

S.B. NO. 1177

1 "Bylaws" means the instruments that contain the procedures
2 for conduct of the affairs of the association regardless of the
3 form in which the association is organized, including any
4 amendments to the instruments.

5 "Common expenses" means expenditures made by, or financial
6 liabilities of, the association, including any allocations to
7 reserves.

8 "Common infrastructure" means the structures, roads,
9 irrigation systems, power supply, agricultural services, and
10 installations within the common interest agricultural community
11 that are owned or leased by the association and that are other
12 than a farm parcel.

13 "Common interest" means the percentage of undivided
14 interest in the common infrastructure appurtenant to each
15 parcel, as specified in the declaration.

16 "Common interest agricultural community" means real estate
17 in which portions are designated for separate ownership and the
18 remainder is designated for common ownership by the owners on
19 land classified as agricultural pursuant to chapter 205,
20 described in a declaration with respect to which a person, by
21 virtue of the person's ownership of a farm parcel, is obligated



1 to pay for a share of real estate taxes, insurance premiums,
2 maintenance, or improvement of, or services or other expenses
3 related to, common infrastructure, other units, or other real
4 estate described in the declaration.

5 "Common interest agricultural community plat map" or "plat
6 map" means, however denominated, a map or site plan of the
7 common interest agricultural community containing the
8 information required by section -13.

9 "Coordinating entrepreneur" means the developer or a
10 qualified person capable, under a right-to-till agreement, of
11 organizing, operating, and assuming the risk for the
12 agricultural operation on a parcel that may include:

- 13 (1) Selecting crops;
- 14 (2) Securing capital, labor, and materials;
- 15 (3) Maintaining and operating equipment and
16 infrastructure; and
- 17 (4) Providing for the post-harvest processing and
18 marketing of products.

19 "Declaration" means any instrument that creates a common
20 interest agricultural community, including any amendments to the
21 instrument.



1 "Developer" means a person or group of persons who
2 undertake to develop a common interest agricultural community,
3 including a person who succeeds to the interest of the developer
4 by acquiring a controlling interest in the developer or the
5 common interest agricultural community.

6 "Development rights" means any right or combination of
7 rights reserved by a developer in the declaration to:

- 8 (1) Add real estate to a common interest agricultural
9 community;
- 10 (2) Create farm parcels, common infrastructure, or limited
11 common infrastructure within a common interest
12 agricultural community;
- 13 (3) Subdivide parcels, combine parcels, or convert parcels
14 into common infrastructure or limited common
15 infrastructure;
- 16 (4) Withdraw real estate from a common interest
17 agricultural community;
- 18 (5) Merge projects or increments of a project; or
- 19 (6) Otherwise alter the common interest agricultural
20 community.



1 "Director" means the director of commerce and consumer
2 affairs.

3 "Farm parcel" or "parcel" means a physical portion of the
4 common interest agricultural community designated for separate
5 ownership or occupancy, the boundaries of which are described in
6 the declaration or pursuant to section -13.

7 "Farm parcel owner" or "parcel owner" means the person or
8 the persons owning the fee simple interest in a farm parcel and
9 its appurtenant common interest, or a lessee of a farm parcel
10 and its appurtenant common interest in a leasehold common
11 interest agricultural community.

12 "Leasehold common interest agricultural community" means a
13 common interest agricultural community in which all of the real
14 estate is subject to a lease, the expiration or termination of
15 which will terminate the common interest agricultural community.

16 "Limited common infrastructure" means a portion of the
17 common infrastructure designated by the declaration for the
18 exclusive use of one or more but fewer than all of the parcels.

19 "Managing agent" means any person retained, as an
20 independent contractor, for the purpose of managing the
21 operation of the project.



S.B. NO. 1177

1 "Project" means a common interest agricultural community
2 project.

3 "Public offering statement" means a statement that fully
4 and accurately discloses the physical characteristics of the
5 common interest agricultural community offered and all unusual
6 or material circumstances of features affecting the project.

7 "Real estate" means fee simple or leasehold lands, all
8 improvements and all structures thereon, and all easements,
9 rights, and appurtenances intended for use in connection with
10 the common interest agricultural community.

