

Title 34. Property.

Chapter 03. Uniform Residential Landlord and Tenant Act.

Article 1. Purposes and Rules of Construction.

Sec. 34.03.010. Purpose and construction.

(a) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this chapter are to

(1) simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlord and tenant;

(2) encourage landlord and tenant to maintain and improve the quality of housing; and

(3) make uniform the law among those states that enact it.

Article 2. Rental Agreements.

Sec. 34.03.020. Terms and conditions of rental agreement.

(a) The landlord and tenant may include in a rental agreement clauses and conditions not prohibited by this chapter or by law, including rent, terms of agreement, and other provisions governing the rights and obligations of the parties.

(b) In the absence of agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.

(c) Rent shall be payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit. Unless otherwise agreed, rent is payable at the beginning of any term of one month or less and otherwise in equal monthly installments. Unless otherwise agreed, rent shall be uniformly apportionable from day to day and shall be paid on the date the periodic tenancy begins and payable on or before the same date of each and every month thereafter until the tenancy terminates.

(d) Unless the rental agreement fixes a definite term, the tenancy shall be week to week in the case of a tenant who pays weekly rent, and in all other cases month to month.

(e) If required by the landlord, the landlord and the tenant shall include within the rental agreement, incorporate by reference in the rental agreement, or add as a separate attachment to the rental agreement a premises condition statement, setting out the condition of the premises, including fixtures but excluding reference to any of the other contents of the premises, and, if applicable, a contents inventory itemizing or describing all of the furnishings and other contents of the premises and specifying the condition of each of them. In the premises condition statement and contents inventory, the landlord and tenant shall describe the premises and its contents at the commencement of the term of the period of the occupancy covered by the rental agreement. When signed by the landlord and tenant, the premises condition statement and contents inventory completed under this subsection become part of the rental agreement.

Sec. 34.03.030. Effect of unsigned or undelivered rental agreement.

(a) If the landlord does not sign and deliver a written rental agreement signed and delivered to the landlord by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.

(b) If the tenant does not sign and deliver a written rental agreement signed and delivered to the tenant by the landlord, acceptance of possession and payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.

(c) If a rental agreement given effect by the operation of this section provides for a term longer than one year, it is effective only for one year.

Sec. 34.03.040. Prohibited provisions in rental agreements.

(a) A rental agreement may not provide that the tenant or landlord

(1) agrees to waive or to forego rights or remedies under this chapter;

(2) authorizes a person to confess judgment on a claim arising out of the rental agreement;

(3) agrees to the exculpation or limitation of any liability of the landlord or tenant arising under the law or to indemnify the landlord or tenant for that liability or the costs connected with it;

(4) agrees to pay the landlord's attorney fees.

(b) A provision prohibited by (a) or (c) of this section included in a rental agreement is unenforceable. If a landlord or tenant wilfully uses a rental agreement containing provisions known by the person to be prohibited, the other party may recover the amount of actual damages.

(c) A rental agreement between a mobile home park operator and a mobile home park tenant may not

(1) deny a tenant of a mobile home park the right to sell the tenant's mobile home within the park or require the resident or tenant to remove the mobile home from the park solely on the basis of the sale of the mobile home, nor may the mobile home park operator make a rule or regulation to the same effect, except that, within 30 days of written notice by the tenant of intent to sell the mobile home to a specified buyer, the operator or owner of the mobile home park may refuse to allow a sale for the following reasons:

(A) the mobile home is in violation of laws or ordinances relating to health, safety or welfare;

(B) the proposed buyer refuses to assume the same terms as are in the existing rental agreement; or

(C) the proposed buyer does not have sufficient financial responsibility;

(2) require a tenant to provide permanent improvements that become a part of the real property of the mobile home park owner or operator as a condition of tenancy in the mobile home park; however, the rental agreement may require the tenant to maintain existing conditions in the park;

(3) require payment of any type of vendor or transfer fee either by a tenant in the mobile home

park desiring to sell the tenant's mobile home to another party or by any party desiring to purchase a mobile home from a tenant in the park as a condition of tenancy; however, this paragraph does not prevent the owner or operator from applying normal park standards to prospective tenants before granting or denying tenancy or from charging a reasonable vendor or transfer fee for services actually performed if the tenant is notified in writing of the amount of those charges before agreeing to move into the park; or

(4) require the prospective tenant to pay a fee to enter the mobile home park or a tenant to pay a fee to transfer the tenant's mobile home to another location outside the park; however, this paragraph does not prevent the owner or operator from charging a reasonable fee for services actually performed and if the tenant is notified in writing of the amount of those charges before agreeing to move into the park.

Sec. 34.03.050. Separation of rents and obligations to maintain property forbidden.

A rental agreement, assignment, conveyance, trust deed, or security instrument may not permit the receipt of rent free of the obligation to comply with [AS 34.03.100\(a\)](#).

Sec. 34.03.060. Sublease and assignment.

(a) Unless otherwise agreed in writing, the tenant may not sublet the premises or assign the rental agreement to another without the landlord's consent.

(b) The tenant's right to sublease the premises or assign the rental agreement to another shall be conditioned on obtaining the landlord's consent, which may be withheld only upon the grounds specified in (d) of this section; no further restrictions on sublease or assignment are enforceable.

(c) When the rental agreement requires the landlord's consent for sublease or assignment, the tenant may secure one or more persons who are willing to occupy the premises. Each prospective occupant shall make a written offer signed and delivered by the prospective occupant to the landlord, containing the following information on the prospective occupant:

(1) name, age, and present address;

(2) marital status;

(3) occupation, place of employment, and name and address of employer;

(4) number of all other persons who would normally reside with the prospective occupant;

(5) two credit references, or responsible persons who will confirm the financial responsibility of the prospective occupant; and

(6) names and addresses of all landlords of the prospective occupant during the prior three years.

(d) Within 14 days after the written offer has been delivered to the landlord, the landlord may refuse consent to a sublease or assignment by a written rejection signed and delivered by the landlord to the tenant, containing one or more of the following reasonable grounds for rejecting the prospective occupant:

(1) insufficient credit standing or financial responsibility;

(2) number of persons in the household;

(3) number of persons under 18 years of age in the household;

(4) unwillingness of the prospective occupant to assume the same terms as are included in the existing rental agreement;

(5) proposed maintenance of pets;

(6) proposed commercial activity; or

(7) written information signed by a previous landlord, which shall accompany the rejection, setting out abuses of other premises occupied by the prospective occupant.

(e) In the event the written rejection fails to contain one or more grounds permitted by (d) of this section for rejecting the prospective occupant, the tenant may consider the landlord's consent given, or at the tenant's option may terminate the rental agreement by a written notice given without unnecessary delay to the landlord at least 30 days before the termination date specified in the notice.

(f) If the landlord does not deliver a written rejection signed by the landlord to the tenant within 14 days after a written offer has been delivered to the landlord by the tenant, the landlord's consent to the sublease or assignment shall be conclusively presumed.

Article 3. Landlord Obligations.

Sec. 34.03.070. Security deposits and prepaid rent.

(a) Except as provided in (h) of this section, a landlord may not demand or receive prepaid rent or a security deposit, however denominated, in an amount or value in excess of two months' periodic rent. This section does not apply to rental units where the rent exceeds \$2,000 a month.

(b) Upon termination of the tenancy, property or money held by the landlord as prepaid rent or as a security deposit may be applied to the payment of accrued rent and the amount of damages that the landlord has suffered by reason of the tenant's noncompliance with [AS 34.03.120](#). The accrued rent and damages must be itemized by the landlord in a written notice mailed to the tenant's last known address within the time limit prescribed by (g) of this section, together with the amount due the tenant. In this subsection, "damages"

(1) means deterioration of the premises and, if applicable, of the contents of the premises;

(2) does not include deterioration

(A) that is the result of normal wear and tear;

(B) caused by the landlord's failure to prepare for expected conditions or by the landlord's failure to comply with an obligation of the landlord imposed by this chapter.

(c) All money paid to the landlord by the tenant as prepaid rent or as a security deposit in a lease or rental agreement shall be promptly deposited by the landlord, wherever practicable, in a trust account in a bank, savings and loan association, or licensed escrow agent, and the landlord shall provide to the tenant the terms and conditions under which the prepaid rent or security deposit or portions of them may be withheld by the landlord. Nothing in this chapter prohibits the landlord from commingling prepaid rents and security deposits in a single financial account; however, the landlord shall separately account for prepaid rent and security deposits received from each tenant. The landlord may not commingle prepaid rent and security deposits with other funds. The

landlord may not use money held for one tenant in a trust account to

(1) refund the security deposit of another tenant;

(2) apply to the payment of another tenant's accrued rent;

(3) apply to damages suffered by the landlord because of another tenant's noncompliance with [AS 34.03.120](#).

(d) If the landlord wilfully fails to comply with (b) of this section, the tenant may recover an amount not to exceed twice the actual amount withheld.

(e) This section does not preclude a landlord or tenant from recovering other damages to which either may be entitled under this chapter.

(f) The holder of the landlord's interest in the premises at the time of the termination of the tenancy is bound by this section.

(g) If the landlord or tenant gives notice that complies with [AS 34.03.290](#), the landlord shall mail the written notice and refund required by (b) of this section within 14 days after the tenancy is terminated and possession is delivered by the tenant, except the landlord shall have 30 days after the tenancy is terminated to mail the refund if costs are deducted for damages that the landlord has suffered because of the tenant's noncompliance with [AS 34.03.120](#). If the tenant does not give notice that complies with [AS 34.03.290](#), the landlord shall mail the written notice and refund required by (b) of this section within 30 days after the tenancy is terminated, possession is delivered by the tenant, or the landlord becomes aware that the dwelling unit is abandoned. If the landlord does not know the mailing address of the tenant, but knows or has reason to know how to contact the tenant to give the notice required by (b) of this section, the landlord shall make a reasonable effort to deliver the notice and refund to the tenant.

(h) Notwithstanding the limitation on the amount of prepaid rent or security deposit in (a) of this section, a landlord may demand or receive an additional security deposit from a tenant who has a pet on the premises that is not a service animal. The additional security deposit

(1) may not exceed the periodic rent for one month; and

(2) shall be accounted for separately from prepaid rent or a security deposit received under (a) of this section and may be applied only to the amount of damages that are directly related to the pet of the tenant.

(i) In this section,

(1) "normal wear and tear" means deterioration that occurs from the intended use of the rental unit and without negligence, carelessness, accident, misuse, or abuse of the premises or contents by the tenant, members of the household of the tenant, or the invitees or guests of the tenant;

(2) "service animal" means an animal that is individually trained to do work or perform tasks that are directly related to and for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.

Sec. 34.03.080. Disclosure.

(a) The landlord or a person authorized to enter into a rental agreement on behalf of the landlord shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of

(1) the person authorized to manage the premises; and

(2) an owner of the premises or a person authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands.

(b) The information required to be furnished by this section shall be kept current and this section extends to and is enforceable against any successor landlord, owner, or manager.

(c) A person who fails to comply with (a) of this section becomes an agent of each person who is a landlord for the purpose of

(1) service of process and receiving and receipting for notices and demands; and

(2) performing the obligations of the landlord under this chapter and under the rental agreement and expending or making available for the purpose all rent collected from the premises.

(d) A mobile home park operator shall disclose fully in writing all capital improvements that will be required to be made by the tenant including but not limited to skirting or utility hook-ups, before entering into a rental agreement.

Sec. 34.03.090. Landlord to supply possession of the dwelling unit.

(a) At the commencement of the term the landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and [AS 34.03.100](#). The landlord may, after serving a notice to quit under [AS 09.45.100](#) — 09.45.105 to a person who is wrongfully in possession,

(1) bring an action for possession against any person wrongfully in possession; and

(2) recover the damages provided in [AS 34.03.290](#).

(b) The tenant shall acknowledge or verify by the tenant's signature the accuracy of the premises condition statement and contents inventory prepared under [AS 34.03.020](#)(e). The premises condition statement and contents inventory

(1) may be used by the landlord or tenant as the basis

(A) to determine whether prepaid rent or a security deposit shall be applied to the payment of damages to the premises when authorized by [AS 34.03.070](#)(b); and

(B) to compute the recovery of other damages to which the parties may be entitled under this chapter; and

(2) is, in an action initiated by a party to recover damages or to obtain other relief to which a party may be entitled under this chapter, presumptive evidence of the condition of the premises and its contents at the commencement of the term of the period of occupancy covered by the rental agreement.

Sec. 34.03.100. Landlord to maintain fit premises.

(a) The landlord shall

(1) make all repairs and do whatever is necessary to put and keep the premises in a fit and

habitable condition;

(2) keep all common areas of the premises in a clean and safe condition;

(3) maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, kitchen, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(4) provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

(5) supply running water and reasonable amounts of hot water and heat at all times, insofar as energy conditions permit, except where

(A) the building that includes the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection; or

(B) the premises do not have a well or water provided by a direct public utility connection and the rental agreement specifically states that the duty of the landlord to supply running water or hot water to the premises is waived by the tenant;

(6) if requested by the tenant, provide and maintain locks and furnish keys reasonably adequate to ensure safety to the tenant's person and property; and

(7) provide smoke detection devices and carbon monoxide detection devices as required under [AS 18.70.095](#).

(b) A landlord of a single family residence located in an undeveloped rural area or located where public sewer or water service has never been connected is not liable for a breach of (a)(3) or (5) of this section if the dwelling unit at the beginning of the rental agreement did not have running water, hot water, sewage, or sanitary facilities from a private system.

(c) The landlord and tenant of a one- or two-family residence may agree in writing that the tenant perform the landlord's duties specified in (a)(4), (5), (6), and (7) of this section. A tenant may agree to perform the duties specified in (a)(3) of this section in rental units where the rent exceeds \$2,000 a month. They may also agree in writing that the tenant perform specified repairs, maintenance tasks, alterations, and remodeling, but the tenant may not agree to maintain elevators in good and safe working order. Agreements are allowed under this subsection only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(d) The landlord and tenant of a dwelling unit other than a single family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if

(1) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set out in a separate writing signed by the parties and supported by adequate consideration; and

(2) the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

(e) The landlord may not treat performance of a separate agreement described in (d) of this section as a condition to an obligation or performance of a rental agreement.

Sec. 34.03.110. Limitation of liability.

(a) Unless otherwise agreed, a landlord who conveys premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser is relieved of liability under the rental agreement and this chapter as to events occurring subsequent to written notice to the tenant of the conveyance. However,

(1) the landlord remains liable to the tenant for the property and money to which the tenant is entitled under [AS 34.03.070](#), unless the property and money are specifically assigned to and accepted by the purchaser; and

(2) the provisions of

(A) a premises condition statement prepared under [AS 34.03.020\(e\)](#) between the landlord and the tenant remains valid as between the purchaser and the tenant until a new premises condition statement is entered into between the purchaser and the tenant; and

(B) a contents inventory prepared under [AS 34.03.020\(e\)](#) between the landlord and the tenant remains valid as between the purchaser and the tenant for the contents remaining on the premises after the conveyance of the premises until a new contents inventory is entered into between the purchaser and the tenant.

(b) Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the termination of the person's management.

Sec. 34.03.115. [Renumbered as [AS 34.05.025](#).]

Article 4. Tenant Obligations.

Sec. 34.03.120. Tenant obligations.

(a) The tenant

(1) shall keep that part of the premises occupied and used by the tenant as clean and safe as the condition of the premises permit;

(2) shall dispose all ashes, rubbish, garbage, and other waste from the dwelling unit in a clean and safe manner;

(3) shall keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(4) shall use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, kitchen, and other facilities and appliances, including elevators, in the premises;

(5) may not deliberately or negligently destroy, deface, damage, impair, or remove a part of the premises or knowingly permit any person to do so;

(6) may not unreasonably disturb, or permit others on the premises with the tenant's consent to unreasonably disturb, a neighbor's peaceful enjoyment of the premises;

(7) shall maintain smoke detection devices and carbon monoxide detection devices as required under [AS 18.70.095](#);

(8) may not, except in an emergency when the landlord cannot be contacted after reasonable effort to do so, change the locks on doors of the premises without first securing the written agreement of the landlord and, immediately after changing the locks, providing the landlord a set of keys to all doors for which locks have been changed; in an emergency, the tenant may change the locks and shall, within five days, provide the landlord a set of keys to all doors for which locks have been changed and written notice of the change;

(9) may not unreasonably engage in conduct, or permit others on the premises to engage in conduct, that results in the imposition of a fee under a municipal ordinance adopted under [AS 29.35.125](#); and

(10) may not allow the number of individuals occupying the premises to exceed the number allowed by applicable law, by a covenant limiting the landlord's use of the premises, or the rental agreement.

(b) The tenant may not knowingly engage at the premises in prostitution, an illegal activity involving a place of prostitution, an illegal activity involving alcoholic beverages, an illegal activity involving gambling or promoting gambling, an illegal activity involving a controlled substance, or an illegal activity involving an imitation controlled substance, or knowingly permit others in the premises to engage in one or more of those activities at the rental premises.

(c) When terminating the tenancy, the tenant shall leave the premises in substantially the same condition, except for normal wear and tear, as the condition of the premises at the beginning of the tenancy, including, in the landlord's discretion, professionally cleaning the carpets if the carpets were professionally cleaned immediately before the tenancy began. In this subsection, "normal wear and tear" has the meaning given in [AS 34.03.070](#).

Sec. 34.03.130. Rules and regulations.

(a) A landlord may adopt rules and regulations, which shall be posted prominently on the premises, concerning the tenant's use and occupancy of the premises. A rule or regulation is enforceable against the tenant only if

(1) its purpose is to promote the convenience, safety, health, or welfare of the tenants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(2) it is reasonably related to the purpose for which it is adopted;

(3) it applies to all tenants in the premises in a fair manner;

(4) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what the tenant must or must not do to comply;

(5) it is not for the purpose of evading the obligations of the landlord; and

(6) the tenant has notice of it at the time the tenant enters into the rental agreement.

(b) A rule or regulation adopted after the tenant enters into the rental agreement is enforceable against the tenant if reasonable notice of its adoption is given to the tenant and it does not work a substantial modification of the rental agreement.

(c) A mobile home park operator may determine by rule or regulation the style or quality of the

equipment, including but not limited to underskirting and tie-downs, to be purchased by the tenant from the vendor of the tenant's choice; however, the operator may not require that the equipment be purchased from the operator.

Sec. 34.03.140. Access.

(a) The tenant may not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, remove personal property belonging to the landlord that is not covered by a written rental agreement, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(b) The landlord may enter the dwelling unit without the consent of the tenant in the case of emergency.

(c) A landlord may not abuse the right of access or use it to harass the tenant. Except in case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least 24 hours notice of intention to enter and may enter only at reasonable times and with the tenant's consent.

(d) The landlord does not have a right of access to the dwelling unit

(1) except

(A) as permitted by this section;

(B) by court order; or

(C) as permitted by [AS 34.03.230\(b\)](#); or

(2) unless the tenant has abandoned or surrendered the premises.

Sec. 34.03.150. Tenant to use and occupy.

Unless otherwise agreed, the tenant shall occupy the dwelling unit only as a dwelling unit. The rental agreement shall require that the tenant notify the landlord of an anticipated extended absence from the premises in excess of seven days; however, the notice shall be given as soon as reasonably possible after the tenant knows the absence will exceed seven days.

Article 5. Tenant Remedies.

Sec. 34.03.160. Noncompliance by the landlord: General.

(a) Except as provided in this chapter, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with [AS 34.03.100](#) materially affecting health and safety, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and specifying that the rental agreement will terminate upon a date not less than 20 days after receipt of the notice if the breach is not remedied in 10 days, and the rental agreement shall terminate as provided in the notice subject to the provisions of this section. If the breach is remediable by repairs or the payment of damages or otherwise, and the landlord remedies the breach before the date specified in the notice, the rental agreement will not terminate. In the absence of due care by the landlord, if substantially the same act or omission that constituted a prior noncompliance of which notice was given recurs within six months, the tenant may terminate the rental agreement upon at least 10 days written notice specifying the

breach and the date of termination of the rental agreement. The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.

(b) Except as provided in this chapter, the tenant may recover damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or [AS 34.03.100](#), 34.03.210, or 34.03.280.

(c) The remedy provided in (b) of this section is in addition to a right of the tenant under (a) of this section.

(d) If the rental agreement is terminated, the landlord shall return all prepaid rent or security deposits recoverable by the tenant under [AS 34.03.070](#).

Sec. 34.03.170. Failure to deliver possession.

(a) If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in [AS 34.03.090](#), rent abates until possession is delivered and the tenant may

(1) upon at least 10 days written notice to the landlord terminate the rental agreement and upon termination the landlord shall return all prepaid rent and security deposits; or

(2) demand performance of the rental agreement by the landlord and if the tenant elects, maintain an action for possession of the dwelling unit against the landlord and any person wrongfully in possession and recover the damages sustained.

(b) If a person's failure to deliver possession is wilful and not in good faith, an aggrieved tenant may recover from that person an amount not to exceed one and one-half times the actual damages.

Sec. 34.03.180. Wrongful failure to supply heat, water, hot water or essential services.

(a) If, contrary to the rental agreement or [AS 34.03.100](#), the landlord deliberately or negligently fails to supply running water, hot water, heat, sanitary facilities, or other essential services, the tenant may give written notice to the landlord specifying the breach and may immediately

(1) procure reasonable amounts of hot water, running water, heat, sanitary facilities, and essential services during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent;

(2) recover damages based on the diminution in the fair rental value of the dwelling unit; or

(3) procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance and, in addition, may recover the amount by which the actual and reasonable cost exceeds rent.

(b) A tenant who proceeds under this section may not proceed under [AS 34.03.160](#) as to that breach.

(c) Rights do not arise under this section until the tenant has given written notice to the landlord. Rights do not arise under this section if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family, or other person on the premises

with the tenant's consent.

Sec. 34.03.190. Landlord's noncompliance as defense to action for possession or rent.

(a) In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may counterclaim for any amount recoverable under the rental agreement or this chapter. If a counterclaim is made, the court shall determine whether the defense is supported by the evidence and, if so, may order that

(1) the periodic rent is to be reduced to reflect the diminution in value of the dwelling unit during the period of noncompliance;

(2) the action be continued for a reasonable time to enable the landlord to cure the violation;

(3) the tenant pay into court all or part of the rent accrued and thereafter accruing; if the violations have not been cured within six months, the court shall enter judgment for the defendant and either refund to the defendant all money deposited or use the money for the purpose of making the dwelling fit for human habitation; if the violations have been cured, the court shall determine the amount due to each party; the party to whom a net amount is owed shall be paid first from the money paid into the court, and the balance by the other party; if no rent remains due after application of this section, judgment shall be entered for the tenant in the action for possession;

(4) the tenant vacate the dwelling during the making of necessary repairs, when the repairs cannot be made without vacation of the premises, the tenant to be reinstated upon completion of the repairs.

(b) In an action for rent where the tenant is not in possession, the tenant may counterclaim as provided in (a) of this section but the tenant is not required to pay rent into court.

Sec. 34.03.200. Fire or casualty damage.

(a) If the dwelling unit or premises are damaged or destroyed by fire or casualty to the extent that enjoyment of the dwelling unit is substantially impaired, the tenant shall

(1) immediately vacate the premises and notify the landlord of the intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

(2) if continued occupancy is lawful, vacate the part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

(b) If the rental agreement is terminated, the landlord shall return all prepaid rent and security deposits recoverable under [AS 34.03.070](#). Accounting for rent in the event of termination or apportionment shall occur as of the date of the casualty.

Sec. 34.03.210. Tenant's remedies for landlord's unlawful ouster, exclusion, or diminution of service.

If the landlord unlawfully removes or excludes the tenant from the premises or wilfully

diminishes services to the tenant by interrupting or causing the interruption of electric, gas, water, sanitary, or other essential service to the tenant, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount not to exceed one and one-half times the actual damages. If the rental agreement is terminated, the landlord shall return all prepaid rent and security deposits recoverable by the tenant under [AS 34.03.070](#).

Article 6. Landlord Remedies.

Sec. 34.03.220. Noncompliance with rental agreement; failure to pay rent.

(a) Except as provided in this chapter,

(1) if the tenant or someone in the tenant's control deliberately inflicts substantial damage to the premises in breach of [AS 34.03.120\(a\)\(5\)](#) or the tenant engages in or permits another to engage in prostitution or another illegal activity at the premises in breach of [AS 34.03.120\(b\)](#), the landlord may deliver a written notice to quit to the tenant under [AS 09.45.100](#) — 09.45.105 specifying the act or activity constituting the breach and specifying that the rental agreement will terminate on a date that is not less than 24 hours or more than five days after service of the notice; for purposes of this paragraph, damage to premises is “substantial” if the loss, destruction, or defacement of property attributable to the deliberate infliction of damage to the premises exceeds \$400;

(2) if there is a material noncompliance by the tenant with the rental agreement, or if there is noncompliance with [AS 34.03.120](#), other than deliberate infliction of substantial damage to the premises or other than noncompliance as to a utility service for which the provisions of (e) of this section apply, materially affecting health and safety, the landlord may deliver a written notice to quit to the tenant under [AS 09.45.100](#) — 09.45.110 specifying the acts and omissions constituting the breach and specifying that the rental agreement will terminate on a date not less than 10 days after service of the notice; if the breach is not remedied, the rental agreement terminates as provided in the notice subject to the provisions of this section; if the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach before the date specified in the notice, the rental agreement will not terminate; in the absence of due care by the tenant, if substantially the same act or omission that constituted a prior noncompliance of which notice was given recurs within six months, the landlord may terminate the rental agreement upon at least five days' written notice to quit specifying the breach and the date of termination of the rental agreement.

(b) If rent is unpaid when due and the tenant fails to pay rent in full within seven days after written notice by the landlord of nonpayment and the intention to terminate the rental agreement if the rent is not paid within that period of time, the tenancy terminates unless the landlord agrees to allow the tenant to remain in occupancy, and the landlord may terminate the rental agreement and immediately recover possession of the rental unit. Only one written notice of default need be given the tenant by the landlord as to any one default. A landlord who has given written notice to the tenant under this subsection may accept a partial payment of the rent due under the rental agreement and extend the date for the eviction accordingly.

(c) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or [AS 34.03.120](#).

(d) An order of abatement entered by a court under [AS 09.50.170](#) terminates a rental agreement on the premises subject to the order of abatement.

(e) If a public utility providing electricity, natural gas, or water to the premises occupied by the tenant discontinues the service to the premises due to the failure of the tenant to pay for the utility service, the landlord may deliver a written notice to quit to the tenant advising that, notwithstanding (a) of this section, the tenancy will terminate five days after the landlord's

service of the notice. If, within three days from the service of the notice, the tenant reinstates the discontinued service and repays the landlord for any amounts paid by the landlord to reinstate service, and if damage did not occur to the rental unit as a result of the discontinuance of service, the rental agreement will not terminate. However, in the absence of due care by the tenant, if substantially the same act or omission that constituted a prior noncompliance under this subsection for which notice was given recurs within six months, the landlord may terminate the rental agreement upon at least three days' written notice specifying the breach and the date of termination of the rental agreement.

(f) A person whose use of premises is based solely on rights acquired by a tenant, and who has not individually acquired the rights of a tenant under this chapter, does not acquire rights under this chapter as a result of being present on the premises.

Sec. 34.03.225. Limitations on mobile home park operator's right to terminate.

(a) A mobile home park operator may evict a mobile home or a mobile home park dweller or tenant only for one of the following reasons:

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

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

(3) the mobile home dweller or tenant has violated a provision, enforceable under [AS 34.03.130](#), of the rental agreement or lease signed by both parties and not prohibited by law including rent and the terms of agreement; and

(4) a change in the use of the land comprising the mobile home park, or the portion of it on which the mobile home to be evicted is located; however, all dwellers or tenants so affected by a change in land use shall be given at least 270 days' notice, or longer if a longer notice period is provided in a valid lease or required by a municipality; a dweller or tenant so affected by a change in land use shall be given a quit date not earlier than May 1 and not later than October 15; a municipality may establish a mobile home relocation fund and require that a dweller or tenant so affected by a change in land use be given a longer notice period or compensated from the fund for the cost of disconnecting, relocating, and reestablishing the dweller's or tenant's mobile home.

(b) A mobile home park operator may not evict a mobile home or a mobile home park dweller or tenant because of the age of the mobile home, except that a mobile home or a mobile home park dweller or tenant may be evicted if, when the mobile home was admitted to the mobile home park, a regulation of the mobile home park limiting the age of a mobile home in the mobile home park was in effect, the mobile home is sold after the age limitation has been exceeded, and the owner or tenant of the mobile home has failed to bring the unit into compliance with the life safety requirements of 24 C.F.R. Part 3280. This does not prohibit eviction for violation of a provision enforceable under [AS 34.03.130](#) that requires that a mobile home be in a fit and habitable condition.

(c) When, under (a) of this section, a mobile home park owner is required to give notice to evict a mobile home owner or a mobile home park dweller or tenant, provision of notice to quit under [AS 09.45.100](#) — 09.45.105 satisfies the requirement of notice.

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

(a) When the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of seven days as required in [AS 34.03.150](#) and the tenant wilfully fails to do so, the landlord may recover an amount not to exceed one and one-half times the actual damages.

(b) During an absence of the tenant in excess of seven days, the landlord may enter the dwelling unit at times reasonably necessary as provided in [AS 34.03.140](#). The landlord may reenter the dwelling unit and, if there is evidence that the tenant has abandoned the dwelling unit, unless the landlord and tenant have made a specific agreement to the contrary, the landlord may terminate the rental agreement.

(c) If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental value. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, the agreement is considered terminated on the date the new tenancy begins. The rental agreement is considered terminated by the landlord on the date the landlord has notice of the abandonment if the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental value or if the landlord accepts the abandonment as a surrender. If the tenancy is from month to month, or week to week, the term of the rental agreement for purposes of this section shall be considered a month or a week, as the case may be.

Sec. 34.03.240. Waiver of landlord's right to terminate.

Acceptance of rent with knowledge of a default by the tenant or acceptance of performance by the tenant that varies from the terms of the rental agreement or rules or regulations subsequently adopted by the landlord constitutes a waiver of the right of the landlord to terminate the rental agreement for that breach, unless otherwise agreed after the breach has occurred.

Sec. 34.03.250. Landlord liens; distraint for rent abolished.

(a) A lien or security interest on behalf of the landlord in the tenant's household goods is not enforceable unless perfected before March 19, 1974.

(b) Distraint for rent is abolished.

Sec. 34.03.260. Disposition of abandoned property.

(a) Except as otherwise agreed, if, upon termination of a tenancy including but not limited to a termination after expiration of a lease or by surrender or abandonment of the premises, a tenant has left personal property upon the premises, and the landlord reasonably believes that the tenant has abandoned this personal property, the landlord may

(1) give notice to the tenant demanding that the property be removed within the dates set out in the notice but not less than 15 days after delivery or mailing of the notice, and that if the property is not removed within the time specified, the property may be sold; if the property is not removed within the time specified in the notice, the landlord may sell the property at a public sale; the landlord may dispose of perishable commodities in any manner the landlord considers fit;

(2) if the tenant has left personal property that is reasonably determined by the landlord to be

valueless or of such little value that the cost of storing and conducting a public sale would probably exceed the amount that would be realized from the sale, the landlord may notify the tenant that the property be removed within the date specified in the notice but not less than 15 days after delivery or mailing of the notice, and that if the property is not removed within the time specified, the landlord intends to destroy or otherwise dispose of the property; if the property is not removed within the time specified in the notice, the landlord may destroy or otherwise dispose of the property; in the notice, the landlord shall indicate an election to sell certain items of the tenant's personal property at public sale and to destroy or otherwise dispose of the remainder.

(b) After notice as provided in (a) of this section, the landlord shall store all personal property of the tenant in a place of safekeeping and shall exercise reasonable care of the property, but is not responsible to the tenant for loss not caused by the landlord's deliberate or negligent act. The landlord may elect to store the property on the premises previously demised, in which event the storage cost may not exceed the fair rental value of the premises. If the tenant's property is removed to a commercial storage company, the storage cost shall include the actual charge for the storage and removal from the premises to the place of storage.

(c) After landlord's notice under (a) of this section, or otherwise, if the tenant makes timely response in writing of an intention to remove the personal property from the premises and does not do so within the time specified in the landlord's notice or within 15 days of the delivery or mailing of the tenant's written response whichever is later, it shall be conclusively presumed that the tenant has abandoned the property. If the tenant removes the property after notice, the landlord is entitled to the cost of storage for the period the property has remained in the landlord's safekeeping.

(d) The landlord is not liable in damages in an action by a tenant claiming loss by reason of the landlord's storage, destruction, or disposition of property under this section. A landlord who deliberately or negligently violates the provisions of this section is liable for actual damages and penal damages of an amount not to exceed actual damages.

(e) A public sale authorized under this section shall be conducted under [AS 09.35.140](#). The landlord may dispose of any property upon which no bid is made at the public sale.

Sec. 34.03.270. Remedy after termination.

If the rental agreement is terminated, the landlord may have a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement.

Sec. 34.03.280. Recovery of possession limited.

A landlord may not recover or take possession of the dwelling unit by action or otherwise, including wilful diminution of services to the tenant by interrupting or causing the interruption of electricity, gas, water, sanitary, or other essential services to the tenant, except in case of abandonment, surrender, circumstances beyond the control of the landlord due to energy conditions, or as permitted in this chapter.

Sec. 34.03.285. Service of process upon tenant.

In an action for possession under this chapter, the summons and complaint shall be served under the provisions of Rule No. 85 of the Rules of Civil Procedure. A continuance may not be granted plaintiff or defendant except for good cause shown.

Article 7. Periodic Tenancy, Holdover, and Abuse of Access.

Sec. 34.03.290. Periodic tenancy and holdover.

(a) While rent is current, the landlord or the tenant may terminate a week to week tenancy by a written notice given to the other at least 14 days before the termination date specified in the notice.

(b) The landlord or the tenant may terminate a month to month tenancy by a written notice given to the other at least 30 days before the rental due date specified in the notice.

(c) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or after its termination under (a) or (b) of this section, the landlord may, after serving a notice to quit to the tenant under [AS 09.45.100](#) — 09.45.105, bring an action for possession and if the tenant's holdover is wilful and not in good faith the landlord, in addition, may recover an amount not to exceed one and one-half times the actual damages. If the landlord consents to the tenant's continued occupancy, [AS 34.03.020](#) applies.

Sec. 34.03.300. Landlord and tenant remedies for abuse of access.

(a) If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access or terminate the rental agreement. In either case, the landlord may recover an amount not to exceed the actual damages or one month's periodic rent, whichever is greater. If the landlord terminates the rental agreement, the landlord shall give written notice to the tenant at least 10 days before the date specified in the notice.

(b) If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case, the tenant may recover an amount not to exceed the actual damages or one month's periodic rent, whichever is greater, court costs and reasonable attorney fees. If the tenant terminates the rental agreement, the tenant shall give written notice to the landlord at least 10 days before the date specified in the notice.

Article 8. Retaliatory Action.

Sec. 34.03.310. Retaliatory conduct prohibited.

(a) Except as provided in (c) and (d) of this section, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after the tenant has

(1) complained to the landlord of a violation of [AS 34.03.100](#);

(2) sought to enforce rights and remedies granted the tenant under this chapter;

(3) organized or become a member of a tenant's union or similar organization; or

(4) complained to a governmental agency responsible for enforcement of governmental housing, wage, price, or rent controls.

(b) If the landlord acts in violation of (a) of this section, the tenant is entitled to the remedies

provided in [AS 34.03.210](#) and has a defense in an action against the tenant for possession.

(c) Notwithstanding (a) and (b) of this section, after serving a notice to quit to the tenant under [AS 09.45.100](#) — 09.45.105, a landlord may bring an action for possession if

(1) the tenant is in default in rent;

(2) compliance with the applicable building or housing code requires alteration, remodeling, or demolition that would effectively deprive the tenant of use of the dwelling unit;

(3) the tenant is committing waste or a nuisance, or is using the dwelling unit for an illegal purpose or for other than living or dwelling purposes in violation of the rental agreement;

(4) the landlord seeks in good faith to recover possession of the dwelling unit for personal purposes;

(5) the landlord seeks in good faith to recover possession of the dwelling unit for the purpose of substantially altering, remodeling, or demolishing the premises;

(6) the landlord seeks in good faith to recover possession of the dwelling unit for the purpose of immediately terminating for at least six months use of the dwelling unit as a dwelling unit; or

(7) the landlord has in good faith contracted to sell the property, and the contract of sale contains a representation by the purchaser corresponding to (4), (5) or (6) of this subsection.

(d) Notwithstanding (a) of this section, the landlord may increase the rent if the landlord

(1) has become liable for a substantial increase in property taxes, or a substantial increase in other maintenance or operating costs not associated with compliance with the complaint or request, not less than four months before the demand for an increase in rent; and the increase in rent bears a reasonable relationship to the net increase in taxes or costs;

(2) has completed a capital improvement of the dwelling unit or the property of which it is a part and the increase in rent does not exceed the amount that may be claimed for federal income tax purposes as a straight-line depreciation of the improvement, prorated among the dwelling units benefited by the improvement;

(3) can establish by competent evidence that the rent now demanded of the tenant does not exceed the rent charged other tenants of similar dwelling units in the building or, in the case of a single-family residence or if there is no similar dwelling unit in the building, does not exceed the fair rental value of the dwelling unit.

(e) Maintenance of the action under (c) of this section does not release the landlord from liability under [AS 34.03.160](#)(b).

Article 9. General Provisions.

Sec. 34.03.320. Obligation of good faith.

Every duty under this chapter and every act that must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement. The aggrieved party has a duty to mitigate damages.

Sec. 34.03.330. Application and exclusions.

(a) This chapter applies to and determines rights, obligations and remedies under a rental agreement, wherever made, for a dwelling unit in this state.

(b) Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

(1) residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar services;

(2) occupancy under a contract of sale of a dwelling unit or the property of which it is a part if the occupant is the purchaser or a person who succeeds to the interest of a purchaser;

(3) occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

(4) transient occupancy in a hotel, motel, lodgings, or other transient facility;

(5) occupancy by an employee of a landlord whose right to occupancy is conditioned upon employment substantially for services, maintenance, or repair to the premises;

(6) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

(7) occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes;

(8) occupancy under a rental agreement covering premises used as part of a transitional or supportive housing program that is sponsored or operated by a public corporation or by a nonprofit corporation and that provides shelter and related support services intended to improve the occupant's opportunity to obtain permanent housing.

Sec. 34.03.335. Proof of certain property damage claims.

In an action initiated by a party to recover damages or to obtain other relief to which a party may be entitled under this chapter, a premises condition statement and contents inventory prepared under [AS 34.03.020](#)(e) is presumptive evidence of the condition of the premises and its contents at the commencement of the term of the period of occupancy covered by the rental agreement between the parties. Unless its authenticity is rebutted by clear and convincing evidence by the party against whom the statement and contents inventory is offered, the statement and contents inventory may be offered by a party, without additional supporting evidence, as the basis on which to compute the recovery of damages to which the party may be entitled under this chapter.

Sec. 34.03.340. Service of process.

If a landlord is not a resident of this state or is a corporation not authorized to do business in this state and engages in any conduct in this state governed by this chapter, or engages in a transaction subject to this chapter, the landlord may designate an agent upon whom service of process may be made in this state. The agent shall be a resident of this state or a corporation authorized to do business in this state. The agent shall be the same person designated under [AS 34.03.080](#). The designation shall be in writing and filed with the commissioner of commerce, community, and economic development. If no designation is made and filed or if process cannot be served in this state upon the designated agent, process may be served upon the commissioner of commerce, community, and economic development, but the service upon the commissioner is not effective

unless the plaintiff or petitioner immediately mails a copy of the process and pleadings by certified or registered mail to the defendant or respondent at the last ascertainable address of the defendant or respondent. An affidavit of compliance with this section shall be filed with the clerk of the court having jurisdiction on or before the return day for the process, if any, or within any further time allowed by the court.

Sec. 34.03.345. Mediation and binding arbitration.

(a) A landlord and a tenant may agree to mediate disputes between them as to an obligation of either of them arising out of the rental agreement. If the landlord and tenant agree to mediate disputes, they shall include the scope of the agreement within the executed rental agreement, incorporate a reference to that agreement within the rental agreement, or add the text of the agreement as a separate attachment to the rental agreement.

(b) A landlord and a tenant may agree to binding arbitration of the disputes between them as to an obligation of either of them arising out of the rental agreement. If the landlord and tenant agree to binding arbitration, they shall include the scope of the agreement within the executed rental agreement, incorporate a reference to that agreement within the rental agreement, or add the text of the agreement as a separate attachment to the rental agreement.

Sec. 34.03.350. Attorney fees.

Attorney fees shall be allowed to the prevailing party in any proceeding arising out of this chapter or a rental agreement.

Sec. 34.03.360. Definitions.

In this chapter,

(1) “abandonment” means that the tenant has left the dwelling unit and the tenant's personal belongings in it and has been absent for a continuous period of seven days or longer without giving notice under [AS 34.03.150](#) and has defaulted in the payment of rent;

(2) “building and housing codes” include any law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of a premise or dwelling unit;

(3) “dwelling unit” means a structure or a part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household, and includes mobile homes, and if located in a mobile home park, the lot or space upon which a mobile home is placed;

(4) “fair rental value” means the average rental rate in the community for available dwelling units of similar size and features;

(5) “good faith” means honesty in fact in the conduct of the transaction concerned;

(6) “illegal activity involving alcoholic beverages” means a person's delivery of an alcoholic beverage in violation of [AS 04.11.010\(b\)](#) in an area where the results of a local option election have, under [AS 04.11.491](#), prohibited the Alcoholic Beverage Control Board from issuing, renewing, or transferring a liquor license or permit under [AS 04](#);

(7) “illegal activity involving a controlled substance” means a violation of [AS 11.71.010\(a\)](#),

11.71.021, 11.71.030(a)(2) or (9), or 11.71.040(a)(1), (2), or (5);

(8) “illegal activity involving gambling or promoting gambling” means a violation of

(A) [AS 11.66.200](#), other than a social game as that term is defined by [AS 11.66.280](#)(10);
and

(B) [AS 11.66.210](#) or 11.66.220;

(9) “illegal activity involving an imitation controlled substance” means a violation of [AS 11.73.010](#) — 11.73.030;

(10) “illegal activity involving a place of prostitution” means a violation of [AS 11.66.120](#)(a)(1) or 11.66.130(a)(2)(A) or (D);

(11) “landlord” means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by [AS 34.03.080](#);

(12) “mobile home” has the meaning given to “manufactured home” in [AS 45.29.102](#);

(13) “organization” includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal entity;

(14) “owner” means one or more persons, jointly or severally, in whom is vested all or part of the legal title to property or all or part of the beneficial ownership of property and a right to present use of the premises; the term includes a mortgagee in possession;

(15) “premises” means a dwelling unit and the structure of which it is a part and facilities and appurtenances in it and grounds, areas, and facilities held out for the use of tenants generally or whose use is promised to the tenant;

(16) “prepaid rent” means that amount of money demanded by the landlord at the initiation of the tenancy for the purpose of ensuring that rent will be paid, but does not include the first month's rent or money received as security for damage;

(17) “prostitution” means an act in violation of [AS 11.66.100](#);

(18) “rent” means the uniform periodic payment due the landlord, however denominated;

(19) “rental agreement” means all agreements, written or oral, and valid rules and regulations adopted under [AS 34.03.130](#) embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises;

(20) “sanitary facility” means a flush toilet and proper drainage for all toilets, sinks, basins, bathtubs, and showers;

(21) “single family residence” means a structure maintained and used as a single dwelling unit;

(22) “tenant” means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others;

(23) “undeveloped rural area” means an area where public sewer or water services are not

available.

Sec. 34.03.370. Applicability.

After March 19, 1974, this chapter applies to any rental agreement, lease, or tenancy entered into, extended, or renewed by the payment of rent on or subsequent to that date.

Sec. 34.03.380. Short title.

This chapter may be cited as the “Uniform Residential Landlord and Tenant Act.”

Chapter 05. Rental of Agricultural, Personal, and Nonresidential Property.

Article 1. Agricultural Property.

Secs. 34.05.010 — 34.05.020. [Repealed, § 4 ch 10 SLA 1974.]

Sec. 34.05.025. Agricultural tenants.

A tenant whose lease or occupancy is for agricultural purposes and who breaches the rental agreement, or continues in possession of the premises at the expiration of the time limited in or contrary to a condition or covenant in the lease or agreement under which the tenant holds, shall be provided with a written notice specifying the breach and demanding the tenant quit the premises at least 30 days before commencement of an action for the recovery of the property. The tenant shall have free access to the premises to cultivate and harvest crops or produce planted by the tenant before the service of the notice of the breach and demand to quit the premises.

Article 2. Personal Property.

Sec. 34.05.030. Obtaining rental equipment with intent to defraud. [Repealed, § 21 ch 166 SLA 1978.]

