

**ASSOCIATION OF APARTMENT OWNERS OF MAKENA SURF
BOARD OF DIRECTORS' RESOLUTION ADOPTING A FINING POLICY**

WHEREAS, the Board of Directors ("Board") of the Association of Apartment Owners of Makena Surf ("Association") has the powers and duties necessary for the administration of the affairs of the Makena Surf condominium project ("Project"), in accordance with the Makena Surf Third Restated Declaration of Condominium Property Regime, as amended ("Declaration"), the Third Restated and Amended Bylaws of the Association of Apartment Owners of Makena Surf ("Bylaws"), and the Makena Surf House Rules Administrative Rules/Regulations ("Rules and Regulations") (collectively, "Governing Documents");

WHEREAS, pursuant to Section 11 (Powers Of Board Of Directors) of the Bylaws, the Board's powers and duties include, among other things,

[s]uch powers reasonably necessary or convenient for the administration of the affairs of the Association and . . . all such acts and things, except such acts and things as by law, the Declaration, or these Bylaws, are expressly reserved to the Voting Owners or to the Owners[.]

. . . .

(l) To enforce the provisions of these Bylaws, the Declaration, and any Rules and Regulations duly enacted for the use of the Units or the Common elements.

. . . .

(q) To . . . levy reasonable fines for violations of the Declaration, these Bylaws, and/or the Rules and Regulation[s]; and establish a fining procedure stating the basis for the imposition of any fine; allowing an appeal to the Board of a fine with notice and opportunity to be heard; and if the fine is paid, the Unit Owner or other person or entity against whom the fine is imposed, shall have the right to initiate a dispute resolution process as provided by the Act [Hawaii Revised Statutes ("HRS") Chapter 514B, Condominium Property Act][.]

WHEREAS, pursuant to Section 22.1 (Adoption Of Administrative Rules And Regulations) of the Bylaws, the Board's powers and duties include, among other things,

to adopt, and from time to time amend, administrative rules and regulations governing the details of the operation and use of the Common elements and that affect the use of or behavior in units, and such rules and regulations with respect to the use of the Units as may be deemed reasonable and necessary for the common welfare, provided that no rules or regulations conflict with any provisions of the Declaration, these Bylaws or law[.]

WHEREAS, under Section 22.3 (Sanctions For Violation Of Administrative Rules/Regulations) of the Bylaws, the Board has the power to impose the following sanctions:

(a) The power to order a Unit Owner to stop violating the Act, Declaration, Bylaws and/or an Administrative Rule/Regulation (a "Performance Order").

(b) Subject to the requirements of Hawaii Revised Statutes Section

514B-146, the power to suspend the rights, services and utilities of a Unit Owner, and all persons who claim under him or her, to use those parts of the Common elements which are not required for access to his or her Unit for a period not to exceed thirty (30) days.

(c) The Board of Directors shall from time to time adopt and publish a "Schedule Of Maximum Fines For Administrative Rule/Regulation Violations" which shall prescribe the maximum fine that may be imposed for violations.

(d) The power to suspend, or to condition, the imposition of a fine for a violation.

(e) After the third willful violation of a particular provision of the Act, Declaration, Bylaws or Administrative Rule/Regulation by any occupant of a Unit in any calendar year, the power to require that the Owner of such Unit give a bond, naming the Association as obligee, with a corporate surety licensed to do a surety business in the State of Hawaii as surety, to continue for a term not to exceed twenty-four (24) months, in a principal amount, to be determined by the Board of Directors, approximately equal to a judgment for damages, costs and expenses that the Association and any aggrieved Unit Owner might reasonably expect to obtain against such Unit Owner in an action for damages or injunctive relief, or both, brought under the Act, for any past violations and the next violation. The Board of Directors shall give such Unit Owner notice of the amount of the bond required, and such bond shall be delivered to the Treasurer by such Unit Owner within thirty (30) days after the delivery of such notice. If such Unit Owner should fail to give such bond, then there shall be a lien against the Unit of such Owner with like effect, and to the same extent, as any assessment for common expenses, in the principal amount of the required bond after the failure of such Unit Owner to give such bond. The right of the Association to foreclose such lien shall be conditioned upon the entry of a judgment in favor of the Association and an aggrieved Unit Owner under the Act. In the event of the foreclosure of such a lien, the proceeds received in satisfaction of such lien shall be distributed or applied in accordance with the judgment entered under the Act.