11 "Record", "recordation", "recorded", or "recording" means
12 to record in the bureau of conveyances in accordance with
13 chapter 502.

14 "Right-to-till agreement" means a contract between a parcel
15 owner and a coordinating entrepreneur establishing conditions
16 that specify the crop or crops that are to be grown on the
17 parcel, when the crops are to be grown, and how the crops are to
18 be grown.

19 § -3 **Separate titles and taxation.** (a) Each farm
20 parcel that has been created, together with its appurtenant



1 interest in the common infrastructure, shall constitute, for all
2 purposes, a separate parcel of real estate.

3 (b) If there is any parcel owner other than a developer,
4 each parcel shall be separately taxed and assessed, and no
5 separate tax or assessment may be rendered against any common
6 infrastructure. Without limitation of the foregoing, each farm
7 parcel and its appurtenant common infrastructure shall be deemed
8 to be a "parcel" and shall be subject to separate assessment and
9 taxation for all types of taxes authorized by law.

10 (c) If there is no parcel owner other than a developer,
11 the real estate comprising the common interest agricultural
12 community may be taxed and assessed in any manner provided by
13 law.

14 **§ -4 Conformance with zoning and land use laws. (a)**
15 Any common interest agricultural community established under
16 this chapter shall comply with county zoning and building
17 ordinances.

18 (b) The permitted uses of each parcel shall be restricted
19 to the uses described in section 205-4.5(a)(1), (2), (3), and
20 (10); provided that a use permitted under section 205-4.5 may be



1 approved by the board, except that any dwelling that may be used
2 and occupied for human habitation shall be prohibited.

3 § -5 **Right-to-till agreement.** The parcel owner may
4 enter into a right-to-till agreement with a coordinating
5 entrepreneur to carry out the agricultural operations on the
6 parcel.

7 § -6 **Water agreement.** (a) The association shall enter
8 into a water agreement with the farm parcel owners, which shall
9 describe:

10 (1) The responsibilities of the association for the
11 design, construction, and maintenance of the
12 irrigation water system facilities; and

13 (2) The quantity of water allocated to the farm parcel
14 expressed in gallons-per-acre-per-day.

15 (b) The agreement shall authorize the association to
16 control or limit the delivery of irrigation water when there is
17 an equipment failure, government action, force majeure, or other
18 reason beyond the control of the association. The association
19 shall be authorized to coordinate the withdrawal and delivery of
20 irrigation water when the demand exceeds the capacity of the
21 system.



1 (c) The agreement shall list the production costs of the
2 irrigation system, including the cost of operations, repair,
3 maintenance, metering, pumping, transmission lines, reservoirs,
4 appurtenances and improvements, and administrative costs. The
5 agreement shall identify the pro rata share of the farm parcel
6 owner and provide for the assessment and payment of the
7 production costs.

8 **PART II. CREATION**

9 **§ -11 Creation of a common interest agricultural**
10 **community.** (a) A common interest agricultural community may be
11 created by recording the declaration and bylaws of the
12 association executed in the same manner as a deed or lease
13 conveying the real estate subject to the declaration to the
14 association. Upon recordation of the deed or lease together
15 with the declaration and bylaws, the common interest
16 agricultural community shall be deemed created.

17 (b) The common interest agricultural community shall be
18 subject to any right, title, or interest existing when the
19 declaration is recorded if the person who owns the right, title,
20 or interest does not execute or join in the declaration or
21 otherwise subordinate the right, title, or interest. A person



1 with any other right, title, or interest in the land may
2 subordinate that person's interest to the common interest
3 agricultural community by executing the declaration, or by
4 executing and recording a document joining in or subordinating
5 to the declaration.

