

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

4055 SJUD SB 44 (FILE 5) - SB 53

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SB

44

(FILE 5):

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February 8, 1985

Ms. Ann Plunket  
Senate Judiciary Committee  
Pouch V  
Juneau, AK 99811

Re: Common Interest Ownership Act

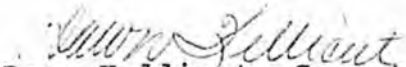
Dear Ann:

Pursuant to our recent telephone conversation, I am enclosing the attached list of attorneys and addresses who Mr. McCollum believes to be interested receiving any information with regard to the Common Interest Ownership Act.

If you have any questions, please do not hesitate to give me a call.

Very truly yours,

BANKSTON & McCOLLUM

  
Dawn Kellicut, Secretary to  
James H. McCollum

Encl.

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Official Business

# Alaska State Legislature

February 19, 1985

Pouch V  
State Capitol  
Juneau, Alaska 99811

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/If Not Empty, POSITION/VPOSITIONV  
/End If//If Not Empty, COMPANY/VCOMPANYV  
/End If/VADDRESSV  
VCITYV, VSTV VZIPV

Dear VTITLEV VLAST\_NAMEV:

I appreciate your continued interest in the legislative efforts to revise the state's laws governing common interest ownership property. As you know, the Uniform Common Interest Ownership Act (UCIOA) was introduced in the State Senate and is now known as Senate Bill 44. The legislation is pending before the Senate Judiciary Committee, which I chair.

The Senate Judiciary Committee has held two hearings on SB 44. The first was a brief overview. At the second hearing, the Committee heard expert testimony presented by Bill McNall and Don Buck. Mr. McNall is an Anchorage attorney, specializing in common interest property, and founder of the Greater Alaska Community Associations Institute. Mr. Buck is a Connecticut attorney and a leading authority on UCIOA and common interest ownership property. Their comments were of tremendous assistance to the Committee.

The next hearing on SB 44 is scheduled for February 26, at 1:30 p.m. in Juneau. This will be teleconferenced in Anchorage. Mr. Buck will be participating from Connecticut and Mr. McNall will be participating in Anchorage. It is anticipated that the first hour and one-half will be devoted to completing the section-by-section analysis which was begun at our last hearing. The next hour and one-half will be open to public comment.

If you are in Juneau on February 26th, please contact the Judiciary Committee at 465-3717. As I stated, this will be teleconferenced in Anchorage at the Teleconference Network Office, located at 1024 West 6th Avenue. I strongly encourage you to observe or participate. If you are unable to attend, I welcome your written comments.

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February 19, 1985  
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Enclosed is a proposed Committee substitute for SB 44 which is under review. I hope that you agree that this legislation is a good beginning to balance the needs of developers, realtors and unit owners.

Thank you again for your interest.

Sincerely,

Pat Rodey  
Senator

Enclosure

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SB

44

(FILE 6):

CS AND CHANGES

4-4-85

New proposals

SB44 AMENDMENTS

(References are to lines in CS)

Page 54, line 27 should read:

- #1 judgment was entered; no other property of a unit owner is subject to the claims of creditors of the association; ✓

hold { Page 75, section 34.08.670, add sentence:

- #2 Violations of this chapter constitute unfair methods of competition and unfair or deceptive acts or practices under AS 45.50.471.

Page 85, line 8, new definition of "dealer" to read:

- #3 (11) "dealer" means a person who owns either six or more units, or 50% or more of all the units in a common interest community. ✓

#4 Page 87, line 21 should read: ✓

of less than [20] 40 years; or

- #5 Banking + securities proposed amendment ✓  
page 66, line 6.

- #6 Conversion properties (next page) ✓

- #7 page 12 - highlighted ✓

- #8 page 76 - highlighted ✓

## CONVERSION PROPERTY AMENDMENTS

Sec. 34.08.440 (page 45, line 21) should read:  
against or, in the case of [a] conversion [building] property,  
against fire and

Sec. 34.08.560 (page 65, line 21) should read:  
COMMON INTEREST COMMUNITIES CONTAINING CONVERSION [BUILDINGS]  
PROPERTY. (a) The public offering statement of a common  
interest community containing [a] conversion [building]  
property must contain, in addition to the information  
required by AS 34.08.530,

(page 65, line 26):  
installations material to the use and enjoyment of the  
[building] property;

(page 66, line 4):

