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## A BILL FOR AN ACT

RELATING TO HOMEOWNERS' ASSOCIATIONS.

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

1           SECTION 1. The legislature finds that under *Paradise Hui*  
2 *Hanalike v. Hawaiian Paradise Park Corporation*, 66 Haw. 362, 662  
3 P.2d 211 (1983), a landowner has a duty to contribute to the  
4 maintenance of roads that abut the landowner's lot. However,  
5 the legislature also finds that for those instances where  
6 common-interest community subdivisions were created without  
7 entities to collect those contributions or homeowners'  
8 association dues or be responsible for the maintenance of common  
9 areas such as private roads or parks, it is necessary to create  
10 a procedure for the creation of those entities.

11           The purpose of this Act is to authorize the creation of  
12 homeowners' associations that are not subject to chapter 421J,  
13 Hawaii Revised Statutes.

14           SECTION 2. The Hawaii Revised Statutes is amended by  
15 adding a new chapter to title 28 to be appropriately designated  
16 and to read as follows:



1 "CHAPTER

2 HOMEOWNERS' ASSOCIATIONS

3 § -1 Definitions. As used in this chapter, unless the  
4 context requires otherwise:

5 "Assessment" means a sum or sums of money payable to the  
6 association, to the developer or other owner of common areas, or  
7 to recreational facilities and other properties serving the  
8 parcels by the owners of one or more parcels as authorized in  
9 the governing documents, which if not paid by the owner of a  
10 parcel, can result in a lien against the parcel.

11 "Common area" means all real property within a community  
12 that is owned or leased by an association or dedicated for use  
13 or maintenance by the association or its members, including,  
14 regardless of whether title has been conveyed to the  
15 association:

- 16 (1) Real property the use of which is dedicated to the  
17 association or its members by a recorded plat; or  
18 (2) Real property committed by a declaration of covenants  
19 to be leased or conveyed to the association.

20 "Common-interest community association" means landowners  
21 whose properties abut roads that are not owned by a separate



1 entity but the title of which is held in common with other  
2 landowners whose deed descriptions refer to the same planned  
3 community or subdivision.

4 "Community" means the real property that is or will be  
5 subject to a declaration of covenants that is recorded in the  
6 county where the property is located.

7 "Declaration of covenants", or "declaration", means a  
8 recorded written instrument or instruments in the nature of  
9 covenants running with the land that subject the land comprising  
10 the community to the jurisdiction and control of an association  
11 or associations in which the owners of the parcels, or their  
12 association representatives, shall be members.

13 "Developer" means a person or entity that:

- 14 (1) Creates the community served by the association; or  
15 (2) Succeeds to the rights and liabilities of the person  
16 or entity that created the community served by the  
17 association, provided that the succession is evidenced  
18 in writing.

19 "Escalation clause" means any clause in a lease that  
20 provides that the rental rate under the lease or agreement shall  
21 increase at the same percentage rate as any nationally



1 recognized and conveniently available commodity or consumer  
2 price index.

3 "Governing documents" means:

4 (1) The recorded declaration of covenants for a community  
5 and all duly adopted and recorded amendments,  
6 supplements, and recorded exhibits thereto;

7 (2) The articles of incorporation and bylaws of the  
8 homeowners' association and any duly adopted  
9 amendments thereto; and

10 (3) Rules adopted under the authority of the recorded  
11 declaration, articles of incorporation, or bylaws and  
12 duly adopted amendments thereto.

13 "Governmental entity" means the State, including the  
14 executive, legislative, and judicial branches of government, the  
15 counties, and any of their boards, commissions, and agencies.

16 "Homeowners' association" means a common-interest community  
17 association with a legally created entity obligated with the  
18 maintenance of common areas, including parks and private roads,  
19 of common use or benefit of the landowners subject to that  
20 entity.



1 "Member" means a member of an association, and may include  
2 a parcel owner or an association representing parcel owners or a  
3 combination of them, and includes any person or entity obligated  
4 by the governing documents to pay an assessment or amenity fee.

5 "Parcel" means a platted or unplatted lot, tract, unit, or  
6 other subdivision of real property within a community, as  
7 described in the declaration:

8 (1) That is capable of separate conveyance; and

9 (2) Of which the parcel owner, or an association in which  
10 the parcel owner is a member, is obligated:

11 (A) By the governing documents to be a member of an  
12 association that serves the community; and

13 (B) To pay to the homeowners' association assessments  
14 that, if not paid, may result in a lien.

15 "Parcel owner" means the record owner of legal title to a  
16 parcel.

17 "Persons who control or disburse funds of the association"  
18 includes persons authorized to sign checks on behalf of the  
19 association and the president, secretary, and treasurer of the  
20 association.



1 "Qualifying offer" means a written offer to pay all amounts  
2 secured by the lien of the association plus amounts accruing  
3 during the pendency of the offer.

4 "Voting interest" means the voting rights distributed to  
5 the members of the homeowners' association, pursuant to the  
6 governing documents.

7 § -2 Purposes, scope, and application. a) The  
8 legislature recognizes that it is not in the best interest of  
9 homeowners' associations or the individual association members  
10 to create or impose a bureau or other agency of state government  
11 to regulate the affairs of homeowners' associations. However,  
12 the legislature finds that homeowners' associations and their  
13 individual members will benefit from an expedited alternative  
14 process for resolution of election and recall disputes and pre-  
15 suit mediation of other disputes involving assessments and  
16 authorizes the county to hear, administer, and determine these  
17 disputes as more fully set forth in this chapter.

18 (b) The purpose of this chapter is to give statutory  
19 recognition to non-profit corporations that operate residential  
20 communities in this State, to provide procedures for operating  
21 homeowners' associations, and to protect the rights of



1 association members without unduly impairing the ability of the  
2 associations to perform their functions.

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4 (c) This chapter shall not apply to:

5 (1) A community that is composed of property primarily  
6 intended for commercial, industrial, or other  
7 nonresidential use;

8 (2) The commercial or industrial parcels in a community  
9 that contains both residential parcels and parcels  
10 intended for commercial or industrial use; or

11 (3) An association that is a planned community association  
12 regulated under chapter 421J.

13 § -3 Association powers and duties. (a) An association  
14 that operates a community shall be a Hawaii corporation. The  
15 association's initial governing documents shall be recorded in  
16 the official records of the county in which the community is  
17 located. An association may operate more than one community.

18 (b) The officers and directors of an association have a  
19 fiduciary relationship to the members who are served by the  
20 association.



1           (c) The powers and duties of an association include those  
2 set forth in this chapter and, except as expressly limited or  
3 restricted in this chapter, those set forth in the governing  
4 documents. After control of the association is obtained by  
5 members other than the developer, the association may institute,  
6 maintain, settle, or appeal actions or hearings in its name on  
7 behalf of all members concerning matters of common interest to  
8 the members, including:

- 9           (1) The common areas;
- 10           (2) Roof or structural components of a building, or other  
11           improvements for which the association is responsible;
- 12           (3) Mechanical, electrical, or plumbing elements serving  
13           an improvement or building for which the association  
14           is responsible; and
- 15           (4) Representations of the developer pertaining to any  
16           existing or proposed commonly used facility.
- 17           (d) The association may defend actions in eminent domain  
18 or bring inverse condemnation actions. Before commencing  
19 litigation against any party in the name of the association  
20 involving amounts in controversy in excess of \$100,000, the  
21 association shall obtain the affirmative approval of a majority





1 of the voting interests at a meeting of the membership at which  
2 a quorum has been attained.

3 (e) This section shall not limit any statutory or common-  
4 law right of any individual member or class of members to bring  
5 any action without participation by the association. A member  
6 shall not have authority to act for the association by virtue of  
7 being a member. An association may have more than one class of  
8 members and may issue membership certificates. An association  
9 of fifteen or fewer parcel owners may enforce only the  
10 requirements of those deed restrictions established prior to the  
11 purchase of each parcel upon an affected parcel owner or owners.

12 § -4 Meetings of the board. (a) Members of the board  
13 of administration may use e-mail as a means of communication but  
14 may not cast a vote on an association matter via e-mail. A  
15 meeting of the board of directors of an association occurs  
16 whenever a quorum of the board gathers to conduct association  
17 business. Meetings of the board shall be open to all members,  
18 except for meetings between the board and its attorney with  
19 respect to proposed or pending litigation where the contents of  
20 the discussion would otherwise be governed by the attorney-  
21 client privilege. A meeting of the board shall be held at a



1 location that is accessible to a physically handicapped person  
2 if requested by a physically handicapped person who has a right  
3 to attend the meeting. This section shall also apply to the  
4 meetings of any committee or other similar body when a final  
5 decision will be made regarding the expenditure of association  
6 funds and to meetings of any body vested with the power to  
7 approve or disapprove architectural decisions with respect to a  
8 specific parcel of residential property owned by a member of the  
9 community.

10 (b) Members have the right to attend all meetings of the  
11 board. The right to attend meetings includes the right to speak  
12 at the meetings with reference to all designated items. The  
13 association may adopt written reasonable rules expanding the  
14 right of members to speak and governing the frequency, duration,  
15 and other manner of member statements, which rules shall be  
16 consistent with this subsection and may include a sign-up sheet  
17 for members wishing to speak. Notwithstanding any other law,  
18 meetings between the board or a committee and the association's  
19 attorney to discuss proposed or pending litigation or meetings  
20 of the board held for the purpose of discussing personnel



1 matters are not required to be open to the members other than  
2 directors.

3 (c) The bylaws shall provide the following for giving  
4 notice to parcel owners and members of all board meetings and,  
5 if they do not do so, shall be deemed to include the following:

6 (1) Notices of all board meetings shall be posted in a  
7 conspicuous place in the community at least forty-  
8 eight hours in advance of a meeting, except in an  
9 emergency. In the alternative, if notice is not  
10 posted in a conspicuous place in the community, notice  
11 of each board meeting shall be mailed or delivered to  
12 each member at least seven days before the meeting,  
13 except in an emergency. Notwithstanding this general  
14 notice requirement, for communities having more than  
15 one hundred members, the association bylaws may  
16 provide for a reasonable alternative to posting or  
17 mailing of notice for each board meeting, including  
18 publication of notice, provision of a schedule of  
19 board meetings, or the conspicuous posting and  
20 repeated broadcasting of the notice on a closed-  
21 circuit cable television system serving the



1 homeowners' association; provided that if broadcast  
2 notice is used in lieu of a notice posted physically  
3 in the community, the notice shall be broadcast at  
4 least four times every broadcast hour of each day that  
5 a posted notice is otherwise required. When broadcast  
6 notice is provided, the notice and agenda shall be  
7 broadcast in a manner and for a sufficient continuous  
8 length of time so as to allow an average reader to  
9 observe the notice and read and comprehend the entire  
10 content of the notice and the agenda. The association  
11 may provide notice by electronic transmission in a  
12 manner authorized by law for meetings of the board of  
13 directors, committee meetings requiring notice under  
14 this section, and annual and special meetings of the  
15 members to any member who has provided a facsimile  
16 number or e-mail address to the association to be used  
17 for those purposes; provided further that a member  
18 shall consent in writing to receiving notice by  
19 electronic transmission;

- 20 (2) An assessment may not be levied at a board meeting  
21 unless the notice of the meeting includes a statement



1 that assessments will be considered and the nature of  
2 the assessments. Written notice of any meeting at  
3 which special assessments will be considered or at  
4 which amendments to rules regarding parcel use will be  
5 considered shall be mailed, delivered, or  
6 electronically transmitted to the members and parcel  
7 owners and posted conspicuously on the property or  
8 broadcast on closed-circuit cable television not less  
9 than fourteen days before the meeting; and

10 (3) Directors may not vote by proxy or by secret ballot at  
11 board meetings, except that secret ballots may be used  
12 in the election of officers. This paragraph shall  
13 also apply to the meetings of any committee or other  
14 similar body, when a final decision will be made  
15 regarding the expenditure of association funds, and to  
16 any body vested with the power to approve or  
17 disapprove architectural decisions with respect to a  
18 specific parcel of residential property owned by a  
19 member of the community.

20 (d) If twenty per cent of the total voting interests  
21 petition the board to address an item of business, the board, at



1 its next regular board meeting or at a special meeting of the  
2 board, but not later than sixty days after the receipt of the  
3 petition, shall take the petitioned item up on an agenda. The  
4 board shall give all members notice of the meeting at which the  
5 petitioned item shall be addressed in accordance with the  
6 fourteen-day notice requirement. Each member shall have the  
7 right to speak for at least three minutes on each matter placed  
8 on the agenda by petition; provided that the member signs the  
9 sign-up sheet, if one is provided, or submits a written request  
10 to speak prior to the meeting. Other than addressing the  
11 petitioned item at the meeting, the board is not obligated to  
12 take any other action requested by the petition.

13 (e) At the first board meeting, excluding the  
14 organizational meeting, that follows the annual meeting of the  
15 members, the board shall consider the desirability of filing  
16 notices to create the covenants or restrictions affecting the  
17 community or association, and to authorize and direct the  
18 appropriate officer to file notice in accordance with  
19 section -13.

20 § -5 **Minutes.** Minutes of all meetings of the members of  
21 an association and of the board of directors of an association



1 shall be maintained in written form or in another form that can  
2 be converted into written form within a reasonable time. A vote  
3 or abstention from voting on each matter voted upon for each  
4 director present at a board meeting shall be recorded in the  
5 minutes.

6 § -6 **Official records.** The association shall maintain  
7 each of the following items, when applicable, which shall  
8 constitute the official records of the association:

- 9 (1) Copies of any plans, specifications, permits, and  
10 warranties related to improvements constructed on the  
11 common areas or other property that the association is  
12 obligated to maintain, repair, or replace;
- 13 (2) A copy of the bylaws of the association and of each  
14 amendment to the bylaws;
- 15 (3) A copy of the articles of incorporation of the  
16 association and of each amendment thereto;
- 17 (4) A copy of the declaration of covenants and a copy of  
18 each amendment thereto;
- 19 (5) A copy of the current rules of the homeowners'  
20 association;



- 1           (6) The minutes of all meetings of the board of directors  
2                   and of the members, which minutes shall be retained  
3                   for at least seven years;
- 4           (7) A current roster of all members and their mailing  
5                   addresses and parcel identifications. The association  
6                   shall also maintain the electronic mailing addresses  
7                   and the numbers designated by members for receiving  
8                   notice sent by electronic transmission of those  
9                   members consenting to receive notice by electronic  
10                  transmission. The electronic mailing addresses and  
11                  numbers provided by parcel owners to receive notice by  
12                  electronic transmission shall be removed from  
13                  association records when consent to receive notice by  
14                  electronic transmission is revoked; provided that the  
15                  association shall not be liable for an erroneous  
16                  disclosure of the electronic mail address or the  
17                  number for receiving electronic transmission of  
18                  notices;
- 19          (8) All of the association's insurance policies or a copy  
20                  thereof, which policies shall be retained for at least  
21                  seven years;





- 1           (9) A current copy of all contracts to which the  
2           association is a party, including any management  
3           agreement, lease, or other contract under which the  
4           association has any obligation or responsibility.  
5           Bids received by the association for work to be  
6           performed shall also be considered official records  
7           and shall be kept for a period of one year;
- 8           (10) The financial and accounting records of the  
9           association to be kept according to good accounting  
10          practices. All financial and accounting records shall  
11          be maintained for a period of at least seven years.  
12          The financial and accounting records shall include:
- 13          (A) Accurate, itemized, and detailed records of all  
14          receipts and expenditures;
- 15          (B) A current account and a periodic statement of the  
16          account for each member, designating the name and  
17          current address of each member who is obligated  
18          to pay assessments, the due date and amount of  
19          each assessment or other charge against the  
20          member, the date and amount of each payment on  
21          the account, and the balance due;



- 1 (C) All tax returns, financial statements, and
- 2 financial reports of the association; and
- 3 (D) Any other records that identify, measure, record,
- 4 or communicate financial information;
- 5 (11) A copy of a disclosure summary; and
- 6 (12) All other written records of the association not
- 7 specifically included in the foregoing that are
- 8 related to the operation of the association.

