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# A BILL FOR AN ACT

RELATING TO HOMEOWNERS' ASSOCIATIONS.

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

1           SECTION 1. The legislature finds that there are  
2 subdivisions that do not fit into the current definition of a  
3 planned community "association", as used in the laws regarding  
4 homeowners' associations. Accordingly, the homeowners'  
5 associations in these subdivisions remain unregulated and lack  
6 access to the cost-effective dispute resolution mechanisms  
7 provided for planned community associations. Applying the  
8 planned community associations laws to these subdivisions will  
9 allow the subdivisions to be regulated and have access to  
10 current mediation processes.

11           The legislature further finds that existing law on voting  
12 pursuant to a proxy at a meeting of a planned community  
13 association specifies that a standard proxy form must contain  
14 boxes for a member of the association to check and indicate how  
15 a proxy is given. However, proxy forms may sometimes be  
16 returned to an association's secretary or managing agent with  
17 more than one box checked, or with nothing marked on the proxy



1 form. This may lead to confusion over how the proxy should be  
2 counted.

3 The purpose of this Act is to:

4 (1) Expand the definition of "associations" under the  
5 planned community association law to include certain  
6 homeowners' associations; and

7 (2) Clarify that if a proxy is a standard proxy form  
8 authorized by an association, and the proxy is  
9 returned with no box checked or more than one box  
10 checked, the proxy shall be counted for quorum  
11 purposes only.

12 SECTION 2. Section 421J-2, Hawaii Revised Statutes, is  
13 amended by amending the definition of "association" to read as  
14 follows:

15 "Association" means a nonprofit, incorporated, or  
16 unincorporated organization:

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

20 (2) That is a planned community association as defined  
21 under section 607-14 [~~-~~]; or



- 1        (3) That is a homeowners' association, in which:
- 2            (A) The voting membership is made up of ten or more
- 3            parcel owners or their proxies, or a combination
- 4            thereof; and
- 5            (B) Assessments may be imposed that, if unpaid, may
- 6            become a lien on the parcel."

7        SECTION 3. Section 421J-4, Hawaii Revised Statutes, is  
8 amended to read as follows:

9        "**§421J-4 Proxies.** (a) A proxy shall be in writing and  
10 shall be valid for only a specified meeting of the association  
11 and any adjournments of that meeting.

12        (b) A member of the association may give a proxy to any  
13 person or the board of directors as an entity, and the proxy may  
14 be limited as indicated by the member. No proxy shall be  
15 irrevocable unless:

- 16        (1) The proxy is coupled with a financial interest in the
- 17            unit; or
- 18        (2) The proxy is held pursuant to a first mortgage of
- 19            record encumbering a unit or an agreement of sale
- 20            affecting a unit.
- 21        (c) To be valid, a proxy shall:



1 (1) Be delivered to the secretary of the association or  
2 the managing agent, if any, no later than 4:30 p.m. on  
3 the second business day prior to the date of the  
4 meeting to which it pertains; and

5 (2) Contain at least the name of the association, the date  
6 of the meeting of the association, the printed name  
7 and signature of the person or persons giving the  
8 proxy, the unit or units for which the proxy is given,  
9 and the date that the proxy is given[ ~~and~~].

10 [~~3~~] (d) If [~~it~~] a proxy is a standard proxy form /  
11 authorized by the association, the proxy shall contain boxes  
12 wherein the owner [~~has indicated~~] may indicate that the proxy is  
13 given:

14 [~~A~~] (1) For quorum purposes only;

15 [~~B~~] (2) To the individual whose name is printed on  
16 a line next to this box;

17 [~~C~~] (3) To the board of directors as a whole and  
18 that the vote be made on the basis of the preference  
19 of the majority of the directors present at the  
20 meeting; or



1           ~~[(d)]~~ (4) To those directors present at the meeting  
2           and the vote to be shared with each board member  
3           receiving an equal percentage~~[-]~~;  
4           provided that if the proxy is returned with no box or more than  
5           one of the boxes in paragraphs (1) through (4) checked, the  
6           proxy shall be counted for quorum purposes only.

7           ~~[(d)]~~ (e) Any board of directors that intends to use  
8           association funds to distribute proxies that include the  
9           election of directors shall first post notice of its intent to  
10          distribute proxies in prominent locations within the project at  
11          least twenty-one days prior to its distribution of proxies;  
12          provided that if the board receives within seven days of the  
13          posted notice a request by any owner for nomination to the board  
14          accompanied by a statement, the board shall mail to all owners  
15          either:

16           (1) A proxy form containing the names of all owners who  
17           have requested nomination to the board accompanied by  
18           their statements; or

19           (2) A proxy form containing no names, but accompanied by a  
20           list of names of all owners who have requested  
21           nomination to the board and their statements.



1           The statement shall be limited to black text on white paper  
2 and shall indicate the owner's qualifications to serve on the  
3 board or reasons for wanting to receive proxies. If the board's  
4 notice of intent to distribute proxies states that the statement  
5 shall not exceed one hundred words, but a longer statement shall  
6 be available on the Internet, then: the owner may provide a  
7 written statement, not to exceed one hundred words, together  
8 with a longer statement in an electronic file not to exceed one  
9 hundred kilobytes; and the mailing of the written statements by  
10 the association shall include an internet link informing owners  
11 that longer statements shall be available on the Internet. In  
12 all other instances, the statement shall not exceed one single-  
13 sided eight and one-half inches by eleven inches page and the  
14 association shall not be required to make a longer statement  
15 available on the Internet.

16           ~~[(e)]~~ (f) Nothing in this section shall affect the holder  
17 of any proxy under a first mortgage of record encumbering an  
18 apartment or under an agreement of sale affecting an apartment.

19           ~~[(f)]~~ (g) Nothing in this section shall prohibit the use  
20 of proxies for filling vacancies that occur after the notice of  
21 the annual meeting has been distributed.



1           ~~[(g)]~~ (h) No managing agent or resident manager, or  
2 employee thereof, shall solicit, for use by the managing agent  
3 or resident manager, any proxies from any member of the  
4 association that retains the managing agent or employs the  
5 resident manager, nor shall the managing agent or resident  
6 manager cast any proxy vote at any association meeting except  
7 for the purpose of establishing a quorum."

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

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

13           SECTION 6. This Act shall take effect on July 1, 2112.



**Report Title:**

Homeowners' Associations; Planned Community Associations;  
Meetings; Voting; Proxies

**Description:**

Expands the law on planned community associations to apply to certain homeowners' associations. Clarifies that if a proxy is a standard proxy form authorized by an association, and the proxy is returned with no box checked or more than one box checked, the proxy shall be counted for quorum purposes only. Effective 7/1/2112. (SD1)

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