedmont West	same as above
CLOCKSIN UEHLING	3/85	Terrace 21 E. 16th Anchorage	owner-occupancy, budget unacceptable inconsistent financial information, status of construction loan, audit, developer delinquency
	1/84	Terrace 21	same as above
CLOCKSIN UEHLING	4/85	West Bluff W. 7th Avenue Anchorage	inadequate budget, deficit '83, '84 & proposed '85, reserves used as operating, owner-occupancy, inadequate fidelity bond coverage
PEARCE HANLEY	4/85	Forest Park LaHonda Drive Anchorage	budget & financial statement inconsistent, delinquency replacement reserve funds inadequate
	2/84	Forest Park	same as above
	9/83	Forest Park	same as above
PEARCE HANLEY	4/85	Carlton Square W. Northern Lights Anchorage	declarant delinquency
PEARCE HANLEY	1/84*	Campbell Village Dimond Blvd. Anchorage	delinquencies high, deficit, structural repairs needed, budget inadequate

*Still ineligible for AHFC financing

5/7/85

Condo/PUD Projects Declined by AHFC
Page 3

Rep.	Date Turned Down	Project & Address	Reason for Decline
PEARCE HANLEY	1/84*	Endeavor 400 W. 76th Avenue Anchorage	developer retaining common area for business, inconsistent documentation, owner-occupancy
	2/84*	Endeavor	developer using two units as offices after assurances by sponsor and developer and amendment of documents that these units were common areas. insufficient/inadequte documentation, owner-occupancy, inadequate reserves
FURNACE PIGNALBERI	2/85	Prosperity Prosperity Drive Anchorage	owner-occupancy
PHILLIPS COTTEN	10/84	Victoria Hills II Boundary Avenue Anchorage	owner-occupancy
	9/83	Victoria Hills II	same as above
	3/83	Victoria Hills II	same as above
PETTYJOHN RIEGER	1/84	Kandlewood Independence Park Anchorage	transition problems, insufficient documentation
	2/85	Kandlewood	inadequate budget, deficit in '84 reserves
MARTIN POURCHOT	5/84	Tamarak II & III Reka Drive Anchorage	two separate entities acting as one association, question ownership of pool, compliance with State Statute (legal doc.), unacceptable budget, fidelity bond coverage inadequate
	2/84	Tamarak II & III	
MARTIN POURCHOT	3/85	Santa Fe San Ernesto	budget unacceptable, delinquencies, pre-sale requirement not satisfied
	2/85	Santa Fe	same as above

*Still ineligible for AHFC financing

5/7/85

Rep.	Date Turned Down	Project & Address	Reason for Decline
MARTIN POURCHOT	11/84	Santa Fe	developer delinquent ($20,000+), compliance with MOA warning letter, developer delinquency
FURNACE PIGNALBERI	3/85	Cottonwood Village Baxter Road Anchorage	inconsistent documentation, budget vs. income/expenses, delinquencies, inadequate budget
MARTIN POURCHOT	8/84	Nina Plaza 834 North Lane Anchorage	insufficient documentation
CLOCKSIN UEHLING	(1981)	Crestview West 22nd Anchorage	structural problems involving litagation
	6/83	Crestview	inadequate budget, insufficient documentation
	8/83	Crestview	buyer awareness statement regarding pending litigation and possible structural problems
	10/84	Crestview	insufficient documentation
MARTIN POURCHOT	2/85	Russian Jack Park 1600-1700 Russian Jack Dr. Anchorage	insufficient documentation
BOUCHER COLLINS	2/85	Park Forrest Vanguard Anchorage	unaccepable/inadequate budget, insufficient documentation
FURNACE PIGNALBERI	3/85	Spicewood, Phases I & II Northern Lights/Baxter Anchorage	unacceptable budget with regard to projected annual income vs. proposed budget
GRUENBERG JENKINS	3/85	Cedarwood West 47th Anchorage	inadequate budget, '84 deficit in reserves, insufficient documentation
FURNACE PIGNALBERI	9/81	Glacier Estates Glacier St. Anchorage	inadequte budget-reserves & operating