9 § -7 **Inspection and copying of records.** (a) The  
10 official records shall be maintained within the State for at  
11 least seven years and shall be made available to a parcel owner  
12 for inspection or photocopying within forty-five miles of the  
13 community or within the county in which the association is  
14 located within ten business days after receipt by the board or  
15 its designee of a written request. The requirements of this  
16 section may be complied with by having a copy of the official  
17 records available for inspection or copying in the community or,  
18 at the option of the association, by making the records  
19 available to a parcel owner electronically via the internet or  
20 by allowing the records to be viewed in electronic format on a  
21 computer screen and printed upon request. If the association



1 has a photocopy machine available where the records are  
2 maintained, it shall provide parcel owners with copies on  
3 request during the inspection if the entire request is limited  
4 to no more than twenty-five pages. An association shall allow a  
5 member or the member's authorized representative to use a  
6 portable device, including a smartphone, tablet, portable  
7 scanner, or any other technology capable of scanning or taking  
8 photographs, to make an electronic copy of the official records  
9 in lieu of the association's providing the member or the  
10 member's authorized representative with a copy of those records.  
11 The association may not charge a fee to a member or the member's  
12 authorized representative for the use of a portable device.

13 (b) The failure of an association to provide access to the  
14 records within ten business days after receipt of a written  
15 request submitted by certified mail, return receipt requested,  
16 creates a rebuttable presumption that the association willfully  
17 failed to comply with this section.

18 (c) A member who is denied access to official records  
19 shall be entitled to the actual damages or minimum damages for  
20 the association's wilful failure to comply with this section.  
21 The minimum damages shall be fifty dollars per calendar day up



1 to ten days, the calculation to begin on the eleventh business  
2 day after receipt of the written request.

3 (d) The association may adopt reasonable written rules  
4 governing the frequency, time, location, notice, records to be  
5 inspected, and manner of inspections, but may not require a  
6 parcel owner to demonstrate any proper purpose for the  
7 inspection, state any reason for the inspection, or limit a  
8 parcel owner's right to inspect records to less than one eight-  
9 hour business day per month. The association may impose fees to  
10 cover the costs of providing copies of the official records,  
11 including the costs of copying and the costs required for  
12 personnel to retrieve and copy the records if the time spent  
13 retrieving and copying the records exceeds one-half hour and if  
14 the personnel costs do not exceed twenty dollars per hour.  
15 Personnel costs may not be charged for records requests that  
16 result in the copying of twenty-five or fewer pages. The  
17 association may charge up to twenty-five cents per page for  
18 copies made on the association's photocopier. If the  
19 association does not have a photocopy machine available where  
20 the records are kept, or if the records requested to be copied  
21 exceed twenty-five pages in length, the association may have



1 copies made by an outside duplicating service and may charge the  
2 actual cost of copying, as supported by the vendor invoice. The  
3 association shall maintain an adequate number of copies of the  
4 recorded governing documents, to ensure their availability to  
5 members and prospective members. Notwithstanding this  
6 subsection, the following records shall not be accessible to  
7 members or parcel owners:

8 (1) Any record protected by the attorney-client privilege  
9 and any record protected by the work-product  
10 privilege, including a record prepared by an  
11 association attorney or prepared at the attorney's  
12 express direction that reflects a mental impression,  
13 conclusion, litigation strategy, or legal theory of  
14 the attorney or the association and that was prepared  
15 exclusively for civil or criminal litigation or for  
16 adversarial administrative proceedings or that was  
17 prepared in anticipation of that litigation or  
18 proceedings until the conclusion of the litigation or  
19 proceedings;



1           (2) Information obtained by an association in connection  
2           with the approval of the lease, sale, or other  
3           transfer of a parcel;

4           (3) Personnel records of association or management company  
5           employees, including disciplinary, payroll, health,  
6           and insurance records. For purposes of this  
7           paragraph, the term "personnel records" does not  
8           include written employment agreements with an  
9           association or management company employee or  
10          budgetary or financial records that indicate the  
11          compensation paid to an association or management  
12          company employee;

13          (4) Medical records of parcel owners or community  
14          residents;

15          (5) Social security numbers, driver license numbers,  
16          credit card numbers, electronic mailing addresses,  
17          telephone numbers, facsimile numbers, emergency  
18          contact information, any addresses for a parcel owner  
19          other than as provided for association notice  
20          requirements, and other personal identifying  
21          information of any person, excluding the person's



1 name, parcel designation, mailing address, and  
2 property address. Notwithstanding the restrictions in  
3 this paragraph, an association may print and  
4 distribute to parcel owners a directory containing the  
5 name, parcel address, and all telephone numbers of  
6 each parcel owner; provided that an owner may exclude  
7 the owner's telephone numbers from the directory by  
8 making a request in writing to the association. An  
9 owner may consent in writing to the disclosure of  
10 other contact information described in this paragraph.  
11 The association shall not be liable for the disclosure  
12 of information that is protected under this paragraph  
13 if the information is included in an official record  
14 of the association and is voluntarily provided by an  
15 owner and not requested by the association;

16 (6) Any electronic security measure that is used by the  
17 association to safeguard data, including passwords;  
18 and

19 (7) The software and operating system used by the  
20 association that allows the manipulation of data, even  
21 if the owner owns a copy of the same software used by



1           the association. The data shall be part of the  
2           official records of the association.

3           (e) The association or its authorized agent shall not be  
4 required to provide a prospective purchaser or lienholder with  
5 information about the residential subdivision or the association  
6 other than information or documents required by this chapter to  
7 be made available or disclosed. The association or its  
8 authorized agent may charge a reasonable fee to the prospective  
9 purchaser or lienholder or the current parcel owner or member  
10 for providing good faith responses to requests for information  
11 by or on behalf of a prospective purchaser or lienholder, other  
12 than that required by law, if the fee does not exceed one  
13 hundred and fifty dollars plus the reasonable cost of  
14 photocopying and any attorney fees incurred by the association  
15 in connection with the response.

16           § -8 **Budgets.** (a) The association shall prepare an  
17 annual budget that sets out the annual operating expenses. The  
18 budget shall reflect the estimated revenues and expenses for  
19 that year and the estimated surplus or deficit as of the end of  
20 the current year. The budget shall set out separately all fees  
21 or charges paid for by the association for recreational





1 amenities, whether owned by the association, the developer, or  
2 another person. The association shall provide each member with  
3 a copy of the annual budget or a written notice that a copy of  
4 the budget shall be available upon request at no charge to the  
5 member. The copy shall be provided to the member within the  
6 time limits set forth in section -7.

7 (b) In addition to annual operating expenses, the budget  
8 may include reserve accounts for capital expenditures and  
9 deferred maintenance for which the association is responsible.  
10 If reserve accounts are not established pursuant to subsection  
11 (d), funding of the reserves shall be limited to the extent that  
12 the governing documents limit increases in assessments,  
13 including reserves. If the budget of the association includes  
14 reserve accounts established pursuant to subsection (d), the  
15 reserves shall be determined, maintained, and waived in the  
16 manner provided in this section. Once an association provides  
17 for reserve accounts pursuant to subsection (d), the association  
18 shall thereafter determine, maintain, and waive reserves in  
19 compliance with this section. This section shall not preclude  
20 the termination of a reserve account established pursuant to  
21 this subsection upon approval of a majority of the total voting



1 interests of the association. Upon approval, the terminating  
2 reserve account shall be removed from the budget.

3 (c) Budgets of the association may or may not provide for  
4 reserve accounts and may or may not provide funding accounts for  
5 deferred expenditures:

6 (1) If the budget of the association does not provide for  
7 reserve accounts pursuant to subsection (d) and the  
8 association is responsible for the repair and  
9 maintenance of capital improvements that may result in  
10 a special assessment if reserves are not provided,  
11 each financial report for the preceding fiscal year  
12 required by section -9 shall contain the following  
13 statement in conspicuous type:

14 THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE  
15 FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND  
16 DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL  
17 ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR  
18 RESERVE ACCOUNTS UPON OBTAINING THE APPROVAL OF A  
19 MAJORITY OF THE TOTAL VOTING INTERESTS OF THE  
20 ASSOCIATION BY VOTE OF THE MEMBERS AT A MEETING  
21 OR BY WRITTEN CONSENT.



1           (2) If the budget of the association does provide for  
2           funding accounts for deferred expenditures, including,  
3           but not limited to, funds for capital expenditures and  
4           deferred maintenance, but the accounts are not created  
5           or established pursuant to subsection (d), each  
6           financial report for the preceding fiscal year  
7           required under section -9 shall also contain the  
8           following statement in conspicuous type:

9                   THE BUDGET OF THE ASSOCIATION PROVIDES FOR  
10                   LIMITED VOLUNTARY DEFERRED EXPENDITURE ACCOUNTS,  
11                   INCLUDING CAPITAL EXPENDITURES AND DEFERRED  
12                   MAINTENANCE, SUBJECT TO LIMITS ON FUNDING  
13                   CONTAINED IN OUR GOVERNING DOCUMENTS. BECAUSE  
14                   THE OWNERS HAVE NOT ELECTED TO PROVIDE FOR  
15                   RESERVE ACCOUNTS, THESE FUNDS ARE NOT SUBJECT TO  
16                   THE RESTRICTIONS ON USE OF THOSE FUNDS REQUIRED  
17                   FOR RESERVE ACCOUNTS, NOR ARE RESERVES  
18                   CALCULATED.

19           (d) An association shall be deemed to have provided for  
20           reserve accounts if reserve accounts have been initially  
21           established by the developer or if the membership of the



1 association affirmatively elects to provide for reserves. If  
2 reserve accounts are established by the developer, the budget  
3 shall designate the components for which the reserve accounts  
4 may be used. If reserve accounts are not initially provided by  
5 the developer, the membership of the association may elect to do  
6 so upon the affirmative approval of a majority of the total  
7 voting interests of the association. The approval may be  
8 obtained by vote of the members at a duly called meeting of the  
9 membership or by the written consent of a majority of the total  
10 voting interests of the association. The approval action of the  
11 membership shall state that reserve accounts shall be provided  
12 for in the budget and shall designate the components for which  
13 the reserve accounts are to be established. Upon approval by  
14 the membership, the board of directors shall include the  
15 required reserve accounts in the budget in the next fiscal year  
16 following the approval and each year thereafter. Once  
17 established as provided in this section, the reserve accounts  
18 shall be funded or maintained or have their funding waived in  
19 the manner provided in subsection (f).

20 (e) The amount to be reserved in any account established  
21 shall be computed by means of a formula that is based upon



1 estimated remaining useful life and estimated replacement cost  
2 or deferred maintenance expense of each reserve item. The  
3 association may adjust replacement reserve assessments annually  
4 to take into account any changes in estimates of cost or useful  
5 life of a reserve item.

6 (f) After one or more reserve accounts are established,  
7 the membership of the association, upon a majority vote at a  
8 meeting at which a quorum is present, may provide for no  
9 reserves or less reserves than required by this section. If a  
10 meeting of the unit owners has been called to determine whether  
11 to waive or reduce the funding of reserves and the result is not  
12 achieved or a quorum is not present, the reserves as included in  
13 the budget shall go into effect. After the turnover, the  
14 developer may vote its voting interest to waive or reduce the  
15 funding of reserves. Any vote taken pursuant to this section to  
16 waive or reduce reserves shall be applicable only to one budget  
17 year.

18 (g) Funding formulas for reserves authorized by this  
19 section shall be based upon a separate analysis of each of the  
20 required assets or a pooled analysis of two or more of the  
21 required assets. If the association maintains separate reserve



1 accounts for each of the required assets, the amount of the  
2 contribution to each reserve account shall be the sum of the  
3 following two calculations:

- 4 (1) The total amount necessary, if any, to bring a  
5 negative component balance to zero; and
- 6 (2) The total estimated deferred maintenance expense or  
7 estimated replacement cost of the reserve component  
8 less the estimated balance of the reserve component as  
9 of the beginning of the period that the budget will be  
10 in effect. The remainder, if greater than zero, shall  
11 be divided by the estimated remaining useful life of  
12 the component.

13 The formula may be adjusted each year for changes in estimates  
14 and deferred maintenance performed during the year and may  
15 include factors such as inflation and earnings on invested  
16 funds.

17 If the association maintains a pooled account of two or  
18 more of the required reserve assets, the amount of the  
19 contribution to the pooled reserve account as disclosed on the  
20 proposed budget may not be less than that required to ensure  
21 that the balance on hand at the beginning of the period the



1 budget will go into effect plus the projected annual cash  
2 inflows over the remaining estimated useful life of all of the  
3 assets that make up the reserve pool are equal to or greater  
4 than the projected annual cash outflows over the remaining  
5 estimated useful lives of all the assets that make up the  
6 reserve pool, based upon the current reserve analysis. The  
7 projected annual cash inflows may include estimated earnings  
8 from investment of principal and accounts receivable minus the  
9 allowance for doubtful accounts. The reserve funding formula  
10 may not include any type of balloon payments.

11 (h) Reserve funds and any interest accruing thereon shall  
12 remain in the reserve account or accounts and shall be used only  
13 for authorized reserve expenditures unless their use for other  
14 purposes is approved in advance by a majority vote at a meeting  
15 at which a quorum is present.

16 § -9 **Financial reporting.** (a) Within ninety days after  
17 the end of the fiscal year, or annually on the date provided in  
18 the bylaws, the association shall prepare and complete, or  
19 contract with a third party for the preparation and completion  
20 of, a financial report for the preceding fiscal year. Within  
21 twenty-one days after the final financial report is completed by



1 the association or received from the third party, but not later  
2 than one hundred and twenty days after the end of the fiscal  
3 year or other date as provided in the bylaws, the association  
4 shall, within the time limits set forth in section -7,  
5 provide each member with a copy of the annual financial report  
6 or a written notice that a copy of the financial report is  
7 available upon request at no charge to the member.

