

ACT 101

H.B. NO. 192

A Bill for an Act Relating to Homeowners' Associations.

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

SECTION 1. The legislature finds that there are subdivisions that do not fit into the current definition of a planned community "association", as used in the laws regarding homeowners' associations. Accordingly, the homeowners' associations in these subdivisions remain unregulated and lack access to the cost-effective dispute resolution mechanisms provided for planned community associations. Applying the planned community associations laws to these subdivisions will allow the subdivisions to be regulated and have access to current mediation processes.

The legislature further finds that existing law on voting pursuant to a proxy at a meeting of a planned community association specifies that a standard proxy form must contain boxes for a member of the association to check and indicate how a proxy is given. However, proxy forms may sometimes be returned to an association's secretary or managing agent with more than one box checked, or with nothing marked on the proxy form. This may lead to confusion over how the proxy should be counted.

The purpose of this Act is to:

- (1) Expand the definition of "association" under the planned community association law to include certain homeowners' associations; and
- (2) Clarify that if a proxy is a standard proxy form authorized by an association, and the proxy is returned with no box checked or more than one box checked, the proxy shall be counted for quorum purposes only.

SECTION 2. Section 421J-2, Hawaii Revised Statutes, is amended by amending the definition of "association" to read as follows:

"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; ~~or~~
- (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.

SECTION 3. 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; 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~~[-and]~~.

~~[(3)]~~ (d) If ~~[(#)]~~ a proxy is a standard proxy form authorized by the association, the proxy shall contain boxes wherein the owner ~~[(has indicated)]~~ may indicate that the proxy is given:

~~[(A)]~~ (1) For quorum purposes only;

~~[(B)]~~ (2) To the individual whose name is printed on a line next to this box;

~~[(C)]~~ (3) 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)]~~ (4) 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) checked, the proxy shall be counted for quorum purposes only.

~~[(d)]~~ (e) 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.

~~[(e)]~~ (f) 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)]~~ (g) 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)~~ (h) 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 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2017.

(Approved July 5, 2017.)