

ASSOCIATION POLICY 100 – GOVERNANCE

Purpose

The purpose of this Governance Policy is to provide the framework from which the Board of Directors (“Board”) and Board Officers are guided in the fulfilling their fiduciary duties to administer and manage the affairs of the Association of Unit Owners of The Collection (“Association”) as set forth in the Declaration of Condominium Property Regime of The Collection, and Bylaws of the Association of Unit Owners of The Collection, as amended, (see *Exhibit A, Association Organizational Chart*) and in accordance with the Association’s mission, vision and values (see *Exhibit B, Association Vision, Mission, Values and Goals*). This policy also serves as a guide for the Committees and Management in fulfilling their respect duties and responsibilities, and organizational framework in which the Association functions.

Policy

1. General Powers and Duties of the Board

a. Powers. The Board is empowered to act on behalf of the Association pursuant to the Association’s governing documents, which includes the power to delegate its powers to committees, representatives, agents, officers and employees.¹

b. Duties. In the performance of the Board’s duties, all officers and directors owe the Association a fiduciary duty and shall exercise the degree of *care* and *loyalty* required of officer or director of a corporation organized pursuant to the Hawaii Nonprofit Corporation Act.² Specifically, a director shall discharge the director’s duties as a director, including the director’s duties as a member of a committee: (i) In good faith; (ii) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (iii) In a manner the director reasonably believes to be in the best interests of the Association.

c. Duty of Care

(1) Actions. Meeting a director’s duty of care generally requires acting in a reasonable and informed manner under the given circumstances. A common recitation of the standard of care is that which “an ordinarily prudent person in a like position would exercise under similar circumstances.” A *prudent person* is “a generalist with the ability to select and evaluate senior officers, oversee and evaluate association performance, review and approve major association plans and actions, and perform other functions normally performed by nonprofit directors.”³ A like position may take into account the size, type and complexity of the association.⁴

(2) Reliance. In discharging the director’s duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if

¹ Hawaii Revised Statutes §514B-106, and Association Bylaws §3.2.3.

² Hawaii Revised Statutes §514B-106.

³ Haas, Jeffrey. When the endowment tanks. ABA Business Law Today, v.12, no. 5 (May/June 2003).

⁴ Hawaii Revised Statutes §414D-149.

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prepared or presented by: (i) One or more officers or employees of the Association whom the director reasonably believes to be reliable and competent in the matters presented; (ii) Legal counsel, independent accountants, or other persons or entities as to matters the director reasonably believes are within the person or entity's professional or expert competence; or (iii) A committee of the Board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence. However, a director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance unwarranted.⁵

(3) Delegation. As set forth in Section 1.a., above, the Board generally delegates management of the Association's day-to-day operations to the Managing Agent and Resident General Manager (collectively, hereinafter referred to as "Management"), whose duties and responsibilities are summarized in Section 4, below.

b. Duty of Loyalty. Meeting a director's duty of loyalty generally requires acting in good faith and in the best interests of the Association. The key to meeting this duty is to place the interests of the Association before the director's own interests or the interests of other persons or entities. Two areas of greatest risk to the adherence to the duty of loyalty are director's need to identify and disclose conflicts of interest and keeping Board matters confidential.

(1) Conflict of interest. A director shall not vote at any board meeting on any issue in which the director has a conflict of interest. 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. "Conflict of interest", as used herein means an issue in which a director has a direct personal or pecuniary interest not common to other members of the Association.⁶

(2) Confidentiality. A director should keep the Association's official and private information confidential (*e.g., matters: concerning personnel, litigation in which the Association is or may [or could] become involved, involving attorney-client privilege of the Association, necessary to protect the interests of the Association while negotiating contracts, leases, and other commercial transactions*). A director should exercise reasonable diligence to keep such information confidential to mitigate risk associated with unauthorized persons or exploiting the information to the disadvantage of the Association. See the Association's Code of Conduct for Directors and Committee Members for further discussion on the duty of loyalty, including conflict of interest and confidentiality.

2. Roles and Responsibilities of the Board, Directors and Officers

a. Board of Directors. The role of the Board is to collectively govern the affairs of the Association, and act on behalf of the Association as set forth in Section 1, above. Responsible for steering the Association towards a sustainable future by adopting sound ethical governance and financial management policies, as well as by making sure the Association has adequate resources to advance its mission. They include compliance with governmental and regulatory requirements, maintenance and repairs, enforcement of the declaration, bylaws and administrative rules, delegation of

⁵ Id.

