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December 21, 2023

TRANSMITTED VIA LEGISLATIVE WEBSITE

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

Enclosed is a copy of the "Interim Report for HB1509, Act 189 – Planned Community Association Oversight Task Force" pursuant to Act 189 Session Laws of Hawaii 2023.

In accordance with section 93-16(a), HRS, a copy of this report will be transmitted to the Legislative Reference Bureau Library and viewable electronically at cca.hawaii.gov/reports/departmental/. Copies will also be transmitted to the State Publications Distribution Center and the University of Hawaii pursuant to section 93-3, HRS.

Sincerely,

NADINE Y. ANDO
Director

Enclosure

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Interim Report for HB1509, Act 189 - Planned Community Association Oversight Task Force

Date: December 11, 2023

To: 33rd Legislature of Hawaii

From: Planned Community Association Oversight Task Force

Subject: Interim Report on HB1509, Act 189

I. Executive Summary

The Planned Community Association Oversight Task Force, established by HB1509, Act 189, is currently engaged in determining whether the rights and benefits provided to owners in condominium property regimes governed by chapter 514B, Hawaii Revised Statutes should be extended to members of planned community associations governed by chapter 421J, Hawaii Revised Statutes. This process involves a comprehensive examination of the rights afforded to condominium owners by chapter 514B. The primary focus is to determine the feasibility of two different options:

- (1) Simply expanding the provisions of chapter 421J to give members of planned community associations many of the same rights and responsibilities provided to condominium owners under chapter 514B; or
- (2) Creating a process under chapter 421J for the registration of planned community associations, to allow the collection of fees from their members to fund the educational and alternative dispute resolution processes established by the legislature for condominiums.

There are several issues to consider in deciding whether planned community associations should be subject to controls like those imposed on condominium associations. One of the main issues is that a planned community association usually exercises less control over its members than a condominium association.

Condominiums are often high rise or townhome style properties. As a result, condominium associations are usually responsible for the structures and the exteriors of the condominium units in those projects. This typically gives a condominium association significantly more control over its members than a typical planned community association has over its members.

Although there are exceptions, a large number of planned communities are comprised of single-family homes or sometimes a mix of single-family homes and condominiums. As a result, the focus of a planned community association is often just controlling the exterior appearance of members' properties and ensuring that its members properly maintain and repair their own units and the surrounding lots. Even if a planned community includes condominium units – often in the form of townhomes – the condominium association will usually have primary control over the townhomes and their owners, including the repair and maintenance of the townhomes. The planned community association will often only have control over the appearance of the townhomes.

In addition, the principles of property ownership under the common law mean condominiums are deemed “creatures of statute” that could not exist without legislative

authority. As a result, the courts may give the legislature broader control over the management and operation of condominiums than over planned communities.

The differences between condominiums and planned communities have to be considered in determining how planned communities should be regulated.

II. Task Force Composition

The task force, as mandated by HB1509, Act 189, comprises representatives from key stakeholders, ensuring a balanced and comprehensive approach to the examination of the identified issues. The current members are as follows:

1. A representative of the Department of Commerce and Consumer Affairs, designated by the Director of Commerce and Consumer Affairs.
2. A member of the House of Representatives, designated by the Speaker of the House of Representatives.
3. A member of the Senate, designated by the President of the Senate.
4. Additional members of the public

III. Activities and Progress

Since its establishment through HB1509, Act 189, the task force has undertaken the following activities:

1. **Preliminary Review:** The task force has conducted a preliminary review of the relevant statutes governing condominium property regimes (chapter 514B) and planned community associations (chapter 421J).
2. **Identification of Issues:** Key issues related to the rights of owners in condominium property regimes and planned community associations have been identified, forming the basis for further investigation. These include the feasibility of the registration of planned community associations to allow the collection of fees from their members to fund the educational and alternative dispute resolution processes established by the legislature for condominiums.

IV. Challenges and Opportunities

While progress has been made, the task force acknowledges the existence of challenges and opportunities:

Challenges:

- Differing legal frameworks for condominium property regimes and planned community associations pose challenges in establishing uniform rights and regulations.
- Balancing the rights of individual owners with the collective interests of the community requires careful consideration.

Opportunities:

- Leveraging alternative dispute resolution systems can enhance the efficiency and effectiveness of conflict resolution within these associations.
- Identifying commonalities between the two governance structures may pave the way for harmonized regulations.

V. Next Steps

The task force, in alignment with the directives outlined in HB1509, Act 189, will continue its work by:

1. **In-Depth Analysis:** Conducting a thorough analysis of the identified issues, including legal implications, practical considerations, and potential impacts on stakeholders.
2. **Recommendations:** Formulating preliminary recommendations for potential legislative or regulatory changes to address the identified issues.

VI. Draft Legislation Attachment

Attached to this interim report is a draft of legislation that proposes amendments to chapter 421J, Hawaii Revised Statutes, incorporating relevant sections from chapter 514B to extend and enhance the rights of members in planned community associations. This represents the simplest and most cost-effective method of providing planned community association members with the rights currently provided to condominium owners but omits the educational and alternative dispute resolution options.

VII. Conclusion

The Planned Community Association Oversight Task Force, as mandated by HB1509, Act 189, remains committed to its mission of examining and enhancing the rights of owners in planned community associations. The task force anticipates further progress and refinement of recommendations as it moves towards providing a final report.

Respectfully submitted,

John A. Morris

John Morris, Chair
Planned Community Association Oversight

Yuriko J. Sugimura

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CHAPTER 421J
PLANNED COMMUNITY ASSOCIATIONS
(DRAFT REVISED 2023-12-15)

Section

- 421J-1 Scope
- 421J-1.5 Interpretation
- 421J-2 Definitions
- 421J-2.5 Association; powers
- 421J-2.6 Association; limitations on powers
- 421J-3 Board of directors
- 421J-3.2 Cumulative voting for directors
- 421J-3.3 Removal of directors elected by members or directors
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- 421J-6 Robert's Rules of Order
- 421J-7 Documents of the association; records to be maintained; availability; disposal; prohibitions
- 421J-7.1 Association documents to be provided
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- 421J-14 First annual meeting of association
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- 421J-18 Additions to and alterations of planned community

[\$421J-1] Scope. This chapter shall apply to all planned community associations existing as of June 16, 1997 and all planned community associations created thereafter. [L 1997, c 132, pt of §1]

[\$421J-1.5] Interpretation. This chapter and any association document subject thereto shall be liberally construed to facilitate the operation of the planned community association. [L 2008, c 70, pt of §2]

§421J-2 Definitions. As used in this chapter, unless otherwise indicated by the context:

"Assessment" means funds collected by an association from association members to operate and manage the association, maintain property within the planned community for the common use or benefit of association members, or provide services to association members. The term also means expenditures made by, or financial liabilities of, the association for operation of the property and includes any allocations to reserves.

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

- (1) Upon which responsibilities are imposed and to which authority is granted in a declaration that governs a planned community;
- (2) That is a planned community association as defined under section 607-14; or
- (3) That is a homeowners' association, in which:
 - (A) The voting membership is made up of ten or more parcel owners or their proxies, or a combination thereof; and
 - (B) Assessments may be imposed that, if unpaid, may become a lien on the parcel.

"Association documents" means the articles of incorporation or other document creating the association, if any, the bylaws of the association, the declaration or similar organizational documents and any exhibits thereto, any rules related to use of common areas, architectural control, maintenance of units, restrictions on the use of units, or payment of money as a regular 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, as well as any amendments made to the foregoing documents.

