

# GUIDE

These FAQs have been prepared to assist owners in understanding the complex issues confronting Kauai Beach Villas AOAO.

Here are some acronyms and definitions to know:

- PTC Post-tension cable; a construction method using steel cables to reinforce concrete slabs. The second and third floors of KBV were constructed using PTC technology.
- SPA Special Assessment
- THG The John Hardy Group; the association's third party project management firm (<https://www.jhgi.com/>)
- WJE Wiss, Janney, Elstner Associates, INC; a third party structural engineering firm hired by the association to assess the condition of the buildings ( <https://www.wje.com/>)
- PCI Percent Common Interest: every apartment as a designated percent common interest that can be found on your recorded deed. See Declaration B: Common Interest
- CIP Common Interest Percentage: same as PCI

## G&H Re-construction

### Question

### Answer

What work is being done in buildings G & H?

Currently, soffit repair (recently completed)

Is it possible that there are more broken post tension cables than were originally identified and how will they be determined?

Yes. WJE has recommended and the association authorized further testing of areas in buildings G & H that have a high likelihood of PTC degradation

Is there a schedule for building G & H repair?

Not at this time. Once the full amount of the SPA has been collected the board will direct THG to work with WJE to create design and bid documents and solicit bids.

When do we expect to get the full renovation repair done?

THG has estimated the full repair project to take approximately 10 months from design to permitting to construction

Once the funding is in place, how long will the repairs would take? 6months? 12months? Do we start with building G or H first?

There are many unknowns, such as time to obtain permits, produce drawings and bid docs, bidding process and final contracting. A very rough estimate based on WJE completing drawings in August, 2024 is possible project completion April/May 2025; however, this is contingent on obtaining permits in a six month timeframe.

When will the buildings reopen after completion of the work?

As soon as THG and WJE determine it is safe to open them.

Why doesn't insurance cover these repairs?

Insurance covers for named events specified in the policy. These include fire and flood. Original construction defects and age related deterioration are not covered.

Has a formal bid been accepted?

No

If yes, has a formal contract been signed?

No

If yes, when is work scheduled to commence?

TBD

## Special Assessment

### Question

### Answer

Who do I discuss setting up a payment plan for the Assessment?

Payment plans are not being accepted because the project cannot commence until 100% of the funds have been received.

Do we know when we expect to collect all the funds?

As of 5/27/24, 45% of the funds have been collected. In accordance with the association's billing and collection policy, late notices were mailed, and the collection policy will be followed.

What do I do if I can't afford the special assessment?

The association does not advise owners on their financial decisions.

What specific work will be undertaken using the funds collected by the special assessment?

This will be determined by WJE after additional inspection.

Is the same company who replaced the soffits going to do the upcoming structural repairs?

Until the bidding process starts we won't know.

What happens to my payment if the work is indefinitely delayed, or never completed? Will it be refunded?

All funds paid for the SPA are being held in an escrow account at First American Vacation Ownership Title and Escrow Services, Inc. and can be used for no purpose other than the tasks specific to reopening buildings G&H. The issue of refunding such funds, in the event that the work cannot commence, has not yet been taken up by the Board.

Will they be held by the board?

The SPA funds are being held in escrow in First American Vacation Ownership Title and Escrow Services, Inc. The Board of Directors has no contact with those funds.

What actions are to be taken if a homeowner does not pay the special assessment?

The association's billing and collection policy is being followed for the SPA the same as for maintenance fee billings: If payment is not received 60 days from the due date and the account is delinquent by at least one-thousand dollars (\$1,000.00), the account may be referred to the Association's attorney for legal action. All legal fees and costs incurred in the collection of a delinquent account shall be assessed against the delinquent unit and shall be collectable as provided in the Governing Documents. In order to be removed from legal action, the account must be brought current.

Are the remaining homeowners expected to make up the difference?

No

Has a formal bid been accepted?

The association requested THG and WJE to create the bid specification for the required work to reoccupy buildings G & H. WJE has recommended additional testing of the buildings before creating the specifications. That work is expected to occur the week of June 10. Then the test results will be analyzed and the bid specification created.

If yes, has a formal contract been signed?

NO

If yes, when is work scheduled to commence?

This will be determined after all the SPA has been collected, bids received and contractors selected.

## All Building Remediation

### Question

### Answer

Why doesn't insurance cover these repairs?

For insurance to cover the repairs there needs to be a specific event to which the damage can be attributed. Third party engineering firms hired to assess the building condition have determined the building defects to be the result of latent structural issues from the time the buildings were constructed. This is not an insured event.

Who were the original builders of KBV?

A Japanese contractor named Hasegawa Komuten who have since changed their name to Haseko.

## Soffit Repairs

### Question

### Answer

Have the soffit repairs to building F, G & H been completed?

Yes

Were the soffit repairs paid for with funds from the special assessment?

No, they were paid for with existing funds from the reserve account.

## Partition Action

### Question

### Answer

What is a partition action?

Generally speaking, a partition is a term used in the law of real property to describe an act, by a court order or otherwise, to divide up a concurrent estate into separate portions representing the proportionate interests of the owners of the property. A special master (referee) would be assigned to execute the partition process. The special master who would report directly to the courts and adhere to state codes.

What is partitioning?

Generally speaking, a process for a partition action is a legal action filed in Court that names all parties who have or claim an interest in the subject property, including owners, lienholders, lenders, and holders of future estates. The action commences with the filing of a Partition complaint, which is filed and served on all named defendants. The Partition action then proceeds like a standard civil lawsuit, except there is no right to a jury trial on the issue of Partition. The Partition action proceeds as a court trial and a judge renders a decision on the determination of interests of the parties and the manner of Partition. The judge will also appoint a referee or some other independent person to make recommendations and oversee the Partition process.

Is there a chance of KBV going bankrupt and ultimately falling apart?

The association's governing documents allow for bankruptcy if needed.

Has the board requested an appraisal on the property?

Not at this time, however the property tax valuation is approximately \$65M. According to the County of Kauai the property is taxed at what they consider the market value.

How would any proceeds be allocated?

Generally speaking, proceeds of a partition sale would be distributed to each owner according to their PCI (percent of common interest) after certain fees and costs are paid for.

Do all owners have an interest in the common elements?

Yes, it is included in each owner's common interest percentage.

Can an individual owner or group of owners choose to buy out their own apartment or building?

That issue is something that the Association cannot advise any individual owner and may be something that is addressed in a partition action. However, outside of such an action, that is generally not possible.