

**Alaska Statutes 2018**  
**Title 34. Property**  
**Chapter 08. Common Interest Ownership.**

**Sec. 34.08.010. Applicability generally.**

Except as provided in [AS 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. 34.08.020. Applicability to small cooperatives. [Repealed, § 10 ch 61 SLA 1986.]**

**Sec. 34.08.030. Applicability to limited expense liability planned communities.**

If a planned community created after January 1, 1986, is not subject to any development rights and 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 community is subject only to [AS 34.08.720](#) – 34.08.740 unless the declaration provides that the entire chapter is applicable.

**Sec. 34.08.035. Prohibited subdivisions.**

A declarant may not subdivide real property under single ownership into two or more common interest communities to avoid the application of this chapter.

**Sec. 34.08.040. Applicability to preexisting common interest communities.**

Except as provided in [AS 34.08.050](#), the provisions of [AS 34.08.110](#), 34.08.120, 34.08.290, 34.08.320(a)(1) – (6) and (11) – (16), 34.08.420, 34.08.470, 34.08.490, 34.08.510, 34.08.590, 34.08.670, 34.08.720, 34.08.730, 34.08.740, and 34.08.990, to the extent necessary in construing any of those sections, apply to all common interest communities created in the state before January 1, 1986, except that the sections apply only with respect to events and circumstances occurring after January 1, 1986, and do not invalidate existing provisions of the declaration, bylaws, or plats or plans of the common interest communities.

**Sec. 34.08.050. Applicability to small preexisting cooperatives and planned communities.**

If a cooperative or planned community created within the state before January 1, 1986 contains no more than 12 units and is not subject to any development rights, it is subject only to [AS 34.08.720](#) – 34.08.740, unless the declaration is amended in conformity with law and with the procedures and requirements of the declaration to take advantage of the provisions of [AS 34.08.060](#), in which case all the sections enumerated in [AS 34.08.040](#) apply to the cooperative or planned community.

**Sec. 34.08.060. Amendments to governing instrument.**

(a) In amendments to the declaration, bylaws, or plats and plans of a common interest community created before January 1, 1986,

(1) if the result accomplished by the amendment was permitted by law prior to this chapter, the amendment may be made either in accordance with the former law, in which case that law applies to that amendment, or it may be made under this chapter; and

(2) if the result accomplished by the amendment is permitted by this chapter and was not permitted by law before January 1, 1986, the amendment may be made under this chapter.

(b) An amendment to the declaration, bylaws, or plats and plans authorized by this chapter must be adopted in conformity with law and with the procedures and requirements specified by the declaration, bylaws, or plats and plans. If an amendment grants a person any right, power, or privilege permitted by this

chapter, each correlative obligation, liability, and restriction in this chapter also applies to the person.

**Sec. 34.08.070. Applicability to nonresidential common interest communities.**

(a) With the exception of [AS 34.08.720](#) – 34.08.740, this chapter does not apply to a common interest community in which each unit is restricted exclusively to nonresidential use unless the declaration provides that the chapter does apply to the common interest community.

(b) This chapter applies to a common interest 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 community or the real estate comprising the units that may be used for residential purposes would be a common interest community in the absence of the units that may not be used for residential purposes.

**Sec. 34.08.080. Applicability to out-of-state common interest communities.**

This chapter does not apply to a common interest community or unit located outside the state, but [AS 34.08.520](#) – 34.08.580 apply to a contract for the disposition of a common interest community or unit that is signed in the state by a party unless the disposition is exempt under [AS 34.08.510\(b\)](#).

**Article 2. Creation, Alteration, and Termination  
of Common Interest Communities.**

**Sec. 34.08.090. Creation of common interest communities.**

(a) A common interest community may be created under this chapter only by recording a declaration executed in the same manner as a deed and, in a cooperative, by conveying the real estate subject to the declaration to the association. The declaration must be recorded, and a plat or plan that is part of the declaration filed and recorded, in each recording district in which a portion of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and the association and in the grantor's index in the name of each person executing the declaration.

(b) In a condominium, a declaration or an amendment to a declaration that adds a unit may not be recorded, and a plat or plan that is part of the declaration may not be filed or recorded, unless the structural components and mechanical systems of each building containing or comprising a unit of the condominium are completed substantially in accordance with the plans, as evidenced by a certificate of completion recorded with the declaration or amendment to the declaration and executed by

(1) an independent registered engineer, architect, or land surveyor;

(2) an appraiser with the designation of senior residential appraiser, senior real property appraiser, or senior real estate analyst of the Society of Real Estate Appraisers;

(3) a residential member, or member of the appraisal institute, of the American Institute of Real Estate Appraisers; or

(4) an individual with a designation established by regulation of the Alaska Housing Finance Corporation for fee appraisers who certify the completion of construction.

**Sec. 34.08.100. Unit boundaries.**

Except as provided by the declaration

(1) if walls, floors, or ceilings are designated as boundaries of a unit, the lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and other materials constituting a part of the finished surfaces of the walls, floors, or ceilings are a part of the unit, and all other

portions of the walls, floors, or ceilings are a part of the common elements;

(2) if a chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside the designated boundaries of a unit, the portion serving only the unit is a limited common element allocated solely to the unit, and any portion serving more than one unit or a portion of the common elements is a part of the common elements;

(3) subject to (2) of this section, spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit;

(4) shutters, awnings, window boxes, doorsteps, stoops, porches, decks, balconies, patios, and each exterior door and window or other fixture designed to serve a single unit that is located outside the boundaries of the unit, are limited common elements allocated exclusively to the unit.

**Sec. 34.08.110. Construction and validity of declaration and bylaws.**

(a) Each provision of the declaration and bylaws is severable.

(b) The rule against perpetuities does not defeat any provision of the declaration, bylaws, rules, or regulations adopted under AS 34.08.320(a)(1).

(c) In a conflict between the provisions of the declaration and the bylaws, the declaration prevails unless the declaration is inconsistent with this chapter.

(d) Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this chapter. Whether a substantial failure impairs marketability is not affected by this chapter.

**Sec. 34.08.120. Description of units.**

A description of a unit that sets out the name of the common interest community, the recording data for the declaration, the recording district in which the common interest community is located, and the identifying number of the unit, is a legally sufficient description of the unit and all rights, obligations, and interests appurtenant to the unit that were created by the declaration or bylaws.

**Sec. 34.08.130. Contents of declaration.**

(a) The declaration must contain

(1) the names of the common interest community and the association and a statement that the common interest community is either a condominium, cooperative, or planned community;

(2) the name of each recording district in which a part of the common interest community is situated;

(3) a legally sufficient description of the real estate included in the common interest community;

(4) a statement of the maximum number of units that the declarant reserves the right to create;

(5) in a condominium or planned community, a description of the boundaries of each unit created by the declaration, including the identifying number of the unit, or in a cooperative, a description, which may be by plats or plans, of each unit created by the declaration, including the identifying number of the unit, its size or number of rooms, and its location within a building if it is within a building containing more than one unit;

(6) a description of any limited common elements, other than those specified in AS 34.08.100(2) and (4) or 34.08.170(b)(10) and, in a planned community, any real estate that is or must become common elements;

(7) a description of any real estate, except real estate subject to development rights, that may be allocated subsequently as limited common elements, other than limited common elements specified in AS 34.08.100(2) and (4), together with a statement that the designated real estate may be allocated;

(8) a description of any development rights or other special declarant rights reserved by the declarant, together with a legally sufficient description of the real estate to which each of the rights applies, and a time limit within which each of the rights must be exercised;

(9) if a development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with

(A) either a statement fixing the boundaries of the portions and regulating the order in which the portions may be subjected to the exercise of each development right or a statement that assurances are not made with regard to matters under this paragraph; and

(B) a statement as to whether, if a development right is exercised in a portion of the real estate subject to the development right, the development right must be exercised in all or in any other portion of the remainder of that real estate;

(10) any other condition or limitation under which the rights described in (8) of this subsection may be exercised or will lapse;

(11) an allocation to each unit of the allocated interests in the manner described in AS 34.08.150;

(12) any restrictions

(A) on use, occupancy, and alienation of the units, and

(B) 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;

(13) the recording data for recorded easements and licenses appurtenant to or included in the common interest community or to which any portion of the common interest community is or may become subject by virtue of a reservation in the declaration; and

(14) each matter required by AS 34.08.140, 34.08.150, 34.08.160, 34.08.170, 34.08.230, 34.08.240 and 34.08.330(d).

(b) A declaration may contain other matters the declarant considers appropriate.

**Sec. 34.08.140. Leasehold common interest communities.**

(a) If the expiration or termination of a lease or a memorandum of the lease will terminate the common interest community or reduce its size, the lease or a memorandum of the lease must be recorded. In a condominium or planned community, the lessor of each lease described in this subsection shall sign the declaration. The declaration must state

(1) the recording data for the lease or a summary of the complete lease;

(2) the date on which the lease is scheduled to expire;

(3) a legally sufficient description of the real estate subject to the lease;

(4) any right of the unit owners to redeem the reversion and the manner in

which the rights may be exercised, or a statement that the unit owners do not have a right to redeem the reversion;

(5) any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that the unit owners do not have the right to remove improvements after the expiration or termination of the lease; and

(6) any right of the unit owners to renew the lease and the conditions of the renewal, or a statement that the unit owners do not have the right to renew the lease.

(b) After the declaration for a leasehold condominium or leasehold planned community is recorded, and a plat or plan that is part of the declaration is filed and recorded, neither the lessor nor the successor in interest of the lessor may terminate the leasehold interest of a unit owner who makes timely payment of a unit owner's share of the rent and otherwise complies with the covenants that, if violated, would entitle the lessor to terminate the lease. The leasehold interest of a unit owner in a condominium or planned community is not affected by the failure of any other person to pay rent or fulfill a covenant.

(c) 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 interests of all unit owners subject to that reversion or remainder are acquired.

(d) If the expiration or termination of a lease decreases the number of units in a common interest community, the allocated interests must be reallocated under AS 34.08.740(a) as if the units had been taken by eminent domain. The reallocation must be confirmed by an amendment to the declaration prepared, executed, and recorded by the association of unit owners; a plat or plan that accompanies the amendment must be filed and recorded with the amendment.

#### **Sec. 34.08.150. Allocation of allocated interests.**

(a) The declaration must allocate

(1) to each unit in a condominium, a fraction or percentage of undivided interests in the common elements and in the common expenses of the association and a portion of the votes in the association;

(2) to each unit in a cooperative, an ownership interest in the association, a fraction or percentage of the common expenses of the association and a portion of the votes in the association; and

(3) to each unit in a planned community, a fraction or percentage of the common expenses of the association and a portion of the votes in the association.

(b) The declaration must state the formulas used to establish allocations of interests. The allocations may not discriminate in favor of units owned by the declarant or an affiliate of the declarant.

