

JAN 24 2007

S.B. NO. 1821

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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 it was the  
2 legislature's intent that chapter 421J, Hawaii Revised Statutes  
3 (the planned community associations law), and the final  
4 paragraph of section 607-14, Hawaii Revised Statutes (which  
5 provides for attorneys' fees in association actions), would be  
6 construed broadly to apply to all situations in which planned  
7 community unit owners and lessees have an express or implied  
8 obligation to pay assessments or to comply with covenants  
9 related to the use of common areas, architectural control, the  
10 maintenance of units, or restrictions on the use of units.  
11 However, in *Kaanapali Hillside Homeowners Association v. Doran*,  
12 112 Hawaii 356, 145 P.3d 899 (2006), the intermediate court of  
13 appeals interpreted chapter 421J and section 607-14  
14 restrictively and in a manner contrary to the legislature's  
15 intent.

16           Therefore, the legislature finds that it is necessary to  
17 revise and clarify certain statutory provisions to assure that



1 planned community associations are able to effectively enforce  
2 their association documents, including but not limited to the  
3 enforcement of restrictive covenants and collection of  
4 assessments.

5 SECTION 2. Chapter 421J, Hawaii Revised Statutes, is  
6 amended by adding a new section to be appropriately designated  
7 and to read as follows:

8 "§421J- Interpretation. This chapter and any association  
9 documents shall be liberally construed to facilitate the  
10 operation of the planned community association."

11 SECTION 3. Section 421J-2, Hawaii Revised Statutes, is  
12 amended as follows:

13 1. By adding a new definition to be appropriately inserted  
14 and to read:

15 "Planned community association" or "association" means a  
16 nonprofit, incorporated, or unincorporated homeowners' or  
17 community association created and governed by a declaration or  
18 other document that imposes responsibilities on and grants  
19 authority to the association."

20 2. By amending the definitions of "declaration" and  
21 "planned community" to read:



1            "Declaration" means any [~~recorded instrument,~~] association  
2 document, however denominated, that imposes on an association  
3 maintenance or operational responsibilities for the common area  
4 and creates the authority in the association to impose on units,  
5 or on the owners or occupants of the units, any mandatory  
6 payment of money as a regular annual assessment or otherwise in  
7 connection with the provisions, maintenance, or services for the  
8 benefit of some or all of the units, the owners, or occupants of  
9 the units or the common areas. A declaration includes any  
10 amendment or supplement to the [~~instruments~~] documents described  
11 in this definition.

12            "Planned community" means a common interest community,  
13 other than a condominium or a cooperative housing corporation or  
14 a time share plan, which includes all of the following  
15 characteristics:

16            (1) Real property subject to a recorded declaration  
17                placing restrictions and obligations on the owners of  
18                the real property and providing for rights and  
19                responsibilities of a separate entity, the  
20                association:

21                (A) Which owns and maintains certain property within  
22                the planned community for the common use or



1 benefit, or both, of the owners of units within  
2 the planned community;

3 (B) Which is obligated to maintain certain property  
4 it does not own within the planned community for  
5 the common use or benefit, or both, of the owners  
6 of units within the planned community; [~~or~~]

7 (C) Which is obligated to provide services to any  
8 such owners or units; or

9 (D) Which is obligated to maintain certain property  
10 it does not own, whether or not such property is  
11 within the planned community, pursuant to any  
12 agreement with; permit issued by; or statute,  
13 ordinance, rule, or regulation of any  
14 governmental authority;

15 (2) Individual owners own separate units which are part of  
16 a planned community at least some of which are  
17 improved by or are to be improved by residential  
18 dwellings;

19 (3) Owners have automatic and non-severable membership in  
20 an association by virtue of ownership of units within  
21 the planned community; and



1 (4) Owners, other than a master developer or declarant,  
2 are obligated by any association documents to pay  
3 mandatory assessments by virtue of ownership of a unit  
4 within the planned community."

5 3. By repealing the definition of "association".

6 [~~"Association" means a nonprofit, incorporated, or~~  
7 ~~unincorporated organization upon which responsibilities are~~  
8 ~~imposed and to which authority is granted in a declaration which~~  
9 ~~governs a planned community." ]~~

10 SECTION 4. Section 607-14, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 **"§607-14 Attorneys' fees in actions in the nature of**  
13 **assumpsit, etc.** In all the courts, in all actions in the nature  
14 of assumpsit and in all actions on a promissory note or other  
15 contract in writing that provides for an attorney's fee, there  
16 shall be taxed as attorneys' fees, to be paid by the losing  
17 party and to be included in the sum for which execution may  
18 issue, a fee that the court determines to be reasonable;  
19 provided that the attorney representing the prevailing party  
20 shall submit to the court an affidavit stating the amount of  
21 time the attorney spent on the action and the amount of time the  
22 attorney is likely to spend to obtain a final written judgment,



1 or, if the fee is not based on an hourly rate, the amount of the  
2 agreed upon fee. The court shall then tax attorneys' fees, which  
3 the court determines to be reasonable, to be paid by the losing  
4 party; provided that this amount shall not exceed twenty-five  
5 per cent of the judgment.

6 Where the note or other contract in writing provides for a  
7 fee of twenty-five per cent or more, or provides for a  
8 reasonable attorney's fee, not more than twenty-five per cent  
9 shall be allowed.

10 Where the note or other contract in writing provides for a  
11 rate less than twenty-five per cent, not more than the specified  
12 rate shall be allowed.

13 Where the note or other contract in writing provides for  
14 the recovery of attorneys' fees incurred in connection with a  
15 prior debt, those attorneys' fees shall not be allowed in the  
16 immediate action unless there was a writing authorizing those  
17 attorneys' fees before the prior debt was incurred. "Prior debt"  
18 for the purposes of this section is the principal amount of a  
19 debt not included in the immediate action.

20 The above fees provided for by this section shall be  
21 assessed on the amount of the judgment exclusive of costs and



1 all attorneys' fees obtained by the plaintiff, and upon the  
2 amount sued for if the defendant obtains judgment.

3 Nothing in this section shall limit the recovery of  
4 reasonable attorneys' fees and costs by a planned community  
5 association and its members in actions for the collection of  
6 delinquent assessments, the foreclosure of any lien, or the  
7 enforcement of any provision of [~~the association's governing~~  
8 ~~documents,~~] any association documents or affect any right of a  
9 prevailing party to recover attorneys' fees in excess of twenty-  
10 five per cent of the judgment pursuant to any statute that  
11 specifically provides that a prevailing party may recover all of  
12 its reasonable attorneys' fees. [~~"Planned community association"~~  
13 ~~for the purposes of this section means a nonprofit homeowners or~~  
14 ~~community association existing pursuant to covenants running~~  
15 ~~with the land.] For the purposes of this section, "planned  
16 community association" and "association documents" shall have  
17 the same meaning as provided in section 421J-2."~~

18 SECTION 5. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

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

21  
INTRODUCED BY: Rosalyn H Baker



**Report Title:**

Planned community associations

**Description:**

Establishes planned community associations.