6 § -12 Contents of declaration; amendment. (a) A

7 declaration shall describe or include the following:

- 8 (1) The name and address of the project, and the name,
9 address, telephone number, and electronic mail
10 address, if any, of the developer or the developer's
11 agent;
- 12 (2) The land submitted to the common interest agricultural
13 community;
- 14 (3) The common interest agricultural community plat map
15 filed concurrently with the declaration;
- 16 (4) The number of farm parcels in the project;
- 17 (5) The farm parcel number or identification designation
18 of each parcel, as described in the common interest
19 agricultural community plat map, and the common
20 interest appurtenant to each parcel;



S.B. NO. 1177

- 1 (6) A statement that the project is in compliance with
2 county zoning and building ordinances and the
3 permitted uses of each parcel shall be restricted to
4 the uses described in section 205-4.5(a)(1), (2), and
5 (3); provided that a use permitted under section 205-
6 4.5 may be approved by the board, except that any
7 dwelling that may be used and occupied for human
8 habitation is prohibited;
- 9 (7) To the extent not shown on the common interest
10 agricultural community plat map, a description of the
11 location and dimensions of the boundaries of any
12 parcel;
- 13 (8) The common interest agricultural community's common
14 infrastructure, the fraction or percentage of the
15 common infrastructure and common expenses, and, if an
16 equal vote is not allocated to each farm parcel, the
17 proportional votes in the association allocated to
18 each farm parcel and the basis for the allocations;
- 19 (9) The common interest agricultural community's limited
20 common infrastructure, if any, and the parcel or



1 parcels to which each limited common infrastructure is
2 appurtenant;

3 (10) The total percentage of the parcel owners of the
4 project that is required to approve rebuilding,
5 repairing, or restoring the common interest
6 agricultural community if it is damaged or destroyed;

7 (11) The total percentage of the parcel owners of the
8 project that is required to amend the declaration.

9 Except as otherwise specifically provided in this
10 chapter, and except for any amendments made pursuant
11 to reservations set forth in paragraph (12), the
12 approval of the parcel owners of at least sixty-seven
13 per cent of the common interest shall be required for
14 all amendments to the declaration; and

15 (12) Any rights that the developer or others reserve
16 regarding the common interest agricultural community,
17 including, without limitation, any development rights,
18 and any reservations to modify the declaration or
19 common interest agricultural community plat map. An
20 amendment to the declaration made pursuant to the
21 exercise of those reserved rights shall require only



1 the consent or approval, if any, specified in the
2 reservation.

3 (b) The declaration may provide for a period of developer
4 control of the association, during which a developer, or persons
5 designated by the developer, may appoint and remove the officers
6 and members of the board. The period of developer control shall
7 terminate no later than the earlier of:

8 (1) Sixty days after conveyance of seventy-five per cent
9 of the common infrastructure appurtenant to the
10 parcels to parcel owners other than a developer or
11 affiliate of the developer;

12 (2) Two years after the developer has ceased to offer
13 parcels for sale in the ordinary course of business;
14 or

15 (3) The day the developer, after giving written notice to
16 unit owners, records an instrument voluntarily
17 surrendering all rights to control any activities of
18 the association.

19 (c) The declaration may be amended by a vote or written
20 consent of the parcel owners of at least sixty-seven per cent of
21 the common interest, unless the declaration specifies a



1 different percentage for all amendments or for specific subjects
2 of amendment. Every amendment to the declaration shall be
3 recorded as provided in section -11 by any officer of the
4 association designated for that purpose or, in the absence of a
5 designation, by the president of the association.

6 (d) The declaration may contain any additional provisions
7 that are consistent with this chapter.

8 § -13 Common interest agricultural community plat map;
9 certification. (a) A common interest agricultural community
10 plat map shall be recorded with the declaration. The plat map
11 shall contain the following:

12 (1) The metes and bounds of the common interest
13 agricultural community and a depiction of the layout,
14 location, boundaries, farm parcel numbers, and
15 dimensions of the farm parcels;

16 (2) A depiction of the location, layout, and access to the
17 common infrastructure included or anticipated to be
18 included in the project, and a depiction of access for
19 farm parcels to a public road or to a common
20 infrastructure road leading to a public road;



1 (3) Unless specifically described in the declaration, the
2 layout, location, and identifying information of the
3 common infrastructure; and

4 (4) Unless specifically described in the declaration, the
5 layout, location, and identifying information of the
6 limited common infrastructure.