(c) If a unit may be added to or withdrawn from the common interest community, the declaration must state the formulas to be used to reallocate the allocated interests among the units included in the common interest community after the addition or withdrawal.

(d) The declaration may provide (1) that different allocations of votes shall be made to the units on particular matters specified in the declaration; (2) for cumulative voting only for the purpose of electing members of the executive board; and (3) for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this chapter nor may units constitute a class because they are

owned by a declarant.

(e) Except for minor variations due to rounding, the sum of the common expense liabilities and, in a condominium, the sum of the undivided interests in the common elements allocated at any time to all the units must each equal one if stated as a fraction or 100 percent if stated as a percentage. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(f) 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.

(g) 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.**

(a) Except for the limited common elements described in AS 34.08.100(2) and (4), 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 unit owners whose units are affected.

(b) Except as the declaration otherwise provides, a limited common element may be reallocated by an amendment to the declaration executed by the unit owners between or among whose units the reallocation is made. The persons executing the amendment shall provide a copy of the amendment to the association, which shall record the amendment and file and record a plat or plan that accompanies the amendment. The amendment must be recorded, and an accompanying plat or plan filed and recorded, in the names of the parties and the common interest community.

(c) A common element not previously allocated as a limited common element may be allocated as a limited common element only under provisions in the declaration adopted under AS 34.08.130(a)(7). The allocation must be made by an amendment to the declaration.

**Sec. 34.08.170. Plats and plans.**

(a) Plats and plans are a part of the declaration and are required for all common interest communities except cooperatives. Separate plats and plans are not required by this chapter if the information required by this section is contained in either a plat or plan. Each plat and plan must be clear and legible and contain a certification that the plat or plan contains the information required by this section.

(b) Each plat must show

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

(2) the location and dimensions of the real estate not subject to development rights or subject only to the development right to withdraw, and the location and dimensions of each existing improvement within the real estate;

(3) a legally sufficient description of the real estate subject to development rights, labeled to identify the rights applicable to each parcel;

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

(5) to the extent feasible, a legally sufficient description of each easement serving or burdening a portion of the common interest community;

(6) the location and dimensions of any vertical unit boundaries not shown or projected on plans filed and recorded under (d) of this section and the identifying number of the unit;

(7) the location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans filed and recorded under (d) of this section and the identifying number of the unit;

(8) a legally sufficient description of any real estate in which the unit owners will own only an estate for years, labeled as "leasehold real estate";

(9) the distance between noncontiguous parcels of real estate comprising the common interest community;

(10) the location and dimensions of limited common elements, including porches, decks, balconies, and patios, other than parking spaces and the other limited common elements described in AS 34.08.100(2) and (4);

(11) in the case of real estate not subject to development rights, all other matters customarily shown on land surveys.

(c) A plat may also show the intended location and dimensions of a contemplated improvement to be constructed within the common interest community. A contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT."

(d) To the extent not shown or projected on the plats, plans of the units must show or project

(1) the location and dimensions of the vertical boundaries of each unit, and the identifying number of the unit;

(2) any horizontal unit boundaries, with reference to an established datum, and the identifying number of the unit; and

(3) each unit in which the declarant has reserved the right to create additional units or common elements, identified appropriately.

(e) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plats and plans.

(f) Upon the exercise of a development right, the declarant shall either file and record new plats and plans necessary to conform to the requirements of (a), (b), and (d) of this section, or file and record new certifications of plats and plans previously filed and recorded if the plats and plans otherwise conform to the requirements of (a), (b), and (d) of this section.

(g) A certification of a plat or plan required by this section or AS 34.08.090(b) shall be made by an independent registered surveyor, architect, or engineer.

(h) The state recorder shall prescribe the style, size, form, and quality of plats and plans filed and recorded under this chapter.

#### **Sec. 34.08.180. Exercise of development rights.**

(a) To exercise a development right reserved under AS 34.08.130(a)(8), a declarant shall prepare, execute, and record an amendment to the declaration, file and record a plat or plan that accompanies the amendment, and, in a condominium or planned community, comply with AS 34.08.170. The declarant is the unit owner of the units created under the amendment. The amendment to the declaration must assign an identifying number to each new unit created, and,

except in the case of subdivision or conversion of units described in (b) of this section, reallocate the allocated interests among all units. The amendment must describe common elements and any limited common elements created under the amendment and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by AS 34.08.160.

(b) A development right may be reserved within any real estate added to the common interest community if the amendment adding the real estate includes the matters required by AS 34.08.130 or 34.08.140, and, in a condominium or planned community, if the plats and plans include the matters required by AS 34.08.170. This provision does not extend the time limit on the exercise of development rights imposed by the declaration under AS 34.08.130(a)(8).

(c) Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both,

(1) if the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the other units as if that unit had been taken by eminent domain; and

(2) if the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

(d) If the declaration under AS 34.08.130(a)(8) provides that all or a portion of the real estate is subject to a right of withdrawal:

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

(2) if a portion is subject to withdrawal, it may not be withdrawn after a unit in the portion has been conveyed to a purchaser.

(e) A declarant may terminate development rights by an amendment to the declaration.

#### **Sec. 34.08.190. Alterations of units.**

Subject to the provisions of the declaration and other provisions of law, a unit owner (1) may make an improvement or alteration to the unit that does not impair the structural integrity or mechanical systems or lessen the support of a portion of the common interest community; (2) may not change the appearance of the common elements or the exterior appearance of a unit or any portion of the common interest community without permission of the association; (3) after acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter an intervening partition or create apertures in the partition even if the partition in whole or in part is a common element, if the removal or alteration does not impair the structural integrity or mechanical systems or lessen the support of a portion of the common interest community and is completed according to applicable codes and in a skillful and workmanlike manner. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

#### **Sec. 34.08.200. Relocation of boundaries between adjoining units.**

(a) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of the units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the executive board determines within 30 days that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved and states the reallocations. The amendment must be



executed by those unit owners, contain words of conveyance between them, and, on recording, be indexed in the name of the grantor, the grantee, and the association.

(b) The association

(1) in a condominium or planned community shall prepare, file, and record plats or plans necessary to show the altered boundaries between adjoining units, and their dimensions and identifying numbers; and

(2) in a cooperative shall prepare and record amendments to the declaration, and file and record a plat or plan necessary to show or describe the altered boundaries between adjoining units and their dimensions and identifying numbers.

**Sec. 34.08.210. Subdivision of units.**

(a) If the declaration expressly permits it, a unit may be subdivided into two or more units. Upon application of a unit owner to subdivide a unit, the association shall, subject to the provisions of the declaration and other provisions of law, prepare, execute, and record an amendment to the declaration subdividing the unit, including in a condominium or planned community filing and recording a plat or plan that accompanies the amendment.

(b) The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit.

**Sec. 34.08.220. Easement for encroachments.**

If a unit or common element encroaches on another unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of wilful misconduct nor relieve a declarant or any other person of liability for failure to adhere to any plats and plans or, in a cooperative, to any representation in the public offering statement.

**Sec. 34.08.230. Use for sales purposes.**

(a) A declarant may maintain sales offices, management offices, and models in units or on common elements in the common interest community only if the declaration permits it and specifies the rights of a declarant with regard to their number, size, location, and relocation. In a cooperative or condominium, a sales office, management office, or model not designated a unit by the declaration is a common element. A declarant who ceases to be a unit owner ceases to have any rights under this section unless the unit is removed promptly from the common interest community under a right to remove reserved in the declaration. A declarant may maintain signs on the common elements advertising the common interest community subject to any limitations in the declaration.

(b) Rights granted under this section are subject to state law and to municipal ordinance.

**Sec. 34.08.240. Easement rights.**

(a) Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging the declarant's obligations or exercising special declarant rights, whether arising under this chapter or reserved in the declaration.

(b) In a planned community, subject to the provisions of AS 34.08.320(a)(6) and 34.08.430, a unit owner has an easement

(1) in the common elements for purposes of access to their units; and

(2) to use the common elements and all real estate that must become common elements for all other purposes.

**Sec. 34.08.250. Amendment of declaration.**

(a) Except for amendments that may be executed by a declarant under AS 34.08.170(b) or 34.08.180, by the association under AS 34.08.140(d), 34.08.160(c), 34.08.200(a), 34.08.210, or 34.08.740, or by certain unit owners under AS 34.08.160(b), 34.08.200(a), 34.08.210(b), or 34.08.260(b), and except as limited by (d) or required by (f) of this section, a declaration, including any required plats and plans, may be amended only by vote or agreement of unit owners of units comprising either at least 67 percent of the allocated interests in the association or a larger percentage specified in the declaration. A declaration may not specify a smaller number unless all of the units are restricted exclusively to nonresidential use.

(b) An action to challenge the validity of an amendment adopted by the association under this section may not be brought more than one year after the amendment is recorded.

(c) Each amendment to the declaration must be recorded, and a plat or plan that accompanies the amendment filed and recorded, in each recording district in which a portion of the common interest community is located and the amendment is effective only upon recording. An amendment, except an amendment under AS 34.08.200(a), must be indexed in the name of the common interest community and the association and in the name of the parties executing the amendment.

(d) Except to the extent expressly permitted or required in this chapter, an amendment may not create or increase special declarant rights, increase the number of units, or change the boundaries of a unit, the allocated interests of a unit, or the uses to which a unit is restricted, in the absence of unanimous consent of the unit owners.

(e) An amendment to the declaration required by this chapter to be recorded by the association must be prepared, executed, recorded, and certified on behalf of the association by an officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(f) The time limits specified in a declaration described under AS 34.08.130(a)(8) may be extended and additional development rights created if persons entitled to cast at least 80 percent of the votes in the association, including 80 percent of the votes allocated to units not owned by the declarant, agree to the extension or additional development rights. The agreement is effective 30 days after an amendment to the declaration reflecting the terms of the agreement is recorded unless all persons holding special declarant rights affected by the amendment or security interests in those rights

(1) record a written objection within the 30-day period, in which case, the amendment is void; or

(2) consent in writing when the amendment is recorded, in which case, the amendment is effective when recorded.

**Sec. 34.08.255. Amendment of a declaration where fewer than 50 percent of unit owners approve.**

(a) If a declaration requires owners having more than 50 percent of the votes in the association in a single class voting structure or unit owners having more than 50 percent of the votes in more than one class in a voting structure with more than one class to vote in favor of an amendment in order to amend a declaration, the association or a unit owner may petition the superior court for the judicial district in which the common interest community is located for an order reducing the percentage of the affirmative votes necessary for the adoption of the amendment. The petition shall describe the efforts that have been made to solicit the approval of the unit owners in the association in the manner required by the declaration, the number of affirmative and negative votes actually received, the number of percentage of affirmative votes required to adopt the amendment under the declaration, and any other matter the petitioner considers

relevant to the determination of the court. The petition must include as exhibits to the petition a copy of

- (1) the governing documents;
- (2) a complete text of the amendments;
- (3) a copy of each notice and the solicitation materials used in the solicitation of the approval of the amendment by the unit owners;
- (4) an explanation of the reason for the amendment;
- (5) other documentation relevant to the determination by the court.