8 (b) An association that meets the criteria of this section  
9 shall prepare or cause to be prepared a complete set of  
10 financial statements in accordance with generally accepted  
11 accounting principles. The financial statements shall be based  
12 upon the association's total annual revenues, as follows:

13 (1) An association with total annual revenues of \$150,000  
14 or more, but less than \$300,000, shall prepare  
15 compiled financial statements;

16 (2) An association with total annual revenues of at least  
17 \$300,000, but less than \$500,000, shall prepare  
18 reviewed financial statements; and

19 (3) An association with total annual revenues of \$500,000  
20 or more shall prepare audited financial statements.





1           (c) An association with total annual revenues of less than  
2 \$150,000 shall prepare a report of cash receipts and  
3 expenditures. A report of cash receipts and disbursement shall  
4 disclose the amount of receipts by accounts and receipt  
5 classifications and the amount of expenses by accounts and  
6 expense classifications, including costs for security,  
7 professional, and management fees and expenses; taxes; costs for  
8 recreation facilities; expenses for refuse collection and  
9 utility services; expenses for lawn care; costs for building  
10 maintenance and repair; insurance costs; administration and  
11 salary expenses; and reserves if maintained by the association.

12           (d) If twenty per cent of the parcel owners petition the  
13 board for a level of financial reporting higher than that  
14 required by this section, the association shall duly notice and  
15 hold a meeting of members within thirty days of receipt of the  
16 petition for the purpose of voting on raising the level of  
17 reporting for that fiscal year. Upon approval of a majority of  
18 the total voting interests of the parcel owners, the association  
19 shall prepare or cause to be prepared, shall amend the budget or  
20 adopt a special assessment to pay for the financial report  
21 regardless of any provision to the contrary in the governing



1 documents, and shall provide within ninety days of the meeting  
2 or the end of the fiscal year, whichever occurs later:

3 (1) Compiled, reviewed, or audited financial statements,  
4 if the association is otherwise required to prepare a  
5 report of cash receipts and expenditures;

6 (2) Reviewed or audited financial statements, if the  
7 association is otherwise required to prepare compiled  
8 financial statements; or

9 (3) Audited financial statements if the association is  
10 otherwise required to prepare reviewed financial  
11 statements.

12 (e) If approved by a majority of the voting interests  
13 present at a properly called meeting of the association, an  
14 association may prepare or cause to be prepared:

15 (1) A report of cash receipts and expenditures in lieu of  
16 a compiled, reviewed, or audited financial statement;

17 (2) A report of cash receipts and expenditures or a  
18 compiled financial statement in lieu of a reviewed or  
19 audited financial statement; or



1           (3) A report of cash receipts and expenditures, a compiled  
2           financial statement, or a reviewed financial statement  
3           in lieu of an audited financial statement.

4           § -10 Association funds; commingling. (a) All  
5 association funds shall be maintained separately in the  
6 association's name. Reserve and operating funds of the  
7 association shall not be commingled prior to turnover; provided  
8 that the association may jointly invest reserve funds; provided  
9 further that jointly invested funds shall be accounted for  
10 separately.

11           (b) No developer in control of a homeowners' association  
12 shall commingle any association funds with the developer's funds  
13 or with the funds of any other homeowners' association or  
14 community association.

15           (c) Association funds shall not be used by a developer to  
16 defend a civil or criminal action, administrative proceeding, or  
17 arbitration proceeding that has been filed against the developer  
18 or directors appointed to the association board by the  
19 developer, even if the subject of the action or proceeding  
20 concerns the operation of the developer-controlled association.



1           §   -11 Recall of directors. (a) Regardless of any  
2 provision to the contrary contained in the governing documents,  
3 any member of the board of directors may be recalled and removed  
4 from office with or without cause by a majority of the total  
5 voting interests.

6           (b) When the governing documents, including the  
7 declaration, articles of incorporation, or bylaws, provide that  
8 only a specific class of members is entitled to elect a board  
9 director or directors, only that class of members may vote to  
10 recall those elected board directors.

11           (c) Board directors may be recalled by an agreement in  
12 writing or by written ballot without a membership meeting. The  
13 agreement in writing or the written ballots, or a copy thereof,  
14 shall be served on the association by certified mail or by  
15 personal service and the Hawaii Rules of Civil Procedure.

16           The board shall duly notice and hold a meeting of the board  
17 within five full business days after receipt of the agreement in  
18 writing or written ballots. At the meeting, the board shall  
19 either certify the written ballots or written agreement to  
20 recall a director or directors of the board, in which case the  
21 director or directors shall be recalled effective immediately



1 and shall turn over to the board within five full business days  
2 any and all records and property of the association in their  
3 possession, or proceed as described in subsection (e).

4       When it is determined by the county pursuant to binding  
5 arbitration proceedings that an initial recall effort was  
6 defective, written recall agreements or written ballots used in  
7 the first recall effort and not found to be defective may be  
8 reused in one subsequent recall effort; provided that in no  
9 event shall a written agreement or written ballot be valid for  
10 more than one hundred and twenty days after it has been signed  
11 by the member.

12       Any rescission or revocation of a member's written recall  
13 ballot or agreement must be in writing and, in order to be  
14 effective, shall be delivered to the association before the  
15 association is served with the written recall agreements or  
16 ballots.

17       The agreement in writing or ballot shall list at least as  
18 many possible replacement directors as there are directors  
19 subject to the recall, when at least a majority of the board is  
20 sought to be recalled; provided that the person executing the



1 recall instrument may vote for as many replacement candidates as  
2 there are directors subject to the recall.

3 (d) If the declaration, articles of incorporation, or  
4 bylaws specifically provide, the members may also recall and  
5 remove a board director or directors by a vote taken at a  
6 meeting. If provided for in the governing documents, a special  
7 meeting of the members to recall a director or directors of the  
8 board of administration may be called by ten per cent of the  
9 voting interests giving notice of the meeting as required for a  
10 meeting of members, and the notice shall state the purpose of  
11 the meeting. Electronic transmission may not be used as a  
12 method of giving notice of a meeting called in whole or in part  
13 for this purpose.

14 The board shall duly notice and hold a board meeting within  
15 five full business days after the adjournment of the member  
16 meeting to recall one or more directors. At the meeting, the  
17 board shall certify the recall, in which case the member or  
18 members shall be recalled effective immediately and shall turn  
19 over to the board within five full business days any and all  
20 records and property of the association in their possession, or  
21 shall proceed as set forth in subsection (e).



1           (e) If the board determines not to certify the written  
2 agreement or written ballots to recall a director or directors  
3 of the board or does not certify the recall by a vote at a  
4 meeting, the board, within five full business days after the  
5 meeting, shall file with the county a petition for binding  
6 arbitration pursuant to chapter 658A. For the purposes of this  
7 section, the members who voted at the meeting or who executed  
8 the agreement in writing shall constitute one party under the  
9 petition for arbitration. If the arbitrator certifies the  
10 recall as to any director or directors of the board, the recall  
11 shall be effective upon the mailing of the final order of  
12 arbitration to the association. The director or directors so  
13 recalled shall deliver to the board any and all records of the  
14 association in their possession within five full business days  
15 after the effective date of the recall.

16           (f) If a vacancy occurs on the board as a result of a  
17 recall and less than a majority of the board directors are  
18 removed, the vacancy may be filled by the affirmative vote of a  
19 majority of the remaining directors, notwithstanding any  
20 provision to the contrary contained in this section or in the  
21 association documents. If vacancies occur on the board as a



1 result of a recall and a majority or more of the board directors  
2 are removed, the vacancies shall be filled by members voting in  
3 favor of the recall; if removal is at a meeting, any vacancies  
4 shall be filled by the members at the meeting. If the recall  
5 occurred by agreement in writing or by written ballot, members  
6 may vote for replacement directors in the same instrument in  
7 accordance with procedural rules adopted by the county, which  
8 rules need not be consistent with this section.

9 (g) If the board fails to duly notice and hold a board  
10 meeting within five full business days after service of an  
11 agreement in writing or within five full business days after the  
12 adjournment of the member recall meeting, the recall shall be  
13 deemed effective and the recalled board directors shall  
14 immediately turn over to the board all records and property of  
15 the association.

16 (h) If the board fails to duly notice and hold the  
17 required meeting or fails to file the required petition, the  
18 unit owner representative may file a petition challenging the  
19 board's failure to act. The petition shall be filed within  
20 sixty days after the expiration of the applicable five-full-  
21 business-day period. The review of a petition under this





1 subsection shall be limited to the sufficiency of service on the  
2 board and the facial validity of the written agreement or  
3 ballots filed.

4 (i) If a director who is removed fails to relinquish the  
5 director's office or turn over records as required under this  
6 section, the circuit court in the county where the association  
7 maintains its principal office, upon the petition of the  
8 association, may summarily order the director to relinquish the  
9 director's office and turn over all association records upon  
10 application of the association.

11 (j) The minutes of the board meeting at which the board  
12 decides whether to certify the recall shall be an official  
13 association record. The minutes shall record the date and time  
14 of the meeting, the decision of the board, and the vote count  
15 taken on each board member subject to the recall. In addition,  
16 when the board decides not to certify the recall, as to each  
17 vote rejected, the minutes shall identify the parcel number and  
18 the specific reason for each rejection.

19 (k) When the recall of more than one board director is  
20 sought, the written agreement, ballot, or vote at a meeting



1 shall provide for a separate vote for each board director sought  
2 to be recalled.

3 (1) A board member who has been recalled may file a  
4 petition to challenge the validity of the recall. The petition  
5 shall be filed within sixty days after the recall is deemed  
6 certified. The association and the parcel owner representative  
7 shall be named as respondents.

8 (m) The county shall not accept for filing a recall  
9 petition, whether filed pursuant to subsections (b), (c), (h),  
10 or (l), and regardless of whether the recall was certified, when  
11 there are sixty or fewer days until the scheduled reelection of  
12 the board member sought to be recalled or when sixty or fewer  
13 days have not elapsed since the election of the board member  
14 sought to be recalled.

15 § -12 **Compensation prohibited.** A director, officer, or  
16 committee member of the association shall not directly receive  
17 any salary or compensation from the association for the  
18 performance of duties as a director, officer, or committee  
19 member and shall not in any other way benefit financially from  
20 service to the association. This section shall not preclude:



- 1           (1) Participation by the person in a financial benefit  
2           accruing to all or a significant number of members as  
3           a result of actions lawfully taken by the board or a  
4           committee of which the person is a member, including  
5           routine maintenance, repair, or replacement of  
6           community assets;
- 7           (2) Reimbursement for out-of-pocket expenses incurred by  
8           the person on behalf of the association, subject to  
9           approval in accordance with procedures established by  
10          the association's governing documents or, in the  
11          absence of those procedures, in accordance with an  
12          approval process established by the board;
- 13          (3) Any recovery of insurance proceeds derived from a  
14          policy of insurance maintained by the association for  
15          the benefit of its members;
- 16          (4) Any fee or compensation authorized in the governing  
17          documents; or
- 18          (5) Any fee or compensation authorized in advance by a  
19          vote of a majority of the voting interests voting in  
20          person or by proxy at a meeting of the members.



1           §   -13 Notice of association information. (a) Any  
2 property owners' association desiring to preserve covenants from  
3 potential termination may record in the bureau of conveyances a  
4 notice specifying:

- 5           (1) The legal name of the association;
- 6           (2) The mailing and physical addresses of the association;
- 7           (3) The names of the affected subdivision plats and  
8                 condominiums or, if not applicable, the common name of  
9                 the community;
- 10          (4) The name, address, and telephone number for the  
11                 current community association management company or  
12                 community association manager, if any;
- 13          (5) Indication as to whether the association desires to  
14                 preserve the covenants or restrictions affecting the  
15                 community or association from extinguishment;
- 16          (6) A listing by name and recording information of those  
17                 covenants or restrictions affecting the community that  
18                 the association desires to be preserved from  
19                 extinguishment;



1           (7) The legal description of the community affected by the  
2           covenants or restrictions, which may be satisfied by a  
3           reference to a recorded plat; and

4           (8) The signature of a duly authorized officer of the  
5           association, acknowledged in the same manner as deeds  
6           are acknowledged for record.

7           (b) A copy of the notice, as filed, shall be included as  
8           part of the next notice of meeting or other mailing sent to all  
9           members.

10           (c) The original signed notice shall be recorded in the  
11           official records of the clerk of the circuit court for the  
12           county.

13           § -14 **Officers and directors.** (a) Within ninety days  
14           after being elected or appointed to the board, each director  
15           shall certify in writing to the secretary of the association  
16           that the director:

17           (1) Has read the association's declaration of covenants,  
18           articles of incorporation, bylaws, and current written  
19           rules and policies;

20           (2) Will work to uphold the documents and policies to the  
21           best of the director's ability; and



1           (3) Will faithfully discharge the director's fiduciary  
2                   responsibility to the association's members.

3   Within ninety days after being elected or appointed to the  
4   board, in lieu of written certification, the newly elected or  
5   appointed director may submit a certificate of having  
6   satisfactorily completed the educational curriculum administered  
7   by a county-approved education provider within one year before  
8   or ninety days after the date of election or appointment.

9           (b) The written certification or educational certificate  
10   shall be valid for the uninterrupted tenure of the director on  
11   the board. A director who does not timely file the written  
12   certification or educational certificate shall be suspended from  
13   the board until the director complies with the requirement. The  
14   board may temporarily fill the vacancy during the period of  
15   suspension.

16           (c) The association shall retain each director's written  
17   certification or educational certificate for inspection by the  
18   members for five years after the director's election; provided  
19   that the failure to have the written certification or  
20   educational certificate on file shall not affect the validity of  
21   any board action.



1 (d) If the association enters into a contract or other  
2 transaction with any of its directors or a corporation, firm, or  
3 association that is not an affiliated homeowners' association,  
4 or other entity in which an association director is also a  
5 director or officer or is financially interested, the board  
6 shall:

7 (1) Approve the contract or other transaction by an  
8 affirmative vote of two-thirds of the directors  
9 present; and

10 (2) At the next regular or special meeting of the members,  
11 disclose the existence of the contract or other  
12 transaction to the members. Upon motion of any  
13 member, the contract or transaction shall be brought  
14 up for a vote and may be canceled by a majority vote  
15 of the members present. If the members cancel the  
16 contract, the association shall be liable only for the  
17 reasonable value of goods and services provided up to  
18 the time of cancellation and shall not liable for any  
19 termination fee, liquidated damages, or other penalty  
20 for the cancellation.



1           (e) An officer, director, or manager may not solicit,  
2 offer to accept, or accept any good or service of value for  
3 which consideration has not been provided for one's benefit or  
4 for the benefit of a member of one's immediate family from any  
5 person providing or proposing to provide goods or services to  
6 the association. If the board finds that an officer or director  
7 has violated this subsection, the board shall immediately remove  
8 the officer or director from office. The vacancy shall be  
9 filled according to law until the end of the director's term of  
10 office; provided that an officer, director, or manager may  
11 accept food to be consumed at a business meeting with a value of  
12 less than twenty-five dollars per individual or a service or  
13 good received in connection with trade fairs or education  
14 programs.

