

JAN 22 2008

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 chapter 421J, Hawaii
2 Revised Statutes, should be construed broadly to apply to all
3 situations in which real property owners or lessees have an
4 express or implied obligation to pay assessments or to comply
5 with covenants related to use of common areas, architectural
6 control, maintenance of units, or use restrictions on units.

7 The legislature further finds that some planned communities
8 and planned community associations that were created prior to
9 the enactment of chapter 421J, may not constitute planned
10 communities and planned community associations as those terms
11 are presently defined, thereby depriving those property owners
12 of the rights and protections provided by chapter 421J.

13 The purpose of this Act is to assure that planned community
14 associations are able to effectively enforce assessments and
15 restrictive covenants and to ensure that all property owners
16 within planned communities and members of planned community



1 associations are entitled to the rights and protections provided
2 by chapter 421J, Hawaii Revised Statutes.

3 SECTION 2. Chapter 421J, Hawaii Revised Statutes, is
4 amended by adding two new sections to be appropriately
5 designated and to read as follows:

6 "§421J- Interpretation. This chapter and any
7 association document subject thereto shall be liberally
8 construed to facilitate the operation of the planned community
9 association.

10 §421J- Restatement of association documents. (a)
11 Notwithstanding any provision of this chapter, an association,
12 by a resolution adopted by the board, may at any time restate
13 the association documents of the association to include
14 amendments to the association documents.

15 (b) An association, by a resolution adopted by the board,
16 may at any time, restate the association documents of the
17 association to amend the association documents as necessary to
18 conform with this chapter or any other applicable law,
19 ordinance, or rule; provided that any association documents
20 restated pursuant to this section shall:

21 (1) Identify each portion so restated;



- 1 (2) Contain a statement that those portions have been
- 2 restated solely for purposes of information and
- 3 convenience;
- 4 (3) Identify the law, ordinance, or rule implemented by
- 5 the amendment; and
- 6 (4) Contain a statement that, in the event of any
- 7 conflict, the restated association documents shall be
- 8 subordinate to the cited law, ordinance, or rule.

9 The restated association documents shall be effective for all
10 purposes as if adopted by a vote or written consent of the
11 members.

12 (c) Upon the adoption of a resolution pursuant to
13 subsection (a) or (b), the restated association documents shall
14 state all of the operative provisions of the original
15 association documents, together with a statement that the
16 restated association documents correctly state the corresponding
17 provisions of the association documents, and that the restated
18 association documents supersede the original association
19 documents and any relative amendments.

20 (d) A restated association document shall be recorded if
21 the original document was recorded and the restated association
22 documents shall supersede the original association documents and



1 any relative amendments. In the event of any conflict, the
2 restated association documents shall be subordinate to the
3 original association documents and any relative amendments."

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

6 1. By amending the definition of "association" to read:

7 "Association" means a nonprofit, incorporated, or
8 unincorporated organization [~~upon~~]:

9 (1) Upon which responsibilities are imposed and to which
10 authority is granted in a declaration which governs a
11 planned community[~~-~~]; or

12 (2) A planned community association as defined pursuant to
13 section 607-14."

14 2. By amending the definition of "declaration" to read:

15 "Declaration" means any [~~recorded instrument,~~] association
16 document, however denominated, that imposes on an association
17 maintenance or operational responsibilities for the common area
18 and creates the authority in the association to impose on units,
19 or on the owners or occupants of the units, any mandatory
20 payment of money as a regular annual assessment or otherwise in
21 connection with the provisions, maintenance, or services for the
22 benefit of some or all of the units, the owners, or occupants of



1 the units or the common areas. A declaration includes any
2 amendment or supplement to the [~~instruments~~] documents described
3 in this definition."

4 3. By amending the definition of "planned community" to
5 read:

6 "Planned community" means a common interest community,
7 other than a condominium or a cooperative housing corporation or
8 a time share plan, which includes some or all of the following
9 characteristics:

10 (1) Real property subject to a recorded declaration
11 placing restrictions and obligations on the owners of
12 the real property [~~and providing for rights and~~
13 ~~responsibilities of~~] that are enforced or enforceable
14 by a separate entity, the association[:], established
15 for that purpose whether or not mentioned in the
16 declaration, and:

17 (A) Which owns and maintains certain property within
18 the planned community for the common use or
19 benefit, or both, of the owners of units within
20 the planned community;

21 (B) Which is obligated to maintain certain property
22 it does not own within the planned community for



1 the common use or benefit, or both, of the owners
2 of units within the planned community; [~~or~~]

3 (C) Which is obligated to provide services to any
4 such owners or units; or

5 (D) Which is defined as a planned community
6 association pursuant to section 607-14;

7 (2) Individual owners own separate units which are part of
8 a planned community at least some of which are
9 improved by or are to be improved by residential
10 dwellings;

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

14 (4) Owners, other than a master developer or declarant,
15 are obligated by any association document to pay
16 mandatory assessments by virtue of ownership of a unit
17 within the planned community."

18 SECTION 4. Section 421J-12, Hawaii Revised Statutes, is
19 amended to read as follows:

20 " ~~[+]~~ §421J-12 ~~[+]~~ **Amendment of association documents when no**
21 **procedure provided.** (a) Whenever an association document
22 provides that it may be amended by the vote of association



1 members at a meeting, the association document may also be
2 amended by the written consent of the same percentage of
3 association members without a meeting.

4 (b) Whenever neither an association document nor any
5 applicable law provide procedures for amendment of that
6 document, the association document may be amended by the vote or
7 written consent of association members representing three-
8 fourths of the votes which association members are entitled to
9 cast with respect to a declaration and two-thirds of the votes
10 which association members are entitled to cast with respect to
11 other association documents; provided that this section shall
12 not apply to articles of incorporation or any association
13 documents which by their terms or as a matter of law may be
14 adopted or amended by the board of directors. Nothing in this
15 section shall be deemed to supersede or override any provision
16 of any association documents related to amendments, or any
17 provision of any law pertaining to associations or corporations.

18 (c) For purposes of this section, a requirement in any
19 association document that an owner must sign an amendment to
20 that document shall be satisfied by the receipt of a written
21 consent signed by the owner."



1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

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

4

INTRODUCED BY: *Cassidy H Baker*
By Request



Report Title:

Planned Community Associations

Description:

Allows for the restatement of planned community association documents.