"Board of directors" or "board" means the executive board or other body, regardless of name, designated in the association documents to act on behalf of the association.

"Common area" means real property within a planned community which is owned or leased by the association or is otherwise available for the use of its members or designated as common area in or pursuant to the declaration.

"Declaration" means any recorded association document, however denominated, that imposes obligations on the owners of the units with respect to maintenance or operational responsibilities for the common area, architectural control, maintenance of units, or restrictions on the use of units. A declaration includes any amendment or supplement to the instruments described in this definition.

"Member" means the person or persons owning a unit or having the right of occupancy of a unit under a recorded lease having a term of twenty or more years from its commencement date; or anyone included in the definition of a member under the association documents, including the developer, whether or not the developer owns a unit.

"Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

"Planned community" means one of the following:

- (1) Real property, other than a condominium or a cooperative housing corporation or a time share plan, that is subject to a planned community association as defined under section 607-14; or
- (2) A common interest community, other than a condominium or a cooperative housing corporation or a time share plan, which includes all of the following characteristics:
 - (A) Real property subject to a recorded declaration placing restrictions and obligations on the owners of the real property that are enforced or enforceable by a separate entity, the association, established for that purpose whether or not mentioned in the declaration, and:
 - (i) That 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;
 - (ii) That 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
- (iii) That is obligated to provide services to any such owners or units;
 - (B) Individual owners own separate units that are part of a planned community at least some of which are improved by or are to be improved by residential dwellings;
 - (C) Owners have automatic and non-severable membership in an association by virtue of ownership of units within the planned community; and
 - (D) 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.

"Recorded" means recorded or filed in the bureau of conveyances of the State or in the office of the assistant registrar of the land court of the State, as appropriate.

"Unit" means a physical portion of the planned community designated for separate ownership or occupancy. [L 1997, c 132, pt of §1; am L 2001, c 68, §1; am L 2008, c 70, §3; am L 2012, c 182, §2(2); am L 2017, c 101, §2]

§421J-2.5 Association; powers. (a) Subject to the provisions of the declaration and bylaws, the association, even if unincorporated, may:

- (1) Adopt and amend the declaration, bylaws, and rules and regulations;
- (2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners, subject to section 421J-9;
- (3) Hire and discharge managing agents and other independent contractors, agents, and employees;
- (4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the planned community. For the purposes of actions under chapter 480, associations shall be deemed to be "consumers";
- (5) Make contracts and incur liabilities;
- (6) Regulate the use, maintenance, repair, replacement, and modification of common elements;

- (7) Cause additional improvements to be made as a part of the common elements;
- (8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property; provided that:
 - (A) Designation of additional areas to be common elements or subject to common expenses after the initial filing of the declaration or bylaws shall require the approval of at least sixty-seven per cent of the unit owners;
 - (B) If the developer discloses to the initial buyer in writing that additional areas will be designated as common elements whether pursuant to an incremental or phased project or otherwise, the requirements of this paragraph shall not apply as to those additional areas; and
 - (C) The requirements of this paragraph shall not apply to the purchase of a unit for a resident manager, which may be purchased with the approval of the board;
- (9) Grant easements, leases, licenses, and concessions through or over the common elements and permit encroachments on the common elements;
- (10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements, and for services provided to unit owners;
- (11) Impose charges and penalties, including late fees and interest, for late payment of assessments and levy reasonable fines for violations of the declaration, bylaws, rules, and regulations of the association, either in accordance with the bylaws or, if the bylaws are silent, pursuant to a resolution adopted by the board that establishes a fining procedure that states the basis for the fine and allows an appeal to the board of the fine with notice and an opportunity to be heard and providing that if the fine is paid, the member shall have the right to initiate a dispute resolution process as provided by section 421J-13.
- (12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, documents requested for resale of units, or statements of unpaid assessments;
- (13) Provide for cumulative voting through a provision in the bylaws;

- (14) Provide for the indemnification of its officers, board, committee members, and agents, and maintain directors' and officers' liability insurance;
 - (15) Assign its right to future income, including the right to receive common expense assessments, but only to the extent section 421J-2.6(c) expressly so provides;
 - (16) Exercise any other powers conferred by the declaration or bylaws;
 - (17) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association, except to the extent inconsistent with this chapter; and
 - (18) Exercise any other powers necessary and proper for the governance and operation of the association;
- (b) If a tenant of a member violates the declaration, bylaws, or rules and regulations of the association, in addition to exercising any of its powers against the member, the association may:
- (1) Exercise directly against the tenant the powers described in subsection (a) (2);
 - (2) After giving notice to the tenant and the member and an opportunity to be heard, levy reasonable fines against the tenant for the violation, provided that a member shall be responsible for the conduct of the member's tenant and for any fines levied against the tenant or any legal fees incurred in enforcing the declaration, bylaws, or rules and regulations of the association against the tenant; and
 - (3) Enforce any other rights against the tenant for the violation which the member as landlord could lawfully have exercised under the lease, including eviction, or which the association could lawfully have exercised directly against the member, or both.
- (c) The rights granted under subsection (b) (3) may only be exercised if the tenant or member fails to cure the violation within ten days after the association notifies the tenant and member of that violation; provided that no notice shall be required when the breach by the tenant causes or threatens to cause damage to any person or constitutes a violation of section 521-51(1) or 521-51(6). [L] see §514B-104(a) through (c)

§421J-2.6 Association; limitations on powers. (a) Any payments made by or on behalf of a member shall first be applied to outstanding common expenses that are assessed to all members

in proportion to the common interest appurtenant to their respective units. Only after said outstanding common expenses have been paid in full may the payments be applied to other charges owed to the association, including assessed charges to the unit such as ground lease rent, utility sub-metering, storage lockers, parking stalls, boat slips, insurance deductibles, and cable. After these charges are paid, other charges, including unpaid late fees, legal fees, fines, and interest, may be assessed in accordance with an application of payment policy adopted by the board; provided that if a member has designated that any payment is for a specific charge that is not a common expense as described in this subsection, the payment may be applied in accordance with the member's designation even if common expenses remain outstanding.

(b) No member who requests legal or other information from the association, the board, the managing agent, or their employees or agents, shall be charged for the reasonable cost of providing the information unless the association notifies the member that it intends to charge the member for the reasonable cost. The association shall notify the member in writing at least ten days prior to incurring the reasonable cost of providing the information, except that no prior notice shall be required to assess the reasonable cost of providing information on delinquent assessments or in connection with proceedings to enforce the law or the association's governing documents. After being notified of the reasonable cost of providing the information, the member may withdraw the request, in writing. A member who withdraws a request for information shall not be charged for the reasonable cost of providing the information.