(b) This section applies only to [a building] property  
that contains a unit

(page 70, line 15):

Sec. 34.08.620. CONVERSION [BUILDINGS] PROPERTY. (a) A  
declarant of a common interest community containing [a]  
conversion [building] property, and any dealer who intends to  
offer units in a common interest community containing conversion  
units, shall give each residential tenant and each residential  
subtenant in possession of a portion of [a] conversion [building]  
property notice of the conversion and provide each person  
with the public offering statement no later than [120] 180  
days before the tenant and any subtenant in possession is  
required to vacate. If the conversion property consists of a  
mobile home park, notice of the conversion and delivery of the  
public offering statement must be provided no later than one  
year before the tenant and any subtenant in possession is  
required to vacate. The notice must set out 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. A  
tenant or subtenant may not be required to vacate upon less  
than [120] 180 days' notice, and in the case of tenants and  
subtenants of mobile home parks upon less than one year's  
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 the period.

The failure to give notice as required by this section is a defense to an action for possession.

(b) For [60] 90 days after delivery or mailing of the notice described in (a) of this section, 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 the unit. If a tenant fails to purchase the unit during the [60] 90-day period, the offeror may not offer to dispose of an interest in the 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 a unit in [a] conversion [building] property if the unit will be restricted exclusively to nonresidential use or if the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

(page 84, line 29)

(9) "conversion [building] property" means [a building or mobile home site] real estate that [,] before creation of the common interest community, was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers;

# 7

1        Sec. 34.08.170. PLATS AND PLANS. (a) Plats and plans are a  
2 part of the declaration and are required for all common interest  
3 communities except cooperatives. Separate plats and plans are not  
4 required by this chapter if the information required by this section  
5 is contained in either a plat or plan. Each plat and plan must be  
6 clear and legible and contain a certification that the plat or plan  
7 contains the information required by this section. The recording office  
shall prescribe the style, size, form, and quality of plats and plans  
filed under this chapter.

8            (b) Each plat must show:

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

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

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

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

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

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

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

# 8

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

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

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

16 ARTICLE 5. GENERAL PROVISIONS.

17 Sec. 34.08.710. VARIATION BY AGREEMENT. Except as expressly  
18 provided in this chapter the provisions of this chapter may not be  
19 varied by agreement and rights conferred by this chapter may not be  
20 waived. A declarant may not act under a power of attorney or use any  
21 other device to evade the limitations or prohibitions of this chapter  
22 or a declaration recorded under it.

23 Sec. 34.08.720. SEPARATE TITLES AND TAXATION. (a) In a cooper-  
ative, a unit owner's interest in a unit and its allocated interest  
is a real property interest for all purposes, except that the real  
property constituting the cooperative shall be taxed and assessed as  
a whole and a unit owner's interest shall not be separately taxed.

24 (b) In a condominium or planned community,

25 (1) if there is a unit owner other than a declarant, each

Included in 1st  
C.S.

SB 44 -- Changes

Page 1. Lines 18 to 23.

Sec. 34.08.020. APPLICABILITY TO SMALL COOPERATIVES. If a cooperative contains only units restricted to nonresidential use or contains no more than 12 units and is not subject to any development rights [,] or [IF IT IS THEN SUBJECT TO] financing from the Alaska Housing Finance Corporation, it is subject only to AS 34.08.720, 34.08.730 [850] and 34.08.740 [860] unless the declaration provides that the entire chapter is applicable.

Page 1. Line 25 to 27.

Sec. 34.08.030. APPLICABILITY TO SMALL LIMITED EXPENSE LIABILITY COMMON INTEREST [PLANNED] COMMUNITIES. If a common interest [PLANNED] community contains no more than 12 units and is not subject to any development rights or [IF IT IS THAN SUBJECT TO] financing from the Alaska Housing Finance Corporation...

Page 2. Line 4...

...the common interest [PLANNED] community is subject only to AS 34.08.720 [710], 34.08.730, and 34.08.740, unless the declaration provides that the entire chapter is applicable. A declarant shall not divide real property under single ownership into two or more common interest communities to avoid applicability of this chapter.

Page 3. Line 15...

Sec. 34.08.070. APPLICABILITY TO NONRESIDENTIAL COMMON INTEREST  
[PLANNED] COMMUNITIES. (a) Except for AS 34.08.720, 34.08.730, and  
34.08.740, which will apply, t[T]his chapter does not apply to a common  
interest [PLANNED] community in which each unit is restricted exclusively  
to nonresidential use unless the declaration provides that the chapter  
does apply to the common interest [PLANNED] community.