15           (f) A director or officer charged by information or  
16 indictment with a felony theft or embezzlement offense involving  
17 the association's funds or property shall be removed from  
18 office. The board shall fill the vacancy until the end of the  
19 period of the suspension or the end of the director's term of  
20 office, whichever occurs first; provided that if the charges are  
21 resolved without a finding of guilt or without acceptance of a





1 plea of guilty or nolo contendere, the director or officer shall  
2 be reinstated for any remainder of the director's or officer's  
3 term of office. A member who has criminal charges pending may  
4 not be appointed or elected to a position as a director or  
5 officer.

6 (g) The association shall maintain insurance or a fidelity  
7 bond for all persons who control or disburse funds of the  
8 association. The insurance policy or fidelity bond shall cover  
9 the maximum funds that will be in the custody of the association  
10 or its management agent at any one time.

11 The association shall bear the cost of any insurance or  
12 bond. If annually approved by a majority of the voting  
13 interests present at a properly called meeting of the  
14 association, an association may waive the requirement of  
15 obtaining an insurance policy or fidelity bond for all persons  
16 who control or disburse funds of the association.

17 **§ -15 Architectural control covenants; parcel owner**  
18 **improvements; rights and privileges.** (a) The authority of an  
19 association or any architectural, construction improvement, or  
20 other similar committee of an association to review and approve  
21 plans and specifications for the location, size, type, or



1 appearance of any structure or other improvement on a parcel, or  
2 to enforce standards for the external appearance of any  
3 structure or improvement located on a parcel, shall be permitted  
4 only to the extent that the authority is specifically stated or  
5 reasonably inferred as to the location, size, type, or  
6 appearance in the declaration of covenants or other published  
7 guidelines and standards authorized by the declaration of  
8 covenants.

9 (b) If the declaration of covenants or other published  
10 guidelines and standards authorized by the declaration of  
11 covenants provides options for the use of material, the size of  
12 the structure or improvement, the design of the structure or  
13 improvement, or the location of the structure or improvement on  
14 the parcel, neither the association nor any architectural,  
15 construction improvement, or other similar committee of the  
16 association shall restrict the right of a parcel owner to select  
17 from the options provided in the declaration of covenants or  
18 other published guidelines and standards authorized by the  
19 declaration of covenants.

20 (c) Unless otherwise specifically stated in the  
21 declaration of covenants or other published guidelines and



1 standards authorized by the declaration of covenants, each  
2 parcel shall be deemed to have only one front for purposes of  
3 determining the required front setback even if the parcel is  
4 bounded by a roadway or other easement on more than one side.  
5 When the declaration of covenants or other published guidelines  
6 and standards authorized by the declaration of covenants do not  
7 provide for specific setback limitations, the applicable county  
8 setback limitations shall apply, and neither the association nor  
9 any architectural, construction improvement, or other similar  
10 committee of the association shall enforce or attempt to enforce  
11 any setback limitation that is inconsistent with the applicable  
12 county standard or standards.

13 (d) Each parcel owner shall be entitled to the rights and  
14 privileges set forth in the declaration of covenants or other  
15 published guidelines and standards authorized by the declaration  
16 of covenants concerning the architectural use of the parcel, and  
17 the construction of permitted structures and improvements on the  
18 parcel and the rights and privileges shall not be unreasonably  
19 infringed upon or impaired by the association or any  
20 architectural, construction improvement, or other similar  
21 committee of the association. If the association or any



1 architectural, construction improvement, or other similar  
2 committee of the association should unreasonably, knowingly, and  
3 wilfully infringe upon or impair the rights and privileges set  
4 forth in the declaration of covenants or other published  
5 guidelines and standards authorized by the declaration of  
6 covenants, the adversely affected parcel owner shall be entitled  
7 to recover damages caused by the infringement or impairment,  
8 including any costs and reasonable attorneys' fees incurred in  
9 preserving or restoring the rights and privileges of the parcel  
10 owner set forth in the declaration of covenants or other  
11 published guidelines and standards authorized by the declaration  
12 of covenants.

13 (e) Neither the association nor any architectural,  
14 construction improvement, or other similar committee of the  
15 association:

16 (1) Shall enforce any policy or restriction that is  
17 inconsistent with the rights and privileges of a  
18 parcel owner set forth in the declaration of covenants  
19 or other published guidelines and standards authorized  
20 by the declaration of covenants, whether uniformly  
21 applied or not; or



1           (2) May rely upon a policy or restriction that is  
2           inconsistent with the declaration of covenants or  
3           other published guidelines and standards authorized by  
4           the declaration of covenants, whether uniformly  
5           applied or not, in defense of any action taken in the  
6           name of or on behalf of the association against a  
7           parcel owner.

8           § -16 Right of owners to peaceably assemble; display of  
9 flag; SLAPP suits prohibited. (a) All common areas and  
10 recreational facilities serving any homeowners' association  
11 shall also be available to parcel owners in the homeowners'  
12 association and their invited guests for the use intended for  
13 those common areas and recreational facilities. The entity or  
14 entities responsible for the operation of the common areas and  
15 recreational facilities may adopt reasonable rules pertaining to  
16 the use of those common areas and recreational facilities. No  
17 entity or entities shall unreasonably restrict any parcel  
18 owner's right to peaceably assemble or right to invite public  
19 officers or candidates for public office to appear and speak in  
20 common areas and recreational facilities.



1           (b) Any homeowner may display one portable, removable  
2 United States flag or official flag of the State of Hawaii in a  
3 respectful manner, and one portable, removable official flag, in  
4 a respectful manner, not larger than four and one-half feet by  
5 six feet, which represents the United States Army, Navy, Air  
6 Force, Marine Corps, or Coast Guard, or a POW/MIA flag,  
7 regardless of any covenants, restrictions, bylaws, rules, or  
8 requirements of the association.

9           (c) Any homeowner may erect a freestanding flagpole not  
10 more than twenty feet high on any portion of the homeowner's  
11 real property, regardless of any covenants, restrictions,  
12 bylaws, rules, or requirements of the association, if the  
13 flagpole does not obstruct sightlines at intersections and is  
14 not erected within or upon an easement. The homeowner may  
15 further display in a respectful manner from that flagpole,  
16 regardless of any covenants, restrictions, bylaws, rules, or  
17 requirements of the association, one official United States  
18 flag, not larger than four and one-half feet by six feet, and  
19 may additionally display one official flag of the State of  
20 Hawaii or the United States Army, Navy, Air Force, Marines, or  
21 Coast Guard, or a POW/MIA flag. The additional flag shall be



1 equal in size to, or smaller than, the United States flag. The  
2 flagpole and display shall be subject to all building codes,  
3 zoning setbacks, and other applicable governmental regulations,  
4 including noise and lighting ordinances in the county in which  
5 the flagpole is erected and all setback and locational criteria  
6 contained in the governing documents.

7 (d) This section shall apply to all community development  
8 districts and homeowners' associations, regardless of whether  
9 the homeowners' associations are authorized to impose  
10 assessments that may become a lien upon the parcel.

11 (e) Any owner prevented from exercising rights guaranteed  
12 by subsection (a) or subsection (b) may bring an action in the  
13 appropriate court of the county in which the alleged  
14 infringement occurred, and, upon favorable adjudication, the  
15 court shall enjoin the enforcement of any provision contained in  
16 any homeowners' association document or rule that operates to  
17 deprive the owner of those rights.

18 (f) A governmental entity, business organization, or  
19 individual in this State may not file or cause to be filed  
20 through its employees or agents any lawsuit, cause of action,  
21 claim, cross-claim, or counterclaim against a parcel owner



1 without merit and solely because the parcel owner has exercised  
2 the right to instruct the parcel owner's representatives or the  
3 right to petition for redress of grievances before the various  
4 governmental entities of this State.

5 (g) A parcel owner sued by a governmental entity, business  
6 organization, or individual in violation of this section has a  
7 right to an expeditious resolution of a claim that the suit is  
8 in violation of this section. A parcel owner may petition the  
9 court for an order dismissing the action or granting final  
10 judgment in favor of that parcel owner. The petitioner may file  
11 a motion for summary judgment, together with supplemental  
12 affidavits, seeking a determination that the lawsuit by the  
13 governmental entity, business organization, or individual has  
14 been brought in violation of this section. The governmental  
15 entity, business organization, or individual shall thereafter  
16 file its response and any supplemental affidavits. As soon as  
17 practicable, the court shall set a hearing on the petitioner's  
18 motion, which shall be held at the earliest possible time after  
19 the filing of the response by the governmental entity, business  
20 organization, or individual. The court may award the parcel  
21 owner sued by the governmental entity, business organization, or





1 individual actual damages arising from the violation of this  
2 section by the governmental entity, individual, or business  
3 organization. A court may treble the damages awarded to a  
4 prevailing parcel owner and shall state the basis for the treble  
5 damages award in its judgment. The court shall award the  
6 prevailing party reasonable attorneys' fees and costs incurred  
7 in connection with a claim that an action was filed in violation  
8 of this section.

9 (h) Homeowners' associations shall not expend association  
10 funds in prosecuting a strategic-lawsuit-against-public-  
11 participation lawsuit against a parcel owner.

12 (i) Any parcel owner may construct an access ramp if a  
13 resident or occupant of the parcel has a medical necessity or  
14 disability that requires a ramp for egress and ingress under the  
15 following conditions:

16 (1) The ramp shall be as unobtrusive as possible, be  
17 designed to blend in aesthetically as practicable, and  
18 be reasonably sized to fit the intended use; and

19 (2) Plans for the ramp shall be submitted in advance to  
20 the homeowners' association. The association may make  
21 reasonable requests to modify the design to achieve



1 architectural consistency with surrounding structures  
2 and surfaces.

3 The parcel owner shall submit to the association an  
4 affidavit from a physician attesting to the medical necessity or  
5 disability of the resident or occupant of the parcel requiring  
6 the access ramp.

7 (j) Any parcel owner may display a sign of reasonable size  
8 provided by a contractor for security services within ten feet  
9 of any entrance to the home.

10 § -17 Obligations of members; remedies at law or in  
11 equity; levy of fines and suspension of use rights. (a) Each  
12 member and the member's tenants, guests, and invitees, and each  
13 association, are governed by, and shall comply with, this  
14 chapter, the governing documents of the community, and the rules  
15 of the association. Actions at law or in equity, or both, to  
16 redress alleged failure or refusal to comply with these  
17 provisions may be brought by the association or by any member  
18 against:

19 (1) The association;

20 (2) A member;



1           (3) Any director or officer of an association who wilfully  
2                   and knowingly fails to comply with these provisions;  
3                   and

4           (4) Any tenants, guests, or invitees occupying a parcel or  
5                   using the common areas.

6           The prevailing party in litigation shall be entitled to  
7 recover reasonable attorneys' fees and costs. A member  
8 prevailing in an action between the association and the member  
9 under this section, in addition to recovering reasonable  
10 attorneys' fees, may recover additional amounts as determined by  
11 the court to be necessary to reimburse the member for the  
12 member's share of assessments levied by the association to fund  
13 its expenses of the litigation. The relief shall not exclude  
14 other remedies provided by law. This section shall not deprive  
15 any person of any other available right or remedy.

16           (b) The association may levy reasonable fines. A fine may  
17 not exceed one hundred dollars per violation against any member  
18 or any member's tenant, guest, invitee, or licensee for the  
19 failure of the owner of the parcel or its occupant, licensee, or  
20 invitee to comply with any provision of the declaration, the  
21 association bylaws, or reasonable rules of the association



1 unless otherwise provided in the governing documents. A fine  
2 may be levied by the board for each day of a continuing  
3 violation, with a single notice and opportunity for hearing,  
4 except that the fine may not exceed one thousand dollars in the  
5 aggregate unless otherwise provided in the governing documents.  
6 A fine of less than one thousand dollars may not become a lien  
7 against a parcel. In any action to recover a fine, the  
8 prevailing party is entitled to reasonable attorney fees and  
9 costs from the non-prevailing party as determined by the court.

10 (c) An association may suspend, for a reasonable period of  
11 time, the right of a member, or a member's tenant, guest, or  
12 invitee, to use common areas and facilities for the failure of  
13 the owner of the parcel or its occupant, licensee, or invitee to  
14 comply with any provision of the declaration, the association  
15 bylaws, or reasonable rules of the association. This subsection  
16 shall not apply to that portion of common areas used to provide  
17 access or utility services to the parcel. A suspension may not  
18 prohibit an owner or tenant of a parcel from having vehicular  
19 and pedestrian ingress to and egress from the parcel, including  
20 the right to park.



1           (d) A fine or suspension levied by the board of  
2 administration may not be imposed unless the board first  
3 provides at least fourteen days of notice to the parcel owner  
4 and, if applicable, any occupant, licensee, or invitee of the  
5 parcel owner, sought to be fined or suspended and an opportunity  
6 for a hearing before a committee of at least three members  
7 appointed by the board who are not officers, directors, or  
8 employees of the association, or the spouse, parent, child,  
9 brother, or sister of an officer, director, or employee. If the  
10 committee, by majority vote, does not approve a proposed fine or  
11 suspension, the proposed fine or suspension shall not be  
12 imposed. The role of the committee shall be limited to  
13 determining whether to confirm or reject the fine or suspension  
14 levied by the board. If the proposed fine or suspension levied  
15 by the board is approved by the committee, the fine payment  
16 shall be due five days after the date of the committee meeting  
17 at which the fine is approved. The association shall provide  
18 written notice of the fine or suspension by mail or hand  
19 delivery to the parcel owner and, if applicable, to any tenant,  
20 licensee, or invitee of the parcel owner.



1           (e) If a member is more than ninety days delinquent in  
2 paying any fee, fine, or other monetary obligation due to the  
3 association, the association may suspend the rights of the  
4 member, or the member's tenant, guest, or invitee, to use common  
5 areas and facilities until the fee, fine, or other monetary  
6 obligation is paid in full. This subsection does not apply to  
7 that portion of common areas used to provide access or utility  
8 services to the parcel. A suspension may not prohibit an owner  
9 or tenant of a parcel from having vehicular and pedestrian  
10 ingress to and egress from the parcel, including the right to  
11 park. The notice and hearing requirements under subsection (d)  
12 shall not apply to a suspension imposed under this subsection.

13           (f) An association may suspend the voting rights of a  
14 parcel or member for the nonpayment of any fee, fine, or other  
15 monetary obligation due to the association that is more than  
16 ninety days delinquent. A voting interest or consent right  
17 allocated to a parcel or member that has been suspended by the  
18 association shall be subtracted from the total number of voting  
19 interests in the association, which shall be reduced by the  
20 number of suspended voting interests when calculating the total  
21 percentage or number of all voting interests available to take



1 or approve any action, and the suspended voting interests shall  
2 not be considered for any purpose, including the percentage or  
3 number of voting interests necessary to constitute a quorum, the  
4 percentage or number of voting interests required to conduct an  
5 election, or the percentage or number of voting interests  
6 required to approve an action under this chapter or pursuant to  
7 the governing documents. The notice and hearing requirements  
8 under subsection (d) do not apply to a suspension imposed under  
9 this subsection. The suspension shall end upon full payment of  
10 all obligations currently due or overdue to the association.

