

Subject: Royal Mauian Registration Fee: Four Owners File for Mediation
From: "Skye Lininger" <skye@hniholdings.com>
Sent: 3/14/2023 3:42:38 PM
To:
Attachments: 2023.03.14.Ltr Porter to DPR w enclosures.pdf

March 14, 2023

Dear Board Members and Fellow Owners,

Our group of four owners has received emails, phone calls, or letters from the owners of 24 units supporting our opposition to the registration fee and in response to our previous communications to the board and the owners about the now passed Resolution RM2022-02 imposing a Registration Fee of \$35 on rental guest registrations which is currently scheduled for implementation on April 1.

We are opposed to the fee on the grounds our condo documents do not give the board authority to charge a discriminatory use fee. Our attorney, Chris Porter, provided us with a legal opinion to that effect that we shared on January 15, 2023 with the board and all of our fellow owners.

Even though the board is charged with representing all owners, it has never communicated directly with any of us on this issue, but instead sent an email on January 31st to all homeowners. Their email did not directly address any of our concerns.

The board has not addressed the following:

1. Our attorney, Chris Porter, stated the action taken by the board was "illegal." The board in its email wrote "The Board has reviewed the letter and discussed it with legal counsel for the Association." The board did not say what the Association's lawyer said, just that they had discussed it with him.
2. The board, in their letter, wrote that we ignored the concept of fairness—and then went on to create its own definition of fairness. In fact, in our letter from January 15th, we clearly said "Fair is what we, as owners, all have legally agreed to." When we bought our units, each of signed the same agreement acknowledging and agreeing to abide by Governing Documents. What is fair is what our Governing Documents and not what the board would like the documents to say.
3. The board then writes they are confident their action is consistent with our documents and the law. Our attorney, whose firm represents hundreds of Hawaiian HOAs says their action is illegal.

As a result, according to our Governing Documents, our recourse is to request mediation (see attached letter from our attorney which has been sent to the HOA's attorney).

Now that our request for mediation has been filed, to act in good faith, we request the following from the board:

Requested action:

1. Delay the implementation of the disputed Registration Fee until after the mediation has taken place. Remember the board is made up of our fellow owners and they are not special in any way. Their responsibility is to impartially look out for all of us. Disagreements occur and we should all want to know if the board's action is legal or not.
2. Provide all owners with the legal opinion letter from the HOA's attorney. We have provided our legal opinion to all owners (even though we paid for it) and think it only right and fair for the HOA to provide

its legal opinion to all owners (since we have also paid for that). We think this is consistent with transparency, good faith, and good governance. The board is relying completely on the HOA attorney's opinion and we'd like to know what his opinion says and whether or not it is an unqualified or a qualified opinion.

Board processes flawed

We'd also like to comment on the process the Board followed to pass this Registration Fee resolution. It was not disclosed in the agenda for the October 11, 2022 meeting where this issue was first discussed. On December 1, 2022 the treasurer sent a letter to all owners stating there would be an increase in the 2023 HOA budget that would be offset by a Registration Fee that was anticipated to generate \$92,000. On Friday, December 16 at 545pm Pacific time, an agenda for the Tuesday December 20 board meeting along with a draft of the resolution to impose a Registration Fee was sent to all owners. Since December 17th and 18th were on the weekend, this gave 1 business day of notice before the December 20th meeting. Despite numerous requests to be placed on the agenda, we were told we would not have any allocated time. Instead, the board arbitrarily limited comments to two minutes per owner before passing the resolution. Since the resolution had been heavily modified prior to the meeting no one other than board members had copies before the meeting. During the comment period, there was no dialog. The board did not interact with any of the speakers other than to say their time was up. This lack of courtesy, respect, and interaction towards all owners is, in our opinion, very poor process.

Board's fee determination did not exercise "prudent business judgement"

Finally, even though we are confident that the fee will ultimately be found to be illegal, we object to the lack of "prudent business judgement" exercised by the board to arrive at \$35.00 per registration fee. Without professional management—our HOA is self-managed—it is easy to overlook things that a professional team would not miss. It is clear both the treasurer's letter from December 1, 2022 and the discussion by the treasurer during the December 20th board meeting and the comments from the board during that same meeting that the fee charge number of \$35 was "backed into" for the sole purpose of raising between \$80,000-100,000 from owners who rent their units to offset cost increases to the shared common area expenses.