(b) This chapter applies to a common interest [PLANNED] community  
containing some units that are restricted exclusively to nonresidential  
use and other units that are not restricted exclusively to nonresidential  
use only if the declaration provides that the chapter applies to the  
common interest [PLANNED] community or the real estate comprising the  
units that may be used for residential purposes would be a common  
interest [PLANNED] community in the absence of the units that may not  
be used for residential purposes.

Page 15. Line 18.

(e) The declarant can terminate the development rights by an  
amendment to the declaration.

Page 32. Line 10 to 13.

Sec. 34.08.340. TRANSFER OF ASSOCIATION CONTROL. (a) Before, or not more than 60 days after[, ] the termination of declarant control, [THE TIME THAT A UNIT OWNER OTHER THAN THE DECLARANT ELECTS A MAJORITY OF THE MEMBERS OF THE EXECUTIVE BOARD OF A COMMON INTEREST COMMUNITY,]...

Page 33. Line 10 to 13.

(9) all tangible personal property that is property of the common interest community, represented by the declarant to be the property of the association [PART OF THE COMMON ELEMENTS] or ostensibly the property of the association [PART OF THE COMMON ELEMENTS]...

Page 35. Line 5.

...transfer of control [.] pursuant to representations in the public offering statement.

Page 56. Line 3.

(b) Any professional manager, managing agent, accountant or other party with whom the association has contracted for services must return all association records within five days of the termination of the contract. In the event the association records are not returned, the association, in its discretion, may bring a claim for injunctive relief, damages, or both.

Page 58. Lines 21 and 22.

(2) a general description of the common interest community, including, in a building constructed for residential purposes with horizontal boundaries, the area of the interior surface of floors available for residential purposes and,

Page 68. Lines 10 and 11.

(b) The association, within 10 days after a written request by a unit owner and payment of a reasonable fee pursuant to AS 34.08.320(12), shall furnish...

Page 77. Lines 15 to 18.

...Upon acquisition, unless the decree otherwise provides, the allocated interests of the unit are, automatically, [AS A MATTER OF LAW], reallocated to the remaining units...

Page 78. Lines 2 to 5.

(2) the portion of the allocated interests divested from the partially acquired unit are, automatically, [AS A MATTER OF LAW], reallocated to the unit...

Page 81. Line 9 and 10.

(2) the dollar amounts must [MAY] not change if the amounts required by this section are those currently in effect under this chapter as a result of an earlier application of this section;

Page 84. Line 11.

(9) "conversion building" means a building or a mobile home site that...

Page 86. Line 14.

(22) "ownership of a unit" does not include a leasehold interest, including renewal options, of less than 40 [20] years in a unit;

Page 88. Line 25...

Rewrite (33) to read:

(33) "unit owner"

(A) a declarant or

(B) other person who owns a unit or

(C) a lessee of a unit in a leasehold common interest community whose lease expires simultaneously with any lease that on its expiration or termination will remove the unit from the common interest community;

(D) does not include a person having an interest in a unit solely as security for an obligation'

(E) includes

(i) in a condominium or planned community the declarant as the owner of any unit created by the declaration;

(ii) in a cooperative, the declarant as the owner of any unit to which allocated interests have been allocated until that unit has been conveyed to another person.

Page 89. Line 23 and 24.

that [WHICH] becomes subject to AS 34.08 or (do not delete) the Horizontal Property Regimes Act (AS 34.07.010 - 34.07.460)

Page 90. Line 6.

percent of the amount determined:

(1) if the community has been declared pursuant to AS 34.07.010 - 34.07.460 by:

(a) dividing the surface area of the common areas and facilities attendant to the ...

(b) multiplying the result obtained in (1) of this subsection by the total amount of the claimant's lien claim.

(2) If the community has been declared pursuant to AS 34.08, by the allocated interest in the common expenses.

Page 90. Line 18.

[SEC. 4. AS 34.07 IS REPEALED].

Short Title.

Comments. The official comments of the Uniform Common Interest Ownership Act should be considered for adoption, either by including a section in the bill or by adopting a letter of intent.

