
A BILL FOR AN ACT

RELATING TO PLANNED COMMUNITY ASSOCIATIONS.

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

1 SECTION 1. The legislature finds that excessive assessment
2 increases, which go far beyond what was reasonably contemplated
3 in an association's annual budget, can negatively impact members
4 of a planned community association, particularly if such an
5 assessment increase is the result of a board's decision that is
6 not in line with the wishes of a majority of association
7 members.

8 The legislature further finds that state law does contain
9 certain protections against excess assessment increases for
10 Hawaii condominium owners. However, current Hawaii law does not
11 contain similar protections for property owners who reside in
12 planned community associations.

13 Accordingly, the purpose of this Act is to:

14 (1) Allow portions of the common areas of a planned
15 community association to be conveyed, subject to a
16 security interest, or dedicated to the appropriate
17 county or to the State, if at least eighty per cent of



1 the members of an association agree in writing to that
2 action; and

3 (2) Limit the ability of the board of directors to impose
4 excessive regular assessments or special assessments,
5 except in emergency situations, without the approval
6 of a majority of the members of an association.

7 SECTION 2. Chapter 421J, Hawaii Revised Statutes, is
8 amended by adding a new section to be appropriately designated
9 and to read as follows:

10 "§421J- Conveyance, encumbrance, or dedication of common
11 areas. (a) Portions of the common areas of an association may
12 be conveyed, subject to a security interest, or dedicated to the
13 appropriate county or to the State, if at least eighty per cent
14 of the members of an association agree in writing to that
15 action. Proceeds of the sale or financing of a common element
16 shall be an asset of the association.

17 (b) The association, on behalf of members, may contract to
18 convey common areas or subject common areas to a security
19 interest, or agree to dedicate common areas to the appropriate
20 county or the State; provided that the contract or the
21 dedication shall not be enforceable against the association



1 until approved pursuant to subsection (a), at which time the
2 association shall have all powers necessary and appropriate to
3 effect the conveyance, encumbrance, or dedication, free and
4 clear of any interest of any member or the association in or to
5 the common element conveyed, encumbered, or dedicated, including
6 the power to execute deeds or other instruments.

7 (c) Any purported conveyance, encumbrance, or other
8 voluntary transfer of common elements, unless made pursuant to
9 this section, is void.

10 (d) No conveyance or encumbrance of common elements
11 pursuant to this section may deprive any unit of its rights of
12 access and support."

13 SECTION 3. Section 421J-9, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "~~§~~421J-9 ~~+~~ Notification of assessment increases~~[-]~~;
16 assessment limitation; emergency situations. (a) The board of
17 directors shall notify members in writing of any increase in
18 regular assessments at least thirty days prior to the increase.

19 (b) Except in emergency situations, the board of directors
20 shall not impose a regular assessment that is more than twenty
21 per cent greater than the immediately preceding fiscal year's



1 assessment without the approval of a majority of the members.
2 For a regular assessment that exceeds twenty per cent of the
3 immediately preceding fiscal year's assessment, the board shall
4 obtain the approval of a majority of the members at a duly
5 convened regular annual meeting or special meeting of the
6 association or by the written consent of the majority of members
7 without a meeting.

8 (c) Except in emergency situations, the board of directors
9 shall not impose a special assessment for any fiscal year for
10 capital expenditures or major maintenance, which in the
11 aggregate exceeds five per cent of the budgeted gross expenses
12 of the association for the current fiscal year without the
13 approval of a majority of the members. For a special assessment
14 that exceeds five per cent of the current fiscal year's budgeted
15 gross reserves, the board shall obtain the approval of a
16 majority of the members at a duly convened regular annual
17 meeting or special meeting of the association or by the written
18 consent of the majority of members without a meeting.

19 (d) In emergency situations, prior to imposing or
20 collecting an assessment under this section, the board shall
21 adopt a resolution containing written findings as to the



1 necessity of the extraordinary expense involved and why the
2 expense was not or could not have been reasonably foreseen in
3 the budgeting process, and the resolution shall be distributed
4 to the members with the notice of assessment.

5 (e) As used in this section:

6 "Budgeted gross expenses" means all expenses in the budget
7 adopted pursuant to the association documents, including
8 operational expenses and reserve contributions.

9 "Capital expenditure" means an expense that results from
10 the purchase or replacement of an asset whose life is greater
11 than one year, or the addition of an asset that extends the life
12 of an existing asset for a period greater than one year.

13 "Emergency situation" means any extraordinary expenses:

14 (1) Required by an order of a court;

15 (2) Necessary to repair or maintain any part of the
16 property for which the association is responsible
17 where a threat to personal safety on the property is
18 discovered;

19 (3) Necessary to repair any part of the property for which
20 the association is responsible that could not have



- 1 been reasonably foreseen by the board as part of a
- 2 budget adopted pursuant to the association documents;
- 3 (4) Necessary to respond to any legal or administrative
- 4 proceeding brought against the association that could
- 5 not have been reasonably foreseen by the board as part
- 6 of a budget adopted pursuant to the association
- 7 documents; or
- 8 (5) Necessary for the association to obtain adequate
- 9 insurance for the property which the association must
- 10 insure.

11 "Major maintenance" means an expenditure for maintenance or
 12 repair that will result in extending the life of an asset for a
 13 period greater than one year."

14 SECTION 4. Statutory material to be repealed is bracketed
 15 and stricken. New statutory material is underscored.

16 SECTION 5. This Act shall take effect upon its approval.

17

INTRODUCED BY:

JAN 19 2017



H.B. NO. 236

Report Title:

Planned Community Associations; Common Interest Communities;
Common Areas; Assessments

Description:

Permits portions of the common areas of a planned community association to be conveyed, subjected to a security interest, or dedicated to the appropriate county or to the State, if at least eighty per cent of the members of an association agree in writing to that action. Limits the ability of the board of directors to impose excessive regular assessments or special assessments, except in emergency situations, without the approval of a majority of the members of an association.

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