Sec. 34.05.040. Failure to return rental equipment.

A person in possession of equipment under an agreement in writing that requires the person to return the equipment to a particular place or at a particular time who refuses or wilfully neglects to return it to the place and at the time specified in the agreement in writing, or who secretes, converts, sells, or attempts to sell the equipment or any part of it is, upon conviction, punishable by imprisonment for not more than one year, or by a fine of not more than \$1,000, or by both.

Sec. 34.05.050. Definitions.

In [AS 34.05.040](#),

(1) “equipment” means any tools, machinery, implements, or appliances used for any type of purpose or service;

(2) “wilfully neglects” means omits, fails, or forebears, with a conscious purpose to injure, or without regard for the rights of the owner, or with indifference whether a wrong is done the owner or not.

Article 3. Illegal Activities in Premises Not Subject to Uniform Residential Landlord and Tenant Act.

Sec. 34.05.100. Tenant responsibilities in premises not subject to [AS 34.03](#).

(a) In rented premises other than premises to which the provisions of [AS 34.03](#) apply, the tenant may not knowingly engage at the premises in prostitution, an illegal activity involving a place of prostitution, an illegal activity involving alcoholic beverages, an illegal activity involving gambling or promoting gambling, an illegal activity involving a controlled substance, or an illegal activity involving an imitation controlled substance, or knowingly permit others in the premises to engage in one or more of those activities at the rental premises.

(b) If there is noncompliance with (a) of this section, a person may seek relief under [AS 09.50.170](#) — 09.50.240.

(c) An order of abatement entered by a court under [AS 09.50.210](#) against premises under this section terminates a rental agreement on the premises subject to the order of abatement.

(d) In this section,

(1) “illegal activity involving alcoholic beverages,” “illegal activity involving a controlled substance,” “illegal activity involving an imitation controlled substance,” “illegal activity involving gambling or promoting gambling,” “illegal activity involving a place of prostitution,” and “prostitution” have the meanings given in [AS 34.03.360](#);

(2) “premises” means a structure or the structure of which it is a part, and facilities and appurtenances in it, and grounds, areas, and facilities held out for the use of persons entitled to possession under an agreement that relates to its use.

Chapter 06. Emergency Residential Rent Regulation and Control.

[Repealed, § 3 ch 128 SLA 1974 as amended by § 7 ch 108 SLA 1975.]

Chapter 07. Horizontal Property Regimes Act.

Article 1. Formation of Horizontal Property Regimes.

Sec. 34.07.010. This chapter applicable only if declaration executed and recorded.

(a) This chapter is applicable only to property, the sole owner or all of the owners of which submit it to the horizontal property regime by executing and recording a declaration under (c) of this section and [AS 34.07.020](#).

(b) A declaration or any amendment to the declaration is not valid unless recorded.

(c) The declaration shall be recorded in the recording district in which the property is located.

Sec. 34.07.020. Contents of declaration.

The declaration must contain

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

(2) a description of the building, stating the number of stories and basements, the number of

apartments and the principal materials of which it is or is to be constructed;

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

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

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

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

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

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

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

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

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

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

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

(14) a reference to the file number and recording information for the floor plans of the building affected that are required to be filed and recorded simultaneously with the declaration under [AS 34.07.030](#).

Sec. 34.07.025. Amendment of declaration; lienholder consent.

(a) If a declaration requires an association of apartment owners to obtain the consent of a lienholder with a lien on the property before the association may amend the declaration, the association may obtain the consent of the lienholder under this section.

(b) To amend the declaration under (a) of this section, the association of apartment owners shall send to a lienholder a dated written notice and a copy of the proposed amendment by certified mail, return receipt requested, to the most recent address of the lienholder shown on the mortgage, deed of trust, or other document that established the lien and to any other address provided by the lienholder to the association in writing.

(c) The association of apartment owners shall include in the notice provided under (b) of this section

(1) a statement that the association intends to amend the declaration;

(2) a request that the lienholder consent to the amendment;

(3) a statement that the association will amend the declaration if the lienholder fails to respond to the notice within 60 days after the postmark date of the notice; and

(4) a statement that the lienholder may not unreasonably withhold the lienholder's consent.

(d) If an association of apartment owners complies with (b) and (c) of this section and the lienholder fails to respond to the association within 60 days after the postmark date of the notice provided under (b) of this section, the lienholder is considered to have approved the proposed amendment.

(e) A lienholder may not unreasonably withhold the lienholder's consent to an amendment under this section.

(f) This section is not intended to be the exclusive method for an association of apartment owners to obtain the consent of a lienholder to an amendment of the declaration. If the association obtains the consent of a lienholder without using the method provided by this section, the association may obtain the consent of other lienholders by using the method provided by this section.

(g) This section applies to a lienholder whose lien on the property has been recorded under [AS 40.17](#).

(h) In this section, "lienholder" means a person that is a mortgagee, lender, or other holder of a lien on the property.

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

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

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

Sec. 34.07.040. Amendment to declaration in place of verified statement by architect or engineer regarding floor plans.

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

(b) The plans must each contain a reference to the date of recording of the declaration and the volume, page, and receiving number of the recorded declaration.

Sec. 34.07.050. Form of floor plans.

The recording office shall prescribe the style, size, form, and quality of floor plans filed and recorded under [AS 34.07.030](#).

Sec. 34.07.060. Survey map and floor plans subject to state and local laws.

The survey map and floor plans are subject to the provisions of state and local laws relating to plats, planning and plans, subdivisions, and zoning, if the laws are not inconsistent with the purposes of this chapter and if the building is or is to be located on land that is not owned in common.

Sec. 34.07.070. Recording of instruments affecting horizontal property regimes.

The declaration, an amendment to it, or any instrument by which the property may be removed from this chapter and every instrument affecting the property or an apartment may be recorded.

Article 2. Apartment Ownership and Conveyancing.

Sec. 34.07.080. Apartment classified as real property.

Each apartment, together with its undivided interest in the common areas and facilities is not considered an intangible or a security or any interest therein but for all purposes constitutes and is classified as real property under the provisions of this chapter.

Sec. 34.07.090. Apartment ownership and possession.

Each apartment owner shall have exclusive ownership and possession of the owner's apartment, but any apartment may be owned by husband and wife as tenants by the entirety or may be commonly owned by more than one person.

Sec. 34.07.100. Separation of apartment ownership from common areas and facilities ownership prohibited.

The percentage of the undivided interest in the common areas and facilities may not be separated from the apartment to which it appertains even though the interest is not expressly mentioned or described in the conveyance or other instrument.

Sec. 34.07.110. Release or partial release from encumbrance affecting apartment with first conveyance; partial waiver of lien claims.

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

(b) A partial waiver of lien claims created under [AS 34.35.050](#) — 34.35.120 (mechanics liens) on unsold apartments may be obtained by following the procedures specified in [AS 34.35.119](#).

Sec. 34.07.120. Liability of grantee for unpaid common expenses at time of conveyance.

In a voluntary conveyance the grantee of an apartment is jointly and severally liable with the grantor for all unpaid assessments against the latter for the grantor's share of the common expenses up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid on the assessments by the grantee.

Sec. 34.07.130. Person obtaining possession upon foreclosure of apartment not liable for common expenses.

If a mortgagee of a recorded mortgage or a trustee of a recorded deed of trust or other purchaser of an apartment obtains possession of the apartment as a result of foreclosure of the mortgage or deed of trust, the possessor, and successors and assigns of the possessor are not liable for the share of the common expenses or assessments by the association of apartment owners chargeable to the apartment that became due before possession. This unpaid share of common expenses or assessments is a common expense collectable from all of the apartment owners including the possessor and successors and assigns of the possessor.

Sec. 34.07.140. Grantee entitled to statement of unpaid assessments.

A grantee is entitled to a statement from the manager or board of directors setting out the amount of the unpaid assessments against the grantor. The grantee is not liable for, nor is the apartment conveyed subject to a lien for, any unpaid assessments against the grantor in excess of the amount in the statement.

Sec. 34.07.150. Contents of apartment deed.

An apartment deed must include

(1) a description of the land as provided in [AS 34.07.020](#), or the post office address of the property, and in either case, the date of recording of the declaration and its volume, page, and receiving number;

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

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

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

(5) any further details that the grantor and grantee may set out consistent with the declaration and with this chapter.

Article 3. Common Areas and Facilities Owned With Apartments.

Sec. 34.07.160. Common areas and facilities ownership.

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

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

Sec. 34.07.170. Nonexclusive easement to use common areas and facilities.

Each apartment owner has a nonexclusive easement for, and may use the common areas and facilities in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful right of the other apartment owners.

Sec. 34.07.180. Alteration of common areas and facilities ownership.

(a) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the declaration may not be altered except in accordance with procedures set out in the bylaws and by amending the declaration.

(b) The bylaws must provide for a periodic reappraisal of the apartments and the common areas and facilities together with a recomputation, if required, of the percentage of the undivided interest of each apartment owner in the common areas and facilities.

Sec. 34.07.190. Partition of common areas and facilities ownership prohibited.

(a) The common areas and facilities shall remain undivided and an apartment owner or other person may not bring an action for partition or division of any part, unless the property has been removed from the provisions of this chapter under [AS 34.07.300](#) — 34.07.340. Any covenant to the contrary is void.

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

Sec. 34.07.200. Maintenance, repair, and replacement of common areas and facilities.

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

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

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

(2) making emergency repairs in the apartment necessary to prevent damage to the common areas and facilities or to another apartment.

Sec. 34.07.210. Waiver of liability for share of common expenses prohibited.

Waiver by an apartment owner of the use or enjoyment of any of the common areas and facilities or abandonment of the apartment does not exempt the owner from liability for contribution towards the common expenses of common areas or facilities.

Sec. 34.07.220. Collection of unpaid common expenses from apartment owner.

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

(1) 10 days' notice shall be given the delinquent apartment owner stating that unless the assessment is paid within 10 days any or all utility services will be immediately severed and shall remain severed until the assessment is paid; or

(2) by the lawful method of enforcement as may be provided in the declaration or bylaws.

Sec. 34.07.230. Unpaid common expense is lien on apartment; order of lien priority.

A sum assessed by the association of apartment owners but unpaid for the share of the common expenses chargeable to an apartment constitutes a lien on the apartment prior to all other liens except

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

(2) sums unpaid on deeds of trust or mortgages of record.

Sec. 34.07.240. Common expense lien foreclosure.

(a) A common expense lien under [AS 34.07.230](#) may be foreclosed in a civil action brought by the manager or board of directors, acting on behalf of the apartment owners, in the same manner as a lien on, or mortgage of or a deed or trust of real property.

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

(c) The manager or board of directors, acting on behalf of the apartment owners may, unless

prohibited by the declaration, bid in the apartment at the foreclosure sale, and may acquire and hold, lease, mortgage, and convey the apartment.

Sec. 34.07.250. Action to recover a judgment for unpaid common expenses does not waive lien. An action to recover a judgment for unpaid common expenses is maintainable without foreclosing or waiving the lien securing it.

Sec. 34.07.260. Causes of action relating to common areas and facilities.

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

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

Sec. 34.07.270. Service of process on two or more apartment owners.

Service of process on two or more apartment owners in an action relating to the common areas and facilities of more than one apartment may be made on the person designated in the declaration to receive service of process.

Sec. 34.07.280. Receipts and expenditures records to be kept.

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

(b) All books and records shall be kept in accordance with good accounting procedures.

Sec. 34.07.290. Examination by apartment owner of receipts and expenditures.

The receipts and expenditures records and vouchers authorizing payment for maintenance and repair of common areas and facilities required to be kept by [AS 34.07.280](#) shall be available for examination by an apartment owner at convenient hours of weekdays.

Article 4. Damage or Destruction of Property.

Sec. 34.07.300. Determination to be made by apartment owners if property destroyed.

If within 60 days of damage or destruction of all or part of the property it is not determined by a majority of all apartment owners to repair, reconstruct, or rebuild in accordance with the original

plan, or by a unanimous vote of all apartment owners to do otherwise, then

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

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

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

Sec. 34.07.310. Action for partition if apartment owners fail to act.

An action for partition may be started by an apartment owner if the apartment owners fail to act under [AS 34.07.300](#) after the damage to or destruction of the property.

Sec. 34.07.320. Distribution of funds from partition sale.

(a) The net proceeds of a sale of the property conducted in an action for partition started under [AS 34.07.310](#) shall be considered as one fund.

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

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

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

Sec. 34.07.330. Removal of property from the provisions of this chapter.

All of the apartment owners may remove a property from the provisions of this chapter by a recorded instrument to that effect if the mortgagees, trustees, and holders of all liens affecting any of the apartments consent or agree, in either case by a recorded instrument, that their mortgages, deeds of trust, and liens are transferred to the percentage of the undivided interest of the apartment owner in the property under [AS 34.07.340](#).

Sec. 34.07.340. Ownership of property upon removal from the provisions of this chapter.

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

(b) The undivided interest in the property owned in common that appertains to each apartment owner is the percentage of the undivided interest previously owned by the owners in the common areas and facilities.

Sec. 34.07.350. Removal of property does not bar subsequent resubmission under this chapter.

The removal of property under [AS 34.07.330](#) — 34.07.340 does not bar the subsequent resubmission of the property to the provisions of this chapter.

Article 6. Miscellaneous Provisions.

Sec. 34.07.360. Strict compliance with bylaws by apartment owner necessary.

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

Sec. 34.07.370. Unanimous consent of all apartment owners needed for certain work on individual apartment.

An apartment owner may not do work that will jeopardize the soundness or safety of the property, reduce its value, or impair any easement or hereditament without the unanimous consent of all of the other apartment owners being first obtained.

Sec. 34.07.380. Common profits and expenses shared by apartment owners.

The common profits of the property shall be distributed among and the common expenses shall be charged to the apartment owners according to the percentage of the undivided interest in the common areas and facilities.

Sec. 34.07.390. Persons subject to this chapter.

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

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

Sec. 34.07.400. Insurance of property.

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

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

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

(d) Provision for insurance under this section does not prejudice the right of an apartment owner to insure the owner's apartment or the personal contents in it.

Sec. 34.07.410. Liens against property, apartments, common areas, and facilities.

(a) After the recording of the declaration as provided in this chapter, and while the property remains subject to this chapter, a lien may not arise or be effective against the property. During this period, liens or encumbrances may arise or be created only against each apartment and the percentage of undivided interest in the common areas and facilities appurtenant to the apartment in the same manner and under the same conditions as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership. However, labor performed or materials furnished with the consent of or at the request of the owner of any apartment, or the owner's agent, contractor, or subcontractor, may not be the basis for the filing of a lien against any other apartment or any other property of any other apartment owner not expressly consenting to or requesting the same. However, express consent is considered given by an apartment owner in the case of emergency repairs.

(b) Labor performed or materials furnished for the common areas and facilities, if authorized as provided in this chapter, or by the declaration or bylaws, or by the association of apartment owners, the manager, or the board of directors, is considered performed or furnished with the express consent of each apartment owner and may be the basis for the filing of a lien against each of the apartments and is subject to the provisions of [AS 34.07.420](#).

Sec. 34.07.420. Removal of lien against two or more apartments.

(a) If a lien against two or more apartments becomes effective, the apartment owners of the separate apartments may remove their apartments and the percentage of undivided interest in the common areas and facilities appurtenant to the apartments from the lien by payment of the fractional or proportional amounts attributable to each of the apartments affected. The individual payments are computed by reference to the percentage appearing on the declaration.

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

Sec. 34.07.430. Assessment and taxation of apartments.

(a) An apartment and its undivided interest in the common areas and facilities are a parcel and it is subject to separate assessments and taxation by each assessing unit for all types of taxes authorized by law including special ad valorem levies and special assessments. A building, property, or any of the common areas and facilities may not be a security or a parcel for any purpose.

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

Sec. 34.07.440. Interpretation of local ordinances, resolutions, or zoning laws.

Local ordinances, resolutions, or laws relating to zoning shall be construed to treat like structures, lots, or parcels in like manner regardless of whether or not the ownership is divided by sale of apartments under this chapter rather than by lease of apartments.

Article 7. General Provisions.

Sec. 34.07.450. Definitions.

In this chapter, unless the context otherwise requires,

(1) “apartment” means a part of the property intended for any type of independent use, including one or more rooms or enclosed spaces located on one or more floors, or part or parts of the floors, in a building, regardless of whether or not it is destined for a residence, an office, the operation of any industry or business, or for any other use not prohibited by law, and that has a direct exit to a public street or highway, or to a common area leading to the street or highway; and the boundaries of an apartment are the interior surfaces of the perimeter walls, floors, ceilings, windows, and doors thereof, and the apartment includes both the portions of the building so described and the airspace so encompassed; and interpreting declarations, deeds, and plans, the existing physical boundaries of the apartment as originally constructed or as reconstructed in substantial accordance with the original plans shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed or depicted in the declaration, deed, or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown in the declaration, deed, or plan and those of apartments in the building;

(2) “apartment number” means the number, letter, or a combination of them, designating the apartment in the recorded declaration;

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

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

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

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

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

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

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

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

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

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

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

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

(7) “common expenses” includes

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

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

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

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

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

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

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

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

(12) “majority” or “majority of apartment owners” means the apartment owners with 51 percent or more of the votes in accordance with the percentages assigned in the recorded declaration to the apartments for voting purposes;

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

Sec. 34.07.460. Short title.

This chapter may be cited as the Horizontal Property Regimes Act.

Chapter 08. Common Interest Ownership.

Article 1. Applicability.

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.

(a) 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.

(b) For the purposes of (a) of this section, the application of [AS 34.08.470](#) to a common interest community created under [AS 34.07](#) before January 1, 1986, with respect to an event or circumstance occurring after January 1, 1986, does not invalidate a provision in the declaration of the common interest community, even if the provision in the declaration conflicts with [AS 34.08.470](#).

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 instruments.

(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.

(g) If a declaration requires an association to obtain the consent of a lienholder with a lien on the property before the association may amend the declaration, the association may obtain the consent of the lienholder under (h) — (n) of this section.

(h) To amend the declaration under (g) of this section, the association shall send to a lienholder a dated written notice and a copy of the proposed amendment by certified mail, return receipt requested, to the most recent address of the lienholder shown on the mortgage, deed of trust, or other document that established the lien and to any other address provided by the lienholder to the association in writing.

(i) The association shall include in the notice provided under (h) of this section

(1) a statement that the association intends to amend the declaration;

(2) a request that the lienholder consent to the amendment;

(3) a statement that the association will amend the declaration if the lienholder fails to respond to the notice within 60 days after the postmark date of the notice; and

(4) a statement that the lienholder may not unreasonably withhold the lienholder's consent.

(j) If an association complies with (h) and (i) of this section and the lienholder fails to respond to the association within 60 days after the postmark date of the notice provided under (h) of this section, the lienholder is considered to have approved the proposed amendment.

(k) A lienholder may not unreasonably withhold the lienholder's consent to an amendment under (g) — (n) of this section.

(l) The provisions of (g) — (n) of this section are not intended to be the exclusive method for an association to obtain the consent of a lienholder to an amendment of the declaration. If an association obtains the consent of a lienholder without using the method provided by (g) — (n) of this section, the association may obtain the consent of other lienholders by using the method provided by (g) — (n) of this section.

(m) The provisions of (g) — (n) of this section apply to a lienholder whose lien on the property has been recorded under [AS 40.17](#).

(n) In (g) — (m) of this section, “lienholder” means a person that is a mortgagee, lender, or other holder of a lien on the property.

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 $33\frac{1}{3}$ 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.

Chapter 10. Land Registration Law.

Secs. 34.10.010 — 34.10.160. Administration, registration, enforcement. [Repealed, § 20 ch 182 SLA 1978.]

Sec. 34.10.170. [Renumbered as [AS 38.05.875](#).]

Secs. 34.10.180 — 34.10.240. Redemption. [Repealed, § 20 ch 182 SLA 1978.]

Chapter 15. Conveyances.

Article 1. Form and Effect.

Sec. 34.15.010. Manner of executing conveyances.

(a) A conveyance of land, or of an estate or interest in land, may be made by deed, signed and sealed by the person from whom the estate or interest is intended to pass, who is of lawful age, or by the lawful agent or attorney of the person, and acknowledged or proved, and recorded as directed in this chapter, without any other act or ceremony whatever.

(b) In a deed or conveyance of the family home or homestead by a married man or a married woman, the husband and wife shall join in the deed or conveyance.

(c) The requirement that a spouse of a married person join in a deed or conveyance of the family home or homestead does not create a proprietary right, title, or interest in the spouse not otherwise vested in the spouse.

(d) Failure of the spouse to join in the deed or conveyance does not affect the validity of the deed or conveyance, unless the spouse appears on the title. The deed or conveyance is sufficient in law to convey the legal title to the premises described in it from the grantor to the grantee when the deed or conveyance is otherwise sufficient, and

(1) no suit is filed in a court of record in the judicial district in which the land is located within one year from the date of recording of the deed or conveyance by the spouse who failed to join in the deed or conveyance to have the deed or conveyance set aside, altered, changed, or reformed; or

(2) the spouse whose interest in the property is affected does not record, within one year in the office of the recorder for the recording district where the property is situated, a notice of an interest in the property.

Sec. 34.15.015. Use of recorded master form.

If reference is made in a document to a recorded master form, a copy of the form, or so much of it as is incorporated by reference, must be provided to each party to the transaction by the party that furnished the document.

Sec. 34.15.020. Conveyance by nonresident married woman. [Repealed, § 103 ch 127 SLA 1974.]

Sec. 34.15.030. Form of warranty deed.

(a) A warranty deed for the conveyance of land may be substantially in the following form, without express covenants:

“The grantor (here insert the name or names and place of residence) for and in consideration of (here insert consideration) in hand paid, conveys and warrants to (here insert the grantee's name or names) the following described real estate (here insert description), located in the State of Alaska.

“Dated this day of, 2.....”

(b) A deed substantially in the form set forth in (a) of this section, when otherwise duly executed, is considered a conveyance in fee simple to the grantee and the heirs and assigns of the grantee, with the following covenants by the grantor: (1) that at the time of the making and delivery of the deed the grantor is lawfully seized of an indefeasible estate in fee simple to the premises described, and has the right and power to convey the premises; (2) that at the time of making and delivery of the deed the premises are free from encumbrances; and (3) that the grantor warrants the quiet and peaceable possession of the premises, and will defend the title to the premises against all persons claiming the premises. The covenants are binding upon a grantor and the heirs and personal representative of a grantor as if written in the deed.

Sec. 34.15.040. Form of quitclaim deed.

(a) A quitclaim deed may be substantially in the following form:

“The grantor (here insert the name or names and place of residence), for and in consideration of (here insert consideration) conveys and quitclaims to (here insert grantee's name or names) all interest which I (we) have, if any, in the following described real estate (here insert description), located in the State of Alaska.

“Dated this day of, 2.....”

(b) A deed substantially in the form set out in (a) of this section, when otherwise duly executed, is considered a sufficient conveyance, release and quitclaim to the grantee and the heirs and assigns of the grantee, in fee of all the existing legal and equitable rights of the grantor in the premises described in the deed.

Sec. 34.15.050. Effect of quitclaim.

A deed of quitclaim and release for the form in common use is sufficient to pass all the real estate which the grantor can convey by a deed of bargain and sale.

Sec. 34.15.060. Passage of fee.

The term “heirs” or other words of inheritance are not necessary to create or convey an estate in fee simple.

Sec. 34.15.070. Passage of grantor's entire estate.

(a) A conveyance of real estate passes all the real estate of the grantor, unless the intent to pass a

less estate appears by express terms or is necessarily implied in the terms of the grant.

(b) A conveyance by a tenant for life or years purporting to grant a greater estate than the tenant possesses or can convey does not work a forfeiture of the estate, but passes to the grantee all the estate that the tenant can convey.

Sec. 34.15.075. Receipt of after-acquired title or interest.

(a) In addition to any estate passed by the grantor under [AS 34.15.070](#), whenever a person purports by a warranty deed, or, for Alaska Native Claims Settlement Act real property, a quitclaim deed, to grant real property in fee or in fee simple to a grantee and subsequently acquires title to, or an interest in, the real property, the subsequently acquired title or interest passes by operation of law to the grantee or the grantee's successors.

(b) In this section, “Alaska Native Claims Settlement Act real property” means real property that, at some point in that real property's chain of title, was conveyed by the federal government under 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act) to a corporation established under 43 U.S.C. 1601 et seq.

Sec. 34.15.080. Covenants not implied.

No covenant is implied in a conveyance of real estate, whether the conveyance contains special covenants or not.

Sec. 34.15.090. Covenant not implied in mortgage.

A mortgage may not be construed as implying a covenant for the payment of the sum intended to be secured by the mortgage. When there is no express covenant for payment contained in the mortgage, and no bond or other separate instrument to secure payment is given, the remedies of the mortgagee are confined to the land mentioned in the mortgage.

Sec. 34.15.100. Conveyance of lands held adversely.

A grant or conveyance of land or interest in land is not void because at the time of the execution the land is in the actual possession of another claiming adversely.

Sec. 34.15.105. Transfer fee covenants prohibited.

(a) A document that conveys real estate may not include a provision that requires a subsequent grantee or grantor to pay a transfer fee to convey the real estate, except a document that conveys real estate may include a provision that requires a transfer fee if the fee is

- (1) a loan assumption fee or similar fee charged by a person holding a lien on the property; or
- (2) a fee or commission paid to a licensed real estate broker for brokerage services.

(b) In this section, “transfer fee” does not include

- (1) a tax, assessment, fee, or charge imposed by a governmental authority;
- (2) a recording fee;

(3) a fee payable to a nonprofit, mandatory homeowners' association, condominium association, or cooperative under an applicable declaration or covenant; or

(4) a fee payable to an organization described in 26 U.S.C. 501(c)(3) or (c)(4) (Internal Revenue Code) used exclusively for cultural, educational, charitable, recreational, environmental, conservation, or similar activities that benefit the real estate conveyed.

(c) A provision that violates this section is void.

Sec. 34.15.110. Conveyances construed as creating tenancy in common.

(a) A conveyance or devise of land or an interest in land made to two or more persons, other than to executors and trustees, as such, shall be construed to create a tenancy in common in the estate, except as provided in (b) of this section and [AS 34.77.100](#).

(b) A husband and wife who acquire title in real property hold the estate as tenants by the entirety, except as provided by [AS 34.77.100](#) or unless it is expressly declared otherwise in the conveyance or devise. The conveyance shall recite the marital status of the parties acquiring title to the real property.

Sec. 34.15.120. Remedy of tenant in common.

A tenant in common may maintain an action against a cotenant for receiving more than the fair share of the rents and profits of the estates owned by them in common.

Sec. 34.15.130. Joint tenancy abolished.

Joint tenancy, with the exception of interests in personalty and tenancy by the entirety, is abolished. Except as provided in [AS 34.15.110](#)(b) and [AS 34.77.100](#), persons having an undivided interest in real property are considered tenants in common.

Sec. 34.15.140. Tenancy by the entirety.

(a) The right to hold an estate in land as tenants by the entirety, with the right of survivorship, is recognized.

(b) [Repealed, § 91 ch 6 SLA 1984.]

(c) The right of a spouse to convey to self and the other spouse as tenants by the entirety, or as tenants in common, is confirmed.

Sec. 34.15.145. Solar easement.

(a) An easement obtained for the purpose of protecting the exposure of property to the direct rays of the sun must be created in writing and is subject to the recording requirements for other conveyances of real property.

(b) An instrument creating a solar easement must include, but is not limited to,

(1) the vertical and horizontal angles, expressed in degrees, at which the solar easement

extends over the real property subject to the solar easement;

(2) any terms or conditions under which the solar easement is granted or under which it will be terminated;

(3) any provisions for compensation of the owner of the property benefiting from the solar easement in the event of interference with the enjoyment of the solar easement, or compensation of the owner of the property subject to the solar easement for maintaining the solar easement.

Article 2. Acknowledgment and Proof.

Sec. 34.15.150. Execution of conveyances.

(a) A conveyance executed in the state of land or an interest in land in the state shall be acknowledged before a person authorized to take acknowledgments in [AS 09.63.010](#) or proved in accordance with [AS 34.15.210](#) or 34.15.220. The officer taking an acknowledgment shall endorse on it a certificate of the acknowledgment of the conveyance and the date of making the acknowledgment.

(b) A conveyance executed before March 12, 1953, in due form but without two witnesses is validated, shall be received in evidence in all courts of the state, and is evidence of the title to the land or interest in land against the grantor and the heirs and assigns of the grantor.

Sec. 34.15.160. Conveyances executed outside the state.

If a conveyance is executed in a state, territory, or district of the United States, the conveyance may be executed according to the laws of that state, territory, or district, and the execution of the conveyance may be acknowledged under [AS 09.63.050](#) — 09.63.130.

Sec. 34.15.170. Certificate of acknowledgment. [Repealed, § 6 ch 37 SLA 1981.]

Sec. 34.15.180. Execution and acknowledgment of conveyance in foreign country.

If a conveyance is executed in a foreign country it may be executed according to the laws of that country and the execution of it acknowledged under [AS 09.63.050](#) — 09.63.130.

Secs. 34.15.190 — 34.15.200. Acknowledgment by married person; officer's knowledge of grantor's identity. [Repealed, § 6 ch 37 SLA 1981. For current law see [AS 09.63](#).]

Sec. 34.15.210. Proof by subscribing witness.

(a) Proof of the execution of a conveyance may be made before an officer authorized to take acknowledgment of conveyances, and shall be made by a subscribing witness, who shall state the witness' own place of residence and that the witness knows the person described in and executing the conveyance.

(b) This proof may not be taken unless the officer is personally acquainted with the subscribing witness or has satisfactory evidence that the person is the subscribing witness to the instrument.

Sec. 34.15.220. Proof of conveyance by handwriting.

When a grantor is dead, out of the state, or refuses to acknowledge the conveyance, and all the subscribing witnesses to the conveyance are also dead or reside out of the state, the conveyance may be proved before the superior court, by proving the handwriting of the grantor and of a subscribing witness to it.

Sec. 34.15.230. Subpoena of witness.

An officer authorized to take an acknowledgment or proof of conveyance may issue a subpoena requiring a witness to a conveyance to appear and testify before the officer regarding the execution, upon the application of a grantee, or of a person claiming under the grantee, verified by the oath of the applicant, setting out that

- (1) the grantor is dead, out of the state, or refuses to acknowledge the conveyance;
- (2) a witness to the conveyance refuses to appear and testify regarding the execution of the conveyance; and
- (3) the conveyance cannot be proved without the evidence of the witness.

Sec. 34.15.240. Penalty for refusal to appear or testify.

A person served with a subpoena described in [AS 34.15.230](#) who, without reasonable cause, refuses or neglects to appear, or upon appearing refuses to answer upon oath regarding the execution of a deed, shall forfeit to the injured party \$100, and may also be committed to jail for a contempt by the officer who issues the subpoena, to remain in jail until the person submits to answer on oath as required.

Sec. 34.15.250. Endorsement by officer.

An officer taking the proof of a conveyance shall certify it, sign it, and in the certificate shall set out the things required by this chapter to be done, known, or proved, together with the names of the witnesses examined before the officer, their places of residence, and the substance of the evidence given by them.

Article 3. Recording.

Secs. 34.15.260 — 34.15.340. Recording. [Repealed, § 43 ch 161 SLA 1988. For current law, see [AS 40.17.](#)]

Sec. 34.15.343. [Renumbered as [AS 40.17.035.](#)]

Secs. 34.15.345 , 34.15.350. Recording. [Repealed, § 43 ch 161 SLA 1988. For current law, see [AS 40.17.](#)]

Chapter 17. Conservation and Public Recreational Use Easements.

Article 1. Uniform Conservation Easement Act.

Sec. 34.17.010. Creation, conveyance, acceptance, and duration.

(a) Except as otherwise provided in [AS 34.17.010](#) — 34.17.060, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements.

(b) A right or duty in favor of or against a holder and a right in favor of a person having a third-party right of enforcement may not arise under a conservation easement before the conservation easement is accepted by the holder and the acceptance is recorded.

(c) Except as provided in [AS 34.17.020](#)(b), a conservation easement is unlimited in duration unless the instrument creating the conservation easement provides a limitation on duration.

(d) An interest in real property in existence at the time a conservation easement is created is not impaired by the conservation easement unless the owner of the interest is a party to or consents to the conservation easement.

(e) The state or a municipality may not establish a conservation easement on property by eminent domain.

Sec. 34.17.020. Judicial actions.

(a) An action affecting a conservation easement may be brought by

- (1) an owner of an interest in the real property burdened by the easement;
- (2) a holder of the easement;
- (3) a person having a third-party right of enforcement; or
- (4) a person authorized by other law.

(b) [AS 34.17.010](#) — 34.17.060 do not affect the power of a court to modify or terminate a conservation easement under the principles of law and equity.

Sec. 34.17.030. Validity.

A conservation easement is valid even though

- (1) it is not appurtenant to an interest in real property;
- (2) it can be or has been assigned to another holder;
- (3) it is not of a character that has been recognized traditionally at common law;
- (4) it imposes a negative burden;
- (5) it imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;
- (6) the benefit does not touch or concern real property; or
- (7) there is no privity of estate or of contract.

Sec. 34.17.040. Applicability.

(a) [AS 34.17.010](#) — 34.17.060 apply to an interest created on or after May 31, 1989 that complies with [AS 34.17.010](#) — 34.17.060, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise.

(b) [AS 34.17.010](#) — 34.17.060 apply to an interest created before May 31, 1989 if the interest would have been enforceable if it had been created after May 31, 1989 unless the retroactive application contravenes the constitution or laws of the state or the United States.

(c) [AS 34.17.010](#) — 34.17.060 do not invalidate an interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under the law of the state.

Sec. 34.17.050. Uniformity of application and construction.

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

Sec. 34.17.055. Tort immunity from personal injuries or death arising out of the use of land subject to a conservation easement.

(a) In addition to the immunity provided by [AS 09.65.200](#), an owner of land, a portion of which is subject to a conservation easement that is 50 feet or less in width, that has been granted to and accepted by the state or a municipality, and that provides public access for recreational purposes on the land subject to the conservation easement is not liable in tort, except for an act or omission that constitutes gross negligence or reckless or intentional misconduct, for damages to a person who uses the easement to enter onto or remain on the land if

(1) the person had no responsibility to compensate the owner for the person's use of the easement or the land; and

(2) the damages arise out of the person's use of the easement for recreational purposes on the land.

(b) The immunity under (a) of this section extends to the grantee of the conservation easement providing public access to the land for recreational purposes.

Sec. 34.17.060. Definitions.

In [AS 34.17.010](#) — 34.17.060,

(1) “conservation easement” means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations to retain or protect natural, scenic, or open space values of real property, ensure its availability for agricultural, forest, recreational, or open space use, protect natural resources, maintain or enhance air or water quality, or preserve the historical, architectural, archaeological, or cultural aspects of real property;

(2) “holder” means

(A) a governmental body empowered to hold an interest in real property under the laws of the state or the United States; or

(B) a nonprofit corporation, charitable corporation, charitable association, or charitable trust exempted from taxation under 26 U.S.C. 501(c)(3) and empowered to retain or protect the natural, scenic, or open space values of real property, ensure the availability of real property for agricultural, forest, recreational, or open space use, protect natural resources, maintain or enhance air or water quality, or preserve the historical, architectural, archaeological, or cultural aspects of

real property;

(3) “third-party right of enforcement” means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, nonprofit corporation, charitable corporation, charitable association, or charitable trust that is not a holder.

Article 2. Public Recreational Use Easements.

Sec. 34.17.100. Public recreational use easements.

(a) A public recreational use easement may be created for the purposes of [AS 09.65.202](#) by recording the grant of the easement in the recorder's office for the recording district where the land affected by the easement is located. The grant of the public recreational use easement must

(1) be on a form provided by the Department of Natural Resources;

(2) identify the land affected;

(3) set out restrictions, conditions, or reservations affecting the easement, including terms addressing duration or termination of the easement, if any; and

(4) state that the purpose of the easement is to make the land available for public recreational activity.

(b) The easement granted under (a) of this section may be a conservation easement under [AS 34.17.010](#) — 34.17.060 (Uniform Conservation Easement Act).

Chapter 20. Mortgages and Trust Deeds.

Article 1. Mortgages.

Sec. 34.20.010. Recording assignment of mortgage.

The recording of the assignment of a mortgage is not in itself considered notice of the assignment to the mortgagor or the heirs or personal representatives of the mortgagor, so as to invalidate a payment made by one or more of them to the mortgagee.

Sec. 34.20.020. Discharge of mortgage by entry in margin of record. [Repealed, § 43 ch 161 SLA 1988.]

Sec. 34.20.030. Recording of discharge upon certificate of mortgagee.

A mortgage may be discharged upon the record of the mortgage by the recorder who has custody of the record when there is presented to the recorder a certificate executed by the mortgagee or the personal representatives or assigns of the mortgagee, acknowledged or proved and certified in the manner prescribed in [AS 34.15](#) to entitle conveyances to be recorded, specifying that the mortgage is paid or otherwise satisfied or discharged.

Sec. 34.20.040. Recording certificate.

A certificate of discharge provided for in [AS 34.20.030](#) and the proof or acknowledgment of the certificate shall be recorded at full length. A reference shall be made to the book and page containing the record of the certificate or the serial number of the record of the certificate in the

entry of the discharge of the mortgage made by the recorder upon the record of the discharge.

Sec. 34.20.050. Penalty for failure to discharge mortgage or execute certificate.

If a mortgagee, or personal representatives, successors in interest or assigns of the mortgagee, after full performance of the condition of the mortgage, whether before or after a breach, for 10 days after being so requested in writing, and after tender of the reasonable charges, neglects or refuses to discharge the mortgage, or to execute and acknowledge a certificate of discharge or release of the mortgage, the mortgagee is liable to the mortgagor, the heirs, successors in interest, representatives or assigns of the mortgagor, in the sum of \$300 damages, and also for all damages occasioned by the neglect or refusal.

Sec. 34.20.060. Definition.

In [AS 34.20.010](#) — 34.20.060, “conveyance” includes every instrument in writing by which an estate or interest in real property is created, alienated, mortgaged, or encumbered, or by which the title to real property is affected, except a will.

Article 2. Deeds of Trust.

Sec. 34.20.070. Sale by trustee.

(a) If a deed of trust is executed conveying real property located in the state to a trustee as security for the payment of an indebtedness and the deed provides that in case of default or noncompliance with the terms of the trust, the trustee may sell the property for condition broken, the trustee, in addition to the right of foreclosure and sale, may execute the trust by sale of the property, upon the conditions and in the manner set forth in the deed of trust, without first securing a decree of foreclosure and order of sale from the court, if the trustee has complied with the notice requirements of (b) of this section. If the deed of trust is foreclosed judicially or the note secured by the deed of trust is sued on and a judgment is obtained by the beneficiary, the beneficiary may not exercise the nonjudicial remedies described in this section.

(b) Not less than 30 days after the default and not less than 90 days before the sale, the trustee shall record in the office of the recorder of the recording district in which the trust property is located a notice of default setting out (1) the name of the trustor, (2) the book and page where the trust deed is recorded or the serial number assigned to the trust deed by the recorder, (3) a description of the trust property, including the property's street address if there is a street address for the property, (4) a statement that a breach of the obligation for which the deed of trust is security has occurred, (5) the nature of the breach, (6) the sum owing on the obligation, (7) the election by the trustee to sell the property to satisfy the obligation, (8) the date, time, and place of the sale, and (9) the statement described in (e) of this section describing conditions for curing the default. An inaccuracy in the street address may not be used to set aside a sale if the legal description is correct. At any time before the sale date stated in the notice of default or to which the sale is postponed under [AS 34.20.080](#)(e), if the default has arisen by failure to make payments required by the trust deed, the default may be cured and sale under this section terminated by payment of the sum then in default, other than the principal that would not then be due if no default had occurred, and attorney and other foreclosure fees and costs actually incurred by the beneficiary and trustee due to the default. If, under the same trust deed, notice of default under this subsection has been recorded two or more times previously and the default has been cured under this subsection, the trustee may elect to refuse payment and continue the sale.

(c) Within 10 days after recording the notice of default, the trustee shall mail a copy of the notice by certified mail to the last known address of each of the following persons or their legal representatives: (1) the trustor in the trust deed; (2) the successor in interest to the trustor whose interest appears of record or of whose interest the trustee or the beneficiary has actual notice, or

who is in actual physical possession of the property; (3) any other person actually in physical possession of the property; (4) any person having a lien or interest subsequent to the interest of the trustee in the trust deed, where the lien or interest appears of record or where the trustee or the beneficiary has actual notice of the lien or interest, except as provided in (f) of this section. The notice may be delivered personally instead of by mail.

(d) If the State of Alaska is a subsequent party, the trustee, in addition to the notice of default, shall give the state a supplemental notice of any state lien existing as of the date of filing the notice of default. This notice must set out, with such particularity as reasonably available information will permit, the nature of the state's lien, including the name and address, if known, of the person whose liability created the lien, the amount shown on the lien document, the department of the state government involved, the recording district, and the book and page on which the lien was recorded or the serial number assigned to the lien by the recorder.

(e) The statement required by (b)(9) of this section must state that, if the default has arisen by failure to make payments required by the trust deed, the default may be cured and the sale under this section terminated if

(1) payment of the sum then in default, other than the principal that would not then be due if default had not occurred, and attorney and other foreclosure fees and costs actually incurred by the beneficiary and trustee due to the default is made at any time before the sale date stated in the notice of default or to which the sale is postponed; and

(2) when notice of default under (b) of this section has been recorded two or more times previously under the same trust deed and the default has been cured under (b) of this section, the trustee does not elect to refuse payment and continue the sale.

(f) In (c)(4) of this section, if the existence of a lien or nonpossessory interest can only be inferred from an inspection of the real property, the person holding the lien or nonpossessory interest is not entitled to notice under (c) of this section unless the lien or nonpossessory interest appears of record or a written notice of the lien or nonpossessory interest has been given to the beneficiary or trustee before the recording of the notice of default.

(g) If the trustee delivers notice personally under (c) of this section to the property or to an occupant of the property, the trustee may, notwithstanding (c) of this section, deliver the notice up to 20 days after the notice of default is recorded. If there is not a structure on the property and a person is not present on the property at the time of delivery, the trustee may place the notice on the property, or as close as practicable to the property if

(1) there is not a practical road access to the property; or

(2) access to the property is restricted by gates or other barriers.

(h) If the trustee or other person who delivered notice under (g) of this section signs an affidavit for the delivery, the affidavit is prima facie evidence that the trustee complied with (g) of this section. After one year from the delivery, as evidenced by the affidavit, the trustee is conclusively presumed to have complied with (g) of this section unless, within one year from the delivery, an action has been filed in court to contest the foreclosure based on failing to comply with (g) of this section.

(i) If a person who is entitled to receive notice by mail under (c) of this section is known by the beneficiary or trustee to be deceased, the trustee may satisfy the notice requirements of (c) of this section by mailing the notice to the last known address of the deceased person and to the personal representative of the deceased person if the beneficiary or trustee knows that a personal representative has been appointed for the deceased person.

(j) If a person who is entitled to receive notice by mail under (c) of this section is known by the beneficiary or trustee to be deceased but the trustee and the beneficiary do not know that a personal representative has been appointed for the deceased person, the trustee may satisfy the notice requirements of (c) of this section by

(1) mailing the notice to the heirs and devisees of the deceased person

(A) whose names and addresses are known to the beneficiary or trustee; or

(B) who have recorded a notice of their interest in the property; and

(2) publishing and posting the notice of the foreclosure as provided by law for the sale of real property on execution, except that the notice must be titled “To the Heirs or Devisees of (insert the name of the deceased person)” and include in the body of the notice a list of the names of the persons who are known by the beneficiary or trustee to be the heirs and devisees of the deceased person.

(k) If notice is given as required by (i) and (j) of this section, an heir or devisee of the deceased person may not challenge the foreclosure on the ground that the heir or devisee did not receive notice of the sale, unless the heir or devisee challenges the foreclosure on this ground within 90 days after the sale.

(l) A person may bring an action in court to enjoin a foreclosure on real property only if the person is

(1) the trustor of the deed of trust under which the real property was foreclosed;

(2) a guarantor of the obligation that the real property is securing;

(3) a person who has an interest in the real property that has been recorded;

(4) a person who has a recorded lien against the real property;

(5) an heir to the real property;

(6) a devisee of the real property; or

(7) the attorney general acting under other legal authority.

(m) If a person brings an action under (l) of this section to stop a sale of real property, and if the sale is being brought because of a default in the performance of a nonmonetary obligation required by the deed of trust that the real property is securing, the court may impose on the person the conditions that the court determines are appropriate to protect the beneficiary.

(n) In this section, “devisee,” “heir,” and “personal representative” have the meanings given in [AS 13.06.050](#).

Sec. 34.20.080. Sale at public auction.

