

ASSOCIATION OF OWNERS OF KUKUI PLAZA

BOARD RESOLUTION RE: COLLECTION OF DELINQUENT ASSESSMENTS

WHEREAS:

The association's Amendment and Second Restatement of Bylaws of the Association of Owners of Kukui Plaza ("Bylaws") authorize the Board of Directors (the "Board") to control the operation and management of the association; and

Section 13.4 of the Amendment and Second Restatement of Declaration of Condominium Property Regime of the Association of Owners of Kukui Plaza ("Declaration") and Article VI, Sections 1(a) and 3 and Article VII, section 2(p) of the Bylaws require the board to assess each owner a common expense assessment ("common expenses") and establish remedies for the nonpayment of those expenses; and

The board's priority of payment policy permits the board to apply payments received from delinquent owners to charges other than common expenses.

The board policy has been superseded by recent changes to the condominium law. Therefore, the board will not follow a priority of payment policy for payments received from a delinquent owner or the owner's agent ("owner").

Instead, the association's General Manager, with the assistance of the association's attorney, shall process all payments received from the owner in accordance with this resolution.

RESOLVED:

I. Application of Payments Received From Owners. In accordance with Hawaii Revised Statutes ("HRS") § 514B-105(c), the board shall first apply all payments received from owners to common expense assessments. Common expenses are: (i) fixed charges imposed on all owners that (ii) are not based on consumption (e.g., submetering) or other variables. Common expense assessments include maintenance fees, special assessments charged to all owners, flat fees charged to all owners (such as bulk cable charges), and limited common expense assessments that are charged to all owners or a class of owners, based on each owner's common interest. Common expenses do not include other amounts, such as attorneys' fees and costs, penalties or fines, late fees, lien filing fees, submetered electricity charges, or any similar charges.

NOTE: If the General Manager is not certain that a charge should be deemed a common expense, the General Manager shall treat the charge as an "other amount", not as a common expense, under the procedures outlined below.

If a delinquent owner submits a payment in response to a demand from the association and the owner owes both common expenses and other amounts, the association shall

apply the payment received as follows:

1. If the owner pays the full amount demanded by the association, the payment shall be applied to the account to clear the delinquency.
2. If the owner pays only the amount demanded for common expenses, the General Manager shall apply the payment to the owner's outstanding common expense assessments and send a letter to the owner demanding the rest of the delinquent amounts. This letter shall include: (i) disclosures on the owner's right to contest charges other than common expenses through mediation, under HRS § 514B-146; and (ii) the disclosures outlined in addendum A, attached. If the owner intends to dispute the additional charges, the association shall follow the procedure outlined in HRS § 514B-146 and section II of this resolution.
3. If the owner pays more than the amount demanded for common expenses but less than the entire amount demanded and does not indicate how the additional amounts are to be applied, the General Manager shall: (i) apply the payment first to any outstanding common expense assessments; and then (ii) hold the excess as a credit to the owner's account until the board determines how the excess should be applied. The General Manager shall send a letter to the owner requesting confirmation as to how the owner intended for the excess payment to be applied. This letter shall include the information stated in addendum A regarding the owner's rights under HRS § 514B-146. If the owner intends to dispute the additional amounts, the General Manager shall hold the credit on the owner's account without applying it to any charges other than common expenses. At the owner's request, the board shall follow the procedure outlined in HRS § 514B-146 and section II of this resolution for resolving disputes. If the owner does not respond within the 30 days provided by law, the board will determine how to apply the credit.
4. If the owner pays less than the common expenses demanded, the General Manager shall apply the payment to the delinquent common expense assessments and send a demand to the owner for the outstanding amounts. This letter shall include the information stated in addendum A regarding the owner's rights under HRS § 514B-146. If the owner intends to dispute the common expense assessments through mediation or any other process, the General Manager shall inform the owner that, by law, the owner must pay the outstanding common expense assessments prior to requesting mediation. If the owner intends to dispute any additional amounts except common expenses, the board shall follow the procedure outlined in HRS § 514B-146 and section II of this resolution.

II. Procedures for Resolving Disputes.

Common Expenses. Under HRS § 514B-146(d), an owner may not withhold common expenses for any reason. If an owner disputes the amount of the delinquent common

expense, the owner must first pay the delinquent common expense prior to requesting mediation or arbitration about the validity of the common expense.

Other Charges. If the owner disputes the amount of charges other than common expenses, the owner may:

- (i) Request written statements – as stated in the attached addendum A -- from the association pursuant to HRS §§ 514B-146(c) and (d); and
- (ii) Demand mediation to contest the validity of any charges for attorneys' fees and costs, penalties or fines, late fees, lien filing fees, or any other charges, except common expenses.

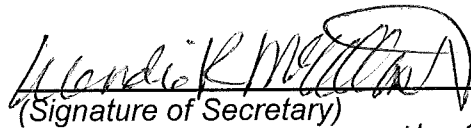
The owner has thirty (30) days from the date of the written statement to file a demand for mediation on the disputed charges, other than common expense assessments. If the owner fails to file for mediation within thirty (30) days of the date of the written statement, the association may proceed with collecting the charges. If the owner makes a request for mediation within thirty (30) days, the association shall be prohibited from attempting to collect any of the disputed charges until the association has participated in the mediation.

The mediation must be completed within sixty (60) days of the owner's request for mediation; provided that if the mediation is not completed within sixty (60) days or the parties are unable to resolve the dispute by mediation, the association may proceed with collection of all amounts due from the owner for attorney's fees and costs, penalties or fines, late fees, lien filing fees, or any other charge that is not imposed on all unit owners as a common expense.

BE IT FURTHER RESOLVED THAT a copy of this resolution shall be made available to all owners.

I hereby certify that the above resolution was adopted pursuant to the provisions of the law stated above and the DECLARATION and BYLAWS OF THE ASSOCIATION OF OWNERS OF KUKUI PLAZA, by the board of directors of the association, at a board meeting on SEPTEMBER 19, 2018.

DATED: Honolulu, Hawaii, 9/27, 2018.


(Signature of Secretary)

Wendie R. McAlister
(Print Name) Secretary

ADDENDUM A

The law provides for two statements to owners:

First: An owner who receives a demand for payment from an association and disputes the amount of an assessment may request a written statement clearly indicating:

- (1) The amount of common expenses included in the assessment, including the due date of each amount claimed;
- (2) The amount of any penalty or fine, late fee, lien filing fee, and any other charge included in the assessment that is not imposed on all unit owners as a common expense; and
- (3) The amount of attorneys' fees and costs, if any, included in the assessment.

Second: An owner who disputes the information in the first written statement received from the association (above) may request a subsequent written statement that additionally informs the unit owner that:

- (1) Under Hawaii law, an owner has no right to withhold common expense assessments for any reason;
- (2) An owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of an association's common expense assessment; provided that the owner immediately pays the common expense assessment in full and keeps common expense assessments current;
- (3) Payment in full of the common expense assessment shall not prevent the owner from contesting the common expense assessment or receiving a refund of amounts not owed; and
- (4) If the owner contests any penalty or fine, late fee, lien filing fee, or other charges included in the assessment, except common expense assessments, the unit owner may demand mediation within thirty (30) days of receiving the written statement, prior to paying those charges.

If an owner disputes a demand for payment from the association, the information in both statements shall be included in any response to the owner.