*Still ineligible for AHFC financing

5/7/85

Rep.	Date Turned Down	Project & Address	Reason for Decline
CLOCKSIN UEHLING	2/82	The Fountains E. 7th Avenue Anchorage	owner-occupancy, insufficient reserve funds
	10/80	The Fountains	same as above
	7/82	The Fountains	same as above
BOUCHER COLLINS	9/81	Woodlands East Copperbush Ct. Anchorage Sweetgate Crt	developer contributing share of assessments, excessive delinquencies, budget inadequate, water drainage problems
GRUENBERG JENKINS	6/83	Camai 4600 Cordova St. Anchorage	budget discrepancies
PEARCE HANLEY	7/83*	Lakeshore Towers Lakeshore Drive Anchorage	inadequate budget, foreclosure action against declarant, delinquencies, structure problems, owner-occupancy, incomplete construction
PEARCE HANLEY	10/83	Blackberry, Phase II Blackberry St. Anchorage	insufficient documentation
CLOCKSIN UEHLING	1/84	Birch Hill Nelchina Street Anchorage	insufficient documentation
FURNACE PIGNALBERI	1/84	Chugach View Early View Dr. Anchorage	structural problems/skirting. Were ineligible for a time but have since met conditions for reinstatement. are currently in an eligible for purchase status.
PEARCE HANLEY	3/84	Town West 2900-3100 W. Northern Lights Anch	insufficient documentation regarding $60,000 deficit
GRUENBERG JENKINS	3/85	35th Ave West Condo Anch	owner-occupancy
CLOCKSIN UEHLING	4/85	Admiralty O & P Streets Anch	owner-occupancy, inadequate budget

5/7/85

Condo/PUD Project Declined by AHFC

Rep.	Date Turned Down	Project & Address	Reason for Decline
CLOCKSIN UEHLING	10/84	Boardwalk 2nd & Barrow Anch	presale owner-occupancy, declarant's delinquency status
PETTYJOHN RIEGER	1/85	Commodore Park O'Malley Road Anch	owner-occupancy
CLOCKSIN UEHLING	4/85	Crawford Park 140 Eagle St. Anch	owner-occupancy, inadequate budget
FURNACE PIGNALBERI	4/85	Eastside Estates E. 20th Anch	declarant's delinquency status, amend Declaration on declarant paying assessments
GRUENBERG JENKINS	4/85	Kapingen Clay Court Anch	owner-occupancy
FURNACE PIGNALBERI	3/85	Meadowridge Lunar Dr. Anch	declarant's delinquency status, sound problems
BOUCHER COLLINS	4/85	Piper Hill Piper St. Anch	declarant-foreclosure action
PEARCE HANLEY	3/85	Alaska Landings International Airport Rd. Anch	developer delinquency
PEARCE HANLEY	2/84*	Chinook Estates 3055 Telequana Dr. Anch	high delinquency, 110 claims against developer on construction
PEARCE HANLEY	6/84	One South	declarant delinquency, construction deficiencies

*Still ineligible for AHFC financing

5/7/85

Rep.	Date Turned Down	Project & Address	Reason for Decline
BOUCHER COLLINS	3/85	Campbell Creek Park 4511 Folker Anch	unacceptable budget, insufficient documentation
CLOCKSIN UEHLING	4/85	Park Place 1200 I Street Anch	developer delinquencies ($40,000), insufficient documentation, inadequate fidelity bond coverage, '84 deficit-need explanation on how loss will be made up
MARTIN POURCHOT	3/85	The Village Reka Drive Anch	developer delinquencies and subsequent bankruptcy of developers, homeowner delinquencies

5/7/85

Rep.	Date Turned Down	Project & Address	Reason for Decline
MILLER DUNCAN	2/84	Parkshore 800 F St. Juneau	insufficient documentation
MILLER DUNCAN	4/84	Vasha Tongass Blvd/Glacier Hwy Juneau	inadequate budget, replacement reserves showing deficit, insufficient documentation
MILLER DUNCAN	10/81	Glacier View Mendenhall Loop Juneau	inadequate budget, association relies on spec. assm't instead of budgeting for reserves
	6/83	Glacier View	unacceptable budget
	4/85	Glacier View	unacceptable budget
MILLER DUNCAN	3/85	Mendenhall James Blvd. Juneau	serious homeowner delinquencies
MILLER DUNCAN	9/81	Auke Bay Towers Auke Bay-Juneau	insufficient documentation, non-compliance w/conditions
KOPENEN	2/84	Woodside North PUD Fairbanks	inadequate budget
	3/83	Woodside North PUD	owner-occupancy
	2/83	Woodside North PUD	delinquent assessments
KOPENEN	2/84	Riverside West Dartmouth Fairbanks	insufficient/inadequate documentation, inadequate budget, inadequate insurance information
	4/84	Riverside West	conditional until insurance rewritten
RINGSTAD FRANK	6/84	El Dorado Estates #2 11th Avenue Fairbanks	budget unacceptable, question common area property ownership, two-year operating deficit, reserves spent on operating expenses, need legal doc. amended for common area that was created into residential unit

(cont.)

