ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

3477 HLAB HB 155

353

lited common element (see definition in Section 1-103(19)), and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

Under 2-102, all spaces, interior partitions, electrical, plumbing and mechanical systems, and all other items within the boundaries of the unit which are attached to the unit boundaries, whether or not deemed fixtures under state law, are part of the unit.

Put simply, if any item is installed, constructed, repaired or replaced by the declarant or his successor in connection with the original sale of a stacked unit, the item is insured by the association. Clearly, this does not include items of personal property easily movable within the unit or easily removable from the unit (whether or not deemed a fixture under state law), such as a vase, table or other furnishings. If improvements or betterments are made to a unit by a unit owner, they will typically be covered under the owner's insurance policy, even if the unit itself is generally covered by the association's policy, since most policies exclude "improvements or betterments made by the owner", and the Act does not mandate improvements and betterments coverage. The subject is a complex one, and careful attention should be paid to it by the association's insurance advisor.

4. Although "all risk" coverage is not required as to conversion buildings, but merely fire and extended coverage, this is not intended to imply that such coverage is unnecessary. "All risk" coverage is not required because it may not be appropriate in the case of an unrenovated conversion where cost is a critical factor.

5. The minimum requirement as to the amount of insurance, which is 80% of the actual cash value, should not be viewed as a recommendation; rather, the 80% is a floor. Typically, many common interest community documents require insurance in an amount equal to *100% of the replacement cost* of the insured property. The Act permits greater flexibility, however, inasmuch as different types of construction and varieties of projects may not require such total coverage with its attendant higher premium cost.

6. Subsection (a)(2) covers only the liability of the association, and unit owners as members, but does not cover the unit owner's individual liability for his acts or omissions or liability for occurrences within his unit.

7. Clause (i) of the third sentence of subsection (b) would operate as follows: (1) if the common interest community consists of composites, restoration after fire damage might consist of merely resodding the area damaged; (2) if the common interest community consists of separate garden-type buildings, restoration after fire damage might consist of demolishing the remaining structure and paving or landscaping the area; and (3) if the common interest community consists of a single high-rise building, restoration may not be required (if the building is substantially destroyed) inasmuch as "a condition compatible with the remainder of the common interest community" would be damaged and unrestored.

8. The scheme of this section, as set forth in subsection (b), is that any damage or destruction to any portion of the common interest community must be repaired (if repairs can be made consistent with applicable safety and health laws) absent a decision to terminate the common interest community or a decision by 80% of the unit owners (including the owners of any damaged units) not to rebuild. Unless a decision is made not to rebuild, any available insurance proceeds must be used to effectuate such repairs. For this reason, subsection (c) provides that any loss covered by the association's property insurance policy shall be adjusted with the association and that the proceeds for any loss shall be payable to the association or to any insurance trustee that may be designated for such purpose. Significantly, such insurance proceeds may not be paid to any mortgagee or other outside party. This provision is necessary to insure that insurance proceeds are available to effectuate any repairs or restoration to the common interest community that may be required.

If units or limited common elements are not rebuilt, insurance proceeds are to be distributed to lienholders or owners of units unless the declaration provides that such payments are to go to some other person."

§ 3-114. Surplus Funds

Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves may be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

COMMENT

Surplus funds of the association are generally used first for the pre-payment of reserves, and remaining funds are thereafter credited to the account of unit owners or paid to them. In some cases, however, unit owners might prefer that surplus funds be used for other purposes (*e.g.*, the purchase of recreational equipment). Accordingly, this section permits the declaration to specify any other use of surplus funds.

§ 3-115. Assessments for Common Expenses

(a) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After an assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association.

(b) Except for assessments under subsections (c), (d), and (e), all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to Section 2-107(a) and (b). Any past due common expense assessment or instalment thereof bears interest at the rate established by the association not exceeding [18] percent per year.

(c) To the extent required by the declaration:

(1) any common expense associated with the maintenance, repair, or replacement of a limited common element must be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides;

(2) any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited; and

(3) the costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.

(d) Assessments to pay a judgment against the association (Section 3-117(a)) may be made only against the units in the common interest community at the time the judgment was entered, in proportion to their common expense liabilities.

(e) If any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against his unit.

(f) If common expense liabilities are reallocated, common expense assessments and any instalment thereof not yet due must be recalculated in accordance with the reallocated common expense liabilities.

COMMENT

1. This section contemplates that a declarant might find it advantageous, particularly in the early stages of project development, to pay all of the expenses of the common interest community himself rather than assessing each unit individually. Such a situation might arise, for example, where a declarant owns most of the units in the project and wishes to avoid billing the costs of each unit separately and crediting payment to each unit. It might also arise in the case of a declarant who, although willing to assume all expenses of the common interest community, is unwilling to make payments for replacement reserves or for other expenses which he expects

connection with the use, ownership, or maintenance of the common elements and, in cooperatives, also of all units.

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

(c) If the insurance described in subsections (a) and (b) is not reasonably available, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it considers appropriate to protect the association or the unit owners.

(d) Insurance policies carried pursuant to subsections (a) and (b) must provide that:

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

(2) the insurer waives its right to subrogation under the policy against any unit owner or member of his household;

(3) no act or omission by any unit owner, unless acting within the scope of his authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

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

(e) Any loss covered by the property policy under subsections (a)(1) and (b) must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any holder of a security interest. The insurance trustee or the association shall hold any insurance proceeds in trust for the association, unit owners, and lien holders as their interests may appear. Subject to the provisions of subsection (h), the proceeds must be disbursed first for the repair or restoration of the damaged property, and the association, unit owners, and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the common interest community is terminated.

(f) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for his own benefit.

(g) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any unit owner or holder of a security interest. The insurer issuing the policy may not cancel or refuse to renew it until [30] days after notice of the proposed cancellation or non-renewal has been mailed to the association, each unit owner and each holder of a security interest to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

(h) Any portion of the common interest community for which insurance is required under this section which is damaged or destroyed must be repaired or replaced promptly by the association unless (i) the common interest community is terminated, in which case Section 2-118 applies (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety, or (iii) [80] percent of the unit owners, including every owner of a unit or assigned limited common element that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire common interest community is not repaired or replaced, (i) the insurance proceeds attributable to

the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the common interest community, and (ii) except to the extent that other persons will be distributees (Section 2-105(a)(12)(ii)), (A) the insurance proceeds attributable to units and limited common elements that are not rebuilt must be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lien holders, as their interests may appear, and (B) the remainder of the proceeds must be distributed to all the unit owners or lien holders, as their interests may appear, as follows: (1) in a condominium, in proportion to the common element interests of all the units and (2) in a cooperative or planned community, in proportion to the common expense liabilities of all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under Section 1-107(a), and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations.

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

COMMENT

1. Subsections (a) and (b) provide that the required insurance must be maintained only to the extent reasonably available. This permits the association to comply with the insurance requirements even if certain coverages are unavailable or unreasonably expensive.

2. Subsection (b) represents a significant departure from the present law as to condominiums and planned communities in virtually all states by requiring that the association obtain and maintain property insurance on *both* the common elements *and* the units within buildings with "stacked" units. *See* Comment 3. While it has been common practice in many parts of the country (either by custom or as mandated by statute) for associations to maintain property insurance on the common elements, it has generally not been the practice for the property insurance policy to cover individual units as well. However, given the great interdependence of the unit owners in the stacked unit situation, mandating property insurance for the entire building is the preferable approach. Moreover, such an approach will greatly simplify claims procedures, particularly where both common elements and portions of a unit have been destroyed. If common elements and units are insured separately, the insurers could be involved in disputes as to the coverage provided by each policy.

The Act does not mandate association insurance on condominium or planned community units in town house or other arrangements in which there are no stacked units. However, if the developer wishes, the declaration may require association insurance as to units having shared walls or as to all units in the development. Many developments will have some units with horizontal boundaries and other units with no horizontal boundaries. In that case, association insurance as to the units having horizontal boundaries is required, but it is not necessary as to other units.

In a cooperative, the association must carry insurance on all units since legal title to all units is in the association.

3. The distinction between what is a common element and what is a unit with respect to the insurance coverage required by this section is complex. The definitions of common elements and a unit in Section 1-103(4) and (31) are not sufficient for this purpose. To determine the distinction between the common elements and units, one must refer first to the declaration's section on unit boundaries. That section will define the unit boundaries. If the declaration fails to do so, and if ceilings, walls, or floors are boundaries, the provisions of Section 2-102 apply.

Section 2-102 provides that, if the declaration is silent, all non-loadbearing and non-structural portions of the walls, floors and ceilings are part of the unit, while all loadbearing and structural portions of the walls, floors and ceilings are common elements. Further, with respect to any structure partially within and partially outside of the boundaries of a unit, any portion thereof serving only that unit is a liev-

will ultimately be part of the association's budget. Subsection (a) grants the declarant such flexibility while at the same time providing that once an assessment is made against any unit, all units, including those owned by the declarant, must be assessed for their full portion of the common expense liability.

2. Under subsection (c), the declaration may provide for assessment on a basis other than the allocation made in Section 2-107 as to limited common elements, other expenses benefiting less than all units, insurance costs, and utility costs.

3. If additional units are added to a common interest community after a judgment has been entered against the association, the new units are not assessed any part of the judgment debt. Since unit owners will know the assessment, and since such unpaid judgment assessments would affect the price paid by purchasers of units, it would be complicated and unnecessary to fairness to reallocate judgment assessments when new units are added.

4. Subsection (f) refers to those instances in which various provisions of this Act require that common expense liabilities be reallocated among the units of a common interest community by amendment to the declaration. These provisions include Section 1-107 (Eminent Domain), Section 2-106(d) (expiration of certain leases), Section 2-110 (Exercise of Development Rights) and Section 2-113(b) (subdivision of units).

§ 3-116. Lien for Assessments

(a) The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to Section 3-102(a)(10), (11), and (12) are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes, or takes subject to, (ii) a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, the first security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent, and (iii) liens for real estate taxes and other governmental assessments or charges against the unit or cooperative. The lien is also prior to all security interests described in clause (ii) above to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to Section 3-115(a) which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. [The lien under this section is not subject to the provisions of [Insert appropriate reference to state homestead, dower and curtesy, or other exemptions].]

(c) Unless the declaration otherwise provides, if 2 or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

(d) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

(e) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within [3] years after the full amount of the assessments becomes due.

(f) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

(g) A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

(h) The association upon written request shall furnish to a unit owner a statement setting forth the amount of unpaid assessments against the unit. If the unit owner's interest is real estate, the statement must be in recordable form. The statement must be furnished within [10] business days after receipt of the request and is binding on the association, the executive board, and every unit owner.

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

(j) The association's lien may be foreclosed as provided in this subsection:

(1) In a condominium or planned community, the association's lien must be foreclosed in like manner as a mortgage on real estate [or by power of sale under [Insert appropriate state statute]];

(2) In a cooperative whose unit owners' interests in the units are real estate (Section 1-105), the association's lien must be foreclosed in like manner as a mortgage on real estate [or by power of sale under [Insert appropriate state statute]] [or by power of sale under subsection (k)]; or

(3) In a cooperative whose unit owners' interests in the units are personal property (Section 1-105), the association's lien must be foreclosed in like manner as a security interest under [Insert reference to Article 9, Uniform Commercial Code.]

[(4) In the case of foreclosure under [Insert reference to state power of sale statute], the association shall give reasonable notice of its action to all lien holders of the unit whose interest would be affected.]

[(k) In a cooperative, if the unit owner's interest in a unit is real estate (Section 1-105):

(1) The association, upon non-payment of assessments and compliance with this subsection, may sell that unit at a public sale or by private negotiation, and at any time and place. Every aspect of the sale, including the method, advertising, time, place, and terms must be reasonable. The association shall give to the unit owner and any lessees of the unit owner reasonable written notice of the time and place of any public sale or, if a private sale is intended, of the intention of entering into a contract to sell and of the time after which a private disposition may be made. The same notice must also be sent to any other person who has a recorded interest in the unit which would be cut off by the sale, but only if the recorded interest was on record 7 weeks before the date specified in the notice as the date of any public sale or 7 weeks before the date specified in the notice as the date after which a private sale may be made. The notices required by this subsection may be sent to any address reasonable in the circumstances. Sale may not be held until 5 weeks after the sending of the notice. The association may buy at any public sale and, if the sale is conducted by a fiduciary or other person not related to the association, at a private sale.

(2) Unless otherwise agreed, the debtor is liable for any deficiency in a foreclosure sale.

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

(i) the reasonable expenses of sale;

(ii) the reasonable expenses of securing possession before sale; holding, maintaining, and preparing the unit for sale, including pay-

ment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by agreement between the association and the unit owner, reasonable attorney's fees and other legal expenses incurred by the association;

(iii) satisfaction of the association's lien;

(iv) satisfaction in the order of priority of any subordinate claim of record; and

(v) remittance of any excess to the unit owner.

(4) A good faith purchaser for value acquires the unit free of the association's debt that gave rise to the lien under which the foreclosure sale occurred and any subordinate interest, even though the association or other person conducting the sale failed to comply with the requirements of this section. The person conducting the sale shall execute a conveyance to the purchaser sufficient to convey the unit and stating that it is executed by him after a foreclosure of the association's lien by power of sale and that he was empowered to make the sale. Signature and title or authority of the person signing the conveyance as grantor and a recital of the facts of non-payment of the assessment and of the giving of the notices required by this subsection are sufficient proof of the facts recited and of his authority to sign. Further proof of authority is not required even though the association is named as grantee in the conveyance.

(5) At any time before the association has disposed of a unit in a cooperative or entered into a contract for its disposition under the power of sale, the unit owner[s] or the holder of any subordinate security interest may cure the unit owner's default and prevent sale or other disposition by tendering the performance due under the security agreement, including any amounts due because of exercise of a right to accelerate, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender, including reasonable attorney's fees of the creditor.]

COMMENT

1. To ensure prompt and efficient enforcement of the association's lien for unpaid assessments, such liens should enjoy statutory priority over most other liens. Accordingly, subsection (b) provides that the association's lien takes 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. However, as to prior first security interests 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 priority of the security interests of lenders. As a practical matter, secured lenders will most likely pay the 6 months' assessments demanded by the association rather than having the association foreclose on the unit. If the lender wishes, no escrow for assessments can be required. Since this provision may conflict with the provisions of some state statutes which forbid some lending institutions from making loans not secured by first priority liens, the law of each state should be reviewed and amended when necessary.

In cooperatives, the association has legal title to the units and depending on the election made in the declaration pursuant to Section 2-118(1) may have power to create, assume, or take subject to security interest[s] in the units which have priority over the interest of unit owners. Obviously, the cooperative association's lien should not have priority over an interest which the association itself has given, assumed, or taken subject to and subsection (b) expressly so provides.

The special reference to cooperatives in subsection (b)(iii) merely recognizes that in a cooperative both the association and the unit owner have an interest in a unit.

2. Units may be part of two common interest communities. For example, a large real estate development may consist of one or more condominiums which are also part of a larger planned community. In that case, the planned community association might assess the condominium units for the general maintenance expenses of the planned community and the condominium association would assess for the direct maintenance expenses of the building itself. In such a situation, subsection (c) provides that unpaid liens of the two associations have equal priority regardless of the relative time of creation of the two regimes and regardless of the time the assessments were made or became delinquent.

3. Subsection (f) makes clear that the association may have remedies short of foreclosure of its lien that can be used to collect unpaid assessments. The association, for example, might bring an action in debt or breach of contract against a recalcitrant unit owner rather than resorting to foreclosure.

4. The rights of the association against a unit upon nonpayment of an assessment on that unit depends on whether the common interest community is a condominium or planned community on the one hand, or a cooperative on the other.

In the typical cooperative the association will have a substantial underlying mortgage on all or a substantial portion of the real estate in the cooperative and a large part of each unit owner's periodic assessment will go toward payment of that particular unit's proportionate share of the mortgage. If the unit owner fails to pay his assessment on time, the association may be forced into default on its own mortgage payments with consequent possible foreclosure of the underlying mortgage and loss by all unit owners of their interests in the cooperative. Therefore, in the cooperative context it is essential that the cooperative association have a fast and effective remedy for failure of a unit owner to pay his assessment. The act provides in Subsection (i) that upon nonpayment the cooperative unit owner may be evicted in the same manner as an unlawfully holding over commercial tenant. Those rules will ordinarily be the most rapid and efficient rules in the state as to eviction of tenants.

If the unit owner's interest is real estate, subsection (j)(2) then offers the state two alternatives as to nonjudicial foreclosure of a cooperative association's lien. The first alternative is power of sale under any existing state statute authorizing power of sale under mortgages. If there is no power of sale statute or if the legislature chooses to adopt a special power of sale provision for foreclosure of the lien on cooperative units, the state can choose the 2d alternative, power of sale under subsection (k) of this section.

Subsection (k), which is patterned after the power of sale foreclosure provisions of the Uniform Land Transactions Act, is a modern power of sale provision which frees private power of sale foreclosure from many of the costly, time consuming, and inefficiency producing strictures of most existing private power of sale statutes. At the same time, it provides reasonable protection to the unit owner and junior interests.

If the unit owners' interest in a cooperative is personal property, the association's lien is foreclosed as if it were a security interest under Article 9 of the Uniform Commercial Code. Article 9 foreclosure is generally less expensive and faster than either judicial or power of sale real estate foreclosure. This difference in cost and speed of foreclosure, both for association liens and security interests, is one of the major factors to be considered in choosing whether, under Section 1-105, a unit owner's interest in a cooperative will be real property or personal property. Article 9 foreclosure is currently used in foreclosing security interests in mobile homes, and has been accepted in the various states as a permissible method of foreclosure in that housing area without serious challenge.

In a condominium or planned community, there is not likely to be a substantial underlying mortgage for which unit owners are assessed. Therefore, failure to pay assessments on time will have less serious consequences for the association than in the case of cooperatives. The section provides that the association lien in a condominium or planned community is to be foreclosed according to the rules generally applicable to real estate mortgages in the state rather than setting out a special faster method of foreclosure in the statute.

§ 3-117. Other Liens

(a) In a condominium or planned community:

(1) Except as provided in paragraph (2), a judgment for money against the association [if recorded] [if docketed] [if (insert other procedures required under state law to perfect a lien on real estate as a result of a judgment)], is not a lien on the common elements, but is a lien in favor of the judgment lien holder against all of the units in the common interest community at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

(2) If the association has granted a security interest in the common elements to a creditor of the association pursuant to Section 3-112, the holder of that security interest shall exercise its right against the common elements before its judgment lien on any unit may be enforced.

(3) Whether perfected before or after the creation of the common interest community, if a lien, other than a deed of trust or mortgage (including a judgment lien or lien attributable to work performed or materials supplied before creation of the common interest community), becomes effective against two or more units, the unit owner of an affected unit may pay to the lien holder the amount of the lien attributable to his unit, and the lien holder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

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

(b) In a cooperative:

(1) If the association receives notice of an impending foreclosure on all or any portion of the association's real estate, the association shall promptly transmit a copy of that notice to each unit owner of a unit located within the real estate to be foreclosed. Failure of the association to transmit the notice does not affect the validity of the foreclosure.

(2) Whether or not a unit owner's unit is subject to the claims of the association's creditors, no other property of a unit owner is subject to those claims.

COMMENT

1. This section deals with the effect on unit owners of judgments against the association. The issue is not free from difficulty. Presently, in most states, if the association is organized as a corporation, the unit owners are likely to receive the insulation from liability given shareholders of a corporation, so that the judgment lienholder can satisfy his judgment only against the property of the association. On the other hand, if the association is organized as an unincorporated association, under the law of most states each unit owner would have joint and several liability on the judgment. This Act strikes a balance between the two extremes.

2. In condominiums and planned communities, the Act makes the judgment lien a direct lien against each individual unit, but allows the individual unit owner to discharge the lien by payment of his pro-rata share of the judgment based on that unit's relative common expense liability. The judgment would also create a lien against any property owned by the association. In cooperatives, title to the units is in the cooperative so that it is not necessary for the Act to provide that a judgment against the association creates a lien against units. The Act does provide, however, that no property of a cooperative unit owner other than the unit is subject to the claims of association creditors. The result is that the relationship between creditors of the association and unit owners is similar in all three forms of ownership.

There are, however, significant differences between cooperatives and condominiums or planned communities as to the position of unit owners as against association creditors. In one respect cooperative unit owners have greater liability than condominium or planned community unit owners and in another respect they have lesser liability.

They have greater liability in that, in a cooperative, if a judgment lien has priority over a unit owner's interest in a unit, the lien against the unit is not limited to the unit's common expense liability percentage. In contrast, in a condominium or planned community, the lien against a unit is only for the unit owner's pro rata share of the judgment. For example, suppose a four unit project in which there is a judgment against the association for $50,000. Further suppose that each of the units has a value of $100,000 and that there are outstanding mortgages as follows:

	Unit A	Unit B	Unit C	Unit D
Value	$100,000	$100,000	$100,000	$100,000
Mortgage	50,000	90,000	90,000	75,000
Equity	50,000	10,000	10,000	25,000

In a condominium or planned community, the judgment lien attaches to each unit in proportion to that unit's liability for common expense liability. If, in the above example, the common expense liability is equal, the lien would attach to each unit for $12,500. Therefore, the association judgment creditor could reach the full equity of Unit owners B and C in their units, but could reach only $12,500 of the interest of Unit owners A and D. Since the association cannot assess A and D for any additional amounts of the judgment, if B and C allow their interest to be foreclosed and foreclosure produces only $20,000, the association judgment creditor will collect only $15,000 of its $50,000 judgment. That is less than it would collect if all unit owners' interests in units were fully liable, but more than it would collect if only association assets were subject to attachment. (The judgment creditor may, however, satisfy his judgment in full by reaching the income stream of the association by appropriate creditor process.)

