

## REQUEST FOR ACTION

<b>To</b>	The Collection Board of Directors				
<b>Subject</b>	Require All Board Members & Managing Agent to comply with Bylaw 10.16.4 and HRS 414B-154.5				
<b>Preparer</b>	Steve Shaw				
<b>Date</b>	October 15, 2019	<b>For Board</b>	x	<b>Action</b>	<b>Info</b>

### EXECUTIVE SUMMARY

To require that the all persons, particularly the Managing Agent and members of the Board of Directors, comply with Bylaw 10.16.4 and HRS 514B-154.5.

### RECOMMENDATION

Bylaw 10.16.4 requires that records requests be made directly to the Board of Directors.

State Law, Hawaii Revised Statutes ("HRS") 514B-154.5, requires that information / records **"shall be made available to any unit owner and the owner's authorized agents by the managing agent, resident manager, board through a board member, or the association's representative:"**

**The deadline for records; or, in limited cases a response, is thirty (30) days from the request.** HRS 514B-154.5(a)(14) and 514B-154.5(c).

### RATIONALE

New Presidents and Directors often are unaware of the rigors of Hawaii's condominium records disclosure laws and the severe penalties for violations.

Seven (7) Directors were sent a request for records by an Owner on July 20, 2019. The President/Director received the request. There was no response in thirty days as required at Bylaw 10.16.4 and HRS 514B-154.5 subsections (a)(14) and (c). However, the Treasurer ordered the Managing Agent (M.A.) to provide the records. This was totally ignored by the M.A. Not a single receipt and matching invoice was provided to the Owner. The crucial records were urgently needed in ongoing meetings to finalize the 2020 Budget. The receipts and matching invoices would allow Owners and the Board to verify an unsubstantiated list of assets at the Property. Numerous items allegedly purchased for The Collection were "valued" by the Managing Agent, Hawaiiana Management ("HMC) at \$14,487,725.52. These are items which Owners are told must be replaced someday. Owners, not the Board, own all reserve components. This shocking, unverified total was provided to Owners by U.S. mail on November 17, 2017 from HMC.

Despite the written requests by an Owner and the Treasurer, HMC refused to provide a single receipt backing up this astounding sum during any meeting of the 2019 Budget and Finance Committee. HMC eventually disclosed that 397 Tower owners will pay

about 13% of their monthly Tower maintenance fees into a reserve fund to replace these items. This fund is set up to adjust for inflation and interest rates to allow for sufficient cash to replace items legitimately on the components list. Some Owners think that more than this percentage of their total maintenance fees is being used for a reserves savings account. The uncertainty gives individuals (with unknown educational credentials) an opportunity at meetings to frighten owners. These individuals thereby cause Owners to think that their maintenance fees **must** go up every year. However, the 2019 annual meeting materials reveal that an individual **with a master's degree**, who successfully ran for directorship, did so on the representation to Owners that he wanted maintenance fees to go down!

Approving this RFA will minimize temptations by future directors to violate the disclosure statute. A recent example involved creating a protocol which required exhaustion of administrative remedies (beginning first with the general manager). However, the statute and the Bylaws override this, or any similar procedure. As a matter of Hawaii state law, Owners are free to choose between any point of contact listed in the statute. More to the point, Bylaw 10.16.4 expressly authorizes Owners to make records requests to the Board. HRS 514B-154.5 (below) does not conflict with Bylaw 10.16.4.

