

RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
ASSOCIATION OF APARTMENT OWNERS OF KEOLA LA'I  
REGARDING MAINTENANCE OF WINDOWS

WHEREAS:

The Board of Directors (the "Board") of the Association of Apartment Owners of Keola La'i (the "Association") is authorized to oversee the administration and operation of the Keola La'i condominium project ("Project");

The Project is governed by the Condominium Property Act, Hawaii Revised Statutes ("HRS") Chapter 514B; the Declaration of Condominium Property Regime of Keola La'i dated October 21, 2005 ("Declaration"), recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-217082 (the "Declaration"); the Bylaws of the Association of Apartment Owners of Keola La'i (the "Bylaws") dated October 21, 2005, recorded in said Bureau as Document No. 2005-217083 (the "Bylaws"); and the House Rules for Keola La'i ("House Rules"), as amended;

1. Residential Apartments:

Section 3.5 of the Declaration includes in the residential apartments the lanais, the interior walls and partitions, the doors and door frames, the windows and window frames, and the spaces within the interior decorated or finished surfaces of the walls, floors, and ceilings of the apartments. The residential apartments do not include the undecorated or unfinished surfaces of the perimeter walls.

The apartments include the lanai wall, which separates each apartment's interior from the lanai. The lanai wall is considered an interior partition wall of the apartment because the apartment includes the lanai, and the boundary of the apartment is the lanai railing. As a result, any window or sliding glass door located on the lanai wall is included in the apartment in its entirety.

Section 8.1(a) of the Bylaws states that the owners are responsible for the maintenance of their apartments.

2. Common Elements:

Sections 4(c) and (g) of the Declaration include in the common elements the perimeter walls and all the parts of the building that are not included in the apartments.

On this basis, the caulking between the window frames and the window openings is a common element because it is a part of the perimeter walls. The common elements also include the parts of the building that cannot be easily maintained or repaired by an individual owner, such as the exterior surfaces of the perimeter windows on the upper floors.

The Association is responsible for the maintenance, repair and replacement of the common elements pursuant to Section 13(c) of the Declaration and Section 8.2 of the Bylaws.

3. Limited Common Elements:

Section 3.6 of the Declaration describes the commercial apartments and it does not mention the windows and window frames. This omission indicates that the commercial apartments do not include the windows and window frames.

Neither the Declaration nor the Bylaws state whether the windows of the commercial apartments are common elements or limited common elements of the Project.

HRS Section 514B-35 (4) states that unless otherwise provided in the Declaration, the doors, windows, and other fixtures that serve only one apartment are limited common elements when they are located outside the boundaries of the apartments, and limited common elements are simply common elements designated for the exclusive use of certain owners.

Sections 8.1(a) and 8.7(d) of the Bylaws state that apartment owners are responsible for the maintenance of their limited common elements.

Section 13(c) of the Declaration and Sections 8.1(b) and 8.2 of the Bylaws state that maintenance, repair and replacement of the limited common elements must be made by or at the direction of the Board, except that the owners are responsible for the limited common elements that serve only their apartments pursuant to the Bylaws.

Section 6.2 of the Declaration and Section 6.1(j) of the Bylaws state that the owners are responsible for all costs and expenses related to their limited common elements.

On that basis, pursuant to HRS Section 514B-35 (4), the windows of the commercial apartments are deemed by law to be limited common elements of each commercial apartment.

4. Reserves:

The condominium law, HRS Chapter 514B, requires the Board to collect reserves for all parts of the project which the Association must maintain, repair, and replace;

Reserve rule 16-107-65(b), adopted by the Hawaii Real Estate Commission, states that if responsibility for a particular part of the project is not clear, the following procedure shall apply:

*(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.*

**5. Approval of Exterior Modifications:**

Section 8.3(b) of the Bylaws requires that an owner must obtain the prior written approval of the Board before making any changes to the exterior of the owner's apartment, including any change to the windows. A building permit may be required. All changes to the building must conform to the Mauka Area Rules of the Hawaii Community Development Authority.

**6. High-Risk Components:**

Section 514B-138, HRS, authorizes the Board, after notice to all apartment owners and an opportunity for owner comment, to determine that certain portions of the apartments, or certain objects or appliances within the apartments pose a particular risk of damage to other apartments or the common elements if they are not properly inspected, maintained, repaired, or replaced by owners.

It may create a dangerous condition on the Project to allow apartment windows to fall into disrepair.

Section 514B-137 (a), HRS, requires each apartment owner to afford to the Association and its employees, independent contractors, and agents access – during reasonable hours – through the owner's apartment reasonably necessary for the operation of the Project.

Section 514B-137 (b), HRS, gives the Association the irrevocable right, to be exercised by the Board, to have access to each apartment at any time as may be

necessary for making emergency repairs to prevent damage to the common elements or to another apartment or apartments.