Rep.	Date Turned Down	Project & Address	Reason for Decline
	10/81	El Dorado Estates #2	budget unacceptable, common area conversion status
PHILLIPS COTTEN	4/85	Eagle River West Eagle River	developer delinquencies, presale requirement
PHILLIPS COTTEN	5/84	Mariner Village Regional Park Eagle River	question status of security locks and intercom systems promised buyers
SUND	2/85	Tongass Heights Ketchikan	owner-occupancy, high delinquency, budget unacceptable
PHILLIPS COTTEN	10/83	Bear Mountain Chugiak	insufficient documentation
DAVIS	3/84	Beaver Springs North Pole	insufficient documentation, need for adequate reserve account, capital working fund not established, inadequate fidelity coverage
DAVIS	11/83	Beaver Springs	inadequate insurance, inadequate financial statement

5/7/85

HOUSE CS FOR CS FOR SB 44 (JUDICIARY)

BACKGROUND ON BILL

Over a year and a half ago, research was begun on the laws regulating condominiums. The industry was found to be in chaos, primarily due to an outdated, ineffective law - the Horizontal Property Regimes Act which was originally adopted in 1963. A review of the laws in other states concluded that the most comprehensive law available was the Uniform Common Interest Ownership Act.

The Uniform Common Interest Ownership Act (UCIOA) was adopted at the 1982 Annual Meeting of the National Conference of Commissioners on Uniform State Law. UCIOA represents the culmination of the Conference's 9 year effort to offer comprehensive legislation to the states. UCIOA was endorsed by national associations of developers, lenders, title insurers, consumers, realtors, and attorneys.

SB 44 is a modified version of UCIOA and provides needed regulation for condominiums, cooperatives, planned unit developments and timeshares.

WHY IS THIS BILL NEEDED?

Major problems exist in Alaska. A list of condominium projects which have been declined AHFC financing has been provided to all of the Representatives. A review of the reasons that certification was denied, highlights the major problems:

Only condominiums are regulated presently, PUDs, cooperatives and timeshares have no statutory guidelines.

Lack of regulation for reserve accounts and association dues - low balled dues have resulted;

No statutory guidelines are available to govern the transition period from developer control to association control - financial documentation has not been turned over to the association.

No statutory guideline are available for association management

No disclosure requirements exist.

Lack of regulation of timeshares.

No warranties exist.

SB 44 PROVIDES SOLUTIONS TO ALL OF THESE PROBLEMS AND MORE.

SB 44 Review

Article I, Applicability

Applies to non-commercial common interest communities, however, commercial entities may opt in and many will want to because of the great financing and development flexibility available. Preexisting communities are not required to comply with the full Act, but may wish to opt in also.

Article II, Creation, Alteration and Termination of Common Interest Communities

This Article provides assistance to developers in the creation, alteration, expansion, and financing of projects.

Article III, Management of the Common Interest Community

Organization, powers, rights and responsibilities of associations are outlined. Bylaws, meetings, tort and contract liability, insurance, surplus fund, records and more day to day functions and duties are specified.

Article IV, Protection of Purchasers

Numerous provisions are made for consumer protection: disclosures, warranties, promotional material, obligation to complete, recision rights, conversion property, regulation of timeshares, etc. are outlined.

Article V, General Provisions

Separate titles and taxation, applicability of local ordinances, obligation of good faith, definitions

SUPPORTERS OF SB 44

CONSUMER PROTECTION DIVISION OF DEPARTMENT OF LAW

ALASKA ASSOCIATION OF BANKERS

ALASKA PUBLIC INTEREST RESEARCH GROUP

ALASKA ASSOCIATION OF REALTORS

MUNICIPALITY OF ANCHORAGE

ALASKA HOUSING FINANCE CORPORATION

NUMEROUS ASSOCIATION MANAGERS

ANCHORAGE HOMEBUILDERS ASSOCIATION

NUMEROUS UNIT OWNERS

ALASKA TRAILOR COURT ASSOCIATES

THE FOLLOWING STATE AGENCIES ARE SUPPORTIVE OF THE SECTIONS WHICH AFFECT THEIR AREA OF REVIEW

STATE RECORDER
STATE ASSESSOR
DIVISION OF BANKING, SECURITIES & CORPORATIONS

Sec. 34.08.270 RIGHTS OF SECURED AND UNSECURED LENDERS.

