

JAN 21 2010

A BILL FOR AN ACT

RELATING TO PLANNED COMMUNITY ASSOCIATIONS.

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

1 SECTION 1. Section 421J-4, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~§421J-4 Proxies. [(a) A proxy shall be in writing and~~
4 ~~shall be valid for only a specified meeting of the association~~
5 ~~and any adjournments of that meeting.~~

6 ~~(b) A member of the association may give a proxy to any~~
7 ~~person or the board of directors as an entity, and the proxy may~~
8 ~~be limited as indicated by the member. No proxy shall be~~
9 ~~irrevocable unless:~~

10 ~~(1) The proxy is coupled with a financial interest in the~~
11 ~~unit; or~~

12 ~~(2) The proxy is held pursuant to a first mortgage of~~
13 ~~record encumbering a unit or an agreement of sale~~
14 ~~affecting a unit.~~

15 ~~(c) To be valid, a proxy shall:~~

16 ~~(1) Be delivered to the secretary of the association or~~
17 ~~the managing agent, if any, no later than 4:30 p.m. on~~



1 ~~the second business day prior to the date of the~~
2 ~~meeting to which it pertains;~~

3 ~~(2) Contain at least the name of the association, the date~~
4 ~~of the meeting of the association, the printed name~~
5 ~~and signature of the person or persons giving the~~
6 ~~proxy, the unit or units for which the proxy is given,~~
7 ~~and the date that the proxy is given; and~~

8 ~~(3) Contain boxes wherein the owner has indicated that the~~
9 ~~proxy is given:~~

10 ~~(A) For quorum purposes only;~~

11 ~~(B) To the individual whose name is printed on a line~~
12 ~~next to this box;~~

13 ~~(C) To the board of directors as a whole and that the~~
14 ~~vote be made on the basis of the preference of~~
15 ~~the majority of the board; or~~

16 ~~(D) To those directors present at the meeting and the~~
17 ~~vote to be shared with each board member~~
18 ~~receiving an equal percentage.~~

19 ~~(d) Any board of directors that uses association funds to~~
20 ~~distribute proxies that include the election of directors shall~~
21 ~~first post notice of its intent to distribute proxies in~~
22 ~~prominent locations within the project at least thirty days~~



1 ~~prior to its distribution of proxies, provided that if the board~~
2 ~~receives within seven days of the posted notice a request by any~~
3 ~~owner for nomination to the board accompanied by a statement,~~
4 ~~the board shall mail to all owners either:~~

5 ~~(1) A proxy form containing the names of all owners who~~
6 ~~have requested nomination to the board accompanied by~~
7 ~~their statements; or~~

8 ~~(2) A proxy form containing no names, but accompanied by a~~
9 ~~list of names of all owners who have requested~~
10 ~~nomination to the board and their statements.~~

11 ~~The statement shall not exceed one hundred words,~~
12 ~~indicating the owner's qualifications to serve on the board and~~
13 ~~reasons for wanting to receive proxies.~~

14 ~~(e) Nothing in this section shall affect the holder of any~~
15 ~~proxy under a first mortgage of record encumbering an apartment~~
16 ~~or under an agreement of sale affecting an apartment.~~

17 ~~(f) Nothing in this section shall prohibit the use of~~
18 ~~proxies for filling vacancies that occur after the notice of the~~

19 ~~annual meeting has been distributed.] (a) If only one of~~

20 ~~several owners of a unit is present at a meeting of the~~

21 ~~association, that owner is entitled to cast all the votes~~

22 ~~allocated to that unit. If more than one of the owners is~~



1 present, the votes allocated to that unit may be cast only in
2 accordance with the agreement of a majority in interest of the
3 owners, unless the declaration or bylaws expressly provide
4 otherwise. There is majority agreement if any one of the owners
5 casts the votes allocated to that unit without protest by any of
6 the other owners of the unit to the person presiding over the
7 meeting before the polls are closed.

8 (b) Votes allocated to a unit may be cast pursuant to a
9 proxy duly executed by a unit owner. A unit owner may vote by
10 mail or electronic transmission through a duly executed proxy.
11 If a unit is owned by more than one person, each owner of the
12 unit may vote or register a protest to the casting of votes by
13 the other owners of the unit through a duly executed proxy. In
14 the absence of a protest, any owner may cast the votes allocated
15 to the unit by proxy. A unit owner may revoke a proxy given
16 pursuant to this section only by actual notice of revocation to
17 the secretary of the association or the managing agent. A proxy
18 is void if it purports to be revocable without notice.