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

(c) The court may, but is not required to, grant the petition if it finds that (1) the petitioner has given not less than 15 days' written notice of the court hearing to

- (A) each unit owner in the association;
- (B) a mortgagee of a mortgage or beneficiary of a deed of trust that is entitled to notice under the provisions of the declaration; and
- (C) the municipality in which the common interest community is located if it is entitled to notice under the declaration;

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

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

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

(5) in a voting structure with more than one class and where the declaration requires a majority of more than one class to vote in favor of the amendment, unit owners having more than 50 percent of the votes in each class required by the declaration to vote in favor of the amendment did vote in favor of the amendment;

(6) the amendment is reasonable; and

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

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

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

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

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

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

each affected class of unit owners approve the amendment;

(2) would eliminate a special right, preference, or privilege designated in the declaration as belonging to the declarant without the approval of the declarant; or

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

(f) An amendment to the declaration approved under this section is not effective until the order of the court and the amendment have been recorded in each recording district in which a portion of the common interest community is located. The amendment may be acknowledged by, and the court order and amendment may be recorded by, an individual designated in the declaration or by the association and, if no one is designated for that purpose, by the president of the association. On the recording of the amendment and the court order, the declaration, as amended under this section, has the same force and effect as if the amendment were adopted in compliance with the declaration.

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

**Sec. 34.08.260. Termination of common interest community.**

(a) Unless all units are taken by eminent domain, or unless there has been a foreclosure of a security interest that has priority over the declaration against an entire cooperative, a common interest community may be terminated only by agreement of unit owners of units comprising either at least 80 percent of the votes in the association or any larger percentage specified in the declaration. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses.

(b) An agreement to terminate must be evidenced by the execution of a termination agreement or ratification of an agreement to terminate, in the same manner as a deed is executed by the required number of unit owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and each ratification of the termination agreement must be recorded in each recording district in which a portion of the common interest community is situated. A termination agreement is effective only upon recording.

(c) If a condominium or planned community contains only units having horizontal boundaries described in the declaration, a termination agreement may provide that all of the common elements and units of the common interest community must be sold following termination. If, under the agreement, any real estate in the common interest community is to be sold following termination, the termination agreement must set out the minimum terms of the sale.

(d) If a condominium or planned community contains a unit not having horizontal boundaries described in the declaration, a termination agreement may provide for sale of the common elements, but it may not require that the unit be sold following termination unless the declaration as originally recorded provided otherwise or unless all unit owners consent to the sale.

(e) The association, on behalf of the unit owners, may contract for the sale of real estate in a common interest community, but the contract is not binding on the unit owners until approved under (a) and (b) of this section. If real estate is to be sold following termination, title to the real estate, upon termination,

vests in the association as trustee for the holders of all interests in the units. The association has at that time all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lien holders as their interests may appear under (h), (i), and (j) of this section. Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and the successor in interest of each unit owner has an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit. During the period of that occupancy, each unit owner and the successors in interest of each unit owner remain liable for all assessments and other obligations imposed on unit owners by this chapter or the declaration.

(f) In a condominium or planned community, if the real estate constituting the common interest community is not to be sold following termination, title to the common elements and, in a common interest community containing only units having horizontal boundaries described in the declaration, title to all the real estate in the common interest community, vests in the unit owners upon termination as tenants in common in proportion to their respective interests under (j) of this section, and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the successors in interest of each unit owner have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit.

(g) Following termination of the common interest community, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear.

(h) Following termination of a condominium or planned community, a creditor of the association holding a lien on the units that was reduced to judgment and recorded before termination, may enforce the lien in the same manner as any other lien holder. Each other creditor of the association shall be treated as if the creditor had perfected a lien on the units immediately before termination.

(i) In a cooperative, the declaration may provide that each creditor of the association has priority over the interests of unit owners and creditors of unit owners. In that event, following termination, a creditor of the association holding a lien on the cooperative that was reduced to judgment and recorded before termination may enforce the lien in the same manner as a lien holder, and each other creditor of the association shall be treated as if the creditor had perfected a lien against the cooperative immediately before termination. Unless the declaration provides that all creditors of the association have that priority (1) the lien of each creditor of the association that was perfected against the association before termination becomes, upon termination, a lien against the interest of each unit owner in the unit as of the date the lien was perfected; (2) any other creditor of the association shall be treated upon termination as if the creditor had perfected a lien against the interest of each unit owner immediately before termination; (3) the amount of the lien of an association's creditor described in (1) and (2) of this subsection against the interest of each unit owner must be proportionate to the ratio which the common expense liability of each unit bears to the common expense liability of all of the units; (4) the lien of each creditor of each unit owner that was perfected before termination continues as a lien against the unit as of the date the lien was perfected; and (5) the assets of the association must be distributed to each unit owner and each lien holder as their interests may appear in the order described in this section. Creditors of the association are not entitled to payment from a unit owner in excess of the amount of the creditor's lien against the interest of the unit owner.

(j) The respective interests of each unit owner referred to in (e) – (i) of this

section are as follows:

(1) except as provided in (2) of this subsection, the respective interest of each unit owner is the fair market value of the unit, allocated interests, and any limited common elements immediately before the termination, as determined by one or more independent appraisers selected by the association; the decision of the independent appraisers must be distributed to the unit owners and becomes final unless disapproved within 30 days after distribution by unit owners of units comprising 25 percent of the allocated interests in the association; the proportion of each unit owner's interest to that of all unit owners is determined by dividing the fair market value of the unit and its allocated interests by the total fair market value of all units and their allocated interests;

(2) if a unit or a limited common element is destroyed to the extent that an appraisal of the fair market value of the unit or the limited common interest before destruction cannot be made, the interests of all unit owners are,

(A) in a condominium, their respective common element interests immediately before the termination;

(B) in a cooperative, their respective ownership interests immediately before the termination; and

(C) in a planned community, their respective common expense liabilities immediately before the termination.

(k) In a condominium or planned community, except as provided in (l) of this section, foreclosure or enforcement of a lien or encumbrance against the entire common interest community does not, of itself, terminate the common interest community, and foreclosure or enforcement of a lien or encumbrance against a portion of the common interest community, other than withdrawable real estate, does not withdraw the portion from the common interest community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not withdraw, of itself, the real estate from the common interest community, but the person taking title to the real estate may require from the association, upon request, an amendment excluding the real estate from the common interest community.

(l) In a condominium or planned community, if a lien or encumbrance against a portion of the real estate comprising the common interest community has priority over the declaration and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, upon foreclosure, may record an instrument excluding the real estate subject to the lien or encumbrance from the common interest community.

(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

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

(2) by the approval of the unit owners having the percentage of votes as specified in the declaration for an amendment to the declaration; or

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

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

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

**Sec. 34.08.270. Rights of secured lenders.**

(a) A financial institution, including a commercial bank, mutual savings bank, savings and loan association, credit union and mortgage company when acting as an ordinary money lender, whether secured or not, and providing financing for a common interest community subject to the provisions of this chapter or to a declarant, unit owner, or purchaser for that person's interest subject to the provisions of this chapter, is not liable under this chapter to a person for an act, omission, warranty, product or structural defect, obligation, breach of contract or other duty arising from common interest community financing.

(b) For purposes of this section, "acting as an ordinary money lender" means a non-negligent action including, but not limited to, property inspections, review of public offering statements, approval of declarations, plats and construction plans and requiring proof of compliance with laws or codes to protect a lender's security interest or otherwise assure the proper use of or repayment of its loan. A lender does not act as an ordinary money lender when it is an affiliate of the declarant or possesses a direct equity interest other than an interest foreclosed upon in the promotion, development, and sale of a common interest.

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

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

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

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

**Sec. 34.08.280. Master associations.**

(a) If the declaration provides that a power described in [AS 34.08.320](#) is to be exercised by or may be delegated to a profit or nonprofit corporation that exercises those or other powers on behalf of one or more common interest communities or for the benefit of the unit owners of one or more common interest communities, each provision of this chapter applicable to a unit owners' association applies to the corporation, except as modified by this section.

(b) Unless it is acting in the capacity of an association described in [AS 34.08.310](#), a master association may exercise the powers set out in [AS 34.08.320\(a\)\(2\)](#) only to the extent expressly permitted in the declarations of common interest communities that are part of the master association or expressly described in the delegation of power from the common interest communities to the master association.

(c) If the declaration of a common interest community provides that the executive board may delegate certain powers to a master association, the members of the executive board of the common interest community are not liable for an act or omission of the master association with respect to the delegated powers following the delegation.

(d) The rights and responsibilities of unit owners with respect to the unit owners' association under [AS 34.08.330](#), 34.08.390, 34.08.400, 34.08.410, and 34.08.430 apply in the conduct of the affairs of a master association only to persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of this chapter.

(e) If a master association is also an association described in [AS 34.08.310](#), the certificate of incorporation or other instrument creating the master association and each declaration of a common interest community that had assigned

powers by the declaration or that has delegated powers to the master association, may provide that the executive board of the master association must be elected after the period of declarant control in one of the following ways:

(1) each unit owner of all common interest communities subject to the master association may elect all members of the executive board of the master association;

(2) the members of the executive boards of all common interest communities subject to the master association may elect the members of the executive board of the master association;

(3) the unit owners of each common interest community subject to the master association may elect specified members of the executive board of the master association;

(4) the members of the executive board of each common interest community subject to the master association may elect specified members of the executive board of the master association.

**Sec. 34.08.290. Merger or consolidation of common interest communities.**

(a) Any two or more common interest communities of the same form of ownership, by agreement of the unit owners under (b) of this section, may be merged or consolidated into a single common interest community. On the merger or consolidation, unless the agreement otherwise provides, the resulting common interest community is the legal successor, for all purposes, of the preexisting common interest communities, and the operations and activities of each association of the preexisting common interest communities are merged or consolidated into a single association that holds all powers, rights, obligations, assets, and liabilities of all preexisting associations.

(b) An agreement of two or more common interest communities to merge or consolidate under (a) of this section must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting common interest communities following approval by owners of units comprising the percentage of votes in each common interest community required to terminate the common interest community. The agreement must be recorded in each recording district in which a portion of the common interest community is located and is not effective until recorded.

(c) Each merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the units of the resultant common interest community either (1) by stating the reallocations or the formulas upon which they are based or (2) by stating the percentage of overall allocated interests of the new common interest community that are allocated to all of the units comprising each of the preexisting common interest communities, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting common interest community must be equal to the percentages of allocated interests allocated to the unit by the declaration of the preexisting common interest community.

