

From: Shaw [REDACTED]
Sent: Wednesday, July 17, 2019 5:28 PM
To: [REDACTED]
Subject: RFA TERMINATE/NON-RENEW MANAGING AGENT AGREEMENT

RFA

The agreement with Hawaiiana Management Co. Ltd ("HMC"), shall be terminated immediately and/or non-renewed; and, the directors approving the agreement shall be identified to the owners at least sixty (60) days before the next annual meeting or in the proxy materials, whichever is sooner.

RATIONALE

Some directors agreed to bind The Collection and placed fiduciary assets at risk by indemnifying HMC for wrongdoing by HMC. The scope of this clause in HMC's agreement seems to work as follows in this hypothetical: HMC causes a loss to an owner which is independent of The Collection Activities (as with deceptive billing or bad professional advice to the Board). An owner goes to mediation against HMC. The Collection insurance pays for a lawyer to defend HMC. After mediation, the owner goes to court and wins against HMC. The Collection and/or its insurer has to pay because of the horrible indemnity clause in the HMC agreement . Therefore, this clause in the agreement breaches the directors' fiduciary duties to owners.

Adding to this fiduciary lapse, some directors apparently made another agreement. In the context of disputes with HMC wherein The Collection is only slightly at fault, some directors may have waived conflicts of interest involved in joint legal representation. This way, one lawyer represents both The Collection and HMC. This tactic, along with the ill advised indemnity agreement with HMC, makes it impossible to settle disputes with The Collection **unless** HMC is "along for the ride." This is by way of a carefully drafted clause, which leaves HMC's name out. HMC refuses to pay anything or offer any concession, yet is the main beneficiary of settlement. Directors not involved with this conflict waiver are likely wondering why settlement is so difficult. The solution is to approve this RFA.

ACTION: Denied at 09/17/19 Board Meeting due to a lack of a motion.

RECORDING SECRETARY: Desmond Oliveira, Office Manager