In a cooperative, on the other hand, the association creditor can reach the entire interest of any of the unit owners in their units and will have its judgment satisfied in full.

The liability of cooperative unit owners to association judgment creditors is less than that of unit owners in condominiums and planned communities in that there is no statutory provision giving the judgment creditor a direct lien against units. Since, in a cooperative, title to the units is in the cooperative, a judgment creditor of the association will have a lien on the units, but under ordinary recording and priority rules, that lien will be subordinate to unit owner interests in units if those interests were recorded prior to the attachment of the judgment lien. Therefore, in a cooperative, there is a possibility that the judgment lienor will have no rights as against the interests of the unit owners. However, the declaration may provide that association creditors have priority over the interests of cooperative unit owners, and, if it does so, such a provision is effective (See Section 2-118), and even in the absence of Section 2-118 would be effective, as a general subordination of unit owner interest to creditors of the association. (The Act in Section 2-118 requires that all creditors of the association be treated in the same way as to priority against unit owners so that the declaration cannot provide, for example, that only contract creditors have priority over unit owners or, for another example, that only regulated financial institution debt has priority. However, the unit owners might subordinate their interest to the rights of individual creditors of the association by giving that individual creditor a subordination agreement.)

However, upon termination of the cooperative, liens against the cooperative which did not have priority over the cooperative interests do become proportional fractional liens against each individual cooperative interest (see Section 2-118(i) and the comments thereto).

3. The provisions of Section 3-117 applicable to condominiums and planned communities were adopted after substantial consideration by the committee and the National Conference and achieve what the drafters believe

is appropriate. Unit owner liability for association debts. The somewhat different treatment given cooperatives arises out of the different history of cooperatives and out of the different tradition as to financing of cooperatives. The rules just stated in effect continue the existing law as to the relationship between cooperative unit owners (today commonly called proprietary lessees) and association creditors. The provisions also take account of a common way of financing cooperatives: In the typical cooperative, the cooperative association will take title to the real estate and will assume or take subject to existing mortgages on the real estate, or if there are no existing mortgages, will borrow a significant portion of the purchase price of the cooperative real estate and secure that price by a mortgage on the real estate. Thereafter, when individual units are conveyed (leased) to individual unit owners, the unit owner's interest will be subject to the prior recorded underlying mortgage. The unit owner also will commonly borrow money on the security of his lease interest to pay the purchase price of the unit owner's interest. Unless a subordination agreement has been taken from the unit owner or subordination of the unit owner interest to subsequent association creditors is provided for in the declaration, the unit purchase financing lender who lends on the security of the unit owner's interest can assess his risk on the assumption that he will never be subject to a greater proportion of the underlying debt than he is at the time the loan is originally made. If there is a subordination agreement, the unit financing lender knows that his security interest is subject to being entirely defeated by subsequent transactions between the association and its creditors. In the cooperative context, that system has worked reasonably well, and many people with substantial experience with housing cooperatives wished to continue that system in the Model Real Estate Cooperative Act and in the Uniform Common Interest Ownership Act.

In the case of condominiums and planned communities, while the condominium or planned community judgment creditor has a direct lien against the units, the lien against a particular unit is limited to that unit's common interest percentage liability, and based on ordinary priority rules, the association judgment creditor's lien will be junior to any prior perfected liens or security interests in the unit owner's unit. Since the priority between association judgment creditors and holders of security interests or liens against individual units in condominiums or planned communities will be determined according to ordinary priority rules, as is the case of cooperatives in the absence of subordination agreements, the result as between association judgment creditors and holders of security interest or liens on individual units is essentially the same under all three acts. However, as pointed out above, as against the unit owner himself, the cooperative association lien creditor who has priority over a unit owner's interest will have greater rights than does the association judgment creditor in the case of condominiums and planned communities.

It should be noted that, while the judgment lien runs directly against unit owners in condominiums and planned communities, the actual liability of the unit owner is almost identical with what it would be if the ordinary corporation rule insulating the unit owner from direct liability were applied. If the incorporated condominium or planned community association only is liable for a judgment, it will, of course, have no assets to satisfy the judgment except whatever personal property and real estate not a part of the common elements it owns. If a checking account or other cash funds of the association are attached or garnished by the creditor, the association, in order to maintain its operations and fulfill its other obligations, will be obliged to make an additional assessment against the unit owners to cover the judgment. The same result follows if the association is to prevent the sale of other assets at an execution sale. That additional assessment would be in precisely the amount for which this Act gives a direct lien against the individual unit owners. Further, if an association which is without sufficient assets to satisfy a judgment refuses to make assessments from which the creditor can have his claim satisfied, it is very likely that a court, in a supplemental proceeding on the judgment, would direct the association to make the necessary assessments against the unit owners. Unpaid assessments made by the association constitute liens against units just as do judgments.

Therefore, whether the lien of the judgment creditor runs against the units directly, or whether the lien is only against the association which finds it necessary to make additional assessments to satisfy the judgment, the unit owner who does not pay his

proportionate share will end up with a lien against his unit.

The differences, therefore, between the lien system established by Section 3-117 for condominiums and planned communities and the system which would be applicable if ordinary corporation rules were applied are these:

(1) The unit owner can discharge his unit from the lien and free it from the possibility of being subsequently assessed by the association for the judgment by making a payment directly to the lien holder. This ability may be valuable to a unit owner who is in the process of selling or securing a mortgage on his unit during the period between the time the judgment is entered and the time the association makes a formal assessment against individual unit owners for the amount of the judgment lien.

(2) The judgment creditor through his ability to threaten to foreclose the lien on an individual unit if the judgment is not paid is given some leverage over individual unit owners to encourage them to see that the association pays the judgment. Procuring an assessment through pressure on individual unit owners may be quicker and cheaper for the judgment creditor than using supplemental proceedings and having a judge order that the board of directors make the necessary assessment.

5. In the rare case where, under corporation law an association could avoid payment of a judgment by dissolution of the association and vesting of title to the units or common elements the unit owners as tenants in common or otherwise, the National Conference of Commissioners on Uniform State Laws believes that that result is inappropriate, and that the unit in the condominium or planned community itself should be viewed as equity property of the association cap. of being reached by judgment creditors in satisfaction of the judgment. As a matter of social policy the condominium or planned community association is in quite a different position than the ordinary corporation. The corporation statutes provide shareholders immunity from liability for debts of the corporation to encourage investment in corporations whose entrepreneurial activities in the marketplace contribute to the general wealth and well being of society. The condominium or planned community association, in managing the affairs of the homeowners, does not serve the same entrepreneurial function. It seems reasonable, as a matter of social policy, that an individual homeowner who would be fully liable for debts incurred in the renovation and maintenance of his home or for torts caused by his failure to adequately maintain the premises should not be able to entirely avoid that liability through the device of organizing with other homeowners into a condominium or planned community association. On the other hand, it is perhaps not fair to a unit owner in a condominium or planned community regime to have all of his assets at risk based on the contracts of the association over which he has little control and as to which he has only a fractional interest or benefit.

It should be noted that, except for situations in which the association has given a mortgage or deed of trust on common elements, the judgment creditor cannot assert a lien against common elements, but is rather left to a lien against the units. That is, the judgment creditor has no power to levy on the golf course or on the swimming pool or other open spaces and sell them independently of the units to satisfy the judgment.

§ 3-118. Association Records

The association shall keep financial records sufficiently detailed to enable the association to comply with Section 4-109. All financial and other records must be made reasonably available for examination by any unit owner and his authorized agents.

§ 3-119. Association as Trustee

With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper ex-

ercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

ARTICLE 4

PROTECTION OF PURCHASERS

§ 4-101. Applicability; Waiver

(a) This Article applies to all units subject to this [Act], except as provided in subsection (b) or as modified or waived by agreement of purchasers of units in a common interest community in which all units are restricted to non-residential use.

(b) Neither a public offering statement nor a resale certificate need be prepared or delivered in the case of:

(1) a gratuitous disposition of a unit;

(2) a disposition pursuant to court order;

(3) a disposition by a government or governmental agency;

(4) a disposition by foreclosure or deed in lieu of foreclosure;

(5) a disposition to a dealer;

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

(7) a disposition of a unit in a planned community in which the declaration limits the maximum annual assessment of any unit to not more than $300, as adjusted pursuant to Section 1-115 (Adjustment of Dollar Amounts) if:

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

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

(iii) the planned community is not subject to any development rights.

COMMENT

1. In the case of commercial and industrial common interest communities, the purchaser is often more sophisticated than the purchaser of residential units and thus better able to bargain for the protections he believes necessary. While this may not always be true, no objective test can be developed which easily distinguishes those commercial purchasers who are able to protect themselves from those who, in the ordinary course of business, have not developed such sophistication. At the same time, the cost of protection imposed by Article 4 may be substantial. Accordingly, subsection (a) permits waiver or modification of Article 4 protections in common interest communities where all units are restricted to non-residential use. However, except for certain waivers of implied warranties of quality (*see* Section 4-115) and certain exemptions from public offering statement and resale certificate requirements (*see* subsection (b)), no express waiver of the protections of this Article with respect to the purchasers of residential units is

permitted by this subsection. Accordingly, by operation of Section 1-101, the rights provided by this Article may not be waived in the case of residential purchasers. Moreover, because of the interrelated rights of residential and commercial owners in mixed-use common interest communities, waiver or modification of rights conferred by this Article is restricted to purchasers in wholly non-residential common interest communities.

2. There are many single family subdivision or townhouse-type common interest communities in which the commonly owned and maintained facilities are relatively inconsequential and the assessment for maintenance of the common areas trivial. For example, the only common facility may be a road, a playground, or an open area. In such cases, the cost of the public offering statement required by this article is not justified any more than it would be justified in the sale of any residence in a subdivision or townhouse development. Therefore, (b)(7) provides that no public offering statement is necessary if the planned community declaration limits the maximum annual assessment of any unit to $300.00 (adjusted for inflation) and if the declarant has a good faith belief that the stated maximum will be sufficient to pay the expenses of the association.

§ 4-102. Liability for Public Offering Statement Requirements

(a) Except as provided in subsection (b), a declarant, before offering any interest in a unit to the public, shall prepare a public offering statement conforming to the requirements of Sections 4-103, 4-104, 4-105, and 4-106.

(b) A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant (Section 3-104) or to a dealer who intends to offer units in the common interest community. In the event of any such transfer, the transferor shall provide the transferee with any information necessary to enable the transferee to fulfill the requirements of subsection (a).

(c) Any declarant or dealer who offers a unit to a purchaser shall deliver a public offering statement in the manner prescribed in subsection 4-108(a). The person who prepared all or a part of the public offering statement is liable under Sections 4-108 and [,] 4-117 [, 5-105, and 5-106] for any false or misleading statement set forth therein or for any omission of a material fact therefrom with respect to that portion of the public offering statement which he prepared. If a declarant did not prepare any part of a public offering statement that he delivers, he is not liable for any false or misleading statement set forth therein or for any omission of a material fact therefrom unless he had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission.

(d) If a unit is part of a common interest community and is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this State, a single public offering statement conforming to the requirements of Sections 4-103, 4-104, 4-105, and 4-106 as those requirements relate to each regime in which the unit is located, and to any other requirements imposed under the laws of this State, may be prepared and delivered in lieu of providing 2 or more public offering statements.

COMMENT

This section permits declarants 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 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.

§ 4-103. Public Offering Statement; General Provisions

(a) Except as provided in subsection (b), a public offering statement must contain or fully and accurately disclose:

(1) the name and principal address of the declarant and of the common interest community, and a statement that the common interest community is either a condominium, cooperative, or planned community;

(2) a general description of the common interest community, including to the extent possible, the types, number, and declarant's schedule of commencement and completion of construction of buildings, and amenities that the declarant anticipates including in the common interest community;

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

(4) copies and a brief narrative description of the significant features of the declaration, other than any plats and plans, and any other recorded covenants, conditions, restrictions, and reservations affecting the common interest community; the bylaws, and any rules or regulations of the association; copies of any contracts and leases to be signed by purchasers at closing, and a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under Section 3-105;

(5) any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for [one] year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association, a statement of who prepared the budget, and a statement of the budget's assumptions concerning occupancy and inflation factors. The budget must include, without limitation:

(i) a statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement;

(ii) a statement of any other reserves;

(iii) the projected common expense assessment by category of expenditures for the association; and

(iv) the projected monthly common expense assessment for each type of unit;

(6) any services not reflected in the budget that the declarant provides, or expenses that he pays and which he expects may become at any subsequent time a common expense of the association and the projected common expense assessment attributable to each of those services or expenses for the association and for each type of unit;

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

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

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

(10) the terms and significant limitations of any warranties provided by the declarant, including statutory warranties and limitations on the enforcement thereof or on damages;

(11) a statement that:

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

(ii) if a declarant fails to provide a public offering statement to a purchaser before conveying a unit, that purchaser may recover from the declarant [10] percent of the sales price of the unit plus [10] percent of the share, proportionate to his common expense liability, of any indebtedness of the association secured by security interests encumbering the common interest community, and

(iii) if a purchaser receives the public offering statement more than 15 days before signing a contract, he cannot cancel the contract;

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

(13) a statement that any deposit made in connection with the purchase of a unit will be held in an escrow account until closing and will be returned to the purchaser if the purchaser cancels the contract pursuant to Section 4-108, together with the name and address of the escrow agent;

(14) any restraints on alienation of any portion of the common interest community and any restrictions: (i) on use, occupancy, and alienation of the units, and (ii) on the amount for which a unit may be sold or on the amount that may be received by a unit owner on sale, condemnation, or casualty loss to the unit or to the common interest community, or on termination of the common interest community;

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

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

(17) the extent to which financial arrangements have been provided for completion of all improvements that the declarant is obligated to build pursuant to Section 4-110 (Declarant's Obligation to Complete and Restore);

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

(19) all unusual and material circumstances, features, and characteristics of the common interest community and the units; and

(20) in a cooperative, (i) whether the unit owners will be entitled, for federal, state, and local income tax purposes, to a pass-through of deductions for payments made by the association for real estate taxes and interest paid the holder of a security interest encumbering the cooperative, and (ii) a statement as to the effect on every unit owner if the association fails to pay real estate taxes or payments due the holder of a security interest encumbering the cooperative.

(b) If a common interest community composed of not more than 12 units is not subject to any development rights and no power is reserved to a declarant to make the common interest community part of a larger common interest community, group of common interest communities, or other real estate, a public offering statement may but need not include the information otherwise required by paragraphs (9), (10), (15), (16), (17), (18), and (19) of subsection (a) and the narrative descriptions of documents required by subsection (a)(4).

(c) A declarant promptly shall amend the public offering statement to report any material change in the information required by this section.

COMMENT

1. The best "consumer protection" that the law can provide to any purchaser is to insure that he has an opportunity to acquire an understanding of the nature of the products which he is purchasing. Such a result is difficult to achieve, however, in the case of the common interest community purchaser because of the complex nature of the bundle of rights and obligations

which each unit owner obtains. For this reason, the Act, adopting the approach of many so-called "second generation" condominium statutes, sets forth a lengthy list of information which must be provided to each purchaser before he contracts for a unit. This list includes a number of important matters not typically required in public offering statements under existing law. The requirement for providing the public offering statement appears in Section 4-102(c), and Section 4-108 provides purchasers with cancellation rights and imposes civil penalties upon declarants not complying with the public offering statement requirements of the Act.

2. Paragraph (a)(2) requires a general description of the common interest community and, to the extent possible, the declarant's schedule for commencement and completion of construction for all building amenities that will comprise portions of the common interest community.

Under Section 4-110 the declarant is obligated to complete all improvements shown on a site plan or other graphic representation in the public offering statement or other promotional materials unless they are labeled "NEED NOT BE BUILT." The estimated schedule of commencement and completion of construction dates provides a standard for judging whether a declarant has complied with those requirements.

3. Paragraph (4) requires the public offering statement to include copies of the declaration, bylaws, and any rules and regulations of the common interest community, as well as copies of any contracts or leases to be executed by the purchaser. In addition, the paragraph requires the public offering statement to include a brief narrative description of the significant features of those documents, as well as of any management contract, leases of recreational facilities, and other sorts of contracts which may be subject to cancellation by the association after the period of declarant control expires, as provided in Section 3-105. This latter requirement is intended to encourage the preparation of brief summaries of all common interest community documents in laymen's terms, *i.e.*, the "brief narrative description" should be more than a simple explanation of what a declaration (or other document) is, but less than an extended legal analysis duplicating the contents of the documents themselves. The summary requirement is intended to alleviate the common problem of public offering statements being drafted in lawyers' terms and being no more comprehensible to laymen than the documents themselves.

4. The disclosure requirement of paragraph (6) is intended to eliminate the common deceptive sales practice known as "lowballing," a practice by which a declarant intentionally underestimates the budget for the association by providing many of the services himself during the initial sales period. In such a circumstance, the declarant commonly intends that, after a certain time, these services (which might include lawn maintenance, painting, security, bookkeeping, or other services) will become expenses of the association, thereby substantially increasing the periodic common expense assessments which association members must ultimately bear. By requiring the disclosure of these services (including the projected common expense assessment attributable to each) in paragraph (6), the Act seeks to minimize "lowballing". In order to comply fully with the provisions of paragraph (5), the declarant must calculate the budget on the basis of his best estimate of the number of units which will be part of the common interest community during that budget year. This requirement as well operates to negate the effects of any attempted "lowballing."

5. Paragraph (9) requires disclosure of any financing "offered" by the declarant. The paragraph contemplates that a declarant disclose any arrangements for financing that may have been made, including arrangements with any unaffiliated lender to provide mortgages to qualified purchasers.

6. Under paragraph (10), the declarant is required to disclose the terms of all warranties provided by the declarant (including the statutory warranties set forth in Section 4-114) and to describe any significant limitations on such warranties, the enforcement thereof, or damages which may be collectible as a result of a breach thereof. This latter requirement would necessitate a description by the declarant of any exclusions or modifications of statutory warranties undertaken pursuant to Section 4-115. The statute of limitations for warranties set forth at Section 4-116, together with any separate written agreement (as required by Section 4-116) providing for reduction of the period of such statute of limitations, must also be disclosed.

7. Paragraph (14) requires that the declarant disclose the existence of any

right of first refusal or other restrictions on the uses for which or classes of persons to whom units may be sold. It also requires disclosure of any provisions limiting the amount for which units may be sold or on the part of the sales price which may be retained by the selling unit owner. In some existing housing cooperatives for low income families the unit owner is required to sell at no more than a fixed sum; sometimes the amount which the unit owner paid; sometimes that plus a fixed appreciation. In addition to that practice, the section contemplates other possible limitations on the owner's right to receive sales proceeds such as a provision under which the developer shares in any appreciation in value.

8. Under paragraph (16), the declarant is obligated to disclose any current or expected fees or charges which unit owners may be required to pay for the use of the common elements and other facilities related to the common interest community. Such fees or charges might include swimming pool fees, golf course fees, or required membership fees for recreation associations. Such fees can represent a substantial addition to monthly assessments.

9. The "financial arrangements" required to be disclosed pursuant to paragraph (17) may vary substantially from one development to another. It is the intent of the paragraph to give purchasers as much information as possible with which to assess the declarant's ability to carry out his obligations to complete the improvements. For example, if a declarant has a commitment from a bank to provide construction financing for a swimming pool when 50% of the units in the common interest community are completed, that fact should be disclosed to potential purchasers.

10. In addition to the information required to be disclosed by paragraphs (1) through (18), paragraph (19) requires that the declarant disclose all other "unusual and material circumstances, features, and characteristics" of the common interest community and all units therein. This requires only information which is both "unusual *and* material." Thus, the provision does not require the disclosure of "material" factors which are commonly understood to be part of the common interest community, *e.g.*, the fact that buildings have a roof, walls, doors, and windows. Similarly, the provision does not require the disclosure of "unusual" information about the common interest community which is not also "material," *e.g.*, the fact that a common interest community is the first development of its type in a particular locality. Information which would normally be required to be disclosed pursuant to paragraph (19) might include, to the extent that they are unusual and material, environmental conditions affecting the use or enjoyment of the common interest community, features of the location of the common interest community, *e.g.*, near the end of an airport runway or a planned rendering plant, and the like.

11. The cost of preparing a public offering statement can be substantial and may, particularly in the case of small common interest communities, represent a significant portion of the cost of a unit. For that reason, subsection (b) permits a declarant to exclude from a public offering statement certain information in the case of a small common interest community (*i.e.*, less than 12 units) which is not subject to development rights and which is not potentially part of a larger common interest community or group of common interest communities. Essentially, subsection (a) permits a declarant to exclude from a public offering statement those materials which, as a practical matter, require extended preparation effort by an attorney or engineer in addition of the normal effort which must be exerted to provide the declaration, bylaws, plats and plans, or other documents required by the Act.