(a) The sale authorized in [AS 34.20.070](#) shall be made under the terms and conditions and in the manner set out in the deed of trust. The proceeds from a sale shall be placed in a trust account until they are disbursed. However, the sale shall be made

(1) at public auction held at the front door of a courthouse of the superior court in the judicial district where the property is located, unless the deed of trust specifically provides that the sale shall be held in a different place, except that a trustee may also accept bids by telephone, the

Internet, and electronic mail if the trustee has taken reasonable steps to ensure that the bidding methods using the telephone, the Internet, or electronic mail are fair, accessible, and designed to result in money that is immediately available for disbursement; and

(2) after public notice of the time and place of the sale has been given in the manner provided by law for the sale of real property on execution.

(b) The attorney for the trustee or another agent of the trustee may conduct the sale and act in the sale as the auctioneer for the trustee. The trustee may set reasonable rules and conditions for the conduct of the sale. Sale shall be made to the highest and best bidder. The beneficiary under the trust deed may bid at the trustee's sale. Except as provided by (g) of this section, the trustee shall execute and deliver to the purchaser a deed to the property sold.

(c) The deed must recite the date and the book and page of the recording of default, and the mailing or delivery of the copies of the notice of default, the true consideration for the conveyance, the time and place of the publication of notice of sale, and the time, place, and manner of sale, and refer to the deed of trust by reference to the page, volume, and place of record or to the place of record and the serial number assigned to the deed of trust by the recorder.

(d) After the sale an affidavit of mailing the notice of default and an affidavit of publication of the notice of sale shall be recorded in the mortgage records of the recording district where the property is located.

(e) The trustee may postpone sale of all or any portion of the property by delivering to the person conducting the sale a written and signed request for the postponement to a stated date and hour. The person conducting the sale shall publicly announce the postponement to the stated date and hour at the time and place originally fixed for the sale. This procedure shall be followed in any succeeding postponement, but the foreclosure may not be postponed for more than 12 months unless a new notice of the sale is given under (a)(2) of this section. A sale may be postponed for up to 12 months from the sale date stated in the notice of default under [AS 34.20.070](#)(b) without providing a basis for challenging the validity of the foreclosure process because of the length of time the foreclosure has been pending.

(f) After delivery of a deed under (b) of this section, the trustee shall distribute any cash proceeds of the sale in the following order to

(1) the beneficiary of the deed of trust being foreclosed until the beneficiary is paid the full amount that is owed under the deed of trust to the beneficiary;

(2) the persons who held, at the time of the sale, recorded interests, except easements, in the property, that were subordinate to the foreclosed deed of trust; the distribution under this paragraph shall be made according to the priority of the recorded interest, and a recorded interest with a higher priority shall be satisfied before distribution is made to the recorded interest that is next lower in priority; however, if a person holds a recorded interest that is an assessment, the person is entitled only to the amount of the assessment that was due at the time of the sale; in this paragraph, "recorded interest" means an interest, including a lease, recorded under [AS 40.17](#);

(3) the trustor in the trust deed if the trustor is still the owner of the property at the time of the foreclosure sale, but, if the trustor is not still the owner of the property at the time of the foreclosure sale, then to the trustor's successor in interest whose interest appears of record at the time of the foreclosure sale.

(g) The trustee may withhold delivery of the deed under (b) of this section for up to 10 days after the sale. If, during the 10 days, the trustee determines that the sale should not have proceeded, the trustee may not issue the deed but shall

(1) inform the beneficiary, the otherwise successful bidder, and the trustor of the trust deed or the trustor's successor in interest that the sale is rescinded; and

(2) return to the otherwise successful bidder money received from the otherwise successful bidder as a bid on the property; return of this money is the otherwise successful bidder's only remedy if the trustee withholds delivery of the deed under (b) of this section.

(h) If a trustee rescinds a sale under (g) of this section and the obligation secured by the deed of trust remains in default, the trustee may, at the request of the beneficiary, reschedule the sale for a date that is not less than 45 days after the date of the rescinded sale. Not less than 30 days before the rescheduled sale date, the trustee shall

(1) mail notice of the rescheduled sale date by certified mail to the last known address of each of the persons identified by [AS 34.20.070\(c\)](#); and

(2) publish and post the notice of the rescheduled sale date as provided by law for the sale of real property on execution.

(i) Unless a sale is rescinded under (g) of this section, the sale completely terminates the rights of the trustor of the trust deed in the property.

(j) If a sale is rescinded under (g) of this section, the deed of trust foreclosed in the rescinded sale is restored to the validity and priority it would have had as though the sale had not occurred.

Sec. 34.20.090. Title, interest, possessory rights, and redemption.

(a) The sale and conveyance transfers all title and interest that the party executing the deed of trust had in the property sold at the time of its execution, together with all title and interest that party may have acquired before the sale, and the party executing the deed of trust or the heirs or assigns of that party have no right or privilege to redeem the property, unless the deed of trust so declares.

(b) The purchaser at a sale and the heirs and assigns of the purchaser are, after the execution of a deed to the purchaser by the trustee, entitled to the possession of the premises described in the deed as against the party executing the deed of trust or any other person claiming by, through or under that party, after recording the deed of trust in the recording district where the property is located.

(c) A recital of compliance with all requirements of law regarding the mailing or personal delivery of copies of notices of default in the deed executed under a power of sale is prima facie evidence of compliance with the requirements. The recital is conclusive evidence of compliance with the requirements in favor of a bona fide purchaser or encumbrancer for value and without notice.

Sec. 34.20.100. Deficiency judgment prohibited.

When a sale is made by a trustee under a deed of trust, as authorized by [AS 34.20.070](#) — 34.20.130, no other or further action or proceeding may be taken nor judgment entered against the maker or the surety or guarantor of the maker, on the obligation secured by the deed of trust for a deficiency.

Sec. 34.20.110. Trust deeds recorded as mortgages.

For the purposes of record, a deed of trust, given to secure an indebtedness, shall be treated as a mortgage of real estate, and recorded in full in the book provided for mortgages of real property. The person who makes or executes the deed of trust shall be indexed as "mortgagor," and the trustee and the beneficiary or cestui que trust, as the "mortgagees."

Sec. 34.20.115. Procedure for reconveyance.

(a) Unless the beneficiary has requested that a title insurance company reconvey a trust deed before the title insurance company mails or delivers the notice under (b) of this section, a title insurance company shall comply with the requirements of this section before reconveying the trust deed.

(b) Not less than 30 days after payment in full of the obligation secured by a trust deed and receipt of satisfactory evidence of payment in full, a title insurance company shall

(1) mail, by certified mail with postage prepaid, return receipt requested, to the beneficiary and the servicer, a notice of intent to reconvey; the notice shall be sent to the beneficiary's address and the servicer's address

(A) stated in the trust deed;

(B) stated in the last recorded assignment of the trust deed, if any;

(C) shown in a request for notice recorded under (g) of this section; and

(D) if any, personally known to the title insurance company; or

(2) hand deliver to the beneficiary and to the servicer a notice of intent to reconvey.

(c) The notice required by (b) of this section must be in substantially the following form and accompanied by a copy of the reconveyance to be recorded:

NOTICE OF INTENT TO RECONVEY TO: (Beneficiary or servicer for beneficiary) FROM: (Title insurance company) DATE: _____ Notice is hereby given to you as follows: (1) This notice concerns the trust deed described as follows: Trustor:

Beneficiary:
Recording information for the
trust deed: Serial number: _____ or Book number:

Page number:
Recording information for current assignment of trust
deed: Serial number: _____ or Book number:

Page number:
(2) The undersigned title insurance company claims to have fully paid or received satisfactory evidence of the payment in full of the obligation secured by the trust deed described above. (3) Unless, within 90 days following the date stated above, the undersigned has received, by certified mail, return receipt requested, directed to the address noted below, a notice stating that you have not received payment in full of all obligations secured by the trust deed or that you otherwise object to reconveyance of the trust deed, the undersigned will fully release and reconvey the trust deed under [AS 34.20.115](#). (4) A copy of the reconveyance or release of the trust deed is enclosed with this notice. (Title insurance company) (Address) (Telephone number) (d) After at least 90 days have elapsed after the mailing or delivery of the notice of intent to reconvey under (b) of this section, if a title insurance company has not received an objection to the reconveyance, the title insurance company may execute and record a

reconveyance of the trust deed.

(e) The reconveyance authorized by (d) of this section must be acknowledged under [AS 09.63](#) and be in substantially the following form

RECONVEYANCE OF TRUST DEED _____, a title insurance company authorized to transact business in Alaska, does, by this document, reconvey, without warranty, to the person or persons legally entitled to the trust property, the following trust property covered by a trust deed naming _____ as trustee and _____ as beneficiary, which was recorded on _____ at serial number _____ or at book _____

and page _____: The following described property located in the _____ Judicial District, State of Alaska: (Property description) The undersigned title insurance company certifies that (1) the undersigned title insurance company has fully paid or received satisfactory evidence of the payment in full of the obligation secured by the trust deed; (2) not less than 30 days following the payment in full of the trust deed, the undersigned hand delivered or mailed by certified mail, return receipt requested, to the record beneficiary under the trust deed and the servicer for the record beneficiary, at the beneficiary's and servicer's record addresses, and to any address personally known to this title insurance company, a notice of intent to reconvey as required by [AS 34.20.115](#); and (3) at least 90 days have elapsed after the mailing or delivery of the notice of intent to reconvey, and the undersigned title insurance company has not received an objection to the reconveyance. Dated _____

insurance company) (Acknowledgment). (f) A reconveyance of a trust deed, when executed and acknowledged in substantially the form prescribed in (e) of this section, may be recorded and, when recorded, constitutes a reconveyance of the trust deed identified in the reconveyance, regardless of any deficiency in the reconveyance procedure that is not disclosed in the recorded reconveyance, except for forgery of the title insurance company's signature. The reconveyance of a trust deed under this section does not discharge a personal obligation that was secured by the trust deed at the time of its reconveyance.

(g) A person who wants to receive a copy of a notice given under (b) of this section after the deed of trust is recorded and before the reconveyance is recorded under (d) of this section may record a request for a copy of the notice in the office of the recorder in the judicial district in which a part of the real property is located. The request must be acknowledged, must state the name and address of the person requesting the copy of the notice, and must identify the deed of trust by stating the names of the parties to the deed of trust, the date of recordation, and the serial number or book and page numbers where the deed of trust is recorded.

(h) If, at any point during the procedure required by this section, the beneficiary requests the title insurance company to reconvey the trust deed, the title insurance company is not required to proceed with the rest of the procedure required by this section and may execute and record a reconveyance of the trust deed.

(i) Except as provided in (a) and (h) of this section, if a title insurance company reconveys a trust deed without having satisfactory evidence of payment in full required under (b) of this section or without providing the prior notice to the beneficiary and the servicer as required under this section, the title insurance company is liable to the beneficiary and to the heirs, successors in interest, representatives, and assigns of the beneficiary for all damages occasioned by the neglect or the wilful act, and the title insurance company is liable to the state for a penalty of \$300.

(j) In this section,

(1) "beneficiary" means both the record owner of the beneficiary's interest under a trust deed

and a successor in interest;

(2) “satisfactory evidence of payment in full,” with regard to an obligation secured by a trust deed or an encumbrance on the property covered by the trust deed, means a payoff letter, or, along with reasonable documentary evidence that the check was intended to effect full payment,

(A) the original cancelled check; or

(B) a copy, including a voucher copy, of a check, payable to the beneficiary or a servicer;

(3) “servicer” means a person who handles, for a beneficiary of a trust deed, the receipt of the beneficiary's payments under the trust deed;

(4) “title insurance company” means a title insurance company or a title insurance limited producer; in this paragraph, “title insurance company” and “title insurance limited producer” have the meanings given in [AS 21.66.480](#).

Sec. 34.20.120. Substitution of trustee.

(a) The trustee under a trust deed upon real property given to secure an obligation to pay money and conferring no duties upon the trustee other than the duties that are incidental to the exercise of the power of sale conferred in the deed may be substituted by recording in the mortgage records of the recording district in which the property is located a substitution executed and acknowledged by

(1) all the beneficiaries under the trust deed, or their successors in interest; or

(2) the attorneys for all of the beneficiaries or the attorneys for all of the beneficiaries' successors in interest.

(b) The substitution must contain

(1) the date of execution of the trust deed;

(2) the names of the trustee, trustor, and beneficiary, and, if the substitution is executed by the attorney for the beneficiary or successor in interest to the beneficiary, the name, address, and Alaska Bar Association identification number of the attorney;

(3) the book and page where the trust deed is recorded or the serial number assigned to the trust deed by the recorder;

(4) the name of the new trustee; and

(5) an acknowledgment signed and acknowledged by the trustee named in the trust deed of a receipt of a copy of the substitution, or an affidavit of service of a copy of it.

(c) From the time the substitution is filed for record, the new trustee succeeds to all the powers, duties, authority, and title of the trustee named in the deed of trust.

(d) When a title insurance company authorized to do business by a certificate of authority granted under [AS 21.66](#) has been purchased by, merged into, or consolidated with, or has transferred all or substantially all of its business assets to, another authorized title insurance company, the surviving or successor company, by operation of law, succeeds to the duties of the predecessor company granted to that predecessor as trustee in any trust deed described in (a) of this section.

Sec. 34.20.125. Trustee bond required.

(a) Before performing the duties of a trustee under [AS 34.20.070](#) and 34.20.080, a person shall obtain a surety bond in the amount of \$100,000 to protect the trustors and beneficiaries of trust deeds against fraud or defalcation by the trustee in the performance of the duties.

(b) The bond required by (a) of this section must be a bond that is terminable at any time by the surety by sending written notice by first class United States mail to the obligee and the principal at the address for each that is last known by the surety, and to the department. The bond terminates when 45 days have expired after the date the notice is mailed. The surety is not liable for an act or omission of the principal that occurs after the termination. The surety is not liable after the termination for more than the face amount of the bond, regardless of the number of claims made against the bond or the number of years the bond remains in force. A revision of the amount of the bond is not cumulative.

(c) If a bond terminates under (b) of this section, the person who obtained the bond under (a) of this section shall give notice of the bond's termination to the department and may not act as a trustee until the person obtains another bond under (a) of this section.

(d) Each year, a trustee shall file evidence of the bond with the department. The department shall verify that the evidence is satisfactory to indicate the existence of the bond, keep an updated list of trustees who are bonded, and make the evidence and the list available to the public for inspection. The department may charge the trustee a reasonable fee for verifying the existence of the bond and maintaining the records required by this subsection.

(e) The bonding requirements of this section do not apply to

(1) a state agency, including the Alaska Housing Finance Corporation and the Alaska Industrial Development and Export Authority; or

(2) an attorney who is licensed to practice law in this state and is an active member of the Alaska Bar.

(f) In this section, "department" means the Department of Commerce, Community, and Economic Development.

Sec. 34.20.130. Recording assignment, subordination, or waiver.

(a) The following instruments may be recorded:

(1) an assignment of the beneficial interest under a deed of trust; or

(2) an instrument by which a deed of trust of real property is subordinated or waived as to priority.

(b) From the time it is filed for record, the instrument operates as constructive notice to all persons.

Sec. 34.20.135. Definition.

In [AS 34.20.070](#) — 34.20.130, “real property” or “property” includes an interest in real property.

Article 3. Miscellaneous Provisions.

Sec. 34.20.140. Recording memorandum extending lien.

Where the payment of an existing contract (a bill of exchange, promissory note, bond, or other evidence of indebtedness) is secured by an instrument creating a lien upon real estate, payment on the contract does not extend the lien beyond its original or extended period as against subsequent purchasers, optionees, mortgagees, creditors, or persons acquiring a lien upon the real estate, unless

(1) a memorandum of the payment is recorded in the office of the recording district where the property is located;

(2) the memorandum is recorded before the end of the statutory time for bringing an action upon the existing contract and extensions as exhibited by the terms of the recorded instrument; and

(3) the memorandum is signed and acknowledged by the owner or the representative of the owner of the existing contract of indebtedness.

Sec. 34.20.150. Maturity of lien.

(a) The date of maturity of an instrument creating a lien upon real property is considered to be 10 years from the date of the instrument, unless

(1) the period of the instrument is disclosed by the terms of the instrument; or

(2) another instrument extending the period of the first instrument or a memorandum of payment of the first instrument is recorded.

(b) When an existing recorded instrument is recorded before March 26, 1955, which creates a lien upon real property but which does not disclose the period of the instrument, another instrument extending the period of the first instrument, or a memorandum of payment of the first instrument may be recorded before January 1, 1956.

Sec. 34.20.160. Notice of other remedies.

(a) When a lender uses a note as evidence of an obligation secured by a mortgage or deed of trust, the note must affirmatively advise the mortgagor or trustor and any other party bound by the note if the mortgagee or beneficiary wants the option to bring suit directly on the note to collect an amount owing under the note without first foreclosing the mortgage or deed of trust. This option must be stated in writing within the note or as a separate document. If a note executed after May 24, 1988 fails to contain the notice specified in this section, the debt secured by the mortgage or deed of trust may be foreclosed under [AS 09.45.170](#) — 09.45.220 or [AS 34.20.070](#) — 34.20.135.

(b) If the mortgagee or beneficiary wishes to collect an amount owing under the note without first foreclosing the mortgage or deed of trust, the following language is sufficient in the note:

The mortgagor or trustor (borrower) is personally obligated and fully liable for the amount due

under the note. The mortgagee or beneficiary (lender) has the right to sue on the note and obtain a personal judgment against the mortgagor or trustor for satisfaction of the amount due under the note either before or after a judicial foreclosure of the mortgage or deed of trust under [AS 09.45.170](#) — 09.45.220.

Chapter 22. Trusts.

Sec. 34.22.010. [Renumbered as [AS 13.36.300](#).]

Chapter 25. Validation of Formal Defects.

Sec. 34.25.010. Validation of defective acknowledgments.

A defective and informal acknowledgment of a deed, contract, lease, power of attorney, mortgage, or other instrument for the conveyance of real property, or an interest in real property, or pertaining to a right, title, or interest in real property, made in good faith, whether the acknowledgment is taken by or before a clerk, deputy clerk, or judge of a federal, state, or territorial court of record, or a commissioner, notary public, or other person authorized to administer oaths, is validated and declared sufficient in law as to acknowledgment, if no suit is filed in a court of record in the judicial district in which the real property affected by the instrument is located within 10 years from the date of the instrument, or the acknowledgment, to have the instrument set aside, altered, changed, or reformed.

Sec. 34.25.020. Adverse title not affected.

This chapter is not intended to interfere with vested rights in lands or premises, arising by adverse title, acquired in good faith since the date of the defective acknowledgments.

Sec. 34.25.030. Validation of defective instruments and use as evidence.

(a) A deed, contract, lease, power of attorney, mortgage, or other instrument for the conveyance of real property or an interest in real property, or pertaining to a right, title, or interest in real property, heretofore or hereafter signed and delivered by a person in good faith, as grantor, lessor, mortgagor, or maker, is validated and is sufficient in law for the purpose for which the instrument was executed and delivered, although the instrument is otherwise defective as to form, if no suit is filed in a court of record in the judicial district in which the property is located within 10 years from the date of the instrument to have the instrument set aside, altered, changed, or reformed.

(b) The instrument so executed and delivered shall be received in evidence in all courts in the state and is evidence of the right, title, or interest to the real property described in the instrument against the grantors, lessors, mortgagors, or makers, and their heirs, successors, and assigns.

Sec. 34.25.040. Deeds on judicial sales.

(a) A judicial sale of real property is valid and sufficient in law to sustain a deed based on the sale when

(1) the sale is heretofore or hereafter made in the state on execution to satisfy a judgment, order, or decree of a court in the state or is made under an order or decree of a court in the state;

(2) the money bid on the property is paid to the officer making the sale, or to the officer's successor; and

(3) the sale is confirmed or acquiesced in by the court from which the execution issued or where the order or decree was entered.

(b) When no deed has been executed, a judicial sale that satisfies the conditions of (a) of this section entitles a purchaser at the sale to a deed.

(c) The deed, when executed and delivered, is sufficient to convey all the title of the judgment debtor or other person affected by the order or decree in the premises sold to the purchaser at the sale.

(d) All defects and irregularities in the proceedings or suit in which execution issues or in which the order or decree is entered, in the issuance of the execution, in obtaining the order or decree of the court, or in the manner of making or conducting the sale shall be disregarded if no suit is filed in a court of record in the judicial district where the real property affected by the deed is located within 10 years from the date of the deed, to have the deed set aside, altered, or otherwise changed or reformed.

Sec. 34.25.050. Sale and deed of executor, administrator, and guardian validated.

(a) A sale of real property heretofore or hereafter made by an executor, administrator, or guardian is sufficient to sustain an executor's, administrator's, or guardian's deed to the purchaser for the real property when

(1) made of the decedent's, ward's, or incompetent person's real property in the state to a purchaser for a valuable consideration;

(2) the consideration is paid by the purchaser to the executor, administrator, or guardian, or the successor of the executor, administrator, or guardian, in good faith; and

(3) the sale is not set aside by the court, but is confirmed or acquiesced in by the court.

(b) If the deed is not given, a sale that satisfies the conditions of (a) of this section entitles the purchaser to the deed.

(c) The deed is sufficient to convey to the purchaser all the title that the decedent, ward, or incompetent had in the real property.

(d) All defects or irregularities in estate or court proceedings, in obtaining the order of the court for the sale, and in the making or conducting of the sale by the executor, administrator, or guardian shall be disregarded if no suit is filed in a court of record in the judicial district in which the real property affected by the deed is located within 10 years from the date of the deed, to have the deed set aside, altered or otherwise changed, or reformed.

Sec. 34.25.055. Conveyances to or from trusts.

(a) A person, including a trustee, may convey real property to a trust whether or not a trustee of the trust is named as a grantee in the instrument of conveyance. A trustee of a trust may convey

real property from a trust whether or not a trustee of the trust is named as a grantor in the instrument of conveyance.

(b) In a conveyance under (a) of this section, notice of the existence of the trust does not affect the status of a purchaser as a bona fide purchaser.

(c) Real property that is owned by a trust and that is purchased by a bona fide purchaser from a person in the person's capacity as trustee of the trust is acquired free of any claim of the beneficiaries of the trust.

(d) Notwithstanding other provisions of law, a trust instrument may not change the effect of (c) of this section.

(e) In this section,

(1) "bona fide purchaser" means a person who purchases real property for value from a trust and who

(A) has not knowingly been a party to fraud or illegality affecting the interest of persons who are parties to the purchase transaction or beneficiaries of the trust;

(B) does not have notice of an adverse claim by a beneficiary of the trust; and

(C) has acted in good faith in the purchase transaction;

(2) "conveyance" means a conveyance made before, on, or after August 9, 2000;

(3) "purchaser" means a person who acquires real property by sale, lease, mortgage, pledge, or lien, or who otherwise deals with real property in a voluntary transaction other than by making a gift;

(4) "real property" includes an interest in real property;

(5) "value" means acquisition of property

(A) in return for a binding commitment to extend credit;

(B) as security for or in total or partial satisfaction of a claim that existed before the giving of the security;

(C) by accepting delivery of the real property under a contract that is for the purchase of the real property and that existed before the delivery; or

(D) in return for other consideration sufficient to support a contract.

Sec. 34.25.060. Record of the deed as evidence.

When the deed is executed and recorded in the deed records in the proper recording district, the record, certified by the recorder, is evidence in all courts, and has the same effect as the original.

Sec. 34.25.070. Validation of sales and action to quiet title.

(a) A sale of real estate by an administrator or executor is confirmed and approved, notwithstanding irregularities or informalities in the proceedings before the sale, when

(1) the real estate is heretofore or hereafter sold under a license or order of a superior court in

the state;

(2) the purchaser pays the purchase money for the real estate;

(3) the sale is made in good faith, in order to provide for payment of the claims against the estate;

(4) the executor or administrator fails or neglects to make or execute a deed conveying the real estate to the purchaser, or if from mistake or omission in the deed or defect in its execution the deed is inoperative; and

(5) five years have elapsed after the making of the sale.

(b) When these facts are shown in an action to quiet title to the real property against the heirs or their assignees of the deceased person whose property is sold, in the proper court for the suit, the court shall make its decree quieting title and compelling and ordering conveyances of the real estate to the purchaser or the heirs or assignees of the purchaser as if a valid contract to convey the real property were made by the deceased while living.

(c) An action may not be maintained by the heirs of the deceased, or their heirs or assignees, to dispossess the purchaser or the heirs or assignees of the purchaser, after the expiration of five years from the sale.

Sec. 34.25.080. Tax deeds validated.

(a) A sale of real property is valid and sufficient in law to sustain a tax deed based on the sale when

(1) the sale is heretofore or hereafter made in the state in a proceeding to enforce a tax lien against real property;

(2) the money bid on the property is paid in good faith to the clerk, or the successor of the clerk, of the city conducting the sale; and

(3) the sale is confirmed or acquiesced in by the court ordering the sale.

(b) When no deed is executed, a sale that satisfies the conditions of (a) of this section entitles the purchaser to a deed.

(c) The deed, when executed, is sufficient to convey all of the right, title, or interest of the delinquent owner or a person in privity with the delinquent owner in the real property sold to the purchaser at the sale.

(d) All defects or irregularities in the delinquent tax roll, notices, presentations of delinquent tax roll to a court, proofs of notice, orders of sale, confirmation of sale or other proceedings before or in connection with the sale, in obtaining the order of the court for the sale, or in the making or conducting of the sale by the clerk of the city, or by another person authorized to make or conduct the sale, the lack of an order confirming the sale, and the lack of, or failure to issue, a certificate of sale and purchase, shall be disregarded if no suit is filed in a court of record in the judicial district in which the real property affected by the deed is located within 10 years from the date of the deed, to have the deed set aside, altered or otherwise changed, or reformed.

Sec. 34.25.090. Definition.

In this chapter “conveyance” includes every instrument in writing by which an estate or interest in real property is created, alienated, mortgaged, or encumbered, or by which the title to real property is affected, except a will.

Chapter 27. Modification or Abolition of Common Law Property Rules.

Article 1. Miscellaneous Common Law Rules Abolished.

Sec. 34.27.010. Rules against perpetuities modified. [Repealed, § 2 ch 82 SLA 1994. For comparable provisions, see [AS 34.27.051](#) — 34.27.100.]

Sec. 34.27.020. Abolition of the common law rule in Shelley's case.

If real property is granted or devised to a person and after the person's death, to the person's heirs or the heirs of the person's body, however the grant or devise is expressed, an estate for life only vests in the person, and a remainder goes to the person's heirs or the heirs of the person's body as purchasers.

Sec. 34.27.030. Abolition of the common law destructibility of contingent remainders.

A contingent remainder is not defeated by the termination of a precedent estate before the occurrence of the contingency that was to cause the remainder to take effect. If the contingency occurs later, the remainder takes effect in the same way as a springing or shifting executory interest.

Article 2. Rules Against Perpetuities.

Sec. 34.27.050. Statutory rule against perpetuities. [Repealed, § 9 ch 17 SLA 2000.]

Sec. 34.27.051. Statutory rule against perpetuities.

(a) A general or nongeneral power of appointment not presently exercisable because of a condition precedent is invalid unless, within a period of 1,000 years after its creation, either the power is irrevocably exercised or the power terminates. For purposes of this subsection, the period in which the power must be exercised or the power terminated is computed from the time of creation of the original power of appointment under which a subsequent general power of appointment not presently exercisable or a subsequent nongeneral power of appointment not presently exercisable was created.

(b) If a nongeneral power of appointment is exercised to create a new presently exercisable general power of appointment, all property interests subject to that new presently exercisable general power of appointment are invalid unless, within 1,000 years after the creation of the new presently exercisable general power of appointment, the property interests that are subject to the new presently exercisable general power of appointment either vest or terminate.

(c) If a nongeneral power of appointment is exercised to create a new or successive nongeneral power of appointment or a new or successive testamentary general power of appointment, all property interests subject to the exercise of that new or successive nongeneral or testamentary general power of appointment are invalid unless, within 1,000 years from the time of creation of the original instrument or conveyance creating the original nongeneral power of appointment that is exercised to create a new or successive nongeneral or testamentary general power of appointment, the property interests that are subject to the new or successive nongeneral or testamentary general power of appointment either vest or terminate.

Sec. 34.27.053. Savings provision.

A property interest that, under [AS 34.27.051](#), becomes invalid shall, upon the expiration of the 1,000-year period set out in [AS 34.27.051](#),

(1) if income from the property interest is payable

(A) to one person, be distributed to the person to whom the income is then payable;

(B) to more than one person, be distributed to the persons to whom the income is then payable

(i) in the shares to which the persons are entitled to the income; or

(ii) equally among all persons who are entitled to the income if shares are not specified;

(2) if income from the property interest is payable in the discretion of a trustee and is payable

(A) to one person, be distributed to the person then eligible to receive the income; or

(B) to more than one person, be distributed to the persons then eligible to receive the income

(i) in the shares to which the persons are entitled to the income; or

(ii) equally among all persons who are entitled to the income if shares are not specified;

or

(3) when there is no person then living to whom the property interest may be distributed under (1) or (2) of this section, be payable to one or more organizations described in 26 U.S.C. 2055(a) (Internal Revenue Code), or to one or more organizations described in any successor provision to 26 U.S.C. 2055(a), in the shares or proportions that the trustee or trustees then acting may determine.

Secs. 34.27.055 — 34.27.065. When nonvested property interest or power of appointment created; reformation; exclusions from statutory rule against perpetuities. [Repealed, § 9 ch 17 SLA 2000.]

Sec. 34.27.070. Application.

(a) Except as extended by (b) of this section, the former provisions of [AS 34.27.051](#) — 34.27.100 apply to a nonvested property interest or a power of appointment that is created on or after January 1, 1996, and before April 2, 1997. For purposes of this subsection, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(b) If a nonvested property interest or a power of appointment was created before January 1, 1996, and is determined in a judicial proceeding, commenced on or after that date, to violate this state's rule against perpetuities as that rule existed before January 1, 1996, or if a nonvested property interest or a power of appointment was created on or after January 1, 1996, but before April 2, 1997, and is determined in a judicial proceeding, commenced on or after that date, to violate this state's rule against perpetuities as that rule existed, on or after January 1, 1996, and before April 2, 1997, a court, upon the petition of an interested person, may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested

property interest or power of appointment was created. For purposes of this subsection, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(c) The provisions of [AS 34.27.051](#) apply to a trust instrument or conveyance executed on or after April 2, 1997, if the trust instrument or conveyance creates a contingent power of appointment or nonvested property interest subject to the exercise of a power of appointment that creates a new or successive power of appointment.

Sec. 34.27.075. Relationship to common law rule.

[AS 34.27.051](#) — 34.27.100 supersede the rule of the common law known as the rule against perpetuities. The common law rule against perpetuities does not apply in this state.

Sec. 34.27.090. Short title and uniformity of application and construction. [Repealed, § 9 ch 17 SLA 2000.]

Sec. 34.27.100. Suspension of the power of alienation.

(a) A future interest or trust is void if, as to property subject to the future interest or trust,

(1) the future interest or trust suspends the power of alienation of the property, the suspension of the power of alienation is for a period of at least 30 years after the death of an individual alive at the time of the creation of the future interest or trust, and the suspension of the power of alienation occurs in the document creating the future interest or trust;

(2) the future interest or trust suspends the power of alienation of the property and the suspension of the power of alienation is for a period of at least 30 years after the death of an individual alive at the time of the creation of the future interest or trust as computed from the time of the termination of a settlor's power to revoke the trust;

(3) the future interest or trust suspends the power of alienation of the property, the future interest or trust is created by the exercise of a presently exercisable general power of appointment, whether by will or otherwise, and the suspension of the power of alienation is for a period of at least 30 years after the death of an individual alive at the time of the creation of the future interest or trust as computed from the time of creation of the presently exercisable power of appointment; or

(4) the future interest or trust suspends the power of alienation of the property, the future interest or trust is created by the exercise of a nongeneral or testamentary general power of appointment, and the suspension of the power of alienation is for a period of at least 30 years after the death of an individual alive at the time of the creation of the future interest or trust as computed from the time of creation of the original instrument or conveyance creating the original power of appointment that was exercised to create a new or successive nongeneral or testamentary general power of appointment.

(b) For purposes of (a) of this section, the power of alienation

(1) is suspended if there is no person alive who, alone or in combination with others, can, as to property that is part of the future interest or trust, convey

(A) title to real property in fee; or

(B) complete ownership of personal property;

(2) is not suspended by a future interest or trust or by an equitable interest in a trust if
(A) the trustee of the trust has power, either express or implied, to sell the property; or

(B) at least one person alive at the time the trust was created has an unlimited power to terminate the trust.

(c) The provisions of (a) of this section do not apply to a transfer

(1) made outright or in trust for a charitable purpose;

(2) to a literary or charitable organization;

(3) to a veterans' memorial organization; or

(4) to a cemetery corporation, society, or association.

Chapter 35. Liens.

Article 1. Foreclosure.

Sec. 34.35.005. Action for foreclosure.

(a) When an action is required to enforce a lien provided for in this chapter and the action falls within the monetary jurisdiction of the district court, the action shall be started in the district court in the judicial district in which venue lies. An action that exceeds the monetary jurisdiction of the district court shall be started in the superior court in the judicial district in which venue lies. The procedure, except as otherwise provided in this chapter, is the same as in the trial of an action to secure property to hold it for the satisfaction of a lien against it.

(b) In an action to enforce a lien, the court shall allow as part of the costs all money paid for drawing the lien and for filing and recording the lien claim, and a reasonable attorney fee for the foreclosure of the lien.

(c) An action to enforce a lien created by [AS 34.35.005](#) — 34.35.425 has preference upon the calendar of civil actions before the court and shall be tried without unnecessary delay.

Sec. 34.35.010. Joinder of claimants in lien statement.

Any number of persons who claim liens under [AS 34.35.005](#) — 34.35.425 against the same property may join in one statement of lien. The consolidated statement of lien shall be verified by the oath of one or more of the claimants having knowledge of the facts.

Sec. 34.35.015. Joinder in foreclosure suit.

Any number of persons who claim liens against the same property may join in the same action, and when separate actions are commenced the court may consolidate them.

Sec. 34.35.020. Sufficiency in lien notice or pleadings.

(a) A mistake in formality or lack of statement in the lien notice or the pleadings is not ground for dismissal or unnecessary delay in an action to foreclose a lien.

(b) Substantial compliance with the law relating to the contents of the lien notice is considered sufficient, if the notice satisfactorily shows the name of the claimant, the amount of the demand, the time of the employment, the property sought to be charged with the lien sufficient for identification, and the name of the owner or reputed owner of the property.

(c) The inclusion of nonlienable items in the amount of the claimant's demand or error in the terms and conditions of the contract of employment, if there is a contract of employment, or other error in the lien notice, made in good faith, is not considered material, unless the error affects the substantial rights of the adverse party, acquired in good faith without notice.

(d) The lien notice and pleadings may be amended at any time before judgment. If a material statement or averment is omitted or misstated, this is ground for a reasonable delay or continuance to enable opposing parties to meet the amendment, and a nonsuit or dismissal may not be entertained in the action except upon the merits of the cause.

Sec. 34.35.025. Parties to foreclosure.

In an action to foreclose a lien created by [AS 34.35.005](#) — 34.35.425, all persons personally liable and all lien holders whose claims have been recorded, and all other persons interested in the matter in controversy or the property sought to be charged with the lien may be made parties. Persons who are not parties are not bound by the proceedings.

Sec. 34.35.030. Lien claim against different properties.

If a lien claim is filed for the same labor against two separate kinds of property owned or claimed by different persons, the court shall determine the liability of each kind of property and designate which shall be sold first to discharge the amount of the lien claim.

Sec. 34.35.035. Several judgment for each claimant.

In an action to enforce a lien judgment shall be given in favor of each person having a lien for the amount due the person, and the court shall order property subject to the lien to be sold by the peace officer in the same manner that property is sold on execution, or in any manner that the court considers proper. The proceeds of the sale shall be apportioned to the payment of each judgment pro rata, if the amount is insufficient to pay them in full.

Sec. 34.35.040. Order of priority and payment. [Repealed, § 19 ch 175 SLA 1978. For current law see [AS 34.35.112](#).]

Sec. 34.35.045. Lienor's action on contract.

Except as otherwise expressly provided, nothing in [AS 34.35.005](#) — 34.35.425 may be construed to prevent a lienor under a contract from maintaining an action as if the lienor has no lien for the security of the debt and the bringing of this action does not prejudice rights under [AS 34.35.005](#) — 34.35.425.

Article 2. Mechanics and Materialmen.

Sec. 34.35.050. Lien for labor or materials furnished.

A person has a lien, only to the extent provided under this chapter, to secure the payment of the contract price if the person

- (1) performs labor upon real property at the request of the owner or the agent of the owner for

the construction, alteration, or repair of a building or improvement;

(2) is a trustee of an employee benefit trust for the benefit of individuals performing labor on the building or improvement and has a direct contract with the owner or the agent of the owner for direct payments into the trust;

(3) furnishes materials that are delivered to real property under a contract with the owner or the agent of the owner that are incorporated in the construction, alteration, or repair of a building or improvement;

(4) furnishes equipment that is delivered to and used upon real property under a contract with the owner or the agent of the owner for the construction, alteration, or repair of a building or improvement;

(5) performs services under a contract with the owner or the agent of the owner in connection with the preparation of plans, surveys, or architectural or engineering plans or drawings for the construction, alteration, or repair of a building or improvement, whether or not actually implemented on that property; or

(6) is a general contractor.

Sec. 34.35.055. Land subject to lien.

(a) The land upon which a building or other improvement described in [AS 34.35.050](#) is constructed, together with a convenient space about the building or other improvement or so much as is required for the convenient use and occupation of it (to be determined by the judgment of the court at the time of the foreclosure of the lien), and the mine on which the work is performed or for which the material is furnished is also subject to the lien created by [AS 34.35.050](#) — 34.35.120 if, at the time the work is started or the materials for the building or other improvements are first furnished, the land belongs to the person who causes the building or other improvement to be constructed, altered, or repaired.

(b) If the person owns less than a fee simple estate in the land, then only the interest of the person in it is subject to the lien.

(c) If the interest is a leasehold interest, and the holder forfeits the rights of the holder to it, the purchaser of the building or improvement and leasehold term, or so much of it as remains unexpired at a sale under [AS 34.35.050](#) — 34.35.120 is considered to be the assignee of the leasehold term, and may pay the lessor all arrears of rent or other money and costs due under the lease.

(d) If the lessor regains possession of the land and property, or obtains judgment for the possession of it before the commencement of the construction, alteration, or repair of the building or other improvement, the purchaser may only remove the building or other improvement within 30 days after the purchase, and the owner of the land shall receive the rent due payable out of the proceeds of the sale, according to the terms of the lease, down to the time of the removal.

Sec. 34.35.060. Priorities.

(a) Except as provided in (c) of this section, an encumbrance which is properly recorded shall be

preferred to a lien created under [AS 34.35.050](#) — 34.35.120 unless the claim of lien under [AS 34.35.070](#) or notice of right to lien under [AS 34.35.064](#) has been recorded before the encumbrance. The preference granted for a prior mortgage or deed of trust under this section applies without regard to when the sums are disbursed or whether the disbursements are required under the terms of a loan agreement.

(b) [Repealed, § 19 ch 175 SLA 1978.]

(c) A lien created by [AS 34.35.050](#) — 34.35.120 in favor of an individual actually performing labor upon a building or other improvement in its original construction or of a trustee of an employee benefit trust for those individuals is preferred to a prior encumbrance upon the land on which the building or other improvement is constructed.

(d) In enforcing the lien, the building or other improvement may be sold separately from the land. When sold separately, the purchaser may remove the building or other improvement within a reasonable time after the sale, not to exceed 30 days, upon the payment to the owner of the land of a reasonable rent for its use from the date of its purchase to the time of removal. If removal is prevented by legal proceedings, the 30 days does not begin to run until the final determination of the proceedings in the court of first resort, or in the appellate court if appeal is taken.

Sec. 34.35.062. Construction financing.

(a) A claimant to whom payment for the labor, material, service, or equipment furnished for a project is past due may give the lender a stop-lending notice. The claimant shall at the same time give a copy of the notice to the owner and to each prime contractor with whom or through whom the claimant or the claimant's debtor has contracted. A stop-lending notice must

(1) instruct the lender to stop disbursing, advancing, or otherwise providing construction financing for the project;

(2) be verified by the claimant;

(3) state the claimant's name, address, and telephone number;

(4) describe the labor, material, service, or equipment furnished by the claimant and state the name of the person to whom furnished;

(5) describe the real property improved by the labor, material, service, or equipment and state the name of the person the claimant believes to be the owner of the real property;

(6) state the amount due and unpaid to the claimant for the labor, material, service, or equipment.

(b) A stop-lending notice is binding upon a lender from the time the lender has received it and had a reasonable opportunity to act upon it until it expires or is revoked. A notice expires on the 91st day after it is received by the lender unless the claimant has commenced an action on the claim that is the subject of the notice before that day and the lender has received written notification of the action. A stop-lending notice may be revoked at any time in writing signed by the claimant. Expiration or revocation of a notice extinguishes the liability of the lender to the claimant under (c) of this section.

(c) A lender who disburses, advances, or otherwise provides construction financing for a project after it is the subject of a stop-lending notice is liable to the claimant in an amount equal to the lowest of the following amounts:

(1) the amount of construction financing disbursed, advanced, or otherwise provided by the lender after receipt of the claimant's stop-lending notice; if there are two or more stop-lending notices when the disbursement occurs, the lender's liability to each claimant is based on the claimant's ranking under [AS 34.35.112](#);

(2) the amount owed to the claimant, including interest, costs, and attorney's fees, for labor, material, service, or equipment furnished for the project by the claimant as established by a written agreement signed on or after the date of the stop-lending notice by the claimant, the owner and the prime contractor with whom or through whom the claimant or the claimant's debtor has contracted or by a final judgment in an action in which the owner, the claimant, and the claimant's debtor are named and, if necessary, served parties;

(3) 150 percent of the amount stated in the stop-lending notice.

(d) Within 10 days after receiving the written agreement or a certified copy of the judgment under (c)(2) of this section establishing the amount owed to a claimant from whom it has a binding stop-lending notice, a lender shall send to the claimant a verified statement showing, by date and amount, all construction financing provided by the lender for the project. Except as provided in (e) of this section, the lender shall include with the statement payment in the amount of the lender's liability to the claimant under (c) of this section.

(e) If there are two or more claimants to whom a lender is or may be liable under (c) of this section and the lender is uncertain as to the amount of its liability or possible liability to each, the lender may bring an action to require the claimants to interplead their claims.

(f) A draw against construction financing may be made only after certification of job progress is delivered to the lender by the owner. The form of the certification may be prescribed by the lender and must include

(1) a statement of the progress of the project, including the percentage of completion of the project;

(2) the name, address, and telephone number of each prime contractor who has furnished labor, material, service, or equipment for the project;

(3) the amount owed by the owner to each listed prime contractor; and

(4) the portion of the draw that the owner will pay to each listed prime contractor.

(g) The owner shall use each draw as indicated in the certificates given by the owner to the lender under (f) of this section. The lender may not be required to verify the information in a certificate and is not liable for an error in a certificate.

(h) An owner who intentionally fails to apply construction financing proceeds as indicated by the certificate required under (f) of this section is guilty of a class A misdemeanor. The penalty provided under this subsection does not replace any other penalty that may be provided for by law for the same conduct.

(i) Within 10 days after being requested, a lender shall provide a person who has given the lender a stop-lending notice with a copy of

(1) each certificate received by the lender under (f) of this section; and

(2) a verified certificate stating the amount of construction financing proceeds committed by the lender for the project that have not been disbursed by the lender.

(j) The lender may not provide construction financing proceeds for payment of indebtedness of the owner that is not incurred for the project.

Sec. 34.35.064. Notice of right to lien.

(a) Before furnishing labor, material, service, or equipment for a project, a person may give a notice of right to lien to the owner or owner's agent. If the notice is given in accordance with this section, the owner has the burden of proof to show that the owner did not know of or consent to the furnishing of the labor, material, service, or equipment by the claimant in an action to foreclose the claimant's lien on the property under [AS 34.35.050](#) — 34.35.120. Otherwise the claimant has the burden of proof to show that the owner knew of and consented to the furnishing of the labor, material, service, or equipment. The notice of right to lien must be in writing, state that it is a notice of a right to assert a lien against real property for labor, materials, services, or equipment furnished in connection with a project, and contain

- (1) a legal description sufficient for identification of the real property;
- (2) the name of the owner;
- (3) the name and address of the claimant;
- (4) the name and address of the person with whom the claimant contracted;
- (5) a general description of the labor, materials, services, or equipment provided or to be provided;
- (6) a statement that the claimant may be entitled to record a claim of lien; and
- (7) the following statement in type no smaller than that used in providing the information required by (1) — (6) of this subsection:

WARNING: Unless provision is made for payment of sums that may be due to the undersigned, your above property may be subject to foreclosure to satisfy those sums even though you may pay a prime contractor or other person for the labor, material, service, or equipment furnished by the undersigned.