(c) Subject to any approval requirements and spending limits contained in the declaration or bylaws, the association may authorize the board to borrow money for the repair, replacement, maintenance, operation, or administration of the common elements and personal property of the project, or the making of any additions, alterations, and improvements thereto; provided that written notice of the purpose and use of the funds is first sent to all members and members representing fifty per cent of the common interest vote or give written consent to the borrowing, provided that should the Association fail to obtain response from greater than fifty percent of the common interest after two attempts then the decision shall be based on the majority of the common interest that voted. In connection with the borrowing, the board may grant to the lender the right to assess and collect monthly or special assessments from the members and to enforce the payment of the assessments or other sums by statutory lien and foreclosure proceedings. The cost of the borrowing, including, without limitation, all principal,

interest, commitment fees, and other expenses payable with respect to the borrowing or the enforcement of the obligations under the borrowing, shall be a common expense of the project. For purposes of this section, the financing of insurance premiums by the association within the policy period shall not be deemed a loan and no lease shall be deemed a loan if it provides that at the end of the lease the association may purchase the leased equipment for its fair market value.
[L _____] see §514B-105(c)&(e)

[\$421J-3] Board of directors. (a) Every member of the board of directors shall be a member of the association. However, a developer may appoint or elect directors pursuant to any special voting rights or power of appointment reserved to the master developer.

(b) The board of directors shall be composed of the number and group of persons specified in the association documents. There shall not be more than one representative on the board of directors from any one unit that is owned by any person other than the master developer or declarant. Representation on the board of directors for members owning multiple units shall be proportionate to the members percentage of common interest rounded up. For example, on a nine-member board an owner with a combined twelve percent common interest could be represented by two director positions on the board. [L 1997, c 132, pt of \$1; _____]

[\$421J-3.2] Cumulative voting for directors. (a) If the association documents provide for cumulative voting by members, members may so vote, by multiplying the number of votes the members are entitled to cast by the number of positions for whom they are entitled to vote, and cast the product for a single candidate or distribute the product among two or more candidates. The candidates receiving the highest number of votes under this section, up to the total number of positions to be filled, shall be deemed elected, and shall be given the longest term.

(b) Unless otherwise provided in the association documents, cumulative voting shall not be permitted.

(c) A director elected by cumulative voting may be removed by the members with or without cause if the requirements of section 421J-3.3 are met. [L 2022, c 69, pt of \$1]

[§421J-3.3] Removal of directors elected by members or directors. (a) The members may remove a director elected by the members with or without cause unless otherwise provided in the association documents. If the removal is successful, the replacement director shall be elected for the remainder of the removed director's term in accordance with all applicable requirements and procedures in the association documents and this chapter. If the replacement director is not elected at the meeting in which the removal occurred, notwithstanding anything to the contrary in the association documents, the board may fill vacancies to serve until the next annual or duly noticed special meeting of the association.

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

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

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

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

- (1) The board of directors recommends removal of the director; or
- (2) A member delivers to the secretary of the association or managing agent a petition for removal of the director that:
 - (A) Is signed by members representing at least one hundred units or members who own at least twenty-five per cent of the total number of units in the planned community, whichever is less;
 - (B) Contains the printed name, identification of the unit, address of the signing members, and dates of their signatures;
 - (C) Is delivered within seven days after the posting of a notice of intent to distribute proxies that includes the election of directors in accordance with section 421J-4(e), or within seven days after the posting of a notice of intent to

distribute a notice of a meeting under section 421J-3.5(f); and

(D) Is submitted within one hundred twenty days of the earliest signature.

(f) If the board of directors recommends removal, or if a timely petition is delivered to the secretary of the association or managing agent, the secretary or managing agent shall include the proposed removal in the notice of the meeting.

(g) In computing whether a director is protected from removal under subsections (b) through (d), it shall be assumed that the votes against removal of the director are cast in an election for the number of directors to the class to which that director belonged at the meeting at which the removal is proposed.

(h) An entire board of directors may be removed pursuant to subsections (a) through (c).

(i) If, at the beginning of a director's term on the board, the association documents provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal. [L 2022, c 69, pt of §1]

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

- (1) Hand delivery;
 - (2) United States mail sent to the mailing address of each unit or to another mailing address designated in writing by the association member;
 - (3) Electronic mail to the electronic mailing address designated in writing by the association member; or
 - (4) Posting of the meeting notice in its entirety on a portion of the association's website that is accessible to all members.
- (b) Notice pursuant to subsection (a) shall state:
- (1) The date, time, and place of the meeting; and
 - (2) The items on the agenda, including the general nature of and rationale for any proposed amendment to the declaration or bylaws; any proposal for a special

assessment, unless the authority for a special assessment is otherwise provided for in the association's governing documents; and any proposal to remove a member of the board.

(c) The requirements of this section shall not be interpreted to preclude any association member from proposing an amendment to the declaration or bylaws.

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

(e) Notwithstanding any provision to the contrary in the association documents, the association may conduct an annual, regular, or special meeting remotely in a manner consistent with section 414D-101(g) or 414D-102(f), as applicable.

(f) Notwithstanding any other provision of this chapter, except as provided in subsection (g), or the declaration or bylaws of a condominium to the contrary, at any association meeting the board may direct the use of an electronic voting device regardless of whether a secret ballot is used or required. Except as provided in subsection (g), the use of an electronic voting device shall be subject to the following:

- (1) The electronic voting device and all associated equipment shall be isolated from any connection to an external network, including the Internet, or shall use a form of encryption comparable to that used for secured internet web browsers;
- (2) The board shall establish reasonable procedures to provide for the secrecy and integrity of the unit owners' votes, including but not limited to procedures that ensure the availability of a printed audit trail containing:
 - (A) The reference number or internet address of the electronic voting device;
 - (B) Each common interest voted; and
 - (C) The vote that was tabulated;
- (3) A copy of the printed audit trail shall be available to owners after the meeting in the same manner provided by sections 421J-7 and 421J-7.1; and
- (4) A copy of the procedures established pursuant to paragraph (2) shall be available at no charge to any owner and a copy shall be available at any meeting at which the association uses an electronic voting device.

If any conflict arises between this subsection and subsection (g), subsection (g) shall control.

(g) Notwithstanding any provision to the contrary in the association's declaration or bylaws, electronic meetings and

electronic, machine, or mail voting may be authorized by the board in its sole discretion:

- (1) During any period in which a state of emergency or local state of emergency, declared pursuant to chapter 127A, is in effect in the county in which the condominium is located;
- (2) For any association meeting for which notice was given while a state of emergency or local state of emergency, declared pursuant to chapter 127A, was in effect for the county in which the association is located but is no longer in effect as of the date of the meeting; provided that the meeting is held within sixty days of the date the notice was first given;
- (3) For any electronic, machine, or mail voting for which notice of voting has been sent; provided that the electronic, machine, or mail voting deadline is within sixty days of the date the notice was first sent;
- (4) Whenever approved in advance by:
 - (A) Written consent of a majority of members; or
 - (B) Majority vote at an association meeting; or
- (5) Whenever otherwise authorized in an association's declaration or bylaws. The association shall implement reasonable measures to verify that each person permitted to vote is a member of the association or proxy of a member.

As used in this subsection, "mail voting" includes sending or receiving written ballots via mail, courier, or electronic transmission; provided that the transmission is a complete reproduction of the original.

(h) If the board of directors does not intend to use association funds to distribute proxies that include the election of directors and therefore does not post notice pursuant to section 421J-4(e), the board shall post notice in prominent locations within the planned community of its intent to distribute written notice of an association meeting at least twenty-one days in advance of distributing written notice under subsection (a).

(i) Minutes of meetings of the association shall be approved at the next succeeding regular meeting or by the board, if authorized by the members at an annual meeting. If approved by the board, members shall be given a copy of the approved minutes or notified of the availability of the minutes within thirty days after approval.

(j) Minutes of all meetings of the association shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within sixty days after the meeting.