7 (b) The common interest agricultural community plat map
8 shall bear the statement of a licensed architect, engineer, or
9 surveyor certifying that the plat map is consistent with the
10 plans of the project filed or to be filed with the government
11 official having jurisdiction over the issuance of permits for
12 the construction of buildings in the county in which the project
13 is located. If any building or buildings exist on the project
14 at the time the plat map is recorded, the certification shall
15 state that, to the best of the architect's, engineer's, or
16 surveyor's knowledge, the plat map depicts the layout, location,
17 dimensions, and numbers of the buildings substantially as built.

18 (c) The common interest agricultural community plat map
19 may contain any additional information that is consistent with
20 this chapter.



1 § -14 Common infrastructure. Each parcel owner may use
2 the common infrastructure in accordance with the purposes
3 permitted under the declaration, subject to:

4 (1) The rights of other parcel owners to use the common
5 infrastructure;

6 (2) Any owner's exclusive right to use of the limited
7 common infrastructure as provided in the declaration;

8 (3) The right of the parcel owners to amend the
9 declaration to change the permitted uses of the common
10 infrastructure; provided that nonmaterial additions or
11 alterations of the common infrastructure or minor
12 additions to or alterations of the common
13 infrastructure for the benefit of individual units
14 shall be permitted if the additions or alterations can
15 be accomplished without substantial impact on the
16 interests of other parcel owners in the common
17 infrastructure, as reasonably determined by the board;

18 (4) Any rights reserved in the declaration to amend the
19 declaration to change the permitted uses of the common
20 infrastructure; and



1 (5) The right of the board, on behalf of the association,
2 to lease or otherwise use for the benefit of the
3 association common infrastructure that the board
4 determines is actually used by one or more parcel
5 owners for a purpose permitted in the declaration.
6 The lease or use shall be approved by the parcel
7 owners of at least sixty-seven per cent of the
8 project, including all directly affected parcel owners
9 that the board reasonably determines actually use the
10 common infrastructure.

11 § -15 **Limited common infrastructure.** (a) The limited
12 common infrastructure designated in the declaration shall be
13 subject to the exclusive use of the parcel owner or parcel
14 owners of the parcel or parcels to which they are appurtenant,
15 subject to the provisions of the declaration and bylaws of the
16 association. No amendment of the declaration affecting any of
17 the limited common infrastructure shall be effective without the
18 consent of the parcel owner or parcel owners of the parcel or
19 parcels to which the limited common infrastructure is
20 appurtenant.



1 (b) Except as provided in the declaration, any parcel
2 owner may transfer or exchange a limited common infrastructure
3 that is assigned to the owner's parcel to another parcel. Any
4 transfer shall be executed and recorded as an amendment to the
5 declaration. The amendment shall be executed by the parcel
6 owner of the parcel whose limited common infrastructure is being
7 transferred and the parcel owner of the parcel receiving the
8 limited common infrastructure; provided that parcel mortgages
9 and leases may also require the consent of mortgagees or
10 lessors, respectively, of the parcels involved. A copy of the
11 executed and recorded amendment shall be delivered to the
12 association.

13 **§ -16 Contents of deeds or leases of parcels. (a)**

14 Deeds or leases of farm parcels shall contain:

- 15 (1) The title and date of the declaration and the
16 declaration's bureau of conveyances or land court
17 document number or liber and page numbers;
- 18 (2) The farm parcel number of the parcel conveyed or
19 leased;
- 20 (3) The common interest appurtenant to the farm parcel
21 conveyed or leased assigned in the declaration;



1 (4) For a farm parcel, title to which is registered in the
2 land court, the land court certificate of title number
3 for the parcel, if available; and

4 (5) For a farm parcel, title to which is not registered in
5 the land court, the bureau of conveyances document
6 number or liber and page numbers for the instrument by
7 which the grantor acquired title.

8 (b) Deeds or leases of parcels may contain additional
9 information and details that are consistent with the declaration
10 and this chapter.

11 **PART III. REGISTRATION AND ADMINISTRATION**

12 **§ -21 Registration; public offering statement;**
13 **application.** (a) A developer shall not offer for sale any farm
14 parcels in a project unless the project is registered in
15 accordance with this chapter and rules adopted by the director.