SENATE BILL 44  
Sectional Analysis

(includes changes proposed in committee substitute)  
(prior to 4/4/85)

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

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

ARTICLE I. APPLICABILITY

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

Exceptions exist to the general rule of applicability:

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

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

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

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

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

the cooperative's declaration makes the entire chapter applicable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 34.08.260. TERMINATION OF COMMON INTEREST COMMUNITY.

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

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

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

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

this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### ARTICLE IV: PROTECTION OF PURCHASERS

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

gratuitous disposition of a unit;

disposition pursuant to court order;

disposition by a government or governmental agency;

disposition by foreclosure;

disposition to a dealer;

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

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

Sec. 34.08.520 LIABILITY FOR PUBLIC OFFERING STATEMENT REQUIREMENTS.

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

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

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

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

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

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

public offering statement specifically prepared to comply with the provision of this chapter, the prospectus filed with and distributed pursuant to the regulation of the U. S. Securities and Exchange Commission.

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

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

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

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

Sec. 34.08.620. CONVERSION BUILDINGS. This section is an attempt to strike a fair balance between the competing interests of rental tenants and prospective owners. When a declarant decides to convert a building or mobile home park to common interest ownership, 120 days notice of the conversion with a public offering statement must be given to the residential tenants and subtenants. If the building or mobile home park will be converted to residential use, the tenants must also be given a opportunity to purchase their units. The declarant is not required to offer residential tenants the right to purchase commercial units or to offer to sell to the tenants if the dimensions of their previous apartment have been substantially altered.

Sec. 34.08.630. EXPRESS WARRANTIES OF QUALITY. Expectations of the purchaser created by the particular conduct (facts, promises, rights, models, descriptions, etc.) of the declarant in connection with the inducement of the sale create express warranties of quality. This is based on the principle that once it is established that the declarant has acted to create particular expectations in the purchaser, warranty should be found unless it is clear that, prior to the time of final agreement, the declarant has negated the conduct which created the

expectation. Statement of mere opinion or commendation of the real estate or its value does not create a warranty.

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

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

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

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

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

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

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

#### ARTICLE V. GENERAL PROVISIONS.

Sec. 34.08.710. VARIATION BY AGREEMENT. This chapter is generally designed to provide great flexibility in the creation of common interest communities, and therefore this section permits the parties to vary many provisions. In many instances, however, provisions of the chapter may not be varied because of the need to protect purchasers, lenders, and

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

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

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

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

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

Sec. 34.08.760. CONSTRUCTION AGAINST IMPLICIT REPEAL.

Sec. 34.08.770. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

Sec. 34.08.780. SEVERABILITY.

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

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

Sec. 34.08.810. REMEDIES TO BE LIBERALLY ADMINISTERED.

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

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

Sec. 34.08.990. DEFINITIONS.

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

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

Section 5 makes this act effect January 1, 1986.

Advisory Council Members  
Senator Bennett, Chairman  
Senator Kerttula  
Senator Abood  
Senator Sackett



1024 W. 6th Avenue, Suite 203  
Anchorage, Alaska 99501  
Phone: (907) 274-1426

SENATE ADVISORY COUNCIL

MEMORANDUM

TO: SENATOR JAN FAIKS  
SENATOR RICK HALFORD

FROM: ELIZABETH J. HICKERSON *EJH*

SUBJECT: SB 44, UCIOA

DATE: FEBRUARY 27, 1985

Attached is a list of proposed changes to SB 44. These have been discussed before Senate Judiciary, and therefore I will not discuss these now. There are other concerns that have been brought to my attention that I wish to share with you both.

1. Sec. 34.08.170. Plats and Plans

The state recorder, Rose Farren, suggested that she be given the same authority over the size and quality of plats and plans filed in her office as is presently provided under the Horizontal Property Regimes Act. The following sentence will extend the authority under SB 44:

"The recording officer shall prescribe the style, size, form, and quality of plats and plans filed under this chapter."

2. Sec. 34.08.720. Separate Titles and Taxation

The state assessor, Mike Worley, was concerned that if cooperatives are given an opportunity to have the units owners' interests designated as personal property, rather than real property, that those local governments which exempt personal property from taxation will lose revenues. I discussed this matter at length with Mr. Worley and Don Buck. It is important to note that in cooperatives, the association holds title to the property, and therefore the association is liable for property taxation regardless of how the owners' interests are defined. If the owners' interests are defined as personal, then the association pays the property taxes. If the owners' interests are defined as real property, then

February 27, 1985

Page 2

the individual owners pay the property taxes. Connecticut was faced with this issue and decided to classify the unit owners' interests as real property or real estate. This resulted in providing special forms for those preexisting cooperatives established as personal property to convert to real property. This also reduced the ability of cooperatives to offer interest in the association as personal property. Cooperatives had been used by low income people as a means to enter the housing market, which required very low down payments. Don Buck is the expert on this, so if you all want more information he should be consulted.