(k) A member shall be allowed to offer corrections to the minutes at an association meeting.

(l) Special meetings of the association may be called by the president, a majority of the board, or by a petition to the secretary or managing agent signed and dated by not less than twenty-five per cent of the members as shown in the association's record of ownership; provided that if the secretary or managing agent fails to send out the notices for the special meeting within fourteen days of receipt of the petition, the petitioners shall have the authority to set the time, date, and place for the special meeting and to send out the notices and proxies for the special meeting at the association's expense in accordance with the requirements of the bylaws and of this part; provided further that a special meeting based upon a petition to the secretary or managing agent shall be set no later than sixty days from receipt of the petition. The petition shall be valid only if submitted within one hundred twenty days of the earliest signature. [L 2013, c 188, §2; am L 2021, c 83, §1; am L 2022, c 69, §4; _____] [see §§514B-121\(c\)&\(e\), and 514B-122](#)

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

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

- (1) The proxy is coupled with a financial interest in the unit; or
 - (2) The proxy is held pursuant to a first mortgage of record encumbering a unit or an agreement of sale affecting a unit.
- (c) To be valid, a proxy shall:
- (1) Be delivered to the secretary of the association or the managing agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains; and
 - (2) Contain at least the name of the association, the date of the meeting of the association, the printed name and signature of the person or persons giving the proxy, the unit or units for which the proxy is given, and the date that the proxy is given.

(d) If a proxy is a standard proxy form authorized by the association, the proxy shall comply with the following additional requirements:

- (1) The proxy shall contain boxes wherein the owner may indicate that the proxy is given:
 - (A) For quorum purposes only;
 - (B) To the individual whose name is printed on a line next to this box;
 - (C) To the board of directors as a whole and that the vote be made on the basis of the preference of the majority of the directors present at the meeting; or
 - (D) To those directors present at the meeting and the vote to be shared with each board member receiving an equal percentage;

provided that if the proxy is returned with no box or more than one of the boxes in [~~paragraphs (1) through (4)~~] subparagraphs (A) through (D) checked, the proxy shall be counted for quorum purposes only.

- (2) The proxy form shall also contain a box wherein the owner may indicate that the owner wishes to obtain a copy of the annual audit report required by section 421J-10.7.

(b) Any board of directors that intends to use association funds to distribute proxies that include the election of directors shall first post notice of its intent to distribute proxies in prominent locations within the project at least twenty-one days prior to its distribution of proxies; provided that if the board receives within seven days of the posted notice a request by any owner for nomination to the board accompanied by a statement, the board shall mail to all owners either:

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

The statement shall be limited to black text on white paper and shall indicate the owner's qualifications to serve on the board or reasons for wanting to receive proxies. If the board's notice of intent to distribute proxies states that the statement shall not exceed one hundred words, but a longer statement shall be available on the Internet, then: the owner may provide a written statement, not to exceed one hundred words, together with a longer statement in an electronic file not to exceed one hundred kilobytes; and the mailing of the written statements by

the association shall include an internet link informing owners that longer statements shall be available on the Internet. In all other instances, the statement shall not exceed one single-sided eight and one-half inches by eleven inches page and the association shall not be required to make a longer statement available on the Internet.

(c) Nothing in this section shall affect the holder of any proxy under a first mortgage of record encumbering an apartment or under an agreement of sale affecting an apartment.

(d) Nothing in this section shall prohibit the use of proxies for filling vacancies that occur after the notice of the annual meeting has been distributed.

(e) No managing agent or resident manager, or employee thereof, shall solicit, for use by the managing agent or resident manager, any proxies from any member of the association that retains the managing agent or employs the resident manager, nor shall the managing agent or resident manager cast any proxy vote at any association meeting except for the purpose of establishing a quorum. [L 1997, c 132, pt of §1; am L 2001, c 191, §1; am L 2016, c 238, §1; am L 2017, c 101, §3; _____] *see §§514B-150 and 514B-123(e) (2), regarding audit report requirement)*

§421J-5 Meetings of the board of directors; committee or subcommittee.

(a) 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]~~ shall be permitted to participate in any deliberation or discussion, other than during executive sessions, ~~[unless a majority of a quorum of the board of directors votes otherwise]~~ pursuant to member participation rules adopted by the board which shall not abridge the right to participation by members.

(b) The board may establish rules for member participation in any deliberation or discussion at board meetings, other than executive sessions. A board that establishes such rules pursuant to this subsection:

- (1) Shall notify all members of these rules;
- (2) May amend these rules at any regular or duly noticed special meeting of the board; provided that all members shall be notified of any adopted amendments; and
- (3) Shall create no rule or rules that abridge the right to participation by members.

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

(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:

(1) Concerning personnel;

(2) Concerning litigation in which the association is or may become involved; ~~[or as may be]~~

(3) Necessary to protect the attorney-client privilege of the association; or

(4) Necessary to protect the interests of the association while negotiating contracts, leases, and other commercial transactions.

The general nature of any business to be considered in executive session shall be first announced in the regular session.

(e) No board member shall vote by proxy at board meetings.

(f) 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.

"Conflict of interest", as used in this subsection, means an issue in which a director has a direct personal or pecuniary interest not common to other members of the association.

(g) 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.

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

(i) Minutes of meetings of the board shall be approved no later than the second succeeding regular meeting.

(j) Minutes of all meetings of the board shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within thirty days after the meeting, provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive

Copies of the executed contract and any amendments shall be provided to all parties to the contract.

~~[(a)]~~ (f) ~~[Association documents, the]~~ 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.

~~[(b)]~~ (g) 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.

~~[(e)]~~ (h) With the exception of subsection (f), financial statements, general ledgers, accounts receivable ledgers, accounts payable ledgers, check ledgers, insurance policies, contracts, invoices of the association for the 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 members 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)]~~ (i) ~~[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 may be charged for 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.]~~

After any association meeting, and not earlier, members shall be permitted to examine proxies, tally sheets, ballots, members' check-in lists, and the certificate of election; provided that:

- (1) Members shall make a request to examine the documents within thirty days after the association meeting;
- (2) The board may require members to furnish to the association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the association or its members or both; and
- (3) Members shall pay for administrative costs in excess of eight hours combined for all members of the association per calendar year.

The documents may be destroyed ninety days after the association meeting; provided that in the event of a contested election, the documents shall be retained until the contested election is resolved. 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; provided that the member pays a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

(j) The managing agent shall provide copies of association records maintained pursuant to this section and sections 421J-7.1 and 421J-8 to members, prospective purchasers and their prospective agents during normal business hours, upon payment to the managing agent of a reasonable charge to defray any administrative or duplicating costs. If the planned community is not managed by a managing agent, the foregoing requirements shall be undertaken by a person or entity, if any, employed by the association, to whom this function is delegated.

(k) Prior to the organization of the association, any member shall be entitled to inspect as well as receive a copy of the management contract from the entity that manages the operation of the property.

[(e)](1) 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] thirty 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 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. [L 1997, c 132, pt of §1; am L 2006, c 312, §3]

(m) An association may comply with this part by making information available to members, at the option of each member and at no cost to the member for downloading the information, through an internet site.

(n) A managing agent retained by one or more associations may dispose of the records of any association which are more than five years old, except for tax records, which shall be kept for seven years, without liability if the managing agent first provides the board of the association affected with written notice of the managing agent's intent to dispose of the records if not retrieved by the board within sixty days, which notice shall include an itemized list of the records proposed to be disposed.