16 (b) An application for registration of a project shall
17 include:

18 (1) The developer's name, telephone number, address, and
19 electronic mail address; or if a corporation or
20 partnership, the telephone number, address, and



- 1 electronic mail address of each of the developer's
2 offices in the State;
- 3 (2) The common interest agricultural community plat map
4 prepared pursuant to section -13;
- 5 (3) A copy of the deed, master lease, or other evidence
6 that the developer holds the fee or leasehold interest
7 in the project;
- 8 (4) A statement of all liens or encumbrances, if any, upon
9 the developer's title to the project's real estate;
- 10 (5) A specimen of the proposed contract of sale for farm
11 parcels;
- 12 (6) A specimen of a receipt for a written notice advising
13 the purchaser of the purchaser's right to rescind a
14 contract within seven days after signing the contract,
15 without penalty to the purchaser;
- 16 (7) An executed copy of an escrow agreement with a third
17 party escrow depository authorized to do business in
18 the State that provides for the retention and
19 disposition of funds from purchasers or prospective
20 purchasers in accordance with rules adopted by the
21 director;



- 1 (8) A project budget showing all costs required to
2 complete the project, and evidence of the availability
3 of sufficient funds to pay all costs required to
4 complete the project;
- 5 (9) A declaration by the developer that the permitted uses
6 of the parcels in the project shall be restricted to
7 the uses described in section 205-4.5(a)(1), (2), and
8 (3); provided that a use permitted under section 205-
9 4.5 may be approved by the board, except that any
10 dwelling that may be used and occupied for human
11 habitation is prohibited;
- 12 (10) A description of the promotional plan for the
13 disposition of the farm parcels together with copies
14 of all advertising material which have been prepared
15 for public distribution by any means of communication,
16 or a statement that no such advertising materials have
17 been produced as of the date of application;
- 18 (11) The proposed public offering statement;
- 19 (12) A statement that the developer has not, or if a
20 corporation, the officers, directors, and principals,
21 or if a partnership, general partners, have not been



1 convicted of a crime involving land dispositions or
2 any aspect of the land-sales business in this State,
3 the United States, or any foreign country within the
4 past ten years, and have not been subject to any
5 injunction or administrative order within the past ten
6 years involving land dispositions; and

7 (13) Any other information that the director may require to
8 assure full and fair disclosure to prospective
9 purchasers.

10 (b) The application for registration shall be accompanied
11 by nonrefundable fees as provided in rules adopted by the
12 director.

13 (c) The developer shall immediately report to the director
14 any material changes in the information contained in any
15 application for registration.

16 **§ -22 Registration; inquiry and examination.** (a) Upon
17 receipt of an application for registration in the proper form
18 prescribed by the director, and the payment of appropriate
19 registration, inspection, or consultant fees, the director shall
20 issue a notice of filing to the applicant, and initiate an
21 examination to determine that:



- 1 (1) The developer can convey or cause to be conveyed the
2 interest in the common interest agricultural community
3 offered for disposition if the purchaser complies with
4 the terms of the offer, and when appropriate, the
5 release clauses, conveyances in trust, or other
6 safeguards provided;
- 7 (2) There is reasonable assurance that all of the proposed
8 improvements will be completed as represented;
- 9 (3) The advertising material and the general promotional
10 plan are not false or misleading and comply with the
11 standards prescribed by the rules adopted by the
12 director and afford full and fair disclosure;
- 13 (4) The developer has not, or if a corporation, the
14 officers, directors, and principals, or if a
15 partnership, general partners, have not been convicted
16 of a crime involving land dispositions or any aspect
17 of the land-sales business in this State, the United
18 States, or any foreign country within the past ten
19 years, and have not been subject to any injunction or
20 administrative order within the past ten years; and



1 (5) Preliminary or required approvals have been granted by
2 the county in which the land is situated.

3 § -23 Orders of registration and rejection. (a) Within
4 forty-five days from the date of notice of filing, the director
5 shall enter a preliminary or final order registering the project
6 or rejecting the registration.

7 (b) The director may return an incomplete application to
8 the developer and require the developer to submit an amended
9 application.

10 (c) If the director determines, upon inquiry and
11 examination, that the project meets the requirements for
12 registration under section -22, the director shall enter a
13 final order registering the project and approving the form of
14 the public offering statement.