**Sec. 34.08.300. Addition of unspecified real estate.**

In a planned community, if the right is originally reserved in the declaration, the declarant, in addition to any other development right, may amend the declaration at any time during as many years as are specified in the declaration for adding additional real estate to the planned community without describing the location of the real estate in the original declaration. The amount of real estate added to the planned community under this section may not exceed 10 percent of the real estate described in [AS 34.08.130\(a\)\(3\)](#) and the declarant may not in any event increase the number of units in the planned community beyond the number stated in the original declaration under [AS 34.08.130\(a\)\(4\)](#).



### Article 3. Management of the Common Interest Community.

#### Sec. 34.08.310. Organization of unit owners' association.

An association of unit owners must be organized no later than the date on which the first unit in the common interest community is conveyed. The membership of the association at all times consists exclusively of all unit owners or, following termination of the common interest community, of all former unit owners entitled to distributions of proceeds under AS 34.08.260 or their heirs, successors, or assigns. The association must be organized as a profit or nonprofit corporation, trust, or partnership.

#### Sec. 34.08.320. Powers of unit owners' association.

(a) Except as provided in (b) of this section and subject to the provisions of the declaration, the association may

- (1) adopt and amend bylaws and rules and regulations;
- (2) adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;
- (3) hire and discharge managing agents and other employees, agents, and independent contractors;
- (4) institute, defend, or intervene in litigation or administrative proceedings or seek injunctive relief for violations of its declaration, bylaws, or rules in its own name on behalf of itself or two or more unit owners on matters affecting the common interest community;
- (5) make contracts and incur liabilities;
- (6) regulate the use, maintenance, repair, replacement, and modification of common elements;
- (7) cause additional improvements to be made as a part of the common elements;
- (8) acquire, hold, encumber, and convey in its own name any right, title, or interest to real estate or personal property, except that
  - (A) common elements in a condominium or planned community may be conveyed or subjected to a security interest only under AS 34.08.430; and
  - (B) part of a cooperative may be conveyed or all or part of a cooperative may be subjected to a security interest only under AS 34.08.430;
- (9) grant easements, leases, licenses, and concessions through or over the common elements;
- (10) impose and receive a payment, fee, or charge for the use, rental, or operation of the common elements, other than limited common elements described in AS 34.08.100(2) and (4), and for services provided to unit owners;
- (11) impose a reasonable charge for late payment of assessments and, after notice and an opportunity to be heard, levy a reasonable fine for a violation of the declaration, bylaws, rules, and regulations of the association;
- (12) impose a reasonable charge for the preparation and recording of an amendment to the declaration, the filing and recording of a plat or plan that accompanies an amendment, resale certificate required by AS 34.08.590, or a statement of unpaid assessments;
- (13) provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;

(14) assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly permits the assignment;

(15) exercise any other powers conferred by the declaration or bylaws;

(16) exercise any other power that may be exercised in the state by a legal entity of the same type as the association; and

(17) exercise any other power necessary and proper for the governance and operation of the association.

(b) The declaration may not impose limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons.

**Sec. 34.08.330. Executive board members and officers.**

(a) Except as provided in the declaration, the bylaws, (b) of this section, or other provisions of this chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board are required to exercise the care required of fiduciaries of the unit owners.

(b) The executive board may not act on behalf of the association to amend the declaration, to terminate the common interest community, or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members, but the executive board may fill vacancies in its membership for the unexpired portion of a term.

(c) Within 30 days after adoption of a proposed budget for the common interest community, the executive board shall provide a summary of the budget to each unit owner, and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than 14 nor more than 30 days after mailing of the summary. Unless at that meeting a majority of all unit owners or any larger vote specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the unit owners continues until the unit owners ratify a budget proposed by the executive board.

(d) Subject to (e) of this section, the declaration may provide for a period of declarant control of the association, during which a declarant or persons designated by the declarant may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (1) 60 days after conveyance of 75 percent of the units that may be created to unit owners other than a declarant; (2) two years after all declarants have ceased to offer units for sale in the ordinary course of business; or (3) two years after any right to add new units was last exercised. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of the periods established in this subsection, but in that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(e) Not later than 60 days after conveyance of 25 percent of the units that may be created to unit owners other than a declarant, at least one member and not less than 25 percent of the members of the executive board must be elected by unit owners other than the declarant. Not later than 60 days after conveyance of 50 percent of the units that may be created to unit owners other than a declarant, not less than 33 1/3 percent of the members of the executive board must be elected by unit owners other than the declarant.

(f) Except as otherwise provided in AS 34.08.280(e), not later than the termination of any period of declarant control, the unit owners shall elect an executive board. The executive board consists of at least three members, except that if there are fewer than 12 units in the common interest community, the declaration may provide for an executive board with one or two members. At least a majority of the members of the executive board must be unit owners. The executive board shall elect the officers. The executive board members and officers take office upon election.

(g) Notwithstanding any provision of the declaration or bylaws to the contrary, following notice under AS 34.08.390, the unit owners, by a two-thirds vote of all persons present and entitled to vote at a meeting of the unit owners at which a quorum is present, may remove a member of the executive board with or without cause, other than a member appointed by the declarant.

**Sec. 34.08.340. Transfer of association control.**

(a) Before or not more than 60 days after the termination of declarant control, the declarant shall relinquish control of the common interest community and the unit owners shall accept control. At the same time, the declarant shall deliver to the common interest community all property of the unit owners and of the common interest community held or controlled by the declarant including, but not limited to

(1) the original or a photocopy of the recorded declaration and each amendment to the declaration; if a photocopy is provided, it shall be certified by affidavit of the declarant, or an officer or agent of the declarant, as being a complete copy of the actual recorded declaration;

(2) a certified copy of the common interest community articles of incorporation, trust or partnership agreement;

(3) a copy of the bylaws;

(4) the minute books, including all minutes, and other books and records of the common interest community;

(5) the rules and regulations that have been adopted;

(6) resignations of officers and members of the executive board who are required to resign because the declarant is required to relinquish control of the common interest community;

(7) the financial records, including financial statements of the common interest community, and source documents since the incorporation of the common interest community through the date of turnover;

(8) common interest community funds or control of the funds of the common interest community;

(9) all tangible personal property that is property of the common interest community, represented by the declarant to be the property of the association or ostensibly the property of the association and an inventory of the property;

(10) a copy of the plans and specifications utilized in the construction or remodeling of improvements and the supplying of equipment to the common interest community and in the construction and installation of all mechanical components serving the improvements and the site, with a certificate in affidavit form of the declarant or an architect or engineer authorized to practice in the state that the plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the common interest community property and for the construction and installation of the mechanical components serving the improvements;

(11) insurance policies;

(12) copies of any certificates of occupancy that may have been issued for the common interest community property;

(13) any other permits issued by governmental bodies applicable to the common interest community property in force or issued within one year before the date the unit owners other than the declarant take control of the common interest community;

(14) all written warranties of the contractor, subcontractors, suppliers, and manufacturers, if any, that are still effective;

(15) a roster of unit owners and their addresses and telephone numbers, if known, as shown on the declarant's records;

(16) leases of the common elements and other leases to which the association is a party;

(17) employment contracts or service contracts in which the common interest community is one of the contracting parties or service contracts in which the common interest community or the unit owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person performing the service;

(18) all other contracts to which the common interest community is a party.

(b) The records shall be reviewed by an independent certified public accountant. The minimum report required is a review in accordance with generally accepted accounting standards as defined by regulation by the Board of Public Accountancy. The accountant performing the review shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for the common interest community purposes and the billings, cash receipts, and related records to determine that the declarant was charged and paid the proper amounts of assessments.

(c) Before the transfer of control from the declarant to the association, an inspection of the common areas and limited common areas subject to the association's control shall be completed by

(1) an independent registered engineer, architect, or land surveyor;

(2) an appraiser with the designation of senior residential appraiser, senior real property appraiser, or senior real estate analyst of the Society of Real Estate Appraisers;

(3) a residential member, or member of the appraisal institute, of the American Institute of Real Estate Appraisers; or

(4) an individual with a designation established by regulation of the Alaska Housing Finance Corporation for fee appraisers who certify the completion of construction.

(d) A report shall be prepared indicating the incomplete work and repairs needed and the method of completing the work and making the repairs. 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 of control under representations in the public offering statement.

**Sec. 34.08.350. Transfer of special declarant rights.**

(a) A special declarant right created or reserved under this chapter may be transferred only by an instrument evidencing the transfer that has been recorded

in each recording district in which any portion of the common interest community is located. The instrument is not effective unless executed by the transferee.

(b) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(1) a transferor is not relieved of an obligation or liability arising before the transfer and remains liable for warranty obligations imposed by this chapter; lack of privity does not deprive a unit owner of standing to maintain an action to enforce an obligation of the transferor;

(2) if a successor to a special declarant right is an affiliate of a declarant, the transferor is jointly and severally liable with the successor for an obligation or liability of the successor relating to the common interest community;

(3) if a transferor retains a special declarant right but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for an obligation or liability imposed on a declarant by this chapter or by the declaration relating to the retained special declarant right and arising after the transfer;

(4) a transferor is not liable for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage instrument, deed of trust, or other agreement creating a security interest, on the foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Act or receivership proceedings of a unit owned by a declarant or of real estate in a common interest community subject to development rights, the person acquiring title to the property being foreclosed or sold, but only upon the request of the person, succeeds either (1) to the special declarant rights related to the property held by the declarant, or (2) only to any rights reserved in the declaration under AS 34.08.230 and held by that declarant to maintain models, sales offices, and signs. The judgment or instrument conveying title must provide for transfer of only the special declarant rights requested.

(d) Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Act or receivership proceedings, of the interests in a common interest community owned by a declarant

(1) the declarant ceases to have special declarant rights, and

(2) the period of declarant control terminates unless the judgment or instrument conveying title provides for transfer of the special declarant rights held by the declarant to a successor declarant.

(e) The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

(1) a successor to any special declarant right who is an affiliate of a declarant is subject to the obligations and liabilities imposed on the transferor by this chapter or by the declaration;

(2) a successor to any special declarant right, other than a successor described in (3) or (4) of this subsection or a successor who is an affiliate of a declarant, is subject to the obligations and liabilities imposed by this chapter or the declaration

(A) on a declarant that relate to the successor's exercise or nonexercise of special declarant rights; or

(B) on the transferor, other than

(i) misrepresentations by a previous declarant;

(ii) warranty obligations on improvements made by a previous declarant or made before the common interest community was created;

(iii) breach of a fiduciary obligation by a previous declarant or the appointees of a previous declarant to the executive board; or

(iv) a liability or obligation imposed on the transferor as a result of the acts or omissions of the transferor after the transfer;

(3) a successor to a right reserved in the declaration only to maintain models, sales offices, and signs may not exercise any other special declarant right and is not subject to liability or obligation as a declarant except the obligation to provide a public offering statement and liability arising as a result of the statement;

(4) a successor to the special declarant rights held by a transferor who succeeded to the rights under a deed or other instrument of conveyance in lieu of foreclosure or under a judgment or instrument conveying title under (c) of this section may declare in a recorded instrument, including one conveying title under (c) of this section

(A) an intention to hold the rights solely for transfer to another person; or

(B) an intention to hold the rights for transfer to another person after making, finishing, or completing improvements in conformity with the declaration, consistent with the public offering statement, plans, and overall development scheme of the common interest community for purposes of preserving or improving the common interest community.