(f) The violation of any of the condominium documents or the violation of the Act by a tenant or occupant other than an Owner, shall give the Board the right (in addition to pursuing any other rights or remedies against the Owner of the Unit involved or as otherwise provided by law, the Declaration or these Bylaws,) after giving notice to the tenant and the Owner and an opportunity to be heard to impose a fine or fines against the tenant or occupant under the provisions of subsection (c), provided that the Owner shall be responsible for the conduct of the Owner's tenant or occupant and for any fines levied against the tenant or occupant or any legal fees incurred in enforcing the Declaration, these Bylaws or the Rules and Regulations against the tenant or occupant. The Board also may enforce any other rights against the tenant for the violation which the Owner as landlord could lawfully have exercised directly under the lease, including eviction, or which the Association could lawfully have exercised directly against the Owner or both. . . .

(g) To enter the Unit in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass.

(h) To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach, and all costs thereof, including attorneys' fees and costs, shall be borne by the defaulting Unit Owner.

WHEREAS, Section 22.4 (Imposition of Sanctions For Violation Of Administrative Rules/Regulations) of the Bylaws states:

Any officer of the Association or any Unit Owner may by a written complaint filed with the Board of Directors request the Board of Directors to impose sanctions upon a Unit Owner for an alleged violation the Act, Declaration, Bylaws or an Administrative Rule/Regulation. The complaint shall describe the nature of the alleged violation. Upon the filing of a complaint, the Secretary, Manager and/or Managing Agent shall immediately fix a date, time and place for the hearing thereof by the Board of Directors (which date shall not be less than five days after the delivery of notice of the hearing upon the Unit Owner alleged to be in default) and shall forthwith deliver a copy of the complaint and the notice of hearing to the Unit Owner alleged to be in default.

At the hearing the Board of Directors shall hear the Unit Owner alleged to be in default, and all others interested, and shall hear and consider such testimony and evidence as it deems pertinent. The Board of Directors may exclude and refuse to hear irrelevant, immaterial or unduly repetitious testimony or evidence. The Board of Directors shall make a written decision of its findings and conclusions in the matter after the hearing, and shall file the same with the Secretary. If the Board of Directors concludes that the Unit Owner alleged to be in default is in violation, the written decision shall specify the sanctions to be imposed upon that Unit Owner. The written decision entered by the Board of Directors after such a hearing shall be final and binding among the Owners and the Association and the same shall not be subject to judicial review or appeal. The Secretary shall forthwith deliver a certified copy of the written decision entered by the Board of Directors in the matter to the Unit Owner alleged to be in default.

WHEREAS, Section 22A (Attorney's Fees and Expenses of Enforcement), Subsection (a)(3) of the Bylaws states that an Owner, occupant, tenant, employee of an Owner, or any other person who may in any manner use the Property shall promptly pay on demand to the Association all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association for enforcing against such person or persons any provision of the Governing Documents, Act, or rules of the real estate commission;

WHEREAS, Section 21 (Alternative Dispute Resolution) of the Declaration provides:

(a) Except as provided in Section 514B-161 of the Act, at the request of any party to a dispute concerning or involving one or more apartment owners and the Association, the Board, or the managing agent or one or more apartment

owners relating to the interpretation, application, or enforcement of the Act, this Declaration, the By-Laws or the Rules and Regulations the parties to the dispute shall be required to participate in mediation. (Section 514B-161 of the Act) If a dispute is not resolved by mediation as provided in subsection (a), in addition to any other legal remedies that may be available, (including the arbitration procedures described in subsection (b)), any party that participated in the mediation may file a request for a hearing with the office of administrative hearings under the provisions of the Act. (Section 514B-161.5 of the Act)

(b) Except as provided in Section 514B-162 of the Act, at the request of any party any dispute concerning or involving one or more apartment owners and the Association, the Board, or the managing agent or one or more apartment owners relating to the interpretation, application, or enforcement of the Act, this Declaration, these By-Laws or the Rules and Regulations shall be submitted to arbitration pursuant to the provisions of said Section 514B-162. (Section 514B-162 of the Act)

WHEREAS, HRS § 514B-104(a)(11) provides that an association may

[i]mpose charges and penalties, including late fees and interest, for late payment of assessments and levy reasonable fines for violations of the declaration, bylaws, rules, and regulations of the association, either in accordance with the bylaws or, if the bylaws are silent, pursuant to a resolution adopted by the board that establishes a fining procedure that states the basis for the fine and allows an appeal to the board of the fine with notice and an opportunity to be heard and providing that if the fine is paid, the unit owner shall have the right to initiate a dispute resolution process as provided by sections 514B-161, 514B-162, or by filing a request for an administrative hearing under a pilot program administered by the department of commerce and consumer affairs.]