§ 4-104. Same; Common Interest Communities Subject to Development Rights

If the declaration provides that a common interest community is subject to any development rights, the public offering statement must disclose, in addition to the information required by Section 4-103:

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

(2) a statement of how many or what percentage of the units that may be created will be restricted exclusively to residential use, or a statement that no representations are made regarding use restrictions;

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

(4) a brief narrative description of any development rights reserved by a declarant and of any conditions relating to or limitations upon the exercise of development rights;

(5) a statement of the maximum extent to which each unit's allocated interests may be changed by the exercise of any development right described in paragraph (3);

(6) a statement of the extent to which any buildings or other improvements that may be erected pursuant to any development right in any part of the common interest community will be compatible with existing buildings and improvements in the common interest community in terms of architectural style, quality of construction, and size, or a statement that no assurances are made in those regards;

(7) general descriptions of all other improvements that may be made and limited common elements that may be created within any part of the common interest community pursuant to any development right reserved by the declarant, or a statement that no assurances are made in that regard;

(8) a statement of any limitations as to the locations of any building or other improvement that may be made within any part of the common interest community pursuant to any development right reserved by the declarant, or a statement that no assurances are made in that regard;

(9) a statement that any limited common elements created pursuant to any development right reserved by the declarant will be of the same general types and sizes as the limited common elements within other parts of the common interest community, or a statement of the types and sizes planned, or a statement that no assurances are made in that regard;

(10) a statement that the proportion of limited common elements to units created pursuant to any development right reserved by the declarant will be approximately equal to the proportion existing within other parts of the common interest community, or a statement of any other assurances in that regard, or a statement that no assurances are made in that regard;

(11) a statement that all restrictions in the declaration affecting use, occupancy, and alienation of units will apply to any units created pursuant to any development right reserved by the declarant, or a statement of any differentiations that may be made as to those units, or a statement that no assurances are made in that regard; and

(12) a statement of the extent to which any assurances made pursuant to this section apply or do not apply in the event that any development right is not exercised by the declarant.

COMMENT

ds section requires disclosure in public offering statement of the ner in which the declarant's exer- of development rights may affect hasers who acquire units before rights have been fully exercised. purpose is to put the purchaser on notice of the extent to which the exercise of these rights may alter, sometimes quite dramatically, both the physical and the legal aspects of the project. For example, the prospective purchaser may be contemplating the acquisition of a particular unit because it enjoys a view of open, undeveloped land over which the declarant has, however, reserved development rights. It may be that the boundary of the parcel as to which development rights have been reserved actually coincides with, or runs quite close to, the outer wall of the unit in question. The disclosures or statements made pursuant to paragraphs (8) and (12) of this section will indicate to the prospective purchaser the extent (if any) to which he can rely on the declarant not to do anything which would radically alter the view from the unit.

§ 4-105. Same; Time Shares

If the declaration provides that ownership or occupancy of any units is or may be in time shares, the public offering statement shall disclose, in addition to the information required by Section 4-103:

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

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

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

(4) the extent to which the creation of time shares will or may affect the enforceability of the association's lien for assessments provided in Section 3-116.

COMMENT

1. Time sharing has become increasingly important in recent years, particularly with respect to resort common interest communities. In recognition of this fact, this section requires the disclosure of certain information with respect to time sharing.

2. Virtually all existing state statutes dealing with condominiums, planned communities or cooperatives are silent with respect to time-share ownership. The inclusion of disclosure provisions for certain forms of time sharing in this Act, however, does not imply that other law regulating time sharing is affected in any way in a state merely because that state enacts this Act.

The Uniform Law Commissioners' Model Real Estate Time-Share Act specifies more extensive disclosures for time-share properties. A "time-share property" may include part or all of the common interest community, and Section 4-109 of the Model Act governs conflicts between this Act and time-share legislation.

§ 4-106. Same; Common Interest Communities Containing Conversion Buildings

(a) The public offering statement of a common interest community containing any conversion building must contain, in addition to the information required by Section 4-103:

(1) a statement by the declarant, based on a report prepared by an independent [registered] architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building;

(2) a statement by the declarant of the expected useful life of each item reported on in paragraph (1) or a statement that no representations are made in that regard; and

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

(b) This section applies only to buildings containing units that may be occupied for residential use.

COMMENT

1. In the case of a common interest community containing one or more conversion buildings, the disclosure of additional information relating to the condition of those buildings is required in the public offering statement because of the difficulty inherent in a single purchaser attempting to determine the condition of what is likely to be an older building being renovated for the purpose of common interest community sales.

2. Paragraph (a)(1) requires the person who gives the public offering statement to retain an independent architect or engineer to report on the present condition of all structural components and fixed mechanical and electrical installations in the conversion building. Such information is as useful to declarant as to the purchaser since, under the implied warranty provisions of Section 4-114, a declarant impliedly warrants all improvements made by any person to the building "before creation of the common interest community" unless such improvements are specifically excluded from the implied warranty of quality pursuant to Section 4-115(b).

3. *See* Comment 6 to Section 2-101 concerning the meaning of "structural components" as used in paragraph (a)(1). Any material changes in the "present condition" of these systems must be reported by an amendment to the public offering statement.

4. Under paragraph (a)(3), the person required to give the public offering statement is required to provide purchasers with a list of all outstanding notices of uncured violations of building codes or other municipal regulations. The literal wording of this provision does not require disclosure of known violations of such building codes or municipal regulations (at least violations having no effect upon the structural components or fixed mechanical and electrical installations of the planned community) unless actual "notices" of such violations have been received. To the extent that outstanding notices of uncured violations do exist, the cost of curing such violations would become a liability of the unit owners or the association following transfer of the unit to a purchaser. For that reason, the estimated cost of curing any outstanding violations must also be disclosed.

5. For the reasons set forth in the Comment to Section 4-101(a), this section does not apply to units which are restricted exclusively to non-residential use.

§ 4-107. Same; Common Interest Community Securities

If an interest in a common interest community is currently registered with the Securities and Exchange Commission of the United States, a declarant satisfies all requirements relating to the preparation of a public offering statement of this [Act] if he delivers to the purchaser [and files with the agency] a copy of the public offering statement filed with the Securities and Exchange Commission. [An interest in a common interest community is not a security under the provisions of [insert appropriate state securities regulation statutes].]

COMMENT

1. Some common interest communities will be regarded as "investment contracts" or other "securities" under federal law because they exhibit certain investment features such as mandatory rental pools. *See* SEC Securities Act Release No. 5347 (January 1973). 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 provisions of this Act, the prospectus filed with and distributed pursuant to the regulations of the United States Securities and Exchange Commission. Absent this provision, prospective purchasers of common interest communities classified by the SEC as "securities" would have to be given two public offering statements, one prepared pursuant to this Act and the other prepared pursuant to the Securities Act of 1933. Not only would this result increase the declarant's costs (and thus the price) of units, it might also reduce the likelihood of either public offering statement actually being read by prospective purchasers.

2. The bracketed language in the first sentence of this section should be inserted by states which choose to accept the agency provisions of Article 5 of the Act. The second sentence should also be inserted by states opting to incorporate Article 5 of the Act to avoid duplicative regulation of common interest communities by the agency administering the State's securities regulation statutes.

§ 4-108. Purchaser's Right to Cancel

(a) A person required to deliver a public offering statement pursuant to Section 4-102(c) shall provide a purchaser with a copy of the public offering statement and all amendments thereto before conveyance of the unit, and not later than the date of any contract of sale. Unless a purchaser is given the public offering statement more than 15 days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within 15 days after first receiving the public offering statement.

(b) If a purchaser elects to cancel a contract pursuant to subsection (a), he may do so by hand delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to his agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly.

(c) If a person required to deliver a public offering statement pursuant to Section 4-102(c) fails to provide a purchaser to whom a unit is conveyed with that public offering statement and all amendments thereto as required by subsection (a), the purchaser, in addition to any rights to damages or other relief, is entitled to receive from that person an amount equal to [10] percent of the sale price of the unit, plus [10] percent of the share, proportionate to his common expense liability, of any indebtedness of the association secured by security interests encumbering the common interest community.

COMMENT

1. The "cooling off" period provided to a purchaser in this section is similar to provisions in many current state condominium statutes.

2. Subsection (a) requires that each purchaser be provided with both the public offering statement and all amendments thereto 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. The section makes clear that any amendments to the public offering statement prepared between the date of any contract and the date of conveyance must also be provided to the purchaser.

3. This section does not require the delivery of a public offering statement prior to the execution by the purchaser of an agreement pursuant to which the purchaser reserves the right to buy a unit but is not contractually bound to do so. Because such agreements (frequently referred to as "non-binding reservation agreements") may be unilaterally cancelled at any time by a prospective purchaser without penalty, they do not constitute "contract[s] of sale" within the meaning of the section.

4. The requirement set forth in subsection (a) that a purchaser be provided with subsequent amendments to the public offering statement during the period between execution of the contract for purchase and conveyance of the unit does not, in itself, extend the "cooling off" period. Indeed, the delivery of such amendments is required even if the "cooling off" period has expired. The purpose of this requirement is to assure that purchasers of units are advised of any material change in the common interest community which may affect their sales contracts under general law. While many such amendments will be merely technical and will not affect the bargain that the purchaser and declarant entered into, each purchaser should be

permitted to judge for himself the materiality of any change in the nature of the common interest community.

5. Under the scheme set forth in this section, it is at least theoretically possible that there will be a contract for sale of the unit, and that a public offering statement will be given to the purchaser at closing just prior to conveyance. However, the available evidence suggests that such practice would be rare, and that the provision of a public offering statement moments prior to conveyance would, in itself, tend to dampen the enthusiasm of the purchaser for immediate closing. In such circumstances, under subsection (a), the purchaser would, as a matter of right, be able to extend the date of closing for 15 days from the time the public offering statement is provided. This fact, together with the generally unsatisfactory experience with mandatory "cooling off" periods such as that imposed under the federal Real Estate Settlement Procedures Act, supports the conclusion that it is inappropriate to require a minimum period of delay between delivery of a public offering statement and conveyance.

6. Under subsection (a), the failure to deliver a public offering statement before conveyance does not result in a statutory right by the purchaser to cancel the conveyance or to reconvey the unit once conveyance has occurred. Any such cancellation or reconveyance following an actual conveyance could create serious mechanical and title problems that could not be easily resolved. The failure of the Act to provide for such cancellation or reconveyance is not, however, intended to diminish any right which a purchaser may otherwise have under general state law. For example, where it appears that a seller, by deliberate or failing to disclose certain material information with respect to a transaction, substantially changed the bargain which he and the purchaser entered into, it is possible that under the common law in some states reconveyance would be an available remedy.

Even absent such resort to general law, however, the penalty provisions of subsection (c) are designed to provide a sufficient incentive to the seller to insure that the public offering statement is provided in the timely fashion required by the Act. The penalty so specified in the subsection is in addition to any right a prevailing purchaser may have under Section 4-117 to collect punitive damages and attorney's fees in connection with his action against the declarant.

§ 4-109. Resales of Units

(a) Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under Section 4-101(b), a unit owner shall furnish to a purchaser before execution of any contract for sale of a unit, or otherwise before conveyance, a copy of the declaration (other than any plats and plans), the bylaws, the rules or regulations of the association, and a certificate containing:

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

(2) a statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner;

(3) a statement of any other fees payable by unit owners;

(4) a statement of any capital expenditures anticipated by the association for the current and 2 next succeeding fiscal years;

(5) a statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified projects;

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

(7) the current operating budget of the association;

(8) a statement of any unsatisfied judgments against the association

and the status of any pending suits to which the association is a defendant;

(9) a statement describing any insurance coverage provided for the benefit of unit owners;

(10) a statement as to whether the executive board has knowledge that any alterations or improvements to the unit or to the limited common elements assigned thereto violate any provision of the declaration;

(11) a statement as to whether the executive board has knowledge of any violations of the health or building codes with respect to the unit, the limited common elements assigned thereto, or any other portion of the common interest community;

(12) a statement of the remaining term of any leasehold estate affecting the common interest community and the provisions governing any extension or renewal thereof;

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

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

(b) The association, within 10 days after a request by a unit owner, shall furnish a certificate containing the information necessary to enable the unit owner to comply with this section. A unit owner providing a certificate pursuant to subsection (a) is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

(c) A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchase contract is voidable by the purchaser until the certificate has been provided and for 5 days thereafter or until conveyance, whichever first occurs.

COMMENT

1. In the case of the resale of a unit by a private unit owner who is not a declarant or a person in the business of selling real estate for his own account, a public offering statement need not be provided. *See* Section 4-102(c). Nevertheless, there are important facts which a purchaser should have in order to make a rational judgment about the advisability of purchasing the particular unit. Accordingly, each unit owner not required to furnish a public offering statement under Section 4-102(c) and not exempt under Section 4-101(b) is required to furnish to a resale purchaser, before the execution of any contract of sale, a copy of the declaration, bylaws, and rules and regulations of the association and a variety of fiscal, insurance, and other information concerning the common interest community and the unit.

2. While the obligation to provide the information required by this section rests upon each unit owner (since the purchaser is in privity only with that unit owner), the association has an obligation to provide the information to the unit owner within 10 days after a request for such information. Under Section 3-102(a)(11)(12), the association is entitled to charge the unit owner a reasonable fee for the preparation of the certificate. Should the association fail to provide the certificate as required, the unit owner would have a right to action against the association pursuant to Section 4-117.

3. Under subsection (c), if a purchaser receives a resale certificate which fails to state the proper amount of the unpaid assessments due from the purchased unit, the purchaser is not liable for any amount greater than that disclosed in the resale certificate. Because a resale purchaser is dependent upon the association for information with respect to the outstanding assessments against the unit which he contemplates buying, it is altogether appropriate that the association should be prohibited from later collecting greater assessments than those disclosed prior to the time of the resale purchase.

§ 4-110. Escrow of Deposits

Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to Section 4-102(c) must be placed in escrow and held either in this State or in the state where the unit is located in an account designated solely for that purpose by [a licensed title insurance company] [an attorney] [a licensed real estate broker] [an independent bonded escrow company or] an institution whose accounts are insured by a governmental agency or instrumentality until (i) delivered to the declarant at closing; (ii) delivered to the declarant because of the purchaser's default under a contract to purchase the unit; or (iii) refunded to the purchaser.

COMMENT

1. This section applies to the sale by persons required to furnish public offering statements of residential units and of non-residential units unless waived pursuant to the provisions of Section 4-101. It does not apply, however, to resales of units between private parties.

2. This section provides declarant a number of choices as to the appropriate escrow agent. Whether the escrow agent must deposit the funds in an insured institutional depository, or in a particular type of account, depends on state law or the agreement of the parties. To minimize record keeping, of course, the institutional depository could itself be the escrow agent. The section does not require a separate account for each unit, so that mingling of funds in a single escrow account would be permitted. The account may be held either in the state where the unit is located, or in the enacting state, in recognition that buyers are often from outside the state where the unit is located.

3. The escrow requirements of this section apply in connection with *any* deposit made by a purchaser, whether such deposit is made pursuant to a binding contract or pursuant to a non-binding reservation agreement (with respect to which no public offering statement is required under Section 4-101(b)(6)).

4. In some states current practice permits escrows to be held by certain title insurance or escrow companies, attorneys, or real estate brokers. Accordingly, the bracketed language should be included or deleted in accordance with local practice.

5. Under this section, any interest earned on an escrow deposit may, but need not, be credited to the purchaser at closing, added to any deposit forfeited to the seller, or added to any deposit refunded to the purchaser. In short, disposition of any interest is left to agreement of the parties.

6. In some states, such as New York, the substitution of a bond in place of a deposit escrow is permitted. The evidence indicates, however, that in many instances the use of the bonding device has forced purchasers to incur substantial costs and delay prior to obtaining refunds to which they are entitled. For this reason, this Act does not include bonding as an alternative to the required escrow of deposits.

§ 4-111. Release of Liens

(a) In the case of a sale of a unit where delivery of a public offering statement is required pursuant to Section 4-102(c), a seller

(1) before conveying a unit, shall record or furnish to the purchaser releases of all liens, except liens on real estate that a declarant has the right to withdraw from the common interest community, that the purchaser does not expressly agree to take subject to or assume and that encumber:

(i) in a condominium, that unit and its common element interest, and

(ii) in a cooperative or planned community, that unit and any limited common elements assigned thereto; or

(2) shall provide a surety bond or substitute collateral for or insurance against the lien as provided for liens on real estate in [insert appropriate references to general state law or Sections 5-211 and 5-212 of the State Uniform Simplification of Land Transfers Act].

(b) Before conveying real estate to the association, the declarant shall have that real estate released from: (1) all liens the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units, and (2) all other liens on that real estate unless the public offering statement describes certain real estate that may be conveyed subject to liens in specified amounts.

COMMENT

1. The exemption for withdrawable real estate set forth in subsection (a) is designed to preserve flexibility for the declarant in terms of financing arrangements. It deals with the unusual case in which a unit has been assigned a limited common element (for example, a parking space) on real estate which the developer has the right to withdraw from the common interest community. In that case, the limited common element can be assigned to the unit without release of liens or assumption of them by the unit owner. Theoretically, a developer might partially avoid the lien release requirement of subsection (a) by placing part of the limited common element improvements such as a parking garage on withdrawable real estate. By doing so, it could separately mortgage that part of the limited common elements without being obligated to discharge the mortgage or secure partial releases when individual units to which the limited common elements are assigned are sold.

If a mortgage or other lien created by or arising against the developer attaches to withdrawable real estate after the declaration has been recorded, a lapse of the developer's right to withdraw the real estate would also terminate the rights of the lienors, since the lien would attach only to the developer's interest (the right to withdraw). However, an alert lienor would not permit the right to withdraw to lapse without taking steps to see that the right to withdraw is exercised. If the mortgage or other lien attached to the real estate and was perfected before the planned community declaration was recorded, lapse of the right to withdraw would not affect the lienor's rights and it could foreclose on the real estate whether or not the developer had lost the right to withdraw. As a practical matter, whether the mortgage or other lien against withdrawable real estate arises before or after the declaration is recorded, unit owners may find that, if the association does not release liens on withdrawable real estate containing limited common elements, the lienor will be able to withdraw the land and deprive the unit owners of its use. Therefore, unit purchasers and their counsel should be alert to that possibility.

2. Subsection (b) will most commonly apply in the case of a planned community, where all of the common elements, whatever they may be in a particular project, must be owned by the association, see section 1-103(4), or in a cooperative, where section 2-101 requires that all the real estate comprising the cooperative must be conveyed to the association at the time the cooperative is created. The section would also apply, however, in the event other real estate, such as units or other real property not subject to the declaration, is conveyed to the association.

§ 4-112. Conversion Buildings

(a) A declarant of a common interest community containing conversion buildings, and any dealer who intends to offer units in such a common interest community, shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion building notice of the

conversion no...rovide those persons with the public offering statement no later than 120 days before the tenants and any subtenant in possession are required to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and must be hand delivered to the unit or mailed by prepaid United States mail to the tenant and subtenant at the address of the unit or any other mailing address provided by a tenant. No tenant or subtenant may be required to vacate upon less than 120 days' notice, except by reason of nonpayment of rent, waste, or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period. Failure to give notice as required by this section is a defense to an action for possession.

(b) For [60] days after delivery or mailing of the notice described in subsection (a), the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If a tenant fails to purchase the unit during that [60] day period, the offeror may not offer to dispose of an interest in that unit during the following [180] days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection does not apply to any unit in a conversion building if that unit will be restricted exclusively to non-residential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

(c) If a seller, in violation of subsection (b), conveys a unit to a purchaser for value who has no knowledge of the violation, the recordation of the deed conveying the unit or, in a cooperative, the conveyance of the unit, extinguishes any right a tenant may have under subsection (b) to purchase that unit if the deed states that the seller has complied with subsection (b), but the conveyance does not affect the right of a tenant to recover damages from the seller for a violation of subsection (b).

(d) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise complies with the provisions of [insert appropriate state summary process statute], the notice also constitutes a notice to vacate specified by that statute.

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

COMMENT

1. One of the most controversial issues in the field of common interest community development relates to conversion of rental buildings to a common interest community. Opponents of conversions point out that the frequent result of conversions, which occur principally in large urban areas, is to displace low- and moderate-income tenants and provide homes for more affluent persons able to afford the higher prices which the converted apartments command. Indeed, studies indicate that the burden of conversion displacement falls most frequently on low- and moderate-income and elderly persons. At the same time, the conversion of a building to common interest community ownership can lead to a substantial increase in property value, a result which proponents believe can be an important factor in curtailing the problem of declining urban tax bases. Proponents also point out that the conversion of rental units in inner-city areas to individual ownership frequently results in the stabilization of the buildings concerned, thus providing an important technique for use in neighborhood preservation and revitalization. This section, which seeks to balance these competing interests, is based principally on similar provisions set forth in the condominium statutes of Virginia and the District of Columbia.

2. In an attempt to strike a fair balance between the competing interests of rental tenants and prospective owners, subsection (b) provides the tenant a right for 60 days to purchase the unit which he leases at a price and on terms offered by the declarant. The subsection discourages unreasonable offers by declarants by providing that, if the tenant fails to accept the terms offered, the declarant may not thereafter

sell the unit at a lower price or upon more favorable terms to a third person for at least 180 days. However, the declarant is not required to offer residential tenants the right to purchase commercial units or to offer to sell to tenants if the dimensions of their previous apartments have been substantially altered. The reason for this exception is that, if an apartment is subdivided or if two apartments are merged into a single planned community unit, compliance with the requirements of subsection (b) would be impossible.

3. Jurisdictions with rent control statutes should consider whether amendments to this section are necessary to conform to the procedures or substantive requirements set out in the rent control laws or whether modifications to the rent control laws may be required as a result of the enactment of this section.

4. Except for the restrictions on permissible evictions stated in subsection (a), this Act does not change the law of summary process in a state. As a result, if a tenant refuses to vacate the premises following the 120-day notice, the usual provisions of the state's summary process statutes would apply, while any defenses available to a tenant would also be available.

