
A BILL FOR AN ACT

RELATING TO PLANNED COMMUNITY ASSOCIATIONS.

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

1 SECTION 1. Chapter 421J, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:

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

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



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

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

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



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

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

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

13 (1) The board of directors recommends removal of one or
14 more directors; or

15 (2) A member delivers to the secretary of the association
16 or managing agent a petition for removal of one or
17 more directors that:

18 (A) Is signed by members representing at least one
19 hundred units or members who own at least twenty-
20 five per cent of the total number of units in the
21 planned community, whichever is less;

1 (B) Contains the printed name, identification of the
2 unit, address of the signing members, and dates
3 of their signatures;

4 (C) Is delivered within seven days after the posting
5 of a notice of intent to distribute proxies that
6 includes the election of directors in accordance
7 with section 421J-4(e), or within seven days
8 after the posting of a notice of intent to
9 distribute a notice of a meeting under section
10 421J-3.5(f); and

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

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

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



1 removed belonged at the meeting at which the removal is
2 proposed.

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

5 (i) If, at the beginning of a director's term on the
6 board, the articles of incorporation, declaration, or bylaws
7 provide that the director may be removed for missing a specified
8 number of board meetings, the board may remove the director for
9 failing to attend the specified number of meetings. The
10 director may be removed only if a majority of the directors then
11 in office vote for the removal."

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

14 **"§414D-114 Cumulative voting for directors.** (a) If the
15 articles or bylaws provide for cumulative voting by members,
16 members may so vote, by multiplying the number of votes the
17 members are entitled to cast by the number of directors for whom
18 they are entitled to vote, and cast the product for a single
19 candidate or distribute the product among two or more
20 candidates.



1 (b) Unless otherwise provided in the articles or bylaws,
2 cumulative voting shall not be permitted. If authorized in the
3 articles or bylaws, cumulative voting may be permitted; provided
4 that:

5 (1) The meeting notice or statement accompanying the
6 notice states that cumulative voting shall take place;

7 (2) A member gives notice of the member's intent to
8 cumulatively vote not less than forty-eight hours
9 before the meeting or ~~[such]~~ a longer period as may be
10 required by the articles or bylaws; and

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

15 (c) A director elected by cumulative voting may be removed
16 by the members without cause if the requirements of section
17 414D-138 are met unless the votes cast against removal or not
18 consenting in writing to the removal would be sufficient to
19 elect the director if voted cumulatively at an election at which
20 the same total number of votes were cast and the entire number
21 of directors authorized at the time of the director's most



1 recent election were then being elected; provided that if the
2 action is taken by ballot, all members entitled to vote had
3 voted.

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

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

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

10 "[+]§414D-138[+] Removal of directors elected by members
11 or directors. (a) The members may remove one or more directors
12 elected by them without cause unless otherwise provided in the
13 articles or bylaws.

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

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



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

7 (e) A director elected by members may be removed by the
8 members only at a meeting called for the purpose of removing the
9 director and the meeting notice [~~must~~] shall state that the
10 purpose, or one of the purposes, of the meeting is removal of
11 the director.

12 (f) In computing whether a director is protected from
13 removal under subsections (b) to (d), it [~~should~~] may be assumed
14 that the votes against removal are cast in an election for the
15 number of directors of the class to which the director to be
16 removed belonged on the date of that director's election.

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

19 (h) A director elected by the board may be removed without
20 cause by the vote of two-thirds of the directors then in office
21 or [~~such~~] a greater number as is set forth in the articles or



1 bylaws; provided that a director elected by the board to fill
2 the vacancy of a director elected by the members may be removed
3 without cause by the members, but not the board.

4 (i) If, at the beginning of a director's term on the
5 board, the articles or bylaws provide that the director may be
6 removed for missing a specified number of board meetings, the
7 board may remove the director for failing to attend the
8 specified number of meetings. The director may be removed only
9 if a majority of the directors then in office vote for the
10 removal.

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

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

15 **"§421J-3.5 Notice required; regular, annual, and special**
16 **meetings.** (a) Not less than fourteen days in advance of any
17 regular, annual, or special meeting of an association, the
18 secretary or other officer specified in the bylaws shall give
19 written notice of the meeting to each member of the association
20 as provided in the bylaws of the association or by two or more
21 of the following means:



- 1 (1) Hand delivery;
- 2 (2) United States mail sent to the mailing address of each
- 3 unit or to another mailing address designated in
- 4 writing by the association member;
- 5 (3) Electronic mail to the electronic mailing address
- 6 designated in writing by the association member; or
- 7 (4) Posting of the meeting notice in its entirety on a
- 8 portion of the association's website that is
- 9 accessible to all members.
- 10 (b) Notice pursuant to this section shall state:
- 11 (1) The date, time, and place of the meeting; and
- 12 (2) The items on the agenda, including the general nature
- 13 of and rationale for any proposed amendment to the
- 14 declaration or bylaws; any proposal for a special
- 15 assessment, unless the authority for a special
- 16 assessment is otherwise provided for in the
- 17 association's governing documents; and any proposal to
- 18 remove a member of the board.
- 19 (c) The requirements of this section shall not be
- 20 interpreted to preclude any association member from proposing an



1 amendment to the declaration or bylaws [~~or proposing to remove a~~
2 ~~member of the board at an association meeting~~].

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

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

10 (f) If the board of directors does not intend to use
11 association funds to distribute proxies that include the
12 election of directors and therefore does not post notice
13 pursuant to section 421J-4(e), the board shall post notice in
14 prominent locations within the project of its intent to
15 distribute written notice of an association meeting at least
16 twenty-one days in advance of distributing written notice under
17 subsection (a)."

18 SECTION 5. In codifying the new sections added by section
19 1 of this Act, the revisor of statutes shall substitute
20 appropriate section numbers for the letters used in designating
21 the new sections in this Act.



1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.
3 SECTION 7. This Act shall take effect upon its approval.



Report Title:

Planned Community Associations; Nonprofit Corporations;
Directors

Description:

Establishes requirements for cumulative voting and the removal of directors of planned community associations. Exempts planned community associations from certain requirements regarding cumulative voting for and the removal of directors under the Hawaii Nonprofit Corporations Act. (SD2)

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