WHEREAS, HRS § 514B-104(b) and (c) provide:

(b) If a tenant of a unit owner violates the declaration, bylaws, or rules and regulations of the association, in addition to exercising any of its powers against the unit owner, the association may:

- (1) Exercise directly against the tenant the powers described in subsection (a)(11);
- (2) After giving notice to the tenant and the unit owner and an opportunity to be heard, levy reasonable fines against the tenant for the violation, provided that a unit owner shall be responsible for the conduct of the owner's tenant and for any fines levied against the tenant or any legal fees incurred in enforcing the declaration, bylaws, or rules and regulations of the association against the tenant; and
- (3) Enforce any other rights against the tenant for the violation which the unit owner as landlord could lawfully have exercised under the lease, including eviction, or which the association could lawfully have exercised directly against the unit owner, or both.

(c) The rights granted under subsection (b)(3) may only be exercised if the tenant or unit owner fails to cure the violation within ten days after the association notifies the tenant and unit owner of that violation; provided that no notice shall be required when the breach by the tenant causes or threatens to cause damage to any person or constitutes a violation of section 521-51(1) [compliance with applicable building and housing laws materially affecting health and safety] or 521-51(6) [not permit any person on the premises with the tenant's permission to willfully destroy, deface, damage, impair, or remove any part of the premises which include the dwelling unit or the facilities, equipment, or appurtenances thereto, nor oneself do any such thing].

WHEREAS, the Board has determined that it is in the best interest of the Association to adopt a policy imposing fines for violations of the Governing Documents, as the same may be amended from time to time.

NOW THEREFORE, BE IT RESOLVED, that pursuant to Sections 11, 22.1, 22.3, 22.4, and 22A of the Bylaws, Section 21 of the Declaration, and HRS § 514B-104(a)(11) and HRS § 514B-104(b) and (c), the Fining Policy, attached hereto, is hereby adopted, effective May 23, 2024.

CERTIFICATE OF SECRETARY

THIS CERTIFIES that the undersigned is the Secretary of the above-named Association and that the foregoing is the full, true and correct resolution adopted by the Board of Directors thereof at a meeting of said Board held on May 23, 2024, legally called and held, at which a quorum was present and voting.

DATE: May 24, 2024.


Secretary
ASSOCIATION OF APARTMENT OWNERS
OF MAKENA SURF

ASSOCIATION OF APARTMENT OWNERS OF MAKENA SURF

FINING POLICY

The Board of Directors ("Board") delegates to the Managing Agent, primary enforcement of the Third Restated Declaration of Condominium Property Regime, as amended, Third Restated and Amended Bylaws of the Association of Apartment Owners of Makena Surf, and Makena Surf House Rules Administrative Rules/Regulations (collectively, "Governing Documents"), and Hawaii Revised Statutes ("HRS") Chapter 514B (Condominium Property Act ("Act")). The Managing Agent shall deliver and/or mail a written notice of a Violation Notice or complaint ("Complaint Notice") by either personal delivery and/or U.S. mail, postage prepaid, to the address of the Unit owner ("Owner") on file with the Managing Agent. A copy of the Violation Notice or Complaint Notice shall also be delivered and/or mailed to the Owner's on-island agent if the Owner is off-island, and the violator, if applicable.

I. NOTICE REQUIREMENTS/PROCEDURES

A. Sanctions Based on Verified Report

Based on a verified report by the Association's General Manager of an alleged violation of the Act or Governing Documents, the Board may issue to the Owner a Violation Notice, in accordance with the Fining Schedule in Part II of this Fining Policy. The Violation Notice shall specify a time period in which the Owner may respond and have an opportunity to be heard. The Owner's failure to respond and exercise their opportunity to be heard within the time period specified shall result in the imposition of a sanction.

