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Cross References

Placement of clotheslines, see §196-8.5.

[§421J-1] Scope. This chapter shall apply to all planned community associations existing as of June 16, 1997 and all planned community associations created thereafter. [L 1997, c 132, pt of §1]

Revision Note

“June 16, 1997” substituted for “the effective date of this chapter”.

[§421J-1.5] Interpretation. This chapter and any association document subject thereto shall be liberally construed to facilitate the operation of the planned community association. [L 2008, c 70, pt of §2]

§421J-2 Definitions. As used in this chapter, unless otherwise indicated by the context:

“Assessment” means funds collected by an association from association members to operate and manage the association, maintain property within the planned community for the common use or benefit of association members, or provide services to association members. The term also means expenditures made by, or financial liabilities of, the association for operation of the property and includes any allocations to reserves.

“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.

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“Association documents” means the articles of incorporation or other document creating the association, if any, the bylaws of the association, the declaration or similar organizational documents and any exhibits thereto, any rules related to use of common areas, architectural control, maintenance of units, restrictions on the use of units, or payment of money as a regular assessment or otherwise in connection with the provisions, maintenance, or services for the benefit of some or all of the units, the owners, or occupants of the units or the common areas, as well as any amendments made to the foregoing documents.

“Board of directors” or “board” means the executive board or other body, regardless of name, designated in the association documents to act on behalf of the association.

“Common area” means real property within a planned community which is owned or leased by the association or is otherwise available for the use of its members or designated as common area in or pursuant to the declaration.

“Declaration” means any recorded association document, however denominated, that imposes obligations on the owners of the units with respect to maintenance or operational responsibilities for the common area, architectural control, maintenance of units, or restrictions on the use of units. A declaration includes any amendment or supplement to the instruments described in this definition.

“Member” means the person or persons owning a unit or having the right of occupancy of a unit under a recorded lease having a term of twenty or more years from its commencement date; or anyone included in the definition of a member under the association documents, including the developer, whether or not the developer owns a unit.

“Person” means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

“Planned community” means one of the following:

- (1) Real property, other than a condominium or a cooperative housing corporation or a time share plan, that is subject to a planned community association as defined under section 607-14; or
- (2) A common interest community, other than a condominium or a cooperative housing corporation or a time share plan, which includes all of the following characteristics:

(A) Real property subject to a recorded declaration placing restrictions and obligations on the owners of the real property that are enforced or enforceable by a separate entity, the association, established for that purpose whether or not mentioned in the declaration, and:

- (i) That owns and maintains certain property within the planned community for the common use or benefit, or both, of the owners of units within the planned community;
- (ii) That is obligated to maintain certain property it does not own within the planned community for the common use or benefit, or both, of the owners of units within the planned community; or
- (iii) That is obligated to provide services to any such owners or units;

(B) Individual owners own separate units that are part of a planned community at least some of which are improved by or are to be improved by residential dwellings;

(C) Owners have automatic and non-severable membership in an association by virtue of ownership of units within the planned community; and

(D) Owners, other than a master developer or declarant, are obligated by any association document to pay mandatory assessments by virtue of ownership of a unit within the planned community

“Recorded” means recorded or filed in the bureau of conveyances of the State or in the office of the assistant registrar of the land court of the State, as appropriate.

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“Unit” means a physical portion of the planned community designated for separate ownership or occupancy. [L 1997, c 132, pt of §1; am L 2001, c 68, §1; am L 2008, c 70, §3; am L 2012, c 182, §2(2)]

Case Notes

Where charter was not recorded, and because homeowner association's first amended declaration could not reasonably be interpreted as creating the requisite authority in the association to impose a mandatory payment of money for maintenance or services, the association was not an “association” under the plain meaning of this section; thus, association was not entitled to fees and costs pursuant to §421J-10. 114 H. 361, 162 P.3d 1277 (2007).

Where homeowners' association did not qualify as an association because it was not granted authority in a declaration satisfying the statutory definition of “association” in this section, trial court erred in awarding attorney's fees and costs pursuant to §421J-10. 112 H. 356 (App.), 145 P.3d 899 (2006).

