

ACT 238

H.B. NO. 1541

A Bill for an Act Relating to Planned Community Associations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 421J-4, Hawaii Revised Statutes, is amended to read as follows:

“**§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;
- (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; and

(3) ~~Contain~~ If it is a standard proxy form authorized by the association, contain boxes wherein the owner has indicated 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 ~~board;~~ 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.

(d) Any board of directors that ~~uses~~ 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 ~~thirty~~ 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 ~~not exceed one hundred words, indicating~~ be limited to black text on white paper and shall indicate the owner's qualifications to serve on the board ~~and~~ 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:

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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.

(e) 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.

(f) 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.

(g) 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.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval; provided that the proxy statement requirements in section 1 of this Act shall apply to proxies for meetings of a planned community association that occur on or after October 1, 2016.

(Approved July 12, 2016.)