(o) No person shall knowingly make any false certificate, entry, or memorandum upon any of the books or records of any managing agent or association. No person shall knowingly alter, destroy, mutilate, or conceal any books or records of a managing agent or association.

(p) Any fee charged to a member to obtain copies of association records under this section shall be reasonable; provided that a reasonable fee shall include administrative and duplicating costs and shall not exceed \$1 per page, or portion thereof, except the fee for pages exceeding eight and one-half inches by fourteen inches may exceed \$1 per page.

[L] see §§514B-152 through 514B-154

§421J-7.1 Association documents to be provided. (a)
Notwithstanding any other provision in the declaration, bylaws,
or house rules, if any, the following documents, records, and
information, whether maintained, kept, or required to be
provided pursuant to this section or section 421J-7 or 421J-8,
shall be made available to any member and the member's
authorized agents by the managing agent, resident manager, board
through a board member, or the association's representative:

- (1) All financial and other records sufficiently detailed
in order to comply with requests for information and
disclosures related to the resale of units;
- (2) An accurate copy of the declaration, bylaws, house
rules, if any, master lease, if any, and a sample
original conveyance document;
- (3) Detailed, accurate records in chronological order of
the receipts and expenditures affecting the common
area, specifying and itemizing the maintenance and
repair expenses of the common area and any other
expenses incurred and monthly statements indicating
the total current delinquent dollar amount of any
unpaid assessments for common expenses;
- (4) All records and the vouchers authorizing the payments
and statements kept and maintained at the address of
the planned community, or elsewhere within the State
as determined by the board, subject to section 421J-
10.8;
- (5) All signed and executed agreements for managing the
operation of the property, expressing the agreement of
all parties, including but not limited to financial
and accounting obligations, services provided, and any
compensation arrangements, including any subsequent
amendments;
- (6) An accurate and current list of members of the planned
community association and the members' current
addresses and the names and addresses of the vendees
under an agreement of sale, if any. A copy of the
list shall be available, at cost, to any member or
member's authorized agent who furnishes to the
managing agent, resident manager, or the board a duly
executed and acknowledged affidavit stating that the
list:
 - (A) Shall be used by the member or member's
authorized agent personally and only for the
purpose of soliciting votes or proxies or for
providing information to other members with
respect to association matters; and

- (B) Shall not be used by the member or member's authorized agent or furnished to anyone else for any other purpose;
- (7) The association's most current financial statement, at no cost or on twenty-four-hour loan, at a convenient location designated by the board;
- (8) Meeting minutes of the association, pursuant to section 421J-3.5;
- (9) Meeting minutes of the board, pursuant to section 421J-7, which shall be:
 - (A) Available for examination by members or members' authorized agents at no cost or on twenty-four-hour loan at a convenient location at the planned community, to be determined by the board; or
 - (B) Transmitted to any member or member's authorized agent making a request for the minutes within fifteen days of receipt of the request by the member or member's authorized agent; provided that:
 - (i) The minutes shall be transmitted by mail, electronic mail transmission, or facsimile, by the means indicated by the member or member's authorized agent, if the member or member's authorized agent indicated a preference at the time of the request; and
 - (ii) The member or member's authorized agent shall pay a reasonable fee for administrative costs associated with handling the request, subject to section 421J-2.6(b);
- (10) With the exception of paragraph (7), financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts, and invoices of the association for the duration those records are kept by the association, and any documents regarding delinquencies of ninety days or more shall be available for examination by members or members' authorized agents at convenient hours at a place designated by the board; provided that:
 - (A) The board may require members or members' authorized agents to furnish to the association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interests of the association, its members, or both; and

- (B) Members or members' authorized agents shall pay for administrative costs in excess of eight hours per year;
- (11) Proxies, tally sheets, ballots, members' check-in lists, and the certificate of election subject to section 421J-7;
 - (12) Copies of an association's documents, records, and information, whether maintained, kept, or required to be provided pursuant to this section or section 421J-7, or 421J-8;
 - (13) A copy of the management contract from the entity that manages the operation of the property before the organization of an association;
 - (14) Other documents requested by a member or member's authorized agent in writing; provided that the board shall give written authorization or written refusal with an explanation of the refusal within thirty calendar days of receipt of a request for documents pursuant to this paragraph; and
 - (15) A copy of any contract, written job description, and compensation between the association and any person or entity retained by the association to manage the operation of the property on-site, including but not limited to the general manager, operations manager, resident manager, or site manager; provided that personal information may be redacted from the contract copy, including but not limited to the manager's date of birth, age, signature, social security number, residence address, telephone number, non-business electronic mail address, driver's license number, Hawaii identification card number, bank account number, credit or debit card number, access code or password that would permit access to the manager's financial accounts, or any other information that may be withheld under state or federal law.

(b) Subject to section 421J-2.6(b), copies of the items in subsection (a) shall be provided to any member or member's authorized agent upon the member's or member's authorized agent's request; provided that the member or member's authorized agent pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request.

(c) Notwithstanding any provision in the declaration, bylaws, or house rules providing for another period of time, all documents, records, and information listed under subsection (a), whether maintained, kept, or required to be provided pursuant to this section or section 421J-7, or 421J-8, shall be provided no

later than thirty days after receipt of a member's or member's authorized agent's written request, unless a lesser time is provided pursuant to this section or section 421J-7, or 421J-8, and except as provided in subsection (a) (14).

(d) Any documents, records, and information, whether maintained, kept, or required to be provided pursuant to this section or section 421J-7, or 421J-8, may be made available electronically to the member or member's authorized agent if the member or member's authorized agent requests such in writing.

(e) An association may comply with this section or section 421J-7, or 421J-8 by making the required documents, records, and information available to members or members' authorized agents for download through an internet site, at the option of each member or member's authorized agent and at no cost to the member or member's authorized agent.

(f) Any fee charged to a member or member's authorized agent to obtain copies of the association's documents, records, and information, whether maintained, kept, or required to be provided pursuant to this section or section 421J-7, or 421J-8, shall be reasonable; provided that a reasonable fee shall include administrative and duplicating costs and shall not exceed \$1 per page, or portion thereof, except that the fee for pages exceeding eight and one-half inches by fourteen inches may exceed \$1 per page.

(g) This section shall apply to all planned community associations existing as of **<insert effective date of Act>** and all planned community associations created thereafter.

(h) Nothing in this section shall be construed to create any new requirements for the release of documents, records, or information. [L _____] see §514B-154.5

[\$421J-7.5] 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. [L 2008, c 70, pt of §2]

[§421J-8] Membership list. ~~[The association shall use good faith efforts to keep an accurate and current list of the names and addresses of association members. If the list is not provided directly to members, the association shall develop a reasonable procedure by which owners may solicit votes or proxies or provide information to other owners with respect to association matters. The board may require members to furnish the association with an affidavit stating that the use of the list is requested in good faith for the protection of the association, its members, or both.]~~ (a) The managing agent, resident manager, or board shall keep an accurate and current list of members of the association and their current addresses, and the names and addresses of the vendees under an agreement of sale, if any. The list shall be maintained at a place designated by the board, and a copy shall be available, at cost, to any member of the association as provided in the declaration or bylaws or rules and regulations or, in any case, to any member who furnishes to the managing agent or resident manager

or the board a duly executed and acknowledged affidavit stating that the list:

- (1) Will be used by the owner personally and only for the purpose of soliciting votes or proxies or providing information to other owners with respect to association matters; and
- (2) Shall not be used by the owner or furnished to anyone else for any other purpose.