Reviewer's Note

L 2008, c 70, §3 amended the definition of “association” in §421J-2 after the previous case was decided.

[§421J-3] Board of directors. (a) Every member of the board of directors shall be a member of the association. However, a developer may appoint or elect directors pursuant to any special voting rights or power of appointment reserved to the master developer.

(b) The board of directors shall be composed of the number and group of persons specified in the association documents. There shall not be more than one representative on the board of directors from any one unit that is owned by any person other than the master developer or declarant. [L 1997, c 132, pt of §1]

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

- (1) Hand delivery;
- (2) United States mail sent to the mailing address of each unit or to another mailing address designated in writing by the association member;
- (3) Electronic mail to the electronic mailing address designated in writing by the association member;
or
- (4) Posting of the meeting notice in its entirety on a portion of the association's website that is accessible to all members.

(b) Notice pursuant to this section shall state:

- (1) The date, time, and place of the meeting; and
- (2) The items on the agenda, including the general nature of and rationale for any proposed amendment to the declaration or bylaws; any proposal for a special assessment, unless the authority for a special assessment is otherwise provided for in the association's governing documents; and any proposal to remove a member of the board.

(c) The requirements of this section shall not be interpreted to preclude any association member from proposing an amendment to the declaration or bylaws or proposing to remove a member of the board at an association meeting.

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(d) The requirements of this section shall not be interpreted to apply to any board meetings or committee meetings of a planned community association. [L 2013, c 188, §2]

Reviewer's Note

Website title and brackets for §421J-3.5 ("Notice required; regular annual and special meetings") differs from title in L 2013, c 188 (GM 1291) signed by the Governor ("Notice Required"). Website title was used.

§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) 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 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 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

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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. [L 1997, c 132, pt of §1; am L 2001, c 191, §1; am L 2016, c 238, §1]

Reviewer's Note

The proxy statement changes in this section shall apply to proxies for meetings of a planned community association that occur on or after October 1, 2016. [L 2016, c 238, §4]

§421J-5 Meetings of the board of directors; committee or subcommittee. (a) All meetings of the board of directors, other than executive sessions, shall be open to all members to provide input on the matters being discussed. Members who are not on the board of directors may participate in any deliberation or discussion, other than during executive sessions, unless a majority of a quorum of the board of directors votes otherwise.

(b) The board of directors shall meet at least once each year.

(c) The board of directors, with the approval of a majority of a quorum of its members, may adjourn any meeting and reconvene in executive session to discuss and vote upon matters concerning personnel, litigation in which the association is or may become involved, or as may be necessary to protect the attorney-client privilege of the association. The general nature of any business to be considered in executive session shall be first announced in the regular session.

(d) No board member shall vote by proxy at board meetings.

(e) A director who has a conflict of interest on any issue before the board shall disclose the nature of the conflict of interest prior to a vote on that issue at the board meeting, and the minutes of the meeting shall record the fact that a disclosure was made.

(f) The board may appoint committees or subcommittees to review and consider any specific matters, and may alter or eliminate the committees or subcommittees; provided that the board in the minutes of the meeting at which the action was taken to appoint the committee or subcommittee shall:

- (1) Report that the committee or subcommittee was appointed;
- (2) Identify the members of the committee or subcommittee; and
- (3) Describe the matter that the committee or subcommittee is to review and consider.

(g) Minutes of the meetings of the board of directors shall include the recorded vote of each board member present on all motions except motions voted upon in executive session. [L 1997, c 132, pt of §1; am L 2006, c 312, §2; am L 2008, c 191, §1]

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[§421J-6] Robert's Rules of Order. All association and board of directors meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order, Newly Revised. [L 1997, c 132, pt of §1]

§421J-7 Documents of the association. (a) Association documents, the most current financial statement of the association, and the minutes of the most recent meeting of the board of directors (other than minutes of executive sessions) shall be made available for examination by any member at no cost, on twenty-four-hour loan or during reasonable hours.

