

# SB392

Measure Title: RELATING TO CONDOMINIUMS.  
Report Title: Condominiums; Associations; Meetings; Voting; Proxies  
Description: Clarifies that when a standard proxy form is returned with no boxes checked or more than one box checked, the proxy shall be deemed defective and shall be counted for quorum purposes only.  
Companion: [HB239](#)  
Package: None  
Current Referral: CPH  
Introducer(s): BAKER, K. RHOADS, S. Chang, Espero, Nishihara

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 20, 2017 12:21 AM  
**To:** CPH Testimony  
**Cc:** steveghi@gmail.com  
**Subject:** Submitted testimony for SB392 on Feb 23, 2017 09:30AM

**SB392**

Submitted on: 2/20/2017

Testimony for CPH on Feb 23, 2017 09:30AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Steve Glanstein	Hawai State Association of Parliamentarians	Comments Only	Yes

Comments: Comments: Aloha, SB392 contains the following language, "If it is a standard proxy form authorized by the association and is returned with no box checked or more than one box checked, be deemed defective and be counted for quorum purposes only." I suggest that the words, "be deemed defective and" be amended since the use of a proxy for quorum purposes only is NOT a defective proxy; it is a directed proxy that can only be used to establish quorum. Quorum only proxies usually act as a "no" for elections and adopting main motions at the meeting due to the commonly used majority present rule. More precise language might be, "If it is a standard proxy form authorized by the association and is returned with no box checked or more than one box checked, unless otherwise defective, shall be used for quorum purposes only." Finally, if the legislature wishes to remain involved with the proxy forms for Condominium Associations and Planned Community Associations, we suggest that this language also be inserted into the Planned Community Association Act, HRS §421J-4 so the proxy forms are identical. This will help to avoid re-creating issues with differences between Condominiums and Planned Community Associations.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 20, 2017 9:17 AM  
**To:** CPH Testimony  
**Cc:** richard.emery@associa.us  
**Subject:** Submitted testimony for SB392 on Feb 23, 2017 09:30AM

**SB392**

Submitted on: 2/20/2017

Testimony for CPH on Feb 23, 2017 09:30AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Richard Emery	Associa	Support	Yes

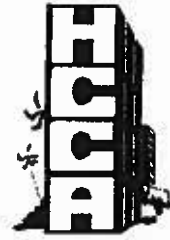
Comments: Support with amendment that the word defective be eliminated and that the proxy become a directed proxy for quorum purposes only.

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**Hawaii Council of Associations  
of Apartment Owners**  
**DBA: Hawaii Council of Community Associations**  
1050 Bishop Street, #366, Honolulu, Hawaii 96813



February 22, 2017

Senator Roslyn Baker, Chair  
Senator Clarence Nishihara, Vice-Chair  
Senate Committee on Commerce, Consumer Protection and Health

Re: Testimony in Support of  
SB392 RELATING TO CONDOMINIUMS  
Hearing: Thursday, February 23, 2017, 9:30 a.m., Conf. Rm. #229

Chair Baker, Vice-Chair Nishihara and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO dba HCCA). This organization represents the interests of condominium and community association members.

HCAAO strongly supports this bill and urges that you pass it out. It has been brought to our attention that some owners have been notified by their Boards that a proxy with no boxes checked or 2 boxes checked will default to the Board of Directors. We feel that such a proxy is defective based on inadvertence or oversight and that the default should not be to the Board of Directors.

If you have any questions, please feel free to contact me. Thank you for the opportunity to testify on this matter.

  
Jane Sugimura  
President



February 22, 2017

VIA WEB TRANSMITTAL

Hearing Date: Thursday, February 23, 2016

Time: 9:30 a.m.

Place: Conference Room 229

State Capitol

Committee on Commerce, Consumer Protection, and Health

The Senate, the 29<sup>th</sup> Legislature

Regular Session of 2017

Re: Community Associations Institute's Comments on SB392

Dear Chair Baker, Vice Chair Nishihara and Committee members:

I am the Vice Chair of the Community Associations Legislative Action Committee ("CAI"). CAI respectfully provides the following comments for SB392 for your consideration.

A defective ballot usually shall be set side and will not be counted as vote at all. To fulfill the legislative intent of SB392, we recommend the proposed ambiguous language amending HRS § 514B-123 be revised to delete "be deemed defective and" and simply states:

"If it is a standard proxy form authorized by the association and is returned with no box checked or more than one box checked, be counted for quorum purposes only."

To avoid potential confusion among property managers and Board directors, the legislators may consider proposing a similar amendment to HRS § 421J-4 to make the

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proxy rules for planned community association consistent with condominium associations.

