
A BILL FOR AN ACT

RELATING TO PLANNED COMMUNITY ASSOCIATIONS.

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

1 SECTION 1. Chapter 421J, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By designating sections 421J-1 through 421J-16 as:

4 "PART I. GENERAL PROVISIONS AND GOVERNANCE"

5 2. By adding sixteen new sections to part I to be
6 appropriately designated and to read:

7 "§421J-A Association; powers. (a) Except as provided in
8 section 421J-B, and subject to the provisions of the declaration
9 and bylaws, the association, even if unincorporated, may:

10 (1) Adopt and amend the declaration, bylaws, and rules and
11 regulations;

12 (2) Adopt and amend budgets for revenues, expenditures,
13 and reserves and collect assessments from members;

14 (3) Hire and discharge managing agents and other
15 independent contractors, agents, and employees;

16 (4) Institute, defend, or intervene in litigation or
17 administrative proceedings in its own name on behalf



1 of itself or two or more unit owners on matters
2 affecting the planned community. For the purposes of
3 actions under chapter 480, associations shall be
4 deemed to be "consumers";

5 (5) Make contracts and incur liabilities;

6 (6) Regulate the use, maintenance, repair, replacement,
7 and modification of common areas;

8 (7) Cause additional improvements to be made as a part of
9 the common areas;

10 (8) Acquire, hold, encumber, and convey in its own name
11 any right, title, or interest to real or personal
12 property; provided that:

13 (A) Designation of additional areas to be common
14 areas or subject to common expenses after the
15 initial filing of the declaration or bylaws shall
16 require the approval of at least sixty-seven per
17 cent of the unit owners;

18 (B) If the developer discloses to the initial buyer
19 in writing that additional areas will be
20 designated as common areas whether pursuant to an
21 incremental or phased project or otherwise, the



- 1 requirements of this paragraph shall not apply as
2 to those additional areas; and
- 3 (C) The requirements of this paragraph shall not
4 apply to the purchase of a unit for a resident
5 manager, which may be purchased with the approval
6 of the board;
- 7 (9) Grant easements, leases, licenses, and concessions
8 through or over the common areas and permit
9 encroachments on the common areas;
- 10 (10) Impose and receive any payments, fees, or charges for
11 the use, rental, or operation of the common areas, and
12 for services provided to unit owners;
- 13 (11) Impose charges and penalties, including late fees and
14 interest, for late payment of assessments and levy
15 reasonable fines for violations of the declaration,
16 bylaws, rules, and regulations of the association,
17 either in accordance with the bylaws or, if the bylaws
18 are silent, pursuant to a resolution adopted by the
19 board that establishes a fining procedure that states
20 the basis for the fine and allows an appeal to the
21 board of the fine with notice and an opportunity to be



1 heard and providing that if the fine is paid, the unit
2 owner shall have the right to initiate a dispute
3 resolution process as provided by sections 421J-13,
4 421J-Q, or by filing a request for an administrative
5 hearing with the department of commerce and consumer
6 affairs;

7 (12) Impose reasonable charges for the preparation and
8 recordation of amendments to the declaration,
9 documents requested for resale of units, or statements
10 of unpaid assessments;

11 (13) Provide for cumulative voting through a provision in
12 the bylaws;

13 (14) Provide for the indemnification of its officers,
14 board, committee members, and agents, and maintain
15 directors' and officers' liability insurance;

16 (15) Assign its right to future income, including the right
17 to receive regular assessments, but only to the extent
18 section 421J-B expressly so provides;

19 (16) Exercise any other powers conferred by the declaration
20 or bylaws;



- 1 (17) Exercise all other powers that may be exercised in
2 this State by legal entities of the same type as the
3 association, except to the extent inconsistent with
4 this chapter;
- 5 (18) Exercise any other powers necessary and proper for the
6 governance and operation of the association; and
- 7 (19) By regulation, subject to sections 421J-10.5, 421J-13,
8 and 421J-Q, require that disputes between the board
9 and members or between two or more members regarding
10 the planned community be submitted to nonbinding
11 alternative dispute resolution in the manner described
12 in the regulation as a prerequisite to commencement of
13 a judicial proceeding.
- 14 (b) If a tenant of a member violates the declaration,
15 bylaws, or rules and regulations of the association, in addition
16 to exercising any of its powers against the member, the
17 association may:
- 18 (1) Exercise directly against the tenant the powers
19 described in subsection (a) (11);
- 20 (2) After giving notice to the tenant and the member and
21 an opportunity to be heard, levy reasonable fines



1 against the tenant for the violation, provided that a
2 member shall be responsible for the conduct of the
3 member's tenant and for any fines levied against the
4 tenant or any legal fees incurred in enforcing the
5 declaration, bylaws, or rules and regulations of the
6 association against the tenant; and

7 (3) Enforce any other rights against the tenant for the
8 violation which the member as landlord could lawfully
9 have exercised under the lease, including eviction, or
10 which the association could lawfully have exercised
11 directly against the member, or both.

12 (c) The rights granted under subsection (b) (3) may only be
13 exercised if the tenant or member fails to cure the violation
14 within ten days after the association notifies the tenant and
15 member of that violation; provided that no notice shall be
16 required when the breach by the tenant causes or threatens to
17 cause damage to any person or constitutes a violation of section
18 521-51(1) or 521-51(6).

19 (d) Unless a lease otherwise provides, this section does
20 not:



1 (1) Affect rights that the member has to enforce the lease
2 or that the association has under other law; or

3 (2) Permit the association to enforce a lease to which it
4 is not a party in the absence of a violation of the
5 declaration, bylaws, or rules and regulations.

6 §421J-B Association; limitations on powers. (a) The
7 declaration and bylaws may not impose limitations on the power
8 of the association to deal with the developer which are more
9 restrictive than the limitations imposed on the power of the
10 association to deal with other persons.

11 (b) Unless otherwise permitted by the declaration, bylaws,
12 or this chapter, an association may adopt rules and regulations
13 that affect the use of or behavior in units that may be used for
14 residential purposes only to:

15 (1) Prevent any use of a unit which violates the
16 declaration or bylaws; or

17 (2) Regulate any behavior in or occupancy of a unit which
18 violates the declaration or bylaws or unreasonably
19 interferes with the use and enjoyment of other units
20 or the common areas by other unit owners.



1 Otherwise, the association may not regulate any use of or
2 behavior in units by means of the rules and regulations.

3 (c) No association shall deduct and apply portions of
4 regular assessment payments received from a member to unpaid
5 late fees, legal fees, fines, and interest (other than amounts
6 remitted by a unit in payment of late fees, legal fees, fines,
7 and interest).

8 (d) No member who requests legal or other information from
9 the association, the board, the managing agent, or their
10 employees or agents, shall be charged for the reasonable cost of
11 providing the information unless the association notifies the
12 member that it intends to charge the member for the reasonable
13 cost. The association shall notify the member in writing at
14 least ten days prior to incurring the reasonable cost of
15 providing the information, except that no prior notice shall be
16 required to assess the reasonable cost of providing information
17 on delinquent assessments or in connection with proceedings to
18 enforce the law or the association's governing documents.

19 After being notified of the reasonable cost of providing
20 the information, the member may withdraw the request, in
21 writing. A member who withdraws a request for information shall



1 not be charged for the reasonable cost of providing the
2 information.

3 (e) Subject to any approval requirements and spending
4 limits contained in the declaration or bylaws, the association
5 may authorize the board to borrow money for the repair,
6 replacement, maintenance, operation, or administration of the
7 common areas and personal property of the planned community, or
8 the making of any additions, alterations, and improvements
9 thereto; provided that written notice of the purpose and use of
10 the funds is first sent to all members and owners representing
11 fifty per cent of the common interest vote or give written
12 consent to the borrowing. In connection with the borrowing, the
13 board may grant to the lender the right to assess and collect
14 monthly or special assessments from the members and to enforce
15 the payment of the assessments or other sums by statutory lien
16 and foreclosure proceedings. The cost of the borrowing,
17 including, without limitation, all principal, interest,
18 commitment fees, and other expenses payable with respect to the
19 borrowing or the enforcement of the obligations under the
20 borrowing, shall be a regular assessment of the project. For
21 purposes of this section, the financing of insurance premiums by



1 the association within the policy period shall not be deemed a
2 loan and no lease shall be deemed a loan if it provides that at
3 the end of the lease the association may purchase the leased
4 equipment for its fair market value.

5 §421J-C Board; powers and duties. (a) Except as provided
6 in the declaration, the bylaws, subsection (b), or other
7 provisions of this chapter, the board may act in all instances
8 on behalf of the association. In the performance of their
9 duties, officers and members of the board shall owe the
10 association a fiduciary duty and exercise the degree of care and
11 loyalty required of an officer or director of a corporation
12 organized under chapter 414D. Any violation by a board or its
13 officers or members of the mandatory provisions of section 421J-
14 13 or 421J-Q may constitute a violation of the fiduciary duty
15 owed pursuant to this subsection; provided that a board member
16 may avoid liability under this subsection by indicating in
17 writing the board member's disagreement with such board action
18 or rescinding or withdrawing the violating conduct within forty-
19 five days of the occurrence of the initial violation.