(b) Upon request from an owner, lender, or prime contractor, a claimant who has given a notice of right to lien under this section shall disclose to the requester within five days the most recent accounting of the amount due and unpaid to that claimant under the terms of the contract and a description of labor, materials, services, or equipment that the claimant reasonably anticipates furnishing.

Sec. 34.35.065. Notice of nonresponsibility.

(a) A building or improvement mentioned in [AS 34.35.050](#) constructed with the knowledge of the owner of the land or the person having or claiming an interest in the land is considered to be constructed at the instance of the owner or person having or claiming the interest.

(b) The interest owned or claimed is subject to a lien recorded under [AS 34.35.050](#) — 34.35.120, unless

- (1) the owner or person having or claiming an interest in the land gives notice within three

days after the owner or other person obtains knowledge of the construction, alteration, or repair that the owner or other person will not be responsible for it, by posting a notice to that effect in writing in some conspicuous place upon the land or upon the building or other improvement located on the land;

(2) the notice is signed by the owner or person having or claiming an interest in the land in the presence of two attesting witnesses or acknowledged by the owner or other person before a notary public;

(3) the posting of notice is attested to by a witness; and

(4) an attested or notarized copy of the notice is recorded with the recorder of the recording district in which the land, building, or other improvement is located within three days after the posting of the notice.

Sec. 34.35.067. Recording notice of right to lien.

A notice of right to lien may be recorded by a claimant at any time after the claimant enters into a contract for or first furnishes labor, material, service, or equipment in connection with a project. The notice shall be recorded in the same manner as specified for the recording of a claim of lien under [AS 34.35.070](#).

Sec. 34.35.068. Time periods for claiming liens.

(a) If a notice of completion is not recorded by the owner as provided in [AS 34.35.071](#), a claim of lien shall be recorded not later than 120 days after the claimant

(1) completes the construction contract; or

(2) ceases to furnish labor, material, services, or equipment for the construction, alteration, or repair of the owner's property.

(b) If a notice of completion is recorded by the owner as provided in [AS 34.35.071](#),

(1) the following shall record a claim of lien or a notice of right to lien not later than 15 days after the notice of completion is recorded:

(A) a claimant who has received advance notification of the date that the notice of completion is recorded as provided in [AS 34.35.071](#)(a)(2);

(B) a claimant who has not given a notice of right to lien as permitted in [AS 34.35.064](#);

(2) the following shall record a claim of lien not later than the time specified in (a) of this section:

(A) a claimant who records a notice of right to lien before or within the period specified in (1) of this subsection;

(B) a claimant who has given a notice of right to lien but who has not received advance notice of the date that the notice of completion is recorded by the owner as provided in [AS 34.35.071](#)(a)(2).

(c) A claim of lien is enforceable only if recorded by a claimant within the time specified in (a) or (b) of this section.

Sec. 34.35.069. Acknowledgment of right to lien. [Repealed, § 18 ch 102 SLA 1986.]

Sec. 34.35.070. Claim of lien.

(a) A claimant may record a claim of lien after entering into a contract for a project. A claim of lien may not be recorded later than the time specified under [AS 34.35.068](#).

(b) [Repealed, § 9 ch 61 SLA 1979.]

(c) The lien shall be verified by the oath of the claimant or another person having knowledge of the facts and state

(1) the real property subject to the lien, with a legal description sufficient for identification;

(2) the name of the owner;

(3) the name and address of the claimant;

(4) the name and address of the person with whom the claimant contracted;

(5) a general description of the labor, materials, services, or equipment furnished for the construction, alteration, or repair, and the contract price of the labor, materials, services, or equipment;

(6) the amount due to the claimant for the labor, materials, services, or equipment; and

(7) the date the last labor, materials, services, or equipment were furnished.

(d) [Repealed, § 19 ch 175 SLA 1978.]

(e) [Repealed, § 19 ch 175 SLA 1978.]

(f) A violation of the provisions of this section places the violator in the position of guarantor regarding another person who suffers damages that are proximately caused by the violation.

Sec. 34.35.071. Notice of completion.

(a) The owner of real property that may be subject to a lien under [AS 34.35.050](#) — 34.35.120 may announce the date of completion of the project by

(1) recording a notice of completion after completion of the project in the office of the recorder of the district in which the real property is situated; and

(2) giving notice at least five days before the recording of the notice of completion to all claimants who have given a notice of right to lien or a stop-lending notice to the owner and the lender prior to 10 days before recording a notice of completion; the notice must include a copy of the notice of completion and a statement advising claimants that a notice of completion will be recorded not earlier than five days after the date of the notice.

(b) The notice of completion shall be signed and verified by the owner, and must state

(1) the date of completion of the building or other improvement;

(2) the name and address of the owner;

(3) the nature of the interest or estate of the owner;

(4) the legal description of the property sufficient for identification; and

(5) the name of the general contractor.

(c) [Repealed, § 9 ch 61 SLA 1979.]

(d) A notice of completion is not effective if recorded before completion.

(e) Labor, materials, services, or equipment furnished after a notice of completion is recorded to satisfy warranty obligations or to remedy defective or unsatisfactory construction, alterations, or repairs for which no additional consideration is owed to the person furnishing the additional labor, materials, services, or equipment does not result in lien liability under [AS 34.35.050](#) — 34.35.120.

(f) After recording a common interest community declaration under [AS 34.08](#), an owner may record a notice of completion under this section as to each unit after completion of the original construction of each unit of the common interest community.

Sec. 34.35.072. Bond.

If the owner of the property sought to be charged with a claim of lien under [AS 34.35.050](#) — 34.35.120, or a prime contractor or subcontractor disputes the correctness or validity of the claim of lien brought under [AS 34.35.050](#) — 34.35.120, the owner or contractor may record either before or after the commencement of an action to enforce the claim of lien, in the office of the recorder in which district the claim of lien was recorded, a bond executed by a person authorized to issue surety bonds in this state under [AS 21](#), a financial institution licensed under [AS 06](#), or a national bank authorized under the federal banking laws, in the penal sum equal to one and one-half times the amount of the claim of lien, which bond shall guarantee the payment of the sum that the lien claimant has claimed, together with the lien claimant's reasonable cost of suit in the action, if the claimant recovers on the claim of lien. If the owner records a bond under this section, the property described in the bond is freed from the effect of a claim of lien under [AS 34.35.050](#) — 34.35.120 and an action brought to foreclose the claim of lien. The principal on the bond may be the owner of the property, the prime contractor, or a subcontractor who is affected by the claim of lien.

Sec. 34.35.074. Civil suits.

(a) A person injured by a violation of [AS 34.35.050](#) — 34.35.120 may bring a civil action

(1) except as provided in [AS 34.35.062](#)(c), for actual and consequential damages that are proximately caused by the violation plus costs, including reasonable attorney fees;

(2) to enjoin the violation, and if the person prevails, the person shall be awarded costs, including reasonable attorney fees.

(b) A claimant who gives a stop-lending notice or has a claim of lien recorded under [AS 34.35.075](#) and who fails to promptly revoke the stop-lending notice or remove the claim of lien from the record upon receiving payment in full on the claim or discovering that the stop-lending notice or claim of lien is in error, unjust, premature, or excessive is liable for actual and consequential damages caused by giving the stop-lending notice or improperly recorded claim of lien plus costs, including reasonable attorney fees.

Sec. 34.35.075. Record and index of claim.

The recorder shall record the claim in a book kept for that purpose. The records shall be indexed as deeds and other conveyances are required by law to be indexed. The recorder is entitled to the same fees allowed by law for recording deeds and other instruments.

Sec. 34.35.080. Duration of lien.

(a) A lien provided for in [AS 34.35.050](#) — 34.35.120 does not bind real property for more than six months after the claim of lien is recorded, unless an action is commenced in the proper court to enforce the lien within

(1) that time; or

(2) six months after recording of an extension notice in the same recording office within the original six-month period showing the recording date and the book and page or instrument number or serial number of the initial claim of lien, and the balance owing.

(b) [Repealed, § 18 ch 102 SLA 1986.]

(c) A lien whose duration is extended by commencement of an action under (a) of this section is void as against a person who, after the commencement of the action and without knowledge or actual notice of its pendency, acquires an interest in the subject property in good faith for valuable consideration, unless a notice of the pendency of the action has been duly filed for record before the time the person's conveyance is duly filed for record. Notice of the pendency of the action must conform to the requirements of [AS 09.45.940](#).

Sec. 34.35.085. Lien for improving lot or street.

A person who, at the request of the owner of a lot in the state, grades, fills in, or improves the lot or the street in front of or adjoining the lot has a lien upon the lot for work done and materials furnished. The provisions of [AS 34.35.050](#) — 34.35.120 for securing and enforcing the mechanic's lien apply to the lien provided by this section.

Sec. 34.35.090. Payment to contractor.

A payment by the owner of a building or structure to a prime contractor or subcontractor, made before 120 days from the completion of the building, is not valid to defeat or discharge a lien created by [AS 34.35.050](#) — 34.35.120 in favor of other claimants, unless the payment is distributed among the other claimants. If a payment is distributed in part only, then the payment is valid only to the extent it is distributed.

Sec. 34.35.095. Amount of lien.

(a) Except as provided in (c) of this section, a claimant may recover upon a lien recorded by the claimant only the amount due to the claimant according to the terms of the contract, after deducting all claims of other persons claiming through the claimant for work done and materials furnished.

(b) [Repealed, § 9 ch 61 SLA 1979.]

(c) An individual may recover upon a lien recorded by the individual only the amount due according to the terms of the employment.

Sec. 34.35.100. Action against contractor on lien.

(a) Where a lien is recorded under [AS 34.35.050](#) — 34.35.120 for work done or materials furnished to a prime contractor, the prime contractor shall defend an action at the expense of the prime contractor, and during the pendency of the action the owner may withhold from the prime contractor the amount of money for which the lien is recorded.

(b) If judgment is given against the owner or the property of the owner upon the liens, the owner may deduct from the amount due or to become due by the owner to the prime contractor the amount of the judgment and costs.

(c) If the amount of the judgment and costs exceeds the amount due by the owner to the prime contractor, or if the owner settles with that contractor in full, the owner may recover back from the prime contractor an amount paid by the owner in excess of the contract price, and for which the prime contractor was originally liable.

Sec. 34.35.105. Materials not subject to process.

When a mechanic, artisan, machinist, builder, lumber merchant, contractor, laborer, or other person furnishes or procures materials for use in the construction, alteration, or repair of a building or other improvement, the materials are not subject to attachment, execution, or other legal process to enforce a debt due by the purchaser of the materials except a debt due for the purchase money thereof, so long as the materials have been or are about to be applied in good faith to the construction, alteration, or repair of the building or other improvement.

Sec. 34.35.110. Actions to enforce liens.

(a) An action to enforce a lien created by [AS 34.35.050](#) — 34.35.120 shall be brought in the superior court. The pleadings, process, practice, and procedure are the same as in other cases. Each claimant is entitled to execution for the balance due after distribution. The clerk of the superior court, upon demand, shall issue the execution after the return of the officer making the execution showing the balance due.

(b) In an action under [AS 34.35.050](#) — 34.35.120 the court shall, upon entering judgment for the plaintiff, allow as a part of the costs all money paid for the filing and recording of the lien and a reasonable amount as attorney fees. An action to enforce a lien created by [AS 34.35.050](#) — 34.35.120 has preference upon the calendar of civil actions of the court and shall be tried without unnecessary delay.

(c) In an action to enforce a lien created by [AS 34.35.050](#) — 34.35.120 all persons personally liable and all lienholders whose claims have been filed for record under [AS 34.35.070](#) shall be made parties; all other persons interested in the matter in controversy or in the property sought to be charged with the lien may be made parties. However, those persons who are not made parties are not bound by the proceedings. The proceedings upon the foreclosure of a lien created by [AS 34.35.050](#) — 34.35.120 shall, as nearly as possible, conform to the proceedings of a foreclosure of a mortgage lien upon real property.

Sec. 34.35.112. Payment of claimant's liens.

(a) If more than one lien created under [AS 34.35.050](#) — 34.35.120 is claimed against property,

the court in its judgment shall declare the rank of each lien or class of liens in the following order:

(1) all persons other than prime contractors or subcontractors with lien rights under [AS 34.35.050](#)(1);

(2) the trustees of employment benefit trusts for persons described in (1) of this subsection;

(3) all materialmen and subcontractors;

(4) persons described in [AS 34.35.050](#)(5) and prime contractors, other than the general contractor;

(5) the general contractor.

(b) For purposes of [AS 34.35.050](#) — 34.35.120, if the proceeds of the foreclosure sale of the property are insufficient to pay the lien claims of all persons who have recorded claims of lien, the

(1) liens of all individuals with lien rights under [AS 34.35.050](#)(1) shall first be paid in full, or pro rata if the proceeds are insufficient to pay them in full;

(2) liens of trustees of employment benefit trusts for persons described in (1) of this subsection shall be paid in full or pro rata if the proceeds are insufficient to pay them in full;

(3) liens of materialmen and subcontractors shall be paid in full or pro rata if the proceeds are insufficient to pay them in full;

(4) liens of persons described in [AS 34.35.050](#)(5) and prime contractors other than the general contractor, shall be paid in full or pro rata if the remainder is insufficient to pay them in full; and

(5) lien of the general contractor shall be paid out of the balance.

(c) For purposes of [AS 34.35.050](#) — 34.35.120, if the proceeds of the foreclosure sale of the property are sufficient to pay the lien claims of all persons who have recorded claims of lien, the balance shall be paid to the person who owned the property before the foreclosure sale.

Sec. 34.35.114. Obligation of claimant and lender to provide information.

(a) A prime contractor, on request, shall provide the following information within five days to any person entitled to claim a lien through the prime contractor:

(1) a description of the real property being improved sufficient to identify the property;

(2) the name and address of the owner with whom the prime contractor contracted;

(3) the name and address of the lender providing construction financing; and

(4) whether there is a payment bond and, if so, the name of the surety.

(b) At the request of any person who may claim a lien through a claimant other than a prime contractor, the claimant shall provide, within five days, the name of the person who contracted for the furnishing by the claimant of the labor, materials, services, or equipment from which a lien claim may arise.

(c) A person who receives a stop-lending notice or notice of right to lien identifying a project for which the person is not the lender shall notify the claimant in writing within 10 days after receipt of the notice that the person is not the lender.

(d) A claimant shall, within 10 days after receipt of a request, provide an owner or lender to whom the claimant has given a stop-lending notice or notice of right to lien a written statement of the amount due to the claimant and unpaid.

(e) [Repealed, § 18 ch 102 SLA 1986.]

Sec. 34.35.115. Persons considered agent of owner.

Every contractor, subcontractor, architect, builder, or other person having charge of the construction, alteration, or repair, in whole or in part, of a building or other improvement as provided in [AS 34.35.050](#) and 34.35.085, is considered to be the agent of the owner for the purposes of [AS 34.35.050](#) — 34.35.120.

Sec. 34.35.117. Waiver of lien rights.

(a) Except as provided under (b) of this section, a written waiver of lien or stop-lending notice of rights created under [AS 34.35.050](#) — 34.35.120 signed by a claimant requires no consideration and is valid and binding. A waiver permitted under this section may not relate to labor, materials, services, or equipment furnished after the date the waiver is signed by the claimant.

(b) An individual described in [AS 34.35.120](#)(10) may not waive right to claim a lien under [AS 34.35.050](#) — 34.35.120. A waiver that purports to waive the lien rights of that individual or class of individuals is void.

Sec. 34.35.118. Claimant liability. [Repealed, § 18 ch 102 SLA 1986.]

Sec. 34.35.119. Waiver of liens on unsold common interest community units.

(a) A lien created under [AS 34.35.050](#) — 34.35.120 arising out of original construction that becomes subject to [AS 34.07](#) or [AS 34.08](#) before the first sale of a unit within a common interest community after commencement of construction shall be subject to the provisions of this section.

(b) Subject to (c) of this section, a claimant who claims a lien against an entire common interest community shall release that portion of the lien claim that relates to a particular unit within a common interest community selected by the owner of the unsold common interest community units after the claimant receives a partial payment of the lien claim that is equal to 115 percent of the amount determined

(1) if the common interest community has been established under [AS 34.07](#) by

(A) dividing the surface area of the common areas and facilities attendant to the common interest community unit by the surface area of all common areas and facilities of the common interest community building; and

(B) multiplying the result obtained in (A) of this paragraph by the total amount of the claimant's lien claim;

(2) by the allocated interest in the common expenses if the common interest community has been established under [AS 34.08](#).

(c) A lien claimant is not required to waive a portion of the lien claim under this section unless the amount of indebtedness secured by a prior encumbrance against the common interest community building held by a construction lender is also reduced by an amount calculated in the same manner as provided in (b) of this section.

Sec. 34.35.120. Definitions.

In [AS 34.35.050](#) — 34.35.120,

(1) “building or other improvement,” includes a wharf, bridge, ditch, flume, tunnel, fence, well, land clearing, machinery, aqueduct to create hydraulic power, or for mining or other purposes, and all other structures and superstructures;

(2) “completion” means the cessation of the performance of labor or services or the furnishing of material or equipment on the building or other improvement to be constructed, altered, or repaired and includes, but is not limited to, the following:

(A) the occupation or use by the owner or an agent of the owner of the building or other improvement constructed, altered, or repaired accompanied by cessation of the furnishing of labor, services, material, or equipment on the building or improvement;

(B) the acceptance by the owner or an agent of the owner of the construction, alteration, or repair after labor, service, material, or equipment is furnished; or

(C) the issuance of a certificate of occupancy for a building by a municipality empowered to issue that certificate accompanied by cessation of the furnishing of labor, services, material, or equipment on the building or improvement;

(3) “construction, alteration, or repair”, includes partial construction, and all repairs done in and upon a building or other improvement;

(4) “construction financing” means money loaned or other credit extended to an owner secured by an encumbrance on real property to finance a project on that real property;

(5) “contract price” means the amount agreed upon by the contracting parties for furnishing services, labor, materials, or equipment covered by the contract, increased or diminished by the price of change orders, extras, or amounts attributable to altered specifications; if no price is agreed upon by the contracting parties, “contract price” means the reasonable value of all services, labor, materials, or equipment covered by the contract;

(6) “draws” means periodic disbursements of construction financing by a lender;

(7) “encumbrance” means a mortgage, deed of trust, or lien arising other than under [AS 34.35.050](#) — 34.35.120;

(8) “general contractor” means a person who is a prime contractor and who has the responsibility for supervising all other contractors furnishing labor, materials, services, or equipment in connection with the construction, alteration, or repair of a building or other improvement;

(9) “give notice” means to mail a notice required under [AS 34.35.050](#) — 34.35.120 by first-class mail and by using a form of mail requiring a signed receipt, or to deliver the notice and obtain a receipt signed by the person to whom it is directed or an agent of that person; a notice is

effective when given or delivered to

(A) a lender at the address designated in the encumbrance securing that lender;

(B) an owner at the last known address of the owner;

(C) a prime contractor at the last known address of the prime contractor;

(D) a potential lien claimant at the address specified in a stop-lending notice or notice of right to lien or claim of lien;

(10) “individual” means a natural person who actually performs labor upon a building or other improvement as an employee of the owner or any contractor furnishing labor, materials, services, or equipment for the construction, alteration, or repair of a building or other improvement;

(11) “lender” means any person providing construction financing;

(12) “materialman” means a person who furnishes materials used in the construction, alteration, or repair of the owner's real property;

(13) “owner” means a person who owns real property or a possessory interest in real property and who enters into a contract, express or implied, for a project on that property;

(14) “potential lien claimant” or “claimant” means any person entitled to assert lien rights under [AS 34.35.050](#) — 34.35.120;

(15) “prime contractor” means a person who enters into a contract directly with an owner to furnish labor, materials, services, or equipment for the construction, alteration, or repair of a building or other improvement on the owner's real property;

(16) “project” means construction, alteration, or repair of an improvement on real property or work done to enhance the real property itself;

(17) “subcontractor” means a person who enters into a contract with a prime contractor to furnish labor, services, or equipment for the construction, alteration, or repair of a building or other improvement on the owner's real property and does not include a materialman.

Article 3. Mines and Wells.

Sec. 34.35.125. Liens on mines and oil wells.

A person who, at the instance of the owner, performs work in, on, or about a mine, or mining claim, oil, gas, or other well, in opening up, developing, sinking, drilling, drifting, stoping, mucking, stripping, shoveling, mining, hoisting, firing, cooking, teaming, or performs any other class or kind of work necessary or convenient to the development, operation, working, or mining of the claim or well; or who performs work tending to or assisting in the development, extraction, separation, or reduction to a commercial value of the minerals; or who performs work on a water right, ditch, flume, pipe line, tramway, tram, road, or trail, used in connection with the opening up, or to facilitate the opening up, operation, or development of the claim or well, or the extraction of the minerals, has a lien on the mine or mining claim, oil, gas, or other claim or well as security for the payment of the work.

Sec. 34.35.130. Lien on mill or machine.

A person who, at the instance of the owner, performs work or labor on, in, or about a mill or machine, either in the alteration or repair of it, or in the operation or working of it, while the mill or machine is used in or about a mine, or mining claim, oil, gas, or other claim or well, as a means of opening up, developing, or mining, or as a means of separating, extracting, or reducing minerals to commercial value, has a lien on the mill or machine, to secure the payment of the amount due for the work.

Sec. 34.35.135. Priority.

A lien under [AS 34.35.125](#) and 34.35.130 is a preferred lien, prior and superior to a mortgage, conditional sale agreement, attachment, claim, or demand, unless the mortgage, conditional sale agreement, attachment, claim, or demand is in writing and recorded in the recorder's office of the recording district where the property is located before the work for which the lien is claimed is started. A sale, transfer, mortgage, assignment, or attachment made or filed for record after the work is started does not have the effect of postponing the lien.

Sec. 34.35.140. Lien on dump or mass of mineral.

(a) A person who, at the instance of another who has the right of possession of a mine, or mining claim, oil or gas well, performs upon, in, or about the mine or well any of the kinds of work mentioned in [AS 34.35.125](#), or who performs any other kind of work in the production, piling up, or storing of a dump or mass of mineral, has a lien on the dump or mass, and the gold, gold dust, or other minerals contained in or extracted from it, to secure the amount due the laborer in the production of the minerals.

(b) The lien attaches to the dump or mass, and to the gold, gold dust, or other mineral, whether they are deposited on the ground in a mass, or dumped into bunkers or hoppers, or stored in tanks or reservoirs, or placed in sluice boxes at the mine, and attaches to the gold, gold dust, and other minerals so long as they are in one mass and can be identified as being produced by the labor of the lienor.

(c) The lien provided for in this section is prior and preferred over a deed, mortgage, bill of sale, attachment, or other claim whether given before or after the work for which the lien is claimed is started.

Sec. 34.35.145. Extent of liens.

Liens under [AS 34.35.125](#), 34.35.130, and 34.35.140 are security for payment for the work performed within a period of nine months immediately before the cessation of the work. The liens bind all the right, title, and interest in the property mentioned of the person at whose instance or request or for whom the work is performed, to the full extent of the interest that the person has at the beginning of the work for which the lien is claimed, or subsequently acquired in the property, up to the time of the foreclosure of the lien.

Sec. 34.35.150. Labor deemed performed at instance of owner, mortgagee, or lien claimant.

(a) When the work mentioned in [AS 34.35.125](#), 34.35.130, and 34.35.140 is performed at the instance of a person, who has the right of possession under a written or oral lease, license, or authority, expressed or implied, bond, option or other contract of sale from the owner, executed by the owner's authority, or who has possession with the knowledge of the owner, the work is considered to have been done at the instance of the owner, and at the instance of the mortgagee or lien claimant.

(b) The owner's, mortgagee's, or claimant's interest in the property is subject to a lien filed in accordance with [AS 34.35.125](#) — 34.35.170, unless the owner, mortgagee, or claimant, within 10 days after obtaining knowledge of the work, gives notice of nonresponsibility for the work, by posting notices to that effect in three conspicuous places on the mine, mining claim, or on or near the oil, gas, or other well, or in one conspicuous place on the dredge, steam shovel, derrick, mill, or machine. A mortgagee or other lien claimant must also give additional notice of the nature of the lien, the amount due on it, and refer to the volume and page where the claim of lien is recorded.

(c) The posting of notice is not required on a dragline, electric shovel, tractor, scraper, hoist, truck, or mobile equipment or machinery or personal property that is readily moved about from place to place or is required to be moved from place to place in the course of mining operations.

Sec. 34.35.155. Liens not exclusive.

(a) Liens under [AS 34.35.125](#) — 34.35.170 are not exclusive of one another. The lien shall attach and may be claimed by the same labor upon the mine, mining claim, mill, or machine used in mining or working, and the dump or mass of mineral, gold, or gold dust, if the facts relative to the labor warrant.

(b) A lienor may claim a lien on one or more of the different classes of property subject to a lien for the same labor if

- (1) the amount claimed against each class of property is separately stated;
- (2) the property sought to be charged is described so that it can be identified; and
- (3) the name of the owner or reputed owner is given.

Sec. 34.35.160. Claim of lien.

(a) A person who claims the benefit of [AS 34.35.125](#) — 34.35.170 shall, within 90 days after the performance of the services or the cessation of the work mentioned in [AS 34.35.125](#) — 34.35.170, record the claim of lien in the recorder's office of the recording district in which the mine or mining claim, or other property on which the lien is claimed is located or used.

(b) The claim of lien must contain

- (1) a statement of the demand;
- (2) the amount of the demand, after deducting all credits and offsets;
- (3) the name of the person by whom the claimant was employed;
- (4) a statement of the terms and conditions of the contract of employment;
- (5) the date of starting and stopping the work;
- (6) a description of the property on which the lien is claimed, sufficient for identification; and
- (7) the name of the owner or reputed owner.

(c) The lien claim shall be verified by the oath of the lien claimant or someone on behalf of the lien claimant having personal knowledge of the facts. If there is no express contract of employment, the claim must state the reasonable value of the work and services.

Sec. 34.35.165. Duration of lien.

(a) A lien under [AS 34.35.125](#) — 34.35.170 does not bind a property for more than six months after notice of the lien is filed for record, unless suit is brought before the proper court to enforce the lien within that time, or if credit is given, with six months after the expiration of the credit.

(b) A lien may not be continued in force for more than one year from the stopping of work by an agreement to give credit.

Sec. 34.35.170. Definitions.

(a) In [AS 34.35.125](#) — 34.35.170,

(1) “dump” or “mass” means the mineral-bearing sands, gravel, earth, ore, stone, coal, oil, gas, other fluids or minerals extracted, hoisted, and raised from a mine or mining claim, while in mass at the mine or on the mining claim or adjacent to it, whether it is deposited in dumps or piles, or placed in hoppers, tanks, or reservoirs, or in sluice boxes or bunkers or other receptacles and whether partially or wholly reduced from its primary state or not;

(2) “mill” or “machine” includes a dredge, steam, internal combustion or electric shovel, dragline, tractor, scraper, hoist, engine and boiler, derrick, drill, roasting or reduction works, stamp, roller or other mill, concentrator, conveyor, elevator, or other machinery used in or about a mine in digging, hoisting, conveying, washing, or blocking out mineral contents, or reducing the mineral contents to a commercial value, while the mill or machine is used in connection with the operation of the mine, and is not a fixture and included in the term “mine” as defined in this section;

(3) “mine” or “mining claim” means a block or parcel of mining ground, consisting of a part of a mining location, a mining location, or two or more contiguous mining locations, or an oil, gas, or other well or claim, possessed and held under one ownership, or mined under one management and worked through a common shaft, tunnel, incline, pit, well, or other opening, or over one tram; and all valuable mineral deposits, including coal, oil, gas, or other fluid, and all lodes, veins, or rock in place containing minerals; and all shafts, tunnels, stopes, ways, and other openings, roads, appliances, machinery, timbering, and structure below the surface of the ground; and all structures, buildings, mills, and machines on the surface of the ground and affixed to the ground and used in the working, mining, and development; and all ditches, water rights, pipelines, roads, trams, flumes, and other appurtenances;

(4) “mineral” includes coal, oil, gas, and inorganic substances subject to location, appropriation, acquisition, or enjoyment under the laws of the United States or the state.

(b) When the phrase “different classes or kinds of property subject to lien” is used, it refers to mines as defined in this section as one class; mills and machines as another class; and the dump or mass as a third class.

Article 4. Improvement of Chattels.

Sec. 34.35.175. Improvement lien on personal property.

(a) A person who makes, alters, repairs, or labors upon an article of personal property at the request of the owner or lawful possessor has a lien on the property for the just and reasonable charges for the labor performed and material furnished. The person may keep possession of the article until the charges are paid.

(b) If the charges are not paid within three months after the labor or materials, or both, are performed or furnished, the person having the lien may sell the article at public auction and apply the proceeds of the sale, first, to the payment of the expenses of sale, second, to the discharge of lien, and third, the balance to the owner of the article.

(c) The sale shall be held in the recording district where the article is left to be altered or repaired.

(d) Before the sale is made, notice of the sale shall be given to the debtor by registered letter directed to the last known place of residence of the debtor, if the residence is known, and also by posting notice of the sale in three public places in the recording district for 10 days before the day of sale. The notice must contain a particular description of the article to be sold, the name of the owner or reputed owner, the amount due on the lien, and the time and place of the sale.

Sec. 34.35.180. Chattel lien; surrender of possession.

A person who expends labor, skill, or materials upon a chattel, at the request of its owner, reputed owner, or authorized agent of the owner, or lawful possessor of the chattel, has a lien upon the chattel for the contract price of the expenditure, or in the absence of a contract price, for the reasonable worth of the expenditure, for a period of six months from the expenditure, notwithstanding the fact that the possession of the chattel is surrendered to the owner or lawful possessor.

Sec. 34.35.185. Lien notice.

(a) The lien claimant shall, before delivery of the chattel to the owner or the authorized agent of the owner, record a lien notice in the office of the recorder of the recording district where the chattel is situated and in which the labor, skill, and materials are expended on the chattel.

(b) The notice must state the name of the claimant, the name of the owner, or reputed owner, a description of the chattel, sufficient for identification, upon which the claimant has expended labor, skill, and material, the amount for which the lien is claimed, and the date upon which the expenditure was completed. The notice shall be verified by the oath of the claimant, or by some one on behalf of the claimant, who has personal knowledge of the facts, and may be substantially in the following form:

....., Claimant, v..... Defendant
Notice is hereby given that claims a lien upon (describe the property) for, and on account of labor, skill, and materials expended upon the (property); that the name of the owner, or reputed owner is, ...; that the labor, skill, and materials were expended upon the property between the day of, and the day of, and the rendition of the labor, skill, and materials so expended by the claimant above

named was closed on the day of; that the amount claimant demands for labor, skill, and materials so expended is \$.....; that no part of it has been paid except \$....., and there is now due and remaining unpaid on it, after deducting all just credits and offsets, the sum of \$....., in which amount a lien is claimed upon the property.State of Alaska..... Judicial District ss:..... ClaimantI,....., being first duly sworn, on oath say that I am named in the foregoing claim; that I have heard the claim read, know the contents of it, and believe it is true..... ClaimantSubscribed and sworn to before me this day of

Sec. 34.35.190. Duty of recorder.

Upon the presentation of the notice to the recorder, the recorder shall record the notice and index it in a book or computer-readable medium kept for that purpose and called “Index of Liens upon Chattels.” The recorder is entitled to charge and receive from the person recording the notice of lien a fee provided for recording and indexing chattel mortgages.

Sec. 34.35.195. Persons considered owner of chattel.

The following persons are considered the owner of a chattel, or the authorized agent of the owner, for the purpose of [AS 34.35.175](#) — 34.35.215:

(1) a person in possession of the chattel under an agreement to purchase it, whether the title to it is in the person or the vendor;

(2) a person in lawful possession of the chattel.

Sec. 34.35.200. Priority.

A lien under [AS 34.35.180](#), when recorded in accordance with [AS 34.35.185](#), is superior to and preferred to

(1) a lien, mortgage, or encumbrance that attaches to the chattel after the starting of labor or services or the furnishing of the material mentioned in that section;

(2) a lien, mortgage, or other encumbrance that attaches before that time, when the person furnishing the material or performing the services did not have notice of the prior lien, mortgage, or encumbrance, or the prior lien, mortgage, or encumbrance was not recorded or filed in the manner provided by law.

Sec. 34.35.205. Duration of lien.

(a) A lien does not bind a property for more than six months after the lien is recorded, unless suit is brought in the superior court to enforce the lien within that time, or if credit is given, within six months after the expiration of the credit.

(b) A lien may not be continued in force for more than one year from stopping of work or services, or after the material is furnished, by an agreement of the parties.

(c) The practice and procedure to enforce a lien shall be governed by the law applicable to the

foreclosure of mechanics' and materialmen's liens.

Sec. 34.35.210. Release or discharge of lien.

A lien under [AS 34.35.175](#) — 34.35.215 may be released and discharged by the lien claimant or the agent of the lien claimant by an entry upon the “Index of Liens upon Chattels.”

Sec. 34.35.215. Penalty for refusal to discharge lien.

A person who refuses to discharge a lien after the lien is paid is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$500 and in addition is liable in damages to the person injured by the refusal in an amount equal to three times the damage sustained.

Article 5. Transportation, Storage, and Agistment.

Sec. 34.35.220. Persons entitled to carrier, warehouse, and livestock liens.

The following persons have liens on personal property for their just and reasonable charges for the labor, care, and attention provided and the food furnished, and may retain possession of the property until the charges are paid:

(1) a person who is a common carrier, or who, at the request of the owner or lawful possessor of personal property, transports the property from one place to another;

(2) a person who safely keeps or stores personal property at the request of the owner or lawful possessor of the property; and

(3) a person who pastures or feeds livestock, or bestows labor, care, or attention on the livestock at the request of the owner or lawful possessor of the livestock.

Sec. 34.35.225. Sale to enforce lien.

(a) If just and reasonable charges are not paid within three months after the care, attention, and labor is performed or food is furnished, the person having the lien may proceed to sell at public auction, as provided in [AS 34.35.175](#), the property mentioned in [AS 34.35.220](#), or a part of it, sufficient to pay the just and reasonable charges.

(b) Nothing in this section may be construed to authorize a person to sell more of the property than is sufficient to pay charges due the person on the property.

(c) A person who sells, loans, or otherwise disposes of property contrary to the provisions of [AS 34.35.220](#) and this section without the consent of the owner of the property shall, for each offense, forfeit and pay to the owner a sum equal to the market value of the property, and 50 percent of the market value in addition as a penalty. In this subsection, “market value” means the price the property bears at the time the owner makes demand on the person for it.

(d) The remedies available under this section are in addition to any remedies available under [AS 45.07.210](#).

Article 6. Timber and Lumber.

Sec. 34.35.230. Construction.

The purpose of [AS 34.35.230](#) — 34.35.315 is remedial to secure laborers, contractors, and subcontractors the amount due them for labor performed in producing, or furnishing lumber. [AS 34.35.230](#) — 34.35.315 shall be liberally construed to effect this purpose.

Sec. 34.35.235. Persons entitled to timber lien.

(a) The following persons shall have liens upon timber for the work done upon, or in obtaining or securing, or for services rendered in towing, transporting, hauling, or driving it:

(1) a person who performs labor upon, or who assists in obtaining or securing timber;

(2) the owner of a tugboat or towboat that tows or assists in towing timber from one place to another within the state;

(3) the owner of a team or a logging or traction engine that hauls or assists in hauling timber from one place to another within the state; and

(4) the owner of a logging road over which timber is transported and delivered.

(b) The lien attaches under (a) of this section whether the work or services are done, rendered, or performed at the instance of the owner of the timber or an agent of the owner.

(c) The cook and other laborers in and about the logging or wood camp, the teamsters transporting the timber, and the laborers on roads and trails, not including public roads or trails, used for the transportation of the timber are considered persons who assist in obtaining, securing, and delivering the timber mentioned in this section.

Sec. 34.35.240. Lien claim.

(a) A person who claims a lien under [AS 34.35.235](#) within 60 days after the completion of the service or after the close of the work must record a claim with the recorder of the recording district in which the timber is cut.

(b) The claim must contain (1) a statement of the demand and the amount of the demand, after deducting as nearly as possible all just credits and offsets; (2) the name of the person by whom the claimant was employed; (3) a statement of the terms and conditions of the contract, or if there is no contract, the reasonable value of the service or work; and (4) a description of the property charged with the lien sufficient for identification with reasonable certainty. The claim shall be verified by the oath of the claimant or another who has knowledge of the facts.

(c) The claim must be substantially in the following form:

CLAIM OF LIEN..... Claimant,
v.....Notice is given by this claim that,
residing at, State of Alaska, claims a lien upon a
of, being about in quantity, which were cut
in recording district, State of Alaska, and are now lying or being
at, for labor performed and assistance provided in
said; that the name of the owner or reputed owner is;
that employed said to perform the labor and provide

the assistance upon the following terms and conditions, to wit: —That
agreed to pay the for labor and assistance; that the
contract has been faithfully performed and fully complied with on the part
of, who performed labor and assisted in for the period
of; that the labor and assistance were so performed and provided
upon between the day of, and
45 days have not elapsed since that time; that the amount of the claimant's demand for the service
is; that no part of the claim has been paid except; and
there is now due and remaining unpaid on the claim, after deducting all just credits and offsets,
the sum of, and that claims a lien in this amount upon
the and also claims a lien on all the now owned
by in the recording district to secure payment for the work and labor in
obtaining or securing the saw logs, spars, piles, cordwood, fuelwood, shingle bolts, or other
timber herein in this claim.....State of
Alaska.....Judicial District ss..... being first duly sworn on
oath says that the undersigned is named in the foregoing claim of liens, has heard the claim read,
knows the contents of the claim and believes the claim to be
true.....Subscribed and sworn to before me
this day of.....(Signature).

Sec. 34.35.245. Landowner's lien for timber.

A person who permits another to go upon the person's land and cut timber has a lien upon the timber for the price agreed to be paid for the privilege, or for the price the privilege would reasonably be worth if there is no express agreement fixing the price.

Sec. 34.35.250. Landowner's lien claim.

(a) A person who claims a lien under [AS 34.35.245](#) must record, within 90 days from the cutting of the timber, a claim with the recorder of the recording district in which the saw timber is cut.

(b) The claim must be in substance the same as provided in [AS 34.35.240](#) and must be verified as provided in that section.

Sec. 34.35.255. Priority.

(a) Liens under [AS 34.35.230](#) — 34.35.315 are preferred liens and are prior to other liens. A sale or transfer of timber does not divest a lien on it under [AS 34.35.230](#) — 34.35.315.

(b) As between liens under [AS 34.35.230](#) — 34.35.315 those for work and labor are preferred.

(c) As between liens for work claimed by several laborers on the same timber, the claim or claims for work done or performed on the identical timber proceeded against, to the extent that the timber can be identified, are preferred as against the general claim of liens for work recognized and provided for in [AS 34.35.230](#) — 34.35.315.

(d) The person performing the service or doing the work named in [AS 34.35.235](#) is only entitled to the liens provided in [AS 34.35.230](#) — 34.35.315 for services or work for six calendar months or a shorter period preceding the recording of the claim.

(e) The person granting the privilege mentioned in [AS 34.35.245](#) is only entitled to the lien under

that section for timber cut during the six months preceding the recording of the claim as provided in [AS 34.35.240](#).

Sec. 34.35.260. Duration of lien.

(a) A lien under [AS 34.35.230](#) — 34.35.315 does not bind property for more than six months after notice of the lien is recorded, unless suit is brought to enforce the lien in the proper court within that time or if credit is given, within six months after the expiration of the credit.

(b) A lien may not be continued in force for more than one year from the stopping of the work or by an agreement to give credit.

Sec. 34.35.265. Enforcement of lien against manufactured product.

(a) The lien provided for saw logs and shingle bolts is not released or lost by the manufacture of the saw logs or shingle bolts into lumber or shingles, and the lien may be enforced against the lumber and shingles manufactured from them.

(b) A lien may not be acquired upon or enforced against lumber or logs after the lumber or logs are used in the construction of a building or structure, or upon spars, piles, or other timber mentioned in [AS 34.35.230](#) — 34.35.315 after they are put to the use for which they are intended.

Sec. 34.35.270. Commissioner of public safety as receiver.

(a) The commissioner of public safety or a peace officer designated by the commissioner shall be the receiver, when one is appointed, and the superior court, upon a showing made, shall appoint the receiver, without notice.

(b) The receiver is entitled to fees which seem just to the court, and shall account for the fees in the same manner as other fees collected in an official capacity.

(c) When property subject to a lien under [AS 34.35.230](#) — 34.35.315 is in the custody of the receiver, a person who claims an interest in the property may deposit with the clerk of the court in which the action is pending a sum of money equal to the claim sued upon, together with \$100 to cover costs and interest, unless the court makes an order fixing a different amount to cover the costs and interest, and may demand and receive the possession and custody of the property from the receiver immediately.

Sec. 34.35.275. Bona fide purchasers.

The court shall conclusively presume that a party purchasing the property liened upon within the 60 days given to claimants to record their liens is not an innocent third party and is not a bona fide owner of the property, unless it appears that

(1) the purchaser has paid full value for the property; and

(2) the purchase money has been applied to the payment of the bona fide claims that are

entitled to liens upon the property under [AS 34.35.230](#) — 34.35.315 according to the priorities established in those sections.

Sec. 34.35.280. Enforceability.

- (a) The following persons may demand that a lien under [AS 34.35.230](#) — 34.35.315 be enforced:
- (1) a person who brings an action to enforce the lien; or
 - (2) a person who has a lien under [AS 34.35.230](#) — 34.35.315, and who is made a party to an action to enforce a lien under those sections.
- (b) The lien may be enforced against the whole, or a part of the lumber, when, during the six months preceding the recording of the lien,
- (1) the person has performed labor on it;
 - (2) the person has assisted in securing or obtaining it; or
 - (3) it has been cut on the person's land.
- (c) The lien demand recorded must be for
- (1) all the labor upon or all the assistance in obtaining or securing the lumber during the whole or a part of the six months mentioned in [AS 34.35.260](#); or
 - (2) timber cut during the whole or a part of the six months mentioned above.
- (d) The priority of the liens shall be determined under [AS 34.35.255](#) where
- (1) proceedings are started against a lot of lumber;
 - (2) some of the lienors claim liens against specific lumber to secure their claims for work and labor; and
 - (3) other lienors claim liens against the lumber generally to secure their claims for work and labor.

Sec. 34.35.285. Contractor's lien.

A person who, as a contractor, supplies lumber under a contract is entitled to the lien under [AS 34.35.230](#) — 34.35.315 to the amount due on the contract. However, the lien is subject and subsequent to the liens of the laborers under [AS 34.35.230](#) — 34.35.315 for the amounts due them for labor on the lumber.

Sec. 34.35.290. Order of sale before judgment.

(a) The court or judge may in vacation, upon motion supported by affidavit showing that the property is liable to loss or destruction, order that property subject to a lien under [AS 34.35.230](#) — 34.35.315 be sold by the peace officer before judgment is rendered, as personal property is sold under execution.

(b) The proceeds of the sale shall be paid into court to be applied as provided in [AS 34.35.230](#) — 34.35.315.

Sec. 34.35.295. Liability for injuring property or destroying identity.

(a) A person who elicits, injures, or destroys or who makes difficult, uncertain, or impossible the identification of timber upon which there is a lien under [AS 34.35.230](#) — 34.35.315, without the express consent of the lienholder, is liable to the lienholder for the damages to the amount secured by the lien, together with costs and charges of drawing and recording the lien and reasonable attorney fees for the foreclosure of the lien.

(b) If these facts are shown to the court in the action to enforce the lien, the court shall enter a personal judgment for the amount of the damages in the action against the person, if the person is a party to the action, or the damages may be recovered in a civil action against the person.

Sec. 34.35.300. Lien for manufacturing.

(a) A person who performs work or assists in manufacturing timber into lumber has a lien upon the lumber while it remains at the mill where it is manufactured, or in the possession or under the control of the manufacturer, whether the work is done at the instance of the owner of the logs or an agent of the owner, or a contractor or subcontractor of the owner.

(b) In this section “lumber” means logs or other timber sawed or split for use, including beams, joists, planks, bolts, shingles, rails, stays, hoops, and every article manufactured from timber.

Sec. 34.35.305. Manufacturing lien claim.

(a) A person who desires to claim the benefit of [AS 34.35.300](#) shall, within 60 days after the close of the service mentioned in that section, record with the recorder of the recording district where the lumber is manufactured, a notice of claim of lien.

(b) The notice must contain a statement of the demand and the amount of the demand in substance and form similar to that provided for in [AS 34.35.240](#).

(c) The provisions of [AS 34.35.230](#) — 34.35.315 relative to the liens of persons performing labor upon, or assisting, obtaining, and securing timber apply in all respects, where applicable, to the liens of persons who perform work in manufacturing lumber, as set out in [AS 34.35.300](#).