In Alaska, it is unclear how many cooperatives exist. Mr. Worley sent me a letter which stated that in Fairbanks North Star Borough that there are "771 co-op parcels (condominiums) on their roll. The current assessed value of those parcels is \$69,393,549." Following a telephone conversation with Mr. Worley, he verified that this letter combined all condominiums and cooperatives. Condominiums and cooperatives are very different in ownership and are treated differently throughout SB 44.

To make a long story short, it was suggested that SB 44 adopt the Connecticut language:

"In a cooperative, a unit owner's interest in a unit and its allocated interest is a real property interest for all purposes, except that the real property constituting the cooperative shall be taxed and assessed as a whole and a unit owner's interest shall not be separately taxed."

This language pleased Mr. Worley, who I am still not sure understands the difference between a condo and a coop. Whether the UCIOA or Connecticut language is adopted the "project" is going to be subject to real estate taxes. The difference is who is billed for the taxes, the association or the individual unit owners.

3. Mary Puksta, a paralegal with Hoge and Lekisch in Anchorage, submitted a list of needed changes. I reviewed these with Mr. Buck and Mr. McNall and concluded the following.

Quorums and Voting and Proxies are treated differently under AS 10.20.076 and AS 10.20.071, than under SB 44. This conflict is taken into account under Sec. 34.08.750 of SB 44, which provides that other property and corporate laws "supplement the provisions of this chapter except to the extent inconsistent with this chapter." This translates to mean that SB 44 can provide different laws related to common interest ownership property and will not be affected by other laws which also address issues such as voting, meetings, quorums, etc.

The legislature needs to make policy decisions on these issues. According to Buck, there is no problem in reducing the validity of a proxy to 11 months to conform with AS 10.20.071 (under SB44 it is effective for 12 months). Buck also believes that there is no problem in reducing the quorum from 20% under SB 44 to 10% under AS 10.20.076 as long as the declaration provides for reduced percentages and notice of meetings with a set agenda to the association members. AS 10.20 is the law of nonprofit corporations, whereas, SB 44 specifically regulates common interest ownership.

Ms. Puksta correctly points out that under section 34.08.440, Insurance (page 48, line 24), that the reference to AS 34.08.860 should be changed to read AS 34.08.740. This is Mr. Dick Bradley's mistake in drafting.

Ms. Puksta's concern over section 34.08.470, Lien for Assessment, is without merit. This section provides a means by which an association's lien may be foreclosed, either as a mortgage or deed of trust on real estate, or as a lien under AS 34.35.005 (Foreclosure in Superior Court). If a lien is foreclosed as a mortgage or deed of trust, deficiency judgements are prohibited. If the lien is foreclosed under AS 09.45.170, then deficiency judgements are not prohibited. The association is given a choice on the means of foreclosing. Therefore, SB 44 is consistent with the Alaska laws on foreclosure.

Ms. Puksta is correct that the reference on page 87, line 21, to 20 years should be 40 years, if the entire change on leaseholds is adopted by the Committee.

4. Mr. Bob Kean, Kean and Associates, is a land surveyor in Anchorage. Mr. Kean contacted me regarding his concern over the plats and plans section 34.08.170. Mr. Kean has two concerns: more guidelines should be provided for the content of plats and plans; and, the law should specify what a surveyor, architect and engineer may and may not certify. Following discussions with Mr. Kean and Mr. Buck, I suggested that Mr. Kean review the manual adopted by Connecticut which provides guidelines for all professionals who work with common interest ownership property. Mr. Kean seemed content that a manual for Alaska, based on the Connecticut model would provide sufficient direction.

However, Mr. Kean was still concerned that surveyors', architects' and engineers' duties should be specified. Mr. Buck stated that nationwide, there are turf wars being fought among these professionals and suggested that the proper place to address this is under our professional licensing statute, AS 08.48.011, since the battle involves all property development not just common interest ownership.

