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# A BILL FOR AN ACT

RELATING TO PLANNED COMMUNITY ASSOCIATIONS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that planned community  
2 associations can have a major impact on the planned community  
3 and its members. Members of planned communities are not only  
4 subject to the restrictions and obligations in the recorded  
5 declarations and bylaws of the association, they are also  
6 subject to the decisions and actions of the association's board  
7 of directors and its agents. These boards and their agents may  
8 sometimes conduct the business of the association in an  
9 inconsistent manner, or without the knowledge and consent of the  
10 members of the association.

11           The purpose of this Act is make the actions of board  
12 members of planned community associations more transparent, and  
13 to increase the accountability of the board to the association.

14           SECTION 2. Chapter 421J, Hawaii Revised Statutes, is  
15 amended by adding three new sections to be appropriately  
16 designated and to read as follows:

17           "§421J-A Member's information request; written notice of  
18 assessment of the cost. (a) No member who pursuant to section



1 421J-7 requests copies of records or documents of the  
2 association or to examine records or documents of the  
3 association shall be charged for the cost of providing the  
4 information unless the association within ten days of receiving  
5 the request provides written notice to the member that it  
6 intends to charge the member for the cost of providing the  
7 information and of the amount to be charged; provided that no  
8 notice shall be required before assessing the cost of providing  
9 information on delinquent assessments or in connection with  
10 proceedings to enforce the law or the association's governing  
11 documents.

12 (b) A member within ten days of being notified of the cost  
13 of providing information shall notify the association in writing  
14 if the member wishes to continue with the request for  
15 information or withdraw the request. A member who withdraws a  
16 request pursuant to this subsection shall not be charged for the  
17 cost of providing the information.

18 **§421J-B Association fiscal matters; annual audits.** (a)  
19 The association shall obtain an annual audit of the  
20 association's financial accounts and no less than one annual  
21 unannounced verification of the association's cash balance by a  
22 certified public accountant licensed pursuant to section 466-5;



1 provided that if the association is comprised of less than  
2 twenty units, the annual audit and the annual unannounced cash  
3 balance verification may be waived by a majority vote of all  
4 members taken at an association meeting.

5 (b) The board shall make available a copy of the annual  
6 audit to each member at least thirty days prior to the annual  
7 meeting that follows the end of the fiscal year. The board  
8 shall not be required to submit a copy of the annual audit to a  
9 member if the proxy form issued pursuant to section 421J-4 is  
10 not marked to indicate that the member wishes to obtain a copy  
11 of the report.

12 (c) If the annual audit has not been completed and made  
13 available pursuant to subsection (b), the board shall make  
14 available:

15 (1) An unaudited year-end financial statement for the  
16 fiscal year to each member at least thirty days prior  
17 to the annual meeting; and

18 (2) The annual audit to all members at the annual meeting,  
19 or as soon as the audit is completed, but not later  
20 than six months after the annual meeting.

21 If the association's fiscal year ends less than two months prior  
22 to the convening of the annual meeting, the unaudited year-to-



1 date financial statement may cover the period from the beginning  
2 of the association's fiscal year to the end of the month  
3 preceding the date on which notice of the annual meeting is  
4 mailed.

5 **§421J-B Planned community members' interest.** (a) The  
6 director of commerce and consumer affairs may:

7 (1) Research, study, and analyze matters that affect the  
8 interest of members;

9 (3) Review this chapter and the laws affecting the  
10 interest of members and recommend legislation to the  
11 legislature to ensure protection of the rights of  
12 members;

13 (4) Pursuant to section 26-9(f), receive and conduct  
14 hearings on controversies or complaints between  
15 members and associations relating to the rights of  
16 members in a planned community and maintain a record  
17 of all complaints filed by members; and

18 (5) Take any other actions that promote and ensure the  
19 rights of members.

20 (b) The director of commerce and consumer affairs,  
21 pursuant to chapter 91 shall adopt rules to effectuate this  
22 section."



