

ASSOCIATION OF APARTMENT OWNERS OF HAWAIIKI TOWER, INC.

**BOARD RESOLUTION REGARDING RESPONSIBILITY FOR
PLUMBING FIXTURES, PIPES, AND DRAINS
LOCATED IN OR SERVING ONLY ONE APARTMENT**

The Board of Directors (the "Board") of the Association of Apartment Owners of Hawaiiki Tower, Inc. (the "Association"), under the "Declaration of Condominium Property Regime of Hawaiiki Tower" dated December 19, 1997 (the "Declaration"), filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Land Court Document No. 2428170, hereby adopts the following administrative resolution:

WHEREAS:

Article III, Section 2 and Article V, Section 1 of the By-Laws of the Association of Apartment Owners of Hawaiiki Tower ("Bylaws") give the Board broad powers to operate and manage the Project for the benefit of the Association and its members.

Plumbing fixtures, pipes, and drains located in or serving only one apartment at the Project have caused leaks and damage that have had to be repaired or replaced, forcing the Board to determine responsibility for repairing or replacing those items and any damage they cause.

Apartment owners and occupants of apartments can often better determine the condition of plumbing fixtures, pipes, and drains located in or serving only their apartments at the Project, so apartment owners and occupants should be primarily responsible for inspecting those items and reporting leaks and other problems to the Association.

Any delay in taking action to: (i) eliminate water leaks in an apartment; or (ii) repair and replace any damage caused by water leaks, may lead to mold problems and expensive remedial action.

Pursuant to Section D.1 of the Declaration, the apartments consist of the spaces within the perimeter and party walls, windows, doors, floors and ceiling of the respective apartments.

Section D.1.(a)(iii) of the Declaration states:

The respective apartments shall not be deemed to include . . . any pipes, wires, vents, shafts, ducts, conduits, or other utility or service line . . . running through or otherwise located within such apartment which are utilized for or serve more than one residential apartment, the same being deemed common elements as hereinafter provided.

Hawaii Revised Statutes (“HRS”) Section 514B-35(2) states that:

*If any chute, flue, duct, wire, conduit, or any other fixture lies partially within and partially outside the designated boundaries of a unit, **any portion thereof serving only that unit is a limited common element appurtenant solely to that unit**, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements . . .*

(Emphasis added.)

HRS §514B-41(a) requires that a condominium project’s declaration state how the apartment owners will be charged – in an “equitable manner” – for the costs and expenses of maintaining, repairing, and replacing their appurtenant limited common elements.

Section K of the Declaration indicates that the costs associated with the maintenance and repair of the limited common elements are a responsibility of the apartment owners to which the limited common elements are assigned.

Specifically, Section K of the Declaration states:

[A]ll charges, costs and expenses incurred by the Association only for or in connection with any apartment or any limited common elements, including but not limited to, all costs of maintenance, repair, replacement, additions and improvements to the apartments or limited common elements and utility costs arising therefrom and reserves therefor shall constitute limited common expenses of the Project for which only the owner of any such apartment shall be liable, or for which only the owner of the apartment to which such limited common elements are appurtenant shall be liable . . . [.]

Section K of the Declaration also states that the Association shall charge to the apartment owner all “costs and expenses incurred by the Association which are necessitated by the negligence, misuse or neglect of an apartment owner or occupant or any person under either of them . . . as a special assessment secured by the lien[.]”

Article VI, Section 3 of the Bylaws states that apartment owners are responsible for the repair and maintenance of the owner’s apartment at his own expense, including all internal installations and other fixtures and accessories belonging to the apartment, and are also responsible for any loss or damage caused by his failure to perform any such work diligently.

Section I.7 of the Declaration gives the Association the right to enter an apartment to make repairs necessary to prevent damage to any apartments or the common elements.

Section M of the Declaration requires the Association to insure the buildings and common elements, and to use the insurance proceeds to rebuild and repair the

buildings and common elements in a good and substantial manner according to the original condominium plans and elevation.

The sections of the governing documents of the Project outlined above indicate that: (i) plumbing fixtures, pipes, and drains located in or serving only one apartment (whether located inside or outside of the apartment) are deemed either part of the apartment or limited common elements appurtenant to the apartment; and (ii) the costs and expenses of maintaining, repairing, and replacing those plumbing fixtures, pipes, and drains are to be charged to the apartment owners. Therefore, the Board, pursuant to Hawaii Administrative Rule §16-107-65(b), has decided to adopt a clarifying written policy to deal with the issue in the future.

