

JAN 22 2016

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 a new part to be appropriately designated and
3 to read as follows:

4 "PART . ADMINISTRATION

5 §421J-A General powers and duties of commission. (a) The
6 commission may:

- 7 (1) Adopt, amend, and repeal rules pursuant to chapter 91;
- 8 (2) Assess fees;
- 9 (3) Conduct investigations, issue cease and desist orders,
10 and bring an action in any court of competent
11 jurisdiction to enjoin persons, consistent with and in
12 furtherance of the objectives of this chapter;
- 13 (4) Prescribe forms and procedures for submitting
14 information to the commission; and
- 15 (5) Prescribe the form and content of any documents
16 required to be submitted to the commission by this
17 chapter.



1 (b) If it appears that any person has engaged, is
2 engaging, or is about to engage in any act or practice in
3 violation of this chapter or any of the commission's related
4 rules or orders, the commission, without prior administrative
5 proceedings, may maintain an action in the appropriate court to
6 enjoin that act or practice or for other appropriate relief.
7 The commission shall not be required to post a bond or to prove
8 that no adequate remedy at law exists in order to maintain the
9 action.

10 (c) The commission may exercise its powers in any action
11 involving the powers or responsibilities of a developer under
12 this chapter.

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

17 (e) The commission may cooperate with agencies performing
18 similar functions in this and other jurisdictions to develop
19 uniform filing procedures and forms, uniform disclosure
20 standards, and uniform administrative practices, and may develop



1 information that may be useful in the discharge of the
2 commission's duties.

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

8 §421J-B Investigatory powers. If the commission has
9 reason to believe that any person is violating or has violated
10 this chapter, or the rules of the commission adopted pursuant
11 thereto, the commission may conduct an investigation of the
12 matter and examine the books, accounts, contracts, records, and
13 files of the association, the board of directors, the managing
14 agent, the real estate broker, the real estate salesperson, the
15 purchaser, or the developer. For the purposes of this
16 examination, the developer and the real estate broker shall keep
17 and maintain records of all sales transactions and of the funds
18 received by the developer and the real estate broker pursuant
19 thereto, and shall make the records accessible to the commission
20 upon reasonable notice and demand.



1 §421J-C Cease and desist orders. In addition to its
2 authority under section 421J-D, whenever the commission has
3 reason to believe that any person is violating or has violated
4 this chapter, or the rules of the commission adopted pursuant
5 thereto, it shall issue and serve upon the person a complaint
6 stating its charges in that respect and containing a notice of a
7 hearing at a stated place and upon a day at least thirty days
8 after the service of the complaint. The person served has the
9 right to appear at the place and time specified and show cause
10 why an order should not be entered by the commission requiring
11 the person to cease and desist from the violation of the law or
12 the rules of the commission charged in the complaint. If, upon
13 the hearing, the commission is of the opinion that this chapter
14 or the rules of the commission have been or are being violated,
15 it shall make a report in writing stating its findings as to the
16 facts and shall issue and cause to be served on the person an
17 order requiring the person to cease and desist from the
18 violations. The person, within thirty days after service upon
19 the person of the report or order, may obtain a review thereof
20 in the appropriate circuit court.



1 §421J-D Power to enjoin. Whenever the commission believes
2 from satisfactory evidence that any person has violated this
3 chapter or the rules of the commission adopted pursuant to this
4 chapter, it may conduct an investigation on the matter and bring
5 an action in the name of the people of the State in any court of
6 competent jurisdiction against the person to enjoin the person
7 from continuing the violation or engaging therein or doing any
8 act or acts in furtherance thereof.

9 §421J-E Penalties. (a) Any person who violates or fails
10 to comply with this chapter is guilty of a misdemeanor and shall
11 be punished by a fine not exceeding \$10,000 or by imprisonment
12 for a term not exceeding one year, or both. Any person who
13 violates or fails, omits, or neglects to obey, observe, or
14 comply with any rule, order, decision, demand, or requirement of
15 the commission under this chapter shall be punished by a fine
16 not exceeding \$10,000.