(a) A financial institution (including commercial banks, mutual savings banks, savings and loan associations, credit unions and mortgage companies) when acting as an ordinary money lender (whether secured or not) and providing financing

(1) for any common interest subject to the provisions of this Chapter; or

(2) to any declarant, unit owner or purchaser for that person's interest subject to the provisions of this chapter,

shall not be liable under this chapter to any person [illegible] any act, omission, warranty, product or structural defect, obligation, breach of contract or other duty arising from the common interest or interests so financed.

(b) For purposes of this section "acting as an ordinary money lender" means any reasonable action (including, but not limited to, property inspections, review of public offering statements, approval of declarations, plats and construction plans and requiring proof of compliance with laws or codes) to protect a lender's security interest or otherwise assure the proper use of, or repayment of its loan. No lender acts as an ordinary money lender when it is an affiliant of the declarant or possesses a direct equity interest (other than those foreclosed upon) in the promotion, development, and sale of a common interest or interests.

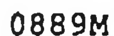
(c) A declaration may require that all or a specified number or percentage of the lenders who hold security interests encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of the action, but a requirement for approval does not operate to

(1) deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board

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

(3) prevent an insurance trustee or the association from receiving and distributing insurance proceeds except under AS 34.08.440.

0889M



CS SB 44 (JUDICIARY)
UNIFORM COMMON INTEREST OWNERSHIP ACT

Sec.	Short Title	Page
ARTICLE I.	APPLICABILITY.	
34.08.010.	Applicability Generally.	1
34.08.020.	Applicability to Small Cooperatives.	[illegible]
34.08.030.	Applicability to Small and Limited Expense Liability Common Interest Communities.	[illegible]
34.08.040.	Applicability to Preexisting Common Interest Communities.	2
34.08.050.	Applicability to Small Preexsting Cooperatives and Planned Communities.	2
34.08.060.	Amendments to Governing Instruments.	2
34.08.070.	Applicability to Nonresidential Common Interest Communities.	3
34.08.080.	Applicability to Out-of-State Common Interest Communities.	4
ARTICLE 2.	CREATION, ALTERATION, AND TERMINATION OF COMMON INTEREST COMMUNITIES.	
34.08.090.	Creation of Common Interest Communities.	4
34.08.100.	Unit Boundaries.	5
34.08.110.	Construction and Validity of Declaration and Bylaws	5
34.08.120.	Description of Units.	6
34.08.130.	Contents of Declaration.	6
34.08.140.	Leasehold Common Interest Communities.	8
34.08.150.	Allocation of Allocated Interests.	10
34.08.160.	Limited Common Elements.	11
34.08.170.	Plats and Plans.	12
34.08.180.	Exercise of Development Rights	14
34.08.190	Alterations of Units.	16
34.08.200.	Relocation of Boundaries Between Adjoining Units.	16
34.08.210.	Subdivision of Units.	17
34.08.220.	Easement for Encroachments.	17
34.08.230.	Use for Sales Purposes.	18
34.08.240.	Easement Rights.	18
34.08.250.	Amendment of Declaration.	19
34.08.260.	Termination of Common Interest Community.	20
34.08.270.	Rights of Secured Lenders.	25
34.08.280.	Master Associations.	25
34.08.290.	Merger or Consolidation of Common Interest Communities.	27
34.08.300.	Addition of Unspecified Real Estate.	28

Sec.	Short Title	Page
ARTICLE 3.	MANAGEMENT OF THE COMMON INTEREST COMMUNITY.	