(f) Until transferring the special declarant rights to a person acquiring title to a unit or real estate subject to the development rights owned by the successor, or until recording an instrument permitting exercise of all those rights, the successor may not exercise any of the rights other than those specified in (e)(4)(B) of this section and the right held by the transferor of the successor to control the executive board under AS 34.08.330(d) for the duration of any period of declarant control and an attempted exercise of rights is void.

(g) So long as a successor declarant may not exercise special declarant rights under (e) of this section, and for purposes of (e)(4)(B) of this section so long as the successor declarant transfers within the time period specified in (h) of this section the rights to a subsequent successor declarant who will assume liability for the improvements made by the successor declarant, the successor declarant is not subject to liability or obligation as a declarant other than liability for acts and omissions under AS 34.08.330(d).

(h) If a lender fails to transfer special declarant rights to a successor declarant within one year of the date of recording an instrument under (e)(4)(B) of this section, then the lender becomes subject to the obligations and liabilities imposed by this chapter or the declaration as specified in (e)(2) of this section.

(i) Nothing in this section subjects a successor to a special declarant right to a claim against or other obligation of a transferor declarant, other than a claim or obligation arising under this chapter or the declaration.

**Sec. 34.08.360. Termination of contracts and leases of declarant.**

(a) If entered into before the executive board elected by the unit owners under AS 34.08.330(f) takes office (1) a management contract, employment contract, or

lease of recreational or parking areas or facilities; (2) a contract or lease between the association and a declarant or an affiliate of a declarant; or (3) a contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing may be terminated without penalty by the association at any time after the executive board elected by the unit owners under AS 34.08.330(f) takes office upon not less than 90 days' notice to the other party.

(b) This section does not apply to

(1) a lease if a termination of the lease would terminate the common interest community or reduce its size, unless the real estate subject to the lease was included in the common interest community for the purpose of avoiding the right of the association to terminate a lease under this section; or

(2) a proprietary lease.

**Sec. 34.08.370. Bylaws.**

(a) The bylaws of the association must provide

(1) for the number of the members of the executive board and for the titles of the officers of the association;

(2) for the election by the executive board of a president, treasurer, secretary, and other officers of the association specified by the bylaws;

(3) for the qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers and filling vacancies;

(4) which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent;

(5) which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and

(6) for a method of amending the bylaws.

(b) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association considers necessary and appropriate.

**Sec. 34.08.380. Upkeep of common interest community.**

(a) Except to the extent provided by the declaration, by (b) of this section, or by AS 34.08.440(h), the association is responsible for the maintenance, repair, and replacement of the common elements, and each unit owner is responsible for the maintenance, repair, and replacement of the unit. Each unit owner shall afford to the association, the other unit owners, and to their agents or employees, access through the unit that is reasonably necessary for maintenance and repair of the unit. If damage is inflicted on the common elements or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair of the damage.

(b) In addition to the liability that a declarant as a unit owner has under this chapter, a declarant is solely liable for the expenses in connection with real estate subject to development rights. No other unit owner and no other portion of the common interest community is subject to a claim for payment of expenses in connection with development rights. Unless the declaration provides otherwise, the income and proceeds from real estate subject to development rights inures to the declarant.

(c) In a planned community, when all development rights have expired with respect to real estate, the declarant remains liable for the expenses of the real estate unless, upon expiration, the declaration provides that the real estate

becomes common elements or units.

**Sec. 34.08.390. Meetings.**

A meeting of the association must be held at least once each year. A special meeting of the association may be called by the president, by a majority of the members of the executive board, or by unit owners comprising either 20 percent or a lower percentage specified in the bylaws of the votes in the association. Not less than 10 nor more than 60 days in advance of a meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to the mailing address designated in writing by the unit owner. The notice of a meeting must state the time and place of the meeting and the items on the agenda, including the general nature of a proposed amendment to the declaration or bylaws, budget changes, and a proposal to remove an officer or member of the executive board.

**Sec. 34.08.400. Quorums.**

(a) Unless the bylaws provide otherwise, a quorum is present throughout a meeting of the association if persons entitled to cast 20 percent of the votes that may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.

(b) Unless the bylaws specify a larger percentage, a quorum is considered present throughout a meeting of the executive board if persons entitled to cast 50 percent of the votes on the board are present at the beginning of the meeting.

**Sec. 34.08.410. Voting and proxies.**

(a) If only one of several owners of a unit is present at a meeting of the association, the owner present is entitled to cast all the votes allocated to the unit. If more than one of the owners are present, the votes allocated to the unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to the unit without protest being made promptly to the person presiding over the meeting by another owner of the unit.

(b) Votes allocated to a unit may be cast under a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may revoke a proxy given under this section only by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.

(c) If the declaration requires that votes on specified matters affecting the common interest community be cast by lessees rather than unit owners of leased units (1) the provisions of (a) and (b) of this section apply to lessees as if they were unit owners; (2) unit owners who have leased their units to other persons may not cast votes on the specified matters; and (3) lessees are entitled to notice of meetings, access to records, and other rights respecting the matters as if they were unit owners. Unit owners must also be given notice under [AS 34.08.390](#), of all meetings at which lessees are entitled to vote.

(d) Votes allocated to a unit owned by the association may not be cast.

**Sec. 34.08.420. Tort and contract liability.**

Neither the association nor any unit owner except the declarant is liable for the torts of the declarant in connection with any part of the common interest community that the declarant has the responsibility to maintain. An action alleging a wrong done by the association must be brought against the association



and not against a unit owner. If the wrong occurred during a period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to a unit owner for (1) tort losses not covered by insurance suffered by the association or the unit owner, and (2) each cost that the association would not have incurred but for a breach of contract or other wrongful act or omission. If the declarant is liable to the association under this section, the declarant is liable for the expenses of litigation incurred by the association. A statute of limitation affecting the right of action of the association under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from maintaining an action under this section because the person is a unit owner or a member or officer of the association. A lien resulting from a judgment against the association is governed by [AS 34.08.480](#).

**Sec. 34.08.430. Conveyance or encumbrance of common elements.**

(a) In a condominium or planned community, portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least 80 percent of the votes in the association, including 80 percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to the action, but each owner of a unit to which a limited common element is allocated must agree in order to convey the limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if each of the units is restricted exclusively to nonresidential uses. The proceeds of the sale and proceeds of a loan secured by encumbering a common area are an asset of the association.

(b) Part of a cooperative may be conveyed and all or part of a cooperative may be subjected to a security interest by the association if persons entitled to cast at least 80 percent of the votes in the association, including 80 percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to the action, but, if fewer than all of the units or limited common elements are to be conveyed or subjected to a security interest, then each unit owner of the units to which the limited common elements are allocated must agree in order to convey the units or limited common elements or subject them to a security interest. The declaration may specify a smaller percentage only if each of the units is restricted exclusively to nonresidential uses. The proceeds of the sale and proceeds of a loan secured by encumbering a common area are an asset of the association. A purported conveyance or other voluntary transfer of an entire cooperative, unless made under [AS 34.08.260](#), is void.

(c) An agreement to convey common elements in a condominium or planned community or to subject the common elements to a security interest and an agreement to convey any part of a cooperative or subject the cooperative to a security interest must be evidenced by the execution of an agreement, or ratifications of the agreement, in the same manner as a deed by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before the date. The agreement and each ratification of the agreement must be recorded in each recording district in which a portion of the common interest community is situated and is effective only upon recording.

(d) The association on behalf of the unit owners may contract to convey an interest in common interest community under (a) of this section, but the contract is not enforceable against the association until approved under (a) – (c) of this section. After approval under (a) – (c) of this section, the association has the powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute a deed or other instrument.

(e) Unless made under this section, a purported conveyance, encumbrance, judicial sale, or other voluntary transfer of common elements or of any other

part of a cooperative is void.

(f) A conveyance or encumbrance of common elements or of a cooperative under this section does not deprive a unit of its rights of access and support.

(g) Unless the declaration provides otherwise, a conveyance or encumbrance of common elements under this section does not affect the priority or validity of preexisting encumbrances.

(h) In a cooperative, the association may acquire, hold, encumber, or convey a proprietary lease without complying with this section.

**Sec. 34.08.440. Insurance.**

(a) Commencing not later than the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available,

(1) property insurance on the common elements and, in a planned community, on property that must become common elements, insuring against all risks of direct physical loss commonly insured against or, in the case of conversion property, against fire and extended coverage perils, and the total amount of insurance after application of any deductibles must be not less than 100 percent of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(2) liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than an amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements and, in cooperatives, of each unit.

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

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

(d) Insurance policies carried under (a) and (b) of this section must provide that

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

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

(3) an act or omission by a unit owner, unless acting within the scope of the unit owner's authority on behalf of the association, will not 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 policy of the association provides primary insurance.

(e) A loss covered by the property policy under (a)(1) and (b) of this section must be adjusted with the association, but the insurance proceeds for the loss are payable to an insurance trustee designated for the purpose or to the association and not to a holder of a security interest. The insurance trustee or the association shall hold insurance proceeds in trust for the association, unit owners, and lien holders as their interests may appear. Subject to the provisions of (h) of this section, 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 a portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or unless the common interest community is terminated.

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

(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 a 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 nonrenewal 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 last known addresses.

(h) A portion of the common interest community for which insurance is required under this section that is damaged or destroyed must be repaired or replaced promptly by the association unless: the common interest community is terminated and AS 34.08.260 applies; repairs or replacement would be illegal under a state statute or municipal ordinance governing health or safety; or 80 percent of the unit owners, including each 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, (1) 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 (2) except to the extent that other persons will be distributees, (A) the insurance proceeds attributable to a unit and limited common elements that are not rebuilt must be distributed to the owner of the unit and the owner of the unit to which the 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 each unit owner or lien holder, as their interests may appear, as follows: (i) in a condominium, in proportion to the common element interest of all the units and (ii) 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 a unit, the allocated interests of the unit are reallocated upon the vote as if the unit had been condemned under AS 34.08.740(a), and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations, and file and record a plat or plan that accompanies the amendment.

(i) The provisions of this section may be varied or waived in a common interest community if all of the units are restricted to nonresidential use.

**Sec. 34.08.450. Surplus funds.**

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

**Sec. 34.08.460. 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 (c) – (e) of this section, all common expenses must be assessed against each unit in accordance with the allocations set out in the declaration under AS 34.08.150(a) and (b). A past due common expense assessment or an installment of the assessment bears interest at the rate established by the association not exceeding 18 percent per year.