B. Sanctions Based on Complaint Notice

An officer of the Association or Owner may file a written complaint with the Board, requesting sanctions upon an Owner for an alleged violation of the Act or Governing Documents and describing the nature of the alleged violation. Prior to the imposition of a sanction, for violations of the Act and/or Governing Documents the following procedure shall be followed:

- The Managing Agent shall deliver and/or mail a Complaint Notice to the Owner, the Owner's on-island agent if the Owner is off-island, and the violator if applicable.
- The Association's Secretary, General Manager, and/or Managing Agent shall immediately schedule a hearing before the Board and deliver a copy of the Complaint Notice and a notice of the hearing to the Owner allegedly in default.
- The date of the hearing shall not be less than five (5) days after delivery of the hearing notice to the Owner allegedly in default.
- At the hearing, the Board shall hear the Owner alleged to be in default and all others interested, and shall hear and consider such testimony and evidence as it deems pertinent. However, the Board may exclude and refuse to hear evidence it deems to be irrelevant, immaterial, or unduly repetitious.

- After the hearing, the Board shall issue a written decision of its findings and conclusions and file it with the Association's Secretary.
- If the Board concludes that the Owner allegedly in default is in violation, the written decision shall specify the sanctions to be imposed.
- The Secretary shall forthwith deliver a certified copy of the Board's decision to the Owner allegedly in default.
- Owner may appeal a fine and/or Violation Notice, as set forth in Part III of this Fining Policy.

II. FINE SCHEDULE

A. General Violations

1. First Violation. For a first violation, a first written Violation Notice ("First Violation Notice") will be issued to the Owner (and to the on-island agent and violator, if applicable). If the violation is ongoing (e.g., an unauthorized alteration), a demand for compliance within one (1) week or as otherwise specified in the First Violation Notice will be made. If the violation has ceased (e.g., a noise disturbance that has ceased), a demand will be made that the violator not engage in further violations of that nature.
2. Second Violation. If a second violation occurs, or if the violation continues after the time period for compliance in the First Violation Notice has expired, a second written Violation Notice ("Second Violation Notice") will be issued to the Owner (and to the on-island agent and violator, if applicable). The Second Violation Notice shall specify a time period in which the Owner may respond and be heard. After the expiration of that time period, if the Owner has not responded, or the Owner has responded and been heard and the Board has decided that a fine is appropriate, a fine of \$250.00 will also be assessed against the Owner. If the violation is ongoing, a demand will be made for compliance within one (1) week or as otherwise specified in the Second Violation Notice. If the second violation has ceased, a demand will be made that the violator not engage in further violations of that nature.
3. Third Violation. If a third violation occurs, or if the violation continues after the time period for compliance in the Second Violation Notice has expired, a third written Violation Notice ("Third Violation Notice") will be issued to the Owner (and to the on-island agent and violator, if applicable). The Third Violation Notice shall specify a time period in which the Owner may respond and be heard. After the expiration of that time period, if the Owner has not responded, or the Owner has responded and been heard and the Board has decided that a fine is appropriate, a fine of \$500.00 will also be assessed against the Owner. If the violation is ongoing, a demand will be made for compliance within one (1) week or as otherwise specified in the Third Violation Notice. If the third violation has ceased, a demand will be made that the violator not engage in further violations of that nature.

4. Subsequent Violations. If a subsequent violation occurs, or if a violation continues after the expiration of the time period for compliance in the Third Violation Notice and/or a subsequent Violation Notice, a subsequent Violation Notice will be issued to the Owner (and to the on-island agent and violator, if applicable), which shall specify a time period in which the Owner may respond and be heard. After the expiration of that time period, if the Owner has not responded, or the Owner has responded and been heard and the Board has decided that a fine is appropriate, a fine of \$1,000.00 will also be assessed against the Owner. Further, the matter may be referred to the Association's attorney for appropriate action. The Owner shall be responsible for all such costs, including attorneys' fees associated with this effort.

Additionally, after the third willful violation of the Act or Governing Documents by any occupant of a Unit in any calendar year, the Board may require that the Owner of such Unit give a bond, naming the Association as obligee, with a corporate surety licensed to do a surety business in the State of Hawaii as surety, to continue for a term not to exceed twenty-four (24) months, in a principal amount, to be determined by the Board, approximately equal to a judgment for damages, costs and expenses that the Association and any aggrieved Owner might reasonably expect to obtain against such Owner in an action for damages or injunctive relief, or both, brought under the Act, for any past violations and the next violation.