§ 4-113. Express Warranties of Quality

(a) Express warranties made by any seller to a purchaser of a unit, if relied upon by the purchaser, are created as follows:

(1) any affirmation of fact or promise which relates to the unit, its use, or rights appurtenant thereto, or to improvements to the common interest community that would directly benefit the unit, or the right to use or have the benefit of facilities not located in the common interest community, creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise;

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

(3) any description of the quantity or extent of the real estate comprising the common interest community, including plats or surveys, creates an express warranty that the common interest community will conform to the description, subject to customary tolerances; and

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

(b) Neither formal words, such as "warranty" or "guarantee", nor a specific intention to make a warranty, are necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty.

(c) Any conveyance of a unit transfers to the purchaser all express warranties of quality made by previous sellers.

COMMENT

1. This section, together with Sections 4-111, 4-115, and 4-116, are adapted from the real estate warranty provisions contained in the Uniform Land Transactions Act (ULTA).

2. This section, which parallels Section 2-308 of ULTA, deals with express warranties, that is, with the expectations of the purchaser created by particular conduct of the declarant in connection with inducement of the sale. It is based on the principle that, once it is established that the declarant has acted so as 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.

3. Subsection (b) makes it clear that no specific intention to make a warranty is necessary if any of the factors mentioned in subsection (a) are made part of the basis of the bargain between the parties. In actual practice, representations made by a declarant concerning common interest community property during the bar-

gaining process are typically regarded as a part of the description. Therefore, no particular reliance on the representations need be shown in order to weave them into the fabric of the agreement. Rather, the burden is on the declarant to show that representations made in the bargaining process were not relied upon by the purchaser at the time of contracting.

4. Subsection (a)(1) provides that representations as to improvements and facilities not located in the common interest community may create express warranties. Declarants often assert that recreational facilities, such as swimming pools, golf courses, tennis courts etc., will be constructed in the future and that unit owners will have the right to utilize such facilities once constructed. Such assertions are intended to be included within the language "have the benefit of facilities not located in the planned community." If, under the circumstances, such improvements would benefit the unit being sold, then the declarant may be liable for breach of express warranty if they are not completed. Such liability is distinct from the declarant's obligations, under Section 4-119, to complete all improvements labeled "MUST BE BUILT" on plats and plans.

5. Under subsection (a)(1), a contract provision permitting the purchaser to use a common interest community unit only for a specified use or uses creates an express warranty that the unit may lawfully be used for that purpose. Therefore, if there is a limitation on use, the resulting express warranty could not be disclaimed by a disclaimer of implied warranties under Section 4-115.

6. The precise time when representations set forth in subsection (a) are made is not material. The sole question is whether the language or other representations of the declarant are fairly to be regarded as part of the contract between the parties.

7. Subsection (b) makes clear that it is not necessary to the existence of a warranty that the declarant have intended to assume a warranty obligation. On the other hand, mere statements of opinion or commendations by the declarant do not necessarily create warranties. Whether a particular statement purports to be merely opinion or commendation is basically a question of whether the purchaser could reasonably rely upon the statement as a meaningful representation or promise with respect to the planned community. That determination depends, in turn, not merely upon the words used but also upon the relative characteristics and skills of the parties. Thus, a representation by a declarant to a novice purchaser that a particular planned community unit is in "good condition" may be more than mere opinion or commendation, while the same statement by a novice seller to a professional buyer would likely be only opinion or commendation, and thus not a warranty.

8. The provision of subsection (c) that the conveyance of a unit transfers to the purchaser all express warranties made by prior declarants is intended, in part, to avoid the possibility that a declarant could negate his warranty obligations through the device of transferring a unit through a shell entity to the ultimate purchaser.

4-114. Implied Warranties of Quality

(a) A declarant and any dealer warrants that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear excepted.

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

(1) free from defective materials; and

(2) constructed in accordance with applicable law, according to sound engineering and construction standards, and in a workmanlike manner.

(c) In addition, a declarant and any dealer warrants to a purchaser of a unit that may be used for residential use that an existing use, continuation of

which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

(d) Warranties imposed by this section may be excluded or modified as specified in Section 4-115.

(e) For purposes of this section, improvements made or contracted for by an affiliate of a declarant (Section 1-103(1)) are made or contracted for by the declarant.

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

COMMENT

1. This section, which is based upon Section 2-309 of ULTA, overturns the rule still applied in many states that a professional seller of real estate makes no implied warranties of quality (the rule of *"caveat emptor"*). In recent years, that rule has been increasingly recognized as a relic of an earlier age whose continued existence defeats reasonable expectations of purchasers. Since the 1930's, more and more courts have completely or partially abolished the *caveat emptor* rule, and it is clear that the judicial tide is now running in favor of seller liability.

2. 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, which arise under subsection (b), are imposed only against declarants and dealers and not against unit owners selling their units to others.

3. Many recent cases have held that a seller of new housing impliedly warrants that the houses sold are habitable. The warranty of suitability under this Act is similar to the warranty of habitability. However, under the Act, the warranty of suitability applies to both units and common elements in both commercial and residential common interest communities. If, for example, a commercial unit is sold for commercial use and is not suitable for the ordinary uses of common interest community units of that type, the warranty of suitability has been breached. Moreover, this warranty of suitability arises in the case of used, as well as new, buildings or other improvements in the common interest community.

4. The warranty of suitability and of quality of construction arises only against a declarant and dealers. As in the case of sales of goods, a non-professional seller is liable, if at all, only for any express warranties made by him. However, if a non-professional seller fails to disclose defects of which he is aware, he may be liable to the purchaser for fraud or misrepresentation under the common law of the state where the transaction occurred. Also, the warranties imposed by this section may be used to give content to a general "guarantee" by a non-professional seller.

5. The warranty as to quality of construction for improvements made or contracted for by the declarant or made by any person before the creation of the common interest community is broader than the warranty of suitability. Particularly, it imposes liability for defects which may not be so serious as to render the units or common elements unsuitable for ordinary purposes of real estate of similar type. Moreover, subsection (c) prevents a declarant from avoiding liability with respect to the quality of construction warranty by having an affiliated entity make the desired improvements.

6. Under subsection (c), a declarant also warrants to a residential purchaser that an existing use contemplated by the parties does not violate applicable law. The declarant, therefore, is liable for any violation of housing codes or other laws which renders any existing use of the unit or common elements unlawful.

7. The issue of declarant liability for warranties is an important one in cases where a transfer of the declarant's rights occurs, either as an arm's length transaction, as a transfer to an affiliate, or as a transfer by foreclosure or a deed in lieu of foreclosure. Subsection (f) makes clear that a conveyance of a unit transfers to the purchaser all warranties of quality made by any declarant, and Section 3-101(b)(1) makes clear that the original declarant remains liable for all warranties of quality with respect to improvements made by him, even after he transfers all declarant rights, regardless of whether the unit is purchased from the declarant who made the improvements. If the successor

declarant is an associate of the original declarant. It is clear, under both Sections 3-101(b)(2) and 1-111(f), that the original declarant remains liable for warranties of quality or improvements made by his successor even after the declarant himself ceases to have any special declarant rights.

8. As to the liability of successor declarants for warranties of quality, a successor who is an affiliate of a declarant is liable, pursuant to Section 3-101(c)(1), for warranties or improvements made by his predecessor. However, any non-affiliated successor of the original declarant is liable only for warranties of quality for improvements made or contracted for by him, and is not liable for warranties which may lie against the original declarant even if the successor sells units completed by the original declarant to a purchaser. *See* Section 3-101(c)(2). In the case of a foreclosing lender, this is the same result as that reached under Section 2-309(f) of ULTA. The same result is also reached under ULTA in the case of a successor who, under ULTA Section 3-309(b), would be a dealer since under that subsection the seller is liable only for warranties for improvements made or contracted for by him.

§ 4-115. Exclusion or Modification of Implied Warranties of Quality

(a) Except as limited by subsection (b) with respect to a purchaser of a unit that may be used for residential use, implied warranties of quality:

(1) may be excluded or modified by agreement of the parties; and

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

(b) With respect to a purchaser of a unit that may be occupied for residential use, no general disclaimer of implied warranties of quality is effective, but a declarant and any dealer may disclaim liability in an instrument signed by the purchaser for a specified defect or specified failure to comply with applicable law, if the defect or failure entered into and became a part of the basis of the bargain.

COMMENT

1. This section parallels Section 2-311(b) and (c) of UCITA.

2. Under this section, implied warranties of quality may be disclaimed. However, a warranty disclaimer clause, like any other contract clause, is subject to a possible court holding of unconscionability. Although the section imposes no requirement that a disclaimer be in writing, except in the case of residential units, an oral disclaimer might be ineffective under the law of parole and extrinsic evidence.

3. Except as against purchasers of residential units, there are no formal standards for the effectiveness of a disclaimer clause. All that is necessary under this section is that the disclaimer be calculated to effectively notify the purchaser of the nature of the disclaimer.

4. Under subsection (b), general disclaimers of implied warranties are not permitted with respect to purchasers of residential units. However, a declarant may disclaim liability for a specified defect or a specified failure to comply with applicable law in an instrument signed by such a purchaser. The requirement that the disclaimer as to each defect or failure be in a signed instrument 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 of the parties. Consequently, this section imposes a special burden upon the declarant who desires to make a "laundry list" of defects or failures by requiring him to emphasize each item on such a list and make its import clear to prospective purchasers. For example, the declarant of a conversion common interest community might, consistent with this subsection, disclaim certain warranties for "all electrical wiring and fixtures in the building, the furnace, all materials

comprising or supporting the roof, and all components of the air conditioning system."

5. This section is not intended to be inconsistent with, or to prevent, the use of insured warranty programs offered by some home builders. However, under the Act, the implied warranty that a new unit will be suitable for ordinary uses (*i.e.*, habitable) and will be constructed in a sound, workmanlike manner, and free of defective materials, cannot be disclaimed by general language.

§ 4-116. Statute of Limitations for Warranties

(a) A judicial proceeding for breach of any obligation arising under Section 4-113 or 4-114 must be commenced within 6 years after the [claim for relief] [cause of action] accrues, but the parties may agree to reduce the period of limitation to not less than 2 years. With respect to a unit that may be occupied for residential use, an agreement to reduce the period of limitation must be evidenced by a separate instrument executed by the purchaser.

(b) Subject to subsection (c), a [claim for relief] [cause of action] for breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

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

(2) as to each common element, at the time the common element is completed or, if later, as to (i) a common element that may be added to the common interest community or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser, or (ii) a common element within any other portion of the common interest community, at the time the first unit is conveyed to a bona fide purchaser.

(c) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the common interest community, the [claim for relief] [cause of action] accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

COMMENT

1. Under subsection (a), the parties may agree that the statute of limitations be reduced to as little as 2 years. However, such a contract provision (which, in the case of residential units, must be reflected in a separate written instrument executed by the purchaser) could, like other contract provisions, be subject to attack on grounds of unconscionability in particular cases.

2. Except for warranties of quality which explicitly refer to future performance or duration, a cause of action for breach of a warranty of quality would normally arise when the purchaser to whom it is first made enters into possession. Suit on such a warranty would thus have to be brought within 6 years thereafter. Even an inability to discover the breach would not delay the running of the statute of limitations in this regard.

3. Real estate sales frequently include warranties that certain components (*e.g.*, furnaces, hot water heaters, air conditioning systems, and roofs) will last for a particular period of time. In the case of such warranties, the statute of limitations would not start running until the breach is discovered, or, if not discovered before the end of the warranty term, until the end of the term.

§ 4-117. Effect of Violations on Rights of Action; Attor fees

If a declarant or any other person subject to this [Act] fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. Punitive damages may be awarded for a willful failure to comply with this [Act]. The court, in an appropriate case, may award reasonable attorney's fees.

COMMENT

This section provides a general cause of action or claim for relief for failure to comply with the Act by either a declarant or any other person subject to the Act's provisions. Such persons might include unit owners, persons exercising a declarant's rights of appointment pursuant to Section 3-103(d), or the association itself. A claim for appropriate relief might include damages, injunctive relief, specific performance, recission or reconveyance if appropriate under the law of the state, or any other remedy normally available under state law. The section specifically refers to "any person or class of persons" to indicate that any relief available under the state class action statute would be available in circumstances where a failure to comply with this Act has occurred. This section specifically permits punitive damages to be awarded in the case of willful failure to comply with the Act and also permits attorney's fees to be awarded in the discretion of the court to any party that prevails in an action.

§ 4-118. Labeling of Promotional Material

No promotional material may be displayed or delivered to prospective purchasers which describes or portrays an improvement that is not in existence unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified either as "MUST BE BUILT" or as "NEED NOT BE BUILT."

COMMENT

This section requiring the labeling of improvements depicted on promotional material is necessary to assure that purchasers are not deceived with respect to improvements the declarant indicates he intends to make in a common interest community.

§ 4-119. Declarant's Obligation to Complete and Restore

(a) Except for improvements labeled "NEED NOT BE BUILT," the declarant shall complete all improvements depicted on any site plan or other graphic representation, including any plats or plans prepared pursuant to Section 2-109, whether or not that site plan or other graphic representation is contained in the public offering statement or in any promotional material distributed by or for the declarant.

(b) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the common interest community, of any portion of the common interest community affected by the exercise of rights reserved pursuant to or created by Section 2-110, 2-111, 2-112, 2-113, 2-115, or 2-116.

COMMENT

1. The duty imposed by subsection (a) is a fundamental obligation of the declarant and is one with which a successor declarant is obligated to comply under Section 3-101.

2. Section 4-119(b) requires the declarant to repair and restore the common interest community following the exercise of any rights reserved or created to exercise a development right (Section 2-110), to alter units (Section 2-112), relocate the boundaries between adjoining units (Section 2-112), subdivide units (Section 2-113), use units or common elements for sales purposes (Section 2-115), or exercise of easement rights (Section 2-116.) Plainly, this obligation on the declarant exists only if the declarant, in his capacity as a unit owner, exercises these rights. If any right to, for example, alter units, is exercised by another unit owner, that unit owner and not the declarant, would be responsible for the consequences of those acts.

§ 4-120. Substantial Completion of Units

In the case of a sale of a unit in which delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that unit may be conveyed, until the declaration is recorded and the unit is substantially completed, as evidenced by a recorded certificate of substantial completion executed by an independent [registered] architect, surveyor or engineer, or by issuance of a certificate of occupancy authorized by law.

COMMENT

The purpose of this section, complemented by Section 4-110, 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.

[OPTIONAL]

ARTICLE 5

ADMINISTRATION AND REGISTRATION OF COMMON INTEREST COMMUNITIES

§ 5-101. Administrative Agency

As used in this [Act], "agency" means [insert appropriate administrative agency], which is an agency within the meaning of [insert appropriate reference to state administrative procedure act]. [Insert any related provisions on creation, selection, and remuneration of personnel, budget, annual reports, fees, and other administrative provisions appropriate to the particular state.]

COMMENT

1. Each state should insert in lieu of the bracketed language in the first sentence that agency, whether it be the Real Estate Commission, the Attorney General's Office, or any other existing or new agency, which the state deems appropriate for regulation of common interest communities.

2. The 1961 Revised Model State Administrative Procedure Act (the "Model Act") had been adopted in 20 states and the District of Columbia by 1981. The appropriate reference in those states to the definition of "Agency" would be the statute adopting Section 1(1) of the Model Act. In those states which have not adopted the Model Act, reference to a similar statute should be made to insure that the procedures of the agency regulating planned communities are undertaken in accordance with the principles of procedural due process which underlie the Model Act. In those states which do not have an administrative procedure act, appropriate administrative proce-

dures should be included, either in this section or elsewhere in this article, to provide for hearings, appellate review, regulations, and other administrative matters.

3. As indicated, Article 5 was not designed to solve all procedural matters which are appropriate for an agency. Rather, the Act relies on the cross reference to a state administrative procedure act. Even in such states, however, it may be appropriate to include other provisions, either in Section 5-101 or elsewhere in this article, which are necessary under state practice to insure the proper functioning of a state agency. This might include budget authority, salary levels, civil service requirements, and the like. This may be particularly important when a new state agency is created.

§ 5-102. Registration Required

A declarant may not offer or dispose of a unit intended for residential use unless the common interest community and the unit are registered with the agency, but a common interest community consisting of no more than 12 units and which is not subject to development rights is exempt from the requirements of this section and Section 5-103(a).

COMMENT

1. Registration of a common interest community is only required in the case of a common interest community or unit intended for residential use. Commercial and industrial common interest communities, accordingly, are exempt from registration under this Act. Also exempt from the requirement of registration is a small common interest community containing 12 or fewer units, so long as the common interest community is not subject to development rights. However, the small common interest community and the industrial or commercial common interest community are still subject to scrutiny by the agency under its general powers, despite the fact that registration is not required.

2. If Article 5 were adopted in a particular state, a declarant could not offer or dispose of a residential unit unless that unit were registered with the agency. However, he could offer and dispose of the unit after registration was approved but before the common interest community was created, subject to the requirements of Sections 2-101 and 5-103.

§ 5-103. Application for Registration; Approval of Uncompleted Units

(a) An application for registration must contain the information and be accompanied by any reasonable fees required by the agency's [rules] [regulations]. A declarant promptly shall file amendments to report any actual or expected material change in any document or information contained in the application.

(b) If a declarant files with the agency a declaration or proposed declaration, or an amendment or proposed amendment to a declaration, creating units that he proposes to convey before they are substantially completed in the manner required by Section 4-120 and, in a condominium, by Section 2-101(b), the declarant shall also file with the agency:

(1) a verified statement showing all costs involved in completing the buildings containing those units;

(2) a verified estimate of the time of completion of construction of the buildings containing those units;

(3) satisfactory evidence of sufficient funds to cover all costs to complete the buildings containing those units;

(4) a copy of the executed construction contract and any other contracts for the completion of the buildings containing those units;

(5) a 100 percent payment and performance bond covering the entire cost of construction of the buildings containing those units;

(6) plans for the units which, in the case of a condominium or planned community, shall conform to the requirements of Section 2-103(c);

(7) if purchasers' funds are to be utilized for the construction of the common interest community, an executed copy of the escrow agreement with an escrow company or financial institution authorized to do business within the state which provides that:

(i) disbursements of purchasers' funds may be made from time to time to pay for construction of the common interest community, architectural, engineering, finance, and legal fees, and other costs for the completion of the common interest community in proportion to the value of the work completed by the contractor as certified by an independent [registered] architect or engineer, on bills submitted and approved by the lender of construction funds or the escrow agent;

(ii) disbursement of the balance of purchasers' funds remaining after completion of the common interest community must be made only when the escrow agent or lender receives satisfactory evidence that (A) the period for filing mechanic's and materialman's liens has expired, (B) the right to claim those liens has been waived, or (C) adequate provision has been made for satisfaction of any claimed mechanic's or materialman's lien; and

(iii) any other restriction relative to the retention and disbursement of purchasers' funds required by the agency; and

(8) any other materials or information the agency may require by its [rules] [regulations].

(c) The agency may not register the units described in the declaration or the amendment unless the agency determines, on the basis of the material submitted by the declarant and any other information available to the agency, that there is a reasonable basis to expect that the units to be conveyed will be completed by the declarant following conveyance.

COMMENT

1. Subsection (a) is a general provision empowering the agency by regulation to develop requirements for information to be submitted to the agency, and for the imposition of reasonable fees by the agency. Such rules or regulations, under the Model Act, could be adopted only after providing notice to interested persons and an opportunity to be heard. *See* Section 3 of the Model Act. The article encourages, but does not require, development of uniform regulations between states adopting Article 5. *See* Section 5-107(e).

2. Under Section 2-101(b) a condominium declaration may not be recorded until all structural and mechanical systems for units which will be created by the recording are substantially completed. While there is no similar requirement for planned communities and cooperatives, Section 4-120, which is applicable to all types of common interest communities, prohibits *conveyance* of units before they are substantially completed.

In addition, under Section 4-110, any deposit made in connection with the purchase or reservation of a unit must be held in escrow until closing. The combined effect of Sections 2-101(b), 4-120 and 4-110 is to insure that any funds of a purchaser are held in escrow until his unit is substantially completed and the purchaser has title.

Subsection (b) is a departure from the requirements of Sections 2-103(b) and 4-120. The need for consumer protection suggests that substantial completion of a residential unit should be a prerequisite for conveying the unit to a purchaser in the absence of an agency to control and review planned community projects. Under subsection (b), however, a declarant may file a declaration or proposed declaration, or an amendment to a declaration, for the purpose of creating a common interest community in which the units are not substantially completed. Subsection (b) contemplates that the agency might nevertheless register the units described in the declaration or amendment, if the agency were satisfied that the units would be completed. Registration would then permit the declarant to offer to sell and convey the uncompleted units.

In addition, paragraph (7) of Section 5-103(b) contemplates that purchaser's funds might be used, despite the language of Section 4-110 for construction of the planned community. Controls are imposed, however, to insure that disbursements are made in accordance with the value of work completed and approved by an escrow agent.

Note that the common elements in the common interest community under the Act need not be completed at the time of the sale, even in the absence of an agency. Completion of common elements, however, is governed by Section 4-119 (Obligation to Complete and Restore).

3. The agency, by regulation, should determine the parties whom the payment and performance bond required under paragraph (b)(5) indemnifies.

§ 5-104. Receipt of Application; Order of Registration

(a) The agency shall acknowledge receipt of an application for registration within [5] business days after receiving it. Within [60] days after receiving the application, the agency shall determine whether:

(1) the application and the proposed public offering statement satisfy the requirements of this [Act] and the agency's [rules] [regulations];

(2) the declaration and bylaws comply with this [Act]; and

(3) it is likely that the improvements the declarant has undertaken to make can be completed as represented.