⁶ Hawaii Revised Statutes §514B-125(g)

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its powers to committees, representatives, agents, officers and employees, contracting with third-parties, providing financial oversight, etc.⁷

b. Directors. The role of directors includes voting on governing and oversight matters of the Association in the fulfillment of their fiduciary duties as set forth in Section 1, above.⁸

c. Board Meetings, Not Association or Member Meetings. Board meetings while open to Members of the Association and permitted to participate in any deliberation or discussion, other than executive sessions, pursuant to the owner participation rules adopted by the Board, they are not meetings of the Association or Members.⁹

d. President. The role of the President is to serve as the chief executive officer of the Association. The President is responsible for leading the Board in fulfilling their duties and ensures that appropriate actions are taken. Planning the Board meeting agenda, presides over the meetings, serves as the primary spokesperson for the Association, appoint members to the committees, and directs and liaisons with Management in fulfilling Board policies and directives.¹⁰

e. Vice President. The Vice President's role is to assume the duties and responsibilities of the President in his/her absence, and responsible for performing other duties as requested by the Board or President.¹¹

f. Secretary. The Secretary is charged with making sure that the directors have the proper resources for discharging their fiduciary duties to the Association; and has overall responsibility to create and maintain Association's minutes, records and other important documents. Such duties may be delegated to the Managing Agent.¹²

g. Treasurer. The Treasurer's role is to primarily manage and oversee the financial well-being of the Association. The Treasurer's responsibilities includes creating and managing the budget, reviewing investment activities, and overseeing the annual financial audit by the independent accountant, and chairs the Budget & Finance Committee. Such duties may be delegated to the Managing Agent.¹³

h. Executive Committee. The role of the Executive Committee is to assist the President in administering and managing the affairs of the Association. It is responsible for (i) Assisting President in fulfilling the day-to-day management and administration of the Association pursuant to the governing documents and Board directives; (ii) Assisting the President review major issues the Association faces, provide council in making preliminary decisions for discussion and action at the next full Board meeting; (iii) Act as a steering committee between Board meetings. The Executive Committee shall consist of the officers of the Association, and committee chairs, as the President deems appropriate, however, the delegation of powers to the Executive (or any other) Committee may be undertaken only pursuant to a

⁷ Bylaws §3.2; also "Roles and Responsibilities," National Council of Nonprofits.

⁸ "Roles and Responsibilities", Boardsource.

⁹ Bylaws §3.8.1 & §2.6.7; also Hawaii Revised Statutes §514B-125(a).

¹⁰ Bylaws §4.1.1

¹¹ Bylaws §4.1.2

¹² Bylaws §4.1.3; also BoardEffect.Com.

¹³ Bylaws §4.1.4.

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duly adopted resolution of the Board.¹⁴ See table below for the difference between *management* and *administration*.¹⁵

| Basis | Management | Administration |
|----------|---|---|
| Meaning | Art of getting things done through others by directing their efforts towards achievement of predetermined goals | It is concerned with formulation of board objectives, plans and policies |
| Nature | Is an execution function | A decision-making function |
| Process | Decides who should do it and how one should do it | Decides what is to be done and when it is to be done |
| Function | Is a doing function because managers get work done under their supervision | Is a thinking function because plans and policies are determined under it |
| Skills | Technical and human skills | Conceptual and human skills |
| Level | Middle and lower level function | Top level function |

3. Roles and Responsibilities of the Committees

a. General Guidelines for Committees

(1) The President, General Manager and Managing Agent shall be ex-officio (non-voting members of all committees), except when the President is a committee member.

(2) The President has the power to appoint committees from among Unit Owners from time to time as the President may in his/her discretion decide is appropriate to assist in the conduct of the affairs of the Association.¹⁶ The Board may appoint non-Unit Owners to committees.¹⁷

(3) All members of the committee shall be notified of any committee meeting at least 24 hours prior to a meeting. This requirement may be waived if all members agree.