Sec. 34.35.310. Release upon filing bond.

(a) After a lien attaches to property mentioned in [AS 34.35.230](#) — 34.35.315, the owner of the property or a person on behalf of the owner may file with the clerk of the superior court in the judicial district in which the property is located a bond (1) in a sum double the amount claimed in the lien notice; (2) executed by two sureties who have the qualifications of bail upon arrest; (3) to be approved by the clerk of the court; (4) running to the claimant in the lien notice; and (5) conditioned for the payment of the damages, costs, charges, and disbursements recovered by the lien claimant against the owner, or found to be a lien upon the property described in the lien notice.

(b) The clerk shall issue to the owner or other person a certificate stating that the bond is substituted in place of the property and that the lien on the property is released and discharged. A marginal entry of the release and substitution of bond shall be made in the lien docket in the office of the recorder where the lien statement is recorded.

(c) If the lien claimant establishes the lien by a suit to enforce it, the claimant is entitled to judgment or decree against the principal and sureties on the bond.

(d) Nothing in this section deprives a person of a defense that the person would have had if the bond had not been given. The filing of the bond does not affect the time within which the foreclosure suit shall be started.

Sec. 34.35.315. Definitions.

In [AS 34.35.230](#) — 34.35.315,

(1) “lumber” includes timber, or lumber or shingles manufactured from it;

(2) “timber” includes saw logs, piles, spars, cordwood, fuelwood, shingle bolts, or other timber.

Article 7. Fish Packers and Processors.

Sec. 34.35.320. Packer's and processor's lien.

(a) A person who contributes to the preparation of fish or aquatic animals for food, fish, meal, fertilizer, oil, or other article of commerce by furnishing material or labor for it has a lien for the value of the labor and material upon (1) the product or output of the cannery, saltery, or other plant or establishment, for which material or labor was furnished; and (2) the plant or establishment itself, including the houses, wharves, machinery, and equipment of the plant or establishment, for the value of labor and material.

(b) This provision may not be construed to give a lien to (1) an officer of a corporation or of an association for labor or material furnished by the officer to the corporation or association; (2) a superintendent, manager, foreman, contractor, or subcontractor in charge of a cannery, saltery, or other plant or establishment for labor or material that the person has furnished to the plant or establishment; or (3) the owner or lessor of a plant or the equipment of the plant for the use or rental of the plant or equipment.

Sec. 34.35.325. Time limit.

The person performing the service or doing the work or furnishing the material mentioned in [AS 34.35.320](#) is only entitled to a lien under [AS 34.35.320](#) — 34.35.390 for service, work, or material furnished for the six months, or a shorter period, preceding the recording of a claim under [AS 34.35.330](#).

Sec. 34.35.330. Lien claim.

(a) A person who claims the benefit of [AS 34.35.320](#) — 34.35.390 shall, within 90 days after the

completion of the work or the furnishing of material mentioned in [AS 34.35.320](#), record a claim of lien in the recorder's office of the recording district where

(1) the product or output of the plant, cannery, saltery, or other establishment for which the material or labor is furnished is located; or

(2) the cannery, saltery, or other plant or establishment on which the lien is claimed is located.

(b) The claim of lien must contain a statement of

(1) the claimant's demand and the amount of the demand after deducting credits and offsets;

(2) the name of the person by whom the claimant is employed or at whose request the material is furnished;

(3) the terms and conditions of the contract of employment or under which the material was furnished;

(4) a description of the property sufficient for identification on which the lien is claimed; and

(5) the name of the owner or reputed owner thereof.

(c) The lien claim shall be verified by the oath of the lien claimant or someone on behalf of the lien claimant who has knowledge of the facts.

(d) If there is no express contract of employment or for furnishing the material the claim shall state the reasonable value of the work, labor, or material.

Sec. 34.35.335. Extent of lien.

A lien under [AS 34.35.320](#) — 34.35.390 binds all the right, title, and interest of the person at whose instance or request or for whom the work is performed or material furnished, to the full extent of the interest that the person has at the commencement of the work or at the time the material is furnished, for which the lien is claimed, or subsequently acquired up to the time of foreclosure of the lien, in (1) all of the product or output of the cannery, saltery, or other plant or establishment for which the material or work was furnished; and (2) the plant or establishment itself, including the houses, wharves, machinery, and equipment.

Sec. 34.35.340. Priority.

(a) A lien under [AS 34.35.320](#) — 34.35.390 is preferred, prior, and superior to a mortgage, attachment, claim, or demand made or recorded in the recorder's office of the recording district where the property subject to the lien is located after

(1) the commencement of the work for which the lien is claimed;

(2) the material is furnished for which the lien is claimed.

(b) A sale, transfer, mortgage, assignment, or attachment recorded after the commencement of the work or furnishing of the material does not postpone the lien. A lien under [AS 34.35.320](#) — 34.35.390 is not prior or paramount to a valid prior lien for labor performed or material furnished in the construction, alteration, or repair of the houses, wharves, or other shore property.

Sec. 34.35.345. Duration of lien.

(a) A lien under [AS 34.35.320](#) — 34.35.390 does not bind the property for more than six months after the lien is recorded, unless suit is brought before the proper court within that time to enforce the lien or if credit is given, within six months after the expiration of the credit.

(b) A lien does not continue in force for more than one year from the cessation of the work or the furnishing of the material, by an agreement to give credit.

Sec. 34.35.350. Commissioner of public safety as receiver.

(a) The commissioner of public safety or a peace officer designated by the commissioner is the receiver, when one is appointed, and the superior court upon a showing made may appoint the receiver without notice.

(b) The receiver is entitled to the fees that seem just to the court and the receiver shall account for the fees collected under this subsection in the same manner other fees collected in an official capacity are accounted for.

(c) When property subject to a lien under [AS 34.35.320](#) — 34.35.390 is in the custody or about to be taken into the custody of the receiver, a person who claims an interest in the property may deposit with the clerk of the court in which the action is pending a sum of money equal to the value of the property, but not greater than the amount of the claims sued upon together with \$100 to cover costs and interest, unless the court makes an order fixing a different amount to cover costs and interest, and may demand and receive the possession and custody of the property from the receiver immediately.

Sec. 34.35.355. Bona fide purchasers.

The court shall conclusively presume that a party who purchases property on which a lien is claimed, within the time allowed for the filing of the lien, is not an innocent purchaser for value and is not a bona fide owner of the property subject to the lien, unless it appears that

(1) the purchaser paid the reasonable value of the property; and

(2) the purchase price for the property is applied to the payment of the bona fide claimants who are entitled to liens upon the property under [AS 34.35.320](#) — 34.35.390.

Sec. 34.35.360. Enforcement against whole or part of property.

(a) A person who brings a suit to enforce the lien, or a person having a lien, who is made a party to the action, may demand that the lien be enforced against the whole or a part of the property upon which the person performs labor or for which the person furnishes material.

(b) Where there are several lien claims against the same property or partly against the same property and partly against separate property, and it appears to the court that the property that may legally be held for the claims is insufficient to satisfy all the claims, the court shall, as nearly as practicable, determine what particular item of the property subject to the lien is the product in whole or in part of the labor or material furnished by each of the several claimants and for which

each claims a lien, and shall give preference accordingly.

Sec. 34.35.365. Property to be sold before judgment.

When it appears, during the term or in vacation, that the property is liable to loss or destruction, the court shall order it sold, free of the lien, by a peace officer, in the manner provided for the sale of personal property under execution, before judgment is rendered. The proceeds of sale shall be paid into court to be applied as directed in the judgment.

Sec. 34.35.370. Liability for injuring property or destroying identity.

(a) A person who elicits, injures, or destroys, or who makes difficult, uncertain, or impossible the identification of a property on which there is a lien under [AS 34.35.320](#) — 34.35.390, without the written consent of the lienholder, is liable to the lienholder for the damages to the amount secured by the lien together with costs and charges of drawing and recording the lien and reasonable attorney fees for the foreclosure of the lien.

(b) If these facts are shown to the court in the suit to enforce the lien, the court shall enter a personal judgment for the amount of the damages in the action against the person, if the person is a party to the action, or the damages may be recovered in a civil action against the person.

Sec. 34.35.375. Release upon filing bond.

(a) After a lien attaches upon property mentioned in [AS 34.35.320](#) — 34.35.390, the owner of the property or a person on behalf of the owner may file with the clerk of the superior court in the judicial district in which the property is located, a bond (1) in a sum double the amount claimed in the lien notice; (2) executed by two sureties who have the qualifications of bail upon arrest; (3) to be approved by the clerk of the court; (4) running to the claimant in the lien notice; and (5) conditioned for the payment of all damages, costs, charges, and disbursements recovered by the lien claimant against the owner, or found to be a lien upon or against the property described in the lien notice.

(b) The clerk shall issue to the owner a certificate stating that the bond is substituted in place of the property and that the lien on the property is released and discharged. A marginal entry of the release and substitution of bond shall be made in the lien docket in the office of the recorder where the lien statement is recorded.

(c) If the lien claimant establishes the lien by a suit to enforce it, the lien claimant is entitled to judgment against the principal and sureties on the bond.

(d) Nothing in this section deprives a person of a defense that the person would have had if the bond had not been given. The filing of the bond does not affect the time within which the foreclosure suit must be started.

Sec. 34.35.380. Misdemeanor to remove lien property from state.

A person who removes or has removed from the state fish, fish products, or the products of an aquatic animal, or fishing appliances, upon which there is a lien or right of lien under [AS](#)

[34.35.320](#) — 34.35.390, unless a bond under [AS 34.35.375](#) is filed, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$2,000, or by imprisonment for not more than six months, or by both.

Sec. 34.35.385. Embezzlement of lien property.

(a) A person who sells or otherwise disposes of fish or the products of fish or aquatic animals or other property upon which there is a lien under [AS 34.35.320](#) — 34.35.390 is a trustee for the lien claimant of the consideration received or promised to be paid for the property and shall account to the lien claimant for it.

(b) If it appears, in a prosecution under this section, that the defendant has paid all claims of lien upon the property removed from the state or that the full value of the property has been distributed among the persons entitled to the lien, the defendant shall be discharged and further proceedings may not be brought against the defendant.

(c) A trustee who refuses or fails to account for the trust fund, or refuses or fails to apply it in payment of the lien claim is guilty of embezzlement, and upon conviction is punishable accordingly.

Sec. 34.35.390. Written statements to employees.

(a) When a person employs another to work at a cannery, saltery, or other plant or establishment in this state for the catching or preparation of fish or aquatic animals for food, fish meal, fertilizer, oil, or other articles of commerce, and the plant or establishment, at the time of employment, is subject to a lien, mortgage, encumbrance, or the provisions of a transfer or conditional sale, or the employer is not the owner of the plant or establishment, or of the boats or fishing gear connected with it, the employer shall furnish to each employee at the time of employment, or in any event, not later than the time the employee is brought within the state boundaries, a written statement showing

(1) the name of the owner of the plant or establishment at or in connection with which the employee is to work;

(2) a general description of the plant or establishment as to buildings, boats, and other gear and material;

(3) whether any of the property is subject to a lien, mortgage, encumbrance, assignment, or conditional sale and, if so, the amount of it.

(b) In a prosecution under this section, the defendant may show in defense that the claims for labor of the employees to whom the statements were not furnished have been paid in full. A defendant who does so shall be discharged.

(c) Failure to furnish a statement required by this section is a misdemeanor and a person who violates this section is punishable by a fine of not more than \$2,000 or by imprisonment for not more than six months or by both.

Article 8. Fishermen's Lien.

Sec. 34.35.391. Fishermen's lien.

(a) A person who sells fish to a fish processor as defined in [AS 16.10.296](#), or to a primary fish buyer as defined in [AS 16.10.296](#), or to a cooperative corporation organized under [AS 10.15](#), and receives a fish ticket or a record of purchase as described in [AS 16.05.690](#) has a lien upon the property of the fish processor, primary fish buyer, or cooperative corporation for the value of the fish.

(b) A person who claims the benefit of this section shall, within 90 days of the date the fish are sold, record a claim of lien in the recorder's office of the recording district where the fish were sold.

(c) The lien provided in this section is preferred, prior, and superior to a mortgage, attachment, claim, or demand made or recorded in the recording district in which the property is located after the date on which the fish are delivered to the buyer of the fish.

Article 9. Watchmen.

Sec. 34.35.395. Watchman's lien.

A person employed as watchman for real or personal property has a lien upon the property for the wages or salary earned as a watchman for the property.

Sec. 34.35.400. Services or work covered by lien.

The person performing the services or doing the work named in [AS 34.35.395](#) is only entitled to a lien under [AS 34.35.395](#) — 34.35.425 for services or work for the nine months or a shorter period preceding the recording of the claim of lien under [AS 34.35.405](#).

Sec. 34.35.405. Lien claim.

(a) A person who claims a lien under [AS 34.35.395](#) — 34.35.425 shall, within 90 days after the completion of the services or the cessation of the labor, record a claim of lien in the recorder's office of the recording district in which the property is located.

(b) The lien claim must contain a true statement of

(1) the demand and the amount of the demand after deducting all just credits and offsets;

(2) the name of the person by whom the claimant is employed and a statement of the terms and conditions of the contract of employment;

(3) a description of the property sufficient for identification on which the lien is claimed; and

(4) the name of the owner or reputed owner of the property.

(c) The lien claim shall be verified by the oath of the claimant or someone on behalf of the lien claimant who has personal knowledge of the facts.

(d) If there is no express contract of employment the claim must state the reasonable value of the work or services.

Sec. 34.35.410. Recording and indexing claim.

(a) The recorder shall record the lien claim in a record book or computer-readable medium kept for that purpose. The record book shall be indexed.

(b) The recorder is entitled to receive the same fees allowed by law for recording deeds and other instruments.

Sec. 34.35.415. Duration of lien.

(a) A lien under [AS 34.35.395](#) — 34.35.425 does not bind property for more than six months after the lien is recorded, unless suit is brought before the proper court to enforce the lien within that time or if credit is given, within nine months after the expiration of the credit.

(b) A lien does not continue in force for more than one year from the stopping of the work or services by an agreement to give credit.

Sec. 34.35.420. Extent of lien.

The lien provided in [AS 34.35.395](#) — 34.35.425 binds all the right, title, and interest of the person at whose instance or request or for whom the work or services are performed, to the full extent of the interest that the person has at the commencement of the work or services for which the lien is claimed or that is subsequently acquired up to the time of the foreclosure of the lien, in the property where the work or services are performed.

Sec. 34.35.425. Priority.

(a) A lien under [AS 34.35.395](#) — 34.35.425 is preferred, prior, and superior to a mortgage, attachment, claim, or demand made or recorded in the recorder's office of the recording district in which the property is located, after the commencement of the work or services for which the lien is claimed.

(b) A sale, transfer, mortgage, assignment, or attachment recorded after the commencement of the work or services does not postpone the lien, except that the lien is of equal rank with other liens recorded or claimed against the property for work or services performed or furnished in the erection, construction, repair, or preservation of the property.

Article 10. Attorneys.

Sec. 34.35.430. Attorney's lien.

(a) An attorney has a lien for compensation, whether specially agreed upon or implied, as provided in this section

(1) first, upon the papers of the client that have come into the possession of the attorney in the course of the professional employment;

(2) second, upon money in the possession of the attorney belonging to the client;

(3) third, upon money in the possession of the adverse party in an action or proceeding in which the attorney is employed, from the giving of notice of the lien to that party;

(4) fourth, upon a judgment to the extent of the costs included in the judgment or, if there is a special agreement, to the extent of the compensation specially agreed on, from the giving of notice of the lien to the party against whom the judgment is given and filing the original with the clerk where the judgment is entered and docketed.

(b) The lien described in (a) of this section is superior to all subsequent liens except tax liens. The lien is a charge on the action, and the parties to the action may not extinguish or affect the attorney's lien by any means, including settlement, other than by satisfying the underlying claim of the attorney for the fees and costs incurred in connection with the action. Nothing in this subsection precludes a party from contesting an attorney's lien under applicable law.

Article 11. Wages.

Sec. 34.35.435. Lien for wages.

When a clerk, accountant, bookkeeper, waiter, waitress, cook, maid, porter, servant, employee, artisan, craftsman, factory operator, mill operator, mechanic, quarryman, common laborer, or farmhand labors or performs a service in an office, store, hotel, rooming house, boardinghouse, restaurant, cafe, shop, newspaper plant, factory, quarry, or mill, of any character, or upon a farm, under or by virtue of a contract or agreement, written or oral, with a person or employer, or an agent, receiver, or trustee of the person or employer, in order to secure the payment of the amount due or owing under the contract or agreement, written or oral, the employee has a first lien upon all products, machinery, tools, fixtures, appurtenances, goods, wares, merchandise, chattels, wagons, carts, or things of value, of whatsoever character, that are created in whole or in part by the labor or that may be used or useful by the person or may be necessarily connected with the performance of the labor or service, which may be owned by the employer, or an agent, receiver, or trustee of the employer.

Sec. 34.35.440. Fixing the lien.

(a) When a person or an agent, receiver, or trustee of the person, fails or refuses to make wage payments as prescribed by law or agreement between the parties, the employee who has performed the service shall make an account of service, showing the amount due the employee for the service, and present to the employer or an agent, receiver, or trustee of the employer one of the duplicate accounts within 30 days after the indebtedness accrues.

(b) Within 90 days after termination of the performance of services the claimant shall record with the recorder of the recording district in which the services were performed a lien notice verified by the claimant.

(c) The lien notice shall be indexed in a book or computer-readable medium kept for that purpose.

(d) The lien claim must contain a description of the property charged with the lien sufficient for identification, and shall be verified by the oath of the lien claimant or of some other person having knowledge of the facts.

(e) A compliance with the requirements in this section is necessary to fix and preserve the lien given under [AS 34.35.435](#) — 34.35.445.

(f) The liens of different persons of the same class have equal priority with each other.

(g) A person claiming the benefit of [AS 34.35.435](#) — 34.35.445 has six months from the date of

recording the lien within which to bring suit to foreclose the lien, or, if a credit is given, then six months after the expiration of the credit.

(h) A substantial compliance with this section is sufficient diligence to fix and secure the lien, except that a purchaser of products covered by the lien from the owner of the products acquires good title to them unless at the time of the purchase, the purchaser has actual or constructive notice of the claim of the lienholder upon the products. The purchaser has constructive notice if the claim is recorded and indexed or if an action is on file.

Sec. 34.35.445. Duration of lien.

(a) The lien created by [AS 34.35.435](#) — 34.35.445 is not operative for more than six months after the lien is recorded and indexed, unless suit to enforce the lien is brought before the proper court within that time or if a credit is given, six months after the expiration of the credit.

(b) A lien does not continue in force for more than one year from the stopping of the work by an agreement to give credit.

Article 12. Hospitals, Physicians, and Nurses.

Sec. 34.35.450. Hospital's, physician's, and nurse's lien.

(a) An operator of a hospital in the state, a licensed special nurse in a hospital in the state, or a physician who furnishes service to a person who has a traumatic injury has a lien upon any sum awarded to the injured person or the personal representative of the injured person by judgment or obtained by a settlement or compromise to the extent of the amount due the hospital, nurse, or physician for the reasonable value of the service furnished before the date of judgment, settlement, or compromise, together with costs and reasonable attorney fees that the court allows, incurred in the enforcement of the lien. [AS 34.35.450](#) — 34.35.480 do not apply to a claim, right of action, or money accruing under [AS 23.30](#) (Workers' Compensation Act).

(b) When the person receiving hospitalization has a contract providing for indemnity or compensation for the sum incurred for hospitalization, the hospital has a lien upon the amount payable under the contract. The party obligated to make reimbursement under the contract may pay the sum due under it directly to the hospital, and this payment is a full release of the party making the payment under the contract in the amount of the payment.

Sec. 34.35.455. Limitation on extent of lien.

Except as otherwise provided, a lien under [AS 34.35.450](#) — 34.35.480 may not be allowed for hospitalization or the services of a physician or licensed special nurse furnished after a settlement is made by or on behalf of the person causing the injury unless the settlement is made within 20 days from the date of the injury. A lien is not allowed for necessary attorney fees, costs, and expenses incurred by the injured person in securing a settlement, compromise, or judgment.

Sec. 34.35.460. Notice of lien.

(a) To perfect the lien described in [AS 34.35.450](#) — 34.35.480, the hospital or the owner or operator of the hospital, or the physician or licensed special nurse, shall, not later than 90 days

after the date of injury, or in no event later than 90 days after the discharge of the injured person from the hospital or the provision of the physician's services, file a notice of lien substantially in the form prescribed in [AS 34.35.465](#), containing a general description of the services rendered and a statement of the amount claimed, with a recorder's office, and shall, after the 90-day period, before the date of judgment, settlement, or compromise, serve a copy of the notice of lien by registered mail, at the last known address, upon the person alleged to be responsible for causing the injury and from whom damages are claimed, and upon the insurance carrier that has insured against the liability, if the insurance carrier is known.

(b) A hospital or the owner or operator of a hospital, or a physician or licensed special nurse who files a notice of lien under (a) of this section for hospitalization or services provided to a recipient of medical assistance under [AS 47](#) shall mail a copy of the notice of lien to the unit of the Department of Health that administers medical assistance for needy persons under [AS 47](#). The copy must be sent by certified mail no later than 30 days after the filing of the notice of lien under (a) of this section.

Sec. 34.35.465. Form of notice.

The form of notice required by [AS 34.35.450](#) — 34.35.480 shall be substantially as follows:

NOTICE is hereby given that has rendered services for hospitalization, physician services, or special nurses' services for, a person who was injured on the day of at in the state, and the
(claimant) hereby claims a lien upon any money due or owing or any claim for compensation, damages, contribution, settlement, or judgment from alleged to have caused the injuries and any other person liable for the injury or obligated to compensate the injured person on account of the injuries; the hospitalization, physician services, or special nurses' services were rendered to the injured person between the day of
and:General Description of Services Rendered and Statement of Amount Due.....and that 90 days have not elapsed since that time; that the claimant's demands for care and service is in the sum of \$..... and that no part of the demands has been paid, except \$....., and that there is now due and owing and remaining unpaid thereof, after deducting all credits and offsets, the sum of \$....., in which amount lien is hereby claimed.United States of AmericaState of Alaska ss..... Judicial DistrictI, ..., being first duly sworn on oath say: That I am named in the foregoing claim of lien; that I have read the same and know the contents thereof and believe the same to be true.Subscribed and sworn to before me this day of, 2.....

Sec. 34.35.470. Lien docket. [Repealed, § 7 ch 135 SLA 1996.]

Sec. 34.35.475. Settlement after notice.

(a) A person or insurer is liable to a hospital, physician, or nurse, in the amount that the hospital, physician, or nurse is entitled to receive, for 180 days after the date of a payment to the injured person, the heirs of the injured person, personal representatives, or the attorney of them, when the person or insurer

(1) receives a copy of notice of lien, or the lien is recorded as provided in [AS 34.35.460](#) and 34.35.465;

(2) makes the payment after receipt of notice or the recording of the lien as compensation for the injury suffered; and

(3) does not pay the hospital, physician, or the licensed special nurse for the reasonable value

of the services rendered to the injured person and claimed in the notice of lien, or so much of the value of the services as can be satisfied out of a judgment, settlement, or compromise, after paying the attorney fees, costs, and expenses incurred in connection with it.

(b) The hospital, physician, or nurse has a cause of action, during the 180 days, against the person or insurer.

Sec. 34.35.480. Enforcement of lien.

(a) A lien under [AS 34.35.450](#) — 34.35.480 may be foreclosed or enforced by an action brought by the claimant, a representative, or assignee within one year after the filing of the lien.

(b) In the action, upon entering a decree for the plaintiff, the court shall allow as part of the costs, all money paid for the filing and recording of the lien notice, together with a reasonable attorney fee.

Sec. 34.35.481. Priority of liens.

A lien perfected by the Department of Health under [AS 47.05.075](#) has priority immediately after a lien perfected by a hospital, nurse, or physician under [AS 34.35.450](#) — 34.35.480.

Sec. 34.35.482. Definition.

In [AS 34.35.450](#) — 34.35.482, “physician” means a person licensed as a chiropractor under [AS 08.20](#) or a person licensed as a doctor of medicine under [AS 08.64](#).

Secs. 34.35.485 — 34.35.500. [Renumbered as [AS 34.35.900](#) — 34.35.930.]

Article 13. Hotels and Boardinghouses.

Sec. 34.35.510. Hotel and boardinghouse operator's liens.

The operator of a hotel or boardinghouse has a lien upon, and may retain, all baggage and other property lawfully in the possession of a guest for all proper charges owed by the guest to the hotel or boardinghouse operator. However, this section does not apply when the baggage or other property is not owned by the guest and the hotel or boardinghouse operator has actual notice of this fact.

Sec. 34.35.520. Disposition of property to satisfy liens.

(a) If a lien under [AS 34.35.510](#) is not satisfied within 60 days after the charges become due, the hotel or boardinghouse operator may proceed to sell the baggage or other property held under the lien at public auction. Ten days before the sale the hotel or boardinghouse operator shall give notice of the time and place of sale by posting notice in three public places in the town or city where the hotel or boardinghouse is located and by mailing notice of the time and place to the owner of the baggage or other property at the place of residence as set out in the hotel or boardinghouse register. If the guest failed to register or to give sufficient address, the required notice shall be mailed to the guest at the city or town where the hotel or boardinghouse is located. When the notice requirements of this section have been complied with, the sale of the baggage or other property is a perpetual bar to an action against the hotel or boardinghouse operator for recovery of baggage, property, or their value.

(b) After satisfaction of the lien and payment of all legal charges for storage and expenses incurred in selling the property, the remaining proceeds of the sale shall, within one year, be paid to the guest upon demand.

Sec. 34.35.530. Definitions.

In [AS 34.35.510](#) — 34.35.530,

(1) “guest” includes every person who is a member of the family of, or dependent upon, a guest, boarder, or lodger in a hotel or boardinghouse;

(2) “hotel or boardinghouse” includes any building held out to the public to be an inn, motel, hotel, or public lodginghouse, or place where sleeping accommodations, whether with or without meals, are furnished for hire to transient guests;

(3) “operator” includes innkeeper, proprietor, keeper, owner, lessee, or manager of a hotel or boardinghouse.

Article 14. Miscellaneous Provisions.

Sec. 34.35.900. Acknowledgment of satisfaction.

(a) When a lien is satisfied by payment, an acknowledgment of satisfaction suitable for recordation shall be delivered to all parties to the lien by the lien claimant. The acknowledgment of satisfaction shall be delivered immediately upon payment by tender of cash in satisfaction of the claim or within 10 days after payment when satisfaction is obtained in some other manner. A certificate of discharge of a lien for nonpayment of a state tax or license fee recorded under [AS 43.10.042](#) shall be delivered within 15 days after tender of cash in satisfaction of the claim or within 30 days when satisfaction is obtained in some other manner. The acknowledgment must identify all parties to the lien and any property subject to the lien using the same name or description contained in the claim of record, if a claim was made, and the book and page of the official record containing the claim or the serial number assigned to the claim by the recorder.

(b) A lien claimant or assignee who, after payment in full of the lien claim and after written demand by a person liable upon the lien, fails without just cause for a period of 30 days to execute and file or record an acknowledgment of satisfaction in the recording district in which the claim of lien is filed or recorded is liable to the person making the demand or the grantees or heirs of that person for all damages that they may sustain by reason of that failure and shall also forfeit to them the sum of \$100.

Sec. 34.35.910. Employment considered continuous.

(a) The fact that a lien claimant is employed at different kinds of labor or at different rates of wages during the period of general employment is not considered an interruption of the continuity of employment.

(b) A temporary cessation of employment of the lien claimant under an understanding of resumption of employment within a reasonable time is not considered an interruption of the continuity of employment so as to cause the time to run within which the notice of the lien is required to be filed for record.

Sec. 34.35.920. Waiver of lien.

Except as provided under [AS 34.35.117](#) and 34.35.119, an agreement by a person mentioned in [AS 34.35.010](#) — 34.35.425 to waive the right to acquire a lien provided in [AS 34.35.010](#) — 34.35.425 is invalid.

Sec. 34.35.930. Liberal construction of chapter.

The intent of this chapter is remedial and its provisions shall be liberally construed.

Sec. 34.35.950. Nonconsensual common law liens.

(a) A nonconsensual common law lien is invalid unless the lien is authorized by an order of a court of competent jurisdiction recognized under state or federal law.

(b) A person may not submit a nonconsensual common law lien under [AS 40.17](#) to the recorder in order to record the lien unless the lien is accompanied by a specific order authorizing the recording of the lien issued by a court of competent jurisdiction recognized under state or federal law. When a nonconsensual common law lien is submitted for recording under this subsection, the court order accompanying the lien shall be recorded with the lien.

(c) A person may not submit a nonconsensual common law lien under a law authorizing the filing of a lien against personal property in order to file the lien unless the lien is accompanied by a specific order authorizing the filing of the lien issued by a court of competent jurisdiction recognized under state or federal law. When a nonconsensual common law lien is submitted for filing under this subsection, the court order accompanying the lien shall be filed with the lien.

(d) In this section,

(1) “filed” means the acceptance of a document by a department or person having responsibility for the receipt and filing of documents that may be filed and that are presented for filing in the place of filing designated by law, whether or not under applicable law the department or person is directed to file the document;

(2) “nonconsensual common law lien” means a lien on real or personal property that
(A) is not provided for by a specific state or federal statute or municipal ordinance;

(B) does not depend on the consent of the owner of the property affected for its existence;
and

(C) is not an equitable, constructive, or other lien imposed by a court recognized under state or federal law;

(3) “record” means the acceptance of a document by the recorder that the recorder has determined is recordable under [AS 40.17](#) and that is presented for recording in the place of recording designated for the recording district where affected property is located whether or not the place of recording is in that district and whether or not under applicable law the recorder is directed to record the document;

(4) “recorder” means the commissioner of natural resources or the person designated by the commissioner of natural resources to perform the duties set out in [AS 40.17](#).

Chapter 40. Fraudulent Transfers, Revocations, and Trusts.

Sec. 34.40.010. Invalidity generally.

Except as provided in [AS 34.40.110](#), a conveyance or assignment, in writing or otherwise, of an estate or interest in land, or in goods, or things in action, or of rents or profits issuing from them or a charge upon land, goods, or things in action, or upon the rents or profits from them, made with the intent to hinder, delay, or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts, or demands, or a bond or other evidence of debt given, action commenced, decree or judgment suffered, with the like intent, as against the persons so hindered, delayed, or defrauded is void.

Sec. 34.40.020. Invalidity as against purchasers.

A conveyance of an interest in land, or the rents or profits of it, or a charge upon land or upon the rents and profits thereof, that is made or created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the land, rents, or profits, as against these purchasers, is void.

Sec. 34.40.030. Purchasers with notice.

A conveyance or charge is not considered fraudulent in favor of a subsequent purchaser who has actual or legal notice of it at the time of the purchase, unless it appears that the grantee in the conveyance, or person to be benefited by the charge, was privy to the fraud intended.

Sec. 34.40.040. Invalidating effect of provision for revocation, determination, or alteration.

A conveyance or charge of or upon an estate or interest in land containing a provision for the revocation, determination, or alteration of the estate or interest, or a part of it, at the will of the grantor, is void as against subsequent purchasers from the grantor for a valuable consideration of an estate or interest liable to be revoked or determined, although the estate or interest is not expressly revoked, determined, or altered by the grantor by virtue of the power reserved or expressed in a prior conveyance or charge.

Sec. 34.40.050. Conveyance in exercise of power to revoke and reconvey.

Where a power to revoke a conveyance of land, or the rents and profits from it, and to reconvey the land or the rents and profits is given to a person other than the grantor in the conveyance, and the person subsequently conveys the land, rents, or profits to a purchaser for a valuable consideration, the subsequent conveyance is valid in the same manner and to the same extent as if the power of revocation were recited in it and the intent to revoke the former conveyance expressly declared.

Sec. 34.40.060. Conveyance before accrual of right to execute power of revocation.

If a conveyance to a purchaser under either [AS 34.40.040](#) or 34.40.050 is made before the person making the conveyance is entitled to execute the power of revocation, it nevertheless is valid from the time the power of revocation actually vests in the person, in the same manner and to the same extent as if then made.

Sec. 34.40.070. Requirement of writing for grant or assignment of trust.

A grant or assignment of an existing trust in land, goods, or things in action, unless the grant or assignment is in writing, subscribed by the person making it, or a lawfully authorized agent of the person, is void.

Sec. 34.40.080. Invalidity against heirs, successors, representatives, or assigns.

A conveyance, charge, instrument, or proceeding declared by law to be void as against the creditors, purchasers, or mortgagees is equally void as against the heirs, successors, personal representatives, or assigns of the creditors, purchasers, or mortgagees.

Sec. 34.40.090. Fraudulent intent question of fact.

The question of fraudulent intent in a case arising under the provisions of this chapter is a question of fact, and not of law.

Sec. 34.40.100. When title of purchaser for value not affected.

The provisions of [AS 34.40.010](#) and 34.40.070 — 34.40.130 may not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration unless it appears that the purchaser had previous notice of the fraudulent intent of the purchaser's immediate grantor, or of the fraud rendering void the title of the grantor.

Sec. 34.40.110. Restricting transfers of trust interests.

(a) A person who in writing transfers property in trust may provide that the interest of a beneficiary of the trust, including a beneficiary who is the settlor of the trust, may not be either voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee. Payment or delivery of the interest to the beneficiary does not include a beneficiary's use or occupancy of real property or tangible personal property owned by the trust if the use or occupancy is in accordance with the trustee's discretionary authority under the trust instrument. A provision in a trust instrument that provides the restrictions described in this subsection is considered to be a restriction that is a restriction on the transfer of the transferor's beneficial interest in the trust and that is enforceable under applicable nonbankruptcy law within the meaning of 11 U.S.C. 541(c)(2) (Bankruptcy Code), as that paragraph reads on September 15, 2004, or as it may be amended in the future. In this subsection,

(1) "property" includes real property, personal property, and interests in real or personal property;

(2) "transfer" means any form of transfer, including deed, conveyance, or assignment.

(b) If a trust contains a transfer restriction allowed under (a) of this section, the transfer restriction prevents a creditor existing when the trust is created or a person who subsequently becomes a creditor from satisfying a claim out of the beneficiary's interest in the trust, unless the creditor is a creditor of the settlor and

(1) the creditor establishes by clear and convincing evidence that the settlor's transfer of property in trust was made with the intent to defraud that creditor, and a cause of action or claim for relief with respect to the fraudulent transfer complies with the requirements of (d) of this section; however, a settlor's expressed intention to protect trust assets from a beneficiary's potential future creditors is not evidence of an intent to defraud;

(2) the trust, except for an eligible individual retirement account trust, provides that the settlor may revoke or terminate all or part of the trust without the consent of a person who has a substantial beneficial interest in the trust and the interest would be adversely affected by the

exercise of the power held by the settlor to revoke or terminate all or part of the trust; in this paragraph, “revoke or terminate” does not include a power to veto a distribution from the trust, a testamentary or lifetime nongeneral power of appointment or similar power, or a right to receive a distribution of income or principal under (3)(A), (B), (C), or (D) of this subsection;

(3) the trust, except for an eligible individual retirement account trust, requires that all or a part of the trust's income or principal, or both, must be distributed to the settlor; however, this paragraph does not apply to a settlor's right to receive the following types of distributions, which remain subject to the restriction provided by (a) of this section until the distributions occur:

(A) income or principal from a charitable remainder annuity trust or charitable remainder unitrust; in this subparagraph, “charitable remainder annuity trust” and “charitable remainder unitrust” have the meanings given in 26 U.S.C. 664 (Internal Revenue Code) and as it may be amended;

(B) a percentage of the value of the trust each year as determined from time to time under the trust instrument, but not exceeding the amount that may be defined as income under [AS 13.38](#) or under 26 U.S.C. 643(b) (Internal Revenue Code) and as it may be amended;

(C) the transferor's potential or actual use of real property held under a qualified personal residence trust within the meaning of 26 U.S.C. 2702(c) (Internal Revenue Code) or as it may be amended in the future; or

(D) income or principal from a grantor retained annuity trust or grantor retained unitrust that is allowed under 26 U.S.C. 2702 (Internal Revenue Code) or as it may be amended in the future; or

(4) at the time of the transfer, the settlor is in default by 30 or more days of making a payment due under a child support judgment or order.

(c) The satisfaction of a claim under (b)(1) — (4) of this section is limited to that part of the trust for which a transfer restriction is not allowed under (b)(1) — (4) of this section, and an attachment or other order may not be made against the trustee with respect to a beneficiary's interest in the trust or against property that is subject to a transfer restriction, except to the extent that a transfer restriction is determined not to be allowed under (b)(1) — (4) of this section.

(d) A cause of action or claim for relief with respect to a fraudulent transfer of a settlor's assets under (b)(1) of this section is extinguished unless the action under (b)(1) of this section is brought by a creditor of the settlor who

(1) is a creditor of the settlor before the settlor's assets are transferred to the trust, and the action under (b)(1) of this section is brought within the later of

(A) four years after the transfer is made; or

(B) one year after the transfer is or reasonably could have been discovered by the creditor if the creditor

(i) can demonstrate, by a preponderance of the evidence, that the creditor asserted a specific claim against the settlor before the transfer; or

(ii) files another action, other than an action under (b)(1) of this section, against the settlor that asserts a claim based on an act or omission of the settlor that occurred before the transfer, and the action described in this sub-subparagraph is filed within four years after the transfer; or

(2) becomes a creditor subsequent to the transfer into trust, and the action under (b)(1) of this section is brought within four years after the transfer is made.

(e) If a trust contains a transfer restriction allowed under (a) of this section, the transfer restriction prevents a creditor existing when the trust is created, a person who subsequently becomes a creditor, or another person from asserting any cause of action or claim for relief against a trustee of the trust or against others involved in the preparation or funding of the trust for conspiracy to commit fraudulent conveyance, aiding and abetting a fraudulent conveyance, or participation in the trust transaction. Preparation or funding of the trust includes the preparation and funding of a limited partnership or a limited liability company if interests in the limited partnership or limited liability company are subsequently transferred to the trust. The creditor and other person prevented from asserting a cause of action or claim for relief are limited to recourse against the trust assets and the settlor to the extent allowed under [AS 34.40.010](#).

(f) A transfer restriction allowed under (a) of this section and enforceable under (b) of this section applies to a settlor who is also a beneficiary of the trust even if the settlor serves as a co-trustee or as an advisor to the trustee under [AS 13.36.375](#) if the settlor does not have a trustee power over discretionary distributions.

(g) A transfer restriction allowed under (a) of this section and enforceable under (b) of this section applies to a beneficiary who is not the settlor of the trust, whether or not the beneficiary serves as a sole trustee, a co-trustee, or an advisor to the trustee under [AS 13.36.375](#).

(h) A transfer restriction is allowed under (a) of this section and is enforceable under (b) of this section even if the settlor has the authority under the terms of the trust instrument to

(1) appoint a trustee, a trust protector under [AS 13.36.370](#), or an advisor under [AS 13.36.375](#);

(2) remove a trustee or trust protector and appoint a replacement trustee or trust protector who is not a related or subordinate party; in this paragraph, “related or subordinate party” has the meaning given in 26 U.S.C. 672(c) (Internal Revenue Code); or

(3) remove an advisor and appoint a replacement advisor.

(i) A settlor whose beneficial interest in a trust is subject to a transfer restriction that is allowed under (a) of this section may not benefit from, direct a distribution of, or use trust property except as may be stated in the trust instrument. An agreement or understanding, express or implied, between the settlor and the trustee that attempts to grant or permit the retention of greater rights or authority than is stated in the trust instrument is void.

(j) A settlor who creates a trust that names the settlor as a beneficiary and whose beneficial interest is subject to a transfer restriction allowed under (a) of this section shall sign a sworn affidavit before the settlor transfers assets to the trust. The affidavit must state that

(1) the settlor has full right, title, and authority to transfer the assets to the trust;

(2) the transfer of the assets to the trust will not render the settlor insolvent;

(3) the settlor does not intend to defraud a creditor by transferring the assets to the trust;

(4) the settlor does not have any pending or threatened court actions against the settlor, except for those court actions identified by the settlor on an attachment to the affidavit;

(5) the settlor is not involved in any administrative proceedings, except for those administrative proceedings identified on an attachment to the affidavit;

(6) at the time of the transfer of the assets to the trust, the settlor is not currently in default of a child support obligation by more than 30 days;

(7) the settlor does not contemplate filing for relief under the provisions of 11 U.S.C. (Bankruptcy Code); and

(8) the assets being transferred to the trust were not derived from unlawful activities.

(k) Notwithstanding another provision of the law of this state, an action, including an action to enforce a judgment entered by a court or other body having adjudicative authority, may not be brought at law or in equity for an attachment or other provisional remedy against property of a trust subject to this section or to avoid a transfer of property to a trust that is the subject of this section unless the action is brought under (b)(1) of this section and within the limitations period of (d) of this section. A court of this state has exclusive jurisdiction over an action brought under a cause of action or claim for relief that is based on a transfer of property to a trust that is the subject of this section.

(l) If a trust has a transfer restriction allowed under (a) of this section, in the event of the divorce or dissolution of the marriage of a beneficiary of the trust, the beneficiary's interest in the trust is not considered property subject to division under [AS 25.24.160](#) or 25.24.230 or a part of a property division under [AS 25.24.160](#) or 25.24.230. Unless otherwise agreed to in writing by the parties to the marriage, this subsection does not apply to a settlor's interest in a self-settled trust with respect to assets transferred to the trust

(1) after the settlor's marriage; or

(2) within 30 days before the settlor's marriage unless the settlor gives written notice to the other party to the marriage of the transfer.

(m) If a trust contains a transfer restriction allowed under (a) of this section, the transfer restriction prevents a creditor existing when the trust is created or a person who subsequently becomes a creditor from satisfying a claim out of the interest of a beneficiary, including a beneficiary who is the settlor of the trust, even if

(1) the beneficiary has the right to receive through the exercise of a person's discretion, whether or not the exercise of the discretion is governed by a standard, a distribution of income, principal, or both principal and interest, from the trust; in this paragraph, "person" includes a trustee who is the settlor, unless the settlor is the beneficiary; or

(2) the settlor potentially will receive or actually receives income or principal to pay, in whole or in part, income taxes due on the income of the trust, if the potential or actual receipt of income or principal will be or is made under a provision in the trust instrument that expressly provides for the payment of the taxes and if the potential or actual receipt of income or principal would be the result of a trustee's acting in the trustee's discretion or under a mandatory direction in the trust instrument; a distribution to pay income taxes that is made under a discretionary or mandatory provision in a governing instrument under this paragraph may be made by direct payment to a taxing authority.

(n) In this section,

(1) "eligible individual retirement account trust" means an individual retirement account under 26 U.S.C. 408(a) or an individual retirement plan under 26 U.S.C. 408A(b) (Internal Revenue Code), as those sections read on September 13, 2006 or as they may be amended in the future, that is in the form of a trust, if a trust company or bank with its principal place of business in this state is the trustee or custodian;

(2) "settlor" means a person who transfers real property, personal property, or an interest in real or personal property, in trust.

Sec. 34.40.113. Discretionary interests in irrevocable trusts.

(a) This section applies to a creditor's claim with respect to a discretionary interest in an irrevocable trust unless the trust instrument provides otherwise.

(b) A discretionary interest in an irrevocable trust is not a property interest or an enforceable right. It is an expectancy that a creditor of a beneficiary may not attach or otherwise reach.

(c) A creditor of a beneficiary may not force a distribution with regard to a discretionary interest in an irrevocable trust. A creditor may not compel a trustee to exercise the trustee's discretion to make a distribution with regard to a discretionary interest in an irrevocable trust.

(d) Even if a beneficiary has an outstanding creditor, in the case of a discretionary interest in an irrevocable trust, a trustee who has the authority to pay income or principal to a beneficiary may pay it to a third party if the payment is for the benefit of the beneficiary. A trustee is not liable to a creditor for paying income or principal on behalf of the beneficiary.

(e) A creditor of a beneficiary may not maintain an action or a proceeding in court that interferes with the trustee's discretion to apply income or principal on behalf of the beneficiary.

(f) A creditor of a beneficiary may not obtain an order of attachment or similar relief that would prevent a trustee from making a discretionary payment to a third party on behalf of the beneficiary.

(g) This section does not prevent a creditor from obtaining relief from a fraudulent transfer under [AS 34.40.110](#).

(h) In this section, a beneficiary's entitlement to a distribution is within the discretion of a trustee, whether or not the trust instrument states the purposes for the distribution or uses "may," "shall," "sole and absolute," "uncontrolled," or similar words.

(i) In this section, "discretionary interest" means a beneficiary's interest in an irrevocable trust if the beneficiary's entitlement to a distribution is within the discretion of the trustee.

Sec. 34.40.115. Subjecting appointed property to claims of donee's creditor.