20 (b) The board may not act on behalf of the association to
21 amend the declaration or bylaws, to remove the planned community



1 from the provisions of this chapter, or to elect members of the
2 board or determine the qualifications, powers and duties, or
3 terms of office of board members; provided that nothing in this
4 subsection shall be construed to prohibit board members from
5 voting proxies to elect members of the board; provided further
6 that notwithstanding anything to the contrary in the declaration
7 or bylaws, the board may only fill vacancies in its membership
8 to serve until the next annual or duly noticed special
9 association meeting. Notice of a special association meeting to
10 fill vacancies shall include notice of the election. Any
11 special association meeting to fill vacancies shall be held on a
12 date that allows sufficient time for owners to declare their
13 intention to run for election and to solicit proxies for that
14 purpose.

15 (c) Within thirty days after the adoption of any proposed
16 budget for the planned community, the board shall make available
17 a copy of the budget to all the members and shall notify each
18 member that the member may request a copy of the budget.

19 (d) The declaration may provide for a period of developer
20 control of the association, during which a developer, or persons
21 designated by the developer, may appoint and remove the officers



1 and members of the board. Regardless of the period provided in
2 the declaration, a period of developer control terminates no
3 later than the earlier of:

4 (1) Two years after the developer has ceased to offer
5 units for sale in the ordinary course of business;

6 (2) Two years after any right to add new units was last
7 exercised; or

8 (3) The day the developer, after giving written notice to
9 unit owners, records an instrument voluntarily
10 surrendering all rights to control activities of the
11 association.

12 A developer may voluntarily surrender the right to appoint and
13 remove officers and members of the board before termination of
14 that period, but in that event the developer may require, for
15 the duration of the period of developer control, that specified
16 actions of the association or board, as described in a recorded
17 instrument executed by the developer, be approved by the
18 developer before they become effective.

19 (e) Not later than the termination of any period of
20 developer control, the unit owners shall elect a board of at
21 least three members. A decrease in the number of directors



1 shall not deprive an incumbent director of any remaining term of
2 office.

3 (f) At any regular or special meeting of the association,
4 any member of the board may be removed and successors shall be
5 elected for the remainder of the term to fill the vacancies thus
6 created. The removal and replacement shall be by a vote of a
7 majority of the unit owners and, otherwise, in accordance with
8 all applicable requirements and procedures in the bylaws for the
9 removal and replacement of directors and, if removal and
10 replacement is to occur at a special meeting.

11 §421J-D Board; limitations. (a) An owner shall not act
12 as an officer of an association and an employee of the managing
13 agent retained by the association. Any owner who is a board
14 member of an association and an employee of the managing agent
15 retained by the association shall not participate in any
16 discussion regarding a management contract at a board meeting
17 and shall be excluded from any executive session of the board
18 where the management contract or the property manager will be
19 discussed.

20 (b) Directors shall not expend association funds for their
21 travel, directors' fees, and per diem, unless owners are



1 informed and a majority approve of these expenses; provided
2 that, with the approval of the board, directors may be
3 reimbursed for actual expenditures incurred on behalf of the
4 association. The board meeting minutes shall reflect in detail
5 the items and amounts of the reimbursements.

6 (c) Associations at their own expense shall provide all
7 board members with a current copy of the association's
8 declaration, bylaws, house rules, and, annually, a copy of this
9 chapter with amendments.

10 (d) The directors may expend association funds, which
11 shall not be deemed to be compensation to the directors, to
12 educate and train themselves in subject areas directly related
13 to their duties and responsibilities as directors; provided that
14 the approved annual operating budget shall include these
15 expenses as separate line items. These expenses may include
16 registration fees, books, videos, tapes, other educational
17 materials, and economy travel expenses. Except for economy
18 travel expenses within the State, all other travel expenses
19 incurred under this subsection shall be subject to the
20 requirements of subsection (b).



1 §421J-E Planned community mutual obligations. (a) All
2 members, tenants of owners, employees of owners and tenants, or
3 any other persons that may in any manner use property or any
4 part thereof submitted to this chapter are subject to this
5 chapter and to the declaration and bylaws of the association
6 adopted pursuant to this chapter.

7 (b) All agreements, decisions, and determinations lawfully
8 made by the association in accordance with the voting
9 percentages established in this chapter, the declaration, or the
10 bylaws are binding on all members.

11 (c) Each member, tenants and employees of an owner, and
12 other persons using the property shall comply strictly with the
13 covenants, conditions, and restrictions set forth in the
14 declaration, the bylaws, and other organizational document
15 adopted pursuant thereto. Failure to comply with any of the
16 same shall be grounds for an action to recover sums due, for
17 damages or injunctive relief, or both, maintainable by the
18 managing agent, resident manager, or board on behalf of the
19 association or, in a proper case, by an aggrieved member.

20 §421J-F Association meetings; minutes. (a) Minutes of
21 meetings of the association shall be approved at the next



1 succeeding regular meeting or by the board, within sixty days
2 after the meeting, if authorized by the owners at an annual
3 meeting. If approved by the board, owners shall be given a copy
4 of the approved minutes or notified of the availability of the
5 minutes within thirty days after approval.

6 (b) Minutes of all meetings of the association shall be
7 available within seven calendar days after approval, and
8 unapproved final drafts of the minutes of a meeting shall be
9 available within sixty days after the meeting.

10 (c) An owner shall be allowed to offer corrections to the
11 minutes at an association meeting.

12 §421J-G Voting for elections; cumulative voting. (a) If
13 the bylaws provide for cumulative voting for an election at a
14 meeting, each member present in person or represented by proxy
15 shall have a number of votes equal to the member's voting
16 percentage multiplied by the number of positions to be filled at
17 the election.

18 (b) Each member shall be entitled to cumulate the votes of
19 the member and give all of the votes to one nominee or
20 distribute the votes among any or all of the nominees.



1 (c) The nominee or nominees receiving the highest number
2 of votes under this section, up to the total number of positions
3 to be filled, shall be deemed elected and shall be given the
4 longest term.

5 (d) This section shall not prevent the filling of
6 vacancies on the board of directors in accordance with this
7 chapter and the association's governing documents.

8 **§421J-H Managing agents.** (a) Every managing agent shall:

9 (1) Be a:

10 (A) Licensed real estate broker in compliance with
11 chapter 467 and the rules of the commission; or

12 (B) Corporation authorized to do business under
13 article 8 of chapter 412;

14 (2) Register with the commission prior to conducting
15 managing agent activity through approval of a
16 completed registration application, payment of fees,
17 and submission of any other additional information set
18 forth by the commission. The registration shall be
19 for a biennial period with termination on December 31
20 of an even-numbered year. The commission shall
21 prescribe a deadline date prior to the termination



1 date for the submission of a completed reregistration
2 application, payment of fees, and any other additional
3 information set forth by the commission. Any managing
4 agent who has not met the submission requirements by
5 the deadline date shall be considered a new applicant
6 for registration and subject to initial registration
7 requirements. The information required to be
8 submitted with any application shall include the name,
9 business address, phone number, and names of
10 associations managed;

11 (3) Obtain and keep current a fidelity bond in an amount
12 equal to \$500 multiplied by the aggregate number of
13 units of the association managed by the managing
14 agent; provided that the amount of the fidelity bond
15 shall not be less than \$20,000 nor greater than
16 \$500,000. Upon request by the commission, the
17 managing agent shall provide evidence of a current
18 fidelity bond or a certification statement from an
19 insurance company authorized by the insurance division
20 of the department of commerce and consumer affairs
21 certifying that the fidelity bond is in effect and



1 meets the requirements of this section and the rules
2 adopted by the commission. The managing agent shall
3 permit only employees covered by the fidelity bond to
4 handle or have custody or control of any association
5 funds, except any principals of the managing agent
6 that cannot be covered by the fidelity bond. The
7 fidelity bond shall protect the managing agent against
8 the loss of any association's moneys, securities, or
9 other properties caused by the fraudulent or dishonest
10 acts of employees of the managing agent. Failure to
11 obtain or maintain a fidelity bond in compliance with
12 this chapter and the rules adopted pursuant thereto,
13 including failure to provide evidence of the fidelity
14 bond coverage in a timely manner to the commission,
15 shall result in nonregistration or the automatic
16 termination of the registration, unless an approved
17 exemption or a bond alternative is presently
18 maintained. A managing agent who is unable to obtain
19 a fidelity bond may seek an exemption from the
20 fidelity bond requirement from the commission;



1 (4) Act promptly and diligently to recover from the
2 fidelity bond, if the fraud or dishonesty of the
3 managing agent's employees causes a loss to an
4 association, and apply the fidelity bond proceeds, if
5 any, to reduce the association's loss. If more than
6 one association suffers a loss, the managing agent
7 shall divide the proceeds among the associations in
8 proportion to each association's loss. An association
9 may request a court order requiring the managing agent
10 to act promptly and diligently to recover from the
11 fidelity bond. If an association cannot recover its
12 loss from the fidelity bond proceeds of the managing
13 agent, the association may recover by court order from
14 the real estate recovery fund established under
15 section 467-16, provided that:

16 (A) The loss is caused by the fraud,
17 misrepresentation, or deceit of the managing
18 agent or its employees;

19 (B) The managing agent is a licensed real estate
20 broker; and



- 1 (C) The association fulfills the requirements of
2 sections 467-16 and 467-18 and any applicable
3 rules of the commission;
- 4 (5) Pay a nonrefundable application fee and, upon
5 approval, an initial registration fee, and
6 subsequently pay a reregistration fee, as prescribed
7 by rules adopted by the director of commerce and
8 consumer affairs pursuant to chapter 91. A compliance
9 resolution fee shall also be paid pursuant to section
10 26-9(o) and the rules adopted pursuant thereto; and
- 11 (6) Report immediately in writing to the commission any
12 changes to the information contained on the
13 registration application or any other documents
14 provided for registration. Failure to do so may
15 result in termination of registration and subject the
16 managing agent to initial registration requirements.
- 17 (b) The commission may deny any registration or re-
18 registration application or terminate a registration without
19 hearing if the fidelity bond and supporting documents fail to
20 meet the requirements of this chapter and the rules adopted
21 pursuant thereto.