11 (g) All suspensions imposed pursuant to subsections (e) or  
12 (f) shall be approved at a properly noticed board meeting. Upon  
13 approval, the association shall notify the parcel owner and, if  
14 applicable, the parcel's occupant, licensee, or invitee by mail  
15 or hand delivery.

16 (h) The suspensions permitted by subsections (c), (e), and  
17 (f) shall apply to a member and, when appropriate, the member's  
18 tenants, guests, or invitees, even if the delinquency or failure  
19 that resulted in the suspension arose from less than all of the  
20 multiple parcels owned by a member.



1           §   -18 Failure to fill vacancies on board of directors  
2 sufficient to constitute a quorum; appointment of receiver upon  
3 petition of member. (a) If an association fails to fill  
4 vacancies on the board of directors sufficient to constitute a  
5 quorum in accordance with the bylaws, any member may give notice  
6 of the member's intent to apply to the circuit court within  
7 whose jurisdiction the association lies for the appointment of a  
8 receiver to manage the affairs of the association. The form of  
9 the notice shall be as follows:

10   NOTICE OF INTENT TO

11   APPLY FOR RECEIVERSHIP

12  
13           YOU ARE HEREBY NOTIFIED that the undersigned member of  
14           (name of homeowners' association)   intends to file a  
15           petition in the circuit court for appointment of a receiver  
16           to manage the affairs of the association on the grounds  
17           that the association has failed to fill vacancies on the  
18           board of directors sufficient to constitute a quorum. This  
19           petition will not be filed if the vacancies are filled  
20           within thirty days after the date on which this notice was  
21           sent or posted, whichever is later. If a receiver is





1 appointed, the receiver shall have all of the powers of the  
2 board and shall be entitled to receive a salary and  
3 reimbursement of all costs and attorneys' fees payable from  
4 association funds.

5

6 (name and address of petitioning member)

7

8 (b) The notice required by subsection (a) shall be  
9 provided by the member to the association by certified mail or  
10 personal delivery, shall be posted in a conspicuous place within  
11 the homeowners' association, and shall be provided to every  
12 member of the association by certified mail or personal  
13 delivery. The notice shall be posted and mailed or delivered at  
14 least thirty days prior to the filing of a petition seeking  
15 receivership. Notice by mail to a member shall be sent to the  
16 address used by the county property appraiser for notice to the  
17 member.

18 (c) If the association fails to fill the vacancies within  
19 thirty days after the notice required by subsection (a) is  
20 posted and mailed or delivered, the member may proceed with the  
21 petition.



1 (d) If a receiver is appointed, all members shall be given  
2 written notice of the appointment as provided in section -28.

3 (e) The association shall be responsible for the salary of  
4 the receiver, court costs, and attorneys' fees. The receiver  
5 shall have all powers and duties of a duly constituted board of  
6 directors and shall serve until the association fills vacancies  
7 on the board sufficient to constitute a quorum and the court  
8 relieves the receiver of the appointment.

9 § -19 **Contracts for products and services; in writing;**  
10 **bids; exceptions.** (a) All contracts as further described in  
11 this section or any contract that is not to be fully performed  
12 within one year after the making of the contract for the  
13 purchase, lease, or renting of materials or equipment to be used  
14 by the association in accomplishing its purposes under this  
15 chapter or the governing documents, and all contracts for the  
16 provision of services, shall be in writing. If a contract for  
17 the purchase, lease, or renting of materials or equipment, or  
18 for the provision of services, requires payment by the  
19 association that exceeds ten per cent of the total annual budget  
20 of the association, including reserves, the association shall  
21 obtain competitive bids for the materials, equipment, or



1 services. Nothing contained in this section shall be construed  
2 to require the association to accept the lowest bid.

3 (b) Notwithstanding the foregoing, contracts with  
4 employees of the association, and contracts for the services of  
5 an attorney, accountant, architect, community association  
6 manager, engineer, or landscape architect shall not be subject  
7 to this section.

8 (c) Materials, equipment, or services provided to an  
9 association under a local government franchise agreement by a  
10 franchise holder shall not be subject to the competitive bid  
11 requirements of this section. A contract with a manager, if  
12 made by a competitive bid, may be made for up to three years.  
13 An association whose declaration or bylaws provide for  
14 competitive bidding for services may operate under the  
15 provisions of that declaration or bylaws in lieu of this section  
16 if those provisions are not less stringent than the requirements  
17 of this section.

18 (d) Nothing contained in this section is intended to limit  
19 the ability of an association to obtain needed products and  
20 services in an emergency.



1 (e) This section shall not apply if the business entity  
2 with which the association desires to enter into a contract is  
3 the only source of supply within the county serving the  
4 association.

5 (f) Nothing contained in this section shall excuse a party  
6 contracting to provide maintenance or management services from  
7 compliance with section -24.

8 § -20 Meetings of members; voting and election  
9 procedures; amendments. (a) Unless a lower number is provided  
10 in the bylaws, the percentage of voting interests required to  
11 constitute a quorum at a meeting of the members shall be thirty  
12 per cent of the total voting interests. Unless otherwise  
13 provided in this chapter or in the articles of incorporation or  
14 bylaws, decisions that require a vote of the members shall be  
15 made by the concurrence of at least a majority of the voting  
16 interests present, in person or by proxy, at a meeting at which  
17 a quorum has been attained. A meeting of the members shall be  
18 held at a location that is accessible to a physically  
19 handicapped person if requested by a physically handicapped  
20 person who has a right to attend the meeting.



1 (b) Unless otherwise provided in the governing documents  
2 or required by law, and other than those matters set forth in  
3 subsection (c), any governing document of an association may be  
4 amended by the affirmative vote of two-thirds of the voting  
5 interests of the association. Within thirty days after  
6 recording an amendment to the governing documents, the  
7 association shall provide copies of the amendment to the  
8 members; provided that if a copy of the proposed amendment is  
9 provided to the members before they vote on the amendment and  
10 the proposed amendment is not changed before the vote, the  
11 association, in lieu of providing a copy of the amendment, may  
12 provide notice to the members that the amendment was adopted,  
13 identifying the official book and page number or instrument  
14 number of the recorded amendment and that a copy of the  
15 amendment is available at no charge to the member upon written  
16 request to the association. The copies and notice described in  
17 this subsection may be provided electronically to those owners  
18 who previously consented to receive notice electronically. The  
19 failure to timely provide notice of the recording of the  
20 amendment shall not affect the validity or enforceability of the  
21 amendment.



1           (c) Unless otherwise provided in the governing documents  
2 as originally recorded or permitted by this chapter, an  
3 amendment may not materially and adversely alter the  
4 proportionate voting interest appurtenant to a parcel or  
5 increase the proportion or percentage by which a parcel shares  
6 in the common expenses of the association unless the record  
7 parcel owner and all record owners of liens on the parcels join  
8 in the execution of the amendment. For purposes of this  
9 section, a change in quorum requirements is not an alteration of  
10 voting interests. The merger or consolidation of one or more  
11 associations under a plan of merger or consolidation shall not  
12 be deemed a material or adverse alteration of the proportionate  
13 voting interest appurtenant to a parcel.

14           (d) A notice required under this section shall be mailed  
15 or delivered to the address identified as the parcel owner's  
16 mailing address on the property appraiser's website for the  
17 county in which the parcel is located, or electronically  
18 transmitted in a manner authorized by the association if the  
19 parcel owner has consented, in writing, to receive notice by  
20 electronic transmission.



1           (e) The association shall hold a meeting of its members  
2 annually for the transaction of any and all proper business at a  
3 time, date, and place stated in, or fixed in accordance with,  
4 the bylaws. The election of directors, if one is required to be  
5 held, shall be held at, or in conjunction with, the annual  
6 meeting or as provided in the governing documents.

7           (f) Special meetings shall be held when called by the  
8 board of directors or, unless a different percentage is stated  
9 in the governing documents, by at least ten per cent of the  
10 total voting interests of the association. Business conducted  
11 at a special meeting shall be limited to the purposes described  
12 in the notice of the meeting.

13           (g) Unless law or the governing documents require  
14 otherwise, notice of an annual meeting shall not be required to  
15 include a description of the purpose or purposes for which the  
16 meeting is called. Notice of a special meeting shall include a  
17 description of the purpose or purposes for which the meeting is  
18 called.

19           (h) The association shall give all parcel owners and  
20 members actual notice of all membership meetings, which shall be  
21 mailed, delivered, or electronically transmitted to the members



1 not less than fourteen days prior to the meeting. Evidence of  
2 compliance with the fourteen-day notice shall be made by an  
3 affidavit executed by the person providing the notice and filed  
4 upon execution among the official records of the association.  
5 In addition to mailing, delivering, or electronically  
6 transmitting the notice of any meeting, the association, by  
7 reasonable rule, may adopt a procedure for conspicuously posting  
8 and repeatedly broadcasting the notice and the agenda on a  
9 closed-circuit cable television system serving the association.  
10 When broadcast notice is provided, the notice and agenda shall  
11 be broadcast in a manner and for a sufficient continuous length  
12 of time so as to allow an average reader to observe the notice  
13 and read and comprehend the entire content of the notice and the  
14 agenda.

15 (i) Members and parcel owners shall have the right to  
16 attend all membership meetings and to speak at any meeting with  
17 reference to all items opened for discussion or included on the  
18 agenda. Notwithstanding any provision to the contrary in the  
19 governing documents or any rules adopted by the board or by the  
20 membership, a member and a parcel owner shall have the right to  
21 speak for at least three minutes on any item. The association





1 may adopt written reasonable rules governing the frequency,  
2 duration, and other manner of member and parcel owner  
3 statements, which rules shall be consistent with this  
4 subsection.

5 (j) Unless the bylaws require otherwise, adjournment of an  
6 annual or special meeting to a different date, time, or place  
7 shall be announced at that meeting before an adjournment is  
8 taken, or notice shall be given of the new date, time, or place  
9 pursuant to section -4. Any business that might have been  
10 transacted on the original date of the meeting may be transacted  
11 at the adjourned meeting. If a new record date for the  
12 adjourned meeting is or must be fixed, notice of the adjourned  
13 meeting shall be given to persons who are entitled to vote and  
14 are members as of the new record date but were not members as of  
15 the previous record date.

16 (k) The members shall have the right, unless otherwise  
17 provided in this subsection or in the governing documents, to  
18 vote in person or by proxy.

19 To be valid, a proxy shall be dated, state the date, time,  
20 and place of the meeting for which it was given, and be signed  
21 by the authorized person who executed the proxy. A proxy shall



1 be effective only for the specific meeting for which it was  
2 originally given, as the meeting may lawfully be adjourned and  
3 reconvened from time to time, and automatically expires ninety  
4 days after the date of the meeting for which it was originally  
5 given. A proxy shall be revocable at any time at the pleasure  
6 of the person who executes it.

7       If the governing documents permit voting by secret ballot  
8 by members who are not in attendance at a meeting of the members  
9 for the election of directors, the ballots shall be placed in an  
10 inner envelope with no identifying markings and mailed or  
11 delivered to the association in an outer envelope bearing  
12 identifying information reflecting the name of the member, the  
13 lot or parcel for which the vote is being cast, and the  
14 signature of the lot or parcel owner casting that ballot. If  
15 the eligibility of the member to vote is confirmed and no other  
16 ballot has been submitted for that lot or parcel, the inner  
17 envelope shall be removed from the outer envelope bearing the  
18 identification information, placed with the ballots which were  
19 personally cast, and opened when the ballots are counted. If  
20 more than one ballot is submitted for a lot or parcel, the  
21 ballots for that lot or parcel shall be disqualified. Any vote



1 by ballot received after the closing of the balloting shall not  
2 be considered.

3 (1) Elections of directors shall be conducted in  
4 accordance with the procedures set forth in the governing  
5 documents of the association. Except as provided in subsection  
6 (m), all members of the association shall be eligible to serve  
7 on the board of directors, and a member may nominate the  
8 member's self as a candidate for the board at a meeting where  
9 the election is to be held; provided that if the election  
10 process allows candidates to be nominated in advance of the  
11 meeting, the association shall not be required to allow  
12 nominations at the meeting. An election shall not be required  
13 unless more candidates are nominated than vacancies exist. If  
14 an election is not required because there are either an equal  
15 number or fewer qualified candidates than vacancies exist, and  
16 if nominations from the floor are not required pursuant to this  
17 section or the bylaws, write-in nominations shall not be  
18 permitted and the qualified candidates shall commence service on  
19 the board of directors, regardless of whether a quorum is  
20 attained at the annual meeting. Except as otherwise provided in  
21 the governing documents, boards of directors shall be elected by



1 a plurality of the votes cast by eligible voters. Any challenge  
2 to the election process shall be commenced within sixty days  
3 after the election results are announced.

4 (m) A person who is delinquent in the payment of any fee,  
5 fine, or other monetary obligation to the association on the day  
6 that the person could last nominate the person's self or be  
7 nominated for the board may not seek election to the board, and  
8 the person's name shall not be listed on the ballot. A person  
9 serving as a board member who becomes more than ninety days  
10 delinquent in the payment of any fee, fine, or other monetary  
11 obligation to the association shall be deemed to have abandoned  
12 the person's seat on the board, creating a vacancy on the board  
13 to be filled according to law.

14 A person who has been convicted of any felony in this State  
15 or in a United States District or Territorial Court, or has been  
16 convicted of any offense in another jurisdiction that would be  
17 considered a felony if committed in this State, shall not seek  
18 election to the board and shall not be eligible for board  
19 membership unless the felon's civil rights have been restored  
20 for at least five years as of the date on which the person seeks  
21 election to the board. The validity of any action by the board



1 shall not be affected if it is later determined that a person  
2 was ineligible to seek election to the board or that a member of  
3 the board is ineligible for board membership.

4 For purposes of this subsection, the term "any fee, fine,  
5 or other monetary obligation" means any delinquency to the  
6 association with respect to any parcel.

7 (n) Any election dispute between a member and an  
8 association shall be submitted to mandatory binding arbitration  
9 with the county. Unless otherwise provided in the bylaws, any  
10 vacancy occurring on the board before the expiration of a term  
11 may be filled by an affirmative vote of the majority of the  
12 remaining directors, even if the remaining directors constitute  
13 less than a quorum, or by the sole remaining director.  
14 Alternatively, a board may hold an election to fill the vacancy,  
15 in which case the election procedures shall conform to the  
16 requirements of the governing documents. Unless otherwise  
17 provided in the bylaws, a board member appointed or elected  
18 under this section shall be appointed for the unexpired term of  
19 the seat being filled.

20 (o) Any parcel owner may make a recording of meetings of  
21 the board of directors and meetings of the members. The board



1 of directors of the association may adopt reasonable rules  
2 governing the recording of meetings of the board and the  
3 membership.