Sincerely yours,

CAI LAC Hawaii

A handwritten signature in cursive script that reads "Na Lan".

By Na Lan  
Its Vice Chair

# ONE KALAKAUA SENIOR LIVING ASSOCIATION

## PROXY

**Note:** Please check only one of the following boxes. If no proxy holder is designated, or if no box is checked, or if more than one box is checked, the proxy shall be given to the Board of Directors as a whole. If you are not present at the meeting, this proxy designates your proxy holder as your substitute for any proxies assigned to you unless you designate another substitute in writing subsequent to this proxy.

The undersigned, being the owner(s) of the apartment(s) shown below, does hereby constitute and appoint

- The Board as a whole, to be voted on the basis of the preference of a majority of the Directors present at the meeting, or
- The Directors present at the meeting and the vote to be shared with each Director receiving an equal percentage, or
- \_\_\_\_\_ The individual whose name is printed on this line (to be used for quorum if absent and if the individual has not assigned his proxy)

as the undersigned's attorney and agent, with full power of substitution, to act in the undersigned's name, place, and stead, and to vote the undersigned's proxy at the March 25, 2015 Annual Association meeting to be held Onsite at 2:00 p.m. (registration begins at 1:15 p.m.), and at any and all adjournments thereof, for the transaction of any and all business that may properly come before the meeting, including the election or re-election of directors, according to the proportional interest in the common elements that the undersigned would be entitled to vote if then personally present, hereby revoking any proxy or proxies heretofore given, and ratifying and confirming all that said attorney and agent may do by virtue hereof, or

For quorum purposes only.

This proxy is valid only for the meeting cited above and any and all adjournments thereof. If I/we attend the meeting in person, I/we may request a ballot to vote in person thereby voiding this proxy (if not previously exercised). Receipt of notice of said meeting is hereby acknowledged.

**PRINTED NAME(S) OF OWNER(S) [REQUIRED BY LAW]:**

**SIGNATURE(S) OF OWNER(S) [REQUIRED BY LAW]:**

\_\_\_\_\_

\_\_\_\_\_

**UNIT NO(S) \_\_\_\_\_**  
[REQUIRED BY LAW]

**DATE SIGNED: \_\_\_\_\_**  
[REQUIRED BY LAW] Do not post date.

Sign and print your name as it appears in the Association's records, and provide your unit number(s) and the date. Persons signing in a representative capacity (personal representatives, executors, administrators, trustees, guardians, conservators, partners, members of a member-managed LLC, managers of a manager-managed LLC, and corporate officers) are to add their titles and, if requested, are to submit evidence of their authority to act in that capacity.

For this proxy to be valid, the proxy must be received by the Association's Managing Agent or Secretary no later than 4:30 p.m., on March 23, 2015. Proxies may be faxed to (808) 593-6333.

IF NOT PROVIDED PRIOR TO OR TOGETHER WITH THE NOTICE OF MEETING, I-WISH TO OBTAIN A COPY OF THE ANNUAL AUDIT REPORT IF ACCOMPLISHED.

Date Received \_\_\_\_\_ by Managing Agent/Board Secretary

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 22, 2017 10:44 AM  
**To:** CPH Testimony  
**Cc:** albertd@hawaiianprop.com  
**Subject:** Submitted testimony for SB392 on Feb 23, 2017 09:30AM

**SB392**

Submitted on: 2/22/2017

Testimony for CPH on Feb 23, 2017 09:30AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
AI Denys	Hawaii CAI LAC & Hawaiian Properties	Oppose	No

Comments: Aloha, We are in opposition to SB 392. Mahalo. warmest aloha AI Denys

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 21, 2017 8:04 PM  
**To:** CPH Testimony  
**Cc:** lila.mower@gmail.com  
**Subject:** \*Submitted testimony for SB392 on Feb 23, 2017 09:30AM\*

**SB392**

Submitted on: 2/21/2017

Testimony for CPH on Feb 23, 2017 09:30AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lila Mower	Hui `Oia`i`o	Support	No

Comments:

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My name is John Morris and I am submitting testimony in opposition to SB 370. The preamble to the bill notes that the board has broad authority. The board has that authority because the owners have given it authority through the governing documents. If the owners wanted to be involved in every aspect of condominium governance, they could easily amend their documents and take that authority away from the board.

Every decision would have to be approved by the membership, after a town hall meeting, and the governance of the association would almost certainly grind to a halt. Alternatively, very few of the owners would even show up to make decisions and little would happen because there would be insufficient owners to participate.