(b) The minutes of board meetings other than executive sessions, once approved, for the current and prior year shall be:

- (1) Available for examination by any member at no cost or on twenty-four-hour loan; or
- (2) Transmitted to any member requesting copies of the minutes, by the board, the managing agent, or the association's representative, within a reasonable period of time from receipt of the request; provided that:
 - (A) The minutes shall be transmitted by mail, electronic mail transmission, or facsimile, as requested by the member, if the member indicates a preference at the time of the request; and
 - (B) Reasonable costs of duplication, postage, stationery, and other administrative costs associated with handling the request shall be borne by the requesting member; and
- (3) Maintained by the association for at least five years.

(c) Financial statements, general ledgers, accounts receivable ledgers, accounts payable ledgers, check ledgers, insurance policies, contracts, invoices of the association for the duration those records are kept by the association, and any documents regarding delinquencies of ninety days or more shall be made available for examination by members at reasonable hours at a location designated by the board; provided that members shall pay for all costs associated with the examination of these documents. The board may require members to furnish the association with an affidavit stating that the foregoing information is requested in good faith for the protection of the interests of the association, its members, or both. Copies of these documents shall be provided to any member upon the member's request if the member pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request.

(d) Members may view proxies, tally sheets, ballots, members' check-in lists, and the certificates of election, if any, for a period of thirty days following any association meeting; provided that members may be charged for any costs associated with the examination of the documents. The board may require members to furnish to the association an affidavit stating that the foregoing information is requested in good faith for the protection of the interests of the association, its members, or both. Proxies and ballots may be destroyed following the thirty-day period. Copies of tally sheets, members' check-in lists, and the certificates of election from the most recent association meeting shall be provided to any member upon the member's request if the member pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request.

(e) Members may file a written request with the board to examine other documents of the association. The board shall give written authorization, or written refusal with an explanation of the refusal, for the examination within sixty calendar days of receipt of the request. The board may condition its approval of any such request upon payment of reasonable fees. Without limitation, books and records kept by or on behalf of an association may be withheld from inspection and copying to the extent that they concern:

- (1) Personnel records;
- (2) An individual's medical records;

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- (3) Records relating to business transactions that are currently in negotiation;
- (4) Communications that are privileged because of attorney-client privilege or any other applicable privilege of the association;
- (5) Complaints against an individual member of the association;
- (6) Any records, the release of which could be a violation of any law, ordinance, rule, or regulation; or
- (7) Similar records. [L 1997, c 132, pt of §1; am L 2006, c 312, §3]

[§421J-7.5] Restatement of association documents. (a) Notwithstanding any provision of this chapter, an association, by a resolution adopted by the board, may at any time restate the association documents of the association to include amendments to the association documents.

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

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

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

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

(d) A restated association document shall be recorded if the original document was recorded and the restated association documents shall supersede the original association documents and any relative amendments. In the event of any conflict, the restated association documents shall be subordinate to the original association documents and any relative amendments. [L 2008, c 70, pt of §2]

[§421J-8] Membership list. The association shall use good faith efforts to keep an accurate and current list of the names and addresses of association members. If the list is not provided directly to members, the association shall develop a reasonable procedure by which owners may solicit votes or proxies or provide information to other owners with respect to association matters. The board may require members to furnish the association with an affidavit stating that the use of the list is requested in good faith for the protection of the association, its members, or both. [L 1997, c 132, pt of §1]

[§421J-9] Notification of assessment increases. The board of directors shall notify members in writing of any increase in regular assessments at least thirty days prior to the increase. [L 1997, c 132, pt of §1]

[§421J-10] Attorneys' fees and expenses of enforcement. (a) All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the association for:

- (1) Collecting any delinquent assessments against any unit or the owner of any unit;

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- (2) Foreclosing any lien on any unit; or
- (3) Enforcing any provision of the association documents or this chapter; against a member, occupant, tenant, employee of a member, or any other person who in any manner may use the property, shall be promptly paid on demand to the association by such person or persons; provided that if the association is not the prevailing party, all costs and expenses, including reasonable attorneys' fees, incurred by any such person or persons as a result of the action of the association, shall be promptly paid on demand to the person by the association. The reasonableness of any attorney's fees paid by a person or by an association as a result of an action pursuant to paragraph (2) shall be determined by the court.