1 (c) Every managing agent shall be considered a fiduciary
2 with respect to any property managed by that managing agent.

3 (d) The registration requirements of this section shall
4 not apply to active real estate brokers in compliance with and
5 licensed under chapter 467.

6 (e) If a managing agent receives a request from the
7 commission to distribute any commission-generated information,
8 printed material, or documents to the association, its board, or
9 unit owners, the managing agent shall make the distribution at
10 the cost of the association within a reasonable period of time
11 after receiving the request. The requirements of this
12 subsection apply to all managing agents, including unregistered
13 managing agents.

14 **§421J-I Association employees; background check;**
15 **prohibition.** (a) The board, managing agent, or resident
16 manager, upon the written authorization of an applicant for
17 employment as a security guard or resident manager or for a
18 position that would allow the employee access to the keys of or
19 entry into the units in the planned community or access to
20 association funds, may conduct a background check on the
21 applicant or direct another responsible party to conduct the



1 check. Before initiating or requesting a check, the board,
2 managing agent, or resident manager shall first certify that the
3 signature on the authorization is authentic and that the person
4 is an applicant for such employment. The background check, at a
5 minimum, shall require the applicant to disclose whether the
6 applicant has been convicted in any jurisdiction of a crime
7 which would tend to indicate that the applicant may be unsuited
8 for employment as an association employee with access to
9 association funds or the keys of or entry into the units in the
10 planned community, and the judgment of conviction has not been
11 vacated.

12 For purposes of this section, the criminal history
13 disclosure made by the applicant may be verified by the board,
14 managing agent, resident manager, or other responsible party, if
15 so directed by the board, managing agent, or resident manager,
16 by means of information obtained through the Hawaii criminal
17 justice data center. The applicant shall provide the Hawaii
18 criminal justice data center with personal identifying
19 information, which shall include, but not be limited to, the
20 applicant's name, social security number, date of birth, and
21 gender. This information shall be used only for the purpose of



1 conducting the criminal history record check authorized by this
 2 section. Failure of an association, managing agent, or resident
 3 manager to conduct or verify or cause to have conducted or
 4 verified a background check shall not alone give rise to any
 5 private cause of action against an association, managing agent,
 6 or resident manager for acts and omissions of the employee
 7 hired.

8 (b) An association's employees shall not engage in selling
 9 or renting units in the planned community in which they are
 10 employed, except association-owned units, unless such activity
 11 is approved by sixty-seven per cent of the members.

12 §421J-J Tort and contract liability; tolling of limitation
 13 period. (a) A member is not liable, solely by reason of being
 14 a unit owner, for any injury or damage arising out of the
 15 condition or use of the common elements. Neither the
 16 association nor any member except the developer is liable for
 17 that developer's torts in connection with any part of the
 18 planned community that the developer has the responsibility to
 19 maintain.

20 (b) An action alleging a wrong done by the association,
 21 including an action arising out of the condition or use of the



1 common areas, may be maintained only against the association and
2 not against any member. If the wrong occurred during any period
3 of developer control and the association gives the developer
4 reasonable notice of and an opportunity to defend against the
5 action, the developer who then controlled the association is
6 liable to the association or to any member for:

- 7 (1) All tort losses not covered by insurance suffered by
8 the association or that unit owner; and
- 9 (2) All costs that the association would not have incurred
10 but for a breach of contract or other wrongful act or
11 omission, as the same may be established through
12 adjudication.

13 Whenever the developer is liable to the association under this
14 section, the developer is also liable for all expenses of
15 litigation, including reasonable attorneys' fees, incurred by
16 the association.

17 (c) Any statute of limitation affecting the association's
18 right of action against a developer is tolled until the period
19 of developer control terminates. A member is not precluded from
20 maintaining an action contemplated by this section because the



1 member is a unit owner or a member or officer of the
2 association.

3 §421J-K Insurance. (a) Unless otherwise provided in the
4 declaration or bylaws, the association shall purchase and at all
5 times maintain the following:

6 (1) Property insurance:

7 (A) On the common areas;

8 (B) Providing coverage for special form causes of
9 loss; and

10 (C) In a total amount of not less than the full
11 insurable replacement cost of the insured
12 property, less deductibles, but including
13 coverage for the increased costs of construction
14 due to building code requirements, at the time
15 the insurance is purchased and at each renewal
16 date;

17 (2) Commercial general liability insurance against claims
18 and liabilities arising in connection with the
19 ownership, existence, use, or management of the
20 property in a minimum amount of \$1,000,000, or a



1 greater amount deemed sufficient in the judgment of
2 the board;

3 (3) A fidelity bond, as follows:

4 (A) An association with more than five dwelling units
5 shall obtain and maintain a fidelity bond
6 covering persons, including the managing agent
7 and its employees who control or disburse funds
8 of the association, in an amount equal to \$500
9 multiplied by the number of units; provided that
10 the amount of the fidelity bond required by this
11 paragraph shall not be less than \$20,000 nor
12 greater than \$200,000; and

13 (B) All management companies that are responsible for
14 the funds held or administered by the association
15 shall be covered by a fidelity bond as provided
16 in section 421J-H. The association shall have
17 standing to make a loss claim against the bond of
18 the managing agent as a party covered under the
19 bond; and

20 (4) The board shall obtain directors and officers
21 liability coverage at a level deemed reasonable by the



1 board, if not otherwise limited by the declaration or
2 bylaws.

3 (b) If a building contains attached units, the insurance
4 maintained under subsection (a) (1), to the extent reasonably
5 available, shall include the units, the limited common areas,
6 except as otherwise determined by the board, and the common
7 areas. The insurance need not cover improvements and
8 betterments to the units installed by unit owners, but if
9 improvements and betterments are covered, any increased cost may
10 be assessed by the association against the units affected.

11 For the purposes of this section, "improvements and
12 betterments" means all decorating, fixtures, and furnishings
13 installed or added to and located within the boundaries of the
14 unit, including electrical fixtures, appliances, air
15 conditioning and heating equipment, water heaters, or built-in
16 cabinets installed by unit owners.

17 (c) If a project contains detached units, then
18 notwithstanding the requirement in this section that the
19 association obtain the requisite coverage, if the board
20 determines that it is in the best interest of the association to
21 do so, the insurance to be maintained under subsection (a) (1)



1 may be obtained separately for each unit by the unit owners;
 2 provided that the requirements of subsection (a)(1) shall be
 3 met; and provided further that evidence of such insurance
 4 coverage shall be delivered annually to the association. In
 5 such event, the association shall be named as an additional
 6 insured.

7 (d) The board, in the case of a claim for damage to a unit
 8 or the common areas, may:

- 9 (1) Pay the deductible amount as a common expense;
- 10 (2) After notice and an opportunity for a hearing, assess
 11 the deductible amount against the owners who caused
 12 the damage or from whose units the damage or cause of
 13 loss originated; or
- 14 (3) Require the unit owners of the units affected to pay
 15 the deductible amount.

16 (e) The declaration, bylaws, or the board may require the
 17 association to carry any other insurance, including workers'
 18 compensation, employment practices, environmental hazards, and
 19 equipment breakdown, that the board considers appropriate to
 20 protect the association, the unit owners, or officers,
 21 directors, or agents of the association. Flood insurance shall



1 also be maintained if the property is located in a special flood
2 hazard area as delineated on flood maps issued by the Federal
3 Emergency Management Agency. The flood insurance policy shall
4 comply with the requirements of the National Flood Insurance
5 Program and the Federal Insurance Administration.

6 (f) Any loss covered by the property policy under
7 subsection (a)(1) shall be adjusted by and with the association.
8 The insurance proceeds for that loss shall be payable to the
9 association, or to an insurance trustee designated by the
10 association for that purpose. The insurance trustee or the
11 association shall hold any insurance proceeds in trust for unit
12 owners and secured parties as their interests may appear.

13 (g) The board, with the vote or written consent of a
14 majority of the unit owners, may require unit owners to obtain
15 reasonable types and levels of insurance. The liability of a
16 unit owner shall include but not be limited to the deductible of
17 the owner whose unit was damaged, any damage not covered by
18 insurance required by this subsection, as well as the
19 decorating, painting, wall and floor coverings, trim,
20 appliances, equipment, and other furnishings.



1 If the unit owner does not purchase or produce evidence of
2 insurance requested by the board, the directors may, in good
3 faith, purchase the insurance coverage and charge the reasonable
4 premium cost back to the unit owner. In no event is the
5 association or board liable to any person either with regard to
6 the failure of a unit owner to purchase insurance or a decision
7 by the board not to purchase the insurance for the owner, or
8 with regard to the timing of its purchase of the insurance or
9 the amounts or types of coverages obtained.

10 (h) The provisions of this section may be varied or waived
11 in the case of a project in which all units are restricted to
12 nonresidential use.

