



GOV. MSG. NO. 712

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

May 14, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on May 14, 2008, the following bill was signed into law:

HB2894 SD1

A BILL FOR AN ACT RELATING TO PLANNED
COMMUNITY ASSOCIATIONS.
(ACT 70)

Sincerely,

JAMES R. AIONA, JR.
Acting Governor

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 chapter 421J, Hawaii
2 Revised Statutes, should be construed broadly to apply to all
3 situations in which real property owners or lessees have an
4 express or implied obligation to pay assessments or to comply
5 with covenants related to the use of common areas, architectural
6 control, the maintenance of units, or use restrictions on units.

7 The legislature further finds that some planned communities
8 and planned community associations that were created prior to
9 the enactment of chapter 421J, may not constitute planned
10 communities and planned community associations as those terms
11 are presently defined, thereby depriving those property owners
12 of the rights and protections provided by chapter 421J.

13 The purpose of this Act is to assure that planned community
14 associations are able to effectively enforce assessments and
15 restrictive covenants and to ensure that all property owners
16 within planned communities and members of planned community



1 associations are entitled to the rights and protections provided
2 by chapter 421J, Hawaii Revised Statutes.

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

6 "§421J- Interpretation. This chapter and any
7 association document subject thereto shall be liberally
8 construed to facilitate the operation of the planned community
9 association.

10 §421J- Restatement of association documents. (a)
11 Notwithstanding any provision of this chapter, an association,
12 by a resolution adopted by the board, may at any time restate
13 the association documents of the association to include
14 amendments to the association documents.

15 (b) An association, by a resolution adopted by the board,
16 may at any time, restate the association documents of the
17 association to amend the association documents as necessary to
18 conform with this chapter or any other applicable law,
19 ordinance, or rule; provided that any association documents
20 restated pursuant to this section shall:

21 (1) Identify each portion so restated;



- 1 (2) Contain a statement that those portions have been
2 restated solely for purposes of information and
3 convenience;
- 4 (3) Identify the law, ordinance, or rule implemented by
5 the amendment; and
- 6 (4) Contain a statement that, in the event of any
7 conflict, the restated association documents shall be
8 subordinate to the cited law, ordinance, or rule.

9 The restated association documents shall be effective for all
10 purposes as if adopted by a vote or written consent of the
11 members.

12 (c) Upon the adoption of a resolution pursuant to
13 subsection (a) or (b), the restated association documents shall
14 state all of the operative provisions of the original
15 association documents, together with a statement that the
16 restated association documents correctly state the corresponding
17 provisions of the association documents, and that the restated
18 association documents supersede the original association
19 documents and any relative amendments.

20 (d) A restated association document shall be recorded if
21 the original document was recorded and the restated association
22 documents shall supersede the original association documents and



1 any relative amendments. In the event of any conflict, the
2 restated association documents shall be subordinate to the
3 original association documents and any relative amendments."

4 SECTION 3. Section 421J-2, Hawaii Revised Statutes, is
5 amended as follows:

6 1. By amending the definition of "association" to read:

7 "Association" means a nonprofit, incorporated, or
8 unincorporated organization [~~upon~~]:

9 (1) Upon which responsibilities are imposed and to which
10 authority is granted in a declaration [~~which~~] that
11 governs a planned community[-]; or

12 (2) That is a planned community association as defined
13 under section 607-14."

14 2. By amending the definition of "association documents"
15 to read:

16 ""Association documents" means the articles of
17 incorporation or other document creating the association, if
18 any, the bylaws of the association, the declaration or similar
19 organizational documents and any exhibits thereto, any rules
20 related to use of common areas, [~~the~~] architectural control, [~~the~~]
21 maintenance of units, [~~ex- the~~] restrictions on the use of units,
22 or [~~the~~] payment of money as a regular assessment or otherwise in



1 connection with the provisions, maintenance, or services for the
2 benefit of some or all of the units, the owners, or occupants of
3 the units or the common areas, as well as any amendments made to
4 the foregoing documents."

