

## Why 421-J?

When we started the fiscal year in July, the BOD was made aware of many legal matters that only a few on the Board were informed of, which lead us to seek new counsel that were not associated with the former Board. The BOD voted to retain ES&A Law from Oahu which specializes in employment law, association law and real estate law. Following a review of our Articles of Incorporation and Bylaws, we were advised that we are not in compliance with state statutes. After an investigation and analysis as to which statutes HPPOA is to be governed by and why, it was determined that HPPOA falls under 414-D for our non-profit status and 421-J because of the makeup of our community. After receiving the legal opinion from them, staff located two additional legal opinions from Hilo Attorneys that stated the same thing, HPPOA is governed by 414-D and 421-J. It was apparent that the prior BODs in 2018 and 2019 ignored the opinions received, but our BOD did not.

421-J was created for planned communities, Homeowner Associations (HOA), and Owner Associations (OA). Our legal counsel stated we are a Planned community because the Association owns the roads that are for the common good of the community, we are required to maintain those common roads and we collect dues for the costs of the road maintenance. 421-J is very clear on the definition.

"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 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.

Some of our current bylaws were amended in 2015 to bring in some aspects of 421-J, but a good portion of the bylaws do not and therefore must be changed. The BOD voted to adopt the resolution 2023-01 to adhere to HRS 414-D and 421-J so that we are meeting our fiduciary duties to protect HPPOA, our non-profit status, and the laws governing corporations.

The next steps will be to bring the bylaws in compliance with state statutes which the BOD has requested the Bylaw Committee complete. Our attorney has provided the Bylaw Committee a copy of our bylaws with the areas needing to be addressed highlighted so that it will be easier. They have also offered to help with the wording of the changes to be sure we are in compliance. Once the Bylaws Committee has finished, they will present the changes at a Membership Meeting which requires two thirds vote to pass by those in attendance. After that, the bylaws will go for a final legal review and then mailed out to ALL owners for approval.

This is a very lengthy and costly process, so it is important that it be done correctly the first time around.