

## Common Interest Ownership Act

### Key Points

#### **Declaration**

A common interest community may be created only by recording a declaration executed in the same manner as a deed. In a cooperative, it is created by conveying the real estate subject to the declaration to the association. The declaration a plat or plan that is part of the declaration must be filed and recorded in each recording district in which any portion of the common interest community is located.

In a condominium, before a declaration, an amendment adding a unit, and a plat or plan may be filed or recorded, the structural components and mechanical systems of each building containing or comprising a unit of the condominium must be completed substantially in accordance with the plans, as evidenced by a certificate of completion recorded with the declaration or amendment to the declaration. The certificate of completion must be executed by one of the following:

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

Except as provided by the declaration, 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. 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. Spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit. 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.

The declaration must contain the following:

1. The names of the common interest community and the association.

2. A statement that the common interest community is either a condominium, cooperative, or planned community.
3. The name of each recording district in which a part of the common interest community is situated.
4. Legal description of the real estate included in the common interest community.
5. The maximum number of units that the declarant reserves the right to create.
6. 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.
7. 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.
8. A description of any limited common elements, other than those specified in Alaska Statutes and, in a planned community, any real estate that is or must become common elements.
9. 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 Alaska Statutes.
10. 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.
11. 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.
12. Any other condition or limitation under which the rights described in (8) of this subsection may be exercised or will lapse.
13. An allocation to each unit of the allocated interests.
14. Restrictions on:
  - a. Use, occupancy, and alienation of the units and
  - b. 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. ) 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

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.

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. 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.

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.

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

In a cooperative, any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an ownership interest in the association made without the possessory interest in the unit to which that interest is related is void.

### **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 Alaska Statutes or their heirs, successors, or assigns. The association must be organized as a profit or nonprofit corporation, trust, or partnership.

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.

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

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.

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.

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.

**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, or 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.

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. <sup>1</sup>With exception, all common expenses must be assessed against each unit in accordance with the allocations set out in the declaration. 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. To the extent required by the declaration, 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. A common expense or portion of the common expense benefiting fewer than all of the units must be assessed exclusively against the units benefited. The costs of insurance must be assessed in proportion to risk. 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 non-determinable utilities shall be shared as a common expense. 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.

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<sup>1</sup> 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. If a common expense is caused by the misconduct of a unit owner, the association may assess that expense exclusively against the unit. 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.

## Public Offerings

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.<sup>2</sup>

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 Alaska Statutes. The person who prepared all or a part of the public offering statement is liable 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.

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.

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.

A purchaser who wishes to cancel a contract 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.

If a person required to deliver a public offering statement fails to provide a purchaser to whom a unit has been conveyed with the public offering statement and each amendment to the statement, 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.

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

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<sup>2</sup> 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.

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:<sup>3</sup>

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.

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.

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<sup>3</sup> 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 this section is not liable to the purchaser for erroneous information provided by the association and included in the certificate.

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 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.

## **Definitions**

### (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 expenses" means expenditures made by, or financial liabilities of, the association, together with any allocations to reserves;
- (6) "common expense liability" means the liability for common expenses allocated to each unit under AS 34.08.150;
- (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