(b) If any member is the prevailing party in any action against an association, any of its officers or directors, or its board of directors to enforce any provision of the association documents or this chapter, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by the member shall be awarded to the member; provided that no such award shall be made in any derivative action unless:

- (1) The member first shall have demanded and allowed reasonable time for the board of directors to pursue an enforcement action; or
- (2) The member demonstrates to the satisfaction of the court that a demand for enforcement made to the board of directors would have been fruitless.

If a member is not the prevailing party in any court action against an association, any of its officers or directors, or its board of directors, to enforce any provision of the association documents or this chapter, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by the association shall be awarded to the association, unless the action was filed in small claims court, or, prior to filing the action in a higher court, the owner has first submitted the claim to mediation pursuant to section 421J-13, and made a good faith effort to resolve the dispute under any of those procedures.

(c) Nothing in this section shall be construed to prohibit the board of directors from authorizing the use of a collection agency. [L 1997, c 132, pt of §1]

Case Notes

Where charter was not recorded, and because homeowner association's first amended declaration could not reasonably be interpreted as creating the requisite authority in the association to impose a mandatory payment of money for maintenance or services, the association was not an "association" under the plain meaning of §421J-2; thus, association was not entitled to fees and costs pursuant to this section. 114 H. 361, 162 P.3d 1277 (2007).

Where homeowners' association did not qualify as an association because it was not granted authority in a declaration satisfying the statutory definition of "association" in §421J-2, trial court erred in awarding attorney's fees and costs pursuant to this section. 112 H. 356 (App.), 145 P.3d 899 (2006).

Reviewer's Note

L 2008, c 70, §3 amended the definition of "association" in §421J-2 after the previous case was decided.

§421J-10.5 Association fiscal matters; lien for assessments. (a) All sums assessed by the association, but unpaid for the share of the assessments chargeable to any unit, shall constitute a lien on the unit. The priority of the association's lien shall, except as otherwise provided by law, be as provided in the association documents or, if no priority is provided in the association documents, by the recordation date of the liens; provided that any amendment to the association documents that governs the priority of liens on the unit shall not provide that an association lien shall have priority over a mortgage lien that is recorded before the amendment is recorded. A lien recorded by an association for unpaid assessments shall expire six years from the date of recordation unless proceedings to enforce the lien are instituted prior to the expiration of the lien; provided that the expiration of a recorded lien shall in no way affect the

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association's automatic lien that arises pursuant to this subsection or the association documents. Any proceedings to enforce an association's lien for any assessment shall be instituted within six years after the assessment became due; provided that if the owner of a unit subject to a lien of the association files a petition for relief under the United States Bankruptcy Code (11 U.S.C. §101 et seq.), the period of time for instituting proceedings to enforce the association's lien shall be tolled until thirty days after the automatic stay of proceedings under section 362 of the United States Bankruptcy Code (11 U.S.C. §362) is lifted.

The lien of the association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures set forth in chapter 667, by the managing agent or board, acting on behalf of the association and in the name of the association; provided that no association may exercise the nonjudicial or power of sale remedies provided in chapter 667 to foreclose a lien against any unit that arises solely from fines, penalties, legal fees, or late fees, and the foreclosure of any such lien shall be filed in court pursuant to part IA of chapter 667. In any association foreclosure, the unit owner shall be required to pay a reasonable rental for the unit, if so provided in the association documents or the law, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rental owed by the unit owner or any tenant of the unit. If the association is the plaintiff, it may request that its managing agent be appointed as receiver to collect the rental from the tenant. The managing agent or board, acting on behalf of the association and in the name of the association, may bid on the unit at foreclosure sale and acquire and hold, lease, mortgage, and convey the unit thereafter as the board deems reasonable. Action to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the unpaid assessments owed.