A board may prohibit commercial solicitations.

(b) The managing agent or resident manager shall not use or distribute any membership list, including for commercial or political purposes, without the prior written consent of the board.

(c) All membership lists are the property of the association, and any membership lists except for membership email lists contained in the managing agent's or resident manager's records are subject to subsections (a) and (b), and this subsection. A managing agent, resident manager, or board may not use the information contained in the lists to create any separate list for the purpose of evading this section. [L 1997, c 132, pt of §1; _____] see §514B-153(e) through (g)

[\$421J-9] Notification of assessment increases; budgets and reserves. (a) The board of directors shall notify members in writing of any increase in regular assessments at least thirty days prior to the increase.

(b) Assessments shall be made based on a budget adopted annually by the board.

(c) The budget shall include at least the following:

- (1) The estimated revenues and operating expenses of the association;
- (2) Information as to whether the budget has been prepared on a cash or accrual basis;
- (3) The total replacement reserves of the association as of the date of the budget;
- (4) The estimated replacement reserves that the association will require to maintain the property based on a reserve study performed by the association; provided that the reserve study shall be reviewed by an independent reserve study prepare; provided further that the reserve study shall be reviewed or updated at least every three years;
- (5) A general explanation of how the estimated replacement reserves are computed; and

(6) The amount the association must collect for the fiscal year to fund the estimated replacement reserves.

(d) Within sixty days after the adoption of any proposed budget for the association, the board shall make available a copy of the budget to all the members and shall notify each member that the member may request a copy of the budget. [L 1997, c 132, pt of §1; _____] *see §§514B-144(a), 514B-148(a), and 514B-106(c)*

[\$421J-10] Attorneys' fees and expenses of enforcement.

(a) All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the association for:

- (1) Collecting any delinquent assessments against any unit or the owner of any unit;
- (2) Foreclosing any lien on any unit; or
- (3) Enforcing any provision of the association documents or this chapter;

against a member, occupant, tenant, employee of a member, or any other person who in any manner may use the property, shall be promptly paid on demand to the association by such person or persons; provided that if the association is not the prevailing party, all costs and expenses, including reasonable attorneys' fees, incurred by any such person or persons as a result of the action of the association, shall be promptly paid on demand to the person by the association. The reasonableness of any attorney's fees paid by a person or by an association as a result of an action pursuant to paragraph (2) shall be determined by the court.

(b) If any member is the prevailing party in any action against an association, any of its officers or directors, or its board of directors to enforce any provision of the association documents or this chapter, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by the member shall be awarded to the member; provided that no such award shall be made in any derivative action unless:

- (1) The member first shall have demanded and allowed reasonable time for the board of directors to pursue an enforcement action; or
- (2) The member demonstrates to the satisfaction of the court that a demand for enforcement made to the board of directors would have been fruitless.

If a member is not the prevailing party in any court action against an association, any of its officers or directors, or its board of directors, to enforce any provision of the association documents or this chapter, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by the association

shall be awarded to the association, unless the action was filed in small claims court, or, prior to filing the action in a higher court, the owner has first submitted the claim to mediation pursuant to section 421J-13, and made a good faith effort to resolve the dispute under any of those procedures.

(c) Nothing in this section shall be construed to prohibit the board of directors from authorizing the use of a collection agency. [L 1997, c 132, pt of §1]

§421J-10.5 Association fiscal matters; lien for assessments. (a) All sums assessed by the association, but unpaid for the share of the assessments chargeable to any unit, shall constitute a lien on the unit. The priority of the association's lien shall, except as otherwise provided by law, be as provided in the association documents or, if no priority is provided in the association documents, by the recordation date of the liens; provided that any amendment to the association documents that governs the priority of liens on the unit shall not provide that an association lien shall have priority over a mortgage lien that is recorded before the amendment is recorded. A lien recorded by an association for unpaid assessments shall expire six years from the date of recordation unless proceedings to enforce the lien are instituted prior to the expiration of the lien; provided that the expiration of a recorded lien shall in no way affect the association's automatic lien that arises pursuant to this subsection or the association documents. Any proceedings to enforce an association's lien for any assessment shall be instituted within six years after the assessment became due; provided that if the owner of a unit subject to a lien of the association files a petition for relief under the United States Bankruptcy Code (11 U.S.C. §101 et seq.), the period of time for instituting proceedings to enforce the association's lien shall be tolled until thirty days after the automatic stay of proceedings under section 362 of the United States Bankruptcy Code (11 U.S.C. §362) is lifted.

The lien of the association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures set forth in chapter 667, by the managing agent or board, acting on behalf of the association and in the name of the association; provided that no association may exercise the nonjudicial or power of sale remedies provided in chapter 667 to foreclose a lien against any unit that arises solely from fines, penalties, legal fees, or late fees, and the foreclosure of any such lien shall be filed in court pursuant to part IA of chapter 667. In

any association foreclosure, the ~~[unit-owner]~~ member shall be required to pay a reasonable rental for the unit, if so provided in the association documents or the law, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rental owed by the ~~[unit-owner]~~ member or any tenant of the unit. If the association is the plaintiff, it may request that its managing agent be appointed as receiver to collect the rental from the tenant. The managing agent or board, acting on behalf of the association and in the name of the association, may bid on the unit at foreclosure sale and acquire and hold, lease, mortgage, and convey the unit thereafter as the board deems reasonable. Action to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the unpaid assessments owed.

In the case of a voluntary conveyance, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for the grantor's share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee. Any such grantor or grantee is entitled to a statement from the board, either directly or through its managing agent or resident manager, setting forth the amount of the unpaid assessments against the grantor. The grantee is not liable and the unit conveyed is not subject to a lien for any unpaid assessments against the grantor in excess of the amount set forth in the statement, except as to the amount of subsequently dishonored checks mentioned in the statement as having been received within the thirty-day period immediately preceding the date of such statement.

(b) Except as provided in subsection (g) or in the association documents, when the mortgagee of a mortgage of record or other purchaser of a unit obtains title to the unit as a result of foreclosure of the mortgage, the acquirer of title and the acquirer's successors and assigns shall not be liable for the share of the assessments by the association chargeable to the unit that became due prior to the acquisition of title to the unit by the acquirer. The unpaid share of assessments shall be deemed to be assessments collectible from all of the ~~[unit owners]~~ members, including the acquirer and the acquirer's successors and assigns. The mortgagee of record or other purchaser of the unit shall be deemed to acquire title and shall be required to pay the unit's share of assessments beginning:

- (1) Thirty-six days after the order confirming the sale to the purchaser has been filed with the court;

- (2) Sixty days after the hearing at which the court grants the motion to confirm the sale to the purchaser;
- (3) Thirty days after the public sale in a nonjudicial power of sale foreclosure conducted pursuant to chapter 667; or
- (4) Upon the recording of the instrument of conveyance; whichever occurs first; provided that the mortgagee of record or other purchaser of the unit shall not be deemed to acquire title under paragraph (1), (2), or (3), if transfer of title is delayed past the thirty-six days specified in paragraph (1), the sixty days specified in paragraph (2), or the thirty days specified in paragraph (3), when a person (other than the mortgagee of record or other purchaser of the unit) who appears at the hearing on the motion or a party to the foreclosure action (other than the mortgagee of record or other purchaser of the unit) requests reconsideration of the motion or order to confirm sale, objects to the form of the proposed order to confirm sale, appeals the decision of the court to grant the motion to confirm sale, or the debtor or mortgagor declares bankruptcy or is involuntarily placed into bankruptcy. In any such case, the mortgagee of record or other purchaser of the unit shall be deemed to acquire title upon recordation of the instrument of conveyance.

