



LAWS OF ALASKA

1986

Source

CSSB 470(Jud)

Chapter No.

61

AN ACT

Relating to the Uniform Common Interest Ownership Act.

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

THE ACT FOLLOWS ON PAGE 1, LINE 9

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: June 3, 1986
Actual Effective Date: September 1, 1986

AN ACT

Relating to the Uniform Common Interest Ownership Act.

* Section 1. AS 34.08.010 is amended to read:

Sec. 34.08.010. APPLICABILITY GENERALLY. Except as provided in AS [34.08.020 AND] 34.08.030, this chapter applies to each common interest community created within the state after January 1, 1986. The provisions of AS 10.15 and AS 34.07 do not apply to common interest communities created after January 1, 1986.

* Sec. 2. AS 34.08.030 is amended to read:

Sec. 34.08.030. APPLICABILITY TO [SMALL AND] LIMITED EXPENSE LIABILITY PLANNED [COMMON INTEREST] COMMUNITIES. If a planned [COMMON INTEREST] community created after January 1, 1986, [CONTAINS NO MORE THAN 12 UNITS AND] is not subject to any development rights and [OR FINANCING FROM THE ALASKA HOUSING FINANCE CORPORATION OR] provides, in its declaration, that the annual average common expense liability of all units restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed \$100, as adjusted under AS 34.08.820, the planned [COMMON INTEREST] community is subject only to AS 34.08.720 - 34.08.740 unless the declaration provides that the entire chapter is applicable. [A DECLARANT MAY NOT SUBDIVIDE REAL PROPERTY UNDER SINGLE OWNERSHIP INTO TWO OR MORE COMMON INTEREST COMMUNITIES TO AVOID THE APPLICATION OF THIS CHAPTER.]

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1 * Sec. 3. AS 34.08 is amended by adding a new section to read:

2 Sec. 34.08.035. PROHIBITED SUBDIVISIONS. A declarant may not
3 subdivide real property under single ownership into two or more common
4 interest communities to avoid the application of this chapter.

5 * Sec. 4. AS 34.08.040 is amended to read:

6 Sec. 34.08.040. APPLICABILITY TO PREEXISTING COMMON INTEREST
7 COMMUNITIES. Except as provided in AS 34.08.050, the provisions of
8 AS 34.08.110, 34.08.120, 34.08.290, 34.08.320(1) - (6) and (11) -
9 (16), 34.08.420, 34.08.470, 34.08.490, 34.08.510, 34.08.590, 34.08.-
10 670, 34.08.720, 34.08.730, 34.08.740, and 34.08.990, to the extent
11 necessary in construing any of those sections, apply to all common
12 interest communities created in the state before January 1, 1986,
13 except that the sections apply only with respect to events and circum-
14 stances occurring after January 1, 1986, and do not invalidate exist-
15 ing provisions of the declaration, bylaws, or plats or plans of the
16 common interest communities.

17 * Sec. 5. AS 34.08 is amended by adding a new section to read:

18 Sec. 34.08.255. AMENDMENT OF A DECLARATION WHERE FEWER THAN 50
19 PERCENT OF UNIT OWNERS APPROVE. (a) If a declaration requires owners
20 having more than 50 percent of the votes in the association in a
21 single class voting structure or unit owners having more than 50
22 percent of the votes in more than one class in a voting structure with
23 more than one class to vote in favor of an amendment in order to amend
24 a declaration, the association or a unit owner may petition the supe-
25 rior court for the judicial district in which the common interest
26 community is located for an order reducing the percentage of the
27 affirmative votes necessary for the adoption of the amendment. The
28 petition shall describe the efforts that have been made to solicit the
29 approval of the unit owners in the association in the manner required

1 by the declaration, the number of affirmative and negative votes
2 actually received, the number or percentage of affirmative votes
3 required to adopt the amendment under the declaration, and any other
4 matter the petitioner considers relevant to the determination of the
5 court. The petition must include as exhibits to the petition a copy
6 of

7 (1) the governing documents;

8 (2) a complete text of the amendments;

9 (3) a copy of each notice and the solicitation materials
10 used in the solicitation of the approval of the amendment by the unit
11 owners;

12 (4) an explanation of the reason for the amendment;

13 (5) other documentation relevant to the determination by
14 the court.

15 (b) When the petition is filed with the superior court, the
16 court shall set the matter for hearing and issue an ex parte order
17 setting out the manner in which notice shall be given to the unit
18 owners in the association.

19 (c) The court may, but is not required to, grant the petition if
20 it finds that

1 (1) the petitioner has given not less than 15 days' written
2 notice of the court hearing to

3 (A) each unit owner in the association;

4 (B) a mortgagee of a mortgage or beneficiary of a deed
5 of trust that is entitled to notice under the provisions of the
6 declaration; and

7 (C) the municipality in which the common interest
8 community is located if it is entitled to notice under the decla-
9 ration;

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1 (2) the balloting on the proposed amendment was conducted
2 under each of the applicable provisions of the declaration, bylaws,
3 and rules or regulations of the association;

4 (3) a reasonably diligent effort was made to permit each
5 eligible unit owner to vote on the proposed amendment;

6 (4) in a common interest community with a single class
7 voting structure, unit owners with more than 50 percent of the votes
8 voted in favor of the amendment;

9 (5) in a voting structure with more than one class and
10 where the declaration requires a majority of more than one class to
11 vote in favor of the amendment, unit owners having more than 50 per-
12 cent of the votes in each class required by the declaration to vote in
13 favor of the amendment did vote in favor of the amendment;

14 (6) the amendment is reasonable; and

15 (7) granting the petition is appropriate considering the
16 circumstances.