On that authority, the Board has decided to adopt a resolution allocating responsibility for the maintenance, repair, and replacement of the windows and window frames of the building.

NOW, THEREFORE, BE IT RESOLVED that the Board, upon careful consideration of all the information available to it, adopts the following policy:

I. RESOLVED:

- (a) Residential Apartments, lanai walls: The lanai walls of the residential apartments, including windows and sliding door, are included in the residential apartments in their entirety pursuant to Section 3.5 of the Declaration. The residential apartment owners are responsible for all maintenance and repair of the windows located on their lanai walls, including the caulking between the window frames and the window openings, pursuant to Section 8.1(a) of the Bylaws.
- (b) Residential Apartments, windows and window frames on the perimeter: The windows and window frames located on the perimeter walls are included in the residential apartments pursuant to Section 3.5 of the Declaration. The residential apartment owners are responsible for all maintenance and repairs within the window frames, including caulking between the window and window frame, pursuant to Section 8.1(a) of the Bylaws.
- (c) Residential Apartments, exterior surfaces of windows: The Association shall conduct regular washing of the exterior surfaces of the perimeter windows that cannot be reached by the residential owners. The cost of the regular window washing shall be a common expense pursuant to Section 6.5 of the Declaration.
- (d) Residential Apartments, water stain removal: Water stain removal is not included in the maintenance of the exterior surfaces of the residential apartment windows. A residential apartment owner may request that the Association remove water stains from the owner's windows; provided that the owner shall be charged separately for the cost of the water stain removal.
- (e) Windows of Commercial Apartments: The windows and window frames of the commercial apartments are limited common elements of the commercial apartment that they serve under HRS Section 514B-35 (4). The Association may, at its option maintain, repair, or replace the windows or window frames of a commercial apartment; provided that the commercial owners shall be

charged a special assessment for the cost of all maintenance, repair and replacement of their limited common element windows, in accordance with Section 6.2 of the Declaration and Section 6.1(j) of the Bylaws.

- (f) Caulking between window frames and window openings: The Association shall be responsible for the space between the window frames and the window opening because this space is a part of the perimeter wall and the perimeter walls are common elements of the Project under Section 4(c) of the Declaration.
- (g) Approval of Exterior Changes. Any owner who wishes to make changes to the exterior of the windows must submit plans in advance to the Board or Building Committee for approval. All proposed modifications must comply with the Mauka Area Rules of the Hawaii Community Development Authority. The owner shall be solely responsible for obtaining a building permit, if required, and for complying with applicable laws and regulations, including the building codes.

II. RESOLVED FURTHER, that:

(a) The Board may require apartment owners to repair the windows and window frames, which are the owners' responsibility. If the owner fails to have the work performed within the time specified by the Board and in accordance with the Board's standards and specifications, the Board may have the work performed and demand reimbursement from the owner.

(b) Under the following circumstances, the Board may perform maintenance and repair of windows and window frames that are an owner responsibility and assess the cost of the repair, maintenance and/or replacement to the owner of the apartment:

- (i) In non-emergency cases, if an owner or resident fails to begin the work within thirty (30) days of written notice from the Board;
- (ii) In emergency cases, such as when a window leaks or threatens to fall, the Board or its representative may enter the apartment and take immediate action to repair the window and eliminate any dangerous condition.

(c) Apartment owners shall make periodic inspections of the areas around their window frames and report any problems to the Board.

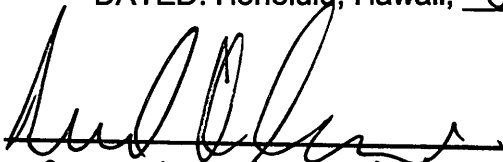
(d) The commercial owners are primarily responsible for their limited common element windows and window frames. If the Association, at its option, performs any work on the windows or window frames of the commercial apartments, the Association will special assess the commercial owner for the cost of the work.

III. RESOLVED FURTHER, that the rights, powers, and authority which this resolution provides shall become effective as of the date of the Board's adoption of this resolution and shall remain effective until this resolution is revoked in writing by the Board or changed by an amendment to the Association's Declaration or Bylaws.

CERTIFICATE

I hereby certify that the above resolution was adopted pursuant to the above sections of the DECLARATION OF CONDOMINIUM PROPERTY REGIME OF KEOLA LA'I and the BYLAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF KEOLA LA'I, by the Board of Directors of the Association, at a Board meeting on September 24, 2019.

DATED: Honolulu, Hawaii, January 30, 2020.

  
PRES. KEOLA LA'I AHOAHO

NEIL CARVIN

  
Secretary, ASSOCIATION OF  
APARTMENT OWNERS OF  
KEOLA LA'I

MARCO GARCIA  
(Print Name)