Sec.	Short Title	Page
34.08.310.	Organization of Unit Owners' Association.	28
34.08.320.	Powers of Unit Owners' Association.	28
34.08.330.	Executive Board Members and Officers.	30
34.08.340.	Transfer of Association Control.	33
34.08.350.	Transfer of Special Declarant Rights.	36
34.08.360.	Termination of Contracts and Leases of Declarant.	39
34.08.370.	Bylaws	40
34.08.380.	Upkeep of Common Interest Community	40
34.08.390.	Meetings.	41
34.08.400.	Quorums.	42
34.08.410.	Voting and Proxies.	42
34.08.420.	Tort and Contract Liability.	43
34.08.430.	Conveyance or Encumbrance of Common Elements.	44
34.08.440.	Insurance.	46
34.08.450.	Surplus Funds.	49
34.08.460.	Assessments for Common Expenses.	50
34.08.470.	Lien for Assessments.	51
34.08.480.	Other Liens.	55
34.08.490.	Association Records.	56
34.08.500.	Association as Trustee.	57
ARTICLE 4.	PROTECTION OF PURCHASERS.	
34.08.510.	Applicability.	57
34.08.520.	Liability for Public Offering Statement Requirements.	58
34.08.530.	Public Offering Statements Generally.	59
34.08.540.	Common Interest Communities Subject to Development Rights.	63
34.08.550.	Time Shares.	65
34.08.560.	Common Interest Communities Containing Conversion Property.	66
34.08.570.	Common Interest Community Securities.	67
34.08.580.	Purchaser's Right to Cancel.	67
34.08.590.	Resales of Units.	68
34.08.600.	Escrow of Deposits.	70
34.08.610.	Release of Liens.	70
34.08.620.	Conversion Property.	71
34.08.630.	Express Warranties of Quality.	73
34.08.640.	Implied Warranties of Quality.	73
34.08.650.	Exclusion or Modification of Implied Warranties of Quality.	74
34.08.660.	Statute of Limitations for Warranties.	75
34.08.670.	Effect of Violations on Rights of Action.	76
34.08.680.	Labeling of Promotional Material.	76
34.08.690.	Declarant's Obligation to Complete and Restore.	76
34.08.700.	Substantial Completion of Units.	77

Sec.	Short Title	Page
ARTICLE 5.	GENERAL PROVISIONS.	
34.08.710.	Variation by Agreement.	77
34.08.720.	Separate Titles and Taxation.	78
34.08.730.	Applicability of Local Ordinances, Regulations, and Building Codes.	78
34.08.740.	Eminent Domain.	79
34.08.750.	Supplemental General Principles of Law Applicable.	80
34.08.760.	Construction Against Implicit Repeal.	80
34.08.770.	Uniformity of Application and Construction.	81
34.08.780.	Severability.	81
34.08.790.	Unconscionable Agreement or Term of Contract.	81
34.08.800.	Obligation of Good Faith.	82
34.08.810.	Remedies to be Liberally Administered.	82
34.08.820.	Adjustment of Dollar Amounts.	82
34.08.830.	Transfer of Unit in a Cooperative.	83
34.08.990.	Definitions.	83
34.08.995.	Short Title.	91

Maureen Weeks
Halford's Off.
Liz Hickerson - 274-1426 (777 Sen)
— Don Buck - Teleconference
Conn. Condo Man

CS SB 44 (Jud)
Sectional Analysis

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

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

ARTICLE I. APPLICABILITY

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

Exceptions exist to the general rule of applicability:

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

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

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.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

02-576(2/77)

Maureen Weeks Halford's Off.

Liz Hickerson - 274-1426 (777 scan)

— Don Buck - Teleconference

Conn. Condo Man

CS SB 44 (Jud)
Sectional Analysis

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

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

ARTICLE I. APPLICABILITY

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

Exceptions exist to the general rule of applicability:

1. A common interest community created prior to the adoption of this chapter may elect, under AS 34.08.060, to have the provisions of this chapter apply. Except for preexisting small cooperatives and planned communities which are not subject to development rights, certain provisions under AS 34.08.040, apply automatically to events and circumstances occurring <u>after</u> 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 ord:ances, regulations and building codes and eminent domain, unless:

> future development right are retained or financing through AHFC is utilized, or,
>
> the cooperative's declaration makes the entire chapter applicable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 34.08.260. TERMINATION OF COMMON INTEREST COMMUNITY. As a general rule, 80% of the votes in the association is required for termination of a project. The declaration may require a larger percentage of the votes and in a nonresidential project a smaller percentage is permitted. A termination agreement is effective only upon recordation, and may provide that all of the common elements and units of the common interest community be sold. Until the sale has been concluded and the proceeds distributed in accordance with this section, the association continues in existence with all powers it had before termination.

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

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

1. prohibit control over the general administrative affairs of the association;

2. prevent the association or executive board from commencing, intervening in, or settling any litigation or proceeding; or,

3. prevent any insurance trustee or the association from receiving and distributing any insurance proceeds except as provided under

this chapter.