The Board shall give such Owner notice of the amount of the bond required, and such bond shall be delivered to the Treasurer by such Owner within thirty (30) days after the delivery of such notice. If such Owner should fail to give such bond, then there shall be a lien against the Unit of such Owner with like effect, and to the same extent, as any assessment for common expenses, in the principal amount of the required bond after the failure of such Owner to give such bond. The right of the Association to foreclose such lien shall be conditioned upon the entry of a judgment in favor of the Association and an aggrieved Owner under the Act.

NOTE: Second, Third, and subsequent violations need not be for a violation of the same provision before a fine is imposed and/or action is taken. For example, if an Owner is cited for performing an unauthorized addition or alteration for their first violation, and then violates a noise rule for their second violation, the fine would be imposed on the Owner upon the occurrence of the second violation. After twelve (12) months, a violation will be removed from an Owner's record and will not be used in the calculation of subsequent violations.

B. Serious Violations

Nothing contained in this Fining Policy shall be interpreted to prevent or delay the Board or the Managing Agent from immediately referring any violation to the Association's attorney for the taking of legal action as may be appropriate to abate a nuisance; protect the health and safety of residents, Association employees, and directors; and/or prevent damage to property. All attorneys' fees and

costs/expenses incurred will be assessed back to the Owner in violation of the Governing Documents.

C. Responsibility of Owners for Fines and Assessments

Owners are responsible for their tenants', occupants' and guests' observance of all Governing Documents and for the payment of any fines or assessments levied. Should a violation occur which places a financial obligation on the Association, the Owner responsible for such obligation shall reimburse the Association, by way of special assessment to the Owner, for such financial obligation, including fines, legal costs and attorneys' fees.

III. APPEALS

A. Submitting an Appeal

An Owner may contest a fine and/or Violation Notice by submitting an appeal in writing to the Board through the Managing Agent within thirty (30) days of the date of the Violation Notice, in accordance with this policy and HRS § 514B-104(a)(11).

The appeal must contain a copy of the Violation Notice(s) and a statement of the facts. Owners are strongly encouraged to include in their appeal:

- an explanation of the position of the person filing the appeal
- the names and addresses of witnesses
- written statements of witnesses
- copies of proposed exhibits

The failure of an Owner to appeal within thirty (30) days of the date of a Violation Notice shall constitute a waiver of the right to a hearing and a loss of the right to contest the decision of the Board.

B. Hearing & Decision

Upon receipt of a timely appeal, the Board shall inform the Owner of the date, time and location of the hearing. The Board will review the appeal at the next scheduled Board meeting at which a quorum is present. The Board may continue the hearing in its sole discretion. The Owner may, but is not required to, present information in person or in writing. The Board may limit the amount of time available to present information. At the hearing, the Board shall review the facts on which the fine and/or Violation Notice was based and allow the Owner to present any defenses to the claim in writing or orally.

The Board may affirm, reduce, suspend, or cancel any fine after considering the evidence presented at the hearing. The Board shall deliver a written decision to the Owner as soon as possible after the hearing, but in any event no later than thirty (30) days after the hearing. The Board's decision shall be final.

IV. ALTERNATIVE DISPUTE RESOLUTION

If a fine is paid, the Owner shall have the right to initiate a dispute resolution process as provided by HRS § 514B-161 (mediation) and/or HRS § 514B-162 (arbitration), to contest a decision of the Board.

V. OTHER REMEDIES

The right of the Board to impose and/or authorize the imposition of fines shall be in addition to any other rights and remedies available to the Association for violations of the Governing Documents.

NOTHING CONTAINED IN THIS RESOLUTION SHALL BE INTERPRETED TO PREVENT OR DELAY THE BOARD OR THE MANAGING AGENT FROM IMMEDIATELY ENJOINING, ABATING, REMOVING, OR REMEDYING – THROUGH AUTOMATIC FINES, LEGAL ACTION, OR ANY OTHER MEANS – ANY VIOLATION OR BREACH WHICH MAY IMPAIR OR IN ANY WAY AFFECT THE VALUE OR SAFETY OF THE PROJECT OR THE USE, ENJOYMENT, SAFETY OR HEALTH OF ANY OCCUPANT.