4 (p) The financial records, including financial statements  
5 of the association, and source documents from the incorporation  
6 of the association through the date of turnover. The records  
7 shall be audited by an independent certified public accountant  
8 for the period from the incorporation of the association or from  
9 the period covered by the last audit, if an audit has been  
10 performed for each fiscal year since incorporation. All  
11 financial statements shall be prepared in accordance with  
12 generally accepted accounting principles and shall be audited in  
13 accordance with generally accepted auditing standards. The  
14 certified public accountant performing the audit shall examine  
15 to the extent necessary supporting documents and records,  
16 including the cash disbursements and related paid invoices to  
17 determine if expenditures were for association purposes and the  
18 billings, cash receipts, and related records of the association  
19 to determine that the developer was charged and paid the proper  
20 amounts of assessments.



1           (q) This section shall not apply to a homeowner'  
2 association in existence under chapter 421J on the effective  
3 date of this chapter, or to a homeowners' association, no matter  
4 when created, if the association is created in a community that  
5 is included in an effective development-of-regional-impact  
6 development order as of the effective date of this chapter,  
7 together with any approved modifications thereof.

8           § -21 Assessments and charges. (a) Assessments levied  
9 pursuant to the annual budget or special assessment shall be in  
10 the member's proportional share of expenses as described in the  
11 governing document, which share may be different among classes  
12 of parcels based upon the state of development thereof, levels  
13 of services received by the applicable members, or other  
14 relevant factors.

15           (b) While the developer is in control of the homeowners'  
16 association, the developer may be excused from payment of its  
17 share of the operating expenses and assessments related to its  
18 parcels for any period of time for which the developer has, in  
19 the declaration, obligated itself to pay any operating expenses  
20 incurred that exceed the assessments receivable from other  
21 members and other income of the association.



1 (c) Assessments or contingent assessments may be levied by  
2 the board of directors of the association to secure the  
3 obligation of the homeowners' association for insurance acquired  
4 from any self-insurance fund.

5 (d) Expenses incurred in the production of non-assessment  
6 revenues, not in excess of the non-assessment revenues, shall  
7 not be included in the operating expenses. If the expenses  
8 attributable to non-assessment revenues exceed non-assessment  
9 revenues, only the excess expenses shall be funded by the  
10 guarantor. Interest earned on the investment of association  
11 funds may be used to pay the income tax expense incurred as a  
12 result of the investment; provided that the expense shall not be  
13 charged to the guarantor; provided further that the net  
14 investment income shall be retained by the association. Each  
15 non-assessment-revenue-generating activity shall be considered  
16 separately. Any portion of the parcel assessment that is  
17 budgeted for designated capital contributions of the association  
18 shall not be used to pay operating expenses.

19 § -22 Payment for assessments; lien claims. (a) To be  
20 valid, a claim of lien shall state the description of the  
21 parcel, the name of the record owner, the name and address of





1 the association, the assessment amount due, and the due date.  
2 The claim of lien shall secure all unpaid assessments that are  
3 due and that may accrue subsequent to the recording of the claim  
4 of lien and before entry of a certificate of title, as well as  
5 interest, late charges, and reasonable costs and attorney fees  
6 incurred by the association incident to the collection process;  
7 provided that no lien can accrue during a period in which  
8 abutting roads or common areas have not been maintained or  
9 repaired. The person making payment shall be entitled to a  
10 satisfaction of the lien upon payment in full.

11 (b) By recording a notice in substantially the following  
12 form, a parcel owner or the parcel owner's agent or attorney may  
13 require the association to enforce a recorded claim of lien  
14 against the parcel:

15 NOTICE OF CONTEST OF LIEN

16

17 TO: (Name and address of association)

18

19 You are notified that the undersigned contests the claim of  
20 lien filed by you on , (year) , and recorded in  
21 Official Records Book at page , of the public records of



1 County, Hawaii, and that the time within which you may file  
2 suit to enforce your lien is limited to ninety days  
3 following the date of service of this notice. Executed  
4 this day of , (year) .

5  
6 Signed: (Owner or Attorney)

7  
8 After the notice of a contest of lien has been recorded, the  
9 clerk of the circuit court shall mail a copy of the recorded  
10 notice to the association by certified mail, return receipt  
11 requested, at the address shown in the claim of lien or the most  
12 recent amendment to it and shall certify to the service on the  
13 face of the notice. Service shall be complete upon mailing.  
14 After service, the association shall have ninety days in which  
15 to file an action to enforce the lien and, if the action is not  
16 filed within the ninety-day period, the lien shall be void;  
17 provided that the ninety-day period shall be extended for any  
18 length of time that the association is prevented from filing its  
19 action because of an automatic stay resulting from the filing of  
20 a bankruptcy petition by the parcel owner or by any other person  
21 claiming an interest in the parcel.



1 (c) The association may bring an action in its name to  
2 foreclose a lien for assessments in the same manner in which a  
3 mortgage of real property is foreclosed and may also bring an  
4 action to recover a money judgment for the unpaid assessments  
5 without waiving any claim of lien. The association may recover  
6 its reasonable attorneys' fees incurred in an action to  
7 foreclose a lien or an action to recover a money judgment for  
8 unpaid assessments.

9 (d) A release of lien shall be in substantially the  
10 following form:

11 RELEASE OF LIEN

12  
13 The undersigned lienor, in consideration of the final  
14 payment in the amount of \$ , hereby waives and releases its  
15 lien and right to claim a lien for unpaid assessments  
16 through , (year) , recorded in the Official Records  
17 Book at Page , of the public records of County,  
18 Hawaii, for the following described real property:

19



1 (TMK: OF (subdivision name) SUBDIVISION AS SHOWN IN  
 2 THE PLAT THEREOF, RECORDED AT PLAT BOOK , PAGE , OF THE  
 3 OFFICIAL RECORDS OF COUNTY, HAWAII.

4  
 5 ..(or insert appropriate metes and bounds description here)

6  
 7 ..(Signature of Authorized Agent) (Signature of  
 8 Witness)

9  
 10 (Print Name) (Print Name)

11  
 12 (Signature of Witness)

13  
 14 (Print Name)

15  
 16 Sworn to (or affirmed) and subscribed before me this day  
 17 of , (year) , by (name of person making statement) .

18  
 19 (Signature of Notary Public)

20



1           (Print, type, or stamp commissioned name of Notary  
2           Public)

3  
4           Personally Known   OR Produced    as identification.

5  
6           (e) If the parcel owner remains in possession of the  
7 parcel after a foreclosure judgment has been entered, the court  
8 may require the parcel owner to pay a reasonable rent for the  
9 parcel. If the parcel is rented or leased during the pendency  
10 of the foreclosure action, the association shall be entitled to  
11 the appointment of a receiver to collect the rent. The expenses  
12 of the receiver shall be paid by the party who does not prevail  
13 in the foreclosure action.

14           (f) The association may purchase the parcel at the  
15 foreclosure sale and hold, lease, mortgage, or convey the  
16 parcel.

17           (g) A parcel owner, regardless of how the title to the  
18 property has been acquired, including by purchase at a  
19 foreclosure sale or by deed in lieu of foreclosure, shall be  
20 liable for all assessments that come due while the person is the  
21 parcel owner. The parcel owner's liability for assessments may



1 not be avoided by waiver or suspension of the use or enjoyment  
2 of any common area or by abandonment of the parcel upon which  
3 the assessments are made.

4 (h) A parcel owner shall be jointly and severally liable  
5 with the previous parcel owner for all unpaid assessments that  
6 came due up to the time of transfer of title. The liability  
7 shall be without prejudice to any right the present parcel owner  
8 may have to recover any amounts paid by the present owner from  
9 the previous owner. The present parcel owner's liability for  
10 unpaid assessments shall be limited to any unpaid assessments  
11 that accrued before the association acquired title to the  
12 delinquent property through foreclosure or by deed in lieu of  
13 foreclosure.

14 For the purposes of this subsection, the term "previous  
15 owner" shall not include an association that acquires title to a  
16 delinquent property through foreclosure or by deed in lieu of  
17 foreclosure.

18 (i) Notwithstanding anything to the contrary contained in  
19 this section, the liability of a first mortgagee, or its  
20 successor or assignee as a subsequent holder of the first  
21 mortgage who acquires title to a parcel by foreclosure or by



1 deed in lieu of foreclosure for the unpaid assessments that  
2 became due before the mortgagee's acquisition of title, shall be  
3 the lesser of:

- 4 (1) The parcel's unpaid common expenses and regular  
5 periodic or special assessments that accrued or came  
6 due during the twelve months immediately preceding the  
7 acquisition of title and for which payment in full has  
8 not been received by the association; or
- 9 (2) One per cent of the original mortgage debt.

10 The limitations on first mortgagee liability provided by  
11 this subsection shall apply only if the first mortgagee filed  
12 suit against the parcel owner and initially joined the  
13 association as a defendant in the mortgagee foreclosure action.  
14 Joinder of the association shall not be required if, on the date  
15 the complaint is filed, the association was dissolved or did not  
16 maintain an office or agent for service of process at a location  
17 that was known to or reasonably discoverable by the mortgagee.

18 (j) An association, or its successor or assignee, that  
19 acquires title to a parcel through the foreclosure of its lien  
20 for assessments shall not be liable for any unpaid assessments,  
21 late fees, interest, or reasonable attorneys' fees and costs



1 that came due before the association's acquisition of title in  
2 favor of any other association, which holds a superior lien  
3 interest on the parcel.

4 (k) Assessments and installments on assessments that are  
5 not paid when due shall bear interest from the due date until  
6 paid at the rate provided in the declaration of covenants or the  
7 bylaws of the association, which rate shall not exceed the rate  
8 allowed by law. If no rate is provided in the declaration or  
9 bylaws, interest shall accrue at the rate of ten per cent per  
10 year.

11 (l) If the declaration or bylaws so provide, the  
12 association may also charge an administrative late fee not to  
13 exceed the greater of twenty-five dollars or five per cent of  
14 the amount of each installment that is paid past the due date.

15 (m) Any payment received by an association and accepted  
16 shall be applied first to any interest accrued, then to any  
17 administrative late fee, then to any costs and reasonable  
18 attorneys' fees incurred in collection, and then to the  
19 delinquent assessment. This subsection shall apply  
20 notwithstanding any restrictive endorsement, designation,  
21 instruction placed on or accompanying a payment, any purported





1 accord and satisfaction, or any restrictive endorsement,  
2 designation, or instruction placed on or accompanying a payment.

3 (n) A homeowners' association shall not file a record of  
4 lien against a parcel for unpaid assessments unless a written  
5 notice or demand for past due assessments as well as any other  
6 amounts owed to the association pursuant to its governing  
7 documents has been made by the association. The written notice  
8 or demand shall:

9 (1) Provide the owner with forty-five days following the  
10 date the notice is deposited in the mail to make  
11 payment for all amounts due, including any attorneys'  
12 fees and actual costs associated with the preparation  
13 and delivery of the written demand. The notice shall  
14 be in substantially the following form:

15 NOTICE OF INTENT

16 TO RECORD A CLAIM OF LIEN

17  
18 RE: Parcel or (lot/block) (lot/parcel number) of  
19 (name of association)  
20



1       The following amounts are currently due on your account to  
 2       (name of association), and must be paid within forty-five  
 3       days after your receipt of this letter. This letter shall  
 4       serve as the association's notice of intent to record a  
 5       Claim of Lien against your property no sooner than forty-  
 6       five days after your receipt of this letter, unless you pay  
 7       in full the amounts set forth below:

8

9       Maintenance due       (dates)               \$ .

10

11       Late fee, if applicable               \$ .

12

13       Interest through       (dates) \*           \$ .

14

15       Certified mail charges               \$ .

16

17       Other costs           \$ .

18

19       TOTAL OUTSTANDING               \$ .

20

21       \*Interest accrues at the rate of       percent per annum.



- 1           (2) Provide the owner with the dates and a summary  
2           description of repairs and maintenance of abutting  
3           roads during the period of any assessments; and
- 4           (3) Be sent by registered or certified mail, return  
5           receipt requested, and by first-class United States  
6           mail to the parcel owner at the owner's last address  
7           as reflected in the records of the association, if the  
8           address is within the United States, and to the parcel  
9           owner subject to the demand at the address of the  
10          parcel if the owner's address as reflected in the  
11          records of the association is not the parcel address.  
12          If the address reflected in the records is outside the  
13          United States, then sending the notice to that address  
14          and to the parcel address by first-class United States  
15          mail is sufficient.
- 16          (o) The association may bring an action in its name to  
17          foreclose a lien for unpaid assessments secured by a lien in the  
18          same manner that a mortgage of real property is foreclosed and  
19          may also bring an action to recover a money judgment for the  
20          unpaid assessments without waiving any claim of lien. The  
21          action to foreclose the lien shall not be brought until forty-



1 five days after the parcel owner has been provided notice of the  
2 association's intent to foreclose and collect the unpaid amount.  
3 The notice shall be given in the manner provided in subsection  
4 (n) (2) and (3), and the notice shall not be provided until the  
5 passage of the forty-five days required in subsection (n) (1).  
6 The notice shall be in substantially the following form:

7 DELINQUENT ASSESSMENT  
8

9 This letter is to inform you a Claim of Lien has been filed  
10 against your property because you have not paid the (type  
11 of assessment) assessment to (name of association) .  
12 The association intends to foreclose the lien and collect  
13 the unpaid amount within forty-five days of this letter  
14 being provided to you.  
15

16 You owe the interest accruing from (month/year) to the  
17 present. As of the date of this letter, the total amount  
18 due with interest is \$ . All costs of any action and  
19 interest from this day forward will also be charged to your  
20 account.  
21



1 Any questions concerning this matter should be directed to  
2 (insert name, addresses, and telephone numbers of  
3 association representative) .

4 (p) The association may recover any interest, late  
5 charges, costs, and reasonable attorneys' fees incurred in a  
6 lien foreclosure action or in an action to recover a money  
7 judgment for the unpaid assessments.

8 (q) The time limitations for subsection (o) shall not  
9 apply if the parcel is subject to a foreclosure action or forced  
10 sale of another party, or if an owner of the parcel is a debtor  
11 in a bankruptcy proceeding.

12 (r) If after service of a summons on a complaint to  
13 foreclose a lien the parcel is not the subject of a mortgage  
14 foreclosure or a notice of tax certificate sale, the parcel  
15 owner is not a debtor in bankruptcy proceedings, or the trial of  
16 or trial docket for the lien foreclosure action is not set to  
17 begin within thirty days, the parcel owner may serve and file  
18 with the court a qualifying offer at any time before the entry  
19 of a foreclosure judgment. The parcel owner may make only one  
20 qualifying offer during the pendency of a foreclosure action.  
21 If a parcel becomes the subject of a mortgage foreclosure or a



1 notice of tax certificate sale while a qualifying offer is  
2 pending, the qualifying offer shall be voidable at the election  
3 of the association. If the parcel owner becomes a debtor in  
4 bankruptcy proceedings while a qualifying offer is pending, the  
5 qualifying offer shall be void.

6 (s) The parcel owner shall deliver a copy of the filed  
7 qualifying offer to the association's attorney by hand delivery,  
8 obtaining a written receipt, or by certified mail, return  
9 receipt requested.