5 3. By amending the definition of "declaration" to read:

6 "Declaration" means any recorded [~~instrument~~] association
7 document, however denominated, that imposes obligations on [~~an~~
8 ~~association~~] the owners of the units with respect to maintenance
9 or operational responsibilities for the common area [~~and creates~~
10 ~~the authority in the association to impose on units, or on the~~
11 ~~owners or occupants of the units, any mandatory payment of money~~
12 ~~as a regular annual assessment or otherwise in connection with~~
13 ~~the provisions, maintenance, or services for the benefit of some~~
14 ~~or all of the units, the owners, or occupants of the units or~~
15 ~~the common areas.~~], architectural control, maintenance of units,
16 or restrictions on the use of units. A declaration includes any
17 amendment or supplement to the instruments described in this
18 definition."

19 4. By amending the definition of "planned community" to
20 read:

21 "Planned community" means [a] one of the following:



1 (1) Real property, other than a condominium or a
2 cooperative housing corporation or a time share plan,
3 that is subject to a planned community association as
4 defined under section 607-14; or

5 (2) A common interest community, other than a condominium
6 or a cooperative housing corporation or a time share
7 plan, which includes all of the following
8 characteristics:

9 ~~(A)~~ (A) Real property subject to a recorded
10 declaration placing restrictions and obligations
11 on the owners of the real property [~~and providing~~
12 ~~for rights and responsibilities of~~ that are
13 enforced or enforceable by a separate entity, the
14 association~~+~~, established for that purpose
15 whether or not mentioned in the declaration, and:

16 ~~(A)~~ (i) [~~Which~~ That owns and maintains certain
17 property within the planned community for
18 the common use or benefit, or both, of the
19 owners of units within the planned
20 community;

21 ~~(B)~~ (ii) [~~Which~~ That is obligated to maintain
22 certain property it does not own within the



1 planned community for the common use or
2 benefit, or both, of the owners of units
3 within the planned community; or

4 ~~[(C)]~~ (iii) ~~[Which]~~ That is obligated to provide
5 services to any such owners or units;

6 ~~[(2)]~~ (B) Individual owners own separate units ~~[which]~~
7 that are part of a planned community at least
8 some of which are improved by or are to be
9 improved by residential dwellings;

10 ~~[(3)]~~ (C) Owners have automatic and non-severable
11 membership in an association by virtue of
12 ownership of units within the planned community;
13 and

14 ~~[(4)]~~ (D) Owners, other than a master developer or
15 declarant, are obligated by any association
16 document to pay mandatory assessments by virtue
17 of ownership of a unit within the planned
18 community."

19 SECTION 4. Section 421J-12, Hawaii Revised Statutes, is
20 amended to read as follows:

21 " ~~[(1)]~~ §421J-12 ~~[(1)]~~ **Amendment of association documents when no**
22 **procedure provided. (a) Whenever an association document**

1 provides that it may be amended by the vote of association
2 members at a meeting, the association document may also be
3 amended by the written consent of the same percentage of
4 association members without a meeting.

5 (b) Whenever neither an association document nor any
6 applicable law provide procedures for amendment of that
7 document, the association document may be amended by the vote or
8 written consent of association members representing three-
9 fourths of the votes which association members are entitled to
10 cast with respect to a declaration and two-thirds of the votes
11 which association members are entitled to cast with respect to
12 other association documents; provided that this section shall
13 not apply to articles of incorporation or any association
14 documents which by their terms or as a matter of law may be
15 adopted or amended by the board of directors. Nothing in this
16 section shall be deemed to supersede or override any provision
17 of any association documents related to amendments, or any
18 provision of any law pertaining to associations or corporations.

19 (c) For purposes of this section, a requirement in any
20 association document that an owner must sign an amendment to
21 that document shall be satisfied by the receipt of a written
22 consent signed by the owner."



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

3 SECTION 6. This Act shall take effect upon its approval.

APPROVED this 14 day of MAY, 2008



JAMES R. AIONA JR.
ACTING GOVERNOR

GOVERNOR OF THE STATE OF HAWAII