13 **§421J-L Association fiscal matters; audits, audited**
14 **financial statement.** (a) The association shall require an
15 annual audit of the association financial accounts and no less
16 than one annual unannounced verification of the association's
17 cash balance by a public accountant; provided that if the
18 association is comprised of less than twenty units, the annual
19 audit and the annual unannounced cash balance verification may
20 be waived at an association meeting by a vote of a majority of
21 the unit owners.



1 (b) The board shall make available a copy of the annual
2 audit to each unit owner at least thirty days prior to the
3 annual meeting which follows the end of the fiscal year. The
4 board shall not be required to submit a copy of the annual audit
5 report to an owner if the proxy form issued pursuant to section
6 421J-4 is not marked to indicate that the owner wishes to obtain
7 a copy of the report. If the annual audit has not been
8 completed by that date, the board shall make available:

9 (1) An unaudited year end financial statement for the
10 fiscal year to each unit owner at least thirty days
11 prior to the annual meeting; and

12 (2) The annual audit to all owners at the annual meeting,
13 or as soon as the audit is completed, but not later
14 than six months after the annual meeting.

15 (c) If the association's fiscal year ends less than two
16 months prior to the convening of the annual meeting, the year-
17 to-date unaudited financial statement may cover the period from
18 the beginning of the association's fiscal year to the end of the
19 month preceding the date on which notice of the annual meeting
20 is mailed.



1 §421J-M Association records; generally. The association
2 shall keep financial and other records sufficiently detailed to
3 enable the association to comply with requests for information
4 and disclosures related to resale of units. Except as otherwise
5 provided by law, all financial and other records shall be made
6 available pursuant to section 421J-N for examination by any unit
7 owner and the owner's authorized agents. Association records
8 shall be stored on the island on which the association is
9 located; provided that if original records, including but not
10 limited to invoices, are required to be sent off-island, copies
11 of the records shall be maintained on the island on which the
12 association's project is located.

13 §421J-N Association records; records to be maintained.
14 (a) An accurate copy of the declaration, bylaws, house rules,
15 if any, master lease, if any, a sample original conveyance
16 document, all public reports and any amendments thereto, shall
17 be kept at the managing agent's office.

18 (b) The managing agent or board shall keep detailed,
19 accurate records in chronological order, of the receipts and
20 expenditures affecting the common areas, specifying and
21 itemizing the maintenance and repair expenses of the common



1 areas and any other expenses incurred. The managing agent or
2 board shall also keep monthly statements indicating the total
3 current delinquent dollar amount of any unpaid regular
4 assessments.

5 (c) Subject to section 421J-M, all records and the
6 vouchers authorizing the payments and statements shall be kept
7 and maintained at the address of the association, or elsewhere
8 within the State as determined by the board.

9 (d) The developer or affiliate of the developer, board,
10 and managing agent shall ensure that there is a written contract
11 for managing the operation of the property, expressing the
12 agreements of all parties, including but not limited to
13 financial and accounting obligations, services provided, and any
14 compensation arrangements, including any subsequent amendments.
15 Copies of the executed contract and any amendments shall be
16 provided to all parties to the contract.

17 §421J-0 Association documents to be provided. (a)
18 Notwithstanding any other provision in the declaration, bylaws,
19 or house rules, if any, the following documents, records, and
20 information, whether maintained, kept, or required to be
21 provided pursuant to this section or sections 421J-M, 421J-N, or



1 421J-7, shall be made available to any unit owner and the
2 owner's authorized agents by the managing agent, resident
3 manager, board through a board member, or the association's
4 representative:

5 (1) All financial and other records sufficiently detailed
6 in order to comply with requests for information and
7 disclosures related to the resale of units;

8 (2) An accurate copy of the declaration, bylaws, house
9 rules, if any, master lease, if any, a sample original
10 conveyance document, and all public reports and any
11 amendments thereto;

12 (3) Detailed, accurate records in chronological order of
13 the receipts and expenditures affecting the common
14 areas, specifying and itemizing the maintenance and
15 repair expenses of the common areas and any other
16 expenses incurred and monthly statements indicating
17 the total current delinquent dollar amount of any
18 unpaid assessments for common expenses;

19 (4) All records and the vouchers authorizing the payments
20 and statements kept and maintained at the address of



1 the project, or elsewhere within the State as
2 determined by the board, subject to section 421J-M;
3 (5) All signed and executed agreements for managing the
4 operation of the property, expressing the agreement of
5 all parties, including but not limited to financial
6 and accounting obligations, services provided, and any
7 compensation arrangements, including any subsequent
8 amendments;
9 (6) An accurate and current list of members of the planned
10 community association and the members' current
11 addresses and the names and addresses of the vendees
12 under an agreement of sale, if any. A copy of the
13 list shall be available, at cost, to any unit owner or
14 owner's authorized agent who furnishes to the managing
15 agent, resident manager, or the board a duly executed
16 and acknowledged affidavit stating that the list:
17 (A) Shall be used by the unit owner or owner's
18 authorized agent personally and only for the
19 purpose of soliciting votes or proxies or for
20 providing information to other unit owners with
21 respect to association matters; and

- 1 (B) Shall not be used by the unit owner or owner's
- 2 authorized agent or furnished to anyone else for
- 3 any other purpose;

- 4 (7) The association's most current financial statement, at
- 5 no cost or on twenty-four-hour loan, at a convenient
- 6 location designated by the board;

- 7 (8) Meeting minutes of the association, pursuant to
- 8 section 421J-F;

- 9 (9) Meeting minutes of the board, pursuant to section
- 10 421J-5, which shall be:

- 11 (A) Available for examination by unit owners or
- 12 owners' authorized agents at no cost or on
- 13 twenty-four-hour loan at a convenient location at
- 14 the project, to be determined by the board; or

- 15 (B) Transmitted to any unit owner or owner's
- 16 authorized agent making a request for the minutes
- 17 within fifteen days of receipt of the request by
- 18 the owner or owner's authorized agent; provided
- 19 that:

- 20 (i) The minutes shall be transmitted by mail,
- 21 electronic mail transmission, or facsimile,



1 by the means indicated by the owner or
2 owner's authorized agent, if the owner or
3 owner's authorized agent indicated a
4 preference at the time of the request; and
5 (ii) The owner or owner's authorized agent shall
6 pay a reasonable fee for administrative
7 costs associated with handling the request;

8 (10) Financial statements, general ledgers, the accounts
9 receivable ledger, accounts payable ledgers, check
10 ledgers, insurance policies, contracts, and invoices
11 of the association for the duration those records are
12 kept by the association, and any documents regarding
13 delinquencies of ninety days or more shall be
14 available for examination by unit owners or owners'
15 authorized agents at convenient hours at a place
16 designated by the board; provided that:

17 (A) The board may require unit owners or owners'
18 authorized agents to furnish to the association a
19 duly executed and acknowledged affidavit stating
20 that the information is requested in good faith

- 1 for the protection of the interests of the
2 association, its members, or both; and
- 3 (B) Unit owners or owners' authorized agents shall
4 pay for administrative costs in excess of eight
5 hours per year;
- 6 (11) Proxies, tally sheets, ballots, unit owners' check-in
7 lists, and the certificate of election subject to
8 section 421J-7;
- 9 (12) Copies of an association's documents, records, and
10 information, whether maintained, kept, or required to
11 be provided pursuant to this section or section 421J-
12 M, 421J-N, or 421J-7;
- 13 (13) A copy of the management contract from the entity that
14 manages the operation of the property before the
15 organization of an association;
- 16 (14) Other documents requested by a unit owner or owner's
17 authorized agent in writing; provided that the board
18 shall give written authorization or written refusal
19 with an explanation of the refusal within thirty
20 calendar days of receipt of a request for documents
21 pursuant to this paragraph; and



1 (15) A copy of any contract, written job description, and
2 compensation between the association and any person or
3 entity retained by the association to manage the
4 operation of the property on-site, including but not
5 limited to the general manager, operations manager,
6 resident manager, or site manager; provided that
7 personal information may be redacted from the contract
8 copy, including but not limited to the manager's date
9 of birth, age, signature, social security number,
10 residence address, telephone number, non-business
11 electronic mail address, driver's license number,
12 Hawaii identification card number, bank account
13 number, credit or debit card number, access code or
14 password that would permit access to the manager's
15 financial accounts, or any other information that may
16 be withheld under state or federal law.

17 (b) Copies of the items in subsection (a) shall be
18 provided to any unit owner or owner's authorized agent upon the
19 owner's or owner's authorized agent's request; provided that the
20 owner or owner's authorized agent pays a reasonable fee for



1 duplication, postage, stationery, and other administrative costs
2 associated with handling the request.

3 (c) Notwithstanding any provision in the declaration,
4 bylaws, or house rules providing for another period of time, all
5 documents, records, and information listed under subsection (a),
6 whether maintained, kept, or required to be provided pursuant to
7 this section or section 421J-M, 421J-N, or 421J-7, shall be
8 provided no later than thirty days after receipt of a unit
9 owner's or owner's authorized agent's written request, unless a
10 lesser time is provided pursuant to this section or section
11 421J-M, 421J-N, or 421J-7, and except as provided in subsection
12 (a) (14).

13 (d) Any documents, records, and information, whether
14 maintained, kept, or required to be provided pursuant to this
15 section or section 421J-M, 421J-N, or 421J-7, may be made
16 available electronically to the unit owner or owner's authorized
17 agent if the owner or owner's authorized agent requests such in
18 writing.