In the case of a voluntary conveyance, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for the grantor's share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee. Any such grantor or grantee is entitled to a statement from the board, either directly or through its managing agent or resident manager, setting forth the amount of the unpaid assessments against the grantor. The grantee is not liable and the unit conveyed is not subject to a lien for any unpaid assessments against the grantor in excess of the amount set forth in the statement, except as to the amount of subsequently dishonored checks mentioned in the statement as having been received within the thirty day period immediately preceding the date of such statement.

(b) Except as provided in subsection (g) or in the association documents, when the mortgagee of a mortgage of record or other purchaser of a unit obtains title to the unit as a result of foreclosure of the mortgage, the acquirer of title and the acquirer's successors and assigns shall not be liable for the share of the assessments by the association chargeable to the unit that became due prior to the acquisition of title to the unit by the acquirer. The unpaid share of assessments shall be deemed to be assessments collectible from all of the unit owners, including the acquirer and the acquirer's successors and assigns. The mortgagee of record or other purchaser of the unit shall be deemed to acquire title and shall be required to pay the unit's share of assessments beginning:

- (1) Thirty-six days after the order confirming the sale to the purchaser has been filed with the court;
- (2) Sixty days after the hearing at which the court grants the motion to confirm the sale to the purchaser;
- (3) Thirty days after the public sale in a nonjudicial power of sale foreclosure conducted pursuant to chapter 667; or
- (4) Upon the recording of the instrument of conveyance;

whichever occurs first; provided that the mortgagee of record or other purchaser of the unit shall not be deemed to acquire title under paragraph (1), (2), or (3), if transfer of title is delayed past the thirty-six days specified in paragraph (1), the sixty days specified in paragraph (2), or the thirty days specified in paragraph (3), when a person (other than the mortgagee of record or other purchaser of the unit) who appears at the hearing on the motion or a party to the foreclosure action (other than the mortgagee of record or other purchaser of the unit) requests reconsideration of the motion or order to confirm sale, objects to the form of the proposed order to confirm sale, appeals the decision of the court to grant the

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motion to confirm sale, or the debtor or mortgagor declares bankruptcy or is involuntarily placed into bankruptcy. In any such case, the mortgagee of record or other purchaser of the unit shall be deemed to acquire title upon recordation of the instrument of conveyance.

(c) Except as provided in section 667-B(c), no unit owner shall withhold any assessment claimed by the association. A unit owner who disputes the amount of an assessment may request a written statement clearly indicating:

- (1) The amount of regular and special assessments included in the assessment, including the due date of each amount claimed;
- (2) The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment;
- (3) The amount of attorneys' fees and costs, if any, included in the assessment;
- (4) That under Hawaii law, a unit owner has no right to withhold assessments for any reason;
- (5) That a unit owner has a right to demand mediation to resolve disputes about the amount or validity of an association's assessment; provided that the unit owner immediately pays the assessment in full and keeps assessments current; and
- (6) That payment in full of the assessment does not prevent the unit owner from contesting the assessment or receiving a refund of amounts not owed.

Nothing in this section shall limit the rights of a unit owner to the protection of all fair debt collection procedures mandated under federal and state law.

(d) A unit owner who pays an association the full amount claimed by the association may file a claim against the association in court, including small claims court, or require the association to mediate under section 421J-13 to resolve any disputes concerning the amount or validity of the association's claim. If the unit owner and the association are unable to resolve the dispute through mediation, either party may file for relief with a court; provided that a unit owner may only file for relief in court if all amounts claimed by the association are paid in full on or before the date of filing. If the unit owner fails to keep all association assessments current during the court hearing, the association may ask the court to temporarily suspend the proceedings. If the unit owner pays all association assessments within thirty days of the date of suspension, the unit owner may ask the court to recommence the proceedings. If the unit owner fails to pay all association assessments by the end of the thirty-day period, the association may ask the court to dismiss the proceedings. The unit owner shall be entitled to a refund of any amounts paid to the association that are not owed.