(b) If the agency makes a favorable determination, it shall issue promptly an order registering the common interest community. Otherwise, unless the declarant has consented in writing to a delay, the agency shall issue promptly an order rejecting registration.

COMMENT

1. This section provides reasonable deadlines for agency review of an application for registration, and describes the standards by which the application should be measured. The agency is directed to review the documents provided to the purchaser, and is given a great deal of discretion in mandating the form and content of the public offering statement; *see* Section 5-110.

2. The agency is also charged with reviewing those common element improvements which a declarant has promised to make, and which would be labeled under Section 4-118 as "MUST BE BUILT," to determine whether the declarant has the financial capacity to build them.

3. In the event the agency were to issue an order rejecting registration under subsection (b), an important issue concerning judicial review of that order may arise in some states.

The order would appear to be a rejection of an application for a license, as defined in Section 1(3) of the Model Act; it would be a "contested case", however, within the meaning of Section 1(2) of the Model Act, only if "an opportunity for hearing" is provided. No right to a hearing, or right of appeal, is provided in the Act.

The order rejecting registration thus might not be appealable under Section 15 of the Model Act, because judicial review is provided under Section 15 only for "contested cases". While that section does not limit utilization of, or the scope of judicial review available under, other means of review, some courts have held that, in the absence of specific statutory authority to hear an appeal from an administrative decision, courts have no jurisdiction to entertain such an appeal. *See, e.g., Rybinski v. State Employees' Retirement Comm.*, 173 Conn. 462 (1977).

Accordingly, the law of each state should be carefully reviewed. In cases where the state administrative procedure act provides for appeals from decisions on licensing matters made by state agencies regardless of the availability of a hearing, no amendment would be required.

§ 5-105. Cease and Desist Orders

If the agency determines, after notice and hearing, that any person has disseminated or caused to be disseminated orally or in writing any false or misleading promotional materials in connection with a common interest community or that any person has otherwise violated any provision of this [Act] or the agency's [rules] [regulations] or orders, the agency may issue an order to cease and desist from that conduct, to comply with the provisions of this [Act] and the agency's [rules] [regulations] and orders, or to take affirmative action to correct conditions resulting from that conduct or failure to comply.

§ 5-106. Revocation of Registration

(a) The agency, after notice and hearing, may issue an order revoking the registration of a common interest community upon determination that a declarant or any officer or principal of a declarant has:

(1) failed to comply with a cease and desist order issued by the agency affecting that common interest community;

(2) concealed, diverted, or disposed of any funds or assets of any person in a manner impairing rights of purchasers of units in that common interest community;

(3) failed to perform any stipulation or agreement made to induce the agency to issue an order relating to that common interest community;

(4) misrepresented or failed to disclose a material fact in the application for registration; or

(5) failed to meet any of the conditions described in Sections 5-103 and 5-101 necessary to qualify for registration.

(b) A declarant may not convey, cause to be conveyed, or contract for the conveyance of any interest in a unit while an order revoking the registration of the common interest community is in effect, without the consent of the agency.

(c) In appropriate cases the agency, in its discretion, may issue a cease and desist order in lieu of an order of revocation.

COMMENT

1. This section permits the agency, after notice and hearing, to revoke a prior registration of a common interest community. Under Section 15 of the Model Act, the revocation would not be effective until the last day for seeking review of the agency order. While the filing of the appeal would not stay the agency's decision, the agency or reviewing court could grant a stay of the revocation. Naturally, this result may vary in a particular state.

2. A declarant is prohibited from disposing of any interest in a unit when registration has been revoked, without consent of the agency.

§ 5-107. General Powers and Duties of Agency

(a) The agency may adopt, amend, and repeal [rules] [regulations] and issue orders consistent with and in furtherance of the objectives of this [Act], but the agency may not intervene in the internal activities of an association except to the extent necessary to prevent or cure violations of this [Act]. The agency may prescribe forms and procedures for submitting information to the agency.

(b) If it appears that any person has engaged, is engaging, or is about to engage in any act or practice in violation of this [Act] or any of the agency's rules or orders, the agency without prior administrative proceedings may maintain an action in the [appropriate court] to enjoin that act or practice or for other appropriate relief. The agency is not required to post a bond or prove that no adequate remedy at law exists.

(c) The agency may intervene in any action involving the powers or responsibilities of a declarant in connection with any common interest community for which an application for registration is on file.

(d) The agency may accept grants in aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions, in furtherance of the objectives of this [Act].

(e) The agency may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices, and may develop information that may be useful in the discharge of the agency's duties.

(f) In issuing any cease and desist order or order rejecting or revoking registration of a common interest community, the agency shall state the basis for the adverse determination and the underlying facts.

(g) The agency, in its sound discretion, may require bonding, escrow of portions of sales proceeds, or other safeguards it may prescribe by its [rules] [regulations] to guarantee completion of all improvements which a declarant is obligated to complete pursuant to Section 4-119 (Declarant's Obligation to Complete and Restore).

COMMENT

1. Under subsection (a), the agency is empowered to adopt regulations and issue orders in furtherance of the objectives of this Act. Those objectives are the same as the underlying purposes of the Act. The agency, however, is prohibited from intervening in the internal activities of the association except to the extent necessary to prevent or cure violations of this Act. The principal purpose of the agency is to regulate the behavior of the declarant, not the behavior of individual unit owners. If, however, the declarant is misusing the association by virtue of his power to control its activities, and thereby violating the Act, the agency may act to prevent the violation.

2. Subsection (g) empowers the agency to require bonding, escrow, or other safeguards to guarantee completion of improvements labeled "MUST BE BUILT" (Section 4-118).

A substantive requirement for bonding is not included under Article 4 for all common interest communities, in all circumstances. While some states have adopted bonding and escrow requirements for completion of the common elements in condominiums (see, e.g., Section 47-74d, Conn. Gen. Stat), the available economic evidence indicates that a universal bonding requirement would increase the cost of units, and that the cost of such provisions may not always be justified. The principal concern for consumer protection in this regard has been resolved in the Act by requiring substantial completion of all units prior to conveyance (Section 4-120) and by requiring labeling of common elements as either "MUST BE BUILT" or "NEED NOT BE BUILT."

At the same time, particularly in the case of common interest communities registered under Section 5-103(b), there may be individual cases where the agency, in its discretion, may find escrowing or bonding to be in the public interest. For that reason, this power is included only as a permissible power for the agency under Article 5.

§ 5-108. Investigative Powers of Agency

(a) The agency may initiate public or private investigations within or outside this State to determine whether any representation in any document or information filed with the agency is false or misleading or whether any person has engaged, is engaging, or is about to engage in any unlawful act or practice.

(b) In the course of any investigation or hearing, the agency may subpoena witnesses and documents, administer oaths and affirmations, and adduce evidence. If a person fails to comply with a subpoena or to answer questions

propounded during the investigation or hearing, the agency may apply to the [appropriate court] for a contempt order or injunctive or other appropriate relief to secure compliance.

COMMENT

The powers enumerated in Sections 5-107 and 5-108 are specifically granted to the agency because of judicial determinations in various states that, in the absence of such statutory powers, agencies have no authority to act.

§ 5-109. Annual Report and Amendments

(a) A declarant, within 30 days after the anniversary date of the order of registration, annually shall file a report to bring up-to-date the material contained in the application for registration and the public offering statement. This provision does not relieve the declarant of the obligation to file amendments pursuant to subsection (b).

(b) A declarant promptly shall file amendments to the public offering statement with the agency.

(c) If an annual report reveals that a declarant owns or controls units representing less than [25] percent of the voting power in the association and that a declarant has no power to increase the number of units in the common interest community, or to cause a merger or confederation of the common interest community with other common interest communities, the agency shall issue an order relieving the declarant of any further obligation to file annual reports. Thereafter, so long as the declarant is offering any units for sale, the agency has jurisdiction over the declarant's activities, but has no other authority to regulate the common interest community.

COMMENT

1. This section requires annual reports from a declarant to the agency in order to keep the information filed with the agency current. This requirement parallels the declarant's obligation to provide a current public offering statement to unit owners. *See* Section 4-103(c).

2. Under subsection (c), if the period of declarant control has passed, the declarant is relieved of the obligation to continue to file an annual report. However, the obligation to continue to provide public offering statements is imposed on a declarant under Section 4-103(c) so long as he is offering any unit for sale. The agency would thus continue to have jurisdiction over the declarant's activities, but would have no other authority to regulate the common interest community.

§ 5-110. Agency Regulation of Public Offering Statement

(a) The agency at any time may require a declarant to alter or supplement the form or substance of a public offering statement to assure adequate and accurate disclosure to prospective purchasers.

(b) The public offering statement may not be used for any promotional purpose before registration and afterwards only if it is used in its entirety. No person may advertise or represent that the agency has approved or recommended the common interest community, the disclosure statement, or any of the documents contained in the application for registration.

(c) In the case of a common interest community situated wholly outside this State, an application for registration or proposed public offering statement filed with the agency which has been approved by an agency in the state where the common interest community is located and substantially complies with the requirements of this [Act] may not be rejected by the agency on the grounds of non-compliance with any different or additional requirements imposed by this [Act] or by the agency's [rules] [regulations]. However, the agency may require additional documents or information in particular cases to assure adequate and accurate disclosure to prospective purchasers.

COMMENT

1. Subsection (c) attempts to facilitate interstate sales of units by requiring the agency in the enacting state to accept an agency-approved public offering statement from the state where the common interest community is located. This avoids the need for a different public offering statement in several states for the same project. If no agency exists in the state where the common interest community is located, however, a public offering statement must be prepared and approved before offering an out-of-state unit in an enacting state.

2. Because of the bracketed language contained in Section 1-208, which should be inserted in the Act if Article 5 is enacted, a foreign common interest community must only be registered under this Article in an enacting state if a declarant is "offering" units in that common interest community in the enacting state. Thus, general advertising which did not meet the definition of "offering" could be circulated in the enacting state without registration. If an "offering" is once made, however, then all of Article 5 applies to the foreign common interest community. Any "disposition" of a foreign residential common interest community in an enacting state, of course, would require delivery of a public offering statement even in the absence of an agency; *see* Section 1-208. If an agency exists in the enacting state, any disposition in that state would be illegal if the common interest community were not registered in the enacting state; *see* Section 1-208.

Landlord Tenant Act

lord cannot thereafter demand forfeiture of the lease without first giving the tenant notice that strict compliance with the terms of the lease will be demanded in the future. Hendrickson v. Freericks, Sup. Ct. Op. No. 2226 (File Nos. 4292, 4565, 4605), 620 P.2d 205 (1980).

A purchaser of a building had standing to enforce compliance with a preexisting lease when the seller had not reserved leasehold rights. Hendrickson v. Freericks, Sup. Ct. Op. No. 2226 (File Nos. 4292, 4565, 4605), 620 P.2d 205 (1980).

Sec. 34.03.225. Limitations on mobile home park operator's right to terminate. A mobile home park operator may evict a mobile home or a mobile home park dweller or tenant only for one of the following reasons:

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

(2) the mobile home dweller or tenant 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;

(3) the mobile home dweller or tenant 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; and

(4) a change in the use of the land comprising the mobile home park, or the portion of it on which the mobile home to be evicted is located; however, all dwellers or tenants so affected by a change in land use shall be given at least 90 days notice, or longer if a longer notice period is provided in a valid lease. (§ 5 ch 138 SLA 1976; am § 1 ch 48 SLA 1982)

Effect of amendments. — The 1982 amendment, in paragraph (3), substituted "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" for "a reasonable rule or regulation properly established by the operator."

Legislative history reports. — For report on ch. 138, SLA 1976 (SCS CSHB 829 am S [re-engrossed]), see 1976 Senate Journal, p. 1368.

NOTES TO DECISIONS

Construction of paragraph (3) as it existed prior to 1982 amendment. — See Osness v. Dimond Estate, Inc., Sup. Ct. Op. No. 2150 (File Nos. 4192 4193), 615 P.2d 605 (1980).

Sec. 34.03.230. Remedies for absence, nonuse and abandonment.

NOTES TO DECISIONS

Cited in Public Safety Employees Ass'n v. State, Sup. Ct. Op. No. 2607 (File No. 6053), 658 P.2d 769 (1983).

Chapter 07. Horizontal Property Regimes Act.

Article
1. Formation of Horizontal Property Regimes (§§ 34.07.010 — 34.07.070)
2. Apartment Ownership and Conveyancing (§§ 34.07.080 — 34.07.150)
3. Common Areas and Facilities Owned With Apartments (§§ 34.07.160 — 34.07.290)
4. Damage or Destruction of Property (§§ 34.07.300 — 34.07.320)
5. Removal of Property From the Horizontal Property Regime (§§ 34.07.330 — 34.07.350)
6. Miscellaneous Provisions (§§ 34.07.360 — 34.07.440)
7. General Provisions (§§ 34.07.450 — 34.07.460)

Article 1. Formation of Horizontal Property Regimes.

Section
10. This chapter applicable only if declaration executed and recorded
20. Contents of declaration
30. Filing of survey map and floor plans with verified statement
40. Amendment to declaration in place of verified statement by architect or engineer regarding floor plans
50. Form of floor plans
60. Survey map and floor plans subject to state and local laws
70. Recording of instruments affecting horizontal property regimes

Sec. 34.07.010. This chapter applicable only if declaration executed and recorded. (a) This chapter is applicable only to property, the sole owner or all of the owners of which submit it to the horizontal property regime by executing and recording a declaration under (c) of this section and § 20 of this chapter.

(b) No declaration or any amendment to the declaration is valid unless recorded.

(c) The declaration shall be recorded in the recording district in which the property is located. (§ 1 ch 44 SLA 1963; am § 25 ch 208 SLA 1975)

Effect of amendment. — The 1975 section and § 20" for "§§ 150—160" in amendment substituted "(c) of this subsection (a).

Sec. 34.07.020. Contents of declaration. The declaration shall contain

(1) a description of the land on which the building and improvement are or are to be located;

(2) a description of the building, stating the number of stories and basements, the number of apartments and the principal materials of which it is or is to be constructed;

(3) the apartment number of each apartment, and a statement of its location, approximate area, number of rooms, and immediate common areas to which it has access, and any other data necessary for its proper identification;

(4) a description of the common areas and facilities;

(5) a description of the limited common areas and facilities, if any, stating to which apartment their use is reserved;

(6) the value of the property and of each apartment, and the percentage of undivided interest in the common areas and facilities appertaining to each apartment and its owner for all purposes, including voting;

(7) a statement of the purposes for which the building and each of the apartments are intended and restricted as to their use;

(8) the name of a person to receive service of process in the cases provided for in this chapter, together with the address of his residence or his place of business which shall be within the city or recording district in which the building is located;

(9) a provision as to the percentage of votes by the apartment owners which determines whether or not to rebuild, repair, restore, or sell the property in the event of the damage or the destruction of all or a part of the property;

(10) a provision authorizing and establishing procedures for the subdividing or combining of an apartment or apartments, common areas and facilities or limited common areas and facilities, through the use of a metes and bounds description or otherwise;

(11) a provision requiring the adoption of bylaws for the administration of the property or for other purposes not inconsistent with this chapter which may include that the property be administered by a board of directors elected from among the apartment owners, or by a manager, or by a managing agent, or otherwise, and the procedures for the adoption and amendment of the bylaws;

(12) any further details in connection with the property which the person executing the declaration may consider desirable to set out consistent with this chapter;

(13) the method by which the declaration may be amended, consistent with this chapter, except that not less than 60 per cent of the apartment owners may consent to any amendment; and

(14) a reference to the file number of the floor plans of the building affected which are required to be filed simultaneously with the declaration under § 30 of this chapter. (§ 1 ch 44 SLA 1963)

Sec. 34.07.030. Filing of survey map and floor plans with verified statement. There shall be filed simultaneously with the recording of the declaration in the recording district in which the property is located

(1) a survey map of the surface of the land submitted to the provisions of this chapter showing the location of the building on it;

(2) a set of the floor plans of the building showing the layout, apartment numbers and dimensions of the apartments in sufficient detail to identify and locate each apartment with certainty, stating the name of the building or that it has no name, and bearing the verified statement of a registered architect or registered professional engineer certifying that it is an accurate copy of portions of the plans of the building as filed with and approved by the governmental entity having jurisdiction over the approval or issuance of permits for the construction of the building, or a statement that no approval or permit is required. (§ 1 ch 44 SLA 1963)

Sec. 34.07.040. Amendments to declaration in place of verified statement by architect or engineer regarding floor plans. (a) If the

floor plans do not include a verified statement by a registered architect or registered professional engineer that the plans fully and accurately depict the layout, apartment numbers, and dimensions of the apartments as built, there shall be recorded before the first conveyance of an apartment an amendment to the declaration to which shall be attached a verified statement of a registered architect certifying that the plans previously filed or being filed simultaneously with the amendment fully and accurately depict the layout, apartment number and dimensions of the apartments as built.

(b) The plans shall each contain a reference to the date of recording of the declaration and the volume, page, and receiving number of the recorded declaration. (§ 1 ch 44 SLA 1963)

Sec. 34.07.050. Form of floor plans. The recording office shall prescribe the style, size, form, and quality of floor plans filed under § 30 of this chapter. (§ 1 ch 44 SLA 1963)

Sec. 34.07.060. Survey map and floor plans subject to state and local laws. The survey map and floor plans are subject to the provisions of state and local laws relating to plats, planning and plans, subdivisions, and zoning, if the laws are not inconsistent with the purposes of this chapter and if the building is or is to be located on land which is not owned in common. (§ 1 ch 44 SLA 1963)

Sec. 34.07.070. Recording of instruments affecting horizontal property regimes. The declaration, an amendment to it, or any instrument by which the property may be removed from this chapter and every instrument affecting the property or an apartment may be recorded. (§ 1 ch 44 SLA 1963)

Article 2. Apartment Ownership and Conveyancing.

Section
80. Apartment classified as real property
90. Apartment ownership and possession
100. Separation of apartment ownership from common areas and facilities ownership prohibited
110. Release or partial release from encumbrance affecting apartment with first conveyance
120. Liability of grantee for unpaid common expenses at time of conveyance
130. Person obtaining possession upon foreclosure of apartment not liable for common expenses
140. Grantee entitled to statement of unpaid assessments
150. Contents of apartment deed

Sec. 34.07.080. Apartment classified as real property. Each apartment, together with its undivided interest in the common areas and facilities is not considered an intangible or a security or any interest therein but for all purposes constitutes and is classified as real property under the provisions of this chapter. (§ 1 ch 44 SLA 1963)

Sec. 34.07.090. Apartment ownership and possession. Each apartment owner shall have exclusive ownership and possession of his apartment, but any apartment may be owned by husband and wife as

istered architect
and accurately
ensions of the
first conveyance
which shall be
certifying that
ously with the
rtment number

ate of recording
number of the

ng office shall
ns filed under §

ct to state and
subject to the
ning and plans.
st with the
lo d on land

ing horizontal
to it, or any
om this chapter
rtment may be

yancing.

ses at time of

possession upon
artment not liable
nses
to statement of
cts
ent deed

roperty. Each
common areas
ecurity or any
lassified as real
SLA 1963)

ssession. Each
oss ion of his
nd wife as

enants by the entirety or may be commonly owned by more than one person. (§ 1 ch 44 SLA 1963)

Sec. 34.07.100. Separation of apartment ownership from common areas and facilities ownership prohibited. The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains even though the interest is not expressly mentioned or described in the conveyance or other instrument. (§ 1 ch 44 SLA 1963)

Sec. 34.07.110. Release or partial release from encumbrance affecting apartment with first conveyance. At the time of the first conveyance of each apartment, every mortgage, deed of trust, lien, or other encumbrance affecting the apartment, including the percentage of undivided interest of the apartment in the common areas and facilities, shall be paid and satisfied of record, or the apartment being conveyed and its percentage of undivided interest in the common areas and facilities shall be released by a recorded partial release. (§ 1 ch 44 SLA 1963)

Sec. 34.07.120. Liability of grantee for unpaid common expenses at time of conveyance. In a voluntary conveyance the grantee of an apartment is jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid on the assessments by the grantee. (§ 1 ch 44 SLA 1963)

Sec. 34.07.130. Person obtaining possession upon foreclosure of apartment not liable for common expenses. If a mortgagee of a recorded mortgage or a trustee of a recorded deed of trust or other purchaser of an apartment obtains possession of the apartment as a result of foreclosure of the mortgage or deed of trust, the possessor, his successors and assigns are not liable for the share of the common expenses or assessments by the association of apartment owners chargeable to the apartment which became due before his possession. This unpaid share of common expenses or assessments is a common expense collectable from all of the apartment owners including the possessor, his successors and assigns. (§ 1 ch 44 SLA 1963)

Sec. 34.07.140. Grantee entitled to statement of unpaid assessments. A grantee is entitled to a statement from the manager or board of directors setting out the amount of the unpaid assessments against the grantor. The grantee is not liable for, nor is the apartment conveyed subject to a lien for, any unpaid assessments against the grantor in excess of the amount in the statement. (§ 1 ch 44 SLA 1963)

Sec. 34.07.150. Contents of apartment deed. An apartment deed shall include

(1) a description of the land as provided in § 20 of this chapter, or the

post office address of the property, and in either case, the date of recording of the declaration and its volume, page, and receiving number;

(2) the apartment number of the apartment in the declaration and any other data necessary for its proper identification;

(3) a statement of the use for which the apartment is intended and any restrictions on its use;

(4) the percentage of undivided interest appertaining to the apartment, the common areas and facilities and limited common areas and facilities appertaining to it, if any; and

(5) any further details which the grantor and grantee may set out consistent with the declaration and with this chapter. (§ 1 ch 44 SLA 1963)

Article 3. Common Areas and Facilities Owned With Apartments.