10 (t) The parcel owner's filing of the qualifying offer with  
11 the court stays the foreclosure action for the period stated in  
12 the qualifying offer, which shall not exceed sixty days  
13 following the date of service of the qualifying offer and no  
14 sooner than thirty days before the date of trial, arbitration,  
15 or the beginning of the trial docket, whichever occurs first, to  
16 permit the parcel owner to pay the qualifying offer to the  
17 association plus any amounts accruing during the pendency of the  
18 offer.

19 (u) The qualifying offer shall be in writing, be signed by  
20 at least one owner of the parcel, be acknowledged by a notary  
21 public, and be in substantially the following form:



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

QUALIFYING OFFER

AUTOMATIC STAY INVOKED

I/We, [Name(s) of Parcel Owner(s)], admit the following:

1. The total amount due the association is secured by the lien of the association.

2. The association is entitled to foreclose its claim of lien and obtain a foreclosure judgment for the total amount due if I/we breach this qualifying offer by failing to pay the amount due by the date specified in this qualifying offer.

3. I/We will not permit the priority of the lien of the association or the amounts secured by the lien to be endangered.

4. I/We hereby affirm that the date(s) by which the association will receive \$ [specify amount] as the total amount due is [specify date, no later than sixty days after



1 the date of service of the qualifying offer and at least  
2 thirty days before the trial or arbitration date], in the  
3 following amounts and dates:

4  
5 5. I/We hereby confirm that I/we have requested and have  
6 received from the homeowners' association a breakdown and  
7 total of all sums due the association and that the amount  
8 offered above is equal to or greater than the total amount  
9 provided by the association.

10  
11 6. This qualifying offer operates as a stay to all  
12 portions of the foreclosure action which seek to collect  
13 unpaid assessments.

14  
15 Signed: (Signatures of all parcel owners and spouses, if  
16 any)

17  
18 Sworn to and subscribed this (date) day of (month) ,  
19 (year) , before the undersigned authority.

20  
21 Notary Public: (Signature of notary public)





1           (v) If the parcel owner makes a qualifying offer under  
2 this section, the association shall not add the cost of any  
3 legal fees incurred by the association within the period of the  
4 stay other than costs acquired in defense of a mortgage  
5 foreclosure action concerning the parcel, a bankruptcy  
6 proceeding in which the parcel owner is a debtor, or in response  
7 to filings by a party other than the association in the lien  
8 foreclosure action of the association.

9           (w) If the parcel owner breaches the qualifying offer, the  
10 stay shall be vacated and the association may proceed in its  
11 action to obtain a foreclosure judgment against the parcel and  
12 the parcel owners for the amount in the qualifying offer and any  
13 amounts accruing after the date of the qualifying offer.

14           (x) If the parcel is occupied by a tenant and the parcel  
15 owner is delinquent in paying any monetary obligation due to the  
16 association, the association may demand that the tenant pay to  
17 the association the subsequent rental payments and continue to  
18 make payments until all the monetary obligations of the parcel  
19 owner related to the parcel have been paid in full to the  
20 association and the association releases the tenant or until the  
21 tenant discontinues tenancy in the parcel.



1           (y) The association shall provide the tenant a notice, by  
2 hand delivery or United States mail, in substantially the  
3 following form:

4           Pursuant to section       -22(x), Hawaii Revised Statutes, we  
5 demand that you make your rent payments directly to the  
6 homeowners' association and continue doing so until the  
7 association notifies you otherwise.

8  
9           Payment due the homeowners' association may be in the same  
10 form as you paid your landlord and must be sent by United  
11 States mail or hand delivery to       (full address)       ,  
12 payable to       (name)       .

13  
14           Your obligation to pay your rent to the association begins  
15 immediately, unless you have already paid rent to your  
16 landlord for the current period before receiving this  
17 notice. In that case, you must provide the association  
18 written proof of your payment within fourteen days after  
19 receiving this notice and your obligation to pay rent to  
20 the association would then begin with the next rental  
21 period.



1

2 Pursuant to section -22(x), Hawaii Revised Statutes,  
3 your payment of rent to the association gives you complete  
4 immunity from any claim for the rent by your landlord.

5 (z) A tenant shall be immune from any claim by the parcel  
6 owner related to the rent timely paid to the association after  
7 the association has made written demand.

8 (aa) If the tenant paid rent to the landlord or parcel  
9 owner for a given rental period before receiving the demand from  
10 the association and provides written evidence to the association  
11 of having paid the rent within fourteen days after receiving the  
12 demand, the tenant shall begin making rental payments to the  
13 association for the following rental period and shall continue  
14 making rental payments to the association to be credited against  
15 the monetary obligations of the parcel owner until the  
16 association releases the tenant or the tenant discontinues  
17 tenancy in the unit. The association shall, upon request,  
18 provide the tenant with written receipts for payments made. The  
19 association shall mail written notice to the parcel owner of the  
20 association's demand that the tenant pay monetary obligations to  
21 the association.



1           (bb) The liability of the tenant shall not exceed the  
2 amount due from the tenant to the tenant's landlord. The tenant  
3 shall be given a credit against rent due to the landlord in the  
4 amount of assessments paid to the association.

5           (cc) The association may sue for summary possession as if  
6 the association were a landlord if the tenant fails to pay a  
7 monetary obligation; provided that the association shall not  
8 otherwise be deemed a landlord.

9           (dd) The tenant, by virtue of payment of monetary  
10 obligations, shall not have any of the rights of a parcel owner  
11 to vote in any election or to examine the books and records of  
12 the association.

13           (ee) A court may supersede the effect of subsections (aa)  
14 to (dd) by appointing a receiver.

15           § -23 **Financial report.** In a residential subdivision in  
16 which the owners of lots or parcels must pay mandatory  
17 maintenance or amenity fees to the subdivision developer or to  
18 the owners of the common areas, recreational facilities, and  
19 other properties serving the lots or parcels, the developer or  
20 owner of the areas, facilities, or properties shall make public,  
21 within sixty days following the end of each fiscal year, a



1 complete financial report of the actual, total receipts of  
2 mandatory maintenance fees received by it, and an itemized  
3 listing of the expenditures made by it from those fees, for that  
4 year. The report shall be made public by mailing it to each lot  
5 or parcel owner in the subdivision, by publishing it in a  
6 publication regularly distributed within the subdivision, or by  
7 posting it in prominent locations in the subdivision.

8 § -24 **Agreements entered into by the association.** (a)

9 Any grant or reservation made by any document, and any contract  
10 that has a term greater than ten years, that is made by an  
11 association before control of the association is turned over to  
12 the members other than the developer, and that provides for the  
13 operation, maintenance, or management of the association or  
14 common areas, shall be fair and reasonable.

15 (b) Any contract entered into by the board may be canceled  
16 by a majority of the voting interests present at the next  
17 regular or special meeting of the association, whichever occurs  
18 first. Any member may make a motion to cancel the contract;  
19 provided that if no motion is made or if the motion fails to  
20 obtain the required vote, the contract shall be deemed ratified  
21 for the expressed term.



1           (c) A resident of any parcel, whether a tenant or parcel  
2 owner, may not be denied access to available franchised,  
3 licensed, or certificated cable or video service providers if  
4 the resident pays the provider directly for services. A  
5 resident or a cable or video service provider may not be  
6 required to pay anything of value in order to obtain or provide  
7 the service except for the charges normally paid for like  
8 services by residents of single-family homes located outside the  
9 community but within the same franchised, licensed, or  
10 certificated area, and except for installation charges agreed to  
11 between the resident and the service provider.

12           § -25 Recreational leaseholds; right to acquire;  
13 escalation clauses. (a) The legislature declares that the  
14 public policy of this State prohibits the inclusion or  
15 enforcement of escalation clauses in land leases or other leases  
16 for recreational facilities, land, or other commonly used  
17 facilities that serve residential communities, and those clauses  
18 are hereby declared void.

19           (b) This public policy prohibits the inclusion of  
20 escalation clauses in leases entered into after the effective  
21 date of this chapter.



- 1 (c) This section shall not apply:
- 2 (1) If the lessor is the federal government, this State,
- 3 any political subdivision of this State, or any agency
- 4 of a political subdivision of this State;
- 5 (2) To a homeowners' association that is created under
- 6 chapter 421J, no matter when created, if the
- 7 association is created in a community that is included
- 8 in an effective development-of-regional-impact
- 9 development order as of the effective date of this
- 10 chapter, together with any approved modifications
- 11 thereto; or
- 12 (3) To any:
- 13 (A) Sale or transfer to a person who would be
- 14 included within the table of descent and
- 15 distribution if the facility owner were to die
- 16 intestate;
- 17 (B) Transfer by gift, devise, or operation of law;
- 18 (C) Transfer by a corporation to an affiliate;
- 19 (D) Transfer to a governmental or quasi-governmental
- 20 entity;



- 1           (E) Conveyance of an interest in the facilities
- 2                   incidental to the financing of the facilities;
- 3           (F) Conveyance resulting from the foreclosure of a
- 4                   mortgage, deed of trust, or other instrument
- 5                   encumbering the facilities or any deed given in
- 6                   lieu of a foreclosure;
- 7           (G) Sale or transfer between or among joint tenants
- 8                   in common owning the facilities; or
- 9           (H) Purchase of the facilities by a governmental
- 10                   entity under its powers of eminent domain.

11           § -26 **Dispute resolution.** (a) The filing of any  
12 petition for arbitration or the serving of a demand for pre-suit  
13 mediation as provided for in this section shall toll the  
14 applicable statute of limitations. In addition, the applicable  
15 county shall conduct mandatory binding arbitration of election  
16 disputes between a member and an association. Neither election  
17 disputes nor recall disputes are eligible for pre-suit  
18 mediation, which shall be arbitrated by the county. At the  
19 conclusion of the proceeding, the county shall charge the  
20 parties a fee in an amount adequate to cover all costs and  
21 expenses incurred by the county in conducting the proceeding.





1 Initially, the petitioner shall remit a filing fee of at least  
2 two hundred dollars to the county. The fees paid to the county  
3 shall become a recoverable cost in the arbitration proceeding,  
4 and the prevailing party in an arbitration proceeding shall  
5 recover its reasonable costs and attorneys' fees in an amount  
6 found reasonable by the arbitrator. The county shall adopt  
7 ordinances to effectuate the purposes of this section.

8 (b) Disputes between an association and a parcel owner  
9 regarding use of or changes to the parcel or the common areas  
10 and other covenant enforcement disputes, disputes regarding  
11 amendments to the association documents, disputes regarding  
12 meetings of the board and committees appointed by the board,  
13 membership meetings not including election meetings, and access  
14 to the official records of the association shall be the subject  
15 of a demand for pre-suit mediation served by an aggrieved party  
16 before the dispute is filed in court. Pre-suit mediation  
17 proceedings shall be conducted in accordance with the applicable  
18 Hawaii Rules of Civil Procedure, and these proceedings shall be  
19 deemed privileged and confidential to the same extent as court-  
20 ordered mediation. Disputes subject to pre-suit mediation under  
21 this section shall not include the collection of any assessment,



1 fine, or other financial obligation, including attorneys' fees  
2 and costs, claimed to be due or any action to enforce a prior  
3 mediation settlement agreement between the parties. Also, in  
4 any dispute subject to pre-suit mediation under this section  
5 where emergency relief is required, a motion for temporary  
6 injunctive relief may be filed with the court without first  
7 complying with the pre-suit mediation requirements of this  
8 section. After any issues regarding emergency or temporary  
9 relief are resolved, the court may either refer the parties to a  
10 mediation program administered by the courts or require  
11 mediation under this section. An arbitrator or judge shall not  
12 consider any information or evidence arising from the pre-suit  
13 mediation proceeding except in a proceeding to impose sanctions  
14 for failure to attend a pre-suit mediation session or to enforce  
15 a mediated settlement agreement. Persons who are not parties to  
16 the dispute shall not attend the pre-suit mediation conference  
17 without the consent of all parties, except for counsel for the  
18 parties and a corporate representative designated by the  
19 association. When mediation is attended by a quorum of the  
20 board, the mediation shall not be deemed a board meeting for  
21 purposes of notice and participation set forth in section -4.



1 An aggrieved party shall serve on the responding party a written  
2 demand to participate in pre-suit mediation.

3 (c) Service of the statutory demand to participate in pre-  
4 suit mediation shall be effected by sending a letter by  
5 certified mail, return receipt requested, with an additional  
6 copy being sent by regular first-class mail, to the address of  
7 the responding party as it last appears on the books and records  
8 of the association. The responding party has twenty days from  
9 the date of the mailing of the statutory demand to serve a  
10 response to the aggrieved party in writing. The response shall  
11 be served by certified mail, return receipt requested, with an  
12 additional copy being sent by regular first-class mail, to the  
13 address shown on the statutory demand. Notwithstanding the  
14 foregoing, once the parties have agreed on a mediator, the  
15 mediator may reschedule the mediation for a date and time  
16 mutually convenient to the parties. The parties shall share the  
17 costs of pre-suit mediation equally, including the fee charged  
18 by the mediator, if any, unless the parties agree otherwise, and  
19 the mediator may require advance payment of its reasonable fees  
20 and costs. The failure of any party to respond to a demand or  
21 response, to agree upon a mediator, to make payment of fees and



1 costs within the time established by the mediator, or to appear  
2 for a scheduled mediation session without the approval of the  
3 mediator, shall constitute the failure or refusal to participate  
4 in the mediation process and shall operate as an impasse in the  
5 pre-suit mediation by that party, entitling the other party to  
6 proceed in court and to seek an award of the costs and fees  
7 associated with the mediation. Additionally, notwithstanding  
8 the provisions of any other law or document, persons who fail or  
9 refuse to participate in the entire mediation process may not  
10 recover attorneys' fees and costs in subsequent litigation  
11 relating to the dispute. If any pre-suit mediation session  
12 cannot be scheduled and conducted within ninety days after the  
13 offer to participate in mediation was filed, an impasse shall be  
14 deemed to have occurred unless both parties agree to extend this  
15 deadline.

16 (d) If pre-suit mediation is not successful in resolving  
17 all issues between the parties, the parties may file the  
18 unresolved dispute in a court of competent jurisdiction or elect  
19 to enter into binding or nonbinding arbitration. If all parties  
20 do not agree to arbitration proceedings following an  
21 unsuccessful pre-suit mediation, any party may file the dispute



1 in court. A final order resulting from nonbinding arbitration  
2 shall be final and enforceable in the courts if a complaint for  
3 trial de novo is not filed in a court of competent jurisdiction  
4 within thirty days after entry of the order. As to any issue or  
5 dispute that is not resolved at pre-suit mediation, and as to  
6 any issue that is settled at pre-suit mediation but is  
7 thereafter subject to an action seeking enforcement of the  
8 mediation settlement, the prevailing party in any subsequent  
9 arbitration or litigation proceeding shall be entitled to seek  
10 recovery of all costs and attorneys' fees incurred in the pre-  
11 suit mediation process.