The property that a donee of a power of appointment is authorized to appoint is not subject to the claims of the creditors of the donee except to the extent that a donee of an inter vivos or testamentary power of appointment

(1) is permitted by the donor of the power to appoint the property to the donee, the creditors of the donee, the donee's estate, or the creditors of the donee's estate; and

(2) effectively exercises the power of appointment in favor of the donee, the creditors of the donee, the donee's estate, or the creditors of the donee's estate.

Sec. 34.40.118. Transfers of individual retirement accounts.

(a) Notwithstanding a provision in [AS 09.38.017\(d\)](#), [AS 34.40.110](#), or another law to the

contrary, a person may voluntarily transfer or assign the person's interest in an individual retirement account if the person

(1) is the owner of or a participant in the individual retirement account; or

(2) acquired the interest as a result of the death of another individual.

(b) In this section, "individual retirement account" means an individual retirement account established under 26 U.S.C. 408 or a Roth IRA established under 26 U.S.C. 408A.

Sec. 34.40.120. "Land" and "estate and interest in land" defined.

The term "land" as used in this chapter shall be construed as coextensive in meaning with "lands, tenements, and hereditaments," and the term "estate and interest in land" shall be construed to embrace every interest, freehold, and chattel, legal and equitable, present and future, vested and contingent in land as defined in this section.

Sec. 34.40.130. "Conveyance" defined.

The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing except a last will and testament, of whatever form and by whatever name it may be known in law, by which an estate or interest in land is created, aliened, assigned, or surrendered.

Chapter 45. Unclaimed Property.

Article 1. Consignees and Bailees.

Sec. 34.45.010. Record of consignee or bailee.

When personal property is consigned to or deposited with a forwarding merchant, wharf, warehouse, or tavern keeper, or the keeper of a depot for the reception and storage of trunks, baggage, merchandise, or other personal property, the consignee or bailee shall immediately record a description of the property, and the date of receipt, in a book kept by the consignee or bailee.

Sec. 34.45.020. Consignee's or bailee's notice to owner.

If the property is not left with the consignee or bailee for the purpose of being forwarded, disposed of, or kept according to directions received by the consignee or bailee, at or before the time of the reception of the property, and if the name and residence of the owner of the property is known to the person having possession of the property, the consignee or bailee shall immediately notify the owner, by letter directed to the owner and deposited in the post office, of the reception of the property.

Sec. 34.45.030. Sale.

If property held by a person described in [AS 34.45.010](#) is not claimed and taken away within one year after the time it is received, the person having possession of the property may sell the property in the manner provided in [AS 34.45.010](#) — 34.45.080, except that property described in [AS 34.45.110](#) — 34.45.260 shall be reported to the Department of Revenue under [AS 34.45.280](#) and is subject to [AS 34.45.290](#) — 34.45.780.

Sec. 34.45.040. Presale inventory and notice.

(a) Before the property is sold, the person in possession of it shall request the district judge or magistrate in the judicial district where the property is located to inventory the property.

(b) Upon the request the district judge or magistrate or a person, other than the holder of the property or the holder's agent, appointed by the district judge or magistrate, shall attend and, in the presence of the holder, or the holder's agent, shall open, examine, and inventory the property. The inventory must be in duplicate, one copy of which shall be filed with the district judge or magistrate and one copy retained by the holder of the property.

(c) After the property is inventoried, the holder, or the holder's agent, may give notice of an intention to sell it in the following manner:

(1) if the name and residence of the owner of the property is known, by serving the notice upon the owner either personally, or at the owner's place of residence or business, or by registered mail;

(2) if the name and residence of the owner of the property is unknown to the holder, then the holder may serve the notice by publication once a week for two successive weeks in a newspaper of general circulation published in the area nearest to where the property is held.

(d) The notice must contain (1) a reasonably correct description of the property; (2) the name and residence of the owner, if known; (3) the name and residence of the holder; (4) the amount of the charges accrued and costs incurred; and (5) a statement that the holder on a certain date, that shall be specified and may not be less than three weeks after the day on which the notice is served or, if published, on which the notice is first published, will apply to the district judge or magistrate for an order to sell the property to satisfy all charges and costs that have accrued or been incurred to that date.

Sec. 34.45.050. Order of sale.

(a) If the owner or person entitled to the possession of the property, before the date specified in the notice, fails to redeem it as provided in [AS 34.45.060](#), the district judge or magistrate, upon verified proof that the service or publication is filed with the court, shall enter an order directing the sale of the property at public auction on a date not less than 10 days after the order to satisfy all charges and costs.

(b) The holder or the holder's agent shall give public notice of sale by posting, within five miles of the place of sale, in three public places, a notice that the property will be sold at public auction. The notice must also contain a reasonably correct description of the property, the name and residence of the owner if known, the name and residence of the holder, and the time and place of sale.

Sec. 34.45.060. Sale at public auction.

(a) The peace officer shall sell the property at public auction to the highest bidder in the manner provided for the sale of personal property on execution.

(b) The sale of the property conveys good title superior to all liens, encumbrances, and mortgages, and without right of redemption; but the owner or mortgagee, at any time before the sale, may redeem the property by claiming it and paying all charges of the holder against it and

all costs incurred or accrued under [AS 34.45.010](#) — 34.45.080 up to and including the date on which the owner or mortgagee redeems it.

(c) The proceeds from the sale shall be applied in payment, first, of all reasonable costs of sale, inventory and publishing, posting, serving and preparing notices, including the district judge's or magistrate's fees and the fees of the peace officer, and second, of the holder's charges, with interest at the legal rate, against the property.

Sec. 34.45.070. Proceeds of sale.

(a) The peace officer, upon completion of the sale of the property, shall make and file with the district judge or magistrate a verified, written return of the conduct of the sale and of the application of the proceeds derived from it, and shall pay all money in excess of costs and charges to the district judge or magistrate.

(b) The district judge or magistrate shall hold the money in trust for the owner of the property and shall pay it to the owner upon the latter's making a written, verified claim to it, with proof of ownership, within one year after the date of the sale. If no claim is made within one year after the date of the sale, the district judge or magistrate shall immediately pay the excess proceeds to the Department of Revenue. Excess proceeds that are required to be paid over to the Department of Revenue under this section are subject to [AS 34.45.280](#) and 34.45.330 — 34.45.780.

Sec. 34.45.080. Sale of perishable property.

(a) Property of a perishable nature and subject to decay by keeping, if not taken away within 30 days after it has been left, may be sold by giving 10 days' notice of sale. In that case the notice provided in [AS 34.45.040](#) need not be given.

(b) The sale shall be conducted and the proceeds of the sale shall be applied in the manner provided in [AS 34.45.010](#) — 34.45.080, except that property in a state of decay, or that is plainly subject to immediate decay, may be summarily sold by order of a district judge or magistrate, after inspection of it, as provided in [AS 34.45.010](#) — 34.45.080.

(c) The return of the sale shall be made and the proceeds derived from it shall be applied in the manner provided in [AS 34.45.060](#) and 34.45.070.

Sec. 34.45.085. Definition.

In [AS 34.45.010](#) and 34.45.020, “property” does not include property covered by [AS 14.57.200](#) — 14.57.290.

Sec. 34.45.090. Fees of officers. [Repealed, § 14 ch 133 SLA 1986.]

Article 2. Personal Property Presumed Abandoned; General Rules.

Sec. 34.45.110. General rule for property presumed abandoned.

(a) Except as otherwise provided in [AS 34.45.120](#) — 34.45.780, all intangible property, including income or increment derived from the property, less lawful charges, that is held, issued, or owing in the ordinary course of a holder's business and has remained unclaimed by the owner

for more than three years after becoming payable or distributable is presumed abandoned.

(b) Property is payable or distributable for the purposes of [AS 34.45.120](#) — 34.45.780 even if the owner failed to demand the property or to present an instrument or document required to receive payment of the property.

Sec. 34.45.120. General rules for taking custody of unclaimed intangible property.

Unless otherwise provided in this chapter or by another statute of the state, intangible property is subject to the custody of the state as unclaimed property if the conditions raising a presumption of abandonment under [AS 34.45.110](#) or 34.45.140 — 34.45.260 are satisfied and

(1) the last known address of the apparent owner, as shown on the records of the holder, is in the state;

(2) the records of the holder do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in the state;

(3) the records of the holder do not reflect the last known address of the apparent owner, and it is established that

(A) the last known address of the person entitled to the property is in the state, or

(B) the holder is a domiciliary or a government or governmental subdivision or agency, including a municipality, of the state and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) the last known address of the apparent owner, as shown on the records of the holder, is in a state that either does not provide by law for the escheat or custodial taking of the property, or its escheat or unclaimed property law is not applicable to the property, and the holder is a domiciliary, government, or governmental subdivision or agency, including a municipality, of the state;

(5) the last known address of the apparent owner, as shown on the records of the holder, is in a foreign nation and the holder is a domiciliary, government, or governmental subdivision, including a municipality, or agency of the state; or

(6) the transaction out of which the property arose occurred in the state and

(A) the last known address of the apparent owner or other person entitled to the property is unknown, or the last known address of the apparent owner or other person entitled to the property is in a state that either does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law does not apply to the property, and

(B) the holder is a domiciliary of a state that either does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law does not apply to the property.

Article 3. Conditions Leading to Presumption of Abandonment of Particular Types of Personal Property.

Sec. 34.45.140. Traveler's checks and money orders.

(a) Subject to (d) of this section, money payable on a traveler's check that has been outstanding for more than 15 years after its issuance is presumed abandoned unless the owner, within the preceding 15 years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record, on file, prepared by an employee of the issuer.

(b) Subject to (d) of this section, money payable on a money order or similar written instrument, other than a third-party bank check, that has been outstanding for more than seven years after its issuance is presumed abandoned unless the owner, within the preceding seven years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record, on file, prepared by an employee of the issuer.

(c) A holder may not deduct from the amount of a traveler's check or money order a charge imposed for failure to present the instrument for payment unless there is a valid and enforceable written contract between the issuer and the owner of the instrument under which the issuer may impose a charge, and the issuer regularly imposes charges and does not regularly reverse or otherwise cancel them.

(d) Money payable on a traveler's check, money order, or similar written instrument, other than a third-party check, described in (a) and (b) of this section, is not subject to the custody of the state as unclaimed property unless

(1) the records of the issuer show that the traveler's check, money order, or similar written instrument was purchased in the state;

(2) the issuer has its principal place of business in the state and the records of the issuer do not show the state in which the traveler's check, money order, or similar written instrument was purchased; or

(3) the issuer has its principal place of business in the state, the records of the issuer show the state in which the traveler's check, money order, or similar written instrument was purchased and the state of purchase either does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.

(e) Notwithstanding any other provision of [AS 34.45.110](#) — 34.45.780, (d) of this section applies to money payable on traveler's checks, money orders, and similar written instruments, other than a third-party bank check, presumed abandoned after January 31, 1965, except to the extent that those sums have been paid over to a state before January 1, 1974.

Sec. 34.45.150. Checks, drafts, and similar instruments issued or certified by banking and financial organizations.

(a) Other than money payable on an instrument that is subject to [AS 34.45.140](#), money payable on a check, draft, or similar instrument on which a banking or financial organization is directly liable, including a cashier's check and a certified check, that has been outstanding for more than five years after it was payable or after its issuance if payable on demand, is presumed abandoned. This presumption does not apply if the owner, within the preceding five years, has communicated in writing with the banking or financial organization concerning the instrument or has otherwise indicated an interest as evidenced by a memorandum or other record, on file, prepared by an employee of the organization.

(b) A holder may not deduct from the amount of an instrument subject to this section a charge imposed for failure to present the instrument for payment unless there is a valid and enforceable

written contract between the holder and the owner of the instrument under which the holder may impose a charge, and the holder regularly imposes the charges and does not regularly reverse or otherwise cancel them.

Sec. 34.45.160. Bank deposits and money in financial organizations.

(a) A demand, savings, or matured time deposit with a banking or financial organization, including a deposit that is automatically renewable, and money paid toward the purchase of a share, a mutual investment certificate, or other intangible property interest in a banking or financial organization is presumed abandoned unless the owner, within the preceding five years, has

(1) in the case of a deposit, increased or decreased its amount or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(2) communicated in writing with the banking or financial organization concerning the property; or

(3) otherwise indicated an interest in the property as evidenced by a memorandum or other record, on file, prepared by an employee of the banking or financial organization.

(b) A holder may not impose, with respect to property described in (a) of this section, a charge due to dormancy or inactivity, or cease payment of interest.

(c) Property described in (a) of this section that is automatically renewable is matured for purposes of (a) of this section upon the expiration of its initial time period. However, in the case of a renewal to which the owner consents at or about the time of renewal by communicating in writing with the banking or financial organization or by otherwise indicating consent as evidenced by a memorandum or other record on file, prepared by an employee of the organization, the property is matured upon the expiration of the last time period for which consent was given. If, at the time provided for delivery in [AS 34.45.320](#), a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time for delivery is extended until the time when no penalty or forfeiture would result.

(d) For purposes of this section, “property” includes interest and dividends.

Sec. 34.45.170. Money owing under life insurance policies.

(a) Money held or owing under a life or endowment insurance policy or annuity contract that has matured or terminated is presumed abandoned if unclaimed for more than three years after the money became due and payable as established from the records of the insurance company holding or owing the money.

(b) If a person other than the insured or annuitant is entitled to the money and the address of that person is not known to the company, or it is not definite and certain from the records of the company who is entitled to the money, it is presumed that the last known address of the person entitled to the money is the same as the last known address of the insured or annuitant according to the records of the company.

(c) For purposes of this section, a life endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the

company is matured and the proceeds are due and payable if

(1) the company has received due proof that the insured or annuitant has died; or

(2) the insured has attained, or would have attained if still living, the limiting age under the mortality table on which the reserve is based and

(A) the policy was in force at the time the insured attained, or would have attained, the limiting age; and

(B) neither the insured nor another person appearing to have an interest in the policy has, within the preceding two years, according to the records of the company, assigned, readjusted, or paid premiums on the policy, subjected the policy to a loan, corresponded in writing with the company concerning the policy, or otherwise indicated an interest as evidence by a memorandum or other record, on file, prepared by an employee of the company.

(d) For purposes of this section, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from being matured or terminated under (a) of this section if the insured has died or the insured or the beneficiary of the policy otherwise has become entitled to the proceeds of the policy before the depletion of the cash surrender value of a policy by the application of those nonforfeiture provisions.

(e) If the laws of the state or the terms of the life insurance policy require the company to give notice to the insured or the owner that an automatic premium loan provision or other nonforfeiture provision has been exercised and the notice is to be given to an insured or owner whose last known address, according to the records of the company, is in the state but is undeliverable, the company shall make a reasonable search to ascertain the policyholder's correct address to which the notice must be mailed.

(f) Notwithstanding any other provision of law, if the company learns of the death of the insured or annuitant and the beneficiary has not communicated with the insurer within four months after the death, the company shall take reasonable steps to pay the proceeds to the beneficiary.

(g) Commencing September 8, 1988, every change-of-beneficiary form issued by an insurance company under a life or endowment insurance policy or annuity contract to an insured or owner who is a resident of the state must request the following information:

(1) the name of each beneficiary, or if a class of beneficiaries is named, the name of each current beneficiary in the class;

(2) the address of each beneficiary; and

(3) the relationship of each beneficiary to the insured.

Sec. 34.45.175. Certain property distributed in insurance company reorganizations.

(a) The following property distributable in the course of a demutualization or related reorganization of an insurance company is considered abandoned two years after the date of demutualization or reorganization as follows:

(1) money that remains unclaimed and the owner has not otherwise communicated with the holder or its agent regarding the property as evidenced by a memorandum or other record on file with the holder or its agent;

(2) stock or other equity interest if

(A) the instruments or statements reflecting the distribution are either mailed to the owner and returned by the post office as undeliverable, or not mailed to the owner because of an address on the books and records of the holder that is known to be incorrect; and

(B) the owner has not otherwise communicated with the holder or its agent regarding the property as evidenced by a memorandum or other record on file with the holder or agent.

(b) Property that is not subject to (a) of this section is reportable as otherwise provided in [AS 34.45.110](#) — 34.45.780.

Sec. 34.45.180. Deposits held by utilities.

A deposit, including interest on the deposit, made by a subscriber with a utility to secure payment, or money paid in advance for utility services to be furnished, less lawful deductions, that remains unclaimed by the owner for more than one year after the termination of the services for which the deposit or advance payment was made is presumed abandoned.

Sec. 34.45.190. Refunds held by business associations.

Except to the extent otherwise ordered by a court or administrative agency, money that a business association has been ordered by the court or administrative agency to refund is presumed abandoned if it remains unclaimed by the owner for more than one year after it became payable in accordance with the final determination or order providing for the refund, regardless of whether the final determination or order requires the owner to make a claim for it.

Sec. 34.45.200. Stock and other intangible interests in business associations.

(a) Stock or other equity interest in a business association is presumed abandoned five years after the earliest of the date

(1) of the most recent dividend, stock split, or other distribution unclaimed by the owner;

(2) that a statement of account or other notification or communication concerning the stock or other equity interest was returned as undeliverable; or

(3) that the holder of the stock or other equity interest discontinued mailings, notifications, or communications to the owner.

(b) Unmatured or unredeemed debt of a business association, other than a bearer bond or an original issue discount bond, is presumed abandoned five years after the date of the most recent interest payment unclaimed by the owner.

(c) Matured or redeemed debt, including bearer bonds and original issue discount bonds, is presumed abandoned five years after the date of maturity or redemption.

(d) At the time property is presumed abandoned under this section, any other property right accrued or accruing to the owner as a result of the property interest and not previously presumed abandoned is also presumed abandoned.

(e) A distribution of net margins by a cooperative incorporated under [AS 10.25](#) is presumed abandoned if the distribution remains unclaimed by the owner for more than one year after the date authorized for the distribution. The distribution presumed abandoned under this subsection reverts to the cooperative if the cooperative has, at least six months before the proposed date that

the distribution reverts to the cooperative, mailed a notice of the proposed reversion to the last known address of the owner as shown on the cooperative records and

(1) if the cooperative does not have an Internet website, published notice of the proposed reversion in the manner provided by law or court rule for service of a summons by publication; or

(2) if the cooperative has an Internet website,

(A) posted for at least 180 days on the cooperative's Internet website

(i) a list of the persons for whom the cooperative has unclaimed distributions; and

(ii) a notice of the proposed reversion that prominently displays a notice line and that provides a link to the list identified in (i) of this subparagraph; the notice must appear on the home page of the cooperative's Internet website; and

(B) published once a week for four consecutive weeks in a newspaper of general circulation in the judicial district where the cooperative is located a notice of the proposed reversion that provides the address of the cooperative's Internet website and indicates that the list identified in (A)(i) of this paragraph can be found at that address; the notice shall be published simultaneously

(i) in the print version of the newspaper in a display advertisement; the display advertisement must be at least 18 square inches in area and must prominently display the notice line at the top; and

(ii) on the Internet version of the newspaper, if an Internet version of the newspaper exists.

(f) In (e) of this section,

(1) “newspaper of general circulation” has the meaning given in [AS 09.35.140](#);

(2) “notice line” means the words “do we owe you money? unclaimed (name of cooperative) capital credits” in capital letters.

Sec. 34.45.210. Property of business associations held in course of dissolution.

Intangible property distributable in the course of a dissolution of a business association that remains unclaimed by the owner for more than one year after the date specified for final distribution is presumed abandoned.

Sec. 34.45.220. Property held by agents and fiduciaries.

(a) Intangible property and income or increment derived from the intangible property held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner, within three years after it has become payable or distributable, has increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record, on file, prepared by the fiduciary.

(b) Money in an individual retirement account or a retirement plan for self-employed individuals or similar account or plan established under the internal revenue laws of the United States is not payable or distributable within the meaning of (a) of this section unless, under the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

(c) For the purpose of this section, a person who holds property as an agent for a business

association is considered as holding the property in a fiduciary capacity for that business association alone, unless the agreement between that person and the business association provides otherwise.

(d) For the purposes of this chapter, a person who is considered as holding property in a fiduciary capacity for a business association alone is the holder of the property only so far as the interest of the business association in the property is concerned, and the business association is the holder of the property so far as the interest of another person in the property is concerned.

Sec. 34.45.230. Property held by courts and public agencies.

Except as provided by [AS 34.45.720\(d\)](#), intangible property held for the owner by a court, state, municipality, or other government, governmental subdivision, or agency, public corporation, or public authority, that remains unclaimed by the owner for more than one year after becoming payable or distributable, is presumed abandoned.

Sec. 34.45.240. Gift certificates and credit memos.

(a) A gift certificate or a credit memo, issued in the ordinary course of an issuer's business, that remains unclaimed by the owner for more than three years after becoming payable or distributable is presumed abandoned.

(b) In the case of a gift certificate, the amount presumed abandoned is the price paid by the purchaser for the gift certificate. In the case of a credit memo, the amount presumed abandoned is the amount credited to the recipient of the memo.

Sec. 34.45.250. Wages.

Unpaid wages, including wages represented by unpresented payroll checks, owing in the ordinary course of the holder's business and that remain unclaimed by the owner for more than one year after becoming payable are presumed abandoned.

Sec. 34.45.260. Contents of safe deposit box or other safekeeping repository.

All tangible and intangible personal property held in a safe deposit box or other safekeeping repository in a financial organization in the state in the ordinary course of the holder's business, and proceeds resulting from the sale of the property permitted by other law, that remain unclaimed by the owner for more than one year after the lease or rental period on the box or other repository has expired, are presumed abandoned.

Sec. 34.45.270. Burden of proof as to property evidenced by record of check, draft, or similar instrument.

A record of the issuance of a check, draft, or similar instrument is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer, the department's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge, and want of consideration are affirmative defenses that must be established by the holder.

Article 4. Reporting and Disposition of Personal Property.

Sec. 34.45.280. Report of abandoned personal property.

(a) A person holding personal property, tangible or intangible, presumed abandoned and subject to custody as unclaimed property under [AS 34.45.110](#) — 34.45.430, shall report to the department concerning the property as provided in this section.

(b) The report must be made on a form bearing a notice that statements are made under penalty of unsworn falsification and must include

(1) except with respect to traveler's checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of property, the value of which is \$100 or more, presumed abandoned under [AS 34.45.110](#) — 34.45.430 and other statutes specifically made subject to this reporting requirement;

(2) in the case of unclaimed money amounting to \$100 or more, held or owing under a life or endowment insurance policy or annuity contract, the full name and last known address of the insured or annuitant and of the beneficiary or other person who is entitled to the proceeds according to the records of the insurance company holding or owing the funds;

(3) in the case of the contents of a safe deposit box or other safekeeping repository or of other tangible personal property, a description of the property and the place where it is held and may be inspected by the department and any amounts owing to the holder;

(4) the nature and identifying number, if any, or description of the property and the amount appearing from the records to be due; items of value under \$100 each may be reported in the aggregate;

(5) the date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property; and

(6) other information that the department prescribes by regulation as necessary for the administration of this chapter.

(c) If the holder of property presumed abandoned and subject to custody as unclaimed property is a successor to other persons who previously held the property for the apparent owner, or the holder has changed the holder's name while holding the property, the holder shall file with the holder's report all known names and addresses of each previous holder of the property.

(d) The report required under (a) of this section shall be filed before November 1 of each year for unclaimed property held as of June 30 of that year. On written request by a person required to file a report, the commissioner may postpone the reporting date.

(e) Not more than 120 days before filing the report required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under [AS 34.45.110](#) — 34.45.430 shall send written notice to the apparent owner at the owner's last known address informing the owner that the holder is in possession of property subject to this chapter if

(1) the holder has in its records an address for the apparent owner that the holder believes to be accurate;

(2) the claim of the apparent owner is not barred by the statute of limitations; and

(3) the property has a value of \$100 or more.

(f) The requirements of this section apply to the holder of intangible property with a total aggregate value greater than \$750 that is presumed abandoned under [AS 34.45.110](#) — 34.45.780 during the year preceding June 30 of each year. For purposes of determining total aggregate value under this subsection, the holder shall include all intangible property from prior years that was not reported under [AS 34.45.110](#) — 34.45.780.

Sec. 34.45.290. Requests for reports and examination of records.

(a) The department may require a person who has not filed a report under [AS 34.45.280](#) or a person who the department believes has filed an inaccurate, incomplete, or false report to file a verified report in a form specified by the department. The report must state whether the person is holding property reportable under [AS 34.45.110](#) — 34.45.780, describe property not previously reported or as to which the department has made inquiry, and specifically identify and state the amounts of the property that may be in issue.

(b) The department, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with [AS 34.45.110](#) — 34.45.780. The department may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid, or delivered under [AS 34.45.110](#) — 34.45.780. The department may contract with any other person to conduct the examination on behalf of the department.

(c) The department at reasonable times may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association that is the holder of property presumed abandoned if the department has given the notice required by (b) of this section to both the association and the agent at least 90 days before the examination.

(d) Documents and working papers obtained or compiled by the department or the department's agents, employees, contractors, or designated representatives in the course of conducting an examination under [AS 34.45.110](#) — 34.45.780 are confidential and are not public records, but the documents and papers may be

(1) used by the department in the course of an action to collect unclaimed property or otherwise enforce [AS 34.45.110](#) — 34.45.780;

(2) used in joint examinations conducted with or under an agreement with another state, the federal government, or any other governmental subdivision, agency, or instrumentality;

(3) produced under subpoena or court order; or

(4) disclosed to the unclaimed property office of another state for that state's use in circumstances equivalent to those described in this subsection, if the other state is bound to keep the documents and papers confidential.

(e) If an examination of the records of a person results in the disclosure of property reportable under [AS 34.45.110](#) — 34.45.780, the department may assess the cost of the examination against the holder at the rate of \$200 a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable under [AS 34.45.110](#) — 34.45.780. The cost of an examination made under (c) of this section may be assessed only against the business association.

(f) If a holder does not maintain the records required by [AS 34.45.300](#) and the records of the holder available for the periods subject to [AS 34.45.110](#) — 34.45.780 are insufficient to permit

the preparation of a report, the department may require the holder to report and pay to the department the amount the department reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been but was not reported.

Sec. 34.45.300. Retention of records.

(a) Except as otherwise provided in (b) of this section, a holder required to file a report under [AS 34.45.280](#) shall maintain the records containing the information required to be included in the report for 10 years after the holder files the report, unless a shorter period is provided by regulations adopted by the department.

(b) A business association that sells, or provides such instruments to others for sale, in the state its traveler's checks, money orders, or other similar written instruments, other than third-party bank checks on which the business association is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for three years after the date the property is reportable.

Sec. 34.45.310. Notice and publication of lists of unclaimed property.

(a) The department shall notify apparent owners of unclaimed property under [AS 34.45.110](#) — 34.45.780 in the manner and method set out in (b) of this section. In deciding whether to use an additional method specified in (b)(2) of this section, and which of those methods to use, the department shall employ the most cost-effective method available within its appropriations.

(b) The department

(1) shall notify all apparent owners of the unclaimed property in accordance with this section by means of posting on the department's website on the Internet;

(2) may use any of the following to provide additional notice to the apparent owners:

(A) publication in a newspaper of general circulation in the area of the state in which the last known address of a person to be named in the notice is located or, if the address is unknown, in the area in which the holder has its principal place of business in the state;

(B) individual contact by regular or electronic mail, or by telephone, if the department has current contact information on file under [AS 34.45.110](#) — 34.45.780;

(C) any other manner and method that the department considers effective for providing notice and publication under [AS 34.45.110](#) — 34.45.780.

(c) In its notice and publication under (b) of this section, the department shall provide the names of the apparent owners of the property and information regarding recovery of the unclaimed property.

(d) The department is not required to publish in the notice an item of less than \$100 in value.

(e) This section does not apply to money payable on traveler's checks, money orders, and other written instruments presumed abandoned under [AS 34.45.140](#).

Sec. 34.45.320. Payment or delivery of abandoned property.

(a) Except as otherwise provided in (b) of this section, a person who is required to file a report under [AS 34.45.280](#), shall, at the time of filing the report under that section, pay or deliver to the administrator all of the property shown on the report and remaining unclaimed by the apparent owner. Upon written request showing good cause, the administrator may postpone the payment or delivery upon the terms or conditions the administrator considers necessary and appropriate. The property paid or delivered to the administrator must include all interest, dividends, increments, and accretions due, payable, or distributable on the property at the time of filing the report. If payment or delivery is postponed, the property paid or delivered to the administrator must include all interest, dividends, increments, and accretions due, payable, or distributable on the day that the property is paid or delivered to the administrator.

(b) If the owner establishes the right to receive the abandoned property to the satisfaction of the holder before the property has been delivered or if it appears that the presumption of abandonment is erroneous, the holder need not pay or deliver the property to the department, and the property is no longer presumed abandoned. The holder shall file with the department a written explanation, made under penalty of unsworn falsification in the second degree, of the proof of claim or of the error in the presumption of abandonment.

(c) [Repealed, § 12 ch 145 SLA 1996.]

(d) The holder of an equity interest under [AS 34.45.200](#) shall deliver a duplicate certificate, or other evidence of ownership if the holder does not issue certificates of ownership, to the department. Upon delivery of a duplicate certificate to the department, the holder and a transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate is relieved of all liability, in accordance with the provisions of [AS 34.45.330](#) to every person, including a person acquiring the original certificate or the duplicate of the certificate issued to the department, for loss or damage resulting to a person by the issuance and delivery to the department of the duplicate certificate.

Sec. 34.45.330. Custody by state.

(a) Upon the payment or delivery of property to the department, the state assumes custody and responsibility for the safekeeping of the property. A person who pays or delivers property to the department in good faith is relieved of all liability to the extent of the value of the property paid or delivered for a claim existing at the time of the payment or delivery or that may arise or be made with respect to the property after the payment or delivery.

(b) A holder who has paid money to the department under [AS 34.45.110](#) — 34.45.430 may make payment to a person appearing to the holder to be entitled to payment. Upon receiving proof of payment from the holder and proof that the payee was entitled to the payment, the department shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the department shall reimburse the holder under this subsection when the holder files proof that the instrument was presented and that payment was made to a person who appeared to the holder to be entitled to payment. The department shall reimburse the holder for payment made under this subsection even if the holder paid a person whose claim was barred under [AS 34.45.430](#).

(c) A holder who has delivered property other than money to the department under [AS 34.45.110](#) — 34.45.430 may reclaim the property if it is still in the possession of the department, without

payment of a fee or other charge, upon filing proof that the owner has claimed the property from the holder.

(d) The department may accept the holder's affidavit as sufficient proof of the facts that entitle the holder to recover money and property under this section.

(e) If a holder pays or delivers property to the department in good faith and another person subsequently claims the property from the holder or another state claims the property under the laws of the other state relating to escheat or unclaimed property, the department, upon receiving written notice of the claim, shall defend the holder against the claim and indemnify the holder against liability on the claim.

(f) Property removed from a safe deposit box or other safekeeping repository is received by the department subject to the holder's right under this subsection to be reimbursed for the actual cost of the opening and to a valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. For charges other than the actual cost of the opening, the department shall reimburse or pay the holder an amount no greater than the value of the property recovered less the department's selling cost.

(g) For the purposes of this section, "good faith" means that

(1) payment or delivery was made in a reasonable attempt to comply with this chapter;

(2) the person delivering the property was not a fiduciary then in breach of trust in respect to the property, and had a reasonable basis for believing, based on the facts then known to the person, that the property was abandoned for the purposes of this chapter; and

(3) there is no showing that the records under which the delivery was made did not meet reasonable commercial standards of practice in the industry.

Sec. 34.45.340. Crediting of dividends, interest, or increments to owner's account.

Except as provided under [AS 34.45.360](#)(d) for appreciation of securities, if property other than money is paid or delivered to the department under [AS 34.45.110](#) — 34.45.430, the owner is entitled to receive from the department dividends, interest, or other increments realized or accruing on the property at or before the department's liquidation or conversion of the property into money.

Article 5. Administration of Abandoned Property.

Sec. 34.45.360. Public sale of abandoned property.

(a) Except as provided in (c) and (d) of this section, the department, within three years after receiving abandoned property, shall sell it to the highest bidder at public sale in the area of the state that the department determines to be the most favorable market for the property involved. The department may decline the highest bid and reoffer the property for sale if in the judgment of the department the bid is insufficient. If in the judgment of the department the probable cost of sale exceeds the value of the property, the department need not offer the property for sale. A sale held under this section must be preceded by a single publication of notice, at least three weeks in advance of sale, in a newspaper of general circulation in the general area in which the property is to be sold.

(b) Securities listed on an established stock exchange must be sold at prices prevailing at the time of sale on the exchange. Other securities may be sold over the counter at prices prevailing at

the time of sale or by another method the department considers advisable.

(c) Unless the department considers it to be in the best interest of the state to do otherwise, the department shall hold all securities that have been delivered to the department, other than those presumed abandoned under [AS 34.45.200](#), for at least one year before the department may sell the securities.

(d) Unless the department considers it to be in the best interest of the state to do otherwise, the department shall hold all securities presumed abandoned under [AS 34.45.200](#) and delivered to the department for at least three years before selling the securities. A person making a claim under [AS 34.45.380](#) is entitled to receive either the securities delivered to the department by the holder, if they still remain in the hands of the department, or the proceeds received from sale, less amounts deducted under [AS 34.45.380\(c\)](#). A person does not have a claim under this section or [AS 34.45.380](#) against the state, the holder, a transfer agent, a registrar, or other person acting for or on behalf of a holder for appreciation in the value of the property occurring after delivery by the holder to the department.

(e) The purchaser of property at a sale conducted by the department under this section takes the property free of all claims of the owner or previous holder of the property and of all persons claiming through or under them. The department shall execute all documents necessary to complete the transfer of ownership.

Sec. 34.45.370. Deposit of money and accounting.

(a) Except as otherwise provided by this section, the department shall promptly deposit in the general fund of the state all money received under [AS 34.45.110](#) — 34.45.780, including the proceeds from the sale of abandoned property under [AS 34.45.360](#). The department shall retain in a separate trust fund an amount not less than \$100,000 from which the department shall make prompt payment of allowed claims. Before making the deposit, the department shall record the name and last known address of each person appearing from the holders' reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and, with respect to each policy or contract listed in the report of an insurance company, its number, the name of the company, and the amount due. The department shall make the record available for public inspection at all reasonable business hours.

(b) [Repealed, § 28 ch 90 SLA 1991.]

Sec. 34.45.380. Filing of claim with department.

(a) A person, excluding another state, claiming an interest in property paid or delivered to the department may file a claim on a form prescribed by the department and bearing a notice that statements are made under penalty of unsworn falsification in the second degree.

(b) The department shall consider each claim after it is filed and shall give written notice to the claimant if the claim is denied in whole or in part. The notice may be given by mailing it to the address, if any, stated in the claim as the address to which notices are to be sent. If an address for notices is not stated in the claim, the notice may be mailed to the address, if any, of the claimant as stated in the claim. A notice of denial need not be given if the claim states neither the address to which notices are to be sent nor the address of the claimant.

(c) If a claim is allowed, the department shall pay or deliver to the claimant the property or the amount the department actually received, or the net proceeds if it has been sold by the department, together with an additional amount required by [AS 34.45.340](#). For the purposes of determining net proceeds after sale of the property, the department may deduct

(1) costs incurred in connection with the sale of the property;

(2) costs of mailing and publication in connection with the property;

(3) reasonable service charges; and

(4) costs incurred in examining records of the holder of the property and in collecting the property from the holder.

(d) If a claim is allowed and the property claimed was interest-bearing to the owner on the date of surrender by the holder, the department also shall pay interest at the rate prescribed in [AS 45.45.010](#) or a lesser rate the property earned while in the possession of the holder. Interest begins to accrue when the property is delivered to the department and ceases on the expiration of 10 years after delivery or the date on which payment is made to the owner, whichever is earlier. The department may not pay interest on interest-bearing property for a period occurring before September 7, 1986.

(e) A holder who pays the owner for property that has been delivered to the state and that, if claimed from the department, would be subject to (d) of this section shall add interest as provided in (d) of this section. The added interest shall be repaid to the holder by the commissioner in the same manner as the principal.

(f) Unless another state files a claim to recover the property, if the identity of the owner of the property is known, the department shall apply the fair market value of the property to satisfaction of the following, in the order listed:

(1) the child support obligations of the owner;

(2) upon application of the Department of Law or submission of documentation satisfactory to the Department of Revenue, court-ordered restitution owed by the owner under [AS 12](#) or [AS 47](#), including any interest, collection costs, and attorney fees awarded by the court.

Sec. 34.45.390. Claim of another state to recover property.

(a) After personal property has been paid or delivered to the department under this chapter another state may recover the property if

(1) this state took custody of the property because the records of the holder did not reflect the last known address of the apparent owner when the property was presumed abandoned under this chapter, the person entitled to the property was in the other state, and under the laws of the other state the property escheated to or was subject to a claim of abandonment by that state;

(2) the last known address of the apparent owner or other person entitled to the property, as reflected by the records of the holder, is in the other state and under the laws of the other state the property has escheated to or become subject to a claim of abandonment by that state;

(3) the records of the holder were erroneous in that they did not accurately reflect the actual owner of the property and the last known address of the actual owner is in the other state and under the laws of the other state the property escheated to or was subject to a claim of abandonment by the other state;

(4) this state took custody of the property under [AS 34.45.120](#)(6), and, under the laws of the state of domicile of the holder, the property has escheated to or become subject to a claim of abandonment by the state of domicile; or

(5) the property is the sum payable on a traveler's check, money order, or other similar instrument of which this state took custody under [AS 34.45.140](#), and the instrument was purchased in the other state, and, under the laws of the other state, the property escheated to or became subject to a claim of abandonment by the other state.

(b) The claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the department. The department shall allow the claim if it determines that the other state is entitled to the abandoned property under (a) of this section.

(c) The department shall require a state, before recovering property under this section, to agree to indemnify this state and its officers and employees against liability on a claim for the property.

Sec. 34.45.400. Action to establish claim.

(a) A person aggrieved by a decision or action of the department under this chapter may apply to the department within 60 days after the mailing date of the department's notice to the person, giving notice of the grievance and requesting an informal conference. At the conference the person aggrieved may present arguments and evidence relevant to the decision or action of the department. If the department determines that a correction is warranted, the department shall make the correction.

(b) A person aggrieved by a decision or action of the department may apply to the department and request a formal hearing

(1) in place of the informal conference provided for in (a) of this section, within 60 days after the mailing date of the department's notice to the person; or

(2) within 30 days after the decision resulting from an informal conference.

(c) At the formal hearing, the administrative law judge from the office of administrative hearings ([AS 44.64.010](#)) may subpoena witnesses and may administer oaths and make inquiries necessary to determine the validity of the claim. The person aggrieved may present arguments and evidence relevant to the decision or action of the department. If, after the hearing, the department determines that a correction is warranted, the department shall make the correction.

(d) A person aggrieved by the decision of the department may, within 30 days after the formal hearing and decision by the department, appeal to the superior court in the judicial district in which the person resides. The department shall give appellant access to the department's file in the matter for preparation of the appeal. If, after the appeal is heard, it appears that the decision of the department was correct, the court shall confirm that decision. If incorrect the court shall determine the amount that the person aggrieved is entitled to recover and shall order the repayment. The department shall immediately pay the amount due and attach a certified copy of the judgment to the payment.

Sec. 34.45.410. Election to take delivery.

(a) The department may decline to receive property reported under this chapter. If the department elects not to receive custody of the property, the department shall notify the holder within 120 days after the holder files the report required under [AS 34.45.280](#).

(b) A holder, with the written consent of the department and upon terms prescribed by the department, may report and deliver property before the property is presumed abandoned. Property delivered under this subsection shall be held by the department and is not presumed abandoned until the property would otherwise be presumed abandoned under this chapter.

Sec. 34.45.420. Destruction or disposition of property having insubstantial commercial value. If the department determines after investigation that property delivered under this chapter has insubstantial commercial value, the department may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the state or an officer of the state or against the holder because of an action taken by the department under this section.

Sec. 34.45.430. Periods of limitation.

The expiration of a period of time specified by contract, statute, or court order, during which a claim for money or property may be made or during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or to recover property, does not prevent the money or property from being presumed abandoned and does not affect a duty to file a report or to pay or deliver abandoned property to the department as required by [AS 34.45.110](#) — 34.45.430.

Article 6. Enforcement and Penalties.

Sec. 34.45.450. Enforcement.

The department may bring an action in a court of competent jurisdiction to enforce [AS 34.45.110](#) — 34.45.780.

Sec. 34.45.460. Interstate agreements and cooperation.

(a) The department may enter into agreements with other states to exchange information needed to enable this or another state to audit or otherwise determine unclaimed personal property that this state or another state may be entitled to subject to a claim of custody. The department may, by regulation, require the reporting of information needed to enable compliance with agreements made under this section, and prescribe the form for the report.

(b) To avoid conflicts between the department's procedures and the procedures in other jurisdictions that enact the Uniform Unclaimed Property Act, the department, so far as is consistent with the purposes, policies, and provisions of this chapter, shall, before adopting, amending, or repealing regulations, advise and consult with administrators in other jurisdictions that enact, substantially, the Uniform Unclaimed Property Act, and shall take into consideration the rules of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act.

(c) The department may join with other states to seek enforcement of [AS 34.45.110](#) — 34.45.780 against a person who is or may be holding property reportable under [AS 34.45.110](#) — 34.45.430.

(d) At the request of another state, the attorney general of this state may bring an action in the name of the other state in a court of competent jurisdiction to enforce the unclaimed property laws of the other state against a holder in this state or property laws of the other state against a

holder in this state of property subject to escheat or a claim of abandonment by the other state. An action may be brought under this subsection only if the other state has agreed to pay expenses incurred by the attorney general of this state in bringing the action.

(e) The department may request that the attorney general of another state, or another person, bring an action to enforce this chapter in the other state in the name of the department. This state shall pay all expenses including attorney fees in an action under this subsection. The department may agree to pay the person bringing the action attorney fees based in whole or in part on a percentage of the value of property recovered in the action. Expenses paid under this subsection may not be deducted from the amount that is subject to a claim by the owner under [AS 34.45.110](#) — 34.45.430.

Sec. 34.45.470. Interest and penalties.

(a) A person who fails to pay or deliver property within the time prescribed by this chapter may be required to pay to the department interest at the annual rate calculated under [AS 43.05.225](#) on the property or the value of it from the date the property should have been paid or delivered.

(b) A person who fails to pay or deliver property or fails to perform other duties required under this chapter may be required to pay the civil penalties calculated under [AS 43.05.220](#), on the property, or the value of the property, that the person had a duty to pay, deliver, or report to the department.

(c) A person who intentionally refuses after written demand by the department to pay or deliver property to the department as required under this chapter is guilty of a class A misdemeanor.

Article 7. General Provisions.

Sec. 34.45.700. Agreement to locate reported property.

(a) An agreement to pay compensation to locate, deliver, recover, or assist in the recovery of property reported under [AS 34.45.280](#) while in the possession of a holder is unenforceable if made

(1) before the date payment or delivery is made under [AS 34.45.320](#); or

(2) within 24 months after the date payment or delivery is made under [AS 34.45.320](#).

(b) An agreement executed after the 24-month period is enforceable only if

(1) the fee or compensation is not more than

(A) 20 percent of the value of the property if the value of the property is less than \$500; and

(B) 10 percent of the value of the property if the value of the property is \$500 or more;

(2) the agreement is in writing, signed by the apparent owner, does not exceed six months, and specifies the fees to be charged, nature and value of the property, and the value of the apparent owner's share after the fee or compensation is deducted.

(c) This section does not preclude an owner from asserting that an agreement to locate property is otherwise invalid.

Sec. 34.45.710. Foreign transactions.

[AS 34.45.110](#) — 34.45.780 do not apply to property held, due, and owing in a foreign country and arising out of a foreign transaction.

Sec. 34.45.720. Application; exceptions.

(a) [AS 34.45.110](#) — 34.45.780 do not relieve a holder of a duty that arose before September 7, 1986 to report, pay, or deliver property. A holder who did not comply with the law in effect before September 7, 1986 is subject to the applicable enforcement and penalty provisions that existed before September 7, 1986, and the applicable enforcement and penalty provisions are continued in effect for the purpose of this subsection.

(b) The initial report filed under [AS 34.45.280](#) for property that was not required to be reported before September 7, 1986 but that is subject to [AS 34.45.110](#) — 34.45.780 must include all items of property that would have been presumed abandoned during the six-year period preceding September 7, 1986, as if [AS 34.45.110](#) — 34.45.780 had been in effect during that period.

(c) [AS 34.45.110](#) — 34.45.780 do not apply to a disbursement for the payment of a permanent fund dividend.

(d) Checks, drafts, currency, and tangible property that are found and turned over to, or found and recovered by, a law enforcement agency of a municipality are not subject to [AS 34.45.110](#) — 34.45.780 if the municipality has adopted an ordinance providing for the custody and disposition of the property.