**"a) Notwithstanding any other provision in the declaration, bylaws, or house rules, if any, the following documents, records, and information, whether maintained, kept, or required to be provided pursuant to this section or section 514B-152, 514B-153, or 514B-154, shall be made available to any unit owner and the owner's authorized agents by the managing agent, resident manager, board through a board member, or the association's representative:"**

This Owner correctly followed the letter and spirit of Bylaw 10.16.4 and HRS 514B-154.5 by requesting the following to the "board through a board member." Again, the request was made to seven (7) board members on July 20, 2017. However, no records were provided before or after the thirty (30) day deadline expired. The records request (below) was simple and clear:

- “1. Written information related to the "best estimates" (described below) about the asset values in the reserve component list, appearing in the proposed budget and previous budgets. This includes verification of all contractor's licenses.
2. 2017 and any prior Budget or equivalent.
3. Written proof of any corrections to the maintenance fee estimate for 2020 after discovery that attorney fees were not allocated to "Common" on proposed 2020 budgets or any prior budget.
4. Written proof of efforts to remove individuals responsible for #3, above from the budgeting process.
5. Written support for the %1 added to the proposed Tower budget after the first 2019 B&F budget meeting.

The 2019 budget on The Collection website has this to say about the reserves: 'COST NOW and NORM LIFE values are best estimates by Hawaiiana Management and vendors who were nice enough to inspect the property or give a best guess...It may be advisable to employ an expert to evaluate these projects with high cost.' This is found at page four of the Budget above the spreadsheet of items owners are asked to pay for. The page caption reads "THE COLLECTION - TOWER YEAR 2019 RESERVE PROJECTS AS OF OCTOBER 16, 2018"

The Bylaws at The Collection prohibit any Director or the M.A. from establishing protocols which conflict with the statute and the bylaws. Even if there was a conflict, the Bylaws and Declaration specifically provide that the statute overrides any conflict between governing documents and Chapter 514B ("The Act"). As stated, however, the relevant bylaw provisions do not conflict with the Act. The Bylaws:

"10.16 Examination of Documents of the Association. The minutes of meetings of the Board and Association and the Association's financial records, **including, without limitation**, audit reports and budgets, shall be available for examination by Unit Owners or by the holder, insurer or guarantor of any mortgage pertaining to any Unit. Copies of such minutes of meetings and financial records shall be provided to any Owner and to the holder, insurer or guarantor of any mortgage pertaining to any Unit upon such party's request and upon payment of a reasonable charge for duplicating, postage, stationery and other administrative charges. Such Association documents shall be made available as follows:

10.16.4 **An Owner may file a written request with the Board** to examine other documents of the Association. The Board shall give written authorization for inspection or written refusal with an explanation of the refusal **within thirty (30) calendar days** of receipt of the request."

Approving this RFA will protect owners' bylaw and statutory rights to inspect and/or copy condominium records. In addition, the approved RFA will guide future officers, directors, and managing agents and protect them from incurring very severe penalties for violating HRS 514B-154.5. Some of those penalties are at HRS 514B-69:

"(a) **Any person** who violates or fails to comply with this part, part V, section 514B-103, 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, **or section 514B-154.5**, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding \$10,000, or by imprisonment for a term not exceeding one year, or both. Any person who violates or fails to comply with any rule, order, decision, demand, or requirement of the commission under this part, part V, section 514B-103, 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, or section 514B-154.5, shall be punished by a fine not exceeding \$10,000.

(b) In addition to any other actions authorized by law, **any person** who violates or fails to comply with this part, part V, section 514B-103, 514B-132, 514B-134, 514B-149, sections 514B-152 to 514B-154, **section 514B-154.5**, or the rules of the commission adopted pursuant thereto, shall also be subject to a civil penalty not exceeding \$10,000 for any violation. Each violation shall constitute a separate offense."

Exhibits (If applicable)	Index	Title

**FOR BOARD USE ONLY**

**CERTIFICATE OF BOARD ACTION**

<input type="checkbox"/>	Approved	<input checked="" type="checkbox"/>	Declined	<input type="checkbox"/>	Noted	<input type="checkbox"/>	Returned	<input type="checkbox"/>	Deferred	<input type="checkbox"/>	Withdrawn
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**Stipulations**

RFA 30-2019 was rejected for lack of a motion.

**Coordinating Instructions**

**Distribution Instructions**

Recording Secretary	Desmond Oliveira	Action Date	11/19/19	RFA No.	30-2019
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