HOUSE OF REPRESENTATIVES
TWENTY-FOURTH LEGISLATURE, 2008
STATE OF HAWAII

H.B. NO. 2894

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 chapter 421J, Hawaii Revised Statutes, should be construed broadly to apply to all situations in which real property owners or lessees have an express or implied obligation to pay assessments or to comply with covenants related to use of common areas, architectural control, maintenance of units, or use restrictions on units.

The legislature further finds that some planned communities and planned community associations that were created prior to the enactment of chapter 421J, may not constitute planned communities and planned community associations as those terms are presently defined, thereby depriving those property owners of the rights and protections provided by chapter 421J.

The purpose of this Act is to assure that planned community associations are able to effectively enforce assessments and restrictive covenants and to ensure that all property owners within planned communities and members of planned community

associations are entitled to the rights and protections provided by chapter 421J, Hawaii Revised Statutes.

SECTION 2. Chapter 421J, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"**§421J- Interpretation.** This chapter and any association document subject thereto shall be liberally construed to facilitate the operation of the planned community association.

§421J- Restatement of association documents. (a) Notwithstanding any provision of this chapter, an association, by a resolution adopted by the board, may at any time restate the association documents of the association to include amendments to the association documents.

(b) An association, by a resolution adopted by the board, may at any time, restate the association documents of the association to amend the association documents as necessary to conform with this chapter or any other applicable law, ordinance, or rule; provided that any association documents restated pursuant to this section shall:

(1) Identify each portion so restated;

(2) Contain a statement that those portions have been restated solely for purposes of information and convenience;

(3) Identify the law, ordinance, or rule implemented by the amendment; and

(4) Contain a statement that, in the event of any conflict, the restated association documents shall be subordinate to the cited law, ordinance, or rule.

The restated association documents shall be effective for all purposes as if adopted by a vote or written consent of the members.

(c) Upon the adoption of a resolution pursuant to subsection (a) or (b), the restated association documents shall state all of the operative provisions of the original association documents, together with a statement that the restated association documents correctly state the corresponding provisions of the association documents, and that the restated association documents supersede the original association documents and any relative amendments.

(d) A restated association document shall be recorded if the original document was recorded and the restated association documents shall supersede the original association documents and

any relative amendments. In the event of any conflict, the restated association documents shall be subordinate to the original association documents and any relative amendments."

SECTION 3. Section 421J-2, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of "association" to read:

""Association" means a nonprofit, incorporated, or unincorporated organization [~~upon~~]:

(1) Upon which responsibilities are imposed and to which authority is granted in a declaration which governs a planned community[~~.~~]; or

(2) A planned community association as defined pursuant to section 607-14."

2. By amending the definition of "declaration" to read:

""Declaration" means any [~~recorded instrument,~~] association document, however denominated, that imposes on an association maintenance or operational responsibilities for the common area and creates the authority in the association to impose on units, or on the owners or occupants of the units, any mandatory payment of money as a regular annual assessment or otherwise in connection with the provisions, maintenance, or services for the benefit of some or all of the units, the owners, or occupants of

the units or the common areas. A declaration includes any amendment or supplement to the [~~instruments~~] documents described in this definition."

3. By amending the definition of "planned community" to read:

""Planned community" means a common interest community, other than a condominium or a cooperative housing corporation or a time share plan, which includes some or all of the following characteristics:

(1) Real property subject to a recorded declaration placing restrictions and obligations on the owners of the real property [~~and providing for rights and responsibilities of~~] that are enforced or enforceable by a separate entity, the association[:], established for that purpose whether or not mentioned in the declaration, and:

(A) Which owns and maintains certain property within the planned community for the common use or benefit, or both, of the owners of units within the planned community;

(B) Which is obligated to maintain certain property it does not own within the planned community for

the common use or benefit, or both, of the owners of units within the planned community; [~~or~~]

(C) Which is obligated to provide services to any such owners or units; or

(D) Which is defined as a planned community association pursuant to section 607-14;

(2) Individual owners own separate units which are part of a planned community at least some of which are improved by or are to be improved by residential dwellings;

(3) Owners have automatic and non-severable membership in an association by virtue of ownership of units within the planned community; and

(4) Owners, other than a master developer or declarant, are obligated by any association document to pay mandatory assessments by virtue of ownership of a unit within the planned community."

SECTION 4. Section 421J-12, Hawaii Revised Statutes, is amended to read as follows:

"[~~[~~]**§421J-12**[~~]~~] **Amendment of association documents when no procedure provided.** (a) Whenever an association document provides that it may be amended by the vote of association

1 members at a meeting, the association document may also be
2 amended by the written consent of the same percentage of
3 association members without a meeting.
4 (b) Whenever neither an association document nor any
5 applicable law provide procedures for amendment of that
6 document, the association document may be amended by the vote or
7 written consent of association members representing three-
8 fourths of the votes which association members are entitled to
9 cast with respect to a declaration and two-thirds of the votes
10 which association members are entitled to cast with respect to
11 other association documents; provided that this section shall
12 not apply to articles of incorporation or any association
13 documents which by their terms or as a matter of law may be
14 adopted or amended by the board of directors. Nothing in this
15 section shall be deemed to supersede or override any provision
16 of any association documents related to amendments, or any
17 provision of any law pertaining to associations or corporations.
18 (c) For purposes of this section, a requirement in any
19 association document that an owner must sign an amendment to
20 that document shall be satisfied by the receipt of a written
21 consent signed by the owner."

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

SECTION 6. This Act shall take effect upon its approval.

INTRODUCED BY: _____ D/R

JAN 22 2008

H.B. NO. 2894

Report Title:
Planned Community Associations

Description:
Allows for the restatement of planned community association documents.