

ASSOCIATION OF APARTMENT OWNERS OF WAILEA EKAHI

COLLECTION POLICY

RECITALS

WHEREAS, the Association of Apartment Owners of Wailea Ekahi (the "Association") is charged with certain responsibilities regarding the care, maintenance, and service of certain portions of the community; and

WHEREAS, the Association must have the financial ability to discharge its responsibilities; and

WHEREAS, the payment of common assessments is necessary for the proper operation and management of the Association; and

WHEREAS, the governing documents of the Association and Chapters 514A and 514B, Hawaii Revised Statutes ("HRS"), provide that the duties of the Association shall include levying and collecting assessments from owners; and

WHEREAS, the Board of Directors (the "Board") is charged with pursuing collection of assessments and other charges from delinquent owners pursuant to Article VI of the Second Restated Bylaws of the Association of Apartment Owners of Wailea Ekahi ("Bylaws"); and

WHEREAS, the Board of the Association desires to adopt a uniform and systematic procedure to collect assessments and other charges of the Association;

NOW, THEREFORE, BE IT RESOLVED that the Association does hereby adopt the following procedures and policies for the collection of assessments and other charges of the Association.

TERMS OF POLICY

1. **Common Expenses.** Assessments shall be made for common expenses based on a budget adopted at least annually by the Board. The term "common expense" means expenditures made by, or financial liabilities of, the Association for operation of the property, and shall include the charges and expenses identified in Article VI, Section 1 of the Bylaws. No Owner shall withhold any assessment claimed by the Association. No Owner shall withhold any assessment claimed by the Association.

2. **Obligation to Pay Assessments.** All sums assessed by the Association but unpaid for the share of the common expenses chargeable to any property shall constitute a lien on the property. Each monthly assessment and each special assessment shall be separate, distinct and personal debts and obligations of the Owner against whom the same are assessed.

3. **Due Date.** Regular monthly assessments shall be due and payable monthly in twelve (12) installments due on the 1st day of each month. Special assessments shall be due and payable when directed by the Board.

4. **Late Charges.** If an Owner shall fail to pay any assessment when due, such Owner shall pay a late fee of Fifty Dollars (\$50.00) for each such default or defaults. Late fees shall be assessed on the twentieth (20th) day of each month and an additional late fee of Fifty (\$50.00) shall be assessed on the twentieth (20th) day of each subsequent month that any portion of the delinquent amount remains unpaid. The late charges shall be the personal obligation of the owner for which such assessment is unpaid. All late charges shall be due and payable immediately. The Board shall have discretion to waive late charges on a case-by-case basis depending on the circumstances, for example, if late payment was not due to any fault of the Owner.

5. **Return Check Charges.** Due to the administrative time and costs incurred, a \$30.00 fee may be assessed against an Owner in the event any check or other instrument attributable to or payable for the benefit of such Owner is not honored by the bank or is returned by the bank for any reason whatsoever, including but not limited to insufficient funds. Such return check charge shall be due and payable immediately upon demand. If two or more of an owner's checks are returned unpaid by the bank within any calendar year, the Association may require that all of the owner's future payments, for a period of one year, be made by certified check or money order.

6. **Full and Partial Payment.** All delinquent accounts remain delinquent until paid in full. No partial payments will waive the Association's right to pursue full payment and/or to enforce the provisions of this Policy.

7. **Attorney's Fees and Costs on Delinquent Accounts.** The Association shall be entitled to recover all of its reasonable attorney's fees and collection costs incurred in the collection of assessments or other charges due the Association from a delinquent owner. The reasonable attorneys' fees incurred by the Association shall be due and payable immediately when incurred, upon demand.

8. **Notices.** Notices and letters will be mailed to the owner's mailing address as shown in the Association's books and records. Owners have an obligation to provide their most current mailing address to the managing agent of the Association.

9. **Attorney Action.** Generally, the managing agent will first provide notice of the delinquency to the owner prior to referring to Association's attorneys; however, the Association may, at any time after the owner becomes delinquent, direct its attorneys to proceed with collection action, as certain circumstances may require. Once referred to the attorneys' office, the owner shall communicate directly with the attorneys' office and will be responsible for all attorneys' fees incurred for such communication, unless informed otherwise. Upon referral of the delinquent account to the Association's attorneys' office, the Board authorizes the attorneys' office to take all actions allowable by the governing documents, this Policy, HRS Chapters 514A, 514B and 667, including but not limited to the following actions:

- (1) Send a demand letter;
- (2) Record a lien against the property;
- (3) Foreclose by action or power of sale procedures set forth in HRS Chapter 667, if allowed for in the Bylaws;

- (4) File an action to recover a money judgment;
- (5) Negotiate and execute payment plans; and
- (6) Mediate and/or arbitrate any dispute concerning the delinquency.

10. Suspend privileges and access to amenities. With the requisite approval of the owners as may be necessary, if a property is owner-occupied, the Association may, after sixty (60) days' notice to the owner and to the property's first mortgagee of the nonpayment of the delinquency, terminate the delinquent owner's access to the common elements and cease supplying the delinquent property with any and all services and utilities 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.