(e) In conjunction with or as an alternative to foreclosure proceedings under subsection (a), where a unit is owner-occupied, the association may authorize its managing agent or board, after sixty days written notice to the unit owner of the unit's share of the assessments, to terminate the delinquent unit's access to the common areas and cease supplying a delinquent unit with any and all services normally supplied or paid for by the association. Any terminated services and privileges shall be restored upon payment of all delinquent assessments, but need not be restored until payment in full is received.

(f) Before the board or managing agent may take the actions permitted under subsection (e), the board shall adopt a written policy providing for such actions and have the policy approved by a majority vote of the unit owners, as provided in the association documents, who are present in person or by proxy or as otherwise permitted by the association documents, at an annual or special meeting of the association or by the written consent of a voting interest equal to a quorum of the unit owners unless the association documents already permit the process.

(g) Subject to this subsection and subsection (h), the board may specially assess the amount of the unpaid regular periodic assessments for assessments against a person who, in a judicial or nonjudicial power of sale foreclosure, purchases a delinquent unit; provided that:

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- (1) A purchaser who holds a mortgage on a delinquent unit, which mortgage is not subordinate to the priority of lien by the association, and who acquires the delinquent unit through a judicial or nonjudicial foreclosure proceeding, including purchasing the delinquent unit at a foreclosure auction, shall not be obligated to make, nor be liable for, payment of the special assessment as provided for under this subsection; and
- (2) A person who subsequently purchases the delinquent unit from the mortgagee referred to in paragraph (1) shall be obligated to make, and shall be liable for, payment of the special assessment provided for under this subsection; and provided further that the mortgagee or subsequent purchaser may require the association to provide, at no charge, a notice of the association's intent to claim a lien against the delinquent unit for the amount of the special assessment, prior to the subsequent purchaser's acquisition of title to the delinquent unit. The notice shall state the amount of the special assessment, how that amount was calculated, and the legal description of the unit.

(h) The amount of the special assessment assessed under subsection (g) shall not exceed the total amount of unpaid regular periodic assessments that were assessed during the six months immediately preceding the completion of the judicial or nonjudicial power of sale foreclosure.

(i) For purposes of subsections (g) and (h), the following definitions shall apply, unless the context requires otherwise:

“Completion” means:

- (1) In a nonjudicial power of sale foreclosure, when the affidavit required under section 667-33 is recorded; and
- (2) In a judicial foreclosure, when a purchaser is deemed to acquire title pursuant to subsection (b).

“Regular periodic assessments” does not include:

- (1) Any special assessment, except for a special assessment imposed on all units as part of a budget adopted pursuant to the association documents;
- (2) Late charges, fines, or penalties;
- (3) Interest assessed by the association;
- (4) Any lien arising out of the assessment; or
- (5) Any fees or costs related to the collection or enforcement of the assessment, including attorneys' fees and court costs. [L 2012, c 182, pt of §21; am L 2014, c 65, §2]

Reviewer's Note

Section titles are usually displayed without brackets if they have been amended. §421J-10.5 was not officially changed with the 2014 amendments. Since it was changed on the website, the change has also been noted here.

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[§421J-10.6] Association fiscal matters; collection of unpaid assessments from tenants or rental agents. (a) If a unit owner rents or leases the unit and is in default for thirty days or more in the payment of the unit's share of the regular assessments, the board, for as long as the default continues, may demand in writing and receive each month, or any other period of time for rental payment as provided in the lease, from any tenant occupying the unit or rental agent renting the unit, an amount sufficient to pay all sums due from the unit owner to the association, including interest, if any, but the amount shall not exceed the tenant's rent due at the time of demand. The tenant's payment under this section shall discharge that amount of payment from the tenant's rent obligation, and any contractual provision to the contrary shall be void as a matter of law.

(b) Before taking any action under this section, the board shall give to the delinquent unit owner written notice of the board's intent to collect the rent owed. The notice shall:

- (1) Be sent both by first-class and certified mail;
- (2) Set forth the exact amount the association claims is due and owing by the unit owner; and
- (3) Indicate the intent of the board to collect such amount from the rent, along with any other amounts that become due and remain unpaid.

(c) The unit owner shall not take any retaliatory action against the tenant for payments made under this section.