19 (c) No votes allocated to a unit owned by the association
20 may be cast for the election or reelection of directors.

21 (d) A proxy, to be valid, shall:



- 1 (1) Be delivered to the secretary of the association or
2 the managing agent, if any, no later than 4:30 p.m.
3 on the second business day prior to the date of the
4 meeting to which it pertains;
- 5 (2) Contain at least the name of the association, the date
6 of the meeting of the association, the printed names
7 and signatures of the persons giving the proxy, the
8 unit numbers for which the proxy is given, the names
9 of persons to whom the proxy is given, and the date
10 that the proxy is given; and
- 11 (3) If it is a standard proxy form authorized by the
12 association, contain boxes wherein the owner has
13 indicated that the proxy is given:
- 14 (A) For quorum purposes only;
- 15 (B) To the individual whose name is printed on a line
16 next to this box;
- 17 (C) To the board as a whole and that the vote is to
18 be made on the basis of the preference of the
19 majority of the directors present at the meeting;
20 or



1 (D) To those directors present at the meeting with
2 the vote to be shared with each director
3 receiving an equal percentage.

4 (e) A proxy shall be valid only for the meeting to which
5 the proxy pertains. A unit owner may designate any person as
6 proxy and may be limit the proxy as the unit owner desires and
7 indicates; provided that no proxy shall be irrevocable unless
8 coupled with a financial interest in the unit.

9 (f) A copy, facsimile telecommunication, or other reliable
10 reproduction of a proxy may be used in lieu of the original
11 proxy for any and all purposes for which the original proxy
12 could have been used; provided that any copy, facsimile
13 telecommunication, or other reproduction of the proxy shall be a
14 complete reproduction of the entire original proxy.

15 (g) Nothing in this section shall affect the holder of any
16 proxy under a first mortgage of record encumbering a unit or
17 under an agreement of sale affecting a unit.

18 (h) With respect to the use of association funds to
19 distribute proxies:

20 (1) Any board that intends to use association funds to
21 distribute proxies, including the standard proxy form
22 referred to in subsection (d)(3), shall first post



1 notice of its intent to distribute proxies in
2 prominent locations within the project at least
3 twenty-one days before its distribution of proxies.

4 If the board receives within seven days of the posted
5 notice, a request by any owner for use of association
6 funds to solicit proxies accompanied by a statement,
7 the board shall mail to all owners:

8 (A) A proxy form containing the names of all owners
9 who have requested the use of association funds
10 for soliciting proxies accompanied by their
11 statements; or

12 (B) A proxy form containing no names, but accompanied
13 by a list of names of all owners who have
14 requested the use of association funds for
15 soliciting proxies and their statements.

16 The statement shall be limited to black text on white
17 paper, shall not exceed one single-sided 8-1/2" x 11"
18 page, and indicate the owner's qualifications to serve
19 on the board or reasons for wanting to receive
20 proxies; and

21 (2) A board or member may use association funds to solicit
22 proxies as part of the distribution of proxies. If a



1 member of the board, as an individual, seeks to
2 solicit proxies using association funds, the board
3 member shall proceed as a unit owner under paragraph
4 (1).

5 (i) No managing agent, resident manager, or their
6 employees, shall solicit, for use by the managing agent or
7 resident manager, any proxies from any unit owner of the
8 association that retains the managing agent or employs the
9 resident manager, nor shall the managing agent or resident
10 manager cast any proxy vote at any association meeting except
11 for the purpose of establishing a quorum.

12 (j) No board shall adopt any rule prohibiting the
13 solicitation of proxies or distribution of materials relating to
14 association matters on the common elements by unit owners;
15 provided that a board may adopt rules regulating reasonable
16 time, place, and manner of the solicitation or distribution of
17 proxies, or both."

18 SECTION 2. Section 421J-6, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "[†] §421J-6 [†] **Robert's Rules of Order.** All association
21 and board of directors meetings shall be conducted in accordance



1 with the most current edition of Robert's Rules of Order [7]
2 Newly Revised."

3 SECTION 3. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 4. This Act shall take effect upon its approval.

6

INTRODUCED BY:

Norman Sakonch



Report Title:

Planned Community Associations

Description:

Conforms planned community association laws with respect to proxies to comparable provisions regulating condominium property regimes.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