Section
160. Common areas and facilities ownership
170. Nonexclusive easement to use common areas and facilities
180. Alteration of common areas and facilities ownership
190. Partition of common areas and facilities ownership prohibited
200. Maintenance, repair and replacement of common areas and facilities
210. Apartment owner liable for his share of the common expenses of common areas and facilities
220. Collection of unpaid common expenses from apartment owner
230. Unpaid common expense is lien on apartment, order of lien priority
240. Common expense lien foreclosure
250. Action to recover a judgment for unpaid common expenses does not waive lien
260. Causes of action relating to common areas and facilities
270. Service of process on two or more apartment owners
280. Receipts and expenditures records to be kept
290. Examination by apartment owner of receipts and expenditures

Sec. 34.07.160. Common areas and facilities ownership. (a) Each apartment owner has the common right to a share, with other apartment owners, in the common areas and facilities.

(b) Each apartment owner is entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration. The percentage is computed by taking as a basis the value of the apartment in relation to the value of the property. (§ 1 ch 44 SLA 1963)

Sec. 34.07.170. Nonexclusive easement to use common areas and facilities. Each apartment owner has a nonexclusive easement for, and may use the common areas and facilities in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful right of the other apartment owners. (§ 1 ch 44 SLA 1963)

Sec. 34.07.180. Alteration of common areas and facilities ownership. (a) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in

e. the date of
and receiving

ieclaration and

s intended and

ıining to the
common areas

ːe may set out
§ 1 ch 44 SLA

Apartments.

xpense is lien on
of lien priority
en foreclosure
a judgment for
exr s does not

ıting to common
s
n two or more

ıditures records to

artment owner of
nditures

ship. (a) Each
e. with other

interest in the
ressed in the
basis the value
§ 1 ch 44 SLA

ıon areas and
easement for,
ance with the
hindering or
ıt owners. (§ 1

nd facilities
erest of each
s e essed in

the declaration shall not be altered except in accordance with procedures set out in the bylaws and by amending the declaration.

(b) The bylaws shall provide for a periodic reappraisal of the apartments and the common areas and facilities together with a recomputation, if required, of the percentage of the undivided interest of each apartment owner in the common areas and facilities. (§ 1 ch 44 SLA 1963)

Sec. 34.07.190. Partition of common areas and facilities ownership prohibited. (a) The common areas and facilities shall remain undivided and no apartment owner or other person may bring an action for partition or division of any part, unless the property has been removed from the provisions of this chapter as prescribed by §§ 300 — 340 of this chapter. Any covenant to the contrary is void.

(b) Nothing in this chapter limits the right of partition by a husband and wife owning as tenants by the entirety or by the owners in common of one or more of the apartments as to the ownership of the apartment or apartments. (§ 1 ch 44 SLA 1963)

Sec. 34.07.200. Maintenance, repair and replacement of common areas and facilities. (a) The necessary work of maintenance, repair and replacement of the common areas and facilities and the making of an addition or improvement may be carried out only as provided in this chapter and in the bylaws.

(b) The association of apartment owners have the irrevocable right, to be exercised by the manager or board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for

(1) the maintenance, repair, or replacement of any of the common areas and facilities in it, or accessible from it; or

(2) making emergency repairs in the apartment necessary to prevent damage to the common areas and facilities or to another apartment. (§ 1 ch 44 SLA 1963)

Sec. 34.07.210. Apartment owner liable for his share of the common expenses of common areas and facilities. No apartment owner may exempt himself from liability for his contribution towards the common expenses of common areas or facilities by his waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of his apartment. (§ 1 ch 44 SLA 1963)

Sec. 34.07.220. Collection of unpaid common expenses from apartment owner. A sum assessed by the association of apartment owners but unpaid for the share of the common expenses chargeable to any apartment may be enforced by the manager or board of directors acting on behalf of the apartment owners, upon first obtaining the approval of a majority of all apartment owners, in the following manner

(1) ten days' notice shall be given the delinquent apartment owner stating that unless the assessment is paid within ten days any or all utility services will be immediately severed and shall remain severed until the assessment is paid; or

(2) by the lawful method of enforcement as may be provided in the declaration or bylaws. (§ 1 ch 44 SLA 1963)

Sec. 34.07.230. Unpaid common expense is lien on apartment, order of lien priority. A sum assessed by the association of apartment owners but unpaid for the share of the common expenses chargeable to an apartment constitutes a lien on the apartment prior to all other liens except

(1) tax liens on the apartment in favor of an assessing unit or special district; and

(2) sums unpaid on deeds of trust or mortgages of record. (§ 1 ch 44 SLA 1963)

Sec. 34.07.240. Common expense lien foreclosure. (a) A common expense lien as provided for in § 230 of this chapter may be foreclosed in a civil action brought by the manager or board of directors, acting on behalf of the apartment owners, in the same manner as a lien on, or mortgage of or a deed of trust of real property.

(b) In the event of foreclosure, the apartment owner shall be required to pay a reasonable rental for the apartment, if provided for in the bylaws, and the plaintiff in the foreclosure may appoint a receiver to collect it.

(c) The manager or board of directors, acting on behalf of the apartment owners may, unless prohibited by the declaration, bid in the apartment at the foreclosure sale, and may acquire and hold, lease, mortgage and convey the apartment. (§ 1 ch 44 SLA 1963)

Sec. 34.07.250. Action to recover a judgment for unpaid common expenses does not waive lien. An action to recover a judgment for unpaid common expenses is maintainable without foreclosing or waiving the lien securing it. (§ 1 ch 44 SLA 1963)

Sec. 34.07.260. Causes of action relating to common areas and facilities. (a) Without limiting the rights of an apartment owner, a cause of action may be brought by the manager or board of directors, in either case in the discretion of the board of directors, on behalf of two or more apartment owners, as their respective interests may appear, with respect to a cause of action relating to the common areas and facilities of more than one apartment.

(b) A cause of action relating to the common areas and facilities for damages arising out of tortious conduct shall be maintained only against the association of apartment owners and a judgment lien or other charge is a common expense. The judgment lien or charge is removed from an apartment and its percentage of undivided interest in the common areas and facilities upon payment by the respective owner

of his proportionate share based on the percentage of undivided interest owned by him. (§ 1 ch 44 SLA 1963)

Sec. 34.07.270. Service of process on two or more apartment owners. Service of process on two or more apartment owners in an action relating to the common areas and facilities of more than one apartment may be made on the person designated in the declaration to receive service of process. (§ 1 ch 44 SLA 1963)

Sec. 34.07.280. Receipts and expenditures records to be kept. (a) The manager or board of directors shall keep detailed and accurate records in chronological order of the receipts and expenditures affecting the common areas and facilities, specifying and itemizing the maintenance and repair expenses of the common areas and facilities and any other expenses incurred.

(b) All books and records shall be kept in accordance with good accounting procedures and shall be audited at least once a year by an auditor outside of the organization. (§ 1 ch 44 SLA 1963)

Sec. 34.07.290. Examination by apartment owner of receipts and expenditures. The receipts and expenditures records and vouchers authorizing payment for maintenance and repair of common areas and facilities required to be kept by § 280 of this chapter shall be available for examination by an apartment owner at convenient hours of weekdays. (§ 1 ch 44 SLA 1963)

Article 4. Damage or Destruction of Property.

Section
300. Determination to be made by apartment owners if property destroyed
310. Action for partition if apartment owners fail to act under § 300 of this chapter
320. Distribution of funds from partition sale

Sec. 34.07.300. Determination to be made by apartment owners if property destroyed. If within 60 days of damage or destruction of all or part of the property it is not determined by a majority of all apartment owners to repair, reconstruct, or rebuild in accordance with the original plan, or by a unanimous vote of all apartment owners to do otherwise, then

(1) the property shall be owned in common by the apartment owners;

(2) the undivided interest in the property owned in common which appertains to each apartment owner shall be the percentage of undivided interest previously owned by him in the common areas and facilities; and

(3) mortgages, deeds of trust, or liens affecting any of the apartments are transferred in accordance with the existing priorities to the percentage of the undivided interest of the apartment owner in the property. (§ 1 ch 44 SLA 1963)

Sec. 34.07.310. Action for partition if apartment owners fail to act under § 300 of this chapter. An action for partition may be started by an apartment owner if the apartment owners fail to act under § 300 of this chapter after the damage to or destruction of the property. (§ 1 ch 44 SLA 1963)

Sec. 34.07.320. Distribution of funds from partition sale. (a) The net proceeds of a sale of the property conducted in an action for partition started under § 310 of this chapter shall be considered as one fund.

(b) The fund shall be divided into separate shares, one for each apartment owner in a percentage equal to the percentage of undivided interest which he has in the property.

(c) After first paying out of the respective share of each apartment owner, all mortgages, deeds of trust, and liens on the undivided interest in the property owned by the apartment owner, the balance remaining in each share shall be distributed to each apartment owner respectively. (§ 1 ch 44 SLA 1963)

Article 5. Removal of Property From the Horizontal Property Regime.

Section

330. Removal of property from the provisions of this chapter
340. Ownership of property upon removal from the provisions of this chapter
350. Removal of property does not bar subsequent resubmission under this chapter

Sec. 34.07.330. Removal of property from the provisions of this chapter. All of the apartment owners may remove a property from the provisions of this chapter by a recorded instrument to that effect if the mortgagees, trustees, and holders of all liens affecting any of the apartments consent or agree, in either case by a recorded instrument, that their mortgages, deeds of trust, and liens are transferred to the percentage of the undivided interest of the apartment owner in the property as provided in § 340 of this chapter. (§ 1 ch 44 SLA 1963)

Sec. 34.07.340. Ownership of property upon removal from the provisions of this chapter. (a) Upon removal of the property from the provisions of this chapter, the property is owned in common by the apartment owners.

(b) The undivided interest in the property owned in common which appertains to each apartment owner is the percentage of the undivided interest previously owned by the owners in the common areas and facilities. (§ 1 ch 44 SLA 1963)

Sec. 34.07.350. Removal of property does not bar subsequent resubmission under this chapter. The removal of property provided for in §§ 330 — 340 of this chapter does not bar the subsequent

resubmission of the property to the provisions of this chapter. (§ 1 ch 44 SLA 1963)

Article 6. Miscellaneous Provisions.

Section
360. Strict compliance with bylaws by apartment owner necessary
370. Unanimous consent of all apartment owners needed for certain work on individual apartment
380. Common profits and expenses shared by apartment owners
390. Persons subject to this chapter
400. Insurance of property
410. Liens against property, apartments, common areas, and facilities
420. Removal of lien against two or more apartments
430. Assessment and taxation of apartments
440. Interpretation of local ordinances, resolutions, or zoning laws

Sec. 34.07.360. Strict compliance with bylaws by apartment owner necessary. Each apartment owner shall comply strictly with the bylaws and with the adopted administrative regulations, as either may be lawfully amended from time to time, and with the covenants, conditions and restrictions set out in the declaration or in the deed to his apartment. Failure to comply with any of the foregoing is ground for an action to recover sums due for damages or injunctive relief, or both, maintainable by the manager or board of directors on behalf of the association of apartment owners or by a particularly aggrieved apartment owner. (§ 1 ch 44 SLA 1963)

Sec. 34.07.370. Unanimous consent of all apartment owners needed for certain work on individual apartment. No apartment owner may do any work which will jeopardize the soundness or safety of the property, reduce its value, or impair any easement or hereditament without the unanimous consent of all of the other apartment owners being first obtained. (§ 1 ch 44 SLA 1963)

Sec. 34.07.380. Common profits and expenses shared by apartment owners. The common profits of the property shall be distributed among and the common expenses shall be charged to the apartment owners according to the percentage of the undivided interest in the common areas and facilities. (§ 1 ch 44 SLA 1963)

Sec. 34.07.390. Persons subject to this chapter. (a) An apartment owner, his tenant, or their employees, or any other person that may in any manner use the property or any part of it under this chapter are subject to the provisions of this chapter, and to the declaration and bylaws of the association of apartment owners adopted under this chapter.

(b) An agreement, decision, and determination made by the association of apartment owners under this chapter, the declaration or the bylaws and in accordance with the voting percentages established under this chapter, declaration, or the bylaws is binding on all apartment owners. (§ 1 ch 44 SLA 1963)

Sec. 34.07.400. Insurance of property. (a) A manager or board of directors, if required by the declaration, bylaws, or by a majority of the apartment owners, or if requested by a mortgagee or trustee having a mortgage or a deed of trust of record covering an apartment, shall obtain insurance for the property against loss or damage by fire and other hazards under the terms and amounts required or requested.

(b) The insurance coverage shall be written on the property in the name of the manager or of the board of directors of the association of apartment owners, as trustee for each of the apartment owners in the percentages established by the declaration.

(c) Premiums for insurance coverage secured under (a) of this section are a common expense.

(d) Provision for insurance under this section does not prejudice the right of an apartment owner to insure his own apartment or the personal contents in it for his benefit. (§ 1 ch 44 SLA 1963)

Sec. 34.07.410. Liens against property, apartments, common areas, and facilities. (a) After the recording of the declaration as provided in this chapter, and while the property remains subject to this chapter, no lien may thereafter arise or be effective against the property. During this period, liens or encumbrances may arise or be created only against each apartment and the percentage of undivided interest in the common areas and facilities appurtenant to the apartment in the same manner and under the same conditions as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership. However, no labor performed or materials furnished with the consent of or at the request of the owner of any apartment, or the owner's agent, contractor, or subcontractor, may be the basis for the filing of a lien against any other apartment or any other property of any other apartment owner not expressly consenting to or requesting the same. However, express consent is considered given by an apartment owner in the case of emergency repairs.

(b) Labor performed or materials furnished for the common areas and facilities, if authorized as provided in this chapter, or by the declaration or bylaws, or by the association of apartment owners, the manager or the board of directors, is considered performed or furnished with the express consent of each apartment owner and may be the basis for the filing of a lien against each of the apartments and is subject to the provisions of § 420 of this chapter. (§ 1 ch 44 SLA 1963)

Sec. 34.07.420. Removal of lien against two or more apartments. (a) If a lien against two or more apartments becomes effective, the apartment owners of the separate apartments may remove their apartments and the percentage of undivided interest in the common areas and facilities appurtenant to the apartments from the lien by payment of the fractional or proportional amounts attributable to each

ager or board of
a majority of the
trustee having a
apartment, shall
nage by fire and
r requested.
property in the
he association of
nt owners in the

der (a) of this

not prejudice the
artment or the
63)

ents, common
declaration as
s subject to this
ive against the
ise or be
ge or undivided
rtenant to the
nditions as liens
ainst any other
ual ownership.
vith the consent
or the owner's
r the filing of a
ty of any othe
sting the same.
artment owner

common areas
ter, or by the
nt owners, the
performed or
owner and may
partments and
44 SLA 1963)

more apart-
omes effective,
y remove their
n the common
m the lien by
ou to each

of the apartments affected. The individual payments are computed by reference to the percentage appearing on the declaration.

(b) After payment, discharge, or satisfaction of the lien, the apartment and the percentage of undivided interest in the common areas and facilities appurtenant to it are free and clear of the liens paid, satisfied, or discharged. The partial payment, satisfaction, or discharge does not prevent the lienor from proceeding to enforce his rights against any apartment and the percentage of undivided interest in the common areas and facilities appurtenant to it not paid, satisfied, or discharged. (§ 1 ch 44 SLA 1963)

Sec. 34.07.430. Assessment and taxation of apartments. (a) An apartment and its undivided interest in the common areas and facilities are a parcel and it is subject to separate assessments and taxation by each assessing unit for all types of taxes authorized by law including special ad valorem levies and special assessments. No building, property, or any of the common areas and facilities may be a security or a parcel for any purpose.

(b) Nothing in this chapter detracts from or limits the powers and duties of any assessing or taxing unit or official otherwise granted or imposed by law or regulation. (§ 1 ch 44 SLA 1963)

Sec. 34.07.440. Interpretation of local ordinances, resolutions, or zoning laws. Local ordinances, resolutions, or laws relating to zoning shall be construed to treat like structures, lots, or parcels in like manner regardless of whether or not the ownership is divided by sale of apartments under this chapter rather than by lease of apartments. (§ 1 ch 44 SLA 1963)

Article 7. General Provisions.

Section
450. Definitions

Section
460. Short title

Sec. 34.07.450. Definitions. In this chapter unless the context otherwise requires

(1) "apartment" means a part of the property intended for any type of independent use, including one or more rooms or enclosed spaces located on one or more floors (or part or parts of the floors) in a building, regardless of whether or not it is destined for a residence, an office, the operation of any industry or business, or for any other use not prohibited by law, and which has a direct exit to a public street or highway, or to a common area leading to the street or highway; and the boundaries of an apartment are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof, and the apartment includes both the portions of the building so described and the air space so encompassed; and interpreting declarations, deeds, and plans, the existing physical boundaries of the apartment as originally constructed

or as reconstructed in substantial accordance with the original plans shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed or depicted in the declaration, deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown in the declaration, deed, or plan and those of apartments in the building;

(2) "apartment owner" means the person or persons owning an apartment in fee simple absolute or qualified, or by way of a periodic estate, or in any other manner in which real property may be owned in this state, together with an undivided interest in a like estate of the common areas and facilities in the percentage specified and established in the recorded declaration;

(3) "apartment number" means the number, letter, or a combination of them, designating the apartment in the recorded declaration;

(4) "association of apartment owners" means all of the apartment owners acting as a group in accordance with the bylaws and with the recorded declaration;

(5) "building" means a building, containing two or more apartments, or two or more buildings each containing two or more apartments, and comprising a part of the property;

(6) "common areas and facilities" unless otherwise provided in the recorded declaration includes

(A) the land on which the building is located;

(B) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, and entrances and exits of the building;

(C) the basements, yards, gardens, parking areas and storage spaces;

(D) the premises for the lodging of janitors or persons in charge of the property;

(E) the installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and incinerating;

(F) the elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;

(G) the community and commercial facilities as provided for in the recorded declaration;

(H) all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use;

(7) "common expenses" includes

(A) all sums lawfully assessed against the apartment owners by the association of apartment owners;

(B) expenses of administration, maintenance, repair, or replacement of the common areas and facilities;

(C) expenses agreed upon as common expenses by the association of apartment owners;

(D) expenses declared common expenses by the provisions of this chapter, or by the recorded declaration, or by the bylaws;

(8) "common profits" means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses;

(9) "declaration" means the instrument by which the property is submitted to provisions of this chapter and as it may be, from time to time amended;

(10) "land" means the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance, and includes free or occupied space for an indefinite distance upwards as well as downwards, subject to limitations upon the use of airspace imposed, and rights in the use of the airspace granted by the laws of the state or of the United States;

(11) "limited common areas and facilities" includes those common areas and facilities designated in the recorded declaration, as reserved for use of certain apartment or apartments to the exclusion of the other apartments;

(12) "majority" or "majority of apartment owners" means the apartment owners with 51 per cent or more of the votes in accordance with the percentages assigned in the recorded declaration, to the apartments for voting purposes;

(13) "property" means the land, the building, all its improvements and structures, all owned in fee simple absolute or qualified or by way of a periodic estate, or in any other manner in which real property may be owned in the state, and all easements, rights, and appurtenances belonging to it, none of which shall be considered as a security or security interest, and all articles of personalty intended for use in connection with it, which have been or are intended to be submitted to this chapter. (§ 1 ch 44 SLA 1963)

Sec. 34.07.460. Short title. This chapter may be cited as the Horizontal Property Regimes Act. (§ 1 ch 44 SLA 1963)

Chapter 10. Land Registration Law.

Article
1. Administration (§§ 34.10.010 — 34.10.030)
2. Registration (§§ 34.10.040 — 34.10.060)
3. Enforcement (§§ 34.10.070 — 34.10.170)
4. Redemption (§§ 34.10.180 — 34.10.240)

Article 1. Administration

Section
10. Administration
20. Collection of penalties
30. Funds for administration

Sec. 34.10.010. Administration. (a) The Department of Natural Resources shall administer this chapter. The department shall make rules and regulations considered necessary to carry out this chapter.

(b) The department has custody of all land registration records assembled under this chapter, and of those records in the Department

LAW OFFICES OF VINCENT VITALE
A PROFESSIONAL CORPORATION
VINCENT VITALE *
WILLIAM L. McNALL
DAVID E. GEORGE
KATHLEEN A. WEEKS
EDWARD L. MINER

725 CHRISTENSEN DRIVE
ANCHORAGE, ALASKA 99501-2184
(907) 274-3538
(907) 276-7576

☐ PLEASE REPLY TO THE ABOVE ADDRESS.

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

☐ 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.

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.

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.

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.

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

Bradley
2/19/85 ✓

Original sponsors: Ringstad, Duncan,
Sund, et al

IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act permitting the establishment of horizontal property regimes for mobile homes; and providing for an effective date."

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

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

ARTICLE 8. HORIZONTAL PROPERTY REGIME FOR MOBILE HOMES.

Sec. 34.07.500. HORIZONTAL PROPERTY REGIME FOR MOBILE HOMES. (a) Notwithstanding the provisions of AS 34.07.010 - 34.07.460, a horizontal property regime for mobile homes may be established as an estate in real property consisting of an undivided interest in common in a portion of the real property together with a separate interest in space, the boundaries of which are described in a declaration filed by the sole owner or all of the owners of the property and which complies to the extent applicable with AS 34.07.020.