(c) To the extent required by the declaration

(1) a common expense associated with the maintenance, repair, or replacement of a limited common element must be assessed against each unit to which that limited common element is assigned, equally, or in proportion provided by the declaration;

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

(3) the costs of insurance must be assessed in proportion to risk; and

(4) the costs of utilities that can be determined must be assessed in proportion to usage and if the costs of utilities cannot be determined, the cost of nondeterminable utilities shall be shared as a common expense.

(d) An assessment to pay a judgment against the association 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 a common expense is caused by the misconduct of a unit owner, the association may assess that expense exclusively against the unit.

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

#### **Sec. 34.08.470. Lien for assessments.**

(a) The association has a lien on a unit for an assessment levied against the 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 under AS 34.08.320(a)(10) – (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 becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except (1) a lien and encumbrance recorded before the recordation of the declaration and, in a cooperative, a lien and encumbrance which the association creates, assumes, or takes subject to; (2) 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 interest of the unit owner and perfected before the date on which the assessment sought to be enforced became delinquent; and (3) a lien for real estate taxes and other governmental assessments or charges against the unit or cooperative. A lien under this section is also prior to all security interests described in (2) of this subsection if the common expense assessments based on the periodic budget adopted by the association under AS 34.08.460(a) would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of a mechanic's or materialman's lien, or the priority of a lien for other assessments made by the association. A lien under this section is not subject to the provisions of AS 09.38.010.

(c) Unless the declaration provides otherwise, if two or more associations have

liens for assessments created at any time on the same property, each lien has equal priority.

(d) The recording of the declaration constitutes record notice and perfection of the lien. Further recording of a claim of lien for assessment under this section is not required.

(e) A lien for an unpaid assessment is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessment becomes due.

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

(g) A judgment or decree in an action brought under this section is enforceable by execution under [AS 09.35.010](#).

(h) The association upon written request shall furnish to a unit owner a statement setting out the amount of unpaid assessments against the unit. If the interest of the unit owner 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 each unit owner.

(i) In a cooperative, upon nonpayment of an assessment on a unit, a 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 under this section.

(j) The association's lien may be foreclosed under this subsection as follows:  
(1) in a condominium or planned community, the lien of the association must be foreclosed as a lien is foreclosed under [AS 34.35.005](#);

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

(3) in a cooperative whose unit owners' interests in the units are personal property, the lien of the association must be foreclosed as a security interest under [AS 45.29](#).

(k) In a cooperative, if the interest of the unit owner in a unit is real estate,

(1) the association, upon nonpayment of an assessment and compliance with this subsection, may sell the unit at a public sale or by private negotiation, and at any time and place; each aspect of the sale, including the method, advertising, time, place, and terms must be reasonable; the association shall give reasonable written notice to the unit owner and a lessee of the unit owner of the time and place of the 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 that would be cut off by the sale, but only if the recorded interest was on record seven weeks before the date specified in the notice as the date of a public sale or seven 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 five weeks after the sending of the notice; the association may buy at a 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 under AS 09.45.170;

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

(A) the reasonable expenses of sale;

(B) the reasonable expenses of securing possession before sale including holding, maintaining, and preparing the unit for sale, payment of taxes and other governmental charges, premiums on hazard and liability insurance;

(C) satisfaction of the lien of the association;

(D) satisfaction in the order of priority of a subordinate claim of record; and

(E) 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 after a foreclosure of the association's lien by power of sale and that person conducting the sale 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 nonpayment of the assessment and of the giving of the notices required by this subsection are sufficient proof of the facts recited and of the authority of the person to sign; further proof of authority is not required even if 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 or the holder of a subordinate security interest may cure the default of the unit owner and prevent sale or other disposition by tendering the performance due under the security agreement, including an amount due because of exercise of a right to accelerate, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender.

#### **Sec. 34.08.480. Other liens.**

(a) In a condominium or planned community,

(1) except as provided in (2) of this subsection, a recorded judgment for money against the association is not a lien on the common elements, but is a lien in favor of the judgment lien holder against the units in the common interest community at the time the judgment was entered and 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 under AS 34.08.430, the holder of the security interest shall exercise its right against the common elements before its judgment lien on a 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 the unit, and the lien holder, upon receipt of payment, shall promptly deliver a release of the lien covering the unit; the amount of the payment must be proportionate to the ratio that the 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 the unit owner's unit for any portion of the common expenses incurred in connection with the 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 a portion of the association's real estate, the association shall promptly transmit a copy of the notice to each unit owner of a unit located within the real estate to be foreclosed; a failure of the association to transmit the notice does not affect the validity of the foreclosure;

(2) whether or not the property of a unit owner is subject to the claims of creditors of the association, other property of a unit owner is not subject to the claims.

**Sec. 34.08.490. Association records.**

(a) The association shall keep financial records sufficiently detailed to enable the association to comply with [AS 34.08.590](#). Financial and other records must be made reasonably available for examination by a unit owner and an authorized agent of a unit owner.

(b) A professional manager, managing agent, accountant, or other person with whom the association has contracted for services shall return all association records within five days of the termination of the contract. If the association records are not returned within five days, the association may sue for their return and for damages.

**Sec. 34.08.500. Association as trustee.**

If a third person deals with the association in the capacity of the association as a trustee, the existence of trust powers and their proper exercise 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.**

**Sec. 34.08.510. Applicability.**

(a) The provisions of [AS 34.08.510](#) – 34.08.700 apply to all units subject to this chapter, except as provided in (b) of this section or as modified or waived by agreement of purchasers of units in a common interest community in which each unit is restricted to nonresidential use.

(b) A public offering statement and a resale certificate are not required to be prepared or delivered on

(1) a gratuitous disposition of a unit;

(2) a disposition under a court order;

(3) a disposition by a 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;

(7) a disposition of a unit in a planned community in which the declaration limits the maximum annual assessment of a unit to not more than \$300, as adjusted under AS 34.08.820, if

(A) 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;

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

(C) the planned community is not subject to development rights; or

(8) a disposition of property by a nonprofit development corporation if that corporation is eligible for assistance from the Neighborhood Reinvestment Corporation organized under 42 U.S.C. 8101 – 42 U.S.C. 8107 (Neighborhood Reinvestment Corporation Act) for neighborhood housing services, neighborhood revitalization, and economic development projects in a community.

**Sec. 34.08.520. Liability for public offering statement requirements.**

(a) Except as provided in (b) of this section, a declarant, before offering an interest in a unit to the public, shall prepare a public offering statement conforming to the requirements of AS 34.08.530, 34.08.540, 34.08.550, and 34.08.560.

(b) A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant or to a dealer who intends to offer units in the common interest community. On the transfer of responsibility, the transferor shall provide the transferee with information necessary to enable the transferee to fulfill the requirements of (a) of this section.

(c) A declarant or dealer who offers a unit to a purchaser shall deliver a public offering statement, or a preliminary version of the public offering statement that reasonably reflects the contents of the public offering statement that is subsequently delivered to a purchaser, in the manner required by AS 34.08.580(a). The person who prepared all or a part of the public offering statement is liable under AS 34.08.580 and 34.08.670 for any false or misleading statement set out in the statement or for any omission of a material fact from the statement with respect to the portion of the public offering statement that the person prepared. If a declarant did not prepare any part of a public offering statement, the declarant is not liable for a false or misleading statement set out in the statement or for an omission of a material fact from the statement unless the declarant 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 a real estate regime where a public offering statement is required under the laws of the state before the unit is offered for sale, a single public offering statement conforming to the requirements of AS 34.08.530, 34.08.540, 34.08.550, and 34.08.560 may be prepared and delivered in lieu of providing two or more public offering statements.

**Sec. 34.08.530. Public offering statements generally.**

(a) Except as provided in (b) of this section, a public offering statement must fully and accurately contain or disclose

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



(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, to the extent possible, the types, number, and declarant's schedule for the 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 plats and plans, and

(A) any recorded covenants, conditions, restrictions, and reservations affecting the common interest community;

(B) the bylaws and any rules or regulations of the association;

(C) copies of any contracts and leases to be signed by purchasers at closing; and

(D) a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under AS 34.08.360;

(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 the current budget of the association, the name of the person who prepared the budget, and a statement of the budget's assumptions concerning occupancy, assumptions concerning the calculation of the amount of reserves certified by a certified architect or engineer, and inflation factors, including, without limitation,

(A) a statement of the amount included in the budget as a reserve for repairs and replacement including the estimated cost of repair or replacement cost and the estimated useful life of the asset to be repaired or replaced;

(B) a statement of any other reserves;

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

(D) 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 the declarant pays and that the declarant expects may become a common expense of the association at a subsequent time 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 liens, defects, or encumbrances on or affecting the title to the common interest community;

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

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

(11) a statement that

(A) within 15 days after receipt of a public offering statement or a

preliminary version of the public offering statement that reasonably reflects the contents of the public offering statement that is subsequently delivered to a purchaser, a purchaser, before conveyance, may cancel any contract for purchase of a unit from a declarant;

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

(C) a purchaser who receives the public offering statement, or a preliminary version of the public offering statement that reasonably reflects the contents of the public offering statement that is subsequently delivered to a purchaser, more than 15 days before signing a contract 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 a 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 under AS 34.08.580, 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

(A) on use, occupancy, and alienation of the unit; and

(B) 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) current or expected fees or charges to be paid by a unit owner 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 improvements that the declarant is obligated to build under AS 34.08.690;

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

(19) each unusual and material circumstance, feature, or characteristic of the common interest community and the units; and

(20) in a cooperative,

(A) whether each unit owner 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

(B) a statement as to the effect on each 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 power is not 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 required by (a)(9), (10) and (15) – (19) of this section and the narrative descriptions of documents required by (a)(4) of this section.

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

**Sec. 34.08.540. Common interest communities subject to development rights.**

If the declaration provides that a common interest community is subject to development rights, the public offering statement must disclose, in addition to the information required by AS 34.08.530,

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

(2) a statement of the number or the percentage of the units that may be created that will be restricted exclusively to residential use, or a statement that representations have not been 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 the 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 that are not restricted exclusively to residential use;

(4) a brief narrative description of the 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 the allocated interests of each unit may be changed by the exercise of a development right described in (3) of this section;

(6) a statement of the extent to which a building or other improvement that may be erected under a 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 assurances have not been made in that regard;

(7) a general description of each other improvement that may be made and limited common elements that may be created within a part of the common interest community under a development right reserved by the declarant, or a statement that assurances have not been made in that regard;

(8) a statement of any limitations as to the location of any building or other improvement that may be made within a part of the common interest community under a development right reserved by the declarant, or a statement that assurances have not been made in that regard;

(9) a statement that the limited common elements created under a development right reserved by the declarant will be of the same general type and size as the limited common elements within other parts of the common interest community, or a statement of the type and size planned, or a statement that assurances have not been made in that regard;

(10) a statement that the proportion of limited common elements to units

created under a 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 assurances have not been made in that regard;

(11) a statement that each restriction in the declaration affecting use, occupancy, and alienation of a unit will apply to each unit created under a development right reserved by the declarant, or a statement of a differentiation that may be made as to the units, or a statement that assurances have not been made in that regard; and

(12) a statement of the extent to which an assurance made under this section applies or does not apply if a development right is not exercised by the declarant.