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

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

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

ARTICLE III: MANAGEMENT OF THE COMMON INTEREST COMMUNITY.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV: PROTECTION OF PURCHASERS

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

gratuitous disposition of a unit;

disposition pursuant to court order;

disposition by a government or governmental agency;

disposition by foreclosure;

disposition to a dealer;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE V. GENERAL PROVISIONS.

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

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 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.

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 exisiting declarations are amended to provide regulation under the Common Interest Ownership Act, only future occurrences or actions after the effective date of this chapter are governed by this new chapter.

Section 5 makes this act effect January 1, 1986.

The following individuals, agencies, associations are on record in support of SB 44.

ALASKA HOUSING FINANCE CORPORATION - Betty Cook

CONSUMER PROTECTION DIVISION OF DEPARTMENT OF LAW - Linda O'Bannon

ALASKA ASSOCIATION OF REALTORS - Bob Arwezon

Wiley Brooks, Certified property manager of six common interest communities

RE-MAX of Eagle River Realtors, 17 realtors

Homebuilders Association - Fred Ferrara, President of Alaska Evaluation Services

Bill Luday / Marston Properties, prop. manager - 13 assoc.

The following state agencies are supportive of the sections affecting their area of review:

> State Recorder - Rose Ferren
> State Assessor - Michael Worley
> Division of Banking, Securities and Corporations - Willis Kirkpatrick

Alaska HOUSING FINANCE CORPORATION

February 1r, 1985

Ms. Elizabeth J. Hickerson
Senior Advisor
Alaska State Legislature
1024 W. 6th Avenue, Suite #203
Anchorage, AK 99501

Dear Ms. Hickerson:

In response to your January 28, 1985, letter to Denna Cline:

1. AHFC currently finances 7715 loans in condominiums and PUD's, totaling $614,232,289.

2. Of those 7715, 168 loans are in a delinquent status. This includes REO's and foreclosures. The 168 loans total $12,745,425.

3. AHFC has encountered "low balled" association budgets. We generally will require bids to be obtained and a more realistic budget drawn up.

4. The problems AHFC encounters are quite varied. The most common problems relate to transfer of ownership from the developer to the association, lack of home owner participation, and collection of delinquent association dues.

Please let us know if you need any additional information.

Sincerely,

Betty M. Cook

Betty M. Cook
Mortgage Operations Director

su

Telephone (907) 276-5599
235 East 8th Avenue
Third Floor
P.O. Box 101020
Anchorage, Alaska 99510

LAW OFFICES OF VINCENT VITALE
A PROFESSIONAL CORPORATION

725 CHRISTENSEN DRIVE
ANCHORAGE, ALASKA 99501-2184
(907) 274-3538
(907) 276-7570

VINCENT VITALE *
WILLIAM L. McNALL
DAVID E. GEORGE
KATHLEEN A. WEEKS
EDWARD L. MINER

P.O. BOX 772889
EAGLE RIVER, ALASKA 99577-2889
(907) 694-8050

☐ PLEASE REPLY TO THE ABOVE ADDRESS.

☐ PLEASE REPLY TO THE ABOVE ADDRESS.

January 31, 1985

The Honorable Senator Pat Rodey
Chairman, Judiciary Committee
Pouch B
Juneau, Alaska 99811

Re: Senate Bill 44, Common Interest Ownership Act

Dear Senator Rodey:

The following review is designed to point out a few of the important differences between the existing act (A.S. 34.07.) and Senate Bill 44. As you are aware the existing act covers only condominiums and does not cover planned unit developments, leasehold planned communities, planned communities, timeshare communities, or cooperatives.

Specific Area of Concern	AS.34.07.	SB 44
1. Association Insurance needs.	Generally addressed by AS 34.07.400	Detailed insurance requirements contained in AS 34. 08.440

Insurance needs of the associations should be clearly spelled out to avoid confusion on the part of developers and association boards and assure adequate coverage. The new statute requires insurance to be at 100% of the replacement value, for example.

2. Transition Problems	Not addressed	Detailed requirements contained in AS 34.08.340

There must be a specific statute which identifies those items or acts which must be completed as part of turning the control of the project over to the owners. This new section accomplishes that purpose. Owners, directors, managers and developers benefit by having the requirements clearly established.

Specific Area of Concern	AS.34.07.	SB 44

The declarant is required to provide the board with all financial records, amendments to declarations or bylaws, warranties from suppliers and subcontractors and so forth. Plans for the building and underground utilities must be provided. The Associations and the unit owners will benefit by having such information. A punch list of common area repairs must be made thus elliminating disputes over common area repairs. This will tend to reduce unnecessary litigation.