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



1 SECTION 2. Chapter 421J, Hawaii Revised Statutes, is
2 amended by designating sections 421J-1 to 421J-16 as part I,
3 entitled "General Provisions".

4 SECTION 3. Section 421J-2, Hawaii Revised Statutes, is
5 amended by adding a new definition to be appropriately inserted
6 and to read as follows:

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

9 SECTION 4. Section 467-4, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§467-4 Powers and duties of commission.** In addition to
12 any other powers and duties authorized by law, the real estate
13 commission shall:

- 14 (1) Grant licenses, registrations, and certificates
15 pursuant to this chapter;
- 16 (2) Adopt, amend, or repeal rules as it may deem proper to
17 effectuate this chapter and carry out its purpose,
18 which is the protection of the general public in its
19 real estate transactions. All rules shall be approved
20 by the governor and the director of commerce and
21 consumer affairs, and when adopted pursuant to chapter



1 91 shall have the force and effect of law. The rules
2 may forbid acts or practices deemed by the commission
3 to be detrimental to the accomplishment of the purpose
4 of this chapter, and the rules may require real estate
5 brokers and salespersons to complete educational
6 courses or to make reports to the commission
7 containing items of information as will better enable
8 the commission to enforce this chapter and the rules,
9 or as will better enable the commission from time to
10 time to amend the rules to more fully effect the
11 purpose of this chapter, and, further, the rules may
12 require real estate brokers and salespersons to
13 furnish reports to their clients containing matters of
14 information as the commission deems necessary to
15 promote the purpose of this chapter. This enumeration
16 of specific matters that may properly be made the
17 subject of rules shall not be construed to limit the
18 commission's broad general power to make all rules
19 necessary to fully effectuate the purpose of this
20 chapter;



- 1 (3) Enforce this chapter and rules adopted pursuant
2 thereto;
- 3 (4) Suspend, fine, terminate, or revoke any license,
4 registration, or certificate for any cause prescribed
5 by this chapter, or for any violation of the rules,
6 and may also require additional education or
7 reexamination, and refuse to grant any license,
8 registration, or certificate for any cause that would
9 be a ground for suspension, fine, termination, or
10 revocation of a license, registration, or certificate;
- 11 (5) Report to the governor and the legislature relevant
12 information that shall include but not be limited to a
13 summary of the programs and financial information
14 about the trust funds, including balances and budgets,
15 through the director of commerce and consumer affairs
16 annually, before the convening of each regular
17 session, and at other times and in other manners as
18 the governor or the legislature may require concerning
19 its activities;
- 20 (6) Publish and distribute pamphlets and circulars,
21 produce seminars and workshops, hold meetings in all



1 counties, and require other education regarding any
2 information as is proper to further the accomplishment
3 of the purpose of this chapter;

4 (7) Enter into contract or contracts with qualified
5 persons to assist the commission in effectuating the
6 purpose of this chapter; [~~and~~]

7 (8) Establish standing committees to assist in
8 effectuating this chapter and carry out its purpose,
9 which shall meet not less often than ten times
10 annually, and shall from time to time meet in each of
11 the counties[~~-~~]; and

12 (9) Enforce chapter 421J and rules adopted pursuant to
13 that chapter."

14 SECTION 5. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 6. In codifying the new sections added by section
18 1 of this Act, the revisor of statutes shall substitute
19 appropriate section numbers for the letters used in designating
20 the new sections in this Act.



S.B. NO. 2252

1 SECTION 7. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 8. This Act shall take effect upon its approval.
4

INTRODUCED BY:

~~Sen. Kirk Aggs~~
Mull



S.B. NO. 2252

Report Title:

Planned Community Associations; Real Estate Commission

Description:

Gives the Real Estate Commission enforcement powers over planned community associations.

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