1 SECTION 3. Section 421J-5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 " ~~[f]~~ §421J-5 ~~[j]~~ **Meetings of the board of directors ~~[r]~~;**  
4 **conflict of interest; committee or subcommittee.** (a) ~~[Whenever~~  
5 ~~practicable, all]~~ All meetings of the board of directors, other  
6 than executive sessions, shall be open to all members. Members  
7 who are not on the board of directors may participate in any  
8 deliberation or discussion, other than executive sessions,  
9 unless a majority of a quorum of the board of directors votes  
10 otherwise.

11 (b) The board of directors shall meet at least once each  
12 year.

13 (c) Minutes of the meetings of the board of directors  
14 shall include the recorded vote of each board member on all  
15 motions except motions voted upon in executive session.

16 (d) The board of directors, with the approval of a  
17 majority of a quorum of its members, may adjourn any meeting and  
18 reconvene in executive session to discuss and vote upon matters  
19 concerning personnel, litigation in which the association is or  
20 may become involved, or as may be necessary to protect the  
21 attorney-client privilege of the association. The general



1 nature of any business to be considered in executive session  
2 shall be first announced in the regular session.

3 (e) No board member shall vote by proxy at board meetings.

4 (f) A director who has a conflict of interest on any issue  
5 before the board shall disclose the nature of the conflict of  
6 interest prior to a vote on that issue at the board meeting, and  
7 the minutes of the meeting shall record the fact that a  
8 disclosure was made. A director shall not vote at any board  
9 meeting on any issue in which the director has a conflict of  
10 interest.

11 (g) The board may appoint committees or subcommittees to  
12 review and consider any specific matters, and alter or eliminate  
13 the committees or subcommittees; provided the board in the  
14 minutes of the meeting at which the action was taken to appoint  
15 the committee or subcommittee shall:

16 (1) Report that the committee or subcommittee was  
17 appointed;

18 (2) Identify the members of the committee or subcommittee;  
19 and

20 (3) Describe the matter that the committee or subcommittee  
21 is to review and consider.



1 The board shall also report in the minutes of the meeting at  
2 which the action was taken, the alteration or elimination of any  
3 committee or subcommittee.

4 (h) As used in this section, "conflict of interest" means  
5 an issue in which a director has a direct personal or pecuniary  
6 interest not common to other members of the association."

7 SECTION 4. Section 421J-7, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "~~[f]~~ **§421J-7** ~~[f]~~ **Documents of the association.** (a) ~~[Upon~~  
10 ~~approval by the board,~~] Association documents, the most current  
11 financial statement of the association, and the minutes of the  
12 most recent meeting of the board of directors (other than  
13 minutes of executive sessions) shall be made available for  
14 examination by any member at no cost, on twenty-four-hour loan  
15 or during reasonable hours, at a location within the planned  
16 community designated by the board.

17 (b) ~~[The approved minutes of other meetings of the board,~~  
18 ~~other than executive sessions, and the approved meetings of the~~  
19 ~~association for the current and prior year, shall be made~~  
20 ~~available for examination by members during reasonable hours at~~  
21 ~~a location designated by the board. Copies of those meeting~~  
22 ~~minutes shall be provided to any member upon the member's~~



1 ~~request if the member pays a reasonable fee for duplication,~~  
2 ~~postage, stationery, and other administrative costs associated~~  
3 ~~with handling the request.] The minutes of board meetings other  
4 than executive sessions, once approved, for the current and  
5 prior year shall be:~~

6 (1) Available for examination by any member at no cost or  
7 on twenty-four-hour loan; or

8 (2) Transmitted to any member requesting copies of the  
9 minutes, by the board, the managing agent, or the  
10 association's representative, within fifteen days of  
11 receipt of the request; provided that:

12 (A) The minutes shall be transmitted by mail,  
13 electronic mail transmission, or facsimile, as  
14 requested by the member, if the member indicates  
15 a preference at the time of the request; and

16 (B) After notice of the assessment of costs is made  
17 pursuant to section 421J-A, reasonable costs of  
18 duplication, postage, stationery, and other  
19 administrative costs associated with handling the  
20 request shall be borne by the requesting member;

21 and

22 (3) Maintained by the association for at least five years.





