



Richard S. Ekimoto
John A. Morris
Gwenaelle M. Bratton
Dan C. Oyasato
Jill M. Tsuchitori
Nikki Y. Sen
Kenny Y.H. Baik

Of Counsel:
Arlette S. Harada

June 15, 2023

Home Owners of
Sunset Shores

Re: AOAO Sunset Shores – Unit Access For The Association and Owners

Dear Sunset Shores Homeowners:

We represent your association, the Association of Apartment Owners of Sunset Shores (the “Association”). The Association asked us to write to confirm that owners must allow access to their units if the access is required for: (i) the board to properly maintain, repair, or replace the common elements; or (ii) for individual owners to properly maintain, repair, or replace their units. Recent problems in obtaining access through units indicates not all owners understand those basic rights of access.

Both the law and your governing documents recognize that owners of condominium apartments must allow the association access to inspect or perform necessary work on the common elements or other apartments. In fact, section 514B-137(a) of the condominium law states:

Except to the extent provided by the declaration or bylaws, the association is responsible for the operation of the property, and each unit owner is responsible for maintenance, repair, and replacement of the owner’s unit. Each unit owner shall afford to the association and the other unit owners, and to employees, independent contractors, or agents of the association or other unit owners, during reasonable hours, access through the owner’s unit reasonably necessary for those purposes.

(Emphasis added.)

Article V, section 8 of the bylaws is also very clear that the Association has the right to enter any unit to perform necessary work or to correct any condition originating in one apartment and threatening other apartments or common elements. In addition, section 9G of the first amended and restated declaration indicates that owners have the right to access pipes and other items within the apartments of other owners. In other words, section 9G not only gives the association a right of access to maintain and repair the common elements; the section also gives individual owners a right of access to other units if required to maintain and repair their individual units.

Some owners may believe their rights as homeowners override the rights of their fellow owners. Nevertheless, Hawaii courts have recognized that living in a condominium project requires the owners of apartments to give up some of the rights they might normally have if they lived in single-family homes. More than 30 years ago, a Hawaii appellate court stated in Association of Owners of Kukui Plaza v. City and County of Honolulu, 7 Hawaii App. 60, 74 (1987):

"The uniqueness of the condominium concept of ownership has caused the law to recognize that each unit owner must give up some degree of freedom of choice he might otherwise enjoy in separate, privately owned property."

Leaving aside the law and the declaration, owners should consider how they would feel if they or the association needed access to another unit to make necessary repairs or improvements but the owner of the unit could deny them access. The provisions of the law and your governing documents are there for a reason -- without them, one owner could thwart the efforts of the association or other owners to make repairs, etc., that are necessary for the proper functioning of the whole building. If every owner can decide whether another owner or the association performs necessary repairs and replacement, there would be chaos and the project would be impossible to maintain.

Unfortunately, recent events suggest that some owners may misunderstand their rights as the owner in a condominium. Those owners seem to overlook the need for all the owners to cooperate in maintaining the condominium and their units by providing access if that is necessary to properly maintain and repair the project. If owners refuse to cooperate, the association may be forced to take formal legal action, at the expense of the owner, to enforce the right of access to individual units.

The Board of Directors (the "Board") would prefer to avoid any unnecessary legal action. Therefore, the Board asked us to provide the legal background to every owner so each owner understands their obligations to provide access.

Very truly yours,

EKIMOTO & MORRIS
A Limited Liability Law Company LLC

By



John A. Morris

Copy: Board of Directors, AOA Sunset Shores.
% Management Executive