

TO: The PAHIO at Kauai Beach Villas Interval Owners Association (KBVIOA)
Board of Directors
By EMAIL to the Kauai Beach Villas Owners Website

FR: Trish Harrington, KBV Owner

RE: Demand for Action – Hold Election on Whether to Renew Contract with
Plan Manager

DA: October 16, 2019

For the past two-and-a-half years, I have closely observed the actions of our Kauai Beach Villas Board of Directors and, simply put, I am outraged.

As an 18 year KBV Owner and 13 year former KBV Board member and Board President, I have never witnessed such unethical and, in my opinion, illegal behavior from a group of fiduciaries, who seem oblivious to the fact that they were elected to represent the interests of the KBV Owners, not themselves or their employers.

I received your recent communication stating that the KBV Board has decided to not renew the management contract of our current management company, Grand Pacific Resorts, in spite of their excellent performance on behalf of the KBV Ownership the past 33 months. Further, that you have elected to return the management responsibilities of KBV to Wyndham Destinations, in spite of their poor management track record at KBV from 2006 – 2016. The KBV Board has taken these actions in secret, without notice to the KBV Owners and with complete disregard for the KBV Governing Documents (specifically, CC&R's Article V., Section 7.a.1.b.) requiring a majority vote of the KBV Owners to not automatically renew our current management company agreement (Plan Manager). In taking this unilateral action, you even ignored a lengthy legal opinion from our long-time Association attorney, Phil Lahne, that clearly stated that you must conduct such a vote of the KBV Owners to make this change in our Plan Manager.

As a result, I have recently retained legal counsel to assist me and, if necessary, intend to pursue these matters by all remedies available to me and my fellow KBV Owners.

With the help of other concerned KBV Owners, we have compiled a 70-page dossier that clearly documents the unethical and, in the opinion of our counsel, illegal activity by the KBV Board and Wyndham. In the near future, we will be sharing this information with Jason Gamel, President and CEO of the American Resort Development Association (ARDA), the timeshare industry's trade association; Shep Altshuler, the Owner and Publisher of Timesharing Today; Rachel Abrams and Gretchen Morgenson of the NY Times and other interested media outlets (which we believe there will be many). While there are numerous examples of unethical and illegal behavior by the KBV Board and Wyndham, this letter will focus on three

examples that we believe to be the most egregious:

- 1) The KBV Board of Directors elected to not renew the Plan Manager without a vote of the KBV Owners as required in our CC&R's, Article V., Section 7.a.1.b. KBV's long time legal counsel, Phil Lahne, specifically advised in a letter to the KBV Board, dated March 4, 2019, that KBV must abide by its CC&R's and hold an election to not renew its Plan Manager. (I will add here that, even though I was a Board Member at the time and Mr. Lahne's letter was specifically addressed to the "Board of Directors, Kauai Beach Villas Interval Owners Association", Board Member Larry Warner, who received Mr. Lahne's letter, never shared the letter with me and I had to request a copy of the letter directly from Mr. Lahne.) I can only presume that Linda Kolstad, the KBV Board President and the Director of Association Governance for Wyndham in Hawaii, was not in agreement with Mr. Lahne's opinion and, in my conversations with Mr. Warner, he confirmed as much. When I learned that a legal services agreement had been entered into with Christian Porter, Esq. (of which Ms. Kolstad and Mr. Warner never advised me or, to my knowledge, any other KBV Board Members) and that he had rendered a second opinion stating that the Board could act to not renew the Plan Manager without a vote of the KBV Owners, I contacted his law firm and requested a copy of his opinion letter. Shortly thereafter, I received a call from Mr. Warner asking me why I was requesting a copy of the letter. I explained that, stating the obvious, I was a KBV Board Member and entitled to a copy of the letter and that I wanted to understand the basis of this second opinion. Mr. Warner then proceeded to explain to me that he was completely within his rights to seek this second opinion as he was acting on the direction and authority of the Board President, Linda Kolstad. Mr. Warner stated that Ms. Kolstad, knowing that she had a terrible conflict of interest, directed him to sign the legal services agreement with Mr. Porter, which he did as the only signatory on behalf of the Association. He concluded our conversation by saying he had directed Mr. Porter's office to not provide a copy of the letter to me. So, Mr. Warner, acting on the direction of Ms. Kolstad and without formal authorization from his fellow Board Members, evidently, obtained a second legal opinion from another attorney, stating that such a vote to terminate the Plan Manager was not required. It should be noted that to this day, I have never received a copy of Mr. Porter's letter. This is yet another violation of our governing documents, as section 4.07 of the KBV Bylaws requires the signature of two officers of the Association to hire a law firm on behalf of the Association. The bottom line here is, Mr. Warner did not have the authority, pursuant to the law, to hire Mr. Porter on his own. Finally, I will add, it is rumored that Mr. Porter has ties to Wyndham.
- 2) Illegal and conflicted conduct by Wyndham employees to manipulate the makeup of the Board of Directors. Two Wyndham employees, that were also KBV Board Members at the time, outlined a plan, IN WRITING, to unethically and in breach of their fiduciary responsibilities manipulate the KBV Board

election process. The “Smoking Gun” memo prepared by these Wyndham employees can be viewed on the SaveKBV.org website (under “Archives”).

- 3) As a continuation of their election manipulation outlined in item 2., the Wyndham controlled KBV Board implemented an unlawful election procedure that invalidated and disenfranchised over 700 independent KBV Owner votes at the May 16, 2019 Annual Owners’ Meeting. A properly elected BOD seat was illegally vacated and a surprise run-off election was held, without proper notice and despite protests from the Owners in attendance. This improper run-off election gave Wyndham the ability to vote again and elect their employee, Dani Ramos, to the Board effectively disenfranchising the Owner base not present from participating in this surprise run-off election.

Additionally, there are numerous other examples of questionable and unethical behavior by the current KBV Board.... Not allowing Owners to speak during Owner Forum, Meetings and Association Business conducted without notice to the KBV Owners, no response to recent Demand for Action and Cease and Desist letters... the list is a long one.

Based on everything we know about the KBV Board and Wyndham at this time, this letter makes the following Demand for Action of the KBV Board:

Comply with the KBV CC&R's, Article V., Section 7.a.1.b. and immediately repeal your illegal decision to hire Wyndham as the Plan Manager, effective January 1st, 2020. Further, conduct an Owner vote to determine whether or not to renew the contract with the current Plan Manager, which requires a majority vote of the KBV Owners to approve.

Please reply to this Demand for Action by October 21st, 2019.

Aloha,

Trish Harrington
Concerned KBV Owner On Behalf of the SaveKBV Coalition