

REQUEST FOR ACTION, As Revised

Subject	Airbnb/Short-Term Rental Fines				
Preparer	Howard Kam, Jr.	AOUO Title	President		
Date	6.29.18, Revised 7.5.18	For Board	x	Action	Info

EXECUTIVE SUMMARY

Jon McKenna, Chris Goodwin, Al Guzman and I have been exploring the Board's ability to unilaterally increase fines specifically to curtail Airbnb activities, which has also been suggested by several Board members and homeowners. Mr. Goodwin informed us that under Bylaws Sec 10.1.2, the Board cannot unilaterally increase fines or specify fines for different types of violations without the approval of a majority of the Owners.

In the interim, the Board should direct management to uniformly and aggressively pursue Airbnb activities within The Collection through "stacking fines." "Stacking fines" is where management will issue subsequent violations in accordance with the Association Rules Sec 14.2 for each day the tenant has not moved out since the Association has no landlord/tenant obligations. That is:

- Day 1 – First Offense (no fine);
- Day 2 – Second Offense (\$75 fine);
- Day 3 – Third Offense (\$150 fine);
- Day 4 – Fourth and subsequent offenses (\$250 fine); and
- Day 5, 6, etc. – Issue a daily \$250 fine.

The section under the Fourth violation (Association Rules Sec 14.2.4) reads; "If the violation is not corrected within thirty (30) days after the date of the written citation, the fine will be increased by twenty dollars (\$20.00) per day from the thirtieth day until the violation." Caveat: This "stacking fines" proposal is not without potential risk as it has not been reviewed by a Hawaii court, and the assessed fines may be disallowed or reduced if challenged by a violator. However, the Administrative Rules do not specify a duration requirement in between issuance of fines.

Also, after the second day an Airbnb violation, management would instruct Association legal counsel to issue a Cease & Desist Letter to the violator and the cost of the letter would be charged to the owner's account.

Lastly, Owner of Unit 2502 appealed his most recent short-term rental violation letter and \$250 fine. The Governance Committee reviewed his case and recommended that the Board deny his appeal. However, the General Manager informed the Executive Committee that Nguyen continues to post his unit on Airbnb, and accordingly, request that the majority of the Board approve the Governance Committee's recommendation to deny the appeal, so that he can continue to pursue enforcement actions for these on-going violations.

RECOMMENDATION

MOVE THAT, the Board instruct Management to uniformly and aggressively pursue prohibited Airbnb/Short-Term Rental activities within The Collection through "stacking fines," as set forth in the Executive Summary, above;

FURTHER MOVED THAT, after the second day an Airbnb/Short-Term Rental violation, management would instruct Association legal counsel to issue a Cease & Desist Letter, which shall include a consent clause to restrain violator from further Airbnb/Short-Term Rental prohibitions and possible unit lien

provision, if deemed appropriate by legal counsel, and the cost of the letter would be charged to the owner's account;

FURTHER MOVED THAT, the Board approve the Governance Committee's recommendation that Owner of Unit 2502 short-term rental violation letter and \$250 fine appeal be denied for the reasons specified above.

RATIONALE

Until such time as the Board is able to review, evaluate and recommend that the majority of the owners approve a revised fines schedule as necessary to address some of the more egregious Administrative Rules violations, the Board should aggressively and expeditiously consider available remedies which are provided within the Association's governing documents and empower management to expeditiously exhaust such remedies in the furtherance of Association's mission, vision and values.

Exhibits (If applicable)	Index	Title
	A	Governance Committee Denial of Owner Nguyen Appeal
	B	

FOR BOARD USE ONLY

CERTIFICATE OF BOARD ACTION

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

Stipulations

Coordinating Instructions

Distribution Instructions

Recording Secretary	Ryan Kamo	Action Date	7.5.2018	RFA No.	
---------------------	-----------	-------------	----------	---------	--