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

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

To: Mike

From: Roger February 20,85 HB 155 continued

As follow-up to the testimony provided by Maureen Kennedy, Director of the Alaska Public Interest Research Group, your file contains the testimony she gave in teleconference on Feb. 7 on this bill. She also sent a list of the the type of living unit, including mobile homes, for each of the 33 Community Councils in Anchorage, giving you at least some Anchorage sub-area figures as well as totals for the whole Anchorage area. Further, she has this information broken out by each of the election districts in Anchorage, so that each legislator can see how much they are impacted.

Additionally, this bill, despite its short notice for this hearing, has drawn further concern and interest. Linda O'Bannon, of the Consumer Protection AGency, Dept. of Law, who testified last time, called and said she would like the opportunity for further input and if you have another hearing would like to provide input through a teleconference. She also pointed out that the proposed CS submitted by Ringstad via Gerrald Watts not only has changed the language from "manufactured housing" back to "mobile homes" (because the latter is defined in statute but the former is not), but they have also dropped part (c) in Section 1 of the bill in response to her criticism in committee Feb 7.

Basically, she felt it was poor drafting (we have had other problems with the bill drafter, Dick Bradley, before--lots of people seem to), and thus ended up saying "those sections of the horizontal property regime act that already apply, apply, and those sections that don't, don't." She felt section 1 (c) should be put back in but should be written so that it spells out the parts of the horizontal property regime act that specifically do not apply, and then state that all the rest of the act does. Bradley really messed it up.

Also, Maureen Weeks, of Senator Halford's office, wanted to be kept informed of when the hearings took place, and if perhaps it could be put first on the calendar. Senator Halford or herself will be there to testify on the bill; they see it as one small part of SB 44 which covers a whole range of issues and problems; if HB 155 passes, SB 44 won't apply to it, and mobile home park owners will have free rein to act without any protection written into the laws for the mobile home owners. Also, Liz Hickerson of SEnate Advisory Council did a lot of work on this bill for SEnator Halford, and would like to provide input on it if possible at a future date.

Maureen Weeks also indicated that next Tuesday, February 26 from 1:30 to 3:00 in the Beltz Room of the Capitol, the Senate Judiciary Committee will be taking teleconferenced testimony from a man in Connecticut who is an expert on the whole issue of condominium and cooperative regulations, as he helped develop the program in Connecticut. You may wish to encourage [illegible] members to attend, and you may wish to hold the bill over in order to give them the opportunity.

My personal feeling is tna while it might b ood strategy to move this bill thru the House to Rules and then hold it co see what happens to SB 44, I feel in its present condition it doesn't protect consumers, is poorly written, is solely aimed at serving a special interest group, and I am offended at the entire way Gerrald has approached this (sending backup materials way late, bragging about it being his bill, wanting it thru for this construction season, trying not co let people know he was pushing to bring it back up for hearings this week, etc.)

This morning Maureen Kennedy of Akpirg called, and she would like to see the bill held o
ver and teleconferenced further. She will also be sending down a list of proposed amendments to allow the bill to protect consumers.

Also, Marueen Weeks wrote up some comments on SB 44 which are included in the members files, and they will be substituted in place of the testimony of Senator Halford, though she can be available for questions if you so wish.

I also understand that Gerrald is using the arguement that we should get this bill to at least Rules so its in position in case SB 44 doesnt move; but once it goes to Rules, it is pretty clear he will push them to get it on out, and if it goes thru the SEnate, it will superced SB 44's provisions dealing with mobile home parks. It strikes me that with Halford, Sturgelewski, and some of the other SEnate members pushing SB 44, premature moving of HB 155 may or may not cause some hard feelings--it should maybe be checked on--perhaps you can talk to Senator Halford about it further, to get a better read on SB 44's chances.

Proposed Amendments to HB 155

Alaska Public Interest Research Group

Article 8. Horizontal Property Regime for Mobile Homes.

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

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

Change (c) to (e).

MUNICIPALITY OF ANCHORAGE
COMMUNITY PLANNING DEPARTMENT
RESEARCH SECTION

1983 POPULATION BY COMMUNITY COUNCIL AND STRUCTURE TYPE

CODE	COMMUNITY COUNCIL NAME	SINGLE FAMILY	DUPLEX	3-4 UNITS	5-19 UNITS	20+ UNITS	MOBILE HOME PARKS	MOBILE HOME LOTS	RV'S	GROUP QUARTERS	HOTELS MOTELS	TOTAL
1	ABBOTT LOOP	5262	1311	833	344	536	1378	793	12	43	0	10512
2	AIRPORT HEIGHTS	2000	1026	331	274	0	0	0	0	40	0	4671
3	BIRCHWOOD	1705	80	36	44	0	0	309	12	0	0	2186
4	CAMPBELL PARK	2518	350	260	485	1034	1016	54	0	4	0	5721
5	CHUGIAK	4496	160	104	114	49	302	666	131	0	0	6022
6	DOWNTOWN	322	33	32	309	435	0	0	0	201	16	1347
7	EAGLE RIVER	4276	125	222	616	0	199	238	0	226	0	5902
8	EAGLE RIVER VALLEY AND SOUTH FORK	7202	410	50	44	0	0	131	4	0	0	7837
9	ELMENDORF-FORT RICHARDSON	0	0	0	0	0	0	0	0	16574	0	16574
10	BAYSHORE-KLATT	4054	734	307	500	86	37	304	244	10	0	6284
11	FAIRVIEW	2428	818	2337	2210	1808	233	10	116	151	87	10260
12	GIRDWOOD VALLEY	909	29	27	10	52	25	16	0	0	8	1076
13	GOVERNMENT HILL	440	353	21	220	1609	0	7	0	0	0	2739
14	HILLSIDE EAST	3490	32	0	0	0	9	90	0	0	0	3621
15	HUFFMAN O'MALLEY	4591	57	24	10	0	0	240	0	31	0	4961
16	MID-HILLSIDE	3495	47	0	0	0	0	24	0	0	0	3564
17	NORTHEAST	10205	2661	1737	1515	319	6425	495	93	21	0	23554
18	NORTH MOUNTAIN VIEW	1775	694	2021	1572	316	229	19	89	28	7	6950
19	NORTH STAR	497	520	221	330	352	73	0	0	0	0	1993
20	OLD SEWARD-OCEANVIEW	4247	249	240	94	0	0	227	279	0	0	5336
21	RABBIT CREEK	4010	47	0	0	0	0	175	0	10	0	4242
22	ROGERS PARK	3347	140	81	560	0	0	0	0	15	0	4151
23	RUSSIAN JACK PARK	2573	1054	1463	2154	987	1478	20	178	30	1	9945
24	SAND LAKE	11024	2079	1672	1555	493	0	233	0	48	0	17904
25	SCENIC PARK AREA	3813	1330	481	259	0	0	3	0	9	0	5895
26	SOUTH ADDITION	1998	1240	503	326	654	0	0	0	227	0	4958
27	SPENARD	6434	1466	1923	3023	2034	2099	106	68	280	6	18387
28	TAKU CAMPBELL	4616	1251	1245	1175	222	1595	150	130	19	0	10403
29	TUDOR AREA	1207	455	107	154	0	24	2	0	14	0	2043
30	TURNAGAIN	5096	1709	1209	1441	534	231	84	0	6	30	10360
31	UNIVERSITY AREA	3452	1021	813	1331	905	929	44	0	302	0	8817
32	GLEN ALPS	335	5	0	0	0	0	3	0	0	0	343
33	TURNAGAIN ARM	319	3	0	0	0	0	35	2	0	0	359
999	REMAINDER OF THE AREA	260	10	31	236	284	1001	7	0	88	4	1921
	TOTAL	114266	21527	18671	20940	13669	17273	4591	1358	18392	159	230846

RV'S = RECREATIONAL VEHICLES USED AS RESIDENTIAL HOUSING UNITS
HOTELS/MOTELS = THE NUMBER OF RESIDENT PERSONS LIVING IN ROOMS RENTED ON A MONTHLY BASIS

SOURCE: OFFICIAL 1983 MUNICIPAL HOUSEHOLD SURVEY

2/7/85

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

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

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

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

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

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

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

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

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

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

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

H.B. 155

STATEMENT

History: H.B. 155 is the 1985 House version of last year's S.B. 464 sponsored by Sen. Halford. That bill went through the Senate Labor & Commerce, Judiciary and Finance Committees, then later passed the Senate 20-0. Last year the House version died in committee just prior to adjournment.

Intent: H.B. 155 is an act amending A.S. 34.07, whereas it includes a section relating to "manufactured housing" under the "Horizontal Property Regimes Act." The language of this year's bill is virtually identical to last year's S.B. 464. The only change is in the evolution of terminology, where "mobile home" has been replaced by "manufactured housing."

Purpose: H.B. 155 is designed to allow the owners of mobile homes an opportunity to become the legal property owners of the designated parcel of land on which their mobile home lies. This bill also allows mobile home park owners the opportunity to sell independent parcels within their park.

Currently, many mobile home owners throughout Alaska are faced with the frustration of having to relocate their unit to another

area, simply because they do not have title to the property on which their mobile home sits. An overwhelming sense of insecurity is the result of this non-ownership. In the event of an eviction, or by the unfortunate circumstance where an entire mobile home park must relocate, a tremendous burden is placed on the mobile home family. Where do these people go?

From a developer's standpoint, H.B. 155 will allow that developer to operate fairly as a competitor in the marketplace.

I strongly urge this committee to consider H.B. 155 and expedite it from committee with a DO PASS.

To: Mike
From: Roger February 7, 1985

HB 155: This bill has a lot of snags in it. I gather that the real pressure from it is ccming from some local Juneau Mobile Home Park Owners, particularly Vic Perez and Jessie Walters (the latter owns Juneau Mortgage Co.). They stand to make a lot of bucks on it if it goes thru, because they can subdivide and instead of rent their lots, they can sell them. While we shouldnt prevent an owner from doing this, there have to be at least some controls in place that keep an owner from doing this on 30 days notice to renters of mobile home lots for example, or charging exorbitant condo fees for the lot because there is a market for it in the housing crunch. One spin-off problem is that you could suddnely have a couple hundred people looking for new home sites at a time, which wouldnt hurt Anchorage much, but would have possible devestating consequences in smaller communites like Juneau.

To provide some balance to this, I have contacted Maureen Kennedy, from the Alaska Public Interest Research Group, who will be testifying on this via teleconference from ANchorage. I also contacted the City and Borouugh of Juneau, which has had a Task Force working on these issues for a couple of years, and as a result, STeve Gilbertson, Manager of the cities Lands and Resoures office, and Lori Bender of the Juno Boro's Planning Office will be there as observors, but you might want to call on them too. Also, Linda O' Bannon will be there because of her testimony on HB 148, and she is privately opposed to it, but because she is in a Dept. of Law office, she cant take an offical public position on it, but might be willing to respond to questions if you have any.

Capital 85 will be there taping the meeting for the press; and we will also have a VTR set up so that Lori Bender will be able to show a five-minute tape to the committee. The teleconference was basically set up at the request of Ringstad's office.

Another aside to this is that I heard that Rick Uehling had originally sponsored this bill and since then has asked that his name taken off of the sponsor's list; and we will need to check with him to find out why.

Given the press attention on this bill, and the fact that there is a better and more comprehensive bill in the Senate, I suggest at the very least that you hold this bill over, possibly for Committee Substitute, and to get more background on why Ringstad is pushing this bill so hard and why he doesnt want to go with SB 44?

Offered: 5/25/84
Referred: Rules

Original sponsor: Halford

IN THE SENATE BY THE FINANCE COMMITTEE

CS FOR SENATE BILL NO. 464 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act permitting the establishment of horizontal property regimes for mobile homes."

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

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

ARTICLE 8. MOBILE HOMES HORIZONTAL PROPERTY REGIME.

Sec. 34.07.500. MOBILE HOME HORIZONTAL PROPERTY REGIME. (a) Notwithstanding the provisions of AS 34.07.010 - 34.07.450, a horizontal property regime for mobile homes may be established as an estate in real property consisting of an undivided interest in common in a portion of the real property together with a separate interest in space, the boundaries of which are described in a declaration filed by the sole owner or all of the owners of the property and which complies to the extent applicable with AS 34.07.020.

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

(c) Except to the extent that AS 34.07.010 - 34.07.460 is inapplicable to a horizontal property regime for mobile homes, the provisions of AS 34.07.010 - 34.07.460 apply to a horizontal property regime established for mobile homes.

SB 464

2/13/84 Introduced in the Senate by Senator Rick Halford
Referred to Senate Labor & Commerce and Judiciary.

3/15/84 Labor & Commerce Meeting, Senator Eliason Chairman (R,Sitka)
Witnesses:
Senator Halford, prime sponsor, favored the bill
Fred Ferrara, Society of Real Estate Appraisers, In Favor
Michael Lynch, Exec. Dir AHFC, felt other vehicles were
available to served to purpose of the prime sponsor
Michael Cohern, S.H.A.F.T Corporation, In Favor

3/16/84 Senate Labor & Commerce Report:
Replaced with a committee substitute
DO PASS - Eliason
NO RECOMMENDATION - Pettyjohn, Mulcahy, Rodey, Sackett
Request by Senator Sackett for a Senate Finance Committee
Referral/AHFC Impact.

4/2/84 Senate Judiciary Report:
After a discussion among committee members, the bill was waive
from to committee to the Senate Finance Committee with the
Labor & Commerce Substitute by unanimous consent.

5/25/84 Senate Finance Committee Report:
Labor & Commerce Substitute replaced with a Senate Finance
Committee Substitute:
DO PASS - Bennett, Mulcahy, Faiks, Fischer
NO RECOMMENDATION - Ferguson

5/29/84 Placed on Senate Supplemental Calendar
PASSED the Senate, 20-0.

5/29/84 First Reading in the House of Representatives
Referred to the House Labor & Commerce Committee, where it
died.

HB 155 FILE CONTENTS

1) Bill Summary -- Legislative Reporting Service

2) Overview -- Committee Staff Memo

3) Bill Analysis -- Legislative Legal Counsel Memo 2/6/85

4) Fiscal Note -- Dept. of Law, Administrative Servs. 2/4/85

5) Backup -- Packet on Last Year's CSSB 464 (Finance), including Minutes of Senate Finance Comm. Testimony on the Bill (provided by Bill Sponsor)

HB 154 (cont'd)

--state department or agency that is hiring would be required to notify non-profit organizations that offer employment agency services, as well as postmaster, village council or city government of existing job vacancies;

--the state department hiring would be required to publicize the vacancy on local radio or TV station and in local newspapers serving the area. The department shall provide vacancy notices to the legislative information office serving the region." (underlined language added);

--if, by the time the department is prepared to makes its hiring decision, neither the department or the division of personnel had determined that the applicant meets the minimum qualifications, the department shall presume that the applicant meets those qualifications (Senate version stated that unless the department had determined that the applicant did not meet the qualifications, the department would be required to consider the applicant for employment).

Does not provide for an effective date (takes effect 90 days after Governor signs bill).

Introduced January 30 and referred to Community & Regional Affairs, then Finance. On Feb. 1 the Speaker added a State Affairs referral. To C&RA, State Affairs, then Finance.

Manufactured Housing (condo-izing)

HOUSE BILL NO. 155, by Reps. Ringstad, Duncan, Sund, Marrou, Jenkins and Oehling. Seeks to allow conversion of mobile home or modular-type home parks to a "condominium" arrangement, whereby all residents would hold an undivided interest in the real estate on which the home is located, with each resident owning his own "space", and holding an interest in common areas. Provides Act takes effect immediately.

Introduced January 30 and referred to Labor & Commerce, then Judiciary.

Legislative Ethics Comm. (composition)

HOUSE BILL NO. 156, by Rep. Thompson. Changes the make-up of the Select Committee on Legislative Ethics. Under Rep. Thompson's version, the committee would be made up of a senate subcommittee of two members of the senate, appointed by the president with concurrence by roll call vote of 2/3 of the full membership of the senate; and a house subcommittee, of two members appointed in the same fashion by the speaker. The committ would also have three public members to be selected by 2/3 of each subcommittee (this may be a drafting error, as 2/3 of a two member subcommittee means it would take 1 1/3 vote) and ratified by 2/3 of the full membership of the house and senate. Would not allow legislative subcommittee members to be from the same political party or the same organizational caucus. Does not provide for an effective date (takes effect 90 days after Governor signs bill).

Introduced February 1 and referred to State Affairs, then

M E M O R A N D U M

TO: All Members, House Labor and Commerce Committee

FROM: Committee Staff

DATE: February 7, 1985

SUBJECT: Overview, House Bill 155

On Thursday, February 7, 1985, the House Labor and Commerce Committee meets at 1:15 pm in Room 102 of the Capitol Building on House Bill 155: " An Act permitting the establishment of horizontal property regimes for manufactured housing."

Last session, CSSB 464 (Finance) passed the Senate 20-0 on May 29, 1984, which was too close to the end of session for it to pass through the House. This bill is being revived in altered form as SB 44 this year, sponsored by Halford. HB 155 is a sort of "mini-companion" piece of legislation in the House side. Rather than repeating all of the issues of SB 44, it has pulled out one issue of that bill for separate attention, so that if SB 44 fails to pass, the issue of establishment of horizontal property regimes for manufactured housing contained within it has a separate chance of survival.

Part of the problem is that much of the law dealing with condominiums and related properties goes back to the original 1963 law, which is very outdated, and the major reason we have managed to get by in this area without certain protections and procedures intact appears to be because of the requirements that various lenders impose on the buyers; and another reason is that at least some local communites have developed their own ordinances to deal with the issues and problems.

One of the differences between SB 44 and HB 155 is that SB 44 deals with the issue conversions and HB 155 doesnt. Conversions are when you take an existing structure (such as an apartment) and change it to a condominium porperty. There are financial advantages to this for the original property owner, which need to be balanced against protecting the consumers, such as mobile home owners from unfair treatment. This bill may not provide the consumer protection that SB 44 does.

Another area of consideration is that of spelling out the rules and procedures for setting up a condominium association, which is not covered in HB 155. Another advantage of SB 44 is that developers, real estate agencies, and the consumers all appear to support SB 44 for at least one major reason: it spells out clearly the liability and limitations involved if there is are violations. Another distinction is that HB 155 basically deals with property lots, and not with buildings.

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M February 6, 1985

SUBJECT: Manufactured housing condominia (HB 155)

TO: Representative John Ringstad
Chairman, House

FROM: Richard A. Bradley
Legislative Counsel

You have requested a brief analysis of HB 155.

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

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

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

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

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

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

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

If I may be of further assistance, please advise.

RAB:ojb
J11/062

	Mobile Hms in Parks	On Lots	# of Apartments
District 7 (Szymanski)	3[illegible]	[illegible]16	330
District 8 (Cowdery and Pestinger)	4[illegible]3	394	828
District 9 (Hayes and Flood)	0	87	1805
District 10 (Bussell and Lindauer)	1543	144	5222
District 11 (Abood and Tischer)	109	42	1546
District 12 (Clocksin and Uehling)	130	8	5304
District 13 (Ward and Martin)	853	31	4481
District 14 (Barnes and Furnace)	2862	211	4362
District D (partial P. Fischer & Gilman)	54[illegible]	292	530
District E (Pettyjohn, Faiks)	489	481	2633
District F (Sturgulewski, Rodey)	1652	150	6768
District G (Josephson, Fischer, V.)	953 387	39	10365
District H (Halford, Kelly partial)	187	381	500. 652.
District 15 (Phillips and Liska, partial)	187	381	652 550

Senator Ray moved that the journal for the sixty-seventh legislative day be approved as certified. Without objection, it was so ordered.

MESSAGES FROM THE GOVERNOR

SB 348

Message of March 14 was read, stating the Governor signed and transmitted the engrossed and enrolled copies of the following bill to the Lieutenant Governor's Office for permanent filing:

HOUSE CS FOR CS FOR SENATE BILL NO. 348 (FIN)

An Act making a supplemental appropriation for the operation of the legislature; and providing for an effective date.

Chapter 17, SLA 1984

STANDING COMMITTEE REPORTS

SB 301

The Resources Committee considered SENATE BILL NO. 301 (furbearer management fund; efd) and recommended it be replaced with

CS FOR SENATE BILL NO. 301 (RES), entitled:

"An Act relating to furbearer management and increasing related license fees; and providing for an effective date."

with a majority do pass. The report was signed by Senator Fahrenkamp, Chairman and concurred in by Senators Sturgulewski, Vic Fischer, Eliason and Ziegler.

SENATE BILL NO. 301 was referred to the Finance Committee.

SB 315

The Finance Committee considered SENATE BILL NO. 315 (Road Improvement Districts) and recommended it be replaced with

CS FOR SENATE BILL NO. 315 (FIN), entitled:

SB 315 cont'd

"An Act relating to road maintenance service areas; and providing for an effective date."

Senator Bennett, Co-Chairman and Senator Faiks signed "do pass". Senators Mulcahy and Josephson signed "no recommendation".

Fiscal Note appears in Senate Supplement No. 61.

SENATE BILL NO. 315 was referred to the Rules Committee.

SB 432

The Labor and Commerce Committee considered SENATE BILL NO. 432 (Alaska Securities Act) and a majority of the committee recommended do pass. The report was signed by Senator Ellis on, Chairman and concurred in by Senators Mulcahy, Rodey and Sackett. Senator Pettyjohn signed "do not pass".

SENATE BILL NO. 432 was referred to the Judiciary Committee.

SB 464

The Labor and Commerce Committee considered SENATE BILL NO. 464 (establishment of horizontal property regimes for mobile homes) and recommended it be replaced with

CS FOR SENATE BILL NO. 464 (L&C), entitled:

"An Act revising the laws relating to horizontal property regimes and permitting the establishment of condominiums for mobile homes."