5. The Connecticut Bar Association developed a manual for implementation of its Common Interest Ownership Act. This manual is a guide only, and according to Mr. Buck should not be part of a statute or regulation. Connecticut is willing to allow Alaska the use of and possible adoption of the manual. Ms. Cheryl Frasca has raised the issue with me, and suggested that perhaps a state agency should be asked to develop a manual for Alaska. The most appropriate agency to undertake such a request seems to be AHFC. I spoke with Betty Cook at AHFC about this possibility, and she was "open" to the idea. Ms. Cook stated that she felt that she had staff internally who could compile an Alaska manual. I am concerned that AHFC does not have qualified staff to adequately complete the assignment if requested. Also, if AHFC develops a manual, it may be seen as a regulation, rather than as a guide. Finally, I wouldn't want to reinvent the wheel, if Connecticut's could easily be adopted. Mr. Buck is available for negotiations on this matter.

6. Betty Cook raised a concern over the applicability of SB 44 to small common interest communities. Under SB 44 (section 34.08.030), common interest communities of 12 or less units, not subject to development rights or financing from AHFC and residential communities whose annual average common expense liability does not exceed \$100, are only subject to the separate titles and taxation, applicability of local ordinances, regulations and building codes, and eminent domain provisions. Ms. Cook believes that these communities should be subject to the entire provisions of SB 44.

I discussed this with Mr. Buck and he stated that there had been lengthy discussions on this very issue during the drafting of UCIOA. Both Mr. Buck and Ms. Cook agree that duplexes and Zero lot lines should not be subject to the entire act. This issue needs to be addressed by the legislature.

There may be additional concern voiced by existing common interest communities regarding the application of SB 44 to small communities if only one unit is financed through AHFC. Mr. Buck seems to think that this really is not a problem, but did feel that it might be cumbersome. Ms. Cook appears to be adamant that if AHFC is financing a unit, that additional regulation for the community is necessary.

7. The realtors have advocated replacing all references to "dealers" with "brokers". This appears to conform with the Alaska laws on real estate transactions, however, the realtors should present testimony on this issue.

8. Finally, I am concerned about the availability of Mr. Buck's gratuitous services in the future. I believe that I am free to contact him on simple issues without interfering with his law practice, and he has been most gracious,

CSSB 44 Memorandum  
February 27, 1985  
Page 5

however, it is unclear about his services for more indepth discussions. I wanted to bring this to your attention, as it may be helpful in planning future hearings on this bill.

Enclosed is a list of all persons on the mailing list. These people were mailed a packet of information on SB 44. If I may be of additional service to either of you on this project, please contact my office.

Enclosures (3)



# RECORDS CERTIFICATION

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

*James O. Smith*  
Signature of Camera Operator

*11/7/89*  
Date

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BILL FILE LOG

BILL # SB 53

- Eileen Klatte notified

- John Shay - Division of Employment Security  
to testify

# STATE OF ALASKA

## DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

P.O. BOX 1149  
JUNEAU, ALASKA 99802  
PHONE: (907) 465-2700

February 1, 1985

Michael Thill  
Professional Assistant  
Labor and Commerce Committee  
Alaska State Senate  
Pouch V  
Juneau, AK 99811

Dear Michael:

This is in response to the question you posed last week on Senate Bill 53. If Alaska failed to enact the verification provisions in Section 1 of the bill, \$22,652,100 in federal administrative funds for our Employment Service and Unemployment Insurance programs would be jeopardized in FY 86.

You may recall that last year we were dealing with some conformity provisions which jeopardized employer FUTA tax credits as well as our administrative grants. Accordingly, I would like to clarify that the amendment we are dealing with this year is not attached in any way to the employer FUTA tax--this year we just have our administrative grants "on the line."

Thanks for your help; and please give me a shout if you need anything else.

Sincerely,



Eileen Plate  
Special Assistant

BILL SHEFFIELD  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 15, 1985

The Honorable Don Bennett  
President of the Senate  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the disclosure of unemployment insurance information.


The bill has two provisions. The first is in response to amendments made to the Social Security Act by the Deficit Reduction Act of 1984 (P.L. 98-369). The latter Act establishes an income and eligibility verification system under which the state must disclose unemployment insurance benefit and wage information to appropriate state and federal agencies in order to qualify for federal money for payment of administrative costs of the unemployment insurance program (42.U.S.C. sec. 1320b-7).