(c) Except as provided in section 667-92(c), no ~~[unit owner]~~ member shall withhold any assessment claimed by the association. A ~~[unit owner]~~ member who disputes the amount of an assessment may request a written statement clearly indicating:

- (1) The amount of regular and special assessments included in the assessment, including the due date of each amount claimed;
- (2) The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment;
- (3) The amount of attorneys' fees and costs, if any, included in the assessment;
- (4) That under Hawaii law, a ~~[unit owner]~~ member has no right to withhold assessments for any reason;
- (5) That a ~~[unit owner]~~ member has a right to demand mediation to resolve disputes about the amount or validity of an association's assessment; provided that the ~~[unit owner]~~ member immediately pays the assessment in full and keeps assessments current; and
- (6) That payment in full of the assessment does not prevent the ~~[unit owner]~~ member from contesting the assessment or receiving a refund of amounts not owed.

Nothing in this section shall limit the rights of a ~~[unit-owner]~~ member to the protection of all fair debt collection procedures mandated under federal and state law.

(d) A ~~[unit-owner]~~ member who pays an association the full amount claimed by the association may file a claim against the association in court, including small claims court, or require the association to mediate under section 421J-13 to resolve any disputes concerning the amount or validity of the association's claim. If the ~~[unit-owner]~~ member and the association are unable to resolve the dispute through mediation, either party may file for relief with a court; provided that a ~~[unit-owner]~~ member may only file for relief in court if all amounts claimed by the association are paid in full on or before the date of filing. If the ~~[unit-owner]~~ member fails to keep all association assessments current during the court hearing, the association may ask the court to temporarily suspend the proceedings. If the ~~[unit-owner]~~ member pays all association assessments within thirty days of the date of suspension, the ~~[unit-owner]~~ member may ask the court to recommence the proceedings. If the ~~[unit-owner]~~ member fails to pay all association assessments by the end of the thirty-day period, the association may ask the court to dismiss the proceedings. The ~~[unit-owner]~~ member shall be entitled to a refund of any amounts paid to the association that are not owed.

(e) In conjunction with or as an alternative to foreclosure proceedings under subsection (a), where a unit is owner-occupied, the association may authorize its managing agent or board, after sixty days written notice to the ~~[unit-owner]~~ member of the unit's share of the assessments, to terminate the delinquent unit's access to the common areas and cease supplying a delinquent unit with any and all services normally supplied or paid for by the association. Any terminated services and privileges shall be restored upon payment of all delinquent assessments, but need not be restored until payment in full is received.

(f) Before the board or managing agent may take the actions permitted under subsection (e), the board shall adopt a written policy providing for such actions and have the policy approved by a majority vote of the ~~[unit-owners]~~ members, as provided in the association documents, who are present in person or by proxy or as otherwise permitted by the association documents, at an annual or special meeting of the association or by the written consent of a voting interest equal to a quorum of the ~~[unit-owners]~~ members unless the association documents already permit the process.

(g) Subject to this subsection and subsection (h), the board may specially assess the amount of the unpaid

regular periodic assessments for assessments against a person who, in a judicial or nonjudicial power of sale foreclosure, purchases a delinquent unit; provided that:

- (1) A purchaser who holds a mortgage on a delinquent unit, which mortgage is not subordinate to the priority of lien by the association, and who acquires the delinquent unit through a judicial or nonjudicial foreclosure proceeding, including purchasing the delinquent unit at a foreclosure auction, shall not be obligated to make, nor be liable for, payment of the special assessment as provided for under this subsection; and
- (2) A person who subsequently purchases the delinquent unit from the mortgagee referred to in paragraph (1) shall be obligated to make, and shall be liable for, payment of the special assessment provided for under this subsection; and provided further that the mortgagee or subsequent purchaser may require the association to provide, at no charge, a notice of the association's intent to claim a lien against the delinquent unit for the amount of the special assessment, prior to the subsequent purchaser's acquisition of title to the delinquent unit. The notice shall state the amount of the special assessment, how that amount was calculated, and the legal description of the unit.

(h) The amount of the special assessment assessed under subsection (g) shall not exceed the total amount of unpaid regular periodic assessments that were assessed during the six months immediately preceding the completion of the judicial or nonjudicial power of sale foreclosure.

(i) For purposes of subsections (g) and (h), the following definitions shall apply, unless the context requires otherwise:

"Completion" means:

- (1) In a nonjudicial power of sale foreclosure, when the affidavit required under section 667-33 is recorded; and
- (2) In a judicial foreclosure, when a purchaser is deemed to acquire title pursuant to subsection (b).

"Regular periodic assessments" does not include:

- (1) Any special assessment, except for a special assessment imposed on all units as part of a budget adopted pursuant to the association documents;
- (2) Late charges, fines, or penalties;
- (3) Interest assessed by the association;
- (4) Any lien arising out of the assessment; or

(f) In the event of any conflict between this section and any provision of chapter 521, the conflict shall be resolved in favor of this section; provided that if the tenant is entitled to an offset of rent under chapter 521, the tenant may deduct the offset from the amount due to the association, up to the limits stated in chapter 521. Nothing herein precludes the ~~[unit-owner]~~ member or tenant from seeking equitable relief from a court of competent jurisdiction or seeking a judicial determination of the amount owed.

(g) Before the board may take the actions permitted under subsection (a), the board shall adopt a written policy providing for the actions and have the policy approved by a majority vote of the ~~[unit-owners]~~ members, as provided in the association documents, who are present in person or by proxy or as otherwise permitted by the association documents, at an annual or special meeting of the association or by the written consent of a voting interest equal to a quorum of the ~~[unit-owners]~~ members unless the association documents already permit the process. [L 2012, c 182, pt of §2(1); _____]

§421J-10.7 Association fiscal matters; audits. (a) The association shall require an annual audit of the association financial accounts and no less than one annual unannounced verification of the association's cash balance by a public accountant; provided that if the association is comprised of less than twenty units, the annual audit and the annual unannounced cash balance verification may be waived at an association meeting by a vote of a majority of the members.

(b) The board shall make available a copy of the annual audit to each member at least thirty days prior to the annual meeting which follows the end of the fiscal year. The board shall not be required to submit a copy of the annual audit report to an owner if the proxy form issued pursuant to section 421J-4(d) is not marked to indicate that the member wishes to obtain a copy of the report. If the annual audit has not been completed by that date, the board shall make available:

(1) An unaudited year end financial statement for the fiscal year to each member at least thirty days prior to the annual meeting; and

(2) The annual audit to all members at the annual meeting, or as soon as the audit is completed, but not later than six months after the annual meeting.

(c) If the association's fiscal year ends less than two months prior to the convening of the annual meeting, the year-to-date unaudited financial statement may cover the period from

the beginning of the association's fiscal year to the end of the month preceding the date on which notice of the annual meeting is mailed. [L _____] see §514B-150

[§421J-11] Applicability of other laws. Nothing in this chapter shall be construed to exempt any association or person from compliance with any applicable law, or subject any association or person to any other applicable law; provided that in the event of a conflict between any such law and this chapter, this chapter shall govern. [L 1997, c 132, pt of §1]

§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 members at a meeting, the association document may also be amended by the written consent of the same percentage of association members without a meeting.