**Sec. 34.08.550. Time shares.**

If the declaration provides that ownership or occupancy of a unit is or may be in time shares, the public offering statement must disclose, in addition to the information required by AS 34.08.530,

(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;

(4) the extent to which the creation of time shares will or may affect the enforceability of the lien of the association for assessments under AS 34.08.470;

(5) any restraint on the power of the purchaser of the time-share unit to transfer the interest in the time-share unit;

(6) whether the time-share unit is included in an exchange program, the present cost and a good faith estimate of the future cost to the purchaser from the exchange program; and

(7) whether the purchaser is required to become a member of the exchange program.

**Sec. 34.08.560. Common interest communities containing conversion property.**

(a) The public offering statement of a common interest community containing conversion property must contain, in addition to the information required by AS 34.08.530,

(1) a statement by the declarant, based on a report prepared by a 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 property;

(2) a statement by the declarant of the expected useful life of each item reported on in (1) of this subsection or a statement that representations have not been 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 the violations.

(b) This section applies only to property that contains a unit that may be occupied for residential use.

**Sec. 34.08.570. 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 each requirement relating to the preparation of a public offering statement of

this chapter if the declarant delivers to the purchaser a copy of the public offering statement filed with the Securities and Exchange Commission. An interest in a common interest community is not subject to the registration requirements of [AS 45.56](#).

**Sec. 34.08.580. Purchaser's right to cancel.**

(a) A person required to deliver a public offering statement under [AS 34.08.520\(c\)](#) shall provide each purchaser with a copy of the public offering statement and each amendment to the statement, or a preliminary version of the public offering statement that reasonably reflects the contents of the public offering statement that is subsequently delivered to a purchaser, before conveyance of the unit, and not later than the date of a contract of sale. If a purchaser is not given the public offering statement, or a preliminary version of the public offering statement that reasonably reflects the contents of the public offering statement that is subsequently delivered to a purchaser, 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 of receipt of the public offering statement or preliminary version of the public offering statement.

(b) A purchaser who wishes to cancel a contract under (a) of this section may cancel the contract by hand delivering notice of the cancellation to the offeror or by mailing notice of the cancellation by prepaid United States mail to the offeror or to the agent for service of process of the offeror. Cancellation is without penalty and each payment made by the purchaser before cancellation must be refunded promptly to the purchaser.

(c) If a person required to deliver a public offering statement under [AS 34.08.520\(c\)](#) fails to provide a purchaser to whom a unit has been conveyed with the public offering statement and each amendment to the statement under (a) of this section, the purchaser, in addition to any right to damages or other relief, is entitled to receive from the person an amount equal to 10 percent of the sale price of the unit, plus 10 percent of the share, proportionate to the common expense liability, of an indebtedness of the association secured by security interests encumbering the common interest community.

**Sec. 34.08.590. Resales of units.**

(a) Except for a sale in which delivery of a public offering statement is required, or unless the sale is exempt under [AS 34.08.510\(b\)](#), a unit owner shall furnish to a purchaser before execution of a contract for sale of a unit or before conveyance a copy of the declaration, as amended, the bylaws, the rules or regulations of the association, and a certificate containing a statement disclosing

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

(2) 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) any other fee payable by unit owners;

(4) any capital expenditures in excess of \$3,000 approved by the executive board for the current and two next succeeding fiscal years;

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

(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) any unsatisfied judgment against the association and the status of any pending suit in which the association is a defendant or plaintiff;

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

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

(11) whether the executive board has knowledge of any violation of a health or safety, fire, or building code or other law, ordinance, or regulation with respect to the unit, the limited common elements assigned to the unit, or any other portion of the common interest community;

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

(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 written request by a unit owner and the payment of a reasonable fee, shall furnish a certificate containing the information necessary to enable the unit owner to comply with this section. A unit owner providing a certificate under (a) of this section is not liable to the purchaser for erroneous information provided by the association and included in the certificate.

(c) A purchaser is not liable for an unpaid assessment or fee greater than the amount set out 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 five days after the certificate was provided or until conveyance, whichever occurs first.

(d) A unit owner in a planned community that was created before January 1, 1986, is not exempt under AS 34.08.050, and does not collect assessments as a planned community and has not formed an association or elected officers or an executive board may comply with (a) and (b) of this section by furnishing the purchaser of the unit an affidavit in recordable form

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

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

(3) providing the purchaser a copy of

(A) the recorded declaration, if any, and any amendment to the declaration;

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

(C) a brief narrative description of

(i) the real estate comprising the planned community; and

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

**Sec. 34.08.600. Escrow of deposits.**

A deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement under AS 34.08.520(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

(1) delivered to the declarant at closing;

(2) delivered to the declarant because of the purchaser's default under a contract to purchase the unit; or

(3) refunded to the purchaser.

**Sec. 34.08.610. Release of liens.**

(a) In a sale of a unit where delivery of a public offering statement is required under AS 34.08.520(c), a seller before conveying a unit shall record and furnish to the purchaser a release of each lien, except a lien 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 encumbers

(1) in a condominium, the unit and its common element interest; or

(2) in a cooperative or planned community, the unit and any limited common elements assigned to the unit.

(b) Before conveying real estate to the association, the declarant shall have the real estate released from

(1) each lien the foreclosure of which would deprive unit owners of a right of access to or easement of support of their units; and

(2) each other lien on the real estate unless the public offering statement describes certain real estate that may be conveyed subject to liens in specified amounts.

**Sec. 34.08.620. Conversion property.**

(a) A declarant of a common interest community containing conversion 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 conversion property notice of the conversion and provide each person with the public offering statement no later than 180 days before the tenant and any subtenant in possession are required to vacate. If the conversion property consists of a mobile home park, notice of the conversion and delivery of a public offering statement shall be provided no later than one year before the tenant and any subtenant in possession are required to vacate. The notice must set out generally the rights of tenants and subtenants under this section and shall be hand delivered to the tenant or subtenant in possession or mailed by certified mail, return receipt requested, to the tenant and subtenant at the address of the unit or any other mailing address provided by a tenant. The failure to give notice as required by this section is a defense to an action for possession and the terms of the tenancy may not be altered during the notice period provided by this subsection. A tenant or subtenant may not be required to vacate upon less than 180 days' notice and a tenant and a subtenant in possession in a mobile home park may not be required to vacate upon less than one year's notice except for one of the following reasons:

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

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

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

(b) For 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 or rents the unit. If a tenant fails to purchase the unit during the 90-day period, the offeror shall extend a right of first refusal to the tenant who is leasing or renting the unit at the time of the conversion. The offeror may not offer to dispose of an interest in the unit at a price or on terms more favorable to the offeree than the price or terms offered to the tenant while the tenant is in possession. The tenant must exercise the right of first refusal within 90 days from the receipt of the offer and must provide the offeror a valid letter of intent or a preliminary loan commitment from a bank or mortgage lending institution within 30 days of receipt of the offer. This subsection does not apply to a unit in conversion 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.

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

(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 AS 09.45.060 - 09.45.160, the notice also constitutes a notice to quit.

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

**Sec. 34.08.630. Express warranties of quality.**

(a) An express warranty made by a seller to a purchaser of a unit, if relied upon by the purchaser, is created as follows:

(1) any affirmation of fact or promise that relates to the unit, its use, or rights appurtenant to the unit, area 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) a 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) a description of the quantity or extent of the real estate comprising the common interest community, including plats of 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) Formal words such as “warranty” or “guarantee” and the specific intention to make a warranty are not 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) A conveyance of a unit transfers to the purchaser each express warranty of quality made by a previous seller.

**Sec. 34.08.640. Implied warranties of quality.**

(a) A declarant and a dealer warrant 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 a dealer impliedly warrant 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 the declarant or dealer, 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 skillful and workmanlike manner.

(c) A declarant and a dealer warrant 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 under [AS 34.08.650](#).

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

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

**Sec. 34.08.650. Exclusion or modification of implied warranties of quality.**

(a) Except as limited by (b) of this section 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 written agreement of the parties; and

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

(b) With respect to a purchaser of a unit that may be occupied for residential use, a general disclaimer of implied warranties of quality is not effective, but a declarant and a 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.

**Sec. 34.08.660. Statute of limitations for warranties.**

(a) A judicial proceeding for breach of an obligation arising under [AS 34.08.630](#) or [34.08.640](#) must be commenced within six years after the cause of action accrues, but the parties may agree to reduce the period of limitation to not less than two years. If the unit 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 (c) of this section, a 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

(A) a common element that may be added to the common interest community or a portion of the common interest community, at the time the first unit is conveyed to a bona fide purchaser; or

(B) 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 an improvement or component of the common interest community, the cause of action accrues at the time the breach is discovered or at the end of the warranty period, whichever is earlier.

**Sec. 34.08.670. Effect of violations on rights of action.**

If a declarant or any other person subject to this chapter fails to comply with a provision of this chapter or with a provision of the declaration or bylaws, a 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 wilful failure to comply with this chapter.

**Sec. 34.08.680. Labeling of promotional material.**

Promotional material may not be displayed or delivered to a prospective purchaser that 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."

**Sec. 34.08.690. Declarant's obligation to complete and restore.**

(a) Except for an improvement labeled "NEED NOT BE BUILT," the declarant shall complete each improvement depicted on a site plan or other graphic representation, including any plats or plans prepared under AS 34.08.180, whether or not the site plan or other graphic representation is contained in the public offering statement or in promotional material distributed by or for the declarant.

(b) The declarant is liable for the prompt repair and restoration, to a condition compatible with the remainder of the common interest community, of a portion of the common interest community affected by the exercise of rights reserved under or created by AS 34.08.180, 34.08.190, 34.08.200, 34.08.210, 34.08.230, or 34.08.240.

**Sec. 34.08.700. Substantial completion of units.**

In the sale of a unit for which delivery of a public offering statement is required, a contract of sale may be executed, but an interest in the unit may not be conveyed until the declaration is recorded, a plat or plan that accompanies the declaration is filed and recorded, and the unit is substantially completed as evidenced by issuance of a certificate of occupancy authorized by law or by a recorded certificate of substantial completion executed by

(1) an independent registered engineer, architect, or land surveyor;

(2) an appraiser with the designation of senior residential appraiser, senior real property appraiser, or senior real estate analyst of the Society of Real Estate Appraisers;

(3) a residential member, or member of the appraisal institute, of the American Institute of Real Estate Appraisers; or

(4) an individual with a designation established by regulation of the Alaska Housing Finance Corporation for fee appraisers who certify the completion of construction.

