

From: Shaw [REDACTED]
Sent: Thursday, July 18, 2019 7:03 PM
To: [REDACTED]
Subject: RFA TO SUSPEND CONTRIBUTIONS TO TOWER RESERVES PENDING DISPUTE RESOLUTION

RFA

Cease from requiring contributions to reserves on Tower budget for 2020 and afterward; and reverse last year's reserve contributions. Notify all owners that the amount of reserves contribution is being calculated based on a list of assets/items. These are now being challenged for necessity, accuracy, and validity; and, for the need to question the individuals who put the "shopping list" together. If the Board needs a dispute to take action, please treat this RFA as a dispute.

RATIONALE:

Examples from the proposed 2020 Budget (Tower pg 4): \$2602 to replace dog park furniture, \$32,888 to replace artwork. \$74,179 for balloon payment on former resident manager's luxury 3br unit. These vary from the reserve study on The Collection site (OwnersOnly) at http://thecollectionhonolulu.net/images/_userfiles/files/01%20Reserve%20Study%20Part%201.pdf While there are also items listed which require engineering/contracting expertise to analyze, the fluffy non-expert items cast serious doubt on the veracity of the entire list. So too do the secretive methods employed to arrive at the 2019 budget and other transactions during the terms of the first president and first two treasurers. Owners must therefore be notified immediately of their dispute rights under Bylaw 6.12.2 (below), HRS Chapter 514B, and any specific requirements for notifying the AOA of owners' disputes over the assets upon which reserves are being calculated.

BYLAW "6.12.2 Owner Challenge to Assessment. An Owner who pays the Association the full amount claimed by the Association 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 pursuant to Hawaii Revised Statutes Section 514B-146(d). If unable to resolve the dispute through mediation, either party may file for arbitration under Part VII of the Act, subject to the requirements set forth in said Section 514B-146(d). The Owner shall be entitled to a refund of any amounts paid to the Association which are not owed."

(NOTE: VOTING TALLY AND DIRECTORS' NAMES ON THIS RFA IS REQUIRED BY FIDUCIARY STANDARDS)

FURTHER ANALYSIS:

Owners at The Collection were blind-sided by failure of the initial officers of the Board to include owners in formulating the list of assets and other matters related to the reserve study. The study is on the website of The Collection (Owners Only) Hawaii Revised Statutes specifies the matter to be suspended until the dispute is resolved over the assets and the values attached to them. See Hawaii Revised Statutes (HRS) at 514B-148 (bold font added):

(a) The budget required under section 514B-144(a) shall include at least the following:

- (1) The estimated revenues and operating expenses of the association;
- (2) Information as to whether the budget has been prepared on a cash or accrual basis;
- (3) The total replacement reserves of the association as of the date of the budget;
- (4) The estimated replacement reserves the association will require to maintain the property based on a reserve study performed by the association;
- (5) A general explanation of how the estimated replacement reserves are computed;
- (6) **The amount the association must collect for the fiscal year to fund the estimated replacement reserves; and**

(7) Information as to whether the amount the association must collect for the fiscal year to fund the estimated replacement reserves was calculated using a per cent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves amount determined by the reserve study pursuant to paragraph (4).

The Board must revisit the alleged asset list, and re-establish the reserves. Hawaii Administrative Rules (HAR) do not prohibit revision of the asset list. See HAR (bold font added):

§ 16-107-65 Calculation of estimated replacement reserves; reserve study; good faith. (a) A board of directors of an association shall calculate the association's estimated replacement reserves based on a reserve study developed in compliance with this section. (b) **The board shall compile a list of the association's assets.** If the project's declaration and association's bylaws fail to clearly state whether a particular part of a condominium project is association property, the board may adopt a resolution allocating responsibility for that part to the association, an individual owner, or individual owners. The board's resolution shall be based on chapter 514A, HRS, the project's declaration and the association's bylaws, and any other applicable legal requirements or documents. The resolution shall clearly indicate whether the part in question:

- (1) Is an asset of the association;
- (2) Is the responsibility of an individual owner or individual owners, but fewer than all owners; or
- (3) Is partly an asset of the association and partly the responsibility of fewer than all owners, such as plumbing or electrical system.

The resolution shall state the basis of the board's decision and shall be effective to determine responsibility for replacement reserves for the part in question upon adoption and until changed by the board or by an amendment to the declaration or bylaws.

This request for action was denied for lack of a motion.

ACTION DATE: 10/29/19

RECORDING SECRETARY: Desmond Oliveira