15 § -24 Public offering statement. (a) A public offering
16 statement shall disclose fully and accurately to prospective
17 purchasers all the unusual and material circumstances or
18 features affecting the project, including but not limited to:

19 (1) The name and address of the project, and the name,
20 address, telephone number, and electronic mail



- 1 address, if any, of the developer or the developer's
2 agent;
- 3 (2) A general description of the common interest
4 agricultural community, other than any plats and
5 plans, and any recorded covenants, conditions,
6 restrictions, and reservations affecting the project;
- 7 (3) The total number of farm parcels, the common
8 infrastructure, and the limited common infrastructure
9 in the project;
- 10 (4) The sales contract for a parcel with a statement that
11 the purchaser has a seven-day period after signing a
12 contract to rescind the contract;
- 13 (5) The annual maintenance fees and the monthly estimated
14 cost for each parcel and when the purchaser becomes
15 obligated to start paying the common expenses charged
16 to the parcel;
- 17 (6) A description of all warranties, if any, for a parcel
18 and the common elements;
- 19 (7) The declaration, bylaws, and any rules of the
20 association; any contracts and leases to be signed by
21 purchasers at closing; and any other covenants,



1 conditions, restrictions, and reservations affecting
2 the common interest agricultural community;

3 (8) A description of any development rights reserved to
4 the developer;

5 (9) The permitted uses and prohibitions on the farm
6 parcels, and a declaration that the project complies
7 with all land use laws and county zoning and building
8 ordinances; and

9 (10) Any other information as may be required by the
10 director.

11 (b) The director may require the developer to alter or
12 amend the proposed public offering statement in order to assure
13 full and fair disclosure of prospective purchasers, and no
14 change in the substance of the promotional plan or plan of
15 disposition or development of the project may be made after
16 registration without notifying the director and without making
17 appropriate amendment of the public offering statement.

18 § -25 Penalties. Any person who wilfully violates this
19 chapter or a rule adopted pursuant thereto shall be guilty of a
20 misdemeanor punishable by a fine of not less than \$10,000 nor



1 more than \$, or imprisonment for a term not exceeding
2 one year, or both.

3 **PART IV. MANAGEMENT AND GOVERNANCE**

4 **§ -31 Farm parcel owners' association; membership and**
5 **organization.** (a) The membership of the farm parcel owners'
6 association shall consist exclusively of all the farm parcel
7 owners.

8 (b) The farm parcel owners' association shall meet and
9 organize not later than one hundred eighty days after
10 recordation of the first parcel conveyance; provided that forty
11 per cent or more of the project has been sold and recorded.

12 **§ -32 Farm parcel owners' association; registration.**

13 (a) Within thirty days of the association's first meeting, the
14 farm parcel owners' association shall register with the director
15 by:

- 16 (1) Submitting a completed registration application
17 prepared by the director;
18 (2) Paying the fees established by the director by rule;
19 (3) Submitting the names and positions of the officers of
20 the association;



- 1 (4) Submitting the name of the association's managing
2 agent, if any;
- 3 (5) Providing the street and the postal address of the
4 common interest agricultural community, and the name
5 and current address where a designated officer of the
6 association can be contacted; and
- 7 (6) Any other additional information required by the
8 director.

9 (b) The association shall notify the director, within
10 thirty days, of any changes to the information contained in the
11 registration information of the association.

12 **§ -33 Association powers and duties.** (a) Except as
13 provided in the declaration, the bylaws, and this chapter, the
14 association may:

- 15 (1) Adopt and amend the declaration, bylaws, and rules of
16 the association;
- 17 (2) Adopt and amend budgets for revenues, expenditures,
18 and reserves and collect assessments for common
19 expenses from parcel owners;
- 20 (3) Hire and discharge managing agents and other
21 independent contractors, agents, and employees;