#### **Article 5. General Provisions.**

##### **Sec. 34.08.710. Variation by agreement.**

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

##### **Sec. 34.08.720. Separate titles and taxation.**

(a) In a cooperative, the interest of a unit owner in a unit and its allocated interests is real estate for all purposes, except that the real estate constituting the cooperative shall be assessed and taxed as a whole and the interest of a unit owner may not be separately taxed.

(b) In a condominium or planned community,

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

(2) if there is a unit owner other than a declarant, each unit shall be separately taxed and assessed, and a separate tax or assessment may not be rendered against any common elements for which a declarant has reserved no development rights.

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

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

##### **Sec. 34.08.730. Applicability of local ordinances, regulations, and building codes.**

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

(b) A zoning, subdivision, or other real estate use law, ordinance, or regulation may not prohibit the condominium or cooperative form of ownership or impose a requirement upon a condominium or cooperative that it would not impose upon a physically identical development under a different form of ownership.

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

##### **Sec. 34.08.740. Eminent domain.**

(a) If a unit is acquired by eminent domain or part of a unit is acquired by eminent domain leaving the unit owner with a remnant that may not practically or lawfully be used for any purpose permitted by the declaration, the award must include compensation to the unit owner for that unit and its allocated interests,

whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, the allocated interests of the unit are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations, and file and record a plat or plan that accompanies the amendment. A remnant of a unit remaining after part of a unit is taken under this subsection is a common element from that time.

(b) Except as provided in (a) of this section, if part of a unit is acquired by eminent domain, the award must compensate the unit owner for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree provides otherwise,

(1) the allocated interests of the unit are reduced either in proportion to the reduction in the size of the unit or on the basis specified in the declaration; and

(2) the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to the unit and to the remaining units in proportion to the respective allocated interests of the units before the taking, with the partially-acquired unit participating in the reallocation on the basis of its reduced allocated interests.

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

(d) The court decree must be recorded in each recording district in which any portion of the common interest community is located.

(e) On a condemnation of a unit or common area, an award or decree must include a reasonable amount to cover the cost of reallocating the allocatable interests of the unit owners.

**Sec. 34.08.750. Supplemental general principles of law applicable.**

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

**Sec. 34.08.760. Construction against implicit repeal.**

This chapter is a general act intended as a unified coverage of its subject matter and a part of the chapter may not be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

**Sec. 34.08.770. Uniformity of application and construction.**

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

**Sec. 34.08.780. Severability.**

If a provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or

application, and to this end the provisions of this chapter are severable.

**Sec. 34.08.790. Unconscionable agreement or term of contract.**

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

(b) Whenever it is claimed or appears to the court that a contract or a contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, must be afforded a reasonable opportunity to present evidence as to (1) the commercial setting of the negotiations; (2) whether a party has knowingly taken advantage of the inability of another party reasonably to protect personal interests by reason of physical or mental infirmity, illiteracy, inability to understand the language of the agreement, or similar factors; (3) the effect and purpose of the contract or clause; and (4) any gross disparity, if a sale, at the time of contracting, between the amount charged for the property and the value of the property measured by the price at which similar property was readily obtainable in similar transactions. A disparity between the contract price and the value of the property measured by the price at which similar property was readily obtainable in similar transactions does not, of itself, render the contract unconscionable.

**Sec. 34.08.800. Obligation of good faith.**

A contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.

**Sec. 34.08.810. Remedies to be liberally administered.**

(a) The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. Consequential, special, or punitive damages may not be awarded except as specifically provided in this chapter or by other rule of law.

(b) A right or obligation declared by this chapter is enforceable by judicial proceeding.

**Sec. 34.08.820. Adjustment of dollar amounts.**

(a) The dollar amounts specified in AS 34.08.030 and 34.08.510(b)(7) change under (b) and (c) of this section, according to and to the extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items 1967 equal 100, compiled by the Bureau of Labor Statistics, United States Department of Labor, (the "Index"). The Index for December, 1979, which was 230, is the Reference Base Index.

(b) The dollar amounts specified in AS 34.08.030 and 34.08.510(b)(7) and any amount stated in the declaration pursuant to those sections change on July 1 of each year if the percentage of change, calculated to the nearest whole percentage point, between the Index at the end of the preceding year and the Reference Base Index is 10 percent or more, except that

(1) the portion of the percentage change in the Index in excess of a multiple of 10 percent shall be disregarded and the dollar amounts shall change only in multiples of 10 percent of the amounts appearing in this chapter on January 1, 1986;

(2) the dollar amounts 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; and

(3) in no event may the dollar amounts be reduced below the amounts appearing in this chapter on January 1, 1986.

(c) If the Index is revised after December 1979, the percentage of change under

this section shall be calculated on the basis of the revised Index. If the revision of the Index changes the Reference Base Index, a revised Reference Base Index must be determined by multiplying the Reference Base Index then applicable by the rebasing factor furnished by the Bureau of Labor Statistics. If the Index is superseded, the index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.

**Sec. 34.08.830. Transfer of unit in a cooperative.**

If a unit in a cooperative is owned by a unit owner or is sold, conveyed, voluntarily or involuntarily encumbered, or otherwise transferred by the unit owner, the interest in the unit that is owned, sold, conveyed, encumbered, or otherwise transferred is the right to possession of the unit under a proprietary lease, coupled with the allocated interests of the unit, and the association's interest in the unit is not affected by the transfer.

**Sec. 34.08.990. Definitions.**

In this chapter,

(1) "affiliate of a declarant"

(A) means a person who controls, is controlled by, or is under common control with a declarant;

(B) as used in this paragraph, a person "controls" a declarant if the person

(i) is a general partner, officer, director, or employer of the declarant;

(ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than 20 percent of the voting interest in the declarant;

(iii) controls in any manner the election of a majority of the directors of the declarant; or

(iv) has contributed more than 20 percent of the capital of the declarant;

(C) as used in this paragraph, a person "is controlled by" a declarant if the declarant

(i) is a general partner, officer, director, or employer of the person;

(ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the person;

(iii) controls in any manner the election of a majority of the directors of the person; or

(iv) has contributed more than 20 percent of the capital of the person;

(D) as used in this paragraph, "control" does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised;

(2) "allocated interests" means the following interests allocated to each unit:

(A) in a condominium, the undivided interest in the common elements, the common expense liability, and votes in the association;

(B) in a cooperative, the common expense liability and the ownership interest and votes in the association; and

(C) in a planned community, the common expense liability and votes in the association;

(3) "association" or "unit owners' association" means the unit owners' association organized under AS 34.08.310;

(4) "common elements" means

(A) in a condominium or cooperative, each portion of the common interest community other than a unit; and

(B) in a planned community, the real estate within a planned community owned or leased by the association, other than a unit;

(5) "common expense liability" means the liability for common expenses allocated to each unit under AS 34.08.150;

(6) "common expenses" means expenditures made by, or financial liabilities of, the association, together with any allocations to reserves;

(7) "common interest community" means real estate with respect to which a person, by virtue of ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in a declaration;

(8) "condominium" means a common interest community in which

(A) portions of the real estate are designated for separate ownership;

(B) the remainder of the real estate is designated for common ownership solely by the owners of those portions; and

(C) the undivided interests in the common elements are vested in the unit owners;

(9) "conversion property" means 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;

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

(11) "dealer" means a person who owns either six or more units in a common interest community or 50 percent or more of the units in a common interest community;

(12) "declarant" means a person or a group of persons acting in concert who

(A) as part of a common promotional plan, offers to dispose of its interest in a unit not previously disposed of; or

(B) reserves or succeeds to a special declarant right;

(13) "declaration"

(A) means an instrument, however described, that creates a common interest community; and

(B) includes amendments to a declaration;

(14) "development right" means a right or a combination of rights reserved

by a declarant in the declaration to

(A) add real estate to a common interest community;

(B) create units, common elements, or limited common elements within a common interest community;

(C) subdivide units or convert units into common elements; or

(D) withdraw real estate from a common interest community;

(15) “dispose” or “disposition”

(A) means a voluntary transfer to a purchaser of any legal or equitable interest in a unit;

(B) does not include the transfer or release of a security interest;

(16) “executive board” means the body designated in the declaration to act on behalf of the association;

(17) “identifying number” means a symbol or address that identifies only one unit in a common interest community;

(18) “leasehold common interest community” means a common interest community in which all or a portion of the real estate is subject to a lease that, on its expiration or termination, will terminate the common interest community or reduce its size;

(19) “limited common element” means the portion of the common elements allocated for the exclusive use of one or more but fewer than all of the units by the declaration or by operation of AS 34.08.100(2) or (4);

(20) “master association” means an organization described in AS 34.08.280 whether or not it is also an association described in AS 34.08.310;

(21) “offering”

(A) means an advertisement, inducement, solicitation, or attempt to encourage a person to acquire an interest in a unit, other than as security for an obligation;

(B) does not include an advertisement in a newspaper or other periodical of general circulation, or in any other broadcast medium to the general public describing a common interest community not located in the state if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the common interest community is located;

(22) “ownership of a unit” does not include a leasehold interest, including renewal options, of less than 40 years in a unit;

(23) “person” means

(A) an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, government subdivision or agency, or other legal or commercial entity;

(B) in the case of a land trust, the beneficiary of the land trust and not the land trust or its trustee;

(24) “planned community” means a common interest community that is not a condominium or a cooperative although a condominium or cooperative may be part of a planned community;

(25) “proprietary lease” means the agreement with the association under which a member is entitled to exclusive possession of a unit in a cooperative;



(26) "purchaser" means a person, other than a declarant or a dealer, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than

(A) a leasehold interest, including renewal options, of less than 40 years; or

(B) as security for an obligation;

(27) "real estate"

(A) means a leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance;

(B) includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water;

(28) "residential purposes" means use for dwelling or recreational purposes, or both;

(29) "security interest"

(A) means an interest in real estate or personal property, created by contract or conveyance, that secures payment or performance of an obligation;

(B) includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation;

(30) "special declarant rights" means the right reserved for the benefit of a declarant to

(A) complete improvements indicated on plats and plans filed and recorded with the declaration or, in a cooperative, to complete improvements described in the public offering statement under [AS 34.08.530\(a\)\(2\)](#);

(B) exercise a development right;

(C) maintain sales offices, management offices, signs advertising the common interest community, and models;

(D) use easements through the common elements for the purpose of making improvements within the common interest community or within real estate that may be added to the common interest community;

(E) make the common interest community subject to a master association;

(F) merge or consolidate a common interest community with another common interest community of the same form of ownership; or

(G) appoint or remove an officer of the association or a master association or an executive board member during a period of declarant control;

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

(32) "unit" means a physical portion of the common interest community designated for separate ownership or occupancy, the boundaries of which are described under [AS 34.08.130\(a\)\(5\)](#);

(33) "unit owner"

(A) means

(i) a declarant;

(ii) a person who owns a unit;

(iii) a person who leases 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;

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

(C) 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.

**Sec. 34.08.995. Short title.**

This Act may be cited as the Uniform Common Interest Ownership Act.