(d) The payment of any portion of the unit's share of regular assessments by the tenant pursuant to a written demand by the board is a complete defense, to the extent of the amount demanded and paid by the tenant, in an action for nonpayment of rent brought by the unit owner against a tenant.

(e) The board may not demand payment from the tenant pursuant to this section if:

- (1) A commissioner or receiver has been appointed to take charge of the unit pending a mortgage foreclosure;
- (2) A mortgagee is in possession of the unit pending a mortgage foreclosure; or
- (3) The tenant is served with a court order directing payment to a third party.

(f) In the event of any conflict between this section and any provision of chapter 521, the conflict shall be resolved in favor of this section; provided that if the tenant is entitled to an offset of rent under chapter 521, the tenant may deduct the offset from the amount due to the association, up to the limits stated in chapter 521. Nothing herein precludes the unit owner or tenant from seeking equitable relief from a court of competent jurisdiction or seeking a judicial determination of the amount owed.

(g) Before the board may take the actions permitted under subsection (a), the board shall adopt a written policy providing for the actions and have the policy approved by a majority vote of the unit owners, as provided in the association documents, who are present in person or by proxy or as otherwise permitted by the association documents, at an annual or special meeting of the association or by the written consent of a voting interest equal to a quorum of the unit owners unless the association documents already permit the process. [L 2012, c 182, pt of §2(1)]

[§421J-11] Applicability of other laws. Nothing in this chapter shall be construed to exempt any association or person from compliance with any applicable law, or subject any association or person to any other applicable law; provided that in the event of a conflict between any such law and this chapter, this chapter shall govern. [L 1997, c 132, pt of §1]

§421J-12 Amendment of association documents when no procedure provided. (a) Whenever an association document provides that it may be amended by the vote of association members at a meeting, the association document may also be amended by the written consent of the same percentage of association members without a meeting.

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

(c) For purposes of this section, a requirement in any association document that an owner must sign an amendment to that document shall be satisfied by the receipt of a written consent signed by the owner. [L 1997, c 132, pt of §1; am L 2008, c 70, §4]

[§421J-13] Mediation of disputes. (a) At the request of any party, any dispute concerning or involving one or more members and an association, its board of directors, managing agent, manager, or one or more other members relating to the interpretation, application, or enforcement of this chapter or the association documents, shall first be submitted to mediation.

(b) Nothing in subsection (a) shall be interpreted to mandate the mediation of any dispute involving:

- (1) Actions seeking equitable relief involving threatened property damage or the health or safety of association members or any other person;
- (2) Actions to collect assessments;
- (3) Personal injury claims; or
- (4) Actions against an association, a board of directors, or one or more directors, officers, agents, employees, or other persons for amounts in excess of \$2,500 if insurance coverage under a policy of insurance procured by the association or its board of directors would be unavailable for defense or judgment because mediation was pursued.

(c) If any mediation under this section is not completed within two months from commencement, no further mediation shall be required unless agreed to by the association and the member. [L 1997, c 132, pt of §1]

[§421J-14] First annual meeting of association. The first annual meeting of the association shall take place as provided in the association documents, but not later than one year after the closing of the first conveyance of a unit to a person other than a developer. [L 1997, c 132, pt of §1]

§421J-15 Service of process. The board shall establish a policy to provide reasonable access to persons authorized to serve civil process in compliance with section 634-21.5. [L 2009, c 158, §2; am L 2011, c 65, §1]

[§421J-16] Medical marijuana; discrimination. A provision in any association document allowing for any of the discriminatory practices listed in paragraphs (1) to (7) of section 515-3 against a person residing in a unit who has a valid certificate for the medical use of marijuana as provided in section 329-123 in any form is void, unless the association document prohibits the smoking of tobacco and the medical marijuana is used by means of smoking. Nothing herein shall be construed to diminish the obligation of a planned community association to provide reasonable accommodations for persons with disabilities pursuant to section 515-3(9). [L 2015, c 242, §3]

Cross References

For similar provisions, see §§514A-88.5 and 514B-113.