11. Collection of Past Due Assessments from Tenants/Rental Agents. If an owner shall at any time rent or lease the property and shall default for a period of thirty (30) days or more in the payment of the owner's share of the common expenses, the Board may, at its option, so long as such default shall continue, may demand in writing and receive each month from any tenant occupying the property, or from any such owner's rental agent who collects rentals from lessees on behalf of the owner, an amount sufficient to pay all sums due from the property owner to the Association. Collection of rent shall be in accordance with Article VI, Section 6 of the Bylaws.

- (1) The tenant's payment shall not exceed the tenant's rent due each month.
- (2) The tenant or rental agent's payment shall discharge the amount of payment from the tenant's rent obligation.
- (3) The owner shall not take any retaliatory action against the tenant for payments made to the Association.
- (4) Before demanding any rent from the tenant, the Board shall give the owner written notice that the Board intends to collect the rent from the tenant. The notice shall be sent to the owner by first-class and certified mail at the owner's address shown on the records of the Association.
- (5) Demanding rent from a tenant shall not be deemed to prevent the Board from proceeding with foreclosure or any other means of collecting the Owner's delinquent common expenses.

12. Foreclosure special assessment. The Association may impose a special assessment for the amount of unpaid regular common assessments against a person or mortgagee who, in a judicial or nonjudicial power of sale foreclosure, purchases a delinquent property upon giving proper notice. This special assessment shall not exceed the total amount of unpaid regular monthly common assessments that were assessed during the six months immediately preceding the completion of the judicial or nonjudicial power of sale foreclosure, and cannot exceed the maximum allowed by law.

13. **Dispute of assessments.** Except as otherwise provided in the governing documents, the Association shall not be required to mediate or arbitrate actions to collect the common expense assessments unless the owner has first paid to the Association the full amount of the common expense assessment claimed by the Association. An owner who pays the full amount of the common expense assessment may file in small claims court or require the Association to mediate to resolve any disputes concerning the amount or validity of the Association's claim. An owner who contests the amount of any attorneys' fees and costs, penalties or fines, late fees, lien filing fees, or any other charges, except common expense assessments, may make a demand in writing for mediation of the validity of those charges. An owner has all rights of appeal granted by the Association's governing documents and Hawaii law.

14. **Notification to Owners and Effective Date.** After execution of this Collection Policy, the Association shall cause all owners to be notified of this Collection Policy. This Collection Policy shall supersede and replace any previously adopted collection policies. This Collection Policy shall be effective 30 days' after mailing the Policy to the Owners, except that the elimination of the priority of payment application is effective July 1, 2018.

IN WITNESS WHEREOF, the undersigned have executed this Collection Policy the 26th day of September in the year 2018.

Signature: Pat Davidson

Printed Name: PATRICIA DAVIDSON

Title: President

Signature: Elaine Hornell

Printed Name: Elaine Hornell

Title: Vice President

CERTIFICATE

I, hereby certify that the foregoing is a true copy of the Policy duly adopted at a meeting of the Board of Directors duly held on _____ and duly entered in the book of minutes of the Association, and that this Policy is in full force and effect.

ASSOCIATION OF APARTMENT OWNERS OF WAILEA EKAHI

Susan Ratzman Easley
Authorized Signature

SUSAN RATZMAN EASLEY
Printed Name

Title: Secretary

ASSOCIATION OF APARTMENT OWNERS OF WAILEA EKAHI

RESOLUTION OF BOARD OF DIRECTORS REGARDING COLLECTION POLICY

The Board of Directors (the "Board") for the Association of Apartment Owners of Wailea Ekahi, a Hawaii nonprofit corporation (the "Association") does hereby consent to the taking of the following actions and adopts the resolutions set forth below.

BACKGROUND:

To properly maintain the Association's common elements, it is imperative that all assessments be paid in full and on time.

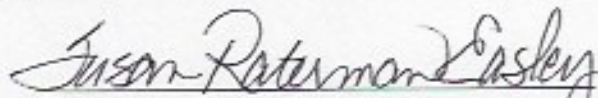
The governing documents of the Association and Chapter 514B, Hawaii Revised Statutes ("HRS"), provide that the duties of the Association shall include levying and collecting assessments from owners. The Board owes a duty to all owners to ensure payment of assessments to the extent allowable by law.

The Board has reviewed the Association's Collection Policy to allow the Association to take legal action in order to collect assessments and protect the interests of the Association.

NOW, THEREFORE, IT IS RESOLVED:

1. The Collection Policy ("Policy") as attached hereto is hereby adopted.
2. The Policy shall be binding upon and inure to the benefit of the all present and future owners, tenants and occupants of any apartments of Wailea Ekahi and all other persons who shall at any time use Wailea Ekahi.
3. The secretary ^{SR}by and the same is hereby directed to include this consent with the corporate records.

Dated: October 1, 2018.


Signature
Printed Name: SUSAN RATERMAN EASLEY
By Its: Secretary