(4) Generally, all committees serve in an advisory capacity to the Board of Directors. Unless otherwise approved by the Board, actions by committees shall be in the form of recommendations to and subject to approval by the Board of Directors. In specific circumstances, the Board may delegate specified powers to a committee, (*e.g., The Board approves a contract, subject to certain conditions being met to the satisfaction of the committee*).

(5) Meetings of committees may be called by the committee chair or by any two members.

(6) Majority of a committee is established based on the majority of the committee. Furthermore, committee members are required to comply with the Association's Code of Conduct for Board and Committee Members.

(7) Votes for recommendation, or decision as delegated by the Board, is by a majority of members present at a meeting.

¹⁴ Bylaws §3.2.3

¹⁵ KeyDifference.Com

¹⁶ Bylaws §4.1.1.

¹⁷ Bylaws §3.2.3; Hawaii Revised Statutes §514B – 108(b)(4).

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(8) Customarily members of each committee, other than the Executive Committee, shall not exceed five (5) and, that each committee will consist of no more than two (2) Board members and three (3) owners, or non-owners approved by the Board.

b. Budget & Finance Committee. The role of the Committee is to assist and advise the Executive Committee and Board on the Association's fiscal matters. The Committee responsibilities include: (i) Assisting in the preparation of the annual budget (the committee should meet with other committee chairpersons, staff, and Management to identify all areas of the project's operation); (ii) Monitor income and expenses of the Association; (iii) Assists the Treasurer with his/her responsibilities; and (iv) Make recommendations concerning, but not limited to, assessments and collection procedures, budget procedures, audits, tax preparation, cash management, and insurance. Its members are appointed by the President after being duly qualified and nominated by the Committee Chair, who shall be the Treasurer.

c. Building, Grounds & Design Review Committee. The role of the Committee is to assist the Board in overseeing and maintaining the quality and integrity of The Collection buildings, grounds, and review and approve resident applications for design requests within their condominium units which are not inconsistent with Section 7.6 or 7.7 of the Declaration of Condominium Property Regime of The Collection, and advises the Board on such matters. The Committee's responsibilities, include: (i) Inspecting property maintenance conditions, and periodically report to the Board and Management; (ii) Semi-annual walk-through of the buildings and ground in spring and fall, which should include Board members and Management (iii) Advising the Board on all matters related to the maintenance and improvement of the project; (iv) Making recommendations to the Board for major upgrades and enhancements; (v) Investigating complaints and violations of design controls and recommending action to the Board and Management; (vi) Reviewing and approving owner design applications consistent with the requirements set forth in the governing documents for Board ratification; (vii) Providing the Board recommendation for owners who submit a design variance request; (viii) Making recommendations for, and drafting, policies to revise existing or establish guidelines of design standards. Members of this Committee shall be appointed by the President after being duly qualified and nominated by the Committee Chair.

d. Governance Committee. The role of the Committee is to assist the Board in the review, oversight and the implementation of the Association's governing documents, rules and policies, and consistent with the Association's vision, mission and values, including serving as the Board's advisory committee on such matters. The Committee's responsibilities, include: (i) Providing recommendations to the Board for changes to the Administrative Rules; (ii) Working with Management to evaluate enforcement guidelines; (iii) Developing use standards and guidelines of common areas and limited common areas; (iv) Evaluating violation appeals and provides recommendations to the Board for resolution. Members of this Committee shall be appointed by the President after being duly qualified and nominated by the Committee Chair.

e. Social Activities Committee. The Committee's role is to assist the Board in planning, developing, reviewing, overseeing and recommending implementation of social programs, activities and events according to the needs and interests of the Association's owners and residents. Its responsibilities include: (i) Fostering a cohesive community by organizing fun and/or interesting events for the residents of The Collection so neighbors can meet and socialize with each other; (ii) Developing and recommending ideas for Association social events & plan events for the year in advance; (iii) Creating a detailed budget for each event for Board approval before the event and incurring expenses;

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(iv) Ensuring that all activities funded by the Association are available to all residents of the Association (e.g., *Easter egg hunt, 4th of July event, visit with Santa, ice cream socials, etc.*); and (v) Ensuring that events for specific groups of residents are not funded by the Association (e.g., *Ladies night, parent playgroups, card clubs, etc.*). Members of this Committee shall be appointed by the President after being duly qualified and nominated by the Committee Chair.

f. Ad Hoc Committees. The role and responsibilities of Ad Hoc Committees shall be delineated in the respective Board approved Request for Approval.