(b) Whenever neither an association document nor any applicable law provide procedures for amendment of that document, the association document may be amended by the vote or written consent of association members representing three-fourths of the votes which association members are entitled to cast with respect to a declaration and two-thirds of the votes which association members are entitled to cast with respect to other association documents; provided that this section shall not apply to articles of incorporation or any association documents which by their terms or as a matter of law may be adopted or amended by the board of directors. Nothing in this section shall be deemed to supersede or override any provision of any association documents related to amendments, or any provision of any law pertaining to associations or corporations.

(c) For purposes of this section, a requirement in any association document that an owner must sign an amendment to that document shall be satisfied by the receipt of a written consent signed by the owner. [L 1997, c 132, pt of §1; am L 2008, c 70, §4]

[§421J-13] Mediation of disputes. (a) At the request of any party, any dispute concerning or involving one or more members and an association, its board of directors, managing agent, manager, or one or more other members relating to the

interpretation, application, or enforcement of this chapter or the association documents, shall first be submitted to mediation.

(b) Nothing in subsection (a) shall be interpreted to mandate the mediation of any dispute involving:

- (1) Actions seeking equitable relief involving threatened property damage or the health or safety of association members or any other person;
- (2) Actions to collect assessments;
- (3) Personal injury claims; or
- (4) Actions against an association, a board of directors, or one or more directors, officers, agents, employees, or other persons for amounts in excess of \$2,500 if insurance coverage under a policy of insurance procured by the association or its board of directors would be unavailable for defense or judgment because mediation was pursued.

(c) If any mediation under this section is not completed within two months from commencement, no further mediation shall be required unless agreed to by the association and the member. [L 1997, c 132, pt of §1]

[§421J-14] First annual meeting of association. The first annual meeting of the association shall take place as provided in the association documents, but not later than one year after the closing of the first conveyance of a unit to a person other than a developer. [L 1997, c 132, pt of §1]

§421J-15 Service of process. The board shall establish a policy to provide reasonable access to persons authorized to serve civil process in compliance with section 634-21.5. [L 2009, c 158, §§2, 8; am L 2011, c 65, §1]

§421J-16 Medical cannabis; discrimination. A provision in any association document allowing for any of the discriminatory practices listed in paragraphs (1) to (7) of section 515-3 against a person residing in a unit who has a valid certificate for the medical use of cannabis as provided in section 329-123 in any form is void, unless the association document prohibits the smoking of tobacco and the medical cannabis is used by means of smoking. Nothing herein shall be construed to diminish the

obligation of a planned community association to provide reasonable accommodations for persons with disabilities pursuant to section 515-3(9). [L 2015, c 242, §3; am L 2017, c 170, §2]

[§421J-17] Personal agriculture allowed. (a) No association shall prohibit or unreasonably restrict the use of a ~~[unit owner's]~~ member's enclosed yard area for personal agriculture; provided that the use is not in violation of the association's existing master landscape plan or other restrictive covenants applicable to the unit.

(b) This section shall apply only to enclosed yard areas that are designated for the exclusive use of the ~~[unit owner]~~ member.

(c) This section shall not:

(1) Apply to provisions in an association document that impose reasonable restrictions on the use of a ~~[unit owner's]~~ member's enclosed yard area for personal agriculture; or

(2) Prohibit an association from applying rules and regulations requiring that dead plant material and weeds, with the exception of straw, mulch, compost, and other organic materials intended to encourage vegetation and retention of moisture in the soil, be regularly cleared from the enclosed yard area.

(d) For purposes of this section:

"Personal agriculture" means a use of land where an individual cultivates lawful edible plant crops for personal use or donation.

"Reasonable restrictions" means restrictions that are reasonably necessary to protect neighbor ~~[unit owners]~~ members or residents' use and enjoyment of their property and do not unreasonably increase the cost of engaging in personal agriculture or unreasonably decrease its efficiency. [L 2022, c 133, §1; _____]

§421J-18 Additions to and alterations of planned community. (a) Notwithstanding any other law to the contrary in this chapter or any provisions in any declaration or bylaws:

(1) Regarding the installation of solar energy devices and wind energy devices:

(A) The board shall have the authority to install or cause the installation of, or lease or license common area for the installation of solar energy

devices and wind energy devices on the common area of the planned community; provided that solar or wind energy devices shall not be installed upon any limited common element without the consent of the member or members of the unit or units for which use of the limited common element is reserved; and

(B) The installation of solar energy devices and wind energy devices on the common area of the planned community by the board shall not be deemed to alter, impair, or diminish the common interest, common area, or easements appurtenant to each unit or to be a structural alteration or addition to any building constituting a material change in the plans of the planned community; provided that the installation does not directly affect any nonconsenting member.

(2) Regarding the installment of telecommunications equipment:

(A) The board shall have the authority to install or cause the installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements of the project; provided that the same shall not be installed upon any limited common element without the consent of the owner or owners of the unit or units for the use of which the limited common element is reserved; and

(B) The installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements by the board shall not be deemed to alter, impair, or diminish the common interest, common elements, and easements appurtenant to each unit, or to be a structural alteration or addition to any building constituting a material change in the plans of the planned community; provided that the installation does not directly affect any nonconsenting member;

(3) Regarding the abandonment of telecommunications equipment:

(A) The board shall be authorized to abandon or change the use of any television signal distribution and telecommunications equipment due to technological or economic obsolescence or to

provide an equivalent function by different means or methods; and

- (B) The abandonment or change of use of any television signal distribution or telecommunications equipment by the board due to technological or economic obsolescence or to provide an equivalent function by different means or methods shall not be deemed to alter, impair, or diminish the common interest, common elements, and easements appurtenant to each unit or to be a structural alteration or addition to any building constituting a material change in the planned community.

(b) As used in this section:

"Directly affect" means the installation of television signal distribution and telecommunications equipment, solar energy devices or wind energy devices in a manner which would specially, personally, and adversely affect an individual member in a manner not common to the members as a whole.

"Limited common element" means a portion of the common area designated by the declaration for the exclusive use of one or more but fewer than all of the units.

"Solar energy device" means any new identifiable facility, equipment, apparatus, or the like which makes use of solar energy for heating, cooling, or reducing the use of other types of energy dependent upon fossil fuel for its generation, including but not limited to all types of building-applied photovoltaics and building-integrated photovoltaics; provided that if the equipment sold cannot be used as a solar device without its incorporation with other equipment, it shall be installed in place and be ready to be made operational in order to qualify as a "solar energy device"; provided further that "solar energy device" shall not include passive solar skylights or windows.

"Television signal distribution" and "telecommunications equipment" shall be construed in their broadest possible senses to encompass all present and future forms of communications technology.

"Wind energy device" means any new identifiable facility, equipment, apparatus, or the like which makes use of wind energy for producing electricity or reducing the use of other types of energy that are dependent upon fossil fuel for generation; provided that if the facility, equipment, apparatus, or the like cannot be used as a wind energy device without incorporation with other equipment, it shall be installed in place and ready to be operational to qualify as a "wind energy device".

[L] see §§514B-3 and 514B-140(c) through (e)