3. Developer reservation of rights.	Not addressed	Addressed in detail AS.34.08.180

Developers must be able to phase projects. Purchasers should know what the developer must build and what the developer may build to avoid misleading representations. By avoiding innocent misrepresentation the developer, realtor and homebuyer will benefit. Unnecessary litigation can be avoided.

4. Association Budget for Reserves	Not addressed	Addressed in detail As 34.08.___

The method of computing reserves should be clearly understood by developer and owners. In this manner "low balling" of budgets can be limited. Proper budgeting for reserves will avoid unexpected special assessments or large increases in the monthly assessments Homebuyers will be assured of having a monthly assessment within their projected household budget.

5. Maintenance of Units	Not addressed	Addressed in

Developer, managers, and boards often dispute whether an item within a unit is the association's responsibility, or the unit owner's responsibility. The new definition will help avoid these disputes. The new unit boundary definition allows clear

Specific Area of Concern	AS.34.07.	SB 44

distinction to be drawn between owner responsibility and association responsibility. Owners will know that they are responsible for certain maintenance items and can plan accordingly. Arguments about such maintenance items should be limited.

Specific Area of Concern	AS.34.07.	SB 44
6. Transfer of reserves rights by declarant	Not addressed	AS 34.08.350 allows declarant to transfer rights reserved by declarant to third parties, generally builders or other developers.

This section allows the developer to transfer specific declarant rights to another developer. In this manner a project can proceed even though the initial developer may choose not to do further work.

Specific Area of Concern	AS.34.07.	SB 44
7. Termination of Contracts entered into by developer	Not addressed	AS 34.08.360 allows the association to terminate contracts entered into by declarant and avoids unfair contracts

This section avoids situations where a developer may have entered into a contract on behalf of the association on terms that are unfavorable. The association has the right to cancel. This avoids the situation where snow removal is being done by the developer's wife's company at exorbitant rates.

Specific Area of Concern	AS.34.07.	SB 44
8. Assessments for Common Expenses	AS.34.07.380 and .450(7)	AS 34.08.460 more clearly spells out assessment requirements.

What is, or is not a common expense, is sometimes a problem. In the case of a P.U.D. there is no statutory definition to aid the association. This section solves those problems.

9. Borrowing by Association	Not addressed	AS 34.08.320(a) (14) specifically allows associations to assign future income

Associations presently have no ability to borrow funds by assigning future income. As potential borrowers the associaton needs to have statutory authority to assign future income to secure borrowing for repairs.

10. Disclosure to Purchasers	Not addressed	AS 34.08.530 sets forth specific information which must be contained in the Public Offering Statement clearly spelled out in AS 34.08.460

Numerous complaints by unit owners involve nondisclosure of future plans by the developer. The Public Offering statement

Specific Area of Concern	AS.34.07.	SB 44

tells potential purchasers and realtors exactly what the project entails and should reduce misleading information being given to buyers. AS 34.08.680 requires the declarant to mark promotional literature with "must be built" or "need not be built" to avoid confusion. Buyers will have available information which will advise them of the developers intentions and plans. Such information will substantially reduce complaints by purchasers.

11. Liability for Assessments for Common Expenses	Addressed but confusing	Clearly spelled out in AS 34.08 .460

Developers often believe they do not have the same liability as unit owners to pay for common expense assessments. This statute clearly sets forth those responsibilities.

12. Access to Records	AS.34.07.290 allows access to financial expenditure records	AS 34.08.490 allows access to all records

Some developers and managers refuse to allow associations to have access to corporate records prior to transition. This statute clearly sets forth the unit owners right to access all records.

13. Resale Disclosure	Not addressed	AS 34.08.590

Many complaints have involved nondisclosure of material facts by unit owners upon resale. The problem can be substantially resolved by requiring the unit owner to give the required information to a purchaser. To do this the associations will be required to keep all the records current. Unit owners, buyers realtors and managers will benefit from up to date informaton.

Specific Area of Conern	AS.34.07.	SB 44
14. Express Warranties of Quality	Not addressed	AS 34.08 630 sets forth how express warranties are created and what they are.

Numerous difficulties are involved in warranty disputes. These statutes clearly set forth what a warranty is.

