

January 5<sup>th</sup> 2009

Aloha Homeowner,

Recently you received a letter/invoice for the new lease rent amounts which went into effect on January 1, 2009, along with a letter from C. Joel Criz, explaining the process and how the amount was determined. Since that letter went out there has been some confusion as to whether the payment is monthly or quarterly. The lease payment will remain on a monthly basis as it has been. Our letter indicated that due to the time frame of the approval of the lease renegotiations, we needed to send a letter/invoice for the first month and you will be receiving new Lease Rent coupons very soon for February and beyond. In Joel's letter he references the By-Laws that state the payments will be paid quarterly in advance. The payments have been collected on a monthly basis long before our office even handled the management and they will continue to be done as such.

As for the increase; I wish we could have given owners more notice of the increase, but the new lease amount started on January 1, 2009 and the final amount was not agreed upon till mid December. Although the Condominium Law in Hawaii requires 30 days notice of an increase in maintenance fees or special assessment, this Law does not apply to lease rent. Hawaii Condominium Law (HRS 514A & 514B) only indicates that on leasehold property, the lease must be followed. As to the complaint that there was no warning about the increase or amount; the lease negotiations have been a topic of discussion for 3 Annual Meetings and nearly every board meeting for the last 2 years, as well as in the newsletter. Unfortunately we could not warn about the amount it would increase to because the Board and Management had no idea what that amount would be until mid December. I will tell you that we avoided Arbitration as requested by the Lessors which could have cost the Association/Owners over \$25,000, with an outcome that we have discovered would have very likely been higher than the amount agreed on. There was no intent on the Board, Management or Joel Criz to "hide" anything from anyone, however in very sensitive negotiations such as this, the negotiation discussions were held in Executive Session as indicated in Hawaii Condominium Law.

In brief, Maalaea Yacht Marina made an offer of \$55 per square foot based on our appraisal from ACM Appraisers, Joel Criz also included two new Maui Ordinances to reduce the appraisal amount, The "Where's the Water Act" regarding available water and the Workforce Housing Ordinance. The Lessors appraisal came in at \$70 a square foot, a marked difference with our offer. The Lessor rejected the AOA's offer and requested Arbitration. While Joel Criz was setting up the Arbitration, he continued to try to get the Lessor to reconsider and come back with an offer. Joel was finally able to get a \$63 per square foot offer from the Lessor, which is considerably below the Lessors Appraisal, thereby avoiding a protracted and very expensive Arbitration. (please be aware that the rules of Arbitration require the arbitrators to consider only the lease itself, the negotiation terms and the appraisals, there is no consideration given to the current economy or personal feelings as to whether an increase is right or not).

Currently in Maalaea there is one condo that has completed its renegotiation Arbitration (Kanai A Nalu is now over \$800 per month in lease rent after a year long arbitration) and the Milowai is entering into arbitration with their Lessor. Maalaea Yacht Marina has actually come out ahead in relation to other renegotiations happening.

Finally, most of my phone calls and e-mails have centered on how the lease rent can go so high. The reason is the Lease itself. When you purchase a Leasehold Property, you are agreeing to pay rent for the land your unit sits on. Generally the Lease Amount for the first 20 years or so, are very low, then at the first renegotiations the amounts take a huge jump based on the “current” value of the land and set for another period of time.; in Maalaea Yacht Marina’s case, 10 years and then renegotiated for another 10 year term. This is the downside of owning leasehold. And not the first time this has happened. In the early and mid 80’s Hawaii Kai on Oahu had a number of Leasehold condos coming up for renegotiation and in some cases the lease rent went for \$45 to over \$1,400. There is also no State or Federal Law requiring the Lessor to sell in Fee Simple. Actually the Hawaii Supreme Court just recently upheld the Lessors right to enforce the terms of the lease. In this particular case the residents of the Kailuan in Kailua Oahu were told to vacate their units....the lease was over, and the lease had a clause that at the end of the lease the property and all improvements revert back to the landowner. The residents refused to move, the land owner took it all the way to the Hawaii Supreme Court, and the Supreme Court found in favor of the landowner, on the basis that the owners knew they were buying leasehold property, and new the lease would terminate and agreed to abide by the lease (a legal binding contract between the Lessor and the unit owner) when they bought, therefore the court required them to vacate and allow the land owner to take the property and improvements back.

I hope this answers some of your questions and concerns. Also please be aware that there will be a Board of Directors Meeting on Saturday January 17<sup>th</sup>, and a lot of this information can be found on the AOA Maalaea Yacht Marina page at [www.sherleyhawaii.com](http://www.sherleyhawaii.com)

Aloha

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Managing Agent