

ACT 312

S.B. NO. 2193

A Bill for an Act Relating to Planned Community Associations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that planned community associations can have a major impact on the planned community and its members. Members of planned communities are not only subject to the restrictions and obligations in the recorded declarations and bylaws of the association, they are also subject to the decisions and actions of the association’s board of directors and its agents. These boards and their agents may sometimes conduct the business of the association in an inconsistent manner, or without the knowledge and consent of the members of the association.

The purpose of this Act is to make the actions of board members of planned community associations more transparent, and to increase the accountability of the board to the association.

SECTION 2. Section 421J-5, Hawaii Revised Statutes, is amended to read as follows:

~~“[§421J-5] Meetings of the board of directors[.]; committee or sub-committee. (a) [Whenever practicable, all] All meetings of the board of directors, other than executive sessions, shall be open to all members to provide input on the matters being discussed. Members who are not on the board of directors may participate in any deliberation or discussion, other than during executive sessions, unless a majority of a quorum of the board of directors votes otherwise.~~

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

~~(c) [Minutes of the meetings of the board of directors shall include the recorded vote of each board member on all motions except motions voted upon in executive session.~~

~~(d) The board of directors, with the approval of a majority of a quorum of its members, may adjourn any meeting and reconvene in executive session to discuss~~

and vote upon matters concerning personnel, litigation in which the association is or may become involved, or as may be necessary to protect the attorney-client privilege of the association. The general nature of any business to be considered in executive session shall be first announced in the regular session.

~~[(e)]~~ (d) No board member shall vote by proxy at board meetings.

~~[(f)]~~ (e) A director who has a conflict of interest on any issue before the board shall disclose the nature of the conflict of interest prior to a vote on that issue at the board meeting, and the minutes of the meeting shall record the fact that a disclosure was made.

(f) The board may appoint committees or subcommittees to review and consider any specific matters, and may alter or eliminate the committees or subcommittees; provided that the board in the minutes of the meeting at which the action was taken to appoint the committee or subcommittee shall:

- (1) Report that the committee or subcommittee was appointed;
- (2) Identify the members of the committee or subcommittee; and
- (3) Describe the matter that the committee or subcommittee is to review and consider.’’

SECTION 3. Section 421J-7, Hawaii Revised Statutes, is amended to read as follows:

~~“[E]§421J-7[.] Documents of the association. (a) [Upon approval by the board,]~~ Association documents, the most current financial statement of the association, and the minutes of the most recent meeting of the board of directors (other than minutes of executive sessions) shall be made available for examination by any member at no cost, on twenty-four-hour loan or during reasonable hours~~[, at a location designated by the board].~~

~~(b) [The approved minutes of other meetings of the board, other than executive sessions, and the approved meetings of the association for the current and prior year, shall be made available for examination by members during reasonable hours at a location designated by the board. Copies of those meeting minutes shall be provided to any member upon the member’s request if the member pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request.]~~ The minutes of board meetings other than executive sessions, once approved, for the current and prior year shall be:

- (1) Available for examination by any member at no cost or on twenty-four-hour loan; or
- (2) Transmitted to any member requesting copies of the minutes, by the board, the managing agent, or the association’s representative, within a reasonable period of time from receipt of the request; provided that:
 - (A) The minutes shall be transmitted by mail, electronic mail transmission, or facsimile, as requested by the member, if the member indicates a preference at the time of the request; and
 - (B) Reasonable costs of duplication, postage, stationery, and other administrative costs associated with handling the request shall be borne by the requesting member; and
- (3) Maintained by the association for at least five years.

~~(c) Financial statements, general ledgers, accounts receivable ledgers, accounts payable ledgers, check ledgers, insurance policies, contracts, invoices of the association for the [current and prior year,] duration those records are kept by the association, and any documents regarding delinquencies of ninety days or more[.] shall be made available for examination by members at reasonable hours at a location designated by the board; provided that members shall pay for all costs associated with the examination of these documents. The board may require mem-~~

bers to furnish the association with an affidavit stating that the foregoing information is requested in good faith for the protection of the interests of the association, its members, or both. Copies of these documents shall be provided to any member upon the member's request if the member pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request.

(d) Members may view proxies, tally sheets, ballots, members' check-in lists, and the certificates of election, if any, for a period of thirty days following any association meeting; provided that members ~~[shall pay]~~ may be charged for ~~[all]~~ any costs associated with the examination of the documents. The board may require members to furnish to the association an affidavit stating that the foregoing information is requested in good faith for the protection of the interests of the association, its members, or both. Proxies and ballots may be destroyed following the thirty-day period. Copies of tally sheets, members' check-in lists, and the certificates of election from the most recent association meeting shall be provided to any member upon the member's request if the member pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request.

(e) Members may file a written request with the board to examine other documents of the association. The board shall give written authorization, or written refusal with an explanation of the refusal, for the examination within sixty calendar days of receipt of the request. The board may condition its approval of any such request upon payment of reasonable fees. Without limitation, books and records kept by or on behalf of an association may be withheld from inspection and copying to the extent that they concern:

- (1) Personnel records;
- (2) An individual's medical records;
- (3) Records relating to business transactions that are currently in negotiation;
- (4) Communications ~~[which]~~ that are privileged because of attorney-client privilege or any other applicable privilege of the association;
- (5) Complaints against an individual member of the association;
- (6) Any records, the release of which could be a violation of any law, ordinance, rule, or regulation; or
- (7) Similar records."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

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

SECTION 6. This Act shall take effect on July 1, 2006.

(Became law on July 11, 2006, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)