S.B. NO. 1177

- 1 (4) Institute, defend, or intervene in litigation or
2 administrative proceedings in its own name on behalf
3 of itself or two or more parcel owners on matters
4 affecting the common interest agricultural community;
- 5 (5) Make contracts and incur liabilities;
- 6 (6) Regulate the use, maintenance, repair, replacement,
7 and modification of common infrastructure;
- 8 (7) Cause additional improvements to the common
9 infrastructure and made a part thereof;
- 10 (8) Acquire, hold, encumber, and convey in its own name
11 any right, title, or interest to real estate or
12 personal property; provided that any conveyance of or
13 security interest in any common infrastructure shall
14 be subject to the provisions of section -14;
- 15 (9) Subject to section -15, grant easements, leases,
16 licenses, and concessions through or over the common
17 infrastructure;
- 18 (10) Impose and receive any payments, fees, or charges for
19 the use, rental, or operation of the common
20 infrastructure, other than limited common



- 1 infrastructure, and for services provided for parcel
2 owners;
- 3 (11) Impose charges and penalties for any late payment of
4 assessments after notice and opportunity to be heard,
5 and levy reasonable fines for violations of the
6 declaration, bylaws, and rules of the association;
- 7 (12) Impose reasonable charges for the preparation and
8 recordation of amendments to the declaration,
9 documents requested for resale of parcels, or
10 statements of unpaid assessments;
- 11 (13) Provide for indemnification of its officers and
12 executive board and maintain directors' and officers'
13 liability insurance;
- 14 (14) Assign its right to future income subject to the
15 limitations in the declaration or bylaws;
- 16 (15) With the written approval of parcel owners
17 representing fifty per cent of the common interest,
18 authorize the board to borrow money for the repair,
19 replacement, maintenance, operation, or administration
20 of the common infrastructure and personal property of
21 the project;



1 (16) Require that disputes between the association and
2 parcel owners or between two or more parcel owners
3 regarding the common interest agricultural community
4 be submitted to nonbinding alternative dispute
5 resolution as a prerequisite to commencement of a
6 judicial proceeding; and

7 (17) Exercise any other powers necessary and proper for the
8 governance and operation of the association.

9 (b) A parcel owner and the tenant of the parcel owner
10 shall be jointly and severally responsible and liable for any
11 violation of the declaration, bylaws, or rules of the
12 association by the tenant, including any reasonable fines levied
13 by the association and any reasonable attorney's fees and costs
14 incurred by the association relating to the violations. The
15 association shall provide the violators with notice of the
16 violations and a hearing prior to levying any fines therefor.

17 § -34 **Association annual meetings and notice.** (a) An
18 annual meeting of farm parcel owners shall be held by the
19 association at a time, date, and place stated in the bylaws.
20 Special meetings of the association may be called by the
21 president, a majority of the board, or by a petition to the



1 board signed by not less than the percentage of the parcel
2 owners specified in the bylaws.

3 (b) The notice for each annual and special meeting of the
4 association shall be:

5 (1) Hand delivered;

6 (2) Sent postage prepaid by United States mail to the
7 mailing address designated by the parcel owner; or

8 (3) Sent by electronic mail to the electronic mail address
9 designated by the parcel owner.

10 The time, date, place of the meeting, and items on the agenda
11 shall be set by the board in accordance with the requirements
12 established in the bylaws.

13 § -35 Association meetings, voting, and proxies. (a)

14 Farm parcel owners may vote:

15 (1) At a meeting in person;

16 (2) By absentee ballot without being present at the
17 meeting by requesting an absentee ballot from the
18 association at least days before the scheduled
19 meeting; provided that the association shall verify
20 that the ballot is cast by the parcel owner having the
21 right to do so; or



- 1 (3) By proxy pursuant to subsection (c).
- 2 (b) At a meeting of the association:
- 3 (1) Parcel owners who are present in person may vote by
- 4 voice vote, show of hands, standing, or any other
- 5 method for determining the votes of parcel owners, as
- 6 designated by the person presiding at the meeting; or
- 7 (2) Unless a greater number of the votes of the members of
- 8 the association is required by this chapter or the
- 9 declaration, a majority of the votes cast shall
- 10 determine the outcome of any action of the
- 11 association.
- 12 (c) Unless otherwise provided in the declaration or
- 13 bylaws, proxy voting shall require that:
- 14 (1) The vote allocated to a parcel to be cast pursuant to
- 15 a directed proxy be dated, valid only for the meeting
- 16 to which it pertains, and duly executed by the parcel
- 17 owner; and
- 18 (2) A parcel owner may revoke a proxy given pursuant to
- 19 this section only by giving an actual notice of
- 20 revocation to the person presiding over a meeting of
- 21 the association.



