

## REQUEST FOR ACTION

<b>To</b>	The Collection Board of Directors				
<b>Subject</b>	Amend Employee Job Descriptions and SOPs				
<b>Preparer</b>	Steve Shaw				
<b>Date</b>	October 18, 2019	<b>For Board</b>	x	<b>Action</b>	<b>Info</b>

### EXECUTIVE SUMMARY

To immediately amend employee job descriptions and SOPs to add guidelines for enforcement of rules and the governing documents. These guidelines result in respect and protection of the victims and/or complaining witnesses.

### RECOMMENDATION

Management and employees require written guidance to:

1. More clearly separate investigatory functions from adjudication of wrongdoing.
2. Assure respect for, and protection of, victims and complaining witnesses.
3. Deter and apprehend rule violators.
4. Avoid underreporting to the Board.
5. Always inform owners whenever there is a complaint or problem with a tenant.
6. Refrain from shifting blame back to complainants/victims.
7. Refrain from shifting responsibility from common elements without written reference to provisions in the governing documents which support this action.

### RATIONALE

Policy 100 at pg. 6 provides as follows: "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.**" Emphasis added.

It must always be recognized that an owner or resident making a complaint is the one who claims her/his rights of quiet & safe enjoyment of the property and quality of life are being violated by another (a suspect or perpetrator). The following are initial complaint-handling guidelines for general managers and those they supervise (security staff and resident specialists). The objective is to maintain respect and protection of complainants and/or victims.

**1. Honor the messenger.** You may be tempted to become angry at the complaining owner/resident over the fact that you must deal with the specter of wrongdoing by another resident. But don't forget that the complaining owner/resident is the victim and not the cause of the problem. If you allow yourself to become angry at the complaining witness, you open yourself up to serious problems. You also run the risk of polarizing your residents, damaging morale, and lowering property values.

**2. Never shift blame to the victim or complaining witness** until the matter is fully investigated. Similarly, do not shift responsibility away from involvement with common elements until the issue is fully investigated, and you first provide the owner/resident with specific provisions in the governing documents for this decision-- in writing.

**3. Avoid even the appearance of retaliation.** It is against the law to retaliate against someone for complaining about condominium rule violations and interference with the accuser's rights to quiet enjoyment. The most obvious forms of retaliation are withholding enforcement, blame-shifting, requests to enter the complaining witness' apartment, minimizing/excuse-making, or deferring the complaint to the Board of Directors. More subtle forms of retaliation may include underreporting of the matter in shift reports or incident reports, failure to contact the actual owner of the suspect's unit, or even falsifying information in reports about the accuser.

**4. Follow established rules as written** and do not wait for the Board to amend them. Also, if you have an employee handbook, SOPs, or other documented policies relating to handling complaints by condominium owner/residents follow those policies as well. Don't open yourself up to claims of unfair treatment by ignoring the association rules. If a rule is being considered for amendment, your job is solely to enforce the existing rule until it is changed (unless the Board instructs otherwise).

**5. Interview the people involved.** Start by talking to the person who complained. This should be in the office and not in her/his unit. Find out exactly what the accuser's concerns are. Get details: what was said or done, when, and where, and who else was there. Take notes of your interviews. Then talk to the resident accused of rule violation(s). If the problem involves offensive or dangerous use of the violator's unit, it is imperative that you gain immediate access to the suspect's unit so that the evidence does not disappear or become stale. This is not done by insisting that innocent neighbors allow you or others into their units. Get details from the perpetrator directly, face-to-face. Be sure to interview any other witnesses who may have seen or heard any problematic conduct. Gather any relevant documents.

**6. Respect Owner's Property Right To Information About Their Tenants.** It is absolutely necessary that you speak immediately with the actual owner of the unit where the suspect resides--not the rental agent. Do not say the accused did something. Instead simply report that someone is complaining etc. Owners have a right to be informed about any complaint, however small, which you receive about a tenant. While insignificant to you, the matter could be the "last straw" and grounds to evict the tenant.

**7. Look for corroboration or contradiction.** Neighbor complaints sometimes offer the classic example of "he said/she said." Often, the accuser and accused have different versions of incidents, leaving you with conflicting stories. You may have to turn to other sources for clues. For example, photos emailed or delivered to you by witnesses may help you determine the true facts. Witnesses -- including coworkers, vendors, customers, or friends -- may have seen part of an incident. And, in some cases, documents will prove one side right.

**8. Do not require improper levels of proof from victims/accusers.** At all times you must be aware that you need only accept the version of the facts which is more likely than not the truth (the civil standard). This is not a criminal matter which requires guilt beyond a reasonable doubt. Nor are you permitted to use the civil fraud standard of clear and convincing evidence.

**9. Keep it confidential.** Complaints can polarize a small community. Avoid these problems by insisting on confidentiality and practicing it in your investigation.

**10. Write it all down.** Take notes during your interviews. Before the interview is over, go back through your notes with the interviewee to make sure you have it right. Keep a journal of your investigation. Write down the steps you have taken to get the truth, including dates and places of interviews you have conducted. Write down the names of all documents you have reviewed. Document any action taken against the accused or the reasons for deciding not to take action. This written record will protect you later if anyone claims that you ignored a complaint or conducted a one-sided investigation.

**11. Format Reports To Protect Privacy.** Hawaii's licensed guards are trained to write law-enforcement reports. To prevent inadvertent underreporting of matters of concern to the Board, all shift reports and incident reports must be reviewed by the Board at intervals. For this reason, you must place the redactable personal identifiers and confidential materials at the top of the first page. This way, when the Board or owners request copies, staff can quickly redact private or confidential information. The body of the report would simply use standard terms like "complainant", "suspect," "this RS;" or "this GM."

**12. Cooperate with government agencies.** If the complaining witness (accuser) makes a complaint with a government agency that agency may investigate. It will probably ask you to provide certain documents, give your side of the story, and explain any efforts you made to deal with the complaint yourself. If you fail to cooperate, victims and other owners could demand that you be replaced.

**13. Take appropriate action against the wrongdoer(s).** Once you have gathered all the information available, sit down and decide what you think really happened. If you conclude there is wrongdoing, figure out what discipline to recommend. Once you have decided on an appropriate response, take action quickly and document it,

Exhibits (If applicable)	Index	Title

<b>FOR BOARD USE ONLY</b>											
<b>CERTIFICATE OF BOARD ACTION</b>											
<input type="checkbox"/>	Approved	<input type="checkbox"/>	Declined	<input type="checkbox"/>	Noted	<input type="checkbox"/>	Returned	<input checked="" type="checkbox"/>	Deferred	<input type="checkbox"/>	Withdrawn
<b>Stipulations</b>											
<b>Coordinating Instructions</b>											
<p>A motion was made by Secretary Ishihara-Wong and seconded by Director Kwan to defer RFA 31-2019 to the General Manager to use as guidance for the staff. The motion carried unanimously.</p>											
<b>Distribution Instructions</b>											
<b>Recording Secretary</b>	Desmond Oliveira			<b>Action Date</b>	11/19/19	<b>RFA No.</b>	31-2019				