4. Roles and Responsibilities of Representatives, Agents, and Employees

a. Managing Agent. The role of the Association's Managing Agent is to assign a qualified Management Executive as the Association's liaison to the Board, owners, residents, and all vendors and professionals doing business with the Association. The Management Executive will assist the President in preparing meeting agendas and supporting meeting documents, attend meetings, provide information, receive instruction and carry out tasks as assigned by the Board and President. The Managing Agent shall assist with budgeting, billing & collections, accounting & reporting, contracts, inspections and assist with human resource matters of the Association. The Management Executive will instruct, evaluate and offer guidance to the Resident General Manager and other employees of the association and assist the Resident General Manager in establishing a schedule of inspections and servicing for maintenance.¹⁸

b. Resident or General Manager. The role of the Resident or General Manager ("General Manager") is to assure that the common areas and limited common areas of the Association are well maintained and that the residents enjoy living at The Collection within the governing documents, rules and applicable policies, including other duties assigned or as directed by the Board through the Managing Agent. The General Manager is responsible for the management, operations and maintenance of Association's entire common and limited common facilities, and plans, supervises, coordinates and manages all on-site activities under the supervision of the Managing Agent without any interference by individual Board members. The General Manager is responsible for maintenance schedules, maintenance requests from residents, supervision of other employees, and vendors called to work at the community, and also enforcing the Administrative Rules to ensure the owners/residents' rights of quiet & safe enjoyment of the property and quality of life are preserved. The General Manager also is responsible for providing a monthly activities report to the Board of Directors and Managing Agent.

5. Roles and Responsibilities of Owners

a. Roles and Responsibilities. The roles and responsibilities are set forth in the:

- (1) Declaration of Condominium Property Regime of The Collection;
- (2) Bylaws of the Association of Unit Owners of The Collection; and

¹⁸ Bylaws §3.3.

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(3) Administrative Rules and Board Policies.

b. Rules for Owners Participation at Board Meetings. Owners shall comply with the current Rules for Owners Participation at Board Meetings.

c. Rules for Owners Participation at Committee Meetings. Committee meetings are by invitation of the Committee Chair, or advance permission of the Committee Chair, and owners shall conduct themselves similar to the Rules for Owners Participation at Board Meetings.

Delegation of Authority

1. Board Delegation to Committees. The Board's and its Officers' general authority to delegate powers and duties to Committees is stated in the Bylaws and to specific Committees is set section in this Policy.

2. Board and Officers Delegation to Managing Agent. The Board's and its Officers' general authority to delegate powers and duties to the Managing Agent is stated in the Bylaws.

Reporting

1. Board. See Board Minutes and Request for Action Log.

2. Officers and Committees. See Officers and Committees Roles and Responsibilities, and Request of Action Policy, respectively and as applicable.

3. Managing Agent and Resident General Manager. See Managing Agent and Resident General Manager Roles and Responsibilities, respectively and as applicable.

