

**THE WHALER ON KAA NAPALI BEACH
ASSOCIATION OF APARTMENT OWNERS**

POLICIES CONCERNING ENFORCEMENT OF OWNER OBLIGATIONS

BACKGROUND:

1. Section 5(a) of the Bylaws empowers the AOAO to assess a fine in the amount of \$50.00 for each month an owner fails to pay any assessment of more than \$75 within 15 days of the date it comes due;

2. Section 5(b) of the Bylaws of the AOAO authorizes the Board through the Managing Agent to levy fines of up to \$100 for each violation by an owner of the Declaration, Bylaws, or House Rules;

3. In 1999, the Hawai'i State Legislature amended HRS Chap. 514A to authorize the Board of Directors to demand rents payable by a tenant of an apartment owned by an owner who has defaulted in the payment of common expenses for thirty (30) days or more;

4. On May 27, 2002, at the 25th annual meeting of the owners, the AOAO adopted a self-help collection policy that allows the AOAO, among other things, to deny a delinquent owner access to project amenities; and,

5. To assist the Managing Agent in enforcing the Declaration, Bylaws and House Rules (the "Project Documents"), the Board of Directors at its January 2003 meeting agreed to clarify its policies with respect to the enforcement process.

NOW, THEREFORE, it is hereby stated to be the policy of the Board of Directors of the AOAO Whaler on Kaanapali Beach as follows:

Common Expense Delinquencies

1. The Managing Agent shall enforce owner compliance with the obligation to pay common expense assessments in the following manner:

(a) If a common expense assessment is not paid within fifteen (15) days of the date payment is due, the Managing Agent shall mail a reminder notice to the responsible owner or its designee explaining the consequences of non-payment including available self-help remedies and the accrual of interest, late charges equal to five percent (5%) of the amount due, and attorney's fees. The notice shall inform the responsible owner that the foregoing consequences will attach if the assessment is not paid within thirty (30) days of the date payment is due. The reminder notice shall be accompanied by a copy of this policy statement.

(b) If the amount due is not paid by the date stated in the notice; i.e., within thirty (30) days of the date payment is due, Association counsel shall make demand on the owner for payment within fifteen (15) days of the date of the demand.

2. If payment is not received within the time specified by the attorney demand, Association counsel shall commence collection by all allowable means, including recordation of notice of lien and foreclosure pursuant to Chap. 514A.

3. Before invoking any self-help remedy, including the interdiction of rent, the Managing Agent shall give to the delinquent apartment owner written notice of its intent to collect any and all rent owed in satisfaction of the outstanding common expense liability.

4. The written notice shall be sent by first class and certified mail, and may be part of the reminder notice.

5. The written notice shall set forth the exact amount the AOA claims is due and owing by the apartment owner.

6. The written notice shall confirm the intent of the Board of Directors to collect such amount, together with any other amounts that become due and remain unpaid from any rent owing to the owner; provided, however, the Managing Agent shall not demand payment from any tenant pursuant to this policy if: (1) a commissioner or receiver has been appointed to take charge of the premises pending a mortgage foreclosure; (2) a mortgagee is in possession pending a mortgage foreclosure; or, (3) the tenant is served with a court order directing payment to a third-party.

7. The written notice shall inform the delinquent owner-occupant that the self-help remedies available to the AOA include suspension of the right to use of the common elements.

8. Nothing in this policy shall affect the right of an owner to request arbitration of any disputed assessment of common expenses so long as the owner first pays the full amount of the assessment in dispute and otherwise fulfills the requirements of HRS § 514A-90(b).

Violation of House Rules

1. The Managing Agent shall enforce compliance with the Project Documents as follows:

(a) Within ten (10) days of discovering a violation, the Managing Agent shall provide the responsible owner with written notice of the particulars of the violation and of assessment of a \$50 per day fine from the date of the onset of the

violation through the date it ceases;

(b) If the fine levied by the Managing Agent is not paid within fifteen (15) days of the date of the demand, Association counsel shall be directed to make demand on the owner for payment within fifteen (15) days;

(c) If the levied fines are not paid within fifteen (15) days of the date of its demand, Association counsel shall commence enforcement by all means authorized by the Project Documents, Chap. 514A or such other law as may be applicable, including without limitation the procedures for collection of common expense assessments contained in this policy statement.

2. An owner subject to levy under this policy, on written request, may contest the levy at the next regularly scheduled meeting of the Board of Directors. The request for hearing must be received by the Managing Agent within fifteen (15) days of the date of the mailing of the notice of violation. Delivery of notice of intent to contest shall temporarily suspend the obligation of the affected owner to pay the amount of the levy, but delivery of the notice shall not toll accrual of the daily penalty, interest and attorney's fees in the event the Board of Directors sustains the action taken by the Managing Agent.

3. Subject to paragraph 2 of this part, nothing in this policy shall alter the right of an owner to request arbitration of any disputed assessment or levy so long as the owner first pays the full amount of the assessment or levy in dispute and otherwise fulfills the requirements of HRS § 514A-90(b).

4. With respect to any violation of the Declaration, Bylaws, or House Rules which, in the reasonable judgment of the general manager or director of security, threatens the quiet enjoyment of the property by others, the following enforcement procedures shall be employed:

First - - The individual believed to be causing the violation shall be contacted by the general manager or the director of security and directed to cease and desist from the activity creating the disturbance;

Second - - If the activity causing the violation continues, the general manager or director of security shall contact the owner of the apartment who shall be directed to make a reasonable effort to cause the violator to cease and desist from the activity creating the disturbance;

Third - - If the first and second step fail to end the disturbance, the general manager and the director of security shall, in the manner authorized by law, evict the individual causing the violation and his or her lawful guardian in the event the violator is a minor;

Fourth - - If eviction is unsuccessful or unavailable, the general

manager shall cause a charge of \$50.00 per violation per day to be assessed against the credit card deposit made by the responsible party at the time of check-in; and,

Fifth - - If the general manager is unsuccessful in making a credit card charge, the owner of the apartment shall be assessed the \$50.00 per day fine from the date of the onset of the violation.

5. A copy of this statement of policies shall be delivered on check-in to each non-owner occupant of an apartment.