19 (e) An association may comply with this section or section
20 421J-M, 421J-N, or 421J-7 by making the required documents,
21 records, and information available to unit owners or owners'



1 authorized agents for download through an internet site, at the
2 option of each unit owner or owner's authorized agent and at no
3 cost to the unit owner or owner's authorized agent.

4 (f) Any fee charged to a unit owner or owner's authorized
5 agent to obtain copies of the association's documents, records,
6 and information, whether maintained, kept, or required to be
7 provided pursuant to this section or section 421J-M, 421J-N, or
8 421J-7, shall be reasonable; provided that a reasonable fee
9 shall include administrative and duplicating costs and shall not
10 exceed \$1 per page, or portion thereof, except that the fee for
11 pages exceeding eight and one-half inches by fourteen inches may
12 exceed \$1 per page.

13 §421J-P Association as trustee. With respect to a third
14 person dealing with the association in the association's
15 capacity as a trustee, the existence of trust powers and their
16 proper exercise by the association may be assumed without
17 inquiry. A third person shall not be bound to inquire whether
18 the association has power to act as trustee or is properly
19 exercising trust powers. A third person, without actual
20 knowledge that the association is exceeding or improperly
21 exercising its powers, shall be fully protected in dealing with



1 the association as if it possessed and properly exercised the
2 powers it purports to exercise. A third person shall not be
3 bound to assure the proper application of trust assets paid or
4 delivered to the association in its capacity as trustee."

5 3. By amending section 421J-2 to add a new definition to
6 be appropriately inserted and to read:

7 "Commission" means the real estate commission established
8 pursuant to section 467-3."

9 4. By amending section 421J-5 to read:

10 **"§421J-5 Meetings of the board of directors; committee or**
11 **subcommittee.** (a) All meetings of the board of directors,
12 other than executive sessions, shall be open to all members to
13 provide input on the matters being discussed. Members who are
14 not on the board of directors may participate in any
15 deliberation or discussion, other than during executive
16 sessions, unless a majority of a quorum of the board of
17 directors votes otherwise.

18 (b) The board of directors shall meet at least once each
19 year.

20 (c) The board of directors, with the approval of a
21 majority of a quorum of its members, may adjourn any meeting and



1 reconvene in executive session to discuss and vote upon matters
2 [~~concerning~~]:

3 (1) Concerning personnel [~~-~~];

4 (2) Concerning litigation in which the association is or
5 may become involved [~~- or as may be necessary~~];

6 (3) Necessary to protect the attorney-client privilege of
7 the association [~~-~~]; or

8 (4) Necessary to protect the interests of the association
9 while negotiating contracts, leases, and other
10 commercial transactions.

11 The general nature of any business to be considered in executive
12 session shall be first announced in the regular session.

13 (d) No board member shall vote by proxy at board meetings.

14 (e) A director who has a conflict of interest on any issue
15 before the board shall disclose the nature of the conflict of
16 interest prior to a vote on that issue at the board meeting, and
17 the minutes of the meeting shall record the fact that a
18 disclosure was made.

19 (f) The board may appoint committees or subcommittees to
20 review and consider any specific matters, and may alter or
21 eliminate the committees or subcommittees; provided that the



1 board in the minutes of the meeting at which the action was
2 taken to appoint the committee or subcommittee shall:

3 (1) Report that the committee or subcommittee was
4 appointed;

5 (2) Identify the members of the committee or subcommittee;
6 and

7 (3) Describe the matter that the committee or subcommittee
8 is to review and consider.

9 (g) Minutes of the meetings of the board of directors
10 shall include the recorded vote of each board member present on
11 all motions except motions voted upon in executive session.

12 Minutes of all meetings of the board shall be approved no later
13 than the second succeeding regular meeting. Minutes of all
14 meetings of the board shall be available within seven calendar
15 days after approval, and unapproved final drafts of the minutes
16 of a meeting shall be available within thirty days of the
17 meeting; provided that the minutes of any executive session may
18 be withheld if their publication would defeat the lawful purpose
19 of the executive session.

20 (h) Unless otherwise provided in the declaration or
21 bylaws, a board may permit any meeting to be conducted by any



1 means of communication through which all directors participating
2 may simultaneously hear each other during the meeting. A
3 director participating in a meeting by this means is deemed to
4 be present in person at the meeting. If permitted by the board,
5 any member may participate in a meeting conducted by a means of
6 communication through which all participants may simultaneously
7 hear each other during the meeting; provided that the board may
8 require that the member pay for the costs associated with the
9 participation."

10 5. By amending section 421J-10.5 to read:

11 "**§421J-10.5 Association fiscal matters; lien for**
12 **assessments.** (a) All sums assessed by the association, but
13 unpaid for the share of the assessments chargeable to any unit,
14 shall constitute a lien on the unit. The priority of the
15 association's lien shall, except as otherwise provided by law,
16 be as provided in the association documents or, if no priority
17 is provided in the association documents, by the recordation
18 date of the liens; provided that any amendment to the
19 association documents that governs the priority of liens on the
20 unit shall not provide that an association lien shall have
21 priority over a mortgage lien that is recorded before the



1 amendment is recorded. A lien recorded by an association for
2 unpaid assessments shall expire six years from the date of
3 recordation unless proceedings to enforce the lien are
4 instituted prior to the expiration of the lien; provided that
5 the expiration of a recorded lien shall in no way affect the
6 association's automatic lien that arises pursuant to this
7 subsection or the association documents. Any proceedings to
8 enforce an association's lien for any assessment shall be
9 instituted within six years after the assessment became due;
10 provided that if the owner of a unit subject to a lien of the
11 association files a petition for relief under the United States
12 Bankruptcy Code (11 U.S.C. section 101 et seq.), the period of
13 time for instituting proceedings to enforce the association's
14 lien shall be tolled until thirty days after the automatic stay
15 of proceedings under section 362 of the United States Bankruptcy
16 Code (11 U.S.C. section 362) is lifted.

17 The lien of the association may be foreclosed by action or
18 by nonjudicial or power of sale foreclosure procedures set forth
19 in chapter 667, by the managing agent or board, acting on behalf
20 of the association and in the name of the association; provided
21 that no association may exercise the nonjudicial or power of



1 sale remedies provided in chapter 667 to foreclose a lien
2 against any unit that arises solely from fines, penalties, legal
3 fees, or late fees, and the foreclosure of any such lien shall
4 be filed in court pursuant to part IA of chapter 667. In any
5 association foreclosure, the unit owner shall be required to pay
6 a reasonable rental for the unit, if so provided in the
7 association documents or the law, and the plaintiff in the
8 foreclosure shall be entitled to the appointment of a receiver
9 to collect the rental owed by the unit owner or any tenant of
10 the unit. If the association is the plaintiff, it may request
11 that its managing agent be appointed as receiver to collect the
12 rental from the tenant. The managing agent or board, acting on
13 behalf of the association and in the name of the association,
14 may bid on the unit at foreclosure sale and acquire and hold,
15 lease, mortgage, and convey the unit thereafter as the board
16 deems reasonable. Action to recover a money judgment for unpaid
17 assessments shall be maintainable without foreclosing or waiving
18 the lien securing the unpaid assessments owed.

19 In the case of a voluntary conveyance, the grantee of a
20 unit shall be jointly and severally liable with the grantor for
21 all unpaid assessments against the latter for the grantor's



1 share of the common expenses up to the time of the grant or
2 conveyance, without prejudice to the grantee's right to recover
3 from the grantor the amounts paid by the grantee. Any such
4 grantor or grantee is entitled to a statement from the board,
5 either directly or through its managing agent or resident
6 manager, setting forth the amount of the unpaid assessments
7 against the grantor. The grantee is not liable and the unit
8 conveyed is not subject to a lien for any unpaid assessments
9 against the grantor in excess of the amount set forth in the
10 statement, except as to the amount of subsequently dishonored
11 checks mentioned in the statement as having been received within
12 the thirty-day period immediately preceding the date of such
13 statement.

14 (b) Except as provided in subsection [~~(g)~~] (j) or in the
15 association documents, when the mortgagee of a mortgage of
16 record or other purchaser of a unit obtains title to the unit as
17 a result of foreclosure of the mortgage, the acquirer of title
18 and the acquirer's successors and assigns shall not be liable
19 for the share of the assessments by the association chargeable
20 to the unit that became due prior to the acquisition of title to
21 the unit by the acquirer. The unpaid share of assessments shall



1 be deemed to be assessments collectible from all of the unit
2 owners, including the acquirer and the acquirer's successors and
3 assigns. The mortgagee of record or other purchaser of the unit
4 shall be deemed to acquire title and shall be required to pay
5 the unit's share of assessments beginning:

- 6 (1) Thirty-six days after the order confirming the sale to
7 the purchaser has been filed with the court;
 - 8 (2) Sixty days after the hearing at which the court grants
9 the motion to confirm the sale to the purchaser;
 - 10 (3) Thirty days after the public sale in a nonjudicial
11 power of sale foreclosure conducted pursuant to
12 chapter 667; or
 - 13 (4) Upon the recording of the instrument of conveyance;
- 14 whichever occurs first; provided that the mortgagee of record or
15 other purchaser of the unit shall not be deemed to acquire title
16 under paragraph (1), (2), or (3), if transfer of title is
17 delayed past the thirty-six days specified in paragraph (1), the
18 sixty days specified in paragraph (2), or the thirty days
19 specified in paragraph (3), when a person (other than the
20 mortgagee of record or other purchaser of the unit) who appears
21 at the hearing on the motion or a party to the foreclosure



1 action (other than the mortgagee of record or other purchaser of
2 the unit) requests reconsideration of the motion or order to
3 confirm sale, objects to the form of the proposed order to
4 confirm sale, appeals the decision of the court to grant the
5 motion to confirm sale, or the debtor or mortgagor declares
6 bankruptcy or is involuntarily placed into bankruptcy. In any
7 such case, the mortgagee of record or other purchaser of the
8 unit shall be deemed to acquire title upon recordation of the
9 instrument of conveyance.

