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

3           "~~§421J-4~~ Voting; Proxies. [~~(a)~~ A proxy shall be in  
4 writing and shall be valid for only a specified meeting of the  
5 association 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 shall 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 to the  
6 person presiding over the meeting by any of the other owners of  
7 the unit 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 shall be cast by proxy for the election or reelection of  
21 directors.

22 (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 whether 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 the box; or

17       (C) To those directors present at the meeting so that  
18       the vote shall be shared to give each candidate  
19       an equal percentage.

20       (e) A proxy shall be valid only for the meeting to which  
21       the proxy pertains. A unit owner may designate any person as  
22       proxy and may limit the proxy as the unit owner desires and



1 indicates; provided that no proxy shall be irrevocable unless it  
2 is coupled with a financial interest in the unit.

3 (f) A copy, facsimile telecommunication, or other reliable  
4 reproduction of a proxy may be used in lieu of the original  
5 proxy for any and all purposes for which the original proxy  
6 could have been used; provided that any copy, facsimile  
7 telecommunication, or other reproduction of the proxy shall be a  
8 complete reproduction of the entire original proxy.

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

12 (h) With respect to the use of association funds to  
13 distribute proxies:

14 (1) Any board that intends to use association funds to  
15 distribute proxies, including the standard proxy form  
16 referred to in subsection (d)(3), shall first post  
17 notice in prominent locations within the project of  
18 its intent to distribute proxies at least twenty-one  
19 days before the distribution of proxies. If, within  
20 seven days of the posted notice, the board receives a  
21 request by any owner to use association funds to



1 solicit proxies accompanied by a statement, the board  
2 shall mail to all owners:

3 (A) A proxy form containing the names of all owners  
4 who have requested the use of association funds  
5 to solicit proxies accompanied by the owners'  
6 statements; or

7 (B) A proxy form containing no names, but accompanied  
8 by a list of names and the statements of all  
9 owners who have requested the use of association  
10 funds to solicit proxies.

11 For purposes of this section, an owner's statement  
12 shall be limited to black text on white paper, shall  
13 not exceed one single-sided 8-1/2" x 11" page, and  
14 shall indicate the owner's qualifications to serve on  
15 the board or reasons for wanting to receive proxies;

16 (2) A board or member may use association funds to solicit  
17 proxies as part of the distribution of proxies. If a  
18 member of the board, as an individual, seeks to  
19 solicit proxies using association funds, the board  
20 member shall proceed as a unit owner under paragraph  
21 (1); and



1       (3) An association may comply with this subsection by  
2       making information available to unit owners, at the  
3       option of the owner and at no cost to the unit owner  
4       for reviewing or downloading the information, through  
5       an Internet site.

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

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

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

21       "~~+~~**\$421J-6**~~+~~ **Robert's Rules of Order.** All association  
22       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. A parliamentarian shall not be required to be  
3 present."

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

6 SECTION 4. This Act shall take effect upon approval;  
7 provided that the requirements of this Act shall not take effect  
8 until January 1, 2011.



**Report Title:**

Planned Community Associations

**Description:**

Conforms planned community association laws with respect to proxies to comparable provisions regulating condominium associations. States that a parliamentarian shall not be required to be present at association and board of directors meetings. (SB2222 HD1)

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