Specific Area of Conern	AS.34.07.	SB 44
15. Implied Warranties	Not addressed	AS 34.08.640 sets forth implied warranties. AS 34.08.650 discusses how warranties can be modified or excluded. AS 34.08.660 establishes a statute of limitations for implied warranties.

Under present Alaska law an implied warranty goes on until the court decides the time period is too long. This statute sets up specific implied warranty periods and avoids much confusion that exists in the area of implied warranty liability.

Specific Area of Conern	AS.34.07.	SB 44
16. Organization of Unit Owners	Not addressed	Requires association corporations to be formed no later than the date of first conveyance of unit.

Numerous disputes involve situations where the associaton was not created until time of transition. Thus owners were paying assessments to a nonexisting association prior to transition. This section requires the declarant to have the association in place prior to the conveyance of the first unit so the unit purchaser will be a member of an existing association.

There are numerous other differences between the present act and Senate Bill 44. The purpose of this summary is to highlight specific areas that have caused difficulties in the past and reflect the fact that these areas are covered in Senate Bill 44.

Sincerely yours,

LAW OFFICES OF VINCENT VITALE
A Professional Corporation

By: ______________________
WILLIAM L. McNALL

WLM:ail

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

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

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

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

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

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

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

(021)

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

associations as clients in the common interest community field.

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

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

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

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

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

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

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

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

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

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

(101)

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

(120)

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

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

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

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

(156)

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

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

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

(181)

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

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

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

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

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

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

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

expense of the particular properties that are creating the burden.

(226)
Marina condominiums. Interesting issue. They are not an apartment, because they are not in a closed space within a building as the old act required. They are a slip. They are actually a portion of reparation rights. A very interesting metaphysical concept which is a unit with common maintenance. The consumer would purchase the uplands as tenants in common or as a condominium. The slips would become units. Consumers would purchase these in order to get stability of and assurances of a slip, particularly where they are restricted. Although, in many cases, there seems to be little chance of equity growth, the values are going up and obviously because there is more value of the increments of the marinas, then there is value from a cash flow basis, and so we are forming a number of those. They all can be mixed. Presently, in some 24 projects I did last year, over half of them had mixed uses: professional units, marina units, commercial units, mixed in with residential. The common interest act permits this and allows the documents to be developed.

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

(244)
Bill McNall: Thank you, Mr. Chairman. After hearing everything that can be done with the new act, I'm embarrassed to say that under the old act, I have clients that come to talk with me about the problems they have in their associations, and because an association may be a PUD, for example, I can't give them any help. PUDs simply are not covered by our statutes. Our statutes only apply to condominiums in the traditional sense and there is no case law in our state. There are no regulations, so I am afraid that if the association I'm trying to deal with is a PUD I simply have no place to go for information.

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

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

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

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

Buck: Yes.

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

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

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

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

Rodey: Senator Kelly.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(517)

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

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

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

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

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

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

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

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

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

McNall: That's correct.

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

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

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

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

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

A limited expense common interest community came out of the planned community act. There's a large number of PUDs only maintain a detention basin or a single drainage way or a sign at the end of the street. And in those particular cases with the corporate formalities and record keeping and financial reporting would be a burden on these folks. So again the $100 per year per un.t limitation is written into the act. It's modified by the CPI based on a very complex formula and this year it means that it's about $140 because it comes in $10 increments.

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

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

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

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

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

Kelly: Surprises should be reserved for Christmas and birthdays.

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

Side 2, Tape 1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Buck: There is a problem with this area. It is the kind of problem that 85 pages of legislation will be needed to be draft, that's the straddle problem, where the statute of limitation is running and then the act passes and then it fails and then controls transfer. We come up with a whole series of permutations and combinations of this which probably will ultimately end up being worked out on a case by case situation. The act only applies with respect to Section 40 sections as to events and occurrences after its effective date. So the termination of the statute of limitations is that an event or a circumstance? I don't know the answer.

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

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

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

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

(118)

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

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

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

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

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

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

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

(172)

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

(196)

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

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

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

(234)

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

section protection needs to be put in for the associations.

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

(260)

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

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

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

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

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

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

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

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

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

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

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

(384)

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

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

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

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

(423)

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

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

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

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

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

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

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

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

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

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

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

(527)

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

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

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

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

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

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

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

O'Bannon: Of course.

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

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

Halford: Then the developer can sell it himself.

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

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

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

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

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

End of Tape 1.

Tape 2, Side 1.

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

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

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

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

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

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

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

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

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

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