
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 by adding two new sections to be appropriately
3 designated and to read as follows:

4 "§421J-A Cumulative voting for directors. (a) If the
5 articles of incorporation, declaration, or bylaws provide for
6 cumulative voting by members, members may so vote, by
7 multiplying the number of votes the members are entitled to cast
8 by the number of positions for whom they are entitled to vote,
9 and cast the product for a single candidate or distribute the
10 product among two or more candidates. The candidates receiving
11 the highest number of votes under this section, up to the total
12 number of positions to be filled, shall be deemed elected, and
13 shall be given the longest term.

14 (b) Unless otherwise provided in the articles of
15 incorporation, declaration, or bylaws, cumulative voting shall
16 not be permitted.



1 (c) A director elected by cumulative voting may be removed
2 by the members with or without cause if the requirements of
3 section 421J-B are met.

4 §421J-B Removal of directors elected by members or
5 directors. (a) The members may remove one or more directors
6 elected by them with or without cause unless otherwise provided
7 in the articles of incorporation, declaration, or bylaws. If
8 the removal is successful, the replacement director or directors
9 shall be elected for the remainder of the removed director's or
10 directors' term or terms in accordance with all applicable
11 requirements and procedures in the articles of incorporation,
12 declaration, or bylaws, and this chapter. If the replacement
13 director or directors are not elected at the meeting in which
14 the removal occurred, notwithstanding anything to the contrary
15 in the articles of incorporation, declaration, or bylaws, the
16 board may fill vacancies to serve until the next annual or duly
17 noticed special association meeting.

18 (b) If a director is elected by a class, chapter, or other
19 organizational unit, or by region or other geographic grouping,
20 the director may be removed only by the members of that class,
21 chapter, unit, or grouping.



1 (c) Except as provided in subsection (j), a director may
2 be removed under subsection (a) or (b) only if the number of
3 votes cast to remove the director would be sufficient to elect
4 the director at a meeting to elect directors.

5 (d) If cumulative voting is authorized at the meeting, the
6 director may not be removed if the number of votes, or if the
7 director was elected by a class, chapter, unit, or grouping of
8 members, the number of votes of that class, chapter, unit, or
9 grouping, sufficient to elect the director under cumulative
10 voting is voted against the director's removal.

11 (e) A director elected by members may be removed by the
12 members at any regular or special meeting, provided that:

13 (1) The member delivers to the secretary of the
14 association or managing agent a petition for removal
15 of one or more directors, signed by members
16 representing at least one hundred units or members who
17 own at least twenty-five per cent of the total number
18 of units in the planned community, whichever is less,
19 and containing the printed name, identification of the
20 unit, and address of the signing members and dates of
21 their signatures; and



1 (2) The petition is so delivered within seven days after
2 the posting of a notice of intent to distribute
3 proxies that include the election of directors in
4 accordance with section 421J-4(e) or within seven days
5 after the posting of a notice of the meeting under
6 section 421J-3.5(e).

7 (f) If a timely petition is delivered to the secretary of
8 the association or managing agent, the secretary or managing
9 agent shall include the proposed removal in the notice of the
10 meeting.

11 (g) In computing whether a director is protected from
12 removal under subsection (b) to (d), it should be assumed that
13 the votes against removal are cast in an election for the number
14 of directors to the class to which the director to be removed
15 belonged at the meeting at which the removal is proposed.

16 (h) An entire board of directors may be removed under
17 subsections (a) to (c).

18 (i) If, at the beginning of a director's term on the
19 board, the articles of incorporation, declaration, or bylaws
20 provide that the director may be removed for missing a specified
21 number of board meetings, the board may remove the director for



1 failing to attend the specified number of meetings. The
2 director may be removed only if a majority of the directors then
3 in office vote for the removal."

4 SECTION 2. Section 414D-114, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§414D-114 Cumulative voting for directors.** (a) If the
7 articles or bylaws provide for cumulative voting by members,
8 members may so vote, by multiplying the number of votes the
9 members are entitled to cast by the number of directors for whom
10 they are entitled to vote, and cast the product for a single
11 candidate or distribute the product among two or more
12 candidates.

13 (b) Unless otherwise provided in the articles or bylaws,
14 cumulative voting shall not be permitted. If authorized in the
15 articles or bylaws, cumulative voting may be permitted; provided
16 that:

- 17 (1) The meeting notice or statement accompanying the
18 notice states that cumulative voting shall take place;
- 19 (2) A member gives notice of the member's intent to
20 cumulatively vote not less than forty-eight hours



1 before the meeting or such longer period as may be
2 required by the articles or bylaws; and

3 (3) If one member gives notice of intent to cumulatively
4 vote, all other members participating in the election
5 may cumulate their votes without giving further
6 notice.