The owners don't make that change because they would rather do something else than act on behalf of their association. If that was not the case, the owners could run for the board themselves. Instead, this bill proposes that any owner who shows up at the meeting gets to act as a board member. Of course, if the owner in question did run for the board and was not elected, that raises a question of whether his or her fellow decided the owners in question should NOT represent them. This bill would overturn that type of decision.

Essentially, this bill proposes that after all the owners, at an annual meeting, have elected a board of directors to act on behalf of all the owners, the board will have to take advice from any owner who shows up at the meeting. Under this bill, that will have to happen no matter what because the bill takes away the board's ability to control its own meetings. For example, owners frequently show up at board meetings long after the board has reached the point of proceeding with the work. Even if the owner is telling board things that the board has already investigated and dealt with, the board will have to sit there and listen to the owner tell them something they already know.

(I was at a meeting a few weeks ago in which an owner stood up and said that no one had told the owners about the special assessment to replace the pipes. The president replied that if the owner had bothered to attend the board meeting, the board had been discussing issues for the last 12 months at every monthly meeting.)

Moreover, if 10 owners happen to show up because, for example, the board has decided to impose a large assessment to fund the replacement of pipes in the building or windows or something similar, the board will have to give each of those 10 owners a "reasonable" time to give their opinions and advice to the board. If the board gives each of the 10 owners two minutes, that will be 20 minutes of time spent listening. If there are three or four items on the agenda, that will extend the board's meeting by 60 to 80 minutes. Being on the board is hard enough without having to spend additional time at a board meeting simply listening to owners.

The legislature does not have a rule that obligates it to surrender control of committee meeting to members of the public. For example, at every decision-making hearing, the legislature specifically excludes testimony from those present, unless the legislature specifically decides it wishes to hear from a particular attendee. Therefore, it is unclear

why this bill proposes to take away from condominium boards that same ability to control their meetings.

Thank you for this opportunity to testify

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 20, 2017 4:51 PM  
**To:** CPH Testimony  
**Cc:** lynnehi@aol.com  
**Subject:** Submitted testimony for SB392 on Feb 23, 2017 09:30AM

**SB392**

Submitted on: 2/20/2017

Testimony for CPH on Feb 23, 2017 09:30AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
lynne matusow	Individual	Support	No

Comments: Often owners do not properly complete their proxy forms. This can result in needing redos of an annual meeting. As an owner and board member I know too well the havoc this can bring. This bill is necessary and should be supported. lynne matusow

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 21, 2017 4:28 PM  
**To:** CPH Testimony  
**Cc:** aanderson@alf-hawaii.com  
**Subject:** Submitted testimony for SB392 on Feb 23, 2017 09:30AM

**SB392**

Submitted on: 2/21/2017

Testimony for CPH on Feb 23, 2017 09:30AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Anne Anderson	Individual	Oppose	Yes

Comments: S.B. 392 contains the following language, "If it is a standard proxy form authorized by the association and is returned with no box checked or more than one box checked, be deemed defective and be counted for quorum purposes only." Because this language follows the provision that includes a box for an owner to check if he or she wants to receive a copy of the audit report, it could be construed to mean that if an owner checks a box giving the proxy to the Board as a whole, individual directors, or to an individual, and the box stating that he wants a copy of the audit, the proxy will be deemed defective because he checked two boxes. This is an unintended consequence. If the bill is to move forward, it needs to be revised to make it clear that the new section does not apply to the box pertaining to the audit. Additionally, if this bill moves forward, the wording should be amended. The words "deemed defective and" should be deleted since the use of a proxy for quorum purposes only is not a defective proxy; it is a directed proxy that can only be used to establish quorum. Finally, the beginning of this section states "(d) a proxy, to be valid, shall: . . ." The new subparagraph (4) is awkwardly worded and does not flow with the beginning of HRS Section 514B-123(d). The bill should be amended and re-written if it is to advance forward. Sincerely, Anne Anderson

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**Richard J. Port**  
**1600 Ala Moana Blvd. #3100**  
**Honolulu, Hawaii 96815**  
**Tel 808-941-9624**  
**e-mail: [portr001@hawaii.rr.com](mailto:portr001@hawaii.rr.com)**

**Measure:** SB 392 Relating to Condominiums

**Date and Time of Hearing:** 9:30 a.m. Thursday, February 23, 2017

**Committee:** The Committee on Commerce, Consumer Protection & Health

Aloha Senator Baker and Members of your Committee,

I am testifying in strong support of SB 392. A proxy that is marked for two candidates or for no candidate should be counted only for quorum.

I am aware that sometimes condominium Property Management companies and Boards have used such proxies for their own re-election. Another testifier will be providing you with a copy of one of these defective proxies.

Please approve SB 392.

Richard Port