Sec. 34.45.730. Regulations.

The department shall adopt regulations necessary to carry out the provisions of [AS 34.45.110](#) — 34.45.780.

Sec. 34.45.740. Uniformity of application and construction.

[AS 34.45.110](#) — 34.45.780 shall be applied and construed so as to effectuate their general purpose to make uniform the law with respect to unclaimed property among states enacting the Uniform Unclaimed Property Act.

Sec. 34.45.750. Report by department upon failure to make report or making false report.

If a person fails to submit a report as required under [AS 34.45.110](#) — 34.45.780, or makes, wilfully or otherwise, a false report, the department shall make the report from the information it obtains under [AS 43.05.050](#). A report made by the department is prima facie valid for all legal purposes.

Sec. 34.45.760. Definitions.

In [AS 34.45.110](#) — 34.45.780, unless the context requires otherwise,

(1) “apparent owner” means the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder;

(2) “banking organization” means a bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, or an organization defined by other applicable laws as a bank or banking organization;

(3) “business association” means a nonpublic corporation, joint stock company, investment company, business trust, mutual fund, joint venture, limited liability company, partnership, or association for business purposes or other business entity of one or more individuals, whether or not for profit, including a banking organization, financial organization, insurance company, or utility;

(4) “commissioner” means the commissioner of revenue;

(5) “department” means the Department of Revenue;

(6) “domicile” means the state of incorporation of a corporation and the state of the principal place of business of an unincorporated person;

(7) “financial organization” means a savings and loan association, cooperative bank, building and loan association, or credit union;

(8) “gift certificate” means an obligation of a business association arising from a transaction between the business association and a consumer to provide goods or services at a future date; “gift certificate” includes a gift certificate, stored value card, gift card, on-line gift account, or other representation or evidence of the obligation of a business association;

(9) “holder” means a person, wherever organized or domiciled, who is

(A) in possession of property belonging to another,

(B) a trustee, or

(C) indebted to another on an obligation;

(10) “insurance company” means an association, corporation, fraternal or mutual benefit organization, whether or not for profit, that is engaged in providing insurance coverage, including accidental, burial, casualty, credit life, contract performance, dental, fidelity, fire, health, hospitalization, illness, life, including endowments and annuities, malpractice, marine, mortgage, surety, and wage protection insurance;

(11) “intangible property”

(A) includes

(i) money, checks, drafts, warrants, deposits, interest, dividends, and income;

(ii) credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, and unidentified remittances;

(iii) stocks and other intangible equity interests in business associations;

(iv) money deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions;

(v) amounts due and payable under the terms of insurance policies;

(vi) amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit-

sharing, employee savings, supplemental unemployment insurance, or similar benefits; and

(vii) amounts due and payable as mineral proceeds;

(B) does not include

(i) unused airline tickets;

(ii) shares of stock issued by a corporation organized under 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act) or unclaimed dividends payable on the shares of stock; or

(iii) overpaid contributions by employers to the unemployment compensation fund under [AS 23.20.130](#);

(12) “mineral” means gas; oil; other gaseous, liquid, and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and nonfissionable ores; colloidal and other clay; steam and other geothermal resources; or any other substance defined as mineral by other state law;

(13) “mineral proceeds” means amounts payable for the extraction, production, or sale of minerals, or, upon the abandonment of those payments, all payments that become payable after the abandonment; “mineral proceeds” includes amounts payable

(A) for the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

(B) for the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments;

(C) under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farm-out agreement;

(14) “owner” means a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, a creditor, claimant, or payee in the case of other intangible property, or a person having a legal or equitable interest in property subject to [AS 34.45.110](#) — 34.45.780; the term includes a person's legal representative;

(15) “person” means an individual, business association, state, municipality or other government, including the United States government, subdivision or agency, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or other legal or commercial entity;

(16) “property” means personal property, but does not include property covered by

(A) [AS 14.57.200](#) — 14.57.290;

(B) [AS 23.20](#);

(17) “state” means a state, district, commonwealth, territory, insular possession, or other area subject to the legislative authority of the United States;

(18) “unsworn falsification” means the offense described in [AS 11.56.210](#);

(19) “utility” means a person who owns or operates for public use a plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

Sec. 34.45.780. Short title.

[AS 34.45.110](#) — 34.45.780 may be cited as the Uniform Unclaimed Property Act.

Chapter 50. Actions for Injuries to Property Interests.

Sec. 34.50.010. Action for injury to the inheritance.

A person seized of an estate in remainder or reversion may maintain a civil action for an injury done to the inheritance, notwithstanding an intervening estate for life or years.

Sec. 34.50.020. Renumbered as [AS 09.65.255](#).

Chapter 55. Uniform Land Sales Practices Act.

Sec. 34.55.004. Administration.

This chapter shall be administered by the department.

Sec. 34.55.006. Fraudulent and prohibited practices.

It is unlawful for a person, in connection with the offer, sale, or purchase of subdivided land directly or indirectly, to knowingly

(1) employ a device, scheme, or artifice to defraud;

(2) make an untrue statement of a material fact or omit a statement of a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(3) engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon a person.

Sec. 34.55.008. Prohibitions on dispositions of interests in subdivisions.

Unless the subdivided land or the transaction is exempt under [AS 34.55.042](#),

(1) a person may not offer or dispose of in this state an interest in subdivided land before the time the subdivided land is registered in accordance with this chapter;

(2) a person may not dispose of an interest in subdivided land unless a current public offering statement is delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the public offering statement before the disposition.

Sec. 34.55.010. Application for registration.

(a) The application for registration of subdivided land shall be filed as prescribed by the department's regulations and must contain the following documents and information:

(1) an irrevocable appointment of the department to receive service of lawful process in a noncriminal proceeding arising under this chapter against the applicant or personal representative of the applicant;

(2) a legal description of the subdivided land offered for registration, together with a map showing the division proposed or made, and the dimensions of the lots, parcels, units, or interest and the relation of the subdivided land to existing streets, roads, and other off-site improvements;

(3) the states or jurisdictions in which an application for registration or similar document has been filed, and an adverse order, judgment, or decree entered in connection with the subdivided land by the regulatory authorities in each jurisdiction or by a court;

(4) the applicant's name, address, and the form, date, and jurisdiction of organization; and the address of each of its offices in this state;

(5) the name, address, and principal occupation for the past five years of every director and officer of the applicant or person occupying a similar status or performing similar functions; the extent and nature of the interest of the director, officer, or other person in the applicant or the subdivided land as of a specified date within 30 days of the filing of the application;

(6) a statement, in a form acceptable to the department, of the condition of the title to the subdivided land including encumbrances as of a specified date within 30 days of the date of application by a title opinion of a licensed attorney, not a salaried employee, officer, or director of the applicant or owner, or by other evidence of title acceptable to the department;

(7) copies of the instruments that will be delivered to a purchaser to evidence the interest of the purchaser in the subdivided land and of the contracts and other agreements that a purchaser will be required to agree to or sign;

(8) copies of the instruments by which the interest in the subdivided land was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with data as to recording;

(9) if there is a lien or encumbrance affecting more than one lot, parcel, unit, or interest a statement of the consequences for a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;

(10) copies of instruments creating easements, restrictions, or other encumbrances, affecting the subdivided land;

(11) a statement of the zoning and other governmental regulations affecting the use of the subdivided land and also of any existing tax and existing or proposed special taxes or assessments which affect the subdivided land;

(12) a statement of the existing provisions for access, sewage disposal, water, and other public utilities in the subdivision; a statement of the improvements to be installed, the schedule for their completion, and a statement as to the provisions for improvement maintenance;

(13) a narrative description of the promotional plan for the disposition of the subdivided land together with copies of all advertising material that has been prepared for public distribution by any means of communication;

(14) the proposed public offering statement;

(15) other information, including a current financial statement, that the department by its regulations requires for the protection of purchasers.

(b) If the subdivider registers additional subdivided land to be offered for disposition, the subdivider may consolidate the subsequent registration with an earlier registration offering subdivided land for disposition under the same promotional plan.

(c) The subdivider shall immediately report a material change in the information contained in an application for registration.

Sec. 34.55.012. Public offering statement.

(a) A public offering statement must disclose fully and accurately the physical characteristics of the subdivided land offered and must make known to prospective purchasers all unusual and material circumstances or features affecting the subdivided land. The proposed public offering statement submitted to the department must be in a form prescribed by its regulations and must include

(1) the name and principal address of the subdivider;

(2) a general description of the subdivided land stating the total number of lots, parcels, units, or interests in the offering;

(3) the significant terms of encumbrances, easements, liens, and restrictions, including zoning and other regulations affecting the subdivided land and each unit or lot, and a statement of all existing taxes and existing or proposed special taxes or assessments that affect the subdivided land;

(4) a statement of the use for which the property is offered;

(5) information concerning improvements, including streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities, and customary utilities, and the estimated cost, date of completion and responsibility for construction and maintenance of existing and proposed improvements that are referred to in connection with the offering or disposition of any interest in subdivided land;

(6) additional information required by the department to assure full and fair disclosure to prospective purchasers.

(b) The public offering statement may not be used for promotional purposes before registration of the subdivided land and afterwards only if it is used in its entirety. A person may not advertise or represent that the department approves or recommends the subdivided land or its disposition. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the department requires it.

(c) The department may require the subdivider to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers. A change in the substance of the promotional plan or plan of disposition or development of the subdivision may not be made after registration without notifying the department and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated.

Sec. 34.55.014. Inquiry and examination.

Upon receipt of an application for registration in proper form, the department shall immediately initiate an examination to determine that

(1) the subdivider can convey or cause to be conveyed the interest in subdivided land offered for disposition if the purchaser complies with the terms of the offer, and when appropriate, that release clauses, conveyances in trust or other safeguards have been provided;

(2) there is reasonable assurance that all proposed improvements will be completed as represented;

(3) the advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the department in its regulations and afford full and fair disclosure;

(4) the subdivider has not, or if a corporation, its officers, directors, and principals have not, been convicted of a crime involving land dispositions or any aspect of the land sales business in this state, the United States, or any other state or foreign country within the past 10 years and has not been subject to an injunction or administrative order within the past 10 years restraining a false or misleading promotional plan involving land dispositions;

(5) the public offering statement requirements of this chapter have been satisfied.

Sec. 34.55.016. Notice of filing and registration.

(a) Upon receipt of the application for registration in proper form, the department shall issue a notice of filing to the applicant. Within 90 days from the date of the notice of filing, the department shall enter an order registering the subdivided land or rejecting the registration. If no order of rejection is entered within 90 days from the date of notice of filing, the land shall be considered registered unless the applicant has consented in writing to a delay.

(b) If the department affirmatively determines, upon inquiry and examination, that the requirements of [AS 34.55.014](#) have been met, it shall enter an order registering the subdivided land and shall designate the form of the public offering statement.

(c) If the department determines upon inquiry and examination that any of the requirements of [AS 34.55.014](#) has not been met, the department shall notify the applicant that the application for registration must be corrected in the particulars specified within 10 days. If the requirements are not met within the time allowed the department shall enter an order rejecting the registration which shall include the findings of fact upon which the order is based. The order rejecting the registration may not become effective for 20 days during which time the applicant may petition for reconsideration and shall be entitled to a hearing.

Sec. 34.55.018. Annual report.

(a) Within 30 days after each annual anniversary date of an order registering subdivided land, the subdivider shall file a report in the form prescribed by the regulations of the department. The report must reflect material changes in information contained in the original application for

registration.

(b) The department at its option may permit the filing of annual reports within 30 days after the anniversary date of the consolidated registration in lieu of the anniversary date of the original registration.

Sec. 34.55.020. General powers and duties.

(a) The department shall adopt regulations under [AS 44.62](#) (Administrative Procedure Act). The regulations must include but not be limited to provisions for advertising standards to assure full and fair disclosure; provisions for escrow or trust agreements or other means reasonably to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land contracted for; provisions for operating procedures; and other provisions as are necessary and proper to accomplish the purpose of this chapter.

(b) The department, by regulation or by an order, after notice and hearing, may require the filing of advertising material relating to subdivided land before its distribution.

(c) If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter, or a regulation or order under this chapter, the department, with or without prior administrative proceedings may bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or a regulation or order under this chapter. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver or conservator may be appointed. The department is not required to post a bond in court proceedings.

(d) The department may intervene in a suit involving subdivided land. In a suit by or against a subdivider involving subdivided land, the subdivider promptly shall furnish the department notice of the suit and copies of all pleadings.

(e) The department may

(1) accept registrations filed in other states or with the federal government;

(2) contract with agencies in this state or other jurisdictions to perform investigative functions;

(3) accept grants in aid from any source.

(f) The department shall cooperate with similar departments in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules, and common administrative practices.

(g) [Repealed, § 28 ch 90 SLA 1991.]

Sec. 34.55.022. Investigations and proceedings.

(a) The department may

(1) make necessary public or private investigations inside or outside this state to determine whether a person has violated or is about to violate this chapter or a regulation or order under this chapter or to aid in the enforcement of this chapter or in the adoption of regulations and forms

under this chapter;

(2) require or permit a person to file a statement in writing, under oath or otherwise as the department determines, as to all the facts and circumstances concerning the matter to be investigated.

(b) For the purpose of an investigation or proceeding under this chapter, the department or an officer designated by the department may administer oaths or affirmations, and upon its own motion or upon request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

(c) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected, the department may apply to the superior court for an order compelling compliance.

(d) Except as otherwise provided in this chapter, all proceedings under this chapter must be in accordance with [AS 44.62](#) (Administrative Procedure Act).

Sec. 34.55.024. Cease and desist orders.

(a) The department may issue an order requiring the person to cease and desist from the unlawful practice and to take affirmative action that in the judgment of the department will carry out the purposes of this chapter, if it determines after notice and hearing that a person has

(1) violated a provision of this chapter;

(2) directly or through an agent or employee knowingly engaged in a false, deceptive, or misleading advertising, promotional or sales method to offer or dispose of an interest in subdivided land;

(3) made a substantial change in the plan of disposition and development of the subdivided land subsequent to the order of registration without obtaining prior written approval from the department;

(4) disposed of subdivided land that has not been registered with the department; or

(5) violated a lawful order or regulation of the department.

(b) If the department makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Before issuing the temporary cease and desist order, the department, whenever possible, by telephone or otherwise shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order must include in its terms a provision that upon request a hearing will be held within 10 days to determine whether or not it becomes permanent.

Sec. 34.55.026. Revocation.

(a) A registration may be revoked after notice and hearing upon a written finding of fact that the

subdivider has

- (1) failed to comply with the terms of a cease and desist order;
 - (2) been convicted in a court subsequent to the filing of the application for registration for a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;
 - (3) disposed of, concealed, or diverted funds or assets of any person so as to defeat the rights of subdivision purchasers;
 - (4) failed faithfully to perform a stipulation or agreement made with the department as an inducement to grant a registration, to reinstate a registration, or to approve a promotional plan or public offering statement;
 - (5) made intentional misrepresentations or concealed material facts in an application for registration.
- (b) The findings of fact, if set out in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.
- (c) If the department finds after notice and hearing that the subdivider has been guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead.

Sec. 34.55.028. Penalties.

- (a) A person who wilfully violates [AS 34.55.006](#) or 34.55.008 is, upon conviction, punishable by a fine of not more than \$50,000, or by imprisonment for not less than one year nor more than five years, or by both fine and imprisonment.
- (b) A violation of this chapter other than as provided in (a) of this section or of a regulation adopted under this chapter is a misdemeanor and is punishable by a fine of not less than \$1,000 or double the amount of gain from the transaction, whichever is larger but not more than \$50,000, or by imprisonment for not more than six months, or by both fine and imprisonment.

Sec. 34.55.030. Civil remedy.

- (a) A person who disposes of subdivided land in violation of [AS 34.55.006](#) or 34.55.008 is liable as provided in this section to the purchaser unless in the case of an untruth or omission it is proved that the purchaser knew of the untruth or omission or that the person offering or disposing of subdivided land did not know and in the exercise of reasonable care could not have known of the untruth or omission.
- (b) In addition to any other remedies, the purchaser, under (a) of this section, may recover the consideration paid for the lot, parcel, unit, or interest in subdivided land together with interest at the rate of six percent a year from the date of payment, property taxes paid, costs, and reasonable attorney fees less the amount of income received from the subdivided land upon tender of appropriate instruments of reconveyance. If the purchaser no longer owns the lot, parcel, unit, or interest in subdivided land, the purchaser may recover the amount that would be recoverable upon a tender of a reconveyance less the value of the land when disposed of and less interest at the rate of six percent a year on that amount from the date of disposition.

(c) Every person who directly or indirectly controls a subdivider liable under (a) of this section, every general partner, officer, or director of a subdivider, every person occupying a similar status or performing a similar function, every employee of the subdivider who materially aids in the disposition, and every agent who materially aids in the disposition is also liable jointly and severally with and to the same extent as the subdivider, unless the person otherwise liable sustains the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the existence of the facts by reason of which the liability is alleged to exist. There is a right to contribution as in cases of contract among persons so liable.

(d) A person whose occupation gives authority to a statement that has been used with the person's consent in an application for registration or public offering statement, who is not otherwise associated with the subdivision and development plan in a material way, is liable only for false statements and omissions in the person's statement and only if the person fails to prove

(1) lack of knowledge of the facts by reason of which the liability is alleged to exist; and

(2) that in the exercise of the reasonable care a person in the same occupation could not have known of the existence of the facts by reason of which the liability is alleged to exist.

(e) A tender of reconveyance may be made at any time before the entry of judgment.

(f) A person may not recover under this section in an action commenced more than four years after the person's first payment of money to the subdivider in the contested transaction.

(g) A stipulation or provision purporting to bind a person acquiring subdivided land to waive compliance with this chapter or a regulation or order under it is void.

Sec. 34.55.032. Jurisdiction.

A disposition of subdivided land is subject to this chapter, and the superior court of this state has jurisdiction in claims or causes of action arising under this chapter if

(1) the subdivider's principal office is located in this state;

(2) an offer or disposition of subdivided land is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates in this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed; or

(3) the subdivided land is located in this state.

Sec. 34.55.034. Interstate rendition.

In the proceedings for extradition of a person charged with a crime under this chapter, it need not be shown that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding or other state.

Sec. 34.55.036. Service of process.

(a) In addition to the methods of service provided for in the Rules of Civil Procedure, service may be made by delivering a copy of the process to the department, but it is not effective unless

(1) the plaintiff, which may be the department in a proceeding instituted by it, immediately sends a copy of the process and of the pleading by certified mail to the defendant or respondent at the last known address of the defendant or respondent; and

(2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(b) If a person, including a nonresident of this state, engages in conduct prohibited by this chapter or a regulation or order under this chapter, and has not filed a consent to service of process and personal jurisdiction cannot otherwise be obtained in this state, the department is authorized to receive service of process in any noncriminal proceeding against the person or the person's successor that grows out of that conduct and that is brought under this chapter or a regulation or order under this chapter, with the same force and validity as if served on the person personally. Notice shall be given as provided in (a) of this section.

Sec. 34.55.038. Uniformity of interpretation.

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states that enact it.

Sec. 34.55.042. Exemptions.

(a) Unless the method of disposition is adopted for the purpose of evasion of this chapter, the registration provisions of this chapter do not apply to offers or dispositions of an interest in land

(1) by a purchaser of subdivided land for the account of the purchaser in a single or isolated transaction;

(2) if fewer than 10 separate lots, parcels, units, or interests in subdivided land located outside this state are offered by a subdivider in a period of 12 months, or if fewer than 50 separate lots, parcels, units, or interests in subdivided land located in this state are offered by a subdivider in a period of 12 months;

(3) on which there is a residential, commercial, or industrial building, or as to which there is a legal obligation on the part of the seller to construct such a building within one year from date of disposition;

(4) to persons who are engaged in the business of construction of buildings for resale, or to persons who acquire an interest in subdivided land for the purpose of engaging, and do engage in the business of construction of buildings for resale;

(5) under court order;

(6) by a government or government agency;

(7) as cemetery lots or interest;

(8) if the land is located in this state and is registered or exempt from registration under the provisions of the federal Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 — 1720).

(b) Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions of this chapter do not apply to

(1) offers or dispositions of evidences of indebtedness secured by a mortgage or deed of trust

of real estate;

(2) offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under a state or federal statute;

(3) offers or dispositions of securities currently registered with the department; and

(4) offers or disposition of an interest in oil, gas, or other minerals or a royalty interest therein if the offers or dispositions of the interests are regulated as securities by the department or by the United States.

Sec. 34.55.044. Definitions.

In this chapter, unless the context otherwise requires,

(1) “department” means Department of Commerce, Community, and Economic Development;

(2) “disposition” includes sale, lease, assignment, award by lottery, or any other transaction concerning a subdivision, if undertaken for gain or profit;

(3) “offer” includes every inducement, solicitation, or attempt to encourage a person to acquire an interest in land, if undertaken for gain or profit;

(4) “person” means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of them having a joint or common interest, or any other legal or commercial entity;

(5) “purchaser” means a person who acquires or attempts to acquire or succeeds to an interest in land;

(6) “subdivider” means an owner of subdivided land who offers it for disposition or the principal agent of an inactive owner;

(7) “subdivision” and “subdivided land” mean land that is divided or is proposed to be divided for the purpose of disposition into two or more lots, parcels, units, or interests and also includes any land whether contiguous or not if two or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale; if the land is contiguous or is known, designated, or advertised as a common unit or by a common name, the land shall be presumed, without regard to the number of lots covered by each individual offering, as being offered for disposition as part of a common promotional plan.

Sec. 34.55.046. Short title.

This chapter may be cited as the Uniform Land Sales Practices Act.

Chapter 60. Relocation Assistance and Real Property Acquisition Practices.

Sec. 34.60.010. Purpose.

The purpose of this chapter is to establish a uniform policy for the fair and equitable treatment of

persons displaced as a result of federally assisted public construction and improvement projects and programs in order that the displaced persons will not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

Sec. 34.60.020. State agencies to establish program.

State agencies shall establish and provide the means for implementing a program providing fair and reasonable relocation and other payment for persons displaced as a result of federally assisted activities undertaken by state agencies, to carry out relocation assistance programs for persons displaced, and to provide payments to persons as a result of acquisition of real property for activities of state agencies.

Sec. 34.60.030. Administration of program.

In order to prevent unnecessary expenses and duplication of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons under this chapter, state agencies may enter into contracts with any individual, firm, association, or corporation for services in connection with relocation assistance programs, or may carry out its functions under this chapter through any federal or state governmental agency or instrumentality having an established organization for conducting relocation assistance programs.

Sec. 34.60.040. Relocation payments.

(a) When the acquisition of real property for a federally assisted program or project undertaken by a state agency will result in the displacement of a person, the state agency responsible for the program or project shall make payment to the displaced person, upon proper application as approved by the state agency, for

(1) actual reasonable expenses in moving a person, the person's family, business, farm operation, or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate the property as determined by the state agency; and

(3) actual reasonable expenses in searching for a replacement business or farm.

(b) A displaced person eligible for payments under (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in place of payments authorized by (a) of this section may receive a moving expense allowance, determined according to a schedule established by the state agency.

(c) A displaced person eligible for payments under (a) of this section who is displaced from a place of business or from a farm operation and who elects to accept the payment authorized by this subsection in place of the payment authorized by (a) of this section may receive a fixed payment, in an amount determined by the state agency, subject to the payment amount limitations under 42 U.S.C. 4622(c), as amended. A person whose sole business at the real property acquired is the rental of the property to others does not qualify for payment under this subsection.

(d) In addition to the moving expenses allowed under this section, a displaced farm or business may receive a payment, not to exceed the amount described in 42 U.S.C. 4622(a)(4), as amended, for the actual reasonable expenses necessary to reestablish the operation at a new site.

Sec. 34.60.050. Replacement housing for homeowners.

(a) In addition to payments otherwise authorized by this chapter, the state agency shall make an additional payment, not to exceed the amount described in 42 U.S.C. 4623(a)(1), as amended, to a displaced person who is displaced from a dwelling actually owned and occupied by the person for not less than 90 days before the initiation of negotiations for the acquisition of the property. This additional payment must include the following elements:

(1) the amount, if any, that, when added to the acquisition cost of the dwelling acquired by the state agency, equals the reasonable cost of a comparable replacement dwelling that is a decent, safe, and sanitary dwelling adequate to accommodate the displaced person, is reasonably accessible to public services and places of employment, and is available on the private market; all determinations required to carry out this paragraph shall be made in accordance with standards established by the state agency making the additional payment;

(2) the amount, if any, that will compensate the displaced person for any increased interest costs that the displaced person is required to pay for financing the acquisition of the comparable replacement dwelling; this amount may be paid only if the dwelling acquired by the state agency was encumbered by a bona fide mortgage that was a valid lien on the dwelling for not less than 90 days before the initiation of negotiations for the acquisition of the dwelling; and

(3) reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(b) The additional payment authorized by (a) of this section may be made only to a displaced person who purchases and occupies a replacement dwelling that is decent, safe, and sanitary not later than the end of the one year period beginning on the date on which the person receives from the state agency final payment of all costs of the acquired dwelling, or the date on which the person moves from the acquired dwelling, whichever is the later date.

Sec. 34.60.060. Replacement housing for tenants and others.

In addition to amounts otherwise authorized by this chapter, the state agency shall make a payment to or for a displaced person displaced from a dwelling, who is not eligible to receive a payment under [AS 34.60.050](#), if the dwelling was actually and lawfully occupied by the displaced person for not less than 90 days before the initiation of negotiations for acquisition of the dwelling. The payment must be either

(1) the amount necessary to enable the displaced person to lease or rent for a period not to exceed three years and six months, a decent, safe, and sanitary dwelling of standards adequate to accommodate the displaced person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to the person's place of employment, but not to exceed the amount described in 42 U.S.C. 4624(a), as amended; or

(2) the amount necessary to enable the displaced person to make a down payment, including incidental expenses described in [AS 34.60.050\(a\)\(3\)](#), on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate the displaced person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed the amount described in 42 U.S.C. 4624(a), as amended.

Sec. 34.60.070. Expenses incidental to transfer of property.

The state agency, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the department considers fair and reasonable, for expenses necessarily incurred for

(1) recording fees, transfer taxes, and similar expenses incidental to conveying the real property to the state agency;

(2) penalty costs for prepayment of a preexisting recorded mortgage entered into in good faith encumbering the real property, if the mortgage was a valid lien on the property for not less than 180 days before the initiation of negotiations for the acquisition of the property; and

(3) the pro rata portion of real property taxes paid that are allocable to a period subsequent to the date of vesting title in the state, or the effective date of possession of the real property by the state agency, whichever is the earlier.

Sec. 34.60.080. Litigation expenses.

(a) The state court having jurisdiction of a proceeding instituted by the state agency to acquire real property by condemnation shall award the owner of any right to, or title to, or interest in, the real property a sum that will in the opinion of the court reimburse the owner for reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if

(1) the final judgment is that the state agency cannot acquire the real property by condemnation; or

(2) the proceeding is abandoned by the state agency.

(b) An award made under (a) of this section shall be paid by the state agency for whose benefit the condemnation proceedings were instituted.

(c) The court rendering a judgment for the plaintiff in a proceeding brought against a state agency, awarding compensation for the taking of property by the state agency, or the attorney for the state agency effecting a settlement of any such proceeding, shall determine and award or allow to the plaintiff, as a part of the judgment or settlement, a sum which will in the opinion of the court or the attorney for the state agency reimburse the plaintiff for reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of the proceeding.

(d) If an inconsistency occurs between the provisions of this section and the Alaska Rules of Civil Procedure, the provisions of the Rules of Civil Procedure govern.

Sec. 34.60.090. Relocation services.

(a) When the acquisition of real property for a program or project undertaken by a state agency for a federally assisted program or project undertaken by the state agency will result in the displacement of a person on or after January 2, 1971, the state agency shall provide a relocation assistance advisory program for displaced persons which offers the services described in (c) of this section. If the state agency determines that a person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, it

may offer the occupant relocation advisory services under the program.

(b) State agencies administering programs which may be of assistance to displaced persons covered by this chapter shall cooperate to the maximum extent feasible with the state agency causing the displacement to assure that the displaced persons receive the maximum assistance available to them.

(c) Each relocation assistance advisory program required by (a) of this section must include measures, facilities, or services necessary or appropriate in order to

(1) determine the need, if any, of displaced persons, for relocation assistance;

(2) provide current and continuing information on availability, prices, and rentals, of comparable decent, safe, and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses;

(3) assure that, within a reasonable time before displacement, there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced decent, safe, and sanitary dwellings, as defined by the state agency, equal in number to the number of and available to the displaced persons who require the dwellings and reasonably accessible to their places of employment except that the state agency may prescribe by regulation situations in which these assurances may be waived;

(4) assist a person displaced from the person's business or farm operation in obtaining and becoming established in a suitable replacement location;

(5) supply information concerning federal and state housing programs, disaster loan programs, and other federal or state programs offering assistance to displaced persons; and

(6) provide other advisory services to displaced persons in order to minimize hardships in adjusting to relocation.

(d) The state agency shall coordinate relocation activities with project work, and other planned or proposed governmental actions in the community or nearby areas that may affect the carrying out of relocation assistance programs.

Sec. 34.60.100. Eminent domain.

Nothing contained in this chapter creates, in a condemnation proceeding brought under the power of eminent domain, an element of damages not in existence on January 2, 1971.

Sec. 34.60.110. Nontaxation of payments.

A payment received by a displaced person under this chapter is not income for the purposes of the state or federal income tax, personal or corporate. The payments are not income or resources to a recipient of public assistance and the payments may not be deducted from the amount of aid to which the recipient would otherwise be entitled.

Sec. 34.60.120. Uniform real property acquisition policy.

A state agency or other entity acquiring real property for any project or program in which federal or federal-aid funds are used shall to the greatest extent practicable comply with the following

policies:

(1) Every reasonable effort shall be made to expeditiously acquire real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or a designated representative shall be given an opportunity to accompany the appraiser during the inspection of the property.

(3) Before the initiation of negotiations for real property, an amount shall be established that is reasonably believed to be just compensation for the real property and that amount shall be offered for the property. In no event may the amount be less than the approved appraisal of the fair market value of the property. A decrease or increase in the fair market value of real property before the date of valuation caused by the public improvement for which the property is acquired or by the likelihood that the property would be acquired for the improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The owner of the real property to be acquired shall be provided with a written statement of, and a summary of the basis for, the amount established as just compensation.

(4) An owner may not be required to surrender possession of real property before the state agency concerned pays the agreed purchase price or deposits with the court in accordance with applicable law, for the benefit of the owner, an amount not less than the approved appraisal of the fair market value of the property, or the amount of the award of compensation in the condemnation proceeding for the property.

(5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, a person lawfully occupying real property is not required to move from a dwelling, assuming a replacement dwelling will be available, or to move the person's business or farm operation, without at least 90 days' written notice of the date by which the move is required.

(6) If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the state agency on short notice, the amount of rent required may not exceed the fair rental value of the property to a short-term occupier.

(7) In no event may the time of condemnation be advanced or negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, nor any other coercive action be taken in order to compel an agreement on the price to be paid for the property.

(8) If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring state agency may not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of the real property.

(9) If the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire the entire property shall be made.

Sec. 34.60.130. Uniform acquisition policy for improvements.

(a) Notwithstanding any other provision of law, if a state agency acquires any interest in real property, the state agency must acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property which the state agency requires to be removed

from the real property or which the state agency determines will be adversely affected by the use to which the real property will be put.

(b) For the purpose of determining just compensation to be paid for a building, structure, or other improvement required to be acquired under (a) of this section, the building, structure, or other improvement is considered to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove the building, structure, or improvement at the expiration of the tenant's term, and the fair market value which the building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of the building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant.

(c) Payment for the buildings, structures, or improvements under this section may not result in duplication of payments otherwise authorized by law. A payment for buildings, structures, or improvements may not be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release to the state agency all right, title, and interest in and to the improvements. Nothing in this subsection and in (b) of this section deprives the tenant of any rights to reject payment and to obtain payment for the property interests in accordance with other laws of the state.

Sec. 34.60.135. Planning loans for additional housing.

In addition to the other programs authorized by this chapter, the Alaska Housing Finance Corporation may make loans in order to encourage and facilitate the construction or rehabilitation of housing to meet the needs of displaced persons. These loans are a part of the federally assisted project cost and may be made to nonprofit, limited dividend, or cooperative organizations, or to public bodies. The loans may be made only for necessary and reasonable expenses, before construction, for planning and obtaining federally insured mortgage financing for the rehabilitation or construction of housing for displaced persons. The loans may not exceed 80 percent of the reasonable costs expected to be incurred in planning, and in obtaining financing for housing for displaced persons. Reasonable costs include but are not limited to costs for preliminary surveys and analysis of market needs, preliminary architectural fees, site acquisition, application and mortgage commitment fees, and construction loan fees and discounts. Loans to an organization established for profit shall bear interest at a market rate established by the Alaska Housing Finance Corporation. All other loans shall be without interest. The Alaska Housing Finance Corporation shall require repayment of loans made under this section under terms and conditions that it may prescribe. Repayment shall be made upon completion of the project or sooner, and except in the case of a loan to an organization established for profit, the Alaska Housing Finance Corporation may cancel any part or all of a loan if the corporation determines that a permanent loan to finance the rehabilitation or construction of the housing cannot be obtained in an amount adequate for repayment of the loan.

Sec. 34.60.137. Housing replacement assistance as last resort.

If a federal aided program or project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, and the state agency determines that housing cannot otherwise be made available, the agency may take, or may request the Alaska Housing Finance Corporation to take, action necessary or appropriate to provide the housing either by use of funds authorized for the project or by use of money available to the corporation.

Sec. 34.60.140. Regulations.

State agencies are authorized to adopt regulations to implement this chapter. These regulations must include provisions relating to

- (1) a moving expense allowance for displaced persons who move from a dwelling, determined according to a schedule;
- (2) procedures for an aggrieved person to have a determination of eligibility or amount of payment reviewed by the state agency;
- (3) eligibility of a displaced person for relocation assistance payment, the procedure for displaced persons to claim the payments, amount of the payments; and
- (4) other regulations necessary to implement the provisions of this chapter.

Sec. 34.60.150. Definitions.

In this chapter,

- (1) “business” means any lawful activity, excepting a farm operation, conducted primarily
 - (A) for the purchase, sale, lease, and rental of personal and real property, and manufacture, processing, or marketing of products, commodities, or other personal property;
 - (B) for the sale of services to the public;
 - (C) by a nonprofit organization; or
 - (D) for assisting, solely for the purpose of [AS 34.60.040\(a\)](#), in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display, whether or not the display is located on the premises on which any of the above activities are conducted;
- (2) “displaced person” means any person who moves from real property, or moves personal property from real property, as a result of the acquisition of the real property, in whole or in part, or as a result of the written order of the state agency to vacate real property, for a program or project undertaken by the state agency, and solely for the purpose of [AS 34.60.040\(a\)](#) and [34.60.090](#), as a result of the acquisition of, or as a result of the written order of a state agency to vacate other real property on which the person conducts a business or farm operation for the program or project;
- (3) “farm operation” means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing these products or commodities in sufficient quantity to be capable of contributing materially to the operator's support;
- (4) “mortgage” means those classes of liens commonly given to secure advances on, or the unpaid purchase price of, real property, under the law of the state in which the real property is located, together with the credit instruments, if any, secured by the property;
- (5) “person” means an individual, partnership, corporation, or association;
- (6) “state agency” means a department, agency, instrumentality, corporate authority of the state, or a political subdivision of the state, or a department, agency, instrumentality, or authority

of two or more political subdivisions of the state participating in federally assisted programs.

Chapter 65. Land Surveys.

Sec. 34.65.010. Purpose.

The purpose of this chapter is to authorize right of entry on land for survey purposes, and to provide a method for preserving evidence of land surveys by filing records of survey and monument records. The provisions of this chapter supplement laws relating to land survey platting and subdivision surveys.

Sec. 34.65.020. Entry upon land for survey purposes.

(a) A land surveyor or an employee of a land surveyor may enter public or private land or water in the state only to occupy, locate, relocate, install, or replace survey monuments, to locate boundaries, to determine geodetic positions, and to make surveys and maps.

(b) The land surveyor shall give reasonable notice to the owner or occupant of the land of an intent to enter private land for survey purposes. The notice must indicate the anticipated date of the entry for survey purposes.

(c) Notice under (b) of this section is not required for a survey along previously surveyed boundaries within a platted subdivision accepted or recorded by the federal government or approved under [AS 29.40.110](#) or 40.15.010.

(d) A land surveyor or an employee of a land surveyor who complies with the notice requirements of (b) of this section is liable to the landowner only for actual damages.

(e) The attorney general may bring an action in the name of the state to restrain and prevent the obstruction of entry under (a) of this section.

Sec. 34.65.030. Records of survey.

After making a survey in conformity with the practice and definition of land surveying, a land surveyor shall record with the district recorder a record of the survey within 90 days if the survey discloses

(1) material evidence or physical change that in whole or in part does not appear on a plat of record previously filed or recorded in the office of the district recorder or in the records of the Bureau of Land Management;

(2) a material discrepancy with a plat of record previously filed or recorded in the office of the district recorder or in the records of the Bureau of Land Management; or

(3) evidence that by reasonable analysis might result in alternate positions of boundaries from those of record.

Sec. 34.65.040. Records of monument.

(a) A land surveyor who in the course of a survey establishes, reestablishes, uses as control, or restores a monument to make it readily identifiable or reasonably durable shall record a monument record, unless the monument and its accessories are substantially as described in a monument record filed or recorded under this chapter or on a survey plat of record.

(b) An agency whose activities will disturb or destroy a monument or its accessories shall have a land surveyor

(1) record a monument record before the monument or its accessories are disturbed or destroyed;

(2) restore or replace the monument and its accessories after the activities have ceased; and

(3) record a new monument record after restoring or replacing the monument or its accessories.

(c) A person who disturbs or destroys a monument shall record a notice of the disturbance or destruction in the office of the district recorder.

(d) A land surveyor may record a monument record for any monument.

(e) A land surveyor who is required to record a monument record under this section shall do so within 90 days of the completion of the survey or of the establishment, reestablishment, or rehabilitation of a monument.

(f) A monument record shall be signed and sealed by the land surveyor responsible for the survey.

Sec. 34.65.050. When record of survey is not required.

A record of survey is not required for a survey

(1) made by the Bureau of Land Management;

(2) when a plat of the survey has been recorded or will be recorded within 18 months after the field survey is completed.

Sec. 34.65.060. Duties of the commissioner.

(a) The commissioner shall adopt regulations to implement this chapter.

(b) The commissioner shall provide a standard form for a monument record.

Sec. 34.65.070. Duties of the district recorder.

(a) The district recorder shall provide a copy of a monument record or a copy of a record of survey to the municipal clerk for the municipality in which the monument or survey is located.

(b) The district recorder shall keep a proper index of monument records and records of survey by

the survey name, tract designation, subdivision designation, or United States public land designation.

Sec. 34.65.100. Definitions.

In this chapter,

- (1) “commissioner” means the commissioner of natural resources;
- (2) “land surveyor” means a professional land surveyor licensed under [AS 08.48](#);
- (3) “monument” means
 - (A) a United States public land survey monument;
 - (B) an Alaska state land survey primary monument;
 - (C) an exterior primary monument controlling a recorded survey;
 - (D) a geodetic control monument established by a state or federal agency;
- (4) “subdivision” has the meaning given in [AS 40.15.900](#);
- (5) “United States public land survey monument”
 - (A) means a survey monument established in a cadastral survey by the Bureau of Land Management or its predecessor;
 - (B) includes a monument in a United States special survey and United States mineral survey that is a part of the public land records of the Bureau of Land Management.

Chapter 70. Disclosures in Residential Real Property Transfers.

Sec. 34.70.010. Disclosures in residential real property transfers.

Before the transferee of an interest in residential real property makes a written offer, the transferor shall deliver by mail or in person a completed written disclosure statement in the form established under [AS 34.70.050](#). Delivery to the spouse of the transferee constitutes delivery to the transferee unless the transferor and the transferee agree otherwise before the delivery.

Sec. 34.70.020. Termination of offer.

If a disclosure statement or material amendment is delivered to the transferee after the transferee has made a written offer, the transferee may terminate the offer by delivering a written notice of termination to the transferor or the transferor's agent within three days after the disclosure statement or amendment is delivered in person or within six days after the disclosure statement or amendment is delivered by deposit in the mail.

Sec. 34.70.030. Liability after disclosure.

A transferor is not liable for a defect or other condition in the real property or the real property interest being transferred if the transferor discloses the existence of the defect or condition in the

disclosure statement.

Sec. 34.70.040. Subsequent events and approximations.

(a) If information in a disclosure statement becomes inaccurate as a result of an act or agreement after the disclosure statement is delivered to the transferee, the resulting inaccuracy does not violate this chapter and the transferor is required to deliver an amendment for the disclosure statement to the transferee.

(b) If an item that is required in the disclosure statement is unknown or is unavailable to the transferor, and if the transferor or the transferor's agent has made a reasonable effort to ascertain the information, the transferor may insert an approximation of the information. The approximation must be reasonable, clearly identified as an approximation, based on the best information available to the transferor or the transferor's agent, and not used to avoid the requirements of this chapter.

Sec. 34.70.050. Form of disclosure statement.

The Real Estate Commission established under [AS 08.88.011](#) shall establish the form of the disclosure statement required by [AS 34.70.010](#). The disclosure statement must include a provision that notifies transferees

(1) that they are responsible for determining whether a person who has been convicted of a sex offense resides in the vicinity of the property that is the subject of the transferee's potential real estate transaction;

(2) where information about the location of convicted sex offenders can be obtained; and

(3) that they are responsible for determining whether, in the vicinity of the property that is the subject of the transferee's potential real estate transaction, there is an agricultural facility or agricultural operation that might produce odor, fumes, dust, blowing snow, smoke, burning, vibrations, noise, insects, rodents, the operation of machinery including aircraft, and other inconveniences or discomforts as a result of lawful agricultural operations.

Sec. 34.70.060. Good faith.

A person who makes a disclosure or performs an act under this chapter shall do so in good faith.

Sec. 34.70.070. Effect on other required disclosures.

The requirements of this chapter do not affect other obligations for disclosure required by law.

Sec. 34.70.080. Written amendment.

An amendment to a disclosure statement must be in writing.

Sec. 34.70.090. Failure to comply.

(a) A transfer that is subject to this chapter is not invalidated solely because a person fails to comply with this chapter.

(b) A person who negligently violates this chapter or fails to perform a duty required by this chapter is liable to the transferee for the amount of the actual damages suffered by the transferee as a result of the violation or failure.

(c) A person who wilfully violates this chapter or fails to perform a duty required by this chapter is liable to the transferee for up to three times the actual damages suffered by the transferee as a result of the violation or failure.

(d) In addition to the damages allowed under (b) or (c) of this section, a court may also award the transferee costs and attorney fees to the extent allowed under the rules of court.

Sec. 34.70.110. Waiver by agreement.

This chapter does not apply to the transfer of an interest in residential real property if the transferor and transferee agree in writing that the transfer will not be covered under this chapter.

Sec. 34.70.120. Exemption for first sales.

This chapter does not apply to the transfer of an interest in residential real property if the transfer is the first transfer of the property and if the property has never been occupied.

Sec. 34.70.200. Definitions.

In this chapter,

(1) “disclosure statement” means the disclosure statement required by [AS 34.70.010](#);

(2) “real property” includes a unit in real property subject to [AS 34.07](#) or [AS 34.08](#);

(3) “residential real property” means real property whose primary purpose is to provide a single-family dwelling, or two single-family dwellings in one building, including a manufactured home that has become real property under [AS 34.85.010](#); in this paragraph, “manufactured home” has the meaning given in [AS 45.29.102](#);

(4) “transfer” means transfers by sale, exchange, installment land sale contract, lease with an option to purchase, other option to purchase, or a ground lease coupled with improvements.

Chapter 75. Noise Levels of Sport Shooting Facilities and Private Airport Facilities.

Sec. 34.75.010. Limitation on actions arising from noise level.

(a) Notwithstanding [AS 09.45.230](#), [AS 11.61.110](#), and any other state or municipal law, except (b) of this section and except as may be otherwise provided by federal law, a person may not bring a civil or criminal action against a person who operates or uses a sport shooting facility or a private airport facility if the action arises out of the noise level resulting from the normal operation or use of the facility and if the facility

(1) was established or began operation before any noise control law applied to the facility; or

(2) complies with the noise control laws that applied to the facility when the facility was established or began operation.

(b) The prohibition in (a) of this section does not apply to an action that arises out of
(1) a contract;

(2) a personal injury suffered by a person while on the premises of the facility; or

(3) a substantial change in the use of the facility.

(c) Except as may be otherwise provided by federal law, even if otherwise allowed by (a) and (b) of this section, a person may not bring a nuisance action for noise level against a facility located in the vicinity of the person's property if the facility was established before the person acquired the property, unless the facility substantially changes the use of the facility after the person acquires the property.

