

New Law- that Extinguishes Priority of Payments for AOA's
Act 195 – Effective July 1, 2018 (Sunsets on June 30, 2020)
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- 1. Any payment by a Debtor is presumed to be for “common expenses.”**
 - a. The exception is when the payment is made pursuant to receipt of a demand letter that lists different categories of charges (including non-common expenses) and the total amount of those charges is then paid by the Debtor.**

- 2. “Common expenses” include:**
 - a. Bulk cable and/or wifi services
 - b. Metered and sub-metered utility reimbursement (pursuant to HRS § 514B-42) [[Note: there is a question as to whether such sub-metered charges would be classified as a common expense assessment even though they may be collected in the same manner as a common expense]]
 - c. Special assessments provided that such assessments are charged to all owners based on their PCI

- 3. Any payment by the Debtor, unless specifically noted by the Debtor on the payment, cannot be applied to such things as:**
 - a. Special Assessments that are not charged to all owners
 - b. Insurance deductible that is charged back to the owner
 - c. Late Fees
 - d. Interest
 - e. Fines
 - f. Attorneys’ Fees and Costs
 - g. Return check fees
 - h. Water damage assessments or other such charges for damage to the common elements

- 4. This law does not apply to HOAs and Co-Ops**

- 5. Pay first and dispute later only applies to those items in ¶2 above.**

Collection Flow

1. Demand letter

- a. Need to breakout the amounts noted above

2. No payment – Lien for all amounts

- a. If no notice of dispute by owner, and no payment plan, then proceed with non-judicial (if governing documents allow “power of sale”) or judicial foreclosure

3. If payment plan reached with owner, the payment plan shall include language on page 4 ¶(c) of the Act regarding Association’s right to mediate and fines and attorneys’ fees cannot be deducted from payments under the plan, and parties shall attempt to mediate disputes over fines, etc. through mediation within 30-days.

4. If no payment plan or at any time there is a dispute of the debt, owner can ask for verification as noted on page 10 of the Act ¶(c).

a. If owner still contests this amount – at any point in time – Association shall inform the owner of several requirements under ¶(d)(1)-(4) of the Act, at pages 11 and 12, including the owner’s right to request mediation.

- i. The owner then has 30-days from receiving this statement to demand mediation on all fines, and other charges;
- ii. If demand for mediation is made, all collection must stop, and mediation is to take place within 60-days of the owner’s demand for mediation.