Senator Eliason signed "do pass". Senators Pettyjohn, Mulcahy and Rodey signed "no recommendation". Senator Sackett signed "(no recommendation) - send to Finance Committee because of AHFC impact".

SENATE BILL NO. 464 was referred to the Judiciary Committee.

TO: REP. MIKE NAVARRE
FROM: SEN. RICK HALFORD'S OFFICE
SUBJECT: HB 155, Manufactured Housing Under Horizontal Property Regimes Act
DATE: Feb. 20, 1985

Following is a summary of problems we feel are associated with HB 155:

1. There is no notice requirement or right of first purchase for mobile home owners presently living in parks which attempt to convert under this bill.
Without these protections, numerous park dwellers would be required to vacate without adequate notice or right of first purchase.

   It is unclear whether the Landlord Tenant Act would apply. Under that Act, certain eviction protections are available: 90 day notice (unless the tenant has violated the lease, not paid the rent, etc.)

2. The Horizontal Property Regimes Act was written more than 20 years ago when the notion of condominiums was still new. Since then, common interest ownership has become more sophisticated and broadened to include cooperatives, planned unit developments and time shares. Today, there are serious gaps in the Horizontal Property Regimes law.

   If mobile homes are allowed to be developed, marketed and financed under the Horizontal Property Regimes law, they will be plagued with the same problems which presently beset owners, developers, lenders, and real estate agents of condominiums. Among them:

   - no statutory warranties
   - no regulations for reserve accounts and association dues
   - no statutory guidelines governing the transition period from developer control to association control
   - no statutory guidelines governing insurance coverage
   - no guidelines for association management

3. SB 44 provides for the establishment of mobile home parks as common interest ownership property. It also provides protection for the mobile home tenant (120 day notice, right of first purchase).

   In addition, it protects the developer, the real estate agent, the lender and the unit owner by requiring extensive disclosure. It allows the developer freedom to "phase" projects to meet the demands of the market place. Its detailed guidelines will help avoid misunderstandings and therefore reduce litigation. Numerous consumer protection provisions are established.

4. Those mobile home park owners who convert under HB 155, if it is passed before SB 44 becomes law, will be considered pre-existing condominiums and will not be required to comply with vital consumer protection provisions.

Adding a new type of condominium development, such as mobile home sites, under an insufficient regulatory law does not provide adequate protection for the purchaser or the lending institution. Based on present problems evidenced by numerous complaints to the Consumer Protection Division of the Attorney General's office, it can only be anticipated that future complaints will escalate.

At the last hearing before the House Labor and Commerce committee, Linda O'Bannon from Consumer Protection and Betty Cook from AHFC expressed similar concerns and asked the committee to review SB44 as a comprehensive measure to address present problems.

COMMUNICATIONS

The Secretary announced receipt of the 1983 ANNUAL REPORT OF THE ALASKA LAND USE COUNCIL, IN A SPIRIT OF COOPERATION dated March 7 from Governor Sheffield, State Co-Chairman and Vernon Wiggins, Federal Co-Chairman implemented by the Alaska National Interest Lands Conservation Act (P.L. 96-487). The report is on file in the Office of the Secretary of the Senate.

STANDING COMMITTEE REPORTS

SCR 42

The Resources Committee considered SENATE CONCURRENT RESOLUTION NO. 42 (sport fishing of salmon and underutilized species) and a majority of the committee recommended do pass. The report was signed by Senator Fahrenkamp, Chairman and concurred in by Senators Ziegler, Paul Fischer and Mulcahy.

SENATE CONCURRENT RESOLUTION NO. 42 was referred to the Rules Committee.

SB 45

The Resources Committee considered 2d SPONSOR SUBSTITUTE FOR SENATE BILL NO. 45 (establishing an agricultural land sale payment moratorium; efd) and a majority of the committee recommended do pass. The report was signed by Senator Fahrenkamp, Chairman and concurred in by Senators Ziegler, Paul Fischer and Kerttula. Senator Mulcahy signed "no recommendation".

2d SPONSOR SUBSTITUTE FOR SENATE BILL NO. 45 was referred to the Finance Committee.

SB 369

The Resources Committee considered SENATE BILL NO. 369 (planning, designing and construction of agriculture and forestry facilities by the Department of Natural Resources) and a majority of the committee recommended do pass. The report was signed by Senator Fahrenkamp, Chairman and concurred in by Senators Ziegler, Paul Fischer and Mulcahy.

SENATE BILL NO. 369 was referred to the Transportation Committee.

SB 432

The Judiciary Committee considered SENATE BILL NO. 432 (amending the Alaska Securities Act). Senator Ray, Chairman and Senator Josephson signed "do pass". Senator Ziegler signed "no recommendation". Senator Pettyjohn signed "do not pass".

SENATE BILL NO. 432 was referred to the Finance Committee.

SB 448

The State Affairs Committee considered SENATE BILL NO. 448 (state personnel rules for open competitive examinations; efd) and recommended it be replaced with

CS FOR SENATE BILL NO. 448 (SA)

with a majority do pass. The report was signed by Senator Vic Fischer, Chairman and concurred in by Senators Kelly, Sturgulewski and Ray.

Fiscal note appears in Senate Supplement No. 69.

SENATE BILL NO. 448 was referred to the Finance Committee.

SB 464

The Judiciary Committee discussed SENATE BILL NO. 464 (permitting the establishment of horizontal property regimes for mobile homes) and decided to waive it with a further referral to the Finance Committee. However, the following amendment to the Labor and Commerce Committee Substitute was suggested for the Finance Committee's consideration:

Page 4, line 27: after "chapter" delete all language through "common" on line 28

Senator Ray moved and asked unanimous consent that the Judiciary Committee referral be waived on SENATE BILL NO. 464. Without objection, it was so ordered. Senator Ray recommended SENATE BILL NO. 464 be referred to the Finance Committee.

President Kerttula stated that SENATE BILL NO. 464 would have an additional referral to the Finance Committee.

SENATE BILL NO. 464 was referred to the Finance Committee.

The presence of Senator Josephson was noted.

Senator Bay moved that the journal for the one hundred thirty-seventh legislative day and Supplement No. 90 be approved as certified. Without objection, it was so ordered.

STANDING COMMITTEE REPORTS

SB 409

The Finance Committee considered SENATE BILL NO. 409 (miscellaneous supplemental appropriations and transfers among appropriations; efd) and recommended it be replaced with

CS FOR SENATE BILL NO. 409 (2d FIN), entitled:

"An Act making miscellaneous appropriations and transfers among appropriations and amending the lapse dates or purposes of certain appropriations; and providing for an effective date."

with a majority do pass. The report was signed by Senator Bennett, Co-Chairman and concurred in by Senators Sackett, Ferguson, Vic Fischer, Mulcahy and Josephson. Senator Folke signed "no recommendation".

SENATE BILL NO. 409 was referred to the Rules Committee.

SB 464

The Finance Committee considered SENATE BILL NO. 464 (revising the laws to horizontal property regimes and permitting the establishment of condominiums for mobile homes) and recommended it be replaced with

CS FOR SENATE BILL NO. 464 (FIN), entitled:

"An Act permitting the establishment of horizontal property regimes for mobile homes."

with a majority do pass. The report was signed by Senator Bennett, Co-Chairman and concurred in by Senators Mulcahy, Folke and Vic Fischer. Senator Ferguson signed "no recommendation".

SENATE BILL NO. 464 was referred to the Rules Committee.

HCR 56

The Finance Committee considered HOUSE CONCURRENT RESOLUTION NO. 56 (appropriations for program receipts) and recommended do pass. The report was signed by Senator Bennett, Co-Chairman and concurred in by Senators Folke, Ferguson, Sackett, Mulcahy, Josephson and Vic Fischer.

HOUSE CONCURRENT RESOLUTION NO. 56 was referred to the Rules Committee.

HB 198

The Finance Committee considered HOUSE BILL NO. 198 am (membership of the Legislative Budget and Audit Committee, the Alaska Legislative Council and to records of the legislative audit division; efd) and a majority of the committee recommended do pass. The report was signed by Senator Bennett, Co-Chairman and concurred in by Senators Folke, Sackett, Vic Fischer, Mulcahy and Josephson.

HOUSE BILL NO. 198 am was referred to the Rules Committee.

HB 663

The Finance Committee considered CS FOR HOUSE BILL NO. 663 (FIN) am (certain state housing loan programs; efd) and recommended it be replaced with

SENATE CS FOR CS FOR HOUSE BILL NO. 663 (FIN)

with a majority do pass. The report was signed by Senator Bennett, Co-Chairman and concurred in by Senators Ferguson, Mulcahy, Josephson and Vic Fischer. Senator Folke signed "no recommendation".

LETTER OF INTENT
SCS CSHB 663 (FIN)

In effecting Sec. 7 of the subject bill, the committee acknowledges that neighborhood groups have suggested the possibility of low-income, owner-occupied housing on the former S & S Apartment site within the Municipality of Anchorage.

It is the intent of the committee that insofar as prior statutory language would appear to prohibit grants for an owner-occupied program, the prohibition is to be removed as to this site so that owner-occupied housing will be eligible, if otherwise feasible. (Nothing in this amendment shall prohibit the use of appropriated moneys for low-rent housing on the site).

HB 705 cont'd

Senator Vic Fischer moved and asked unanimous consent for the adoption of Amendment No. 1. Senators Kerttula and Fahrenkamp objected, then withdrew their objections. There being no further objection, Amendment No. 1 was adopted.

Senator Pettyjohn offered Amendment No. 2:

Page 1, line 18: After "agreement" insert "with the commission"

Senator Pettyjohn moved and asked unanimous consent for the adoption of Amendment No. 2. Without objection, Amendment No. 2 was adopted.

Senator Ray moved and asked unanimous consent that SENATE CS FOR CS FOR HOUSE BILL NO. 705 (L&C) am S be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

SENATE CS FOR CS FOR HOUSE BILL NO. 705 (L&C) am S was read the third time.

The question being: "Shall SENATE CS FOR CS FOR HOUSE BILL NO. 705 (L&C) am S (real estate surety fund) pass the Senate?" The roll was taken with the following result:

SCS CSHB 705 LC AM S 3RD

Yeas: 20 Bennett, Eliason, Fahrenkamp, Folka, Ferguson, Fischer Paul, Fischer Vic, Gilman, Halford, Josephson, Kelly, Kerttula, Moss, Mulcahy, Pettyjohn, Ray, Rodey, Sackett, Sturgulewski, Ziegler

Nays: 0

and so, SENATE CS FOR CS FOR HOUSE BILL NO. 705 (L&C) am S passed the Senate.

SENATE CS FOR CS FOR HOUSE BILL NO. 705 (L&C) am S was engrossed, signed by the President and Secretary and returned to the House for consideration.

CITATIONS

Senator Ray moved that the following citations be approved:

Honoring - The Frontiersman
by Senator Kerttula

Honoring - Frances Bryner
by Senators Gilman, Paul Fischer and Sturgulewski
Representatives Malone and Fritz

In Memoriam - Roger Culp; Larry McVey; Dale Majeste; Albert Hagan; Lyman, Joyce and Marshall Klein; and Fred Burk
by Representatives Davis, Hurlbert, Bettisworth, Liska, Szymanski, Vezka, Kaponen, Ringstad, Shultz, M.W. Miller and All Other Members of the House
Senators Halford, Fahrenkamp and All Other Members of the Senate

Honoring - Taiwan Trade Delegation
by Senators Vic Fischer, Ziegler, Kerttula, Paul Fischer and Sturgulewski

Honoring - Korean Trade Delegation
by Senators Vic Fischer, Ziegler, Sturgulewski, Paul Fischer and Kerttula

Without objection, the citations were approved and referred to the Secretary for transmittal.

SUPPLEMENTAL CALENDAR

SECOND READING OF SENATE BILLS

SB 464

SENATE BILL NO. 464 (permitting the establishment of horizontal property regimes for mobile homes) was read the second time.

Senator Sackett moved and asked unanimous consent for the adoption of the Finance Committee Substitute offered on page 3268. Without objection, CS FOR SENATE BILL NO. 464 (FIN), was adopted.

SB 464 cont'd

CS FOR SENATE BILL NO. 464 (FIN) was read the second time.

Senator Ray moved and asked unanimous consent that CS FOR SENATE BILL NO. 464 (FIN) be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

CS FOR SENATE BILL NO. 464 (FIN) was read the third time.

The question being: "Shall CS FOR SENATE BILL NO. 464 (FIN) (establishment of horizontal property regimes for mobile homes) pass the Senate?" The roll was taken with the following result:

CS SB 464 FIN 3RD

Yeas: 20 Bennett, Ellason, Fahrenkamp, Falks, Ferguson, Fischer Paul, Fischer Vic, Gilman, Halford, Josephson, Kelly, Kerttula, Moss, Mulcahy, Pettyjohn, Ray, Rodey, Sackett, Sturgulewski, Ziegler

Nays: 0

and so, CS FOR SENATE BILL NO. 464 (FIN) passed the Senate.

CS FOR SENATE BILL NO. 464 (FIN) was engrossed, signed by the President and Secretary and transmitted to the House for consideration.

SECOND READING OF HOUSE BILLS

HB 571

CS FOR HOUSE BILL NO. 571 (FIN) (venue of actions in superior court and the number of superior and district court judges; efd) was read the second time.

Senator Ray moved and asked unanimous consent for the adoption of the Judiciary Senate Committee Substitute offered on page 3128. Without objection, SENATE CS FOR CS FOR HOUSE BILL NO. 571 (JUD) was adopted.

HB 571 cont'd

SENATE CS FOR CS FOR HOUSE BILL NO. 571 (JUD) was read the second time.

Senator Ray moved and asked unanimous consent that SENATE CS FOR CS FOR HOUSE BILL NO. 571 (JUD) be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

SENATE CS FOR CS FOR HOUSE BILL NO. 571 (JUD) was read the third time.

The question being: "Shall SENATE CS FOR CS FOR HOUSE BILL NO. 571 (JUD) (venue of actions in superior court and the number of superior and district court judges; efd) pass the Senate?" The roll was taken with the following result:

SCS CSHB 571 JUD 3RD

Yeas: 19 Ellason, Fahrenkamp, Falks, Ferguson, Fischer Paul, Fischer Vic, Gilman, Halford, Josephson, Kelly, Kerttula, Moss, Mulcahy, Pettyjohn, Ray, Rodey, Sackett, Sturgulewski, Ziegler

Nays: 0

Absent: 1 Bennett

and so, SENATE CS FOR CS FOR HOUSE BILL NO. 571 (JUD) passed the Senate.

Senator Ray moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clause. Without objection, it was so ordered.

SENATE CS FOR CS FOR HOUSE BILL NO. 571 (JUD) was engrossed, signed by the President and Secretary and returned to the House for consideration.

FIRST READING AND REFERENCE OF SENATE BILLS

CSSB 464(Fin)

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 464 (Finance) by the Finance Committee, entitled:

"An Act permitting the establishment of horizontal property regimes for mobile homes."

was read the first time and referred to the Labor & Commerce Committee.

REPORTS OF STANDING COMMITTEES

CSSCR 19(Res)

The Resources Committee has had COMMITTEE SUBSTITUTE FOR SENATE CONCURRENT RESOLUTION NO. 19 (Resources) (relating to a statewide system of trails) under consideration, recommends it be replaced with HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE CONCURRENT RESOLUTION NO. 19 (Resources) (same title), and reports it back as follows: Larson, Liska and Cowdery recommend do pass; Ringstad (Co-Chairman) and Shultz have no recommendation.

CSSCR 19(Res) was referred to the Rules Committee for placement on the calendar.

CSSB 411(Res)

The Resources Committee has had COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 411 (Resources) (relating to preferential use of Alaska agricultural products) under consideration and reports it back as follows: Ringstad (Co-Chairman), Shultz, Larson, Liska and Cowdery recommend do pass.

CSSB 411(Res) was referred to the Finance Committee.

REPORTS OF SPECIAL COMMITTEES

A report dated May 28, 1984, was read stating that the Select Committee on Legislative Ethics has selected Cheri Jacobus as the public member of the Select Committee on Legislative Ethics and recommends that her selection be ratified. The report was signed by Representatives Barnes (Chairman) and concurred in by Representatives Furnace and M. K. Miller.

INTRODUCTION OF CITATIONS

The following citations were received and referred to the Rules Committee for placement on the calendar:

Honoring - Mrs. Elizabeth Baines
by Representative Fuller and Senator Ferguson

Honoring - Bernard L. Warren
by Representatives Furnace and Barnes

Honoring - Hugh Malone
by Representatives M. K. Miller, Hayes and All Other Members of the House

ENGROSSMENT

HCS CSSB 289(Res)amH

HCS CSSB 289(Res)amH was engrossed, signed by the Speaker and the Chief Clerk and transmitted to the Senate for consideration.

HCS CSSB 504(Jud)

HCS CSSB 504(Jud) was engrossed, signed by the Speaker and the Chief Clerk and transmitted to the Senate for consideration.

HCS CSSB 525(Fin)

HCS CSSB 525(Fin) was engrossed, signed by the Speaker and the Chief Clerk and transmitted to the Senate for consideration.

ENROLLMENT

SCS CSHB 298(Fin)

The following was enrolled, signed by the Speaker and the Chief Clerk, the President and Secretary of the Senate and the engrossed and enrolled copies were transmitted to the Office of the Governor at 2:25 p.m., May 29, 1984:

SB 458

SENATE BILL NO. 458 by Senators Vic Fischer and Pettyjohn, entitled:

"An Act terminating the Alaska Transportation Commission and repealing transportation laws administered by the commission; and requiring persons who carry persons or freight intrastate for compensation to have insurance or other security."

was read the first time and referred to the Labor and Commerce Committee and the Finance Committee.

SB 459

SENATE BILL NO. 459 by Senator Fahrenkamp, entitled:

"An Act relating to oil and gas unitization agreements."

was read the first time and referred to the Resources Committee and the Finance Committee.

SB 460

SENATE BILL NO. 460 by Senators Vic Fischer and Kerttula, entitled:

"An Act renaming and expanding the functions of the Medicaid Rate Commission and providing for the regulation of rates charged for services provided by health facilities."

was read the first time and referred to the Health, Education and Social Services Committee and the Finance Committee.

SB 461

SENATE BILL NO. 461 by Senator Fahrenkamp, entitled:

"An Act relating to the management and use of water in mining; and providing for an effective date."

was read the first time and referred to the Resources Committee.

SB 462

SENATE BILL NO. 462 by Senator Fahrenkamp, entitled:

"An Act making a special appropriation to the Mining Water Use Board for loans and grants concerned with the management and use of water in mining; and providing for an effective date."

was read the first time and referred to the Resources Committee and the Finance Committee.

SB 463

SENATE BILL NO. 463 by Senators Vic Fischer, Moss, Ellason, Rodey, Josephson, Halford, Gilman, Sturgulewski, Kerttula, Fahrenkamp, Kelly and Paul Fischer, entitled:

"An Act relating to veterans exposed to radiation from above-ground nuclear weapons testing or to a biological or chemical agent, including Agent Orange."

was read the first time and referred to the State Affairs Committee and the Health, Education and Social Services Committee.

SB 464

SENATE BILL NO. 464 by Senator Halford, entitled:

"An Act permitting the establishment of horizontal property regimes for mobile homes."

was read the first time and referred to the Labor and Commerce Committee and the Judiciary Committee.

SB 465

SENATE BILL NO. 465 by Senators Halford, Sturgulewski, Josephson, Vic Fischer, Ellason, Fahrenkamp, Faiks, Kelly and Paul Fischer, entitled:

"An Act establishing an annuity program; amending the longevity bonus program and the permanent fund dividend distribution program; and providing for an effective date."

was read the first time and referred to the Judiciary Committee and the Finance Committee.

LAW OFFICES OF WILLIAM McNALL
3333 DENALI ST., SUITE 120
ANCHORAGE, ALASKA 99503
(907) 276 2535

March 18, 1985

Rep. Mike NaVarr, Chairman
House Labor & Commerce Committee
Pouch V
Juneau, Alaska 99811

Re: HB 155

Dear Representative NaVarr,

Representative Boucher specifically requested additional information concerning problems with House Bill 155, Manufactured Housing under Horizontal Property Regimes Act, during the February 25, 1985 teleconference testimony.

There are several areas which must be addressed to aid mobile home park development as common interest communities. Some of these areas are as follows:

a.) express and implied warrants,
b.) disclosure requirements to purchase,
c.) association reserve, budget and accountin requirements,
d.) association insurance coverage,
e.) association management guidelines.

HB 155 essentially allows development of a mobile home park condominium but does not provide much needed assistance to the project after the initial development process has been started. I believe that developers, realtors, and sellers of mobile homes will be poorly served by this statute. I predict that there will be litigation which could have been avoided if HB 155 is passed into law.

Mobile home parks must have specific statutory authority to regulate through the Mobile Home Park Unit owners Association such matters as outside storage, removal of nuisance items, built-on additions such as garages, carport, wannigans, storage buildings, attachment to the foundation, sewer and electrical hookups, parking, playground facilities and insurance coverage for liability issues related to these items.

Finally, the replacement of old or delapidated units must be addressed. At what point may the association require a unit owner to upgrade to a newer mobile home? Alaska Housing Finance will not finance sales of used homes with less than a twelve year life expectancy. If a unit owner conveys a delapidated unit to a purchaser can the association prevent the sale or require an upgrade?

All of these issues must be carefully thought out. Senate Bill 44 provides the flexibility to address all of these issues. HB 155 and the present Horizontal Property Regime Act do not.

Sincerely yours,

William L. McNall

William L. McNall