The system is intended to verify the eligibility of recipients of certain benefits in federally assisted state programs, such as the medicaid, food stamp, and unemployment insurance programs, among others. The bill will allow the Department of Labor to make the appropriate disclosures.

The second provision allows the department to disclose information to the Internal Revenue Service. Under federal law, the IRS has the duty to seek information necessary for enforcement of the Internal Revenue Code, and it is empowered to compel the cooperation of persons and agencies in its performance of that duty. Although under current state law the department may not voluntarily disclose unemployment insurance information to the IRS for that purpose, the Department of Law has concluded that the Department of Labor must respond to an IRS subpoena which requests such information. The proposed amendment would eliminate the need for the issuance and processing of subpoenas, a costly procedure, which has become especially burdensome due to the increasingly large number of subpoenas issued.

Section 2651(1)(2) of the Deficit Reduction Act of 1984 (98 Stat. 1151) basically requires compliance with the provisions of that Act as of April 1, 1985. Therefore, I urge your prompt and favorable consideration of this measure.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Sheffield".

Bill Sheffield  
Governor

Bill No. Committee Substitute for Senate Bill No. 53 (L&C)

Date March 1, 1985

Title "An Act relating to unemployment insurance"

Contact: Eileen Plate  
465-2700

John W. Shay, Jr.  
465-2712

Committee Substitute for Senate Bill 53 amends a provision in Alaska's unemployment insurance law which deals with disclosure of unemployment insurance claim and wage information.

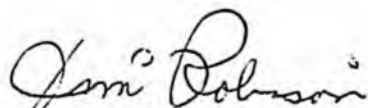
Specifically, this bill provides for the Department of Labor to disclose unemployment insurance benefit and wage information to appropriate state and federal programs funded by the Social Security Act (Aid to Families with Dependent Children, Medicaid, Food Stamps, etc.).

This provision is in response to a 1984 amendment to the Social Security Act which establishes a system for verifying the income and eligibility of persons receiving benefits from programs operating under the Social Security Act. Basically, the verification system consists of the exchange of income and eligibility information among the programs.

State unemployment insurance programs are required, under the amendments to the Social Security Act, to participate in this exchange of information by April 1, 1985. The amendment to Alaska's unemployment insurance law set out in CS SB 53 is necessary to enable the Department of Labor to make the appropriate disclosures and thereby assure that federal funding received by the Department for administration of its Unemployment Insurance program is not jeopardized.

The Department supports passage of this bill. It will not have a fiscal impact on the Department.

APPROVED:



Jim Robison  
Commissioner

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

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

REQUEST  
 Bill/Resolution No.: CS SB 53 (I.&C)  
 Title: "An act relating to unemployment insurance..."  
 Sponsor: Rules Committee  
 Requestor: Senate Judiciary  
 Date of Request: 3/1/85

FISCAL DETAIL  
 Agency Affected: Labor  
 Program Category Affected: Social Services  
 BRU, Program or Subprogram(s) Affected: BRU, Program or Subprogram(s) Affected:  
 Employment Security - Unemployment Insurance

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

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

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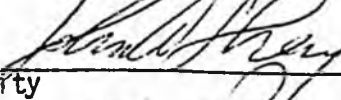
**FUNDING: (Thousands of Dollars)**

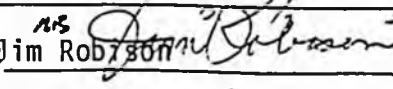
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By <sup>AS</sup> John W. Shay  Phone 465-2712  
 Division Employment Security Date: 3/4/85

Approved by Commissioner <sup>AS</sup> Jim Robinson  Date: 3/4/85  
 Agency Labor

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



Official Business

# Alaska State Legislature

## Senate

### Committee on Labor & Commerce

Pouch V  
State Capitol  
Juneau, Alaska 99811

#### SB 53 Sectional Analysis:

Section 1) (h) Establishes an income and eligibility verification system (PL 98-369) requiring disclosure of U.I. benefit and wage information to appropriate state and federal agencies. Receipt of federal funds (\$22,652,100) for the administrative costs of the UI program are conditioned upon being in conformity with the provisions of the 1984 amendments to the Social Security Act.

(i) proposed subsection would allow the Department of Labor to voluntarily disclose UI information to the IRS. Current law requires the issuance of a subpoena before an information exchange takes place.

Section 2) Immediate effective date

CSSB 53 (L&C): Deletes subsection (i) with respect to voluntary disclosure of information between the IRS and the Department of Labor.