Sec. 34.75.020. Time limitation on nuisance actions.

Except as may otherwise be provided by federal law, a person may not bring a nuisance action otherwise allowed under this chapter for the level of noise against a facility unless the action is brought within five years after the facility is established or begins operation or, if the action is brought after a substantial change in the use of the facility, within three years after the substantial change. In this section, “established” includes resuming shooting activity at a sport shooting facility if there has not been shooting activity at the facility for three or more years, or resuming airport activity at a private airport facility if there has not been airport activity at the facility for three or more years.

Sec. 34.75.030. State and municipal regulation.

(a) Notwithstanding [AS 02.15.020](#) and [AS 02.25.020](#), the state or a municipality may not regulate the outdoor level of noise at a facility if the facility is exempt from a criminal or civil action under [AS 34.75.010](#)(a).

(b) Except as otherwise provided in this chapter, a municipality may regulate the noise level produced by a facility.

Sec. 34.75.040. Construction and meaning of “substantial change in the use”.

In this chapter, the phrase “substantial change in the use” shall be strictly construed to maximize the immunity from civil and criminal actions provided under [AS 34.75.010](#) — [AS 34.75.020](#) for sport shooting facilities and private airport facilities.

In this chapter, “substantial change in the use” does not include a mere increase in the frequency of flights or the number of shots.

Sec. 34.75.090. Definitions.

In this chapter, unless the context indicates otherwise,

(1) “airport facility” means an area of land or water that is used or intended for use for the landing and takeoff of aircraft, including appurtenant areas that are used or intended for use as

airport buildings or rights-of-way; in this paragraph, “aircraft” includes fixed-wing and rotor aircraft;

(2) “facility” means a sport shooting facility or a private airport facility;

(3) “law” means a state statute or regulation or an ordinance of a municipality;

(4) “person” includes the state, a state agency, and a municipality;

(5) “private” means an airport that is privately owned and operated; airports owned, operated, or leased by the state, a municipality, or a political subdivision of the state or a local government are considered public airports;

(6) “sport shooting facility” means real property operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, archery, or similar activity related to sport shooting.

Chapter 77. Community Property Act.

Sec. 34.77.010. Good faith requirement.

A spouse shall act in good faith with respect to the other spouse in matters involving community property. The obligation under this section may not be varied by a community property agreement or a community property trust.

Sec. 34.77.020. Variation by marital property agreement.

Except as provided in [AS 34.77.010](#), 34.77.070(h), 34.77.080(b), and 34.77.090(c), a community property agreement or a community property trust may vary the effect of this chapter.

Sec. 34.77.030. Classification of property of spouses.

(a) Except for property that is classified otherwise in this chapter, property of spouses is community property under this chapter only to the extent provided in a community property agreement or a community property trust.

(b) If a community property agreement provides that all property acquired by either or both spouses during the marriage is community property, the property of the spouses acquired during the marriage and after the determination date is presumed to be community property.

(c) A spouse has a present undivided one-half interest in community property.

(d) If the community property agreement provides that all property acquired by either or both spouses during the marriage is community property, income earned or accrued by a spouse or attributable to property of a spouse during marriage and after the determination date is community property.

(e) Community property transferred to a trust remains community property.

(f) Whether or not the community property agreement provides that all property acquired by either or both spouses during the marriage is community property, property that is owned by a spouse at the time of a marriage but before the determination date is not community property.

except to the extent otherwise expressly provided in the community property agreement.

(g) Whether or not the community property agreement provides that all property acquired by either or both spouses during the marriage is community property, and except to the extent otherwise expressly provided by the spouses in the community property agreement or by the settlors in a community property trust, property acquired by a spouse during marriage and after the determination date is individual property if acquired

(1) by gift or a disposition at death made by a third person to the spouse and not to both spouses;

(2) in exchange for or with the proceeds of other individual property of the spouse;

(3) from appreciation or income of the spouse's individual property except to the extent that the income or appreciation is classified as community property under [AS 34.77.130](#);

(4) by a decree, community property agreement, written consent, or reclassification under [AS 34.77.060](#)(b) designating it as the individual property of the spouse;

(5) as a recovery for damage to property under [AS 34.77.140](#), except as specifically provided otherwise in a decree, community property agreement, community property trust, or written consent;

(6) as a recovery for personal injury, except for the amount of the recovery attributable to expenses paid or otherwise satisfied from community property; or

(7) as a transfer to a community property trust and declared by the trust to be the individual property of the spouse.

(h) Except as otherwise expressly provided in the community property trust, appreciation and income of property transferred to a community property trust are community property.

(i) Community property held by a community property trust or another trust remains community property of the spouses if distributed to the spouses.

(j) Except as provided otherwise in this chapter, this chapter does not alter the classification and ownership rights of property acquired before or during the marriage.

Sec. 34.77.040. Management and control of property of spouses.

(a) A spouse acting alone may manage and control

(1) that spouse's property that is not community property;

(2) except as provided in (c) of this section, community property held in that spouse's name alone or not held in the name of either spouse;

(3) a policy of insurance if that spouse is designated as the owner on the records of the issuer of the policy;

(4) the rights of an employee under an arrangement for deferred employment benefits that accrue as a result of that spouse's employment;

(5) a claim for relief vested in that spouse by other law;

(6) community property held in the names of both spouses in the alternative, including using the names of both spouses with the word “or.”

(b) Spouses may not manage and control community property held in the names of both spouses other than in the alternative unless they act together.

(c) The right to manage and control community property that is transferred to a trust, including property that is community property under the trust, is determined by the terms of the trust.

(d) The right to manage and control community property does not determine the classification of property of the spouses and does not rebut the presumption of [AS 34.77.030\(b\)](#).

(e) The right to manage and control community property does not permit gifts of the property, except to the extent provided in [AS 34.77.050](#).

(f) Except to the extent otherwise expressly provided in a community property agreement or a community property trust, the right to manage and control the property of spouses is not affected by this chapter if the property is acquired before the determination date.

(g) A court may appoint a conservator or guardian to exercise a disabled spouse's right to manage and control community property.

Sec. 34.77.050. Gifts of community property to third persons.

(a) A spouse acting alone may not give to a third person community property that the spouse has the right to manage and control unless the value of the community property given to the third person does not aggregate more than \$1,000 in a calendar year, or a larger amount if, when made, the gift is reasonable in amount considering the economic position of the spouses.

(b) A gift of community property to a third person that is not allowed under (a) of this section is subject to [AS 34.77.140\(e\)](#) — (h) unless both spouses act together in making the gift or the other spouse ratifies the gift.

(c) Reporting any part of a gift made by the other spouse on a United States gift tax return under 26 U.S.C. 2501 — 2524 or consenting to the treatment of a gift under 26 U.S.C. 2513 (Internal Revenue Code) by signing the consent on the other spouse's United States gift tax return is treated as the spouses acting together in making the gift.

(d) [Repealed, § 46 ch 45 SLA 2013.]

Sec. 34.77.060. Certain property transactions between spouses.

(a) While both spouses are domiciled in this state, spouses may classify any or all of their property as community property in a community property agreement.

(b) Whether or not both, one, or neither is domiciled in this state, spouses may classify any or all of their property as community property by transferring property to a community property trust and providing in the trust that the property is community property.

Sec. 34.77.070. Obligations of spouses.

(a) [Repealed, § 6 ch 80 SLA 2001.]

(b) After the determination date, a spouse's obligation to satisfy a duty of support owed to the other spouse or to a child of the marriage may be satisfied only from community property and the other property of the obligated spouse that is not community property.

(c) [Repealed, § 6 ch 80 SLA 2001.]

(d) [Repealed, § 6 ch 80 SLA 2001.]

(e) [Repealed, § 6 ch 80 SLA 2001.]

(f) This chapter does not alter the relationship between spouses and their creditors with respect to property or an obligation in existence before the determination date.

(g) A writing that is signed by a creditor and that reduces a creditor's rights under this section is binding on the creditor.

(h) A provision of a community property agreement or a community property trust does not adversely affect the interest of a creditor unless the creditor has actual knowledge of the provision when the obligation to the creditor is incurred. The effect of this subsection may not be varied by a community property agreement or a community property trust.

(i) This chapter does not affect an exemption provided under other law for the property of spouses.

(j) An obligation incurred by only one spouse before or during marriage may be satisfied only from the property of that spouse that is not community property and from that spouse's interest in community property. This subsection does not apply to an obligation described in (b) of this section.

(k) An obligation incurred during marriage by both spouses may be satisfied from property of each spouse that is not community property and from the community property.

Sec. 34.77.080. Protection of bona fide purchasers dealing with spouses.

(a) Notice of the existence of a community property agreement, a community property trust, a marriage, or the termination of a marriage does not affect the status of a purchaser as a bona fide purchaser.

(b) Community property purchased by a bona fide purchaser from a spouse having the right to manage and control the property under [AS 34.77.040](#) is acquired free of any claim of the other spouse. The effect of this subsection may not be varied by a community property agreement or a community property trust.

(c) In this section,

(1) “bona fide purchaser” means a purchaser of property for value who has not knowingly been a party to fraud or illegality affecting the interest of the spouses or other parties to the transaction, does not have notice of an adverse claim by a spouse, and has acted in the transaction in good faith; in this paragraph, a purchaser gives “value” for property if the property is acquired

(A) in return for a binding commitment to extend credit;

- (B) as security for or in total or partial satisfaction of a preexisting claim;
- (C) by accepting delivery under a preexisting contract for purchase; or
- (D) in return for other consideration sufficient to support a contract;

(2) “purchaser” means a person who acquires property by sale, lease, discount, negotiation, mortgage, pledge, or lien, or otherwise deals with property in a voluntary transaction other than making a gift.

Sec. 34.77.090. Community property agreement.

(a) A community property agreement must be contained in a written document signed by both spouses and classify some or all of the property of the spouses as community property. It is enforceable without consideration.

(b) A community property agreement must contain the following language in capital letters at the beginning of the agreement:

THE CONSEQUENCES OF THIS AGREEMENT MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE BOTH DURING THE COURSE OF YOUR MARRIAGE AND AT THE TIME OF A DIVORCE. ACCORDINGLY, THIS AGREEMENT SHOULD ONLY BE SIGNED AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS AGREEMENT, YOU SHOULD SEEK COMPETENT ADVICE. (c) A community property agreement may not adversely affect the right of a child to support.

(d) Except as provided in [AS 34.77.020](#), 34.77.070(h), 34.77.080(b), and in (c) of this section, in a community property agreement, spouses may agree

(1) on the rights and obligations in the property, notwithstanding when and where the property is acquired and located;

(2) on the management and control of their property;

(3) on the disposition of their property on dissolution, death, or the occurrence or nonoccurrence of another event;

(4) on making a will, trust, or other arrangement to carry out the agreement;

(5) that, upon the death of either of them, any of their property, including after-acquired property, passes without probate to a designated person, trust, or other entity by nontestamentary disposition;

(6) on the choice of law governing the interpretation of the agreement; and

(7) on any other matter that affects their property and does not violate public policy or a statute imposing a criminal penalty.

(e) A community property agreement may not be amended or revoked unless the agreement itself provides for amendment or revocation, or unless the agreement is amended or revoked by a later

community property agreement. To amend or revoke the agreement, the later community property agreement is not required to declare any property of the spouses as community property. The amended agreement or the revocation is enforceable without consideration. However, notwithstanding the other provisions of this subsection, unless the community property agreement expressly provides otherwise, if a community property agreement provides for the nontestamentary disposition of property without probate, at any time after the death of the first spouse the surviving spouse may amend the community property agreement with regard to the surviving spouse's property to be disposed of at the surviving spouse's death. In this subsection, "surviving spouse's property" means the property that consists of the surviving spouse's separate property and the surviving spouse's share of the community property determined as of the date of the first spouse's death.

(f) Persons intending to marry each other may enter into a community property agreement as if married, but the agreement does not become effective until the persons are married.

(g) A community property agreement executed during marriage is not enforceable if the spouse against whom enforcement is sought proves that

(1) the agreement was unconscionable when made;

(2) the spouse against whom enforcement is sought did not execute the agreement voluntarily;
or

(3) before execution of the agreement, the spouse against whom enforcement is sought

(A) was not given a fair and reasonable disclosure of the property and financial obligations of the other spouse;

(B) did not voluntarily sign a written consent expressly waiving the right to disclosure of the property and financial obligations of the other spouse beyond the disclosure provided; and

(C) did not have notice of the property or financial obligations of the other spouse.

(h) A community property agreement executed before marriage is not enforceable if the spouse against whom enforcement is sought proves that

(1) the spouse against whom enforcement is sought did not execute the agreement voluntarily;
or

(2) the agreement was unconscionable when made and, before execution of the agreement, the spouse against whom enforcement is sought

(A) was not given a fair and reasonable disclosure of the property and financial obligations of the other spouse;

(B) did not voluntarily sign a written consent expressly waiving the right to disclosure of the property and financial obligations of the other spouse beyond the disclosure provided; and

(C) did not have notice of the property or financial obligations of the other spouse.

(i) Whether or not a community property agreement is unconscionable is determined by a court as a matter of law.

Sec. 34.77.100. Community property trust.

(a) An arrangement is a community property trust if one or both spouses transfer property to a

trust, the trust expressly declares that some or all the property transferred is community property under this chapter, and at least one trustee is a qualified person whose powers include or are limited to maintaining records for the trust on an exclusive or a nonexclusive basis and preparing or arranging for the preparation of, on an exclusive or a nonexclusive basis, any income tax returns that must be filed by the trust. A community property trust is enforceable without consideration. Both spouses or either spouse may be a trustee. The trust must be signed by both spouses. In this subsection, “qualified person” means

(1) an individual

(A) who, except for brief intervals, military service, attendance at an educational or training institution, or absences for good cause shown, resides in this state;

(B) whose true and permanent home is in this state;

(C) who does not have a present intention of moving from this state; and

(D) who intends to return to this state when away;

(2) a trust company that is organized under [AS 06.26](#) and that has its principal place of business in this state; or

(3) a bank that is organized under [AS 06.05](#) or a national banking association that is organized under 12 U.S.C. 21 — 216d if the bank or national banking association possesses and exercises trust powers and has its principal place of business in this state.

(b) A community property trust must contain the following language in capital letters at the beginning of the trust:

THE CONSEQUENCES OF THIS TRUST MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE BOTH DURING THE COURSE OF YOUR MARRIAGE AND AT THE TIME OF A DIVORCE. ACCORDINGLY, THIS AGREEMENT SHOULD ONLY BE SIGNED AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS AGREEMENT, YOU SHOULD SEEK COMPETENT ADVICE. (c) A community property trust may not adversely affect the right of a child to support.

(d) Except as provided in [AS 34.77.010](#), 34.77.070(h), 34.77.080(b), and in (c) of this section, in a community property trust spouses may agree on

(1) the rights and obligations in the property transferred to the trust, notwithstanding when and where the property is acquired or located;

(2) the management and control of the property transferred to the trust;

(3) the disposition of the property transferred to the trust on dissolution, death, or the occurrence or nonoccurrence of another event;

(4) the choice of law governing the interpretation of the trust; and

(5) any other matter that affects the property transferred to the trust and does not violate public policy or a statute imposing a criminal penalty.

(e) A community property trust may not be amended or revoked unless the agreement itself provides for amendment or revocation, or unless the agreement is amended or revoked by a later community property trust. To amend or revoke the trust, the later community property trust is not

required to declare any property held by the trustee as community property. The amended trust or the revocation is enforceable without consideration. However, notwithstanding the other provisions of this subsection, unless the community property trust expressly provides otherwise, at any time after the death of the first spouse the surviving spouse may amend the community property trust with regard to the surviving spouse's property to be disposed of at the surviving spouse's death. In this subsection, "surviving spouse's property" means the property that consists of the surviving spouse's separate property and the surviving spouse's share of the community property determined as of the date of the first spouse's death.

(f) A community property trust executed during marriage is not enforceable if the spouse against whom enforcement is sought proves that

(1) trust was unconscionable when made; or

(2) the spouse against whom enforcement is sought did not execute the community property trust agreement voluntarily; or

(3) before execution of the community property trust agreement, the spouse against whom enforcement is sought

(A) was not given a fair and reasonable disclosure of the property and financial obligations of the other spouse;

(B) did not voluntarily sign a written waiver expressly waiving right to disclosure of the property and financial obligations of the other spouse beyond the disclosure provided; and

(C) did not have notice of the property or financial obligations of the other spouse.

(g) Whether or not a community property trust is unconscionable is determined by a court as a matter of law.

(h) The trustee of a community property trust shall maintain records that identify which property held by the trust is community property and which property held by the trust is not community property.

(i) In addition to other transfers of property to a community property trust, property will be considered transferred to a community property trust if the property is subject to a nonprobate transfer on death under [AS 13.33.101](#) and the community property trust is designated as the beneficiary to receive the property under the transfer.

Sec. 34.77.110. Forms of holding property.

(a) Spouses may hold community property in a form that designates the holders of it by the words "(name of one spouse) or (name of other spouse) as community property." Community property held in this form is subject to [AS 34.77.040\(a\)\(6\)](#).

(b) Spouses may hold community property in a form that designates the holder of it by the words "(name of one spouse) and (name of other spouse) as community property." Community property held in this form is subject to [AS 34.77.040\(b\)](#).

(c) A spouse may hold individual property in a form that designates the holder of it by the words "(name of spouse) as individual property." Individual property held in this form is subject to [AS 34.77.040\(a\)\(1\)](#).

(d) [Repealed, § 46 ch 45 SLA 2013.]

(e) If the words “survivorship community property” are used instead of the words “community property” in the form described in (a) or (b) of this section, the community property is survivorship community property. On the death of a spouse, the ownership rights of that spouse in survivorship community property vest solely in the surviving spouse by nontestamentary disposition at death. The first deceased spouse does not have a right of disposition at death of any interest in survivorship community property. Holding community property in a form described in (a) or (b) of this section does not by itself establish survivorship ownership between the spouses for the property held in that form.

(f) Property that spouses agree in a community property agreement is community property or property that is transferred to a community property trust and expressly declared by the trust to be community property is owned as community property regardless of the form of title to the property, even if the title indicates that the property is owned unequally by the spouses or is only in the name of one spouse.

(g) If the title to community property is in a form that provides for ownership by survivorship between the spouses, then ownership by survivorship is presumed to have been made with the consent of both spouses.

(h) If a spouse with management and control of community property designates a beneficiary for the property on the death of one or both of the spouses, and if the community property is held in a form of title that permits a beneficiary designation, the beneficiary designation is effective only for the designating spouse's one-half interest in the community property unless the other spouse consents in writing to the designation. A designation of the following as the beneficiary is presumed to have been made with the consent of the other spouse:

(1) the other spouse or an ancestor or descendant of either spouse;

(2) a charity; or

(3) a trust, to the extent that the beneficiaries consist of persons or entities identified in (1) or (2) of this subsection.

(i) The testimony of one spouse is sufficient to rebut a presumption established under this section.

(j) A disposition of community property contrary to (e) — (h) of this section is voidable. An action in court to void the disposition must be commenced within the time specified by [AS 34.77.140](#)(e).

Sec. 34.77.120. Classification of life insurance policies and proceeds.

(a) If a policy issuer makes payments or takes actions in accordance with the policy and the issuer's records, the issuer is not liable because of the payments or actions unless, at the time of the payments or actions, the issuer had actual knowledge of inconsistent provisions of a community property agreement, a community property trust, a decree relating to a community property agreement or a community property trust, or an adverse claim that is brought by a spouse, former spouse, surviving spouse, or persons claiming under a deceased spouse's disposition at death and that relates to a community property agreement or a community property trust.

(b) Except as provided in (c) — (e) of this section,

(1) the ownership interest in and proceeds of a policy that insures the life of one of the spouses and that has been classified by a community property agreement or a community property trust as community property are community property without regard to the classification of property used to pay premiums on the policy;

(2) the ownership interest in and proceeds of a policy that is owned by one spouse and that has not been classified by a community property agreement or a community property trust as community property are mixed property if all or part of a premium on the policy is paid from community property after the determination date; the community property component of the ownership interest and proceeds is the part resulting from multiplying the entire ownership interest and proceeds by a fraction that consists of a numerator that is the sum of the net premiums and portions of net premiums paid from community property and a denominator that is the sum of the net premiums paid;

(3) the ownership interest in and proceeds of a policy issued during marriage that designates the spouse of the insured as the owner are the individual property of the owner without regard to the classification of property used to pay premiums on the policy;

(4) the ownership interest in and proceeds of a policy that designates a person other than either of the spouses as the owner are not affected by this chapter if a premium on the policy is not paid from community property after the determination date; if all or part of a premium on the policy is paid from community property after the determination date, the ownership interest and proceeds of the policy are in part property of the designated owner of the policy and in part community property of the spouses without regard to the classification of property used to pay premiums on the policy after the initial payment of a premium on the policy from community property; the community property component of the ownership interest and proceeds is the part resulting from multiplying the entire ownership interest and proceeds by a fraction that consists of a numerator that is the sum of the net premiums and portions of net premiums paid from community property and a denominator that is the sum of the net premiums paid;

(5) written consent by a spouse to the designation of another person as the beneficiary of the proceeds of a policy is effective to relinquish that spouse's interest in the ownership interest and proceeds of the policy without regard to the classification of property used by a spouse or another person to pay premiums on the policy; a designation of any of the following persons or trusts as the beneficiary of a policy is presumed to have been made with the consent of the other spouse:

(A) the other spouse or an ancestor or descendant of either spouse; or

(B) a trust, to the extent that its beneficiaries consist of one or more of the persons named in (A) of this paragraph;

(6) unless the spouses provide otherwise in a community property agreement or community property trust, designation of a trust as the beneficiary of the proceeds of a policy with a community property component does not reclassify the component;

(7) unless the spouses provide otherwise, if an irrevocable trust owns a life insurance policy insuring the life of one spouse and the spouse whose life is not insured by the policy is provided a beneficial interest in the trust, then, before a contribution of assets to the trust, the spouse whose life is not insured by the policy is presumed to have relinquished any community property interest that the spouse whose life is not insured by the policy may have had in the assets contributed to the trust; the presumption in this paragraph applies only to the extent that the beneficiaries of the trust consist of one or more of the following persons:

(A) the spouse whose life is not insured;

(B) an ancestor of either spouse;

(C) a descendant of either spouse;

(8) the testimony of the spouse whose life is not insured is sufficient to rebut a presumption in (5) or (7) of this subsection.

(c) This section does not affect a creditor's interest in the ownership interest or proceeds of a policy assigned or made payable to the creditor as security.

(d) The interest of a person as owner or beneficiary of a policy acquired under a decree or property settlement agreement incident to a prior marriage or parenthood is not community property notwithstanding the classification of property used to pay premiums on the policy.

(e) This section does not affect the ownership interest or proceeds of a policy unless a spouse or a trust described in (b)(7) of this section is designated as an owner in the policy or on the records of the policy issuer and community property is used to pay a premium on the policy.

(f) In this section,

(1) "owner" means a person appearing on the records of a policy issuer as the person having the ownership interest, or, if a person other than the insured does not appear on the records as a person having the interest, "owner" means the insured;

(2) "ownership interest" means the rights of an owner under a policy;

(3) "policy" means an insurance policy insuring the life of a spouse and providing for payment of death benefits at the spouse's death;

(4) "proceeds" means the death benefit from a policy and all other economic benefits from the policy, whether the economic benefits accrue or become payable as a result of the death of an insured person or upon the occurrence or nonoccurrence of another event.

Sec. 34.77.130. Mixed property.

(a) Except as provided otherwise in [AS 34.77.110](#), mixing community property with property having another classification reclassifies the other property as community property unless the component of the mixed property that is not community property can be traced.

(b) If a community property agreement provides that all property acquired by either or both spouses during marriage is community property, application by one spouse of substantial labor, effort, inventiveness, physical skill, intellectual skill, creativity, or managerial activity on individual property of the other spouse creates community property attributable to the application if

(1) reasonable compensation is not received for the application; and

(2) substantial appreciation of the individual property of the other spouse results from the application.

Sec. 34.77.140. Interspousal remedies.

(a) A spouse has a claim against the other spouse for breach of the good faith requirement under

[AS 34.77.010](#) resulting in damage to the claimant spouse's present undivided one-half interest in community property.

(b) If the spouses have signed a community property agreement or a community property trust, a court may order an accounting of the property and obligations of the spouses and may determine rights of ownership in, beneficial enjoyment of, or access to marital property and the classification of all property of the spouses.

(c) A court may order that the name of a spouse be added to community property held in the name of the other spouse alone, except

(1) a partnership interest held by the other spouse as a general partner;

(2) an interest in a professional corporation, professional association, or similar entity held by the other spouse as a stockholder or member;

(3) an asset of an unincorporated business if the other spouse is the only spouse involved in operating or managing the business; or

(4) other property if the addition would adversely affect the rights of a third person.

(d) Except as provided otherwise in (e) — (h) of this section, a spouse must begin an action against the other spouse under (a) of this section within three years after acquiring actual knowledge of the facts giving rise to the claim.

(e) Except as provided by (f) — (h) of this section, if a gift of community property during marriage by a spouse does not comply with [AS 34.77.050](#)(a), the nondonor spouse may bring an action to recover the property or the amount of money by which the gift exceeded the limit under [AS 34.77.050](#)(a). The nondonor spouse may bring the action against the donor spouse, the gift recipient, or both. The nondonor spouse must commence the action within the earliest of the following times:

(1) one year after the nondonor spouse receives notice of the gift;

(2) one year after dissolution of the marriage; or

(3) on or before the deadline for filing a claim under [AS 13.16.460](#) after the death of the donor spouse.

(f) If a recovery under (e) of this section occurs during the marriage of the donor spouse and the nondonor spouse, the property or money that is recovered is considered community property. If the recovery occurs after the dissolution of the marriage of the donor and nondonor spouses or after the death of either the donor or the nondonor spouse, the recovery is limited to 50 percent of the property or money that would have been recovered if the recovery had occurred during the marriage.

(g) If a transfer of community property to a third person during marriage by a spouse acting without the other spouse becomes a completed gift on the death of the donor spouse, or if an arrangement involving community property during marriage by a spouse acting without the other spouse is intended to be and becomes a gift to a third person on the death of the donor spouse, the surviving spouse may bring an action in court against the gift recipient to recover one-half of the gift. To bring an action under this subsection, the surviving spouse must commence the action on or before the deadline for filing a claim under [AS 13.16.460](#).

(h) If a spouse who would have been entitled to bring an action under (e) — (g) of this section predeceases the donor spouse, the deceased spouse's successor in interest may bring an action for

recovery under (e) — (g) of this section, but the action must be commenced within one year after the deceased spouse's death. Recovery in an action under this subsection is the same as if the donor spouse had predeceased the spouse entitled to the recovery, but the amount of the recovery is calculated as of the date of the death of the spouse entitled to the recovery.

Sec. 34.77.150. Treatment of certain property at death of spouse.

If a community property agreement provides that all property acquired by either or both spouses during marriage is community property, at the death of a spouse domiciled in this state, property of the spouse that can be traced to property received by the spouse after the determination date as a recovery for a loss of earning capacity during marriage shall be treated as if it were community property.

Sec. 34.77.155. Division of community property at death.

(a) Upon the death of a spouse, one-half of the aggregate value of the community property owned by the spouses and by any community property trust established by the spouses reflects the share of the surviving spouse and the other one-half reflects the share of the decedent.

(b) Upon the death of a spouse, the deceased spouse's personal representative and the trustee of a community property trust each have the power to distribute community property in divided or undivided interests and to adjust resulting differences in valuation. A distribution of community property in kind may be made on the basis of a non pro rata division of the aggregate value of the community property, on the basis of a pro rata division of each individual item or asset of community property, or by using both methods.

(c) Notwithstanding (a) and (b) of this section, spouses may agree in writing to divide their community property on the basis of a non pro rata division of the aggregate value of the community property or on the basis of a pro rata division of each individual item or asset of community property, or by using both methods.

Sec. 34.77.160. Uniformity of application and construction.

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

Sec. 34.77.900. Definitions.

In this chapter,

(1) “acquire” in relation to property includes obtaining reductions of indebtedness on encumbered property and obtaining a lien on or a security interest in property;

(2) “appreciation” means a realized or unrealized increase in the value of property;

(3) “community property” means property owned jointly by both spouses under a community property agreement or a community property trust;

(4) “community property agreement” means an agreement that complies with [AS 34.77.090](#);

(5) “community property trust” means an express trust that complies with [AS 34.77.100](#);

(6) “decree” means a judgment or other order of a court;

(7) “determination date” means the later of

(A) marriage;

(B) the effective date of a community property agreement or a community property trust; or

(C) May 23, 1998;

(8) “disposition at death” means the transfer of property by will, intestate succession, nontestamentary transfer, or other means that take effect at the transferor's death;

(9) “dissolution” means

(A) termination of a marriage by a decree of dissolution, divorce, annulment, or declaration of invalidity; or

(B) entry of a decree of legal separation or separate maintenance;

(10) “during marriage” means a period that begins at marriage and ends at divorce, dissolution, or the death of a spouse;

(11) “held” means the registration, recordation, or filing by a person in a public office in the name of the person of a document of title to property, or the issuance in the person's name of a writing that customarily operates as a document of title to the property;

(12) “income” means dividends, interest, and net rents and other net returns attributable to investment, rental, licensing, or other use of property unless attributable to a return of capital or to appreciation;

(13) “management and control” means the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, institute or defend a civil action regarding, or otherwise deal with property as if the property is the property of an unmarried person;

(14) “notice” of a fact means a knowledge of it, receipt of a notification of it, or reason to know that it exists from the facts and circumstances known to the person;

(15) “presume” or a “presumption” means the imposition on the person against whom the presumption or presumed fact is directed of the burden of proving that the nonexistence of the presumed fact is more probable than its existence;

(16) “property” means an interest, present or future, legal or equitable, vested or contingent, in real or personal property;

(17) “written waiver” means a document signed by a person against whose interests it is sought to be enforced.

Sec. 34.77.995. Short Title.

This chapter may be cited as the Alaska Community Property Act.

Chapter 80. Escrow Transactions for Residential Real Property.

Sec. 34.80.010. Characterization of escrow money.

The money that is received by a settlement agent for an escrow transaction is not the property of the settlement agent and is not subject to execution, attachment, or other form of collection for a claim against the settlement agent. Escrow money may not be used for a purpose other than to fulfill the terms of the escrow transaction agreement.

Sec. 34.80.020. Segregation and deposit of escrow money.

(a) A settlement agent shall segregate on the records of the settlement agent the escrow money from one escrow transaction from all other money, including the escrow money of other escrow transactions. Escrow money from more than one escrow transaction may be deposited into a single depository escrow account.

(b) A settlement agent shall deposit escrow money in a depository escrow account of a financial institution located in this state.

Sec. 34.80.030. Interest on escrow money.

Notwithstanding any other provision of law, interest may not be collected or paid by a settlement agent on money held for an escrow transaction unless authorized in writing by the parties to the escrow transaction, including the settlement agent.

Sec. 34.80.040. Disbursement of escrow money.

(a) A settlement agent may not disburse escrow money unless items that are at least equal in value to the proposed disbursements have been received by the settlement agent for the escrow transaction, have been deposited as required by [AS 34.80.020\(b\)](#), and are available for withdrawal as a matter of right from the depository escrow account.

(b) A settlement agent may not disburse escrow money on the same business day as the items are deposited under [AS 34.80.020\(b\)](#) unless the deposit is made in cash, by interbank electronic transfer, or in a form that permits conversion of the deposit to cash on the same day the deposit is made.

(c) A settlement agent may not disburse escrow money on the business day after the business day on which the items are deposited under (a) of this section unless the deposit is made by

(1) a cashier's check or a certified check and the cashier's check or certified check is payable in the state and drawn on a financial institution located in the state;

(2) a cashier's check, a negotiable order of withdrawal, a money order, or another item and the check, order of withdrawal, money order, or other item has been finally paid before the disbursement; or

(3) a depository check, including a cashier's, certified, or teller's check, that is governed by 12 U.S.C. 4001 — 4010 (Expedited Funds Availability Act).

(d) In (a) of this section, “available for withdrawal as a matter of right” means

(1) when the item has been submitted for collection and payment for the item has been

received;

(2) when the financial institution where an item has been deposited considers the money represented by the item available for withdrawal; or

(3) unless written notification has been received from the financial institution where the item was deposited establishing a longer period for an item drawn on an out-of-state financial institution, after a reasonable time has passed for prohibiting customers from drawing on the item.

Sec. 34.80.050. Recording, filing, or delivery of escrow transaction documents.

A settlement agent may not record in the office of the recorder in this state or record in an office in another state that is equivalent to the office of the recorder, file under [AS 45.29](#) in this state or file under an equivalent statute in another state, or deliver a conveyance of property, loan documents, documents establishing a security interest in property, or other documents from an escrow transaction until the money required by the escrow transaction agreement to be disbursed at the same time is available for disbursement under [AS 34.80.040](#).

Sec. 34.80.090. Definitions.

In this chapter,

(1) “depository escrow account” means an account that holds escrow money pending completion of an escrow transaction and that is in a financial institution;

(2) “escrow money” means the money that is received by a settlement agent for an escrow transaction;

(3) “escrow transaction” means a transaction where, for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumbrance, leasing, or other disposition of an interest in a single piece of residential real property, persons agree that

(A) money, written documents, evidence of title to real or personal property, or other things of value will be delivered to a person for retention until the happening of a specific event or the performance of a prescribed condition; and

(B) upon the happening of the event or performance of the condition, the person holding the things of value will deliver them to the persons entitled to them under the escrow transaction agreement;

(4) “financial institution” means a financial institution

(A) whose accounts are insured by an agency of the federal government;

(B) that is located in this state and does not meet the requirements of (A) of this paragraph, but is subject to regulation by the Department of Commerce, Community, and Economic Development; or

(C) that is located in another state and does not meet the requirements of (A) of this paragraph, but is subject to regulation in the other state by an agency comparable to the Department of Commerce, Community, and Economic Development;

(5) “item” means cash, a check, a negotiable order of withdrawal, a share draft, a traveler's check, a money order, or an interbank electronic transfer; in this paragraph, “check” includes a

cashier's check;

(6) “residential real property” means real property on which there are one to four attached or detached dwelling units, or any number of apartments if the apartments are in a horizontal property regime formed under [AS 34.07](#) or any number of units if the units are in a common interest community created under [AS 34.08](#); “residential real property” includes a manufactured home that has become real property under [AS 34.85.010](#); in this paragraph, “manufactured home” has the meaning given in [AS 45.29.102](#);

(7) “settlement agent” means a person who handles an escrow transaction for compensation, but does not mean a financial institution or other person when the financial institution or other person collects money for the sole purpose of applying the money to the payment of an indebtedness; “settlement agent” includes an employee of a person who handles an escrow transaction for compensation when the employee is carrying out employment duties related to the escrow transaction.

Sec. 34.80.095. Short title.

This chapter may be cited as the Good Funds Act.

Chapter 85. Manufactured Home Property Act.

Sec. 34.85.010. Real property characterization.

A manufactured home becomes real property if

(1) the home is permanently affixed to land under [AS 34.85.150](#);

(2) an affixation affidavit has been recorded under [AS 40.17.125](#);

(3) the ownership interests in the manufactured home and in the real property to which the manufactured home is permanently affixed are identical, except as provided by [AS 34.85.040](#); and

(4) the manufactured home is

(A) covered by a manufacturer's certificate of origin that the owner of the manufactured home is able to produce, and the department has cancelled the manufacturer's certificate of origin under [AS 28.10.262](#);

(B) covered by a certificate of title that the owner of the manufactured home is able to produce, and the department has cancelled the certificate of title under [AS 28.10.263](#); or

(C) not covered by a manufacturer's certificate of origin or a certificate of title, or if the manufactured home is covered by a manufacturer's certificate of origin or a certificate of title but the owner of the manufactured home, after diligent search and inquiry, was unable to produce the manufacturer's certificate of origin or certificate of title, and the department has provided a written confirmation under [AS 28.10.264](#).

Sec. 34.85.020. Effect of real property characterization.

(a) When a manufactured home becomes real property under [AS 34.85.010](#), a mortgage, deed of trust, lien, or security interest that can attach to land, buildings erected on land, or fixtures affixed to land or buildings attaches to the manufactured home in the same manner as if the manufactured home were built from ordinary building materials on the land where the manufactured home is located.

(b) If the title to a manufactured home is transferred after the manufactured home becomes real property under [AS 34.85.010](#), title to the manufactured home, together with the land to which the converted manufactured home is affixed, shall be transferred by deed or other form of conveyance that is effective to transfer an interest in real property.

(c) When a manufactured home becomes real property under [AS 34.85.010](#), the manufactured home is governed by the laws applicable to real property in effect on the date the manufactured home satisfies [AS 34.85.010](#).

Sec. 34.85.040. Ownership interest exception.

If the owner of a manufactured home is not the owner of the real property on which the manufactured home is located, the requirement under [AS 34.85.010](#)(3) that the ownership interests be identical is satisfied if the owner possesses the real property under

(1) a lease in a recordable form that has a term that continues for at least 20 years after the date of execution of the affixation affidavit; and

(2) the lessor of the real property consents.

Sec. 34.85.060. Affixation affidavit requirements.

An affixation affidavit must provide

(1) the name of the manufacturer, the make, the model name, the model year, the dimensions, and the manufacturer's serial number of the manufactured home;

(2) whether the manufactured home is new or used;

(3) a statement that the person executing the affidavit is

(A) the owner of the real property described in the affixation affidavit; or

(B) not the owner of the real property described in the affixation affidavit, and the person

(i) is in possession of the real property under a lease in recordable form that has a term that continues for at least 20 years after the date of execution of the affidavit; and

(ii) the lessor of the real property consents;

(4) if (3)(B)(ii) of this section applies, the consent of the lessor of the real property endorsed on or attached to the affidavit and acknowledged or proved in the manner required for the conveyance to be recorded;

(5) the street address and the legal description of the real property to which the manufactured home is or shall be permanently affixed;

(6) if the manufactured home is not covered by a certificate of title, a statement by the owner

to that effect;

(7) an owner's statement under [AS 34.85.070](#);

(8) a statement whether or not the manufactured home is subject to a lien or encumbrance;

(9) if the manufactured home is subject to a lien or encumbrance, a statement giving the name and address of each person who holds a lien or encumbrance on the manufactured home, including each holder of a lien or encumbrance shown on a certificate of title issued by the department, the original principal amount secured by each lien and encumbrance, and a statement that

(A) the lien or encumbrance shall be released; or

(B) each lien or encumbrance on the manufactured home has been released and proof of the release;

(10) if the manufactured home is not covered by a manufacturer's certificate of origin or a certificate of title, a statement by the owner of the manufactured home that the manufactured home is not covered by a manufacturer's certificate of origin or a certificate of title and that the owner of the manufactured home will apply to the department under [AS 28.10.264](#);

(11) a statement that the manufactured home is or will be permanently affixed to the real property; and

(12) the name and address of a person designated for filing the certified copy of the affixation affidavit with the department.

Sec. 34.85.070. Owner's statement for affixation affidavit.

(a) An owner's statement for an affixation affidavit must comply with (b) or (c) of this section.

(b) If a manufactured home is covered by a manufacturer's certificate of origin, the owner of the manufactured home shall

(1) state that the manufactured home is covered by a manufacturer's certificate of origin, provide the date the manufacturer's certificate of origin was issued, provide the manufacturer's serial number, state that the original manufacturer's certificate of origin for the manufactured home is annexed to the affixation affidavit and is endorsed to the owner of the manufactured home, and state that the owner of the manufactured home will surrender the manufacturer's certificate of origin for cancellation under [AS 28.10.262](#); or

(2) state that the owner of the manufactured home, after diligent search and inquiry, has been unable to produce the original manufacturer's certificate of origin for the manufactured home and shall apply to the department under [AS 28.10.264](#).

(c) If a manufactured home is covered by a certificate of title, the owner of the manufactured home shall

(1) state that the manufactured home is covered by a certificate of title, provide the date the title was issued and the title number, and state that the owner shall surrender the title for cancellation under [AS 28.10.263](#); or

(2) state that the owner, after diligent search and inquiry, has been unable to produce the certificate of title to the manufactured home and shall apply to the department under [AS](#)

[28.10.264.](#)

Sec. 34.85.080. Effect on liens and encumbrances.

Permanently affixing a manufactured home to real property or recording an affixation affidavit under [AS 40.17.125](#) does not impair the rights of a holder of, or the character of, a lien or encumbrance on a manufactured home under [AS 28.10.381](#) unless an application to cancel the title is filed with the department under [AS 28.10.263](#) and the lien or encumbrance is released under [AS 28.10.401](#).

Sec. 34.85.090. Filing affixation affidavit with department.

When a person designated in an affixation affidavit to file the affixation affidavit with the department receives a certified copy of the recorded affixation affidavit, the person shall deliver the certified copy of the affixation affidavit to the department for filing under [AS 28.10.262](#) — 28.10.264.

Sec. 34.85.100. Use of affidavit.

(a) Except as provided in [AS 34.85.010](#), 34.85.020, 34.85.090, and [AS 40.17.125](#), an affixation affidavit is not necessary or effective to convey or encumber a manufactured home or to change the character of a manufactured home to real property.

(b) A conveyance of land on which a manufactured home is located must recite that the conveyance does not affect the title to the manufactured home and that the transfer or encumbrance of the manufactured home can only be made under [AS 28.10](#) if

(1) an affixation affidavit has not been recorded for the manufactured home; or

(2) a severance affidavit has been recorded for the manufactured home.

(c) An agreement that waives the requirements of (a) or (b) of this subsection is void.

Sec. 34.85.110. Severance of manufactured home.

If an affixation affidavit has been recorded for a converted manufactured home and if the converted manufactured home is severed from the real property to which it was affixed, each person having an interest in the real property shall record a severance affidavit in the recording district where the affixation affidavit was recorded.

Sec. 34.85.120. Severance affidavit.

The severance affidavit must contain or be accompanied by

(1) the name, residence, and mailing address of the owner of the manufactured home;

(2) a description of the manufactured home, including the name of the manufacturer, the make, the model name, the model year, the dimensions, and the manufacturer's serial number of the manufactured home;

(3) a statement of whether the manufactured home is new or used;

(4) the serial numbers and date when the affixation affidavit was recorded;

(5) a statement

(A) of any facts or information known to the person signing the affidavit that could reasonably affect the validity of the title to the manufactured home or the existence or nonexistence of a lien or encumbrance on the manufactured home; or

(B) that the person signing the affidavit does not know any facts or information that could reasonably affect the validity of the title to the manufactured home or the existence or nonexistence of a lien or encumbrance on the manufactured home;

(6) a declaration made under oath or affirmation by an attorney authorized under [AS 08.08](#) to practice law in the state or an agent of a title insurance company entitled under [AS 21.66](#) to transact a title insurance business in this state that the manufactured home is free and clear of all liens and encumbrances, and

(A) stating any facts or information known to the attorney or agent that could reasonably affect the validity of the title to the manufactured home or the existence or nonexistence of a lien or encumbrance on the manufactured home; or

(B) that the attorney or agent does not know any facts or information that could reasonably affect the validity of the title to the manufactured home or the existence or nonexistence of a lien or encumbrance on the manufactured home; and

(7) the name and address of the person designated to file the certified copy of the severance affidavit with the department under [AS 28.10.265](#).

Sec. 34.85.130. Filing of severance affidavit.

On receipt of a certified copy of the severance affidavit by the person designated in the affidavit for filing with the department, the person shall file the certified copy with the department under [AS 28.10.262](#) — 28.10.264.

Sec. 34.85.140. Affidavit form and acknowledgment.

(a) An affixation affidavit and a severance affidavit must be acknowledged in the same manner as a conveyance of real property and must be in a form that may be recorded under [AS 40.17](#).

(b) The department shall establish by regulation the forms for an affixation affidavit and a severance affidavit.

Sec. 34.85.150. Permanently affixed.

A manufactured home is permanently affixed when it is

(1) anchored to real property by attachment to a permanent foundation;

(2) constructed in accordance with applicable state and local building codes and manufacturer's specifications as provided in the Model Manufactured Home Installation Standards of the federal Department of Housing and Urban Development (24 C.F.R. 3285); and

(3) connected to a residential utility, including water, gas, electricity, sewer, or septic service.

Sec. 34.85.190. Definitions.

In this chapter, unless the context requires otherwise,

- (1) “affixation affidavit” means an affixation affidavit under [AS 34.85.060](#);
- (2) “department” means the Department of Administration;
- (3) “manufactured home” has the meaning given in [AS 45.29.102](#);
- (4) “permanently affixed” means when a manufactured home is permanently affixed under [AS 34.85.150](#);
- (5) “severance affidavit” means a severance affidavit under [AS 34.85.120](#).

Sec. 34.85.195. Short title.

This chapter may be cited as the Manufactured Home Property Act.