1 (c) Financial statements, general ledgers, accounts  
2 receivable ledgers, accounts payable ledgers, check ledgers,  
3 insurance policies, contracts, invoices of the association for  
4 the [~~current and prior year,~~] duration those records are kept by  
5 the association, and any documents regarding delinquencies of  
6 ninety days or more[~~7~~] shall be made available for examination  
7 by members at reasonable hours at a location designated by the  
8 board; provided that members shall pay for all costs associated  
9 with the examination of these documents. The board may require  
10 members to furnish the association with an affidavit stating  
11 that the foregoing information is requested in good faith for  
12 the protection of the interests of the association, its members,  
13 or both. [~~Copies~~] After notice of the assessment of costs is  
14 made pursuant to section 421J-A, copies of these documents shall  
15 be provided to any member upon the member's request if the  
16 member pays a reasonable fee for duplication, postage,  
17 stationery, and other administrative costs associated with  
18 handling the request.

19 (d) Members may view proxies, tally sheets, ballots,  
20 members' check-in lists, and the certificates of election, if  
21 any, for a period of thirty days following any association  
22 meeting; provided that after notice of the assessment of costs



1 is made pursuant to section 421J-A, members [~~shall pay~~ may be  
2 charged for [~~all~~] any costs associated with the examination of  
3 the documents. The board may require members to furnish to the  
4 association an affidavit stating that the foregoing information  
5 is requested in good faith for the protection of the interests  
6 of the association, its members, or both. Proxies and ballots  
7 may be destroyed following the thirty-day period. [~~Copies~~]  
8 After notice of assessment of the cost is made pursuant to  
9 section 421J-A, copies of tally sheets, members' check-in lists,  
10 and the certificates of election from the most recent  
11 association meeting shall be provided to any member upon the  
12 member's request if the member pays a reasonable fee for  
13 duplication, postage, stationery, and other administrative costs  
14 associated with handling the request.

15 (e) Members may file a written request with the board to  
16 examine other documents of the association. The board shall  
17 give written authorization, or written refusal with an  
18 explanation of the refusal, for the examination within sixty  
19 calendar days of receipt of the request. [~~The~~] Section 421J-A  
20 notwithstanding, the board may condition its approval of any  
21 such request upon payment of reasonable fees[~~-~~], and shall  
22 notify the member in writing of the intent to charge fees and



1 the amount of the fees at the time of the authorization.

2 Without limitation, books and records kept by or on behalf of an  
3 association may be withheld from inspection and copying to the  
4 extent that they concern:

5 (1) Personnel records;

6 (2) An individual's medical records;

7 (3) Records relating to business transactions that are  
8 currently in negotiation;

9 (4) Communications [~~which~~] that are privileged because of  
10 attorney-client privilege or any other applicable  
11 privilege of the association;

12 (5) Complaints against an individual member of the  
13 association;

14 (6) Any records, the release of which could be a violation  
15 of any law, ordinance, rule, or regulation; or

16 (7) Similar records."

17 SECTION 5. In codifying the new sections added by section  
18 2 of this Act, the revisor of statutes shall substitute  
19 appropriate section numbers for the letters used in designating  
20 the new sections in this Act.



1 SECTION 6. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun, before its effective date.

4 SECTION 7. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 8. This Act shall take effect upon its approval.



HB 1936  
HD1

**Report Title:**

Planned Community Associations; Member's Interests

**Description:**

Requires planned community association (PCA) boards to give notice of the formation of a committee or subcommittee in meeting minutes, provide PCA members with better access to records, give members requesting information notice of intent to assess the cost of duplicating or producing association records, and annually audit association accounts and provide copies to members. Prohibits board members with a conflict of interest from voting. Authorizes DCCA to study PCA issues and propose legislation to protect member interests, and hear and resolve complaints. (HB1936 HD1)