10 (c) ~~[Except as provided in section 667-92(c), no unit~~
11 ~~owner shall withhold any assessment claimed by the association.]~~

12 A unit owner who receives a demand for payment from an
13 association and disputes the amount of an assessment may request
14 a written statement clearly indicating:

- 15 (1) The amount of regular and special assessments included
16 in the assessment, including the due date of each
17 amount claimed;
- 18 (2) The amount of any penalty~~[,]~~ or fine, late fee, lien
19 filing fee, and any other charge included in the
20 assessment~~[,]~~ that is not imposed on all members as a
21 regular assessment; and



1 (3) The amount of attorneys' fees and costs, if any,
2 included in the assessment [~~+~~].

3 (d) A unit owner who disputes the information in the
4 written statement received from the association pursuant to
5 subsection (c) may request a subsequent written statement that
6 additionally informs the unit owner that:

7 [~~(4) That under~~] (1) Under Hawaii law, a unit owner has no
8 right to withhold assessments for any reason;

9 [~~(5) That a~~] (2) A unit owner has a right to demand
10 mediation to resolve disputes about the amount or
11 validity of an association's regular assessment;
12 provided that the unit owner immediately pays the
13 regular assessment in full and keeps regular
14 assessments current; [~~and~~]

15 [~~(6) That payment~~] (3) Payment in full of the regular
16 assessment [~~does~~] shall not prevent the unit owner
17 from contesting the regular assessment or receiving a
18 refund of amounts not owed [~~-~~]; and

19 (4) If the unit owner contests any attorney's fee and
20 cost, penalty or fine, late fee, lien filing fee,
21 special assessment not imposed on all members, or



1 other charges included in the assessment, except
2 regular assessments, the unit owner may demand
3 mediation as provided in subsection (g) prior to
4 paying those charges.

5 (e) No unit owner shall withhold any regular assessment
6 that is claimed by the association. Nothing in this section
7 shall limit the rights of a unit owner to the protection of all
8 fair debt collection procedures mandated under federal and state
9 law.

10 ~~[(d)]~~ (f) A unit owner who pays an association the full
11 amount of the regular assessment claimed by the association may
12 file a claim against the association in court, including small
13 claims court, or require the association to mediate under
14 section 421J-13 to resolve any disputes concerning the amount or
15 validity of the association's regular assessment claim. If the
16 unit owner and the association are unable to resolve the dispute
17 through mediation, either party may file for ~~[relief with a~~
18 ~~court,]~~ arbitration; provided that a unit owner may only file
19 for ~~[relief in court]~~ arbitration if all amounts claimed by the
20 association as regular assessments are paid in full on or before
21 the date of filing. If the unit owner fails to keep all



1 association regular assessments current during the [~~court~~
2 hearing,] arbitration, the association may ask the [~~court~~]
3 arbitrator to temporarily suspend the arbitration proceedings.
4 If the unit owner pays all association regular assessments
5 within thirty days of the date of suspension, the unit owner may
6 ask the [~~court~~] arbitrator to recommence the proceedings. If
7 the unit owner fails to pay all association regular assessments
8 by the end of the thirty-day period, the association may ask the
9 [~~court~~] arbitrator to dismiss the proceedings. The unit owner
10 shall be entitled to a refund of any amounts paid as regular
11 assessments to the association that are not owed.

12 (g) A unit owner who contests the amount of any attorneys'
13 fees and costs, penalties or fines, late fees, lien filing fees,
14 special assessments not imposed on all members, or any other
15 charges, except regular assessments, may make a demand in
16 writing for mediation on the validity of those charges. The
17 unit owner has thirty days from the date of the written
18 statement requested pursuant to subsection (d) to file demand
19 for mediation on the disputed charges, other than regular
20 assessments. If the unit owner fails to file for mediation
21 within thirty days of the date of the written statement



1 requested pursuant to subsection (d), the association may
2 proceed with the collection of the charges. If the unit owner
3 makes a request for mediation within thirty days, the
4 association shall be prohibited from attempting to collect any
5 of the disputed charges until the association has participated
6 in the mediation. The mediation shall be completed within sixty
7 days of the unit owner's request for mediation; provided that if
8 the mediation is not completed within sixty days or the parties
9 are unable to resolve the dispute by mediation, the association
10 may proceed with collection of all amounts due from the unit
11 owner for attorneys' fees and costs, penalties or fines, late
12 fees, lien filing fees, special assessments not imposed on all
13 members, or any other charges.

14 [~~e~~] (h) In conjunction with or as an alternative to
15 foreclosure proceedings under subsection (a), where a unit is
16 owner-occupied, the association may authorize its managing agent
17 or board, after sixty days written notice to the unit owner of
18 the unit's share of the assessments, to terminate the delinquent
19 unit's access to the common areas and cease supplying a
20 delinquent unit with any and all services normally supplied or
21 paid for by the association. Any terminated services and



1 privileges shall be restored upon payment of all delinquent
2 assessments, but need not be restored until payment in full is
3 received.

4 ~~[(f)]~~ (i) Before the board or managing agent may take the
5 actions permitted under subsection ~~[(e)]~~, (h), the board shall
6 adopt a written policy providing for such actions and have the
7 policy approved by a majority vote of the unit owners, as
8 provided in the association documents, who are present in person
9 or by proxy or as otherwise permitted by the association
10 documents, at an annual or special meeting of the association or
11 by the written consent of a voting interest equal to a quorum of
12 the unit owners unless the association documents already permit
13 the process.

14 ~~[(g)]~~ (j) Subject to this subsection and subsection ~~[(h)]~~,
15 (k), the board may specially assess the amount of the unpaid
16 regular ~~[periodic]~~ assessments for assessments against a person
17 who, in a judicial or nonjudicial power of sale foreclosure,
18 purchases a delinquent unit; provided that:

19 (1) A purchaser who holds a mortgage on a delinquent unit,
20 which mortgage is not subordinate to the priority of
21 lien by the association, and who acquires the



1 delinquent unit through a judicial or nonjudicial
2 foreclosure proceeding, including purchasing the
3 delinquent unit at a foreclosure auction, shall not be
4 obligated to make, nor be liable for, payment of the
5 special assessment as provided for under this
6 subsection; and

- 7 (2) A person who subsequently purchases the delinquent
8 unit from the mortgagee referred to in paragraph (1)
9 shall be obligated to make, and shall be liable for,
10 payment of the special assessment provided for under
11 this subsection; and provided further that the
12 mortgagee or subsequent purchaser may require the
13 association to provide, at no charge, a notice of the
14 association's intent to claim a lien against the
15 delinquent unit for the amount of the special
16 assessment, prior to the subsequent purchaser's
17 acquisition of title to the delinquent unit. The
18 notice shall state the amount of the special
19 assessment, how that amount was calculated, and the
20 legal description of the unit.



1 ~~[(h)]~~ (k) The amount of the special assessment assessed
 2 under subsection ~~[(g)]~~ (j) shall not exceed the total amount of
 3 unpaid regular ~~[periodic]~~ assessments that were assessed during
 4 the six months immediately preceding the completion of the
 5 judicial or nonjudicial power of sale foreclosure.

6 ~~[(i)]~~ (l) For purposes of ~~[subsections (g) and (h),]~~ this
 7 section, the following definitions shall apply, unless the
 8 context requires otherwise:

9 "Completion" means:

- 10 (1) In a nonjudicial power of sale foreclosure, when the
- 11 affidavit required under section 667-33 is recorded;
- 12 and
- 13 (2) In a judicial foreclosure, when a purchaser is deemed
- 14 to acquire title pursuant to subsection (b).

15 "Regular ~~[periodic]~~ assessments" does not include:

- 16 (1) Any special assessment, except for a special
- 17 assessment imposed on all units as part of a budget
- 18 adopted pursuant to the association documents;
- 19 (2) Late charges, fines, or penalties;
- 20 (3) Interest assessed by the association;
- 21 (4) Any lien arising out of the assessment; or



1 (5) Any fees or costs related to the collection or
2 enforcement of the assessment, including attorneys' fees and
3 court costs."