7 (c) A director elected by cumulative voting may be removed
8 by the members without cause if the requirements of section
9 414D-138 are met unless the votes cast against removal or not
10 consenting in writing to the removal would be sufficient to
11 elect the director if voted cumulatively at an election at which
12 the same total number of votes were cast and the entire number
13 of directors authorized at the time of the director's most
14 recent election were then being elected; provided that if the
15 action is taken by ballot, all members entitled to vote had
16 voted.

17 (d) Members may not cumulatively vote if the directors and
18 members are identical.

19 (e) This section shall not apply to any planned community
20 association governed by chapter 421J."



1 SECTION 3. Section 414D-138, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " ~~[+]§414D-138[+]~~ **Removal of directors elected by members**
4 **or directors.** (a) The members may remove one or more directors
5 elected by them without cause unless otherwise provided in the
6 articles or bylaws.

7 (b) If a director is elected by a class, chapter, or other
8 organizational unit, or by region or other geographic grouping,
9 the director may be removed only by the members of that class,
10 chapter, unit, or grouping.

11 (c) Except as provided in subsection (i), a director may
12 be removed under subsection (a) or (b) only if the number of
13 votes cast to remove the director would be sufficient to elect
14 the director at a meeting to elect directors.

15 (d) If cumulative voting is authorized, a director may not
16 be removed if the number of votes, or if the director was
17 elected by a class, chapter, unit, or grouping of members, the
18 number of votes of that class, chapter, unit, or grouping,
19 sufficient to elect the director under cumulative voting is
20 voted against the director's removal.



1 (e) A director elected by members may be removed by the
2 members only at a meeting called for the purpose of removing the
3 director and the meeting notice must state that the purpose, or
4 one of the purposes, of the meeting is removal of the director.

5 (f) In computing whether a director is protected from
6 removal under subsections (b) to (d), it should be assumed that
7 the votes against removal are cast in an election for the number
8 of directors of the class to which the director to be removed
9 belonged on the date of that director's election.

10 (g) An entire board of directors may be removed under
11 subsections (a) to (e).

12 (h) A director elected by the board may be removed without
13 cause by the vote of two-thirds of the directors then in office
14 or such greater number as is set forth in the articles or
15 bylaws; provided that a director elected by the board to fill
16 the vacancy of a director elected by the members may be removed
17 without cause by the members, but not the board.

18 (i) If, at the beginning of a director's term on the
19 board, the articles or bylaws provide that the director may be
20 removed for missing a specified number of board meetings, the
21 board may remove the director for failing to attend the



1 specified number of meetings. The director may be removed only
2 if a majority of the directors then in office vote for the
3 removal.

4 (j) This section shall not apply to any planned community
5 association governed by chapter 421J."

6 SECTION 4. Section 421J-3.5, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "~~+~~§421J-3.5 Notice required; regular annual and special
9 meetings.~~+~~ (a) Not less than fourteen days in advance of any
10 regular annual meeting or special meeting of an association, the
11 secretary or other officer specified in the bylaws shall give
12 written notice of the meeting to each member of the association
13 as provided in the bylaws of the association or by two or more
14 of the following means:

- 15 (1) Hand delivery;
- 16 (2) United States mail sent to the mailing address of each
17 unit or to another mailing address designated in
18 writing by the association member;
- 19 (3) Electronic mail to the electronic mailing address
20 designated in writing by the association member; or



1 (4) Posting of the meeting notice in its entirety on a
2 portion of the association's website that is
3 accessible to all members.

4 (b) Notice pursuant to this section shall state:

5 (1) The date, time, and place of the meeting; and

6 (2) The items on the agenda, including the general nature
7 of and rationale for any proposed amendment to the
8 declaration or bylaws; any proposal for a special
9 assessment, unless the authority for a special
10 assessment is otherwise provided for in the
11 association's governing documents; and any proposal to
12 remove a member of the board.

13 (c) The requirements of this section shall not be
14 interpreted to preclude any association member from proposing an
15 amendment to the declaration or bylaws [~~or proposing to remove a~~
16 ~~member of the board at an association meeting~~].

17 (d) The requirements of this section shall not be
18 interpreted to apply to any board meetings or committee meetings
19 of a planned community association.

20 (e) If the board of directors does not intend to use
21 association funds to distribute proxies that include the



1 election of directors and therefore does not post notice
2 pursuant to section 421J-4(e), the board shall post notice in
3 prominent locations within the project of its intent to
4 distribute written notice of an association meeting at least
5 twenty-one days in advance of distributing written notice under
6 subsection (a)."

7 SECTION 5. In codifying the new sections added by section
8 1 of this Act, the revisor of statutes shall substitute
9 appropriate section numbers for the letters used in designating
10 the new sections in this Act.

11 SECTION 6. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 7. This Act shall take effect on July 1, 2050.



Report Title:

Planned Community Associations; Nonprofit Corporations;
Directors

Description:

Establishes requirements for cumulative voting and the removal of directors of planned community associations. Exempts planned community associations from certain requirements regarding cumulative voting for and the removal of directors under the Hawaii Nonprofit Corporations Act. Takes effect on 7/1/2050.
(SD1)

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