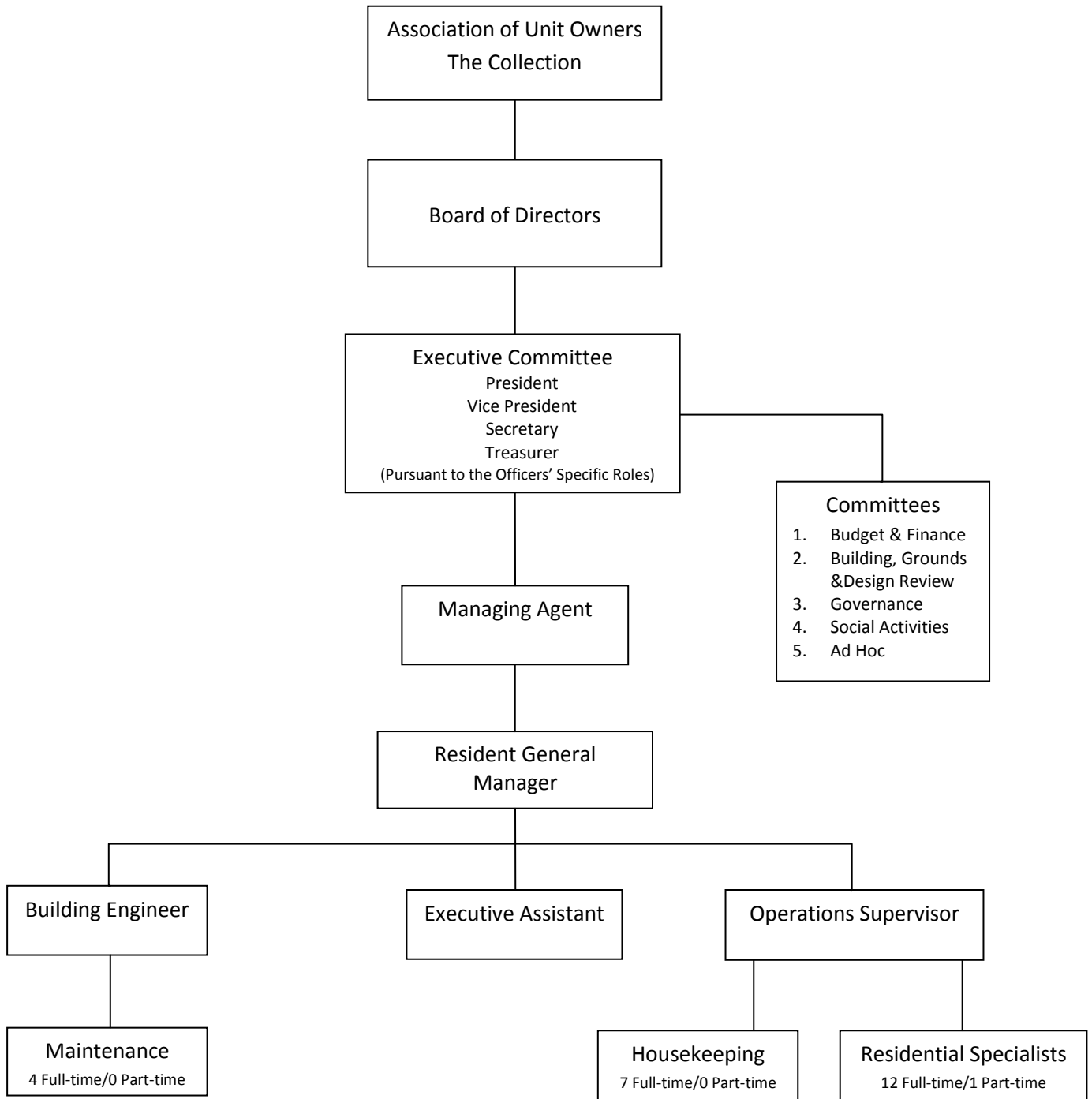
References: As Footnoted.

Tracking Information

Approved and Effective: March 22, 2018

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Exhibit A, Association Organization Chart



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Exhibit B, Association Vision, Mission, Values and Goals

A. Vision. We envision a community that offers an inspiring lifestyle, quality of life, and one of the most desirable places to live and work in Kaka’ako.

B. Mission. Our mission is to fulfill the vision for The Collection through effective and efficient management of the Association, judicious enforcement of rules, and support initiatives that benefit the greater good of our community.

C. Values. We strive to achieve our vision and mission through ethical and philosophical values which are proper in light of our community at-large.

D. Board Goals. Based upon The Collection’s vision, mission and values, the Board should collectively strive to:

1. Encourage collaborative and diverse participation.
2. Establish and maintain appropriate and effective community forums.
3. Satisfy, maintain and enhance community values, safety and regulatory requirements.
4. Build community relationships based on best practices and opportunities.
5. Enhance management effectiveness and efficiency, accountability, and deliverables.
6. Establish and maintain a viable financial position for the Association.
7. Be vigilant of and uphold the Association's Vision, Mission and Values.
8. Serve in the best interests and common good of the Association.

E. Owner & Resident Goals. Being respectful of Princess Bernice Pauahi Bishop’s legacy, the Charter for Kaiaulu ‘o Kaka’ako and The Collection’s Declaration, the owners and residents should collectively aspire to:

1. Perpetuate “*aloha*” throughout our community.
2. Uphold your “*kuleana*” for our community.
3. Be “*pono*” in all that one does within our community.