I. **RESOLVED:**

Based on the law, the Declaration, and the Bylaws, the Board of Directors of the ASSOCIATION OF APARTMENT OWNERS OF HAWAIIKI TOWER, on behalf of the members of the Association, hereby adopts the following resolutions to allocate responsibility for the maintenance, repair, and replacement of plumbing fixtures, pipes, and drains serving only one apartment at the Project, and any damage they cause:

A. **Responsibility for Maintenance, Repair, and Replacement of Plumbing Fixtures, Pipes, and Drains Located in One Apartment.**

(a) Owners and occupants of apartments shall be responsible for reporting any leaks or other problems with plumbing fixtures, pipes, and drains located in their respective apartments.

(b) Except as stated below, if plumbing fixtures, pipes, and/or drains located in only one apartment leak or require maintenance, repair or replacement, the apartment owner shall be responsible for doing the work at the expense of the owner.

(c) If a water leak from any plumbing fixtures, pipes, and/or drains located in only one apartment: (i) threatens other apartments or the common elements, or (ii) may result in the growth of mold, the Association may enter the apartment and take immediate action to repair the leak and eliminate any conditions that are conducive to the growth of mold. The apartment owner, however, shall be responsible for the cost of the work.

(d) For other leaks from items located in only one apartment, if an owner or resident fails to begin the work within seventy-two (72) hours of the discovery of a leak, the Board may perform the work and assess the cost of the repair, maintenance and/or replacement to the owner of the apartment. In the event of an emergency, the Board may perform the work immediately and assess the cost of the repair, maintenance and/or replacement to the owner of the apartment.

(e) Each apartment owner shall be responsible for the cost of repairing any uninsured damage to: (i) the owner's apartment, (ii) the common elements, or (iii) any

other apartment caused by any plumbing fixtures, pipes, and/or drains located in the owner's apartment, including the cost of any mold remediation.

B. Responsibility for Maintenance, Repair, and Replacement of Plumbing Fixtures, Pipes, and Drains Serving Only One Apartment (but located outside of the apartment), and any Damage they cause.

(a) Owners and occupants of apartments shall be responsible for reporting any leaks or other problems with plumbing fixtures, pipes, and drains serving only their respective apartments (even if located outside of the apartments).

(b) Except as stated below, if plumbing fixtures, pipes, and/or drains serving only one apartment, but located outside of the apartment, leak or require maintenance, repair or replacement, the Association shall be responsible for doing the work at the expense of the apartment owner.

(c) Each apartment owner shall be responsible for the cost incurred by the Association in repairing any uninsured damage to: (i) the owner's apartment, (ii) the common elements, or (iii) any other apartment caused by any plumbing fixtures, pipes, and/or drains serving only the owner's apartment, but located outside of the apartment, including the cost of any mold remediation.

II. RESOLVED FURTHER THAT:

Collection of any expenses incurred by the Association on behalf of an apartment owner under this resolution shall be undertaken in the same manner as the collection of common expenses.

III. RESOLVED FURTHER THAT:

If the Association undertakes any remedial work in an owner's apartment pursuant to this resolution, the apartment owner shall be responsible for restoring the decorated surface of any wall, floor, or ceiling of the apartment to its original condition. In addition, if the Association must remove any items or covering, including, but not limited to, paneling, mirrors, carpeting or tile, from any wall, floor, or ceiling of the apartment to maintain, repair, or replace any plumbing fixtures, pipes, drains, and other installations, the apartment owner shall be responsible for restoring or replacing the item or covering.

IV. RESOLVED FURTHER THAT:

The Board, at its option, may conduct periodic inspections of apartments to determine the condition of any plumbing fixtures, pipes, and/or drains located in or serving only the owner's apartment (whether located inside or outside of the apartment). The Association and the apartment owners shall be responsible for maintenance, repair, and replacement of the items, as outlined in sections I and III, above.

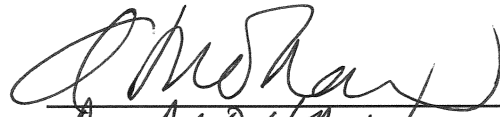
V. RESOLVED FURTHER THAT:

The rights, obligations, powers, and authority that 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 Declaration or Bylaws.

CERTIFICATE

I, Secretary of the Association of Apartment Owners of Hawaiki Tower, Inc., hereby certify that the above resolution was adopted pursuant to the law and the DECLARATION and BYLAWS OF THE ASSOCIATION OF APARTMENT OWNERS OF HAWAIKI TOWER, by the Board of Directors of the Association, at a Board meeting on May 22, 2017.

DATED: Honolulu, Hawaii, June 2, 2017.



A. MOTTAW, Secretary
(Print Name)