17 (d) If the court makes the findings required in (c) of this
18 section, an order issued under this section may

19 (1) confirm the amendment as being validly approved on the
20 basis of the affirmative votes actually received during the balloting
21 period; or

22 (2) dispense with a requirement relating to quorums or to
23 the percentage of votes needed for approval of an amendment under the
24 governing documents.

25 (e) A court may not approve an amendment to a declaration under
26 this section that

27 (1) would change the provision in a declaration requiring
28 the approval of unit owners having more than 50 percent of the votes
29 in more than one class to vote in favor of an amendment unless more

1 than 50 percent of the unit owners in each affected class of unit
2 owners approve the amendment;

3 (2) would eliminate a special right, preference, or privi-
4 lege designated in the declaration as belonging to the declarant
5 without the approval of the declarant; or

6 (3) would impair the security interest of a mortgagee of a
7 mortgage or the beneficiary of a deed of trust without the approval of
8 the percentage of the mortgagees and beneficiaries specified in the
9 declaration if the declaration requires the approval of a specified
10 percentage of the mortgagees and beneficiaries.

11 (f) An amendment to the declaration approved under this section
12 is not effective until the order of the court and the amendment have
13 been recorded in each recording district in which a portion of the
14 common interest community is located. The amendment may be acknowl-
15 edged by, and the court order and amendment may be recorded by, an
6 individual designated in the declaration or by the association and, if
7 no one is designated for that purpose, by the president of the asso-
8 ciation. On the recording of the amendment and the court order, the
9 declaration, as amended under this section, has the same force and
10 effect as if the amendment were adopted in compliance with the decla-
11 ration.

12 (g) Within a reasonable time after the recording of the amend-
13 ment under (f) of this section, the association shall mail a copy of
14 the amendment to each unit owner in the association together with a
15 statement that the amendment has been recorded.

* Sec. 6. AS 34.08.260 is amended by adding new subsections to read:

(m) A declaration that specifies a termination date but that
does not contain a provision for the extension of the termination date
may be extended

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1 (1) by the approval of the unit owners having more than 50
2 percent of the votes in the association;

3 (2) by the approval of the unit owners having the percent-
4 age of votes as specified in the declaration for an amendment to the
5 declaration; or

6 (3) if the approval of unit owners having more than 50
7 percent of the votes in the association is required to amend the
8 declaration, under AS 34.08.255.

9 (n) An amendment to a declaration under (m) of this section
10 becomes effective when it has been recorded in each recording district
11 in which a portion of the common interest community is located.

12 (o) A single extension of the terms of a declaration made under
13 this section may not exceed the initial term of the declaration or 20
14 years, whichever is less. More than one extension of the term may
15 occur under this section.

16 * Sec. 7. AS 34.08.470(j) is amended to read:

17 (j) The association's lien may be foreclosed under this subsec-
18 tion:

19 (1) in a condominium or planned community, the lien of the
20 association must be foreclosed [AS A MORTGAGE OR DEED OF TRUST ON REAL
21 ESTATE IS FORECLOSED, OR] as a lien is foreclosed under AS 34.35.005;

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

26 (3) in a cooperative whose unit owners' interests in the
27 units are personal property, the lien of the association must be
28 foreclosed as a security interest under AS 45.09 [; OR

29 (4) IN THE CASE OF FORECLOSURE UNDER AS 34.20.070, THE

1 ASSOCIATION SHALL GIVE REASONABLE NOTICE OF ITS ACTION TO EACH LIEN
2 HOLDER OF A UNIT WHOSE INTEREST WOULD BE AFFECTED].

3 * Sec. 8. AS 34.08.590 is amended by adding a new subsection to read:

4 (d) A unit owner in a planned community that was created before
5 January 1, 1986, is not exempt under AS 34.08.050, and does not col-
6 lect assessments as a planned community and has not formed an asso-
7 ciation or elected officers or an executive board may comply with (a)
8 and (b) of this section by furnishing the purchaser of the unit an
9 affidavit in recordable form

10 (1) stating that assessments are not collected, the last
11 date assessments were collected, if known, the amount of the last
12 assessment, if known, and the reason assessments ceased;

13 (2) stating that an association has not been formed or that
14 no officers or executive board exists; and

15 (3) providing the purchaser a copy of

16 (A) the recorded declaration, if any, and any amend-
17 ment to the declaration;

18 (B) bylaws, rules, and regulations of the association,
19 if any; and

20 (C) a brief narrative description of

21 (i) the real estate comprising the planned commu-
22 nity; and

23 (ii) obligations to pay for real estate taxes,
24 insurance premiums, maintenance, and improvements of the
25 real estate described in the declaration.

26 * Sec. 9. In a condominium or cooperative created after January 1,
27 1986, and before the effective date of this Act, the provisions of
28 AS 34.08.040 apply to events and occurrences concerning the condominium or
29 cooperative occurring after the effective date of this Act.

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* Sec. 10. AS 34.08.020 is repealed.

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