4 6. By amending section 421J-13 to read:

5 "~~[f] §421J-13 [f] Mediation of disputes. [(a) At the~~
6 ~~request of any party, any dispute concerning or involving one or~~
7 ~~more members and an association, its board of directors,~~
8 ~~managing agent, manager, or one or more other members relating~~
9 ~~to the interpretation, application, or enforcement of this~~
10 ~~chapter or the association documents, shall first be submitted~~
11 ~~to mediation.~~

12 ~~(b) Nothing in subsection (a) shall be interpreted to~~
13 ~~mandate the mediation of any dispute involving:~~

14 ~~(1) Actions seeking equitable relief involving threatened~~
15 ~~property damage or the health or safety of association~~
16 ~~members or any other person;~~

17 ~~(2) Actions to collect assessments;~~

18 ~~(3) Personal injury claims; or~~

19 ~~(4) Actions against an association, a board of directors,~~
20 ~~or one or more directors, officers, agents, employees,~~
21 ~~or other persons for amounts in excess of \$2,500 if~~



1 ~~insurance coverage under a policy of insurance~~
 2 ~~procured by the association or its board of directors~~
 3 ~~would be unavailable for defense or judgment because~~
 4 ~~mediation was pursued.~~

5 ~~(c) If any mediation under this section is not completed~~
 6 ~~within two months from commencement, no further mediation shall~~
 7 ~~be required unless agreed to by the association and the member.]~~

8 (a) The mediation of a dispute between a member and the board,
 9 member and the managing agent, board members and the board, or
 10 directors and managing agents and the board shall be mandatory
 11 upon written request to the other party when:

12 (1) The dispute involves the interpretation or enforcement
 13 of the association's declaration, bylaws, or similar
 14 organizational documents;

15 (2) The dispute falls outside the scope of subsection (b);

16 (3) The parties have not already mediated the same or a
 17 substantially similar dispute; and

18 (4) An action or an arbitration concerning the dispute has
 19 not been commenced.

20 (b) The mediation of a dispute between a member and the
 21 board, member and the managing agent, board members and the



1 board, or directors and managing agents and the board shall not
2 be mandatory when the dispute involves:

3 (1) Threatened property damage or the health or safety of
4 members or any other person;

5 (2) Assessments;

6 (3) Personal injury claims; or

7 (4) Matters that would affect the availability of any
8 coverage pursuant to an insurance policy obtained by
9 or on behalf of an association.

10 (c) If evaluative mediation is requested in writing by one
11 of the parties pursuant to subsection (a), the other party
12 cannot choose to do facilitative mediation instead, and any
13 attempt to do so shall be treated as a rejection to mediate.

14 (d) A member or an association may apply to the circuit
15 court in the judicial circuit where the member's property is
16 located for an order compelling mediation only when:

17 (1) Mediation of the dispute is mandatory pursuant to
18 subsection (a);

19 (2) A written request for mediation has been delivered to
20 and received by the other party; and



1 (3) The parties have not agreed to a mediator and a
2 mediation date within forty-five days after a party
3 receives a written request for mediation.

4 (e) Any application made to the circuit court pursuant to
5 subsection (d) shall be made and heard in a summary manner and
6 in accordance with procedures for the making and hearing of
7 motions. The prevailing party shall be awarded its attorneys'
8 fees and costs in an amount not to exceed \$1,500.

9 (f) Each party to a mediation shall bear the attorneys'
10 fees, costs, and other expenses of preparing for and
11 participating in mediation incurred by the party, unless
12 otherwise specified in:

13 (1) A written agreement providing otherwise that is signed
14 by the parties;

15 (2) An order of a court in connection with the final
16 disposition of a claim that was submitted to
17 mediation;

18 (3) An award of an arbitrator in connection with the final
19 disposition of a claim that was submitted to
20 mediation; or



1 (4) An order of the circuit court in connection with
2 compelled mediation in accordance with subsections (d)
3 and (e).

4 (g) A court or an arbitrator with jurisdiction may
5 consider a timely request to stay any action or proceeding
6 concerning a dispute that would be subject to mediation pursuant
7 to subsection (a) in the absence of the action or proceeding,
8 and refer the matter to mediation; provided that:

9 (1) The court or arbitrator determines that the request is
10 made in good faith and a stay would not be prejudicial
11 to any party; and

12 (2) No stay shall exceed a period of ninety days."

13 7. By adding two new parts to be appropriately designated
14 and to read:

15 "PART II. ALTERNATIVE DISPUTE RESOLUTION

16 §421J-Q Arbitration. (a) At the request of any party,
17 any dispute concerning or involving one or more members and an
18 association, its board, managing agent, or one or more other
19 members relating to the interpretation, application, or
20 enforcement of this chapter or the association's declaration,
21 bylaws, or similar organizational documents adopted in



1 accordance with its bylaws shall be submitted to arbitration.
2 The arbitration shall be conducted, unless otherwise agreed by
3 the parties, in accordance with the rules adopted by the
4 commission and of chapter 658A; provided that the rules of the
5 arbitration service conducting the arbitration shall be used
6 until the commission adopts its rules; provided further that
7 where any arbitration rule conflicts with chapter 658A, chapter
8 658A shall prevail; and provided further that notwithstanding
9 any rule to the contrary, the arbitrator shall conduct the
10 proceedings in a manner which affords substantial justice to all
11 parties. The arbitrator shall be bound by rules of substantive
12 law and shall not be bound by rules of evidence, whether or not
13 set out by statute, except for provisions relating to privileged
14 communications. The arbitrator shall permit discovery as
15 provided for in the Hawaii rules of civil procedure; provided
16 that the arbitrator may restrict the scope of such discovery for
17 good cause to avoid excessive delay and costs to the parties or
18 the arbitrator may refer any matter involving discovery to the
19 circuit court for disposition in accordance with the Hawaii
20 rules of civil procedure then in effect.



- 1 (b) Nothing in subsection (a) shall be interpreted to
2 mandate the arbitration of any dispute involving:
- 3 (1) The real estate commission;
 - 4 (2) The mortgagee of a mortgage of record;
 - 5 (3) Actions seeking equitable relief involving threatened
6 property damage or the health or safety of unit owners
7 or any other person;
 - 8 (4) Actions to collect assessments which are liens or
9 subject to foreclosure; provided that a unit owner who
10 pays the full amount of an assessment and fulfills the
11 requirements of section 421J-10.5 shall have the right
12 to demand arbitration of the owner's dispute,
13 including a dispute about the amount and validity of
14 the assessment;
 - 15 (5) Personal injury claims;
 - 16 (6) Actions for amounts in excess of \$2,500 against an
17 association, a board, or one or more directors,
18 officers, agents, employees, or other persons, if
19 insurance coverage under a policy or policies procured
20 by the association or its board would be unavailable
21 because action by arbitration was pursued; or



1 (7) Any other cases which are determined, as provided in
2 subsection (c), to be unsuitable for disposition by
3 arbitration.

4 (c) At any time within twenty days of being served with a
5 written demand for arbitration, any party so served may apply to
6 the circuit court in the judicial circuit in which the member's
7 property is located for a determination that the subject matter
8 of the dispute is unsuitable for disposition by arbitration.

9 In determining whether the subject matter of a dispute is
10 unsuitable for disposition by arbitration, a court may consider:

11 (1) The magnitude of the potential award, or any issue of
12 broad public concern raised by the subject matter
13 underlying the dispute;

14 (2) Problems referred to the court where court regulated
15 discovery is necessary;

16 (3) The fact that the matter in dispute is a reasonable or
17 necessary issue to be resolved in pending litigation
18 and involves other matters not covered by or related
19 to this chapter;



1 (4) The fact that the matter to be arbitrated is only part
2 of a dispute involving other parties or issues which
3 are not subject to arbitration under this section; and

4 (5) Any matters of dispute where disposition by
5 arbitration, in the absence of complete judicial
6 review, would not afford substantial justice to one or
7 more of the parties.

8 Any such application to the circuit court shall be made and
9 heard in a summary manner and in accordance with procedures for
10 the making and hearing of motions. The prevailing party shall
11 be awarded its attorneys' fees and costs in an amount not to
12 exceed \$200.

13 (d) In the event of a dispute as to whether a claim shall
14 be excluded from mandatory arbitration under subsection (b)(7),
15 any party to an arbitration may file a complaint for declaratory
16 relief against the involved insurer or insurers for a
17 determination of whether insurance coverage is unavailable due
18 to the pursuit of action by arbitration. The complaint shall be
19 filed with the circuit court in the judicial circuit in which
20 the member's property is located. The insurer or insurers shall
21 file an answer to the complaint within twenty days of the date



1 of service of the complaint and the issue shall be disposed of
2 by the circuit court at a hearing to be held at the earliest
3 available date; provided that the hearing shall not be held
4 within twenty days from the date of service of the complaint
5 upon the insurer or insurers.

6 (e) Notwithstanding any provision in this chapter to the
7 contrary, the declaration, or the bylaws, the award of any
8 costs, expenses, and legal fees by the arbitrator shall be in
9 the sole discretion of the arbitrator and the determination of
10 costs, expenses, and legal fees shall be binding upon all
11 parties.

12 (f) The award of the arbitrator shall be in writing and
13 acknowledged or proved in like manner as a deed for the
14 conveyance of real estate, and shall be served by the arbitrator
15 on each of the parties to the arbitration, personally or by
16 registered or certified mail. At any time within one year after
17 the award is made and served, any party to the arbitration may
18 apply to the circuit court of the judicial circuit in which the
19 member's property is located for an order confirming the award.
20 The court shall grant the order confirming the award pursuant to
21 section 658A-22, unless the award is vacated, modified, or



1 corrected, as provided in sections 658A-20, 658A-23, and
2 658A-24, or a trial de novo is demanded under subsection (h) and
3 section 421J-R, or the award is successfully appealed under
4 subsection (h) and section 421J-R. The record shall be filed
5 with the motion to confirm award, and notice of the motion shall
6 be served upon each other party or their respective attorneys in
7 the manner required for service of notice of a motion.

8 (g) Findings of fact and conclusions of law, as requested
9 by any party prior to the arbitration hearing, shall be promptly
10 provided to the requesting party upon payment of the reasonable
11 cost thereof.