1 § -36 Board of directors; officers, powers, and
2 meetings. (a) The board of directors of the association shall
3 act on behalf of the association. Upon the termination of the
4 developer's control of the board as provided in the declaration,
5 parcel owners shall elect a board of directors of at least
6 members, who shall be farm parcel owners. The officers of the
7 board shall be elected by the members of the board from among
8 its members.

9 (b) The board, as provided in the bylaws, shall:

10 (1) Develop the policies, procedures, and rules necessary
11 and appropriate for the operation and management of
12 the association; and

13 (2) Enter into contracts and agreements necessary for the
14 performance and responsibilities of the association.

15 (c) Meetings of the board shall be open to the parcel
16 owners, except during executive sessions. An executive session
17 may be held only to:

18 (1) Consult with the association's attorney concerning
19 legal matters;

20 (2) Discuss existing or potential litigation or mediation,
21 arbitration, or administrative proceedings;



- 1 (3) Discuss labor or personnel matters;
- 2 (4) Discuss contracts, leases, and other commercial
- 3 transactions to purchase or provide goods or services
- 4 currently being negotiated; or
- 5 (5) Prevent public knowledge of the matter to be discussed
- 6 if the board determines that public knowledge would
- 7 violate the privacy of any person.

8 § -37 Bylaws. (a) The bylaws of the association shall
9 provide:

- 10 (1) For:
 - 11 (A) The number of members of the board of directors
 - 12 and the titles of the officers of the
 - 13 association; and
 - 14 (B) The qualifications, powers and duties, terms of
 - 15 office, the manner of electing and removing of
 - 16 directors and officers, and filing of vacancies;
- 17 (2) Requirements for the meetings, quorums, voting, and
- 18 other activities of the association;
- 19 (3) The process for the preparation, execution,
- 20 certification, and recordation of amendments to the
- 21 declaration of the association;



- 1 (4) For the amendment of the bylaws by the association;
- 2 (5) The process for the preparation, amendment, and
- 3 execution of the association's budget; and
- 4 (6) Any other matters the association deems necessary and
- 5 appropriate.

6 (b) The bylaws may be amended by a vote or written consent
7 of parcel owners representing at least sixty-seven per cent of
8 the common interest. Every amendment to the bylaws shall be
9 recorded as provided in section -11 by any officer of the
10 association designated for that purpose or, in the absence of a
11 designation, by the president of the association."

12 SECTION 2. Section 484-3, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) Unless the method of disposition is adopted for the
15 purpose of evasion of this chapter, or unless the subdivider
16 files in writing with the director that this chapter shall apply
17 to the subdivider's subdivision, this chapter shall not apply to
18 offers or dispositions of an interest in land:

- 19 (1) By a purchaser of subdivided lands for the purchaser's
- 20 own account in a single or isolated transaction;



S.B. NO. 1177

- 1 (2) If fewer than twenty separate lots, parcels, units, or
2 interests in subdivided lands are offered by a person
3 in a period of twelve months;
- 4 (3) Where the division of lands is a leasehold
5 agricultural lot within state agricultural districts
6 on which no dwelling structures are constructed as
7 provided in section 205-4.5(f);
- 8 (4) On which there is a residential, commercial, or
9 industrial building, or as to which there is a legal
10 obligation on the part of the seller to construct a
11 building on the land within two years from the date of
12 disposition; provided that the obligation to construct
13 shall not be, directly or indirectly, transferred to
14 or otherwise imposed upon the purchaser;
- 15 (5) To persons who are engaged in, and are duly licensed
16 to engage in, the business of construction of
17 buildings for resale, or to persons who acquire an
18 interest in subdivided lands for the purpose of
19 engaging, and do engage in, and are duly licensed to
20 engage in, the business of construction of buildings
21 for resale;



S.B. NO. 1177

Report Title:

Common Interest Agricultural Communities

Description:

Establishes common interest agricultural communities.

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

