

RESOLUTION AND POLICY FOR H0-6, CONDUITS AND WATER DAMAGE

BACKGROUND

A. The Association of Apartment Owners of Kihei Shores (“Association”) and its owners have experienced water leaks.

B. Hawaii Revised Statutes (“HRS”) § 514B-35 states: “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;”

C. HRS § 514B-41(a) provides: “Except as otherwise provided in subsection (c) or the declaration or bylaws, all limited common element costs and expenses, including but not limited to maintenance, repair, replacement, additions, and improvements, shall be charged to the owner or owners of the unit or units to which the limited common element is appurtenant in an equitable manner as set forth in the declaration.”

D. Pursuant to HRS § 514B-137(b), the Association shall have the irrevocable right, to be exercised by the Board, to have access to each unit at any time as may be necessary for making emergency repairs to prevent damage to the common elements or to another unit or units.

E. HRS § 514B-143 provides in relevant part:

(b) If a building contains attached units, the insurance maintained under subsection (a)(1), to the extent reasonably available, shall include the units, the limited common elements, except as otherwise determined by the board, and the common elements. The insurance need not cover improvements and betterments to the units installed by unit owners, but if improvements and betterments are covered, any increased cost may be assessed by the association against the units affected. For the purposes of this section, “improvements and betterments” means all decorating, fixtures, and furnishings installed or added to and located within the boundaries of the unit, including electrical fixtures, appliances, air conditioning and heating equipment, water heaters, or built-in cabinets installed by unit owners.

* * *

(d) The board, in the case of a claim for damage to a unit or the common elements, may: (1) Pay the deductible amount as a common expense; (2) After notice and an opportunity for a hearing, assess the deductible amount against the owners who caused the damage or from whose units the damage or cause of loss originated; or (3) Require the unit owners of the units affected to pay the deductible amount.

G. The Board of Directors for the Association seeks to clarify the Association and owners' respective duties for maintenance, repair and replacement of faulty water lines, conduits, and fixtures, procedures for handling a water damage claim and requirements for H06 insurance.

TERMS OF POLICY

1. Classification of Elements.

a. Conduits, pipes, switches, wires, shafts, utility lines, chutes, ducts, and fixtures that are located within the apartment boundaries (in the perimeter walls, floors and ceilings) are part of the unit and are the responsibility of the owner.

b. Conduits, pipes, switches, wires, shafts, utility lines, chutes, ducts, and fixtures, regardless of location, that serve the common elements or more than one unit are common elements, and are the responsibility of the Association. These are typically known as the "vertical" pipes.

c. Conduits, pipes, switches, wires, shafts, utility lines, chutes, ducts, and fixtures partially in an apartment and partially outside a unit or outside the boundaries of the unit that serve only the unit are limited common elements, and the Association and/or owner may maintain, repair and replace at the cost of the owner. These are typically known as the "horizontal" pipes.

d. The Association shall be responsible for the maintenance, repair and replacement of the common elements and the limited common elements, provided that the costs for the common elements shall be assessed to all owners as a common expense and the costs for limited common elements shall be assessed to the unit appurtenant to the limited common element. Owners shall be responsible for the maintenance, repair and replacement of the unit.

2. Procedure. Should a water leak occur in any unit, limited common element, and/or common element, the following procedure shall occur:

a. Upon discovery of the leak, the owner shall immediately notify the Association's Site Manager at manager@kiheishores.net or (808)875-0077.

b. The Site Manager, as soon as reasonably practicable upon receipt of notice, shall:

- i. Assist in closing the nearest shut off valve;
- ii. Inspect the extent of damage in the unit, other units, limited common elements and/or to the common elements and attempt to stop the water leakage;
- iii. Notify the unit owner(s) affected by the water and promptly work with the owner(s) to take action to have the water removed; and
- iv. Notify the Association's insurance carrier, if necessary.

c. The Site Manager, with the assistance and approval of any insurance adjuster assigned, may obtain estimates for repair cost and time involved by licensed and insured contractors in order to repair the damaged areas.

d. The owner shall promptly contact the owner's HO6 and/or rental policy insurance agent. The owner shall not file a claim with the Association's insurance agent.

e. Owners are encouraged to promptly contact a Hawaii licensed and insured plumber or mold remediation contractor to assist in the mitigation of any damages and to determine the source of the water leak. All work shall have any necessary permits and meet all building codes.

f. For common element pipes, which are pipes serving more than one unit or that serve the common element, the owner shall not make repairs or interfere with the Association's ability to make repairs of these common elements.

g. For limited common element pipes, which are pipes that serve only that unit that may be outside the boundaries of the unit, the Association has the right to make repairs/replacements and assess the owner for the cost of the repairs/replacement. The boundaries of the apartment are within the perimeter walls, ceilings and floor of the apartment.

3. Responsibility for Payment of Repairs/Replacements of Defect.

a. The Association shall pay for repair and/or replacement of the defective pipe, joint, connection, seal, or other fixture if it is a common element, unless the owner was responsible for the defect or damage to the common element, in which case, the owner shall pay to repair and/or replace the defect.

b. The owner shall pay for repair and/or replacement of the defective pipe, joint, connection, seal or other fixture if it is a limited common element or unit component. Limited common elements include pipes, joints, connections, conduits and fixtures that serve only the owner's unit, even if such pipe is behind or obstructed by a common element, such as a common element wall, floor or ceiling.

4. Responsibility for Damage.

a. If covered by the Association's insurance:

i. The Association shall pay for repair and/or replacement to any damaged common elements, limited common elements, and units except for any improvements and betterments to the units caused by the damage.

ii. The owner shall pay for repair and/or replacement to any and all damaged improvements and betterments to the units, and the owner shall tender such claims to the owner's HO6 policy carrier.

b. If not covered by the Association's insurance:

i. The Association shall pay for repair and/or replacement to any damaged common elements, limited common elements, and units except for any improvements and betterments to the units caused by the damage, if the water damage was caused by a defect in the common element unless the owner was responsible for the defect or damage to the common element, in which case, the owner shall pay for all such repair and/or replacement for the damage.

ii. The owner shall pay for repair and/or replacement to any damaged common elements, limited common elements, and units if the water damage was caused by a defect in the owner's unit or limited common element.

5. Association Deductible.

a. The Association's insurance deductible shall be paid by:

i. The Association as a common expense if the damage was caused by a defect in the common elements, the Association was negligent and no owner is responsible for the damage; or

ii. The owner from whose unit the damage or cause of loss originated, after notice and an opportunity for a hearing. The assessed owner shall promptly contact their H06 policy carriers to seek payment of the deductible. Such notice of the assessment and opportunity to be heard by the Association will be sent by mail to the affected owner. If the owner desires a hearing, the owner must request it within ten calendar days after receipt of the notice from the Association. The hearing will occur in executive session of a Board meeting to allow the owner to present the owner's position. The Board will subsequently issue a decision to the owner.

iii. Equally by all affected units if multiple units are affected and the damage cannot be attributed to the Association or any one unit.


b. If the Association pays the deductible, it will be specially assessed to the owner's unit, and will constitute a lien against the unit if the deductible is not paid.

6. Notification to Owners. After execution of this Policy, the Association shall cause all Owners to be notified of this Policy.

CERTIFICATE

I, hereby certify that the foregoing is a true copy of the Policy duly adopted at a meeting of the Board of Directors duly held on 4/15/26 and duly entered in the book of minutes of the Association, and that this Policy is in full force and effect.

ASSOCIATION OF APARTMENT OWNERS OF KIHEI SHORES

Signature: 
Printed Name: A.J. DROWLZO
Title: Secretary