12 (h) Any party to an arbitration under this section may
13 apply to vacate, modify, or correct the arbitration award for
14 the grounds set out in chapter 658A. All reasonable costs,
15 expenses, and attorneys' fees on appeal shall be charged to the
16 nonprevailing party.

17 **§421J-R Trial de novo and appeal.** (a) The submission of
18 any dispute to an arbitration under section 421J-Q shall in no
19 way limit or abridge the right of any party to a trial de novo.

20 (b) Written demand for a trial de novo by any party
21 desiring a trial de novo shall be made upon the other parties



1 within ten days after service of the arbitration award upon all
2 parties and the trial de novo shall be filed in circuit court
3 within thirty days of the written demand. Failure to meet these
4 deadlines shall preclude a party from demanding a trial de novo.

5 (c) The award of arbitration shall not be made known to
6 the trier of fact at a trial de novo.

7 (d) In any trial de novo demanded under this section, if
8 the party demanding a trial de novo does not prevail at trial,
9 the party demanding the trial de novo shall be charged with all
10 reasonable costs, expenses, and attorneys' fees of the trial.
11 When there is more than one party on one or both sides of an
12 action, or more than one issue in dispute, the court shall
13 allocate its award of costs, expenses, and attorneys' fees among
14 the prevailing parties and tax such fees against those
15 nonprevailing parties who demanded a trial de novo in accordance
16 with the principles of equity.

17 **PART III. ADMINISTRATION**

18 **§421J-S General powers and duties of real estate**

19 **commission.** (a) The commission may:

- 20 (1) Adopt, amend, and repeal rules pursuant to chapter 91;
21 (2) Assess fees;



1 (3) Conduct investigations, issue cease and desist orders,
2 and bring an action in any court of competent
3 jurisdiction to enjoin persons, consistent with and in
4 furtherance of the objectives of this chapter;

5 (4) Prescribe forms and procedures for submitting
6 information to the commission; and

7 (5) Prescribe the form and content of any documents
8 required to be submitted to the commission by this
9 chapter.

10 (b) If it appears that any person has engaged, is
11 engaging, or is about to engage in any act or practice in
12 violation of this chapter or any of the commission's related
13 rules or orders, the commission, without prior administrative
14 proceedings, may maintain an action in the appropriate court to
15 enjoin that act or practice or for other appropriate relief.

16 The commission shall not be required to post a bond or to prove
17 that no adequate remedy at law exists in order to maintain the
18 action.

19 (c) The commission may exercise its powers in any action
20 involving the powers or responsibilities of a developer under
21 this chapter.



1 (d) The commission may accept grants-in-aid from any
2 governmental source and may contract with agencies charged with
3 similar functions in this or other jurisdictions, in furtherance
4 of the objectives of this chapter.

5 (e) The commission may cooperate with agencies performing
6 similar functions in this and other jurisdictions to develop
7 uniform filing procedures and forms, uniform disclosure
8 standards, and uniform administrative practices, and may develop
9 information that may be useful in the discharge of the
10 commission's duties.

11 (f) The commission, by rule, may require bonding at
12 appropriate levels over time, escrow of portions of sales
13 proceeds, or other safeguards to assure completion of all
14 improvements that a developer is obligated to complete, or has
15 represented that it will complete.

16 **§421J-T Investigatory powers.** If the commission has
17 reason to believe that any person is violating or has violated
18 this chapter, or the rules of the commission adopted pursuant
19 thereto, the commission may conduct an investigation of the
20 matter and examine the books, accounts, contracts, records, and
21 files of the association, the board of directors, the managing



1 agent, the real estate broker, the real estate salesperson, the
2 purchaser, or the developer. For the purposes of this
3 examination, the developer and the real estate broker shall keep
4 and maintain records of all sales transactions and of the funds
5 received by the developer and the real estate broker pursuant
6 thereto, and shall make the records accessible to the commission
7 upon reasonable notice and demand.

8 **§421J-U Cease and desist orders.** In addition to its
9 authority under section 421J-V, whenever the commission has
10 reason to believe that any person is violating or has violated
11 this chapter, or the rules of the commission adopted pursuant
12 thereto, it shall issue and serve upon the person a complaint
13 stating its charges in that respect and containing a notice of a
14 hearing at a stated place and upon a day at least thirty days
15 after the service of the complaint. The person served has the
16 right to appear at the place and time specified and show cause
17 why an order should not be entered by the commission requiring
18 the person to cease and desist from the violation of the law or
19 the rules of the commission charged in the complaint. If, upon
20 the hearing, the commission is of the opinion that this chapter
21 or the rules of the commission have been or are being violated,



1 it shall make a report in writing stating its findings as to the
2 facts and shall issue and cause to be served on the person an
3 order requiring the person to cease and desist from the
4 violations. The person, within thirty days after service upon
5 the person of the report or order, may obtain a review thereof
6 in the appropriate circuit court.

7 **§421J-V Power to enjoin.** Whenever the commission believes
8 from satisfactory evidence that any person has violated this
9 chapter or the rules of the commission adopted pursuant to this
10 chapter, it may conduct an investigation on the matter and bring
11 an action in the name of the people of the State in any court of
12 competent jurisdiction against the person to enjoin the person
13 from continuing the violation or engaging therein or doing any
14 act or acts in furtherance thereof.

15 **§421J-W Penalties.** (a) Any person who violates or fails
16 to comply with this chapter is guilty of a misdemeanor and shall
17 be punished by a fine not exceeding \$10,000 or by imprisonment
18 for a term not exceeding one year, or both. Any person who
19 violates or fails, omits, or neglects to obey, observe, or
20 comply with any rule, order, decision, demand, or requirement of



1 the commission under this chapter shall be punished by a fine
2 not exceeding \$10,000.

3 (b) Any person who violates any provision of this chapter
4 or the rules of the commission adopted pursuant thereto shall
5 also be subject to a civil penalty not exceeding \$10,000 for any
6 violation. Each violation shall constitute a separate offense.

7 **§421J-X Association; registration.** (a) Each association
8 shall:

9 (1) Secure and maintain a fidelity bond in an amount for
10 the coverage and terms as required by section 421J-K.
11 An association shall act promptly and diligently to
12 recover from the fidelity bond required by this
13 section. An association that is unable to obtain a
14 fidelity bond may seek approval for an exemption, a
15 deductible, or a bond alternative from the commission.
16 Current evidence of a fidelity bond includes a
17 certification statement from an insurance company
18 registered with the department of commerce and
19 consumer affairs certifying that the bond is in effect
20 and meets the requirement of this section and the
21 rules adopted by the commission;



1 (2) Register with the commission through approval of a
2 completed registration application, payment of fees,
3 and submission of any other additional information set
4 forth by the commission. The registration shall be
5 for a biennial period with termination on June 30 of
6 each odd-numbered year. The commission shall
7 prescribe a deadline date prior to the termination
8 date for the submission of a completed reregistration
9 application, payment of fees, and any other additional
10 information set forth by the commission. Any project
11 or association that has not met the submission
12 requirements by the deadline date shall be considered
13 a new applicant for registration and be subject to
14 initial registration requirements. Any new project or
15 association shall register within thirty days of the
16 association's first meeting. If the association has
17 not held its first meeting and it is at least one year
18 after the recordation of the purchase of the first
19 unit in the project, the developer or developer's
20 affiliate or the managing agent shall register on
21 behalf of the association and shall comply with this



1 section, except for the fidelity bond requirement for
2 associations required by section 421J-K. The public
3 information required to be submitted on any completed
4 application form shall include but not be limited to
5 evidence of and information on fidelity bond coverage,
6 names and positions of the officers of the
7 association, the name of the association's managing
8 agent, if any, the street and the postal address of
9 the planned community association, and the name and
10 current mailing address of a designated officer of the
11 association where the officer can be contacted
12 directly;

- 13 (3) Pay a nonrefundable application fee and, upon
14 approval, an initial registration fee and a
15 reregistration fee upon reregistration as provided in
16 rules adopted by the director of commerce and consumer
17 affairs pursuant to chapter 91;
- 18 (4) Register or reregister and pay the required fees by
19 the due date. Failure to register or reregister or
20 pay the required fees by the due date shall result in



1 the assessment of a penalty equal to the amount of the
2 registration or reregistration fee; and

3 (5) Report promptly in writing to the commission any
4 changes to the information contained on the
5 registration or reregistration application or any
6 other documents required by the commission. Failure
7 to do so may result in termination of registration and
8 subject the project or the association to initial
9 registration requirements.

10 (b) The commission may reject or terminate any
11 registration submitted by a project or an association that fails
12 to comply with this section. Any association that fails to
13 register as required by this section or whose registration is
14 rejected or terminated shall not have standing to maintain any
15 action or proceeding in the courts of this State until it
16 registers. The failure of an association to register, or
17 rejection or termination of its registration, shall not impair
18 the validity of any contract or act of the association nor
19 prevent the association from defending any action or proceeding
20 in any court in this State."




1 SECTION 2. This Act does not affect rights and duties that
2 have matured, penalties that were incurred, and proceedings that
3 were begun before its effective date.

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

6 SECTION 4. This Act shall take effect on January 1, 2020.

7

INTRODUCED BY:  _____

JAN 18 2019



H.B. NO. 638

Report Title:

Planned Community Associations

Description:

Specifies the powers of a planned community association and its board. Inserts similar provisions concerning governance and documents as are provided to condominium associations. Specifies alternative dispute resolution procedures. Specifies the Real Estate Commission as the regulatory entity.

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

