

# KIHEI TIMESHARE OWNERS ASSOCIATION

## COLLECTION POLICY

### RECITALS

WHEREAS, the Kihei Timeshare Owners Association (the “Association”) is charged with certain responsibilities regarding the care, maintenance, and service of certain portions of the community; and

WHEREAS, the Association must have the financial ability to discharge its responsibilities; and

WHEREAS, the payment of common assessments is necessary for the proper operation and management of the Association; and

WHEREAS, the governing documents of the Association and Chapters 514B and 514E, Hawaii Revised Statutes (“HRS”), provide that the duties of the Association shall include levying and collecting assessments from members; and

WHEREAS, the Board of Directors (the “Board”) is charged with pursuing collection of assessments and other charges from delinquent members; and

WHEREAS, the Board of the Association desires to adopt a uniform, non-discriminating and systematic procedure to collect assessments and other charges of the Association;

NOW, THEREFORE, BE IT RESOLVED that the Association does hereby adopt the following procedures and policies for the collection of assessments and other charges of the Association.

### TERMS OF POLICY

1. **Assessments Generally.** Assessments shall be made for expenses based on a budget adopted at least annually by the Board. The term “common expense” means expenditures made by, or financial liabilities of, the Association for operation of the property, and shall include but not be limited to allocations to reserves, regular annual assessments, special assessments, repairs, and any other charges to the Association. No member shall withhold any assessment claimed by the Association. All sum assessed by the Association but unpaid shall constitute a lien on the property.

2. **Due Date.** Assessments shall be due and payable on December 1st of each year.

3. **Late Charges and Interest.** An assessment shall be past due and delinquent if not paid by the 10th day of December each year. Payments received later than the 10<sup>th</sup> of December will automatically incur a \$25.00 late charge for the first year of delinquency, \$50.00 for the second year of delinquency, and \$100.00 for the third and every subsequent year of delinquency. Any past due assessment shall bear interest at the rate of 1.5% per month. The late charges and interest shall be the personal obligation of the member for which such assessment is unpaid. All late charges and interest shall be due and payable immediately.

4. **Return Check Charges.** Due to the administrative time and costs incurred, a \$25.00 fee shall be assessed against a member in the event any check or other instrument attributable to or payable for the benefit of such member is not honored by the bank or is returned by the bank for any reason whatsoever, including but not limited to insufficient funds. Late charges and interest will also be charged if applicable. Such charges shall be due and payable immediately upon demand. If two or more of a member's checks are returned unpaid by the bank within any calendar year, the Association may require that all of the member's future payments, for a period of one year, be made by certified check or money order.

5. **Full and Partial Payment.** All delinquent accounts remain delinquent until paid in full. No partial payments will waive the Association's right to pursue full payment and/or to enforce the provisions of this Policy.

6. **Attorney's Fees and Costs on Delinquent Accounts.** The Association shall be entitled to recover all of its reasonable attorney's fees and collection costs incurred in the collection of assessments or other charges due the Association from a delinquent member. The reasonable attorney's fees incurred by the Association shall be due and payable immediately when incurred, upon demand.

7. **Application for payments made to the Association.** Failure to pay late fees, legal fees, fines and interest may result in the deduction of such late fees, legal fees, fines and interest from future common expense payments, so long as a delinquency continues to exist. Late fees may be imposed against any future common expense payment that is less than the full amount owed due to the deduction of unpaid late fees, legal fees, fines and interest from the payment. Payments received from a member will be applied and credited in the following order:

- (1) Charges for legal fees, court costs and other costs of collection;
- (2) All late charges and interest accrued, as applicable;
- (3) All other fines, penalties and charges incurred by the Association as a result of any violation by a member, his/her family, employees, agents or licensees, of the governing documents and/or applicable Hawaii statutes and regulations and federal law;
- (4) The yearly assessment for a property, including any accelerated or special assessment due, as applicable; payments shall be applied toward the oldest amount then owed.

8. **Notices.** Notices and letters will be mailed to the member's address as shown in the Association's books and records in accordance with the following schedule:

- (1) After an assessment, or other charge due the Association, becomes 30 days past due, the member will receive a first past due notice.
- (2) After an assessment, or other charge due the Association, becomes 60 days past due, the member will receive a second past due notice.
- (3) After an assessment, or other charge due the Association, becomes 90 days past due, the member will receive a third past due notice.

- (4) Failure to make full payment after the third past due notice will result in referral of the delinquency to the Association's attorneys.

9. **Attorney Action.** Generally, the managing agent will first provide notice of the delinquency to the member prior to referring to Association's attorneys; however, the Association may, at any time after the member becomes delinquent, direct its attorneys to proceed with collection action, as certain circumstances may require. Once referred to the attorneys' office, the member shall communicate directly with the attorneys' office and will be responsible for all attorneys' fees incurred for such communication, unless informed otherwise. Upon referral of the delinquent account to the Association's attorneys' office, the Board authorizes the attorneys' office to take all actions allowable by Section 8.10 and 8.11 of the Declaration, Part 3 of the By-Laws, this Policy, HRS Chapters 514B, 514E and 667, including but not limited to the following actions:

- (1) Send a demand letter;
- (2) Record a lien against the property;
- (3) Foreclose by action or power of sale procedures set forth in HRS Chapter 667;
- (4) File an action to recover a money judgment;
- (5) Negotiate and execute payment plans; and
- (6) Mediate and/or arbitrate any dispute concerning the delinquency.

10. **Suspend privileges and access to amenities.** After an Association members account has been delinquent for 10 days or more all privileges and rights are suspended. All rights and privileges will be restored upon receipt of full payment. Any week(s) not used due to the member being in bad standing shall not be "saved" or "carried over" to the next year.

11. **Foreclosure special assessment.** The Association may impose a special assessment for the amount of unpaid regular common assessments against a person other than the mortgagee who, in a judicial or nonjudicial power of sale foreclosure, purchases a delinquent property upon giving proper notice. This special assessment shall not exceed the total amount of unpaid regular monthly common assessments that were assessed during the six months immediately preceding the completion of the judicial or nonjudicial power of sale foreclosure, and cannot exceed the maximum allowed by law.

12. **Dispute of assessments.** Except as otherwise provided in the governing documents, the Association shall not be required to mediate or arbitrate actions to collect the assessments unless the member has first paid to the Association the full amount claimed by the Association. A member who pays the full amount 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. A member has all rights of appeal granted by the Association's governing documents and Hawaii law.

13. **Notification to Members.** After execution of this Collection Policy, the Association shall cause all members to be notified of this Collection Policy. This Collection Policy shall supersede and replace any previously adopted collection policies.

IN WITNESS WHEREOF, the undersigned have executed this Collection Policy the \_\_\_\_ day of \_\_\_\_\_ in the year 2015.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: President