Some members of the board have stated they do not want to use or rely upon certain technologies and processes commonly in use by most businesses around the world. Instead, they prefer manual systems and written forms. This suggests they are either not knowledgeable about or else biased against the use of these technologies even if they would save the homeowners money. Again, professional management might have been able to better advise our board.

Regarding parking permits: a parking pass with a unit's number could be supplied to each owner to be used by guests to place on their dashboard or rear-view mirror. Since each unit would only have one pass, units would not be able to have more than one tagged car in the parking lot at any one time. Such a parking permit system would help manage parking usage.

Regarding registration: many services exist to provide the ability to register guests electronically and compile a report. If this were done, all guests could register in advance and electronically. If a license number for the car in the lot is needed, that could be emailed to the front desk or appended to the electronic registration form. Any required signatures could be obtained using DocuSign or other similar services.

In other words, technology or simple systems could drive the actual costs down to close to zero. If the board were honestly trying to be efficient with our property's costs, they would treat registration like we do pool maintenance, propane, trash collection, building and rooftop garden maintenance, and other common expenses. We look for a quality service and do price comparison and pay as little as possible for what we need.

The fact this wasn't done with determining the registration fee helps reinforce our view of the board's bad faith and our opinion the registration fee number was arbitrarily determined and then justified in order to come up with a number between \$80,000-\$100,000. If this is allowed, there is nothing to stop the board from increasing the arbitrary fee even higher in the future or charging for swimming pool or rooftop usage if they unilaterally redefine such costs are no longer common expenses as they are now attempting to do with registration and parking passes.

Mediation and Arbitration

Our documents lay out a process for dispute resolution. The first step is mediation where both sides along with a neutral mediator in good faith work to resolve their differences. We all hope that will be possible. Some costs are incurred by each side. We will have to pay our attorney Chris Porter while all owners will share in the cost the board is incurring for the HOA attorney. Our hope is the HOA board will listen to reason, follow the Governing Documents, and rescind the illegal registration fee.

If mediation doesn't resolve the issue, the next step is binding arbitration. This is quite a bit more expensive. Again, each side will have to hire an attorney. Once all the evidence has been heard, the arbitrator will issue a binding decision. The difference with arbitration compared to mediation is if we prevail, and based on previous arbitrations and court cases we think we will do so, then the arbitrator can have the HOA reimburse us for our costs. All owners would have to share in the cost.

We believe we are acting in the best interests of ALL owners. If the board starts down the slippery slope of targeted fees to owners who rent their properties, it could conceivably hurt property values. Face it, our units have a high value because we are located on a beautiful ocean front property—but also because the units can be rented to guests. Almost every new owner is buying into our property intending to rent. We need to treat all owners the same and not discriminate against owners who choose to rent their units in accordance with the condo documents and bylaws.

Summary

In summary, our common elements are clearly defined in our Governing Documents and the front desk is included in that definition as is our pool, the rooftop garden, and our parking lot. The board does not have the power to decide what is and what is not included in that definition. The method for sharing amongst the owners the costs related to the common elements is also clearly set out in our Governing Documents to which we all agreed to when we purchased, and the board does not have the power to change that. The Governing Documents and the cost allocation method set out therein can only be changed by a 2/3 vote of the owners at a properly convened owners meeting and not by the board acting alone."

Sincerely,

Skye and Jane Lininger 516 (Skye is former Board President of Wailea Beach Villas AOA)

Dirk De Vuyst 608 and 609 (Dirk is an attorney and former RM HOA board member)

Leonard Heyman 205

Richard Berkins 207

This email is being sent by me in accordance with the following: "As a member of the Royal Mauian Association of Apartment Owners, I hereby request to be provided with a copy of the Owners List, in accordance with HRS 514B-154.5(a) (6) and Royal Mauian Bylaw 12. I am requesting this information in good faith for the protection of the interests of the

association or its members or both and I affirm that the information will be used by me personally and only for the purpose of soliciting votes or proxies or for providing information to other unit owners with respect to association matters.”