12 (e) A mediator or arbitrator may conduct mediation or  
13 arbitration under this section only if the mediator or  
14 arbitrator has been certified as a circuit court civil mediator  
15 or arbitrator, respectively, pursuant to the Hawaii Arbitration  
16 Rules adopted by the supreme court of the State of Hawaii.  
17 Settlement agreements resulting from mediation shall not have  
18 precedential value in proceedings involving parties other than  
19 those participating in the mediation to support either a claim  
20 or defense in other disputes.



1           §   -27   **Declaration of covenants; survival after tax deed**  
2   **or foreclosure.** All provisions of a declaration of covenants  
3 relating to a parcel that has been sold for taxes or special  
4 assessments shall survive and be enforceable after the issuance  
5 of a tax deed or master's deed, or upon the foreclosure of an  
6 assessment, a certificate or lien, a tax deed, tax certificate,  
7 or tax lien, to the same extent that they would be enforceable  
8 against a voluntary grantee of title to the parcel immediately  
9 before the delivery of the tax deed or master's deed or  
10 immediately before the foreclosure.

11           §   -28   **Receivership notification.** Upon the appointment  
12 of a receiver by a court for any reason relating to a  
13 homeowners' association, the court shall direct the receiver to  
14 provide to all members written notice of the receiver's  
15 appointment. The notice shall be mailed or delivered within ten  
16 days after the appointment. Notice by mail to a member shall be  
17 sent to the address used by the county property appraiser for  
18 notice to the owner of the property.

19           §   -29   **Passage of special assessments.** Before turnover,  
20 the board of directors controlled by the developer may not levy  
21 a special assessment unless a majority of the parcel owners



1 other than the developer has approved the special assessment by  
2 a majority vote at a duly called special meeting of the  
3 membership at which a quorum is present.

4       § -30 Association emergency powers. (a) To the extent  
5 allowed by law, unless specifically prohibited by the  
6 declaration or other recorded governing documents, the board of  
7 directors, in response to damage caused by an event for which a  
8 state of emergency is declared by the governor pursuant to  
9 chapter 127A in the area encompassed by the association, may  
10 exercise the following powers:

11       (1) Conduct board or membership meetings after notice of  
12 the meetings and board decisions is provided in as  
13 practicable a manner as possible, including via  
14 publication, radio, United States mail, the Internet,  
15 public service announcements, conspicuous posting on  
16 the association property, or any other means the board  
17 deems appropriate under the circumstances;

18       (2) Cancel and reschedule an association meeting;

19       (3) Designate assistant officers who are not directors.

20       If the executive officer is incapacitated or  
21 unavailable, the assistant officer shall have the same



- 1 authority during the state of emergency as the  
2 executive officer that the assistant officer assists;
- 3 (4) Relocate the association's principal office or  
4 designate an alternative principal office;
- 5 (5) Enter into agreements with counties to assist counties  
6 with debris removal;
- 7 (6) Implement a disaster plan before or immediately  
8 following the event for which a state of emergency is  
9 declared, which may include turning on or shutting off  
10 elevators; electricity; water, sewer, or security  
11 systems; or air conditioners for association  
12 buildings;
- 13 (7) Based upon the advice of emergency management  
14 officials or upon the advice of licensed professionals  
15 retained by the board, determine any portion of the  
16 association property unavailable for entry or  
17 occupancy by owners or their family members, tenants,  
18 guests, agents, or invitees to protect their health,  
19 safety, or welfare;
- 20 (8) Based upon the advice of emergency management  
21 officials or upon the advice of licensed professionals





1 retained by the board, determine whether the  
2 association property can be safely inhabited or  
3 occupied; provided that the determination shall not be  
4 conclusive as to any determination of habitability  
5 pursuant to the declaration;

6 (9) Mitigate further damage, including taking action to  
7 contract for the removal of debris and to prevent or  
8 mitigate the spread of fungus, including mold or  
9 mildew, by removing and disposing of wet drywall,  
10 insulation, carpet, cabinetry, or other fixtures on or  
11 within the association property;

12 (10) Notwithstanding any provision to the contrary, and  
13 regardless of whether authority does not specifically  
14 appear in the declaration or other recorded governing  
15 documents, levy special assessments without a vote of  
16 the owners; and

17 (11) Without owners' approval, borrow money and pledge  
18 association assets as collateral to fund emergency  
19 repairs and carry out the duties of the association if  
20 operating funds are insufficient; provided that this  
21 paragraph shall not limit the general authority of the



1           association to borrow money, subject to any  
2           restrictions contained in the declaration or other  
3           recorded governing documents.

4           (b) The authority granted under subsection (a) shall be  
5           limited to that time reasonably necessary to protect the health,  
6           safety, and welfare of the association and the parcel owners and  
7           their family members, tenants, guests, agents, or invitees, and  
8           to mitigate further damage and make emergency repairs.

9           § -31 **Electronic voting.** The association may conduct  
10          elections and other membership votes through an Internet-based  
11          online voting system if a member consents, in writing, to online  
12          voting and if the following requirements are met:

13          (1) The association provides each member with:

14                (A) A method to authenticate the member's identity to  
15                the online voting system;

16                (B) A method to confirm, at least fourteen days  
17                before the voting deadline, that the member's  
18                electronic device can successfully communicate  
19                with the online voting system; and

20                (C) A method that is consistent with the election and  
21                voting procedures in the association's bylaws;



- 1           (2) The association uses an online voting system that is:
- 2           (A) Able to authenticate the member's identity;
- 3           (B) Able to authenticate the validity of each
- 4           electronic vote to ensure that the vote is not
- 5           altered in transit;
- 6           (C) Able to transmit a receipt from the online voting
- 7           system to each member who casts an electronic
- 8           vote;
- 9           (D) Able to permanently separate any authentication
- 10          or identifying information from the electronic
- 11          election ballot, rendering it impossible to tie
- 12          an election ballot to a specific member; provided
- 13          that this subparagraph shall apply only if the
- 14          association's bylaws provide for secret ballots
- 15          for the election of directors; and
- 16          (E) Able to store and keep electronic ballots
- 17          accessible to election officials for recount,
- 18          inspection, and review purposes;
- 19          (3) A member voting electronically pursuant to this
- 20          section shall be counted as being in attendance at the
- 21          meeting for purposes of determining a quorum;



- 1           (4) This section applies to an association that provides  
2           for and authorizes an online voting system pursuant to  
3           this section by a board resolution; provided that the  
4           board resolution shall provide that members receive  
5           notice of the opportunity to vote through an online  
6           voting system, establish reasonable procedures and  
7           deadlines for members to consent, in writing, to  
8           online voting, and establish reasonable procedures and  
9           deadlines for members to opt out of online voting  
10          after giving consent. Written notice of a meeting at  
11          which the board resolution regarding online voting  
12          will be considered shall be mailed, delivered, or  
13          electronically transmitted to the unit owners and  
14          posted conspicuously on the condominium property or  
15          association property at least fourteen days before the  
16          meeting. Evidence of compliance with the fourteen-day  
17          notice requirement shall be made by an affidavit  
18          executed by the person providing the notice and filed  
19          with the official records of the association;
- 20          (5) A member's consent to online voting shall be valid  
21          until the member opts out of online voting pursuant to



1 the procedures established by the board of  
2 administration pursuant to paragraph (4); and

3 (6) This section may apply to any matter that requires a  
4 vote of the members.

5 § -32 Recording; notice of recording; applicability and  
6 effective date. (a) Not later than thirty days after receiving  
7 approval from the county, the organizing committee shall file  
8 the articles of incorporation of the association with the county  
9 if the articles have not been previously filed with the county.

10 (b) Not later than thirty days after receiving approval  
11 from the county, the president and secretary of the association  
12 shall execute the revived declaration and other governing  
13 documents approved by the county in the name of the association  
14 and have the documents recorded with the clerk of the circuit  
15 court in the county where the affected parcels are located.

16 (c) The recorded documents shall include the full text of  
17 the approved declaration of covenants, the articles of  
18 incorporation and bylaws of the association, the letter of  
19 approval by the county, and the legal description of each  
20 affected parcel of property. The association shall be deemed to  
21 be and shall be indexed as the grantee in a title transaction



1 and the parcel owners named in the revived declaration shall be  
2 deemed to be and shall be indexed as the grantors in the title  
3 transaction.

4 (d) Immediately after recording the documents, a complete  
5 copy of all of the approved recorded documents shall be mailed  
6 or hand delivered to the owner of each affected parcel. The  
7 revived declaration and other governing documents shall be  
8 effective upon recordation in the public records with respect to  
9 each affected parcel subject thereto, regardless of whether the  
10 particular parcel owner approved the revived declaration. Upon  
11 recordation, the revived declaration shall replace and supersede  
12 the previous declaration with respect to all affected parcels  
13 then governed by the previous declaration and shall have the  
14 same record priority as the superseded previous declaration.  
15 With respect to any affected parcels that had ceased to be  
16 governed by the previous declaration as of the recording date,  
17 the revived declaration shall not have retroactive effect with  
18 respect to the parcel and shall take priority with respect to  
19 the parcel as of the recording date.

20 (e) With respect to any parcel that has ceased to be  
21 governed by a previous declaration of covenants as of the



1 effective date of this chapter, the parcel owner may commence an  
2 action within one year after the effective date of this chapter  
3 for a judicial determination that the previous declaration did  
4 not govern that parcel as of the effective date of this chapter  
5 and that any revival of the declaration as to that parcel would  
6 unconstitutionally deprive the parcel owner of rights or  
7 property. A revived declaration that is implemented pursuant to  
8 this chapter shall not apply to or affect the rights of the  
9 respective parcel owner recognized by any court order or  
10 judgment in any action commenced within one year after the  
11 effective date of this chapter, and any rights so recognized may  
12 not be subsequently altered by a revived declaration implemented  
13 under this chapter without the consent of the affected property  
14 owner.

15       §   -33   Contributions for maintenance of common areas or  
16 roads. (a) If there is no recorded declaration creating an  
17 entity to collect contributions for the maintenance of common  
18 areas or roads, then a landowner in a common-area community  
19 association may create that entity under the following  
20 conditions:



- 1           (1) A nonprofit corporation shall be created with the  
2           primary purpose of maintaining common areas of the  
3           real property in the common-interest community  
4           association, including private roads, private parks,  
5           private meeting halls, and areas of benefit or of use  
6           by the common-interest community association; and
- 7           (2) The by-laws govern the creation of a board of  
8           directors, voting rights that include those who are  
9           non-resident landowners, board of directors' meetings,  
10          meetings of landowners with notice, determination of  
11          common area maintenance schedules, methods on  
12          conducting meetings, the number of board members, and  
13          the duties of the various officers and board members  
14          and membership voting rights.
- 15          (b) The quorum for meetings shall be at least ten per cent  
16          of owners and not more than forty per cent of the owners.
- 17          (c) Notices for meetings shall be by email, mail or by  
18          notice on the website. Notices for annual meetings shall be  
19          made by United States mail at least one month prior to the  
20          meeting.





1 (d) Once created, the by-laws cannot be amended unless and  
2 until notice is mailed to all owners and at a hearing with sixty  
3 per cent of those present voting for the amendment.

4 (e) Funds collected by the association shall be managed by  
5 a licensed bonded accountant unless a majority of owners, in an  
6 annual meeting votes otherwise where the meeting's notice  
7 identifies by name and address the proposed manager of the  
8 funds.

9 (f) One month prior to an annual meeting, a report shall  
10 be provided by the treasurer or funds manager as to the amount  
11 of collections, and the proposed assessments shall be made  
12 available by a uniform resource locator link at the  
13 association's webpage or website or emailed to members with  
14 known emails and otherwise made available at the annual meeting.

15 (g) One month prior to an annual meeting, the board of  
16 directors shall provide a report of the scheduled maintenance  
17 and repair of common areas. For roads, the report shall include  
18 a plan to pave unpaved roads or patch potholes. The schedule  
19 shall include at least annual maintenance costs for all common  
20 areas, such as grading or making drivable all unpaved roads that



1 have at least one abutting owner who has regularly paid  
2 maintenance fees.

3 (h) Annual audit of the funds by a third-party certified  
4 public accountant shall be conducted prior to an annual meeting.

5 (i) Every board member, upon their appointment or at least  
6 biennially, shall attend a county or approved class on the best  
7 practices for conducting meetings, creating by-laws, or  
8 otherwise running an entity that is subject to chapter 421J.

9 (j) Initial assessments shall be based upon one per cent  
10 of real property tax records of land-only tax assessed values.  
11 Thereafter, assessments shall be determined by the board of  
12 directors under procedures set out in the bylaws.

13 (k) Notice shall be given to all landowners of the  
14 creation of the entity.

15 (l) Provided that all prior requirements are met, if more  
16 than one entity is nominated, the entity receiving the approval  
17 of most landowners, whose ownership is determined at the time of  
18 the contest, shall be the entity entitled to assess and manage  
19 the common areas for benefit or for use of the common interest  
20 association.



1 (m) Upon the creation of the entity, the entity shall be  
2 recorded with the bureau of conveyances.

3 (n) From the initial assessments recorded, the landowner  
4 who creates the entity may be reimbursed for all reasonable  
5 expenses necessary to form the entity.

6 (o) Upon creation of a homeowners' association under this  
7 chapter, landowners in a common-interest community association  
8 may convey their fractional interests in the common roads and  
9 common areas to the newly-created entity.

10 (p) If an entity is created but its bylaws are no longer  
11 in compliance with this chapter, then the entity shall be  
12 subject to invalidation through the creation of an entity that  
13 is in compliance with this chapter."

14 SECTION 3. There is appropriated out of the general  
15 revenues of the State of Hawaii the sum of \$ or so  
16 much thereof as may be necessary for fiscal year 2020-2021 to  
17 fulfill the State's obligations under article VIII, section 5,  
18 of the state constitution.

19 The sum appropriated shall be allocated to, and expended  
20 by, the counties for the purposes of this Act in the following  
21 amounts:



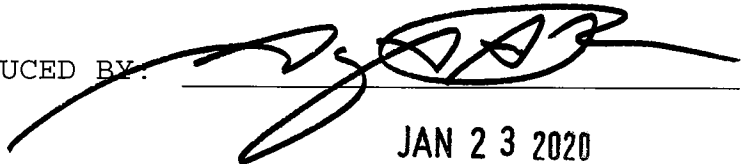
- 1 City and county of Honolulu §
- 2 County of Hawaii §
- 3 County of Kauai §
- 4 County of Maui §

5 SECTION 4. In codifying the new sections added by section  
 6 2 of this Act, the revisor of statutes shall substitute  
 7 appropriate section numbers for the letters used in designating  
 8 the new sections in this Act.

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

10

INTRODUCED BY:



JAN 23 2020



# H.B. NO. 2711

**Report Title:**

Homeowners' Associations; Counties; Appropriations

**Description:**

Authorizes the creation of community associations that are not subject to the laws relating to planned community associations. Authorizes the creation of entities to collect contributions or homeowners' association dues or be responsible for the maintenance of common areas such as private roads or parks if the common-interest community subdivisions were created without those entities. Authorizes counties to hear, administer, and decide certain disputes. Appropriates funds to the counties.

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

