1. Introduction

1.1. Life in a Sectional Title scheme such as Dolphin Beach depends largely on a friendly co-existence between the different owners and their families. In most cases this is achieved when one's own conduct is within the management rules and allows others the same conduct.

1.2. Many tenants share the same space as owners, and they do not necessarily share the same values or conduct principles. This causes additional strain on a community that share a space close to one another.

1.3. Imposing fines on owners is a last resort actions from the Trustees when the conduct of the individual is not aligned with the rules and the behaviour does not change after warnings were issued.

2. The Aim of this House Rule

2.1. This House rule sets out the procedure that must be followed to impose a fine on an Owner.

3. Breach in the Registered Conduct Rules

3.1. The following paragraphs 20 and 21 "Breach" is an extract from the Dolphin Beach Registered Conduct Rules

***"**Paragraph 20. BREACH"*

In addition to and without prejudice to the rights created in accordance with the provisions of rule 70 of the management rules in the event –

(a) of the owner committing any breach of any of the provisions of the management, conduct or house rules made hereunder or of the Act and failing to remedy such breach within seven (7) days of the date of delivery by hand or posting by prepaid registered post of written notice calling upon such owner to remedy the same; or

(b) of the owner committing or suffering the commission of any repetition of any breach of any of the terms and conditions of the management, conduct or house rules hereunder or of the Act, which breach is of such a nature or occurrence that cannot practicably be remedied subsequent to the giving of a period of notice as aforesaid, at any time after due notice in writing has been given to the owner requiring the owner to desist from and/or not to repeat or suffer the repetition of the breach complained of:

the body corporate or the trustees or the managing agent if so authorised by the trustees shall be entitled notwithstanding any indulgence that may have been shown to the defaulting owner, to take such action as may be available to it or them, either to enforce the relevant provision of the rules and/or Act breached, or alternatively to restrain the defaulting owner from continuing or repeating the unlawful conduct complained of as may be available to the body corporate or the trustees or the managing agent as the case may be or to impose a suitable fine to be levied against the owner of that unit's levy account? the amount of such fine to be determined in the sole discretion of the trustees, by way of a majority vote at a Trustee meeting, all without prejudice to any other rights that may lie against the defaulting owner for the recovery of any damages or loss which the body corporate or any other owner in the building may suffer as a

result of such breach and/or failure to remedy same. In the event of any steps or legal action being taken by the body corporate or the trustees or the managing agent for the purpose of enforcing compliance with these rules or any house rules hereunder or of the Act of procuring a due and proper remedy of such breach, all costs and expenses howsoever incurred by the body corporate or the trustees or the managing agent arising thereout or in connection therewith (including costs on the scale as between Attorney and own client) shall be paid by and shall be recovered from the defaulting owner.

<u>"Paragraph 20A"</u>

a) In the event that the Trustees elect to impose a fine, written notice will be despatched to the owner within 3 business days of the decision being taken and minute at a Trustees' meeting, and if the offender is a tenant, then also to the tenant, advising the owner of the fact that the Trustees have elected to impose a fine, setting out the details of alleged breach of the rules and advise the owner of the amount of the fine to be imposed, which will be added to the owner's levy account. The owner shall be granted 10 business days to dispute the fine.

b) Should the owner not dispute notice within 10 business days of when the notice is dated, in writing, the fine will become payable and the owner shall have no further recourse and the decision shall become final and binding.

c) Should the owner however dispute the fine on any of the following grounds:

i) whether a breach of the rules occurred; and / or

ii) whether a fine is a suitable remedy and / or

iii) that the amount of the fine that was imposed is excessive: full, written reasons shall be provided in the owner's written objection, including an appropriate alternative sanction, should the dispute only be with regard to the amount of the fine imposed. Any 3 trustees (including a nominee trustee) (hereafter "the committee") shall then within 2 weeks (or later if this is reasonably practical) convene a meeting, at a time and place convenient to them and the owner (at which meeting the Chairman of the Trustees must be present, and failing him / her, any Trustee may be elected as an ad hoc Chairman) to consider the said representations and hear oral representation by the owner, if any, and hear evidence by any relevant witnesses (including witnesses called by the Trustees in support of the alleged breach). After hearing same, they may then either agree with the reduced fine suggested by the owner, or reverse the fine entirely or further reduce it, in which event the decision will be final and binding. If they however elect to retain the fine entirely or only reduce it to an amount more than the owner proposed, the committee shall (if the decision is not made at the said hearing in the presence of the owner) inform the owner, in writing, within 3 business days of their decision.

d) The hearing will be of an informal nature and the number of witnesses will be limited at the discretion of the majority of the committee whose decision will be final and binding, and which discretion will be exercised reasonably.

e) Upon hearing the owner as well as any witnesses that the Trustees elect to call in support of the fine to be imposed, (which evidence may be recorded) the committee shall by majority vote make a decision as to whether there was a breach and / or as to the reasonableness of the fine to be imposed, if any.

f) If the committee decides to uphold the fine written reasons shall be given.

g) If the owner is dissatisfied with the outcome he/she may within 21 business days after the decision is made known, declare a dispute and invoke arbitration proceedings as set out in the Management Rules to appeal the finding and / or fine imposed failing which the decision shall become final and binding and the fine shall be added to the next month's levy account and become payable.

Paragraph 21 In the event of the body corporate instituting any legal action or proceedings against the owner as a result of any breach of the management, conduct and/or house rules, or in terms thereof, the owner shall be liable to pay, in addition to party and party costs, all attorney and client fees and disbursements on the scale as between Attorney and own client, including collection commission, on a scale as determined by the Law Society from time to time.

4. Fines in the Sectional Title Act

4.1. The following paragraph is an extract from the Sectional Title act: "Contributions and charges."

25. (1) The body corporate must, as soon as possible but not later than 14 days after the approval of the budgets referred to in rule 17(6)(j)(iv) by a general meeting, give each member written notice of the contributions and charges due and payable by that member to the body corporate, which notice must—

(a) state that the member has an obligation to pay the specified contributions and charges; and

(b) specify the due date for each payment; and

(c) if applicable, state that interest at a rate specified in the notice will be payable on any overdue contributions and charges; and

(d) include details of the dispute resolution process that applies in respect of disputed contributions and charges.

(2) If money owing is not paid on the dates specified in the notice referred to in sub-rule (1), the body corporate must send a final notice to the member, which notice must state—

(a) that the member has an obligation to pay the overdue contributions and charges and any applicable interest immediately; and

(b) if applicable—

(i) the interest that is payable in respect of the overdue contributions and charges at the date of the final notice; and

(ii) the amount of interest that will accrue daily until the payment of the overdue contributions and charges; and

(c) that the body corporate intends to take action to recover the amount due if the overdue contributions and charges and interest owing are not paid within. (This gazette is also available free online at www.gpwonline.co.za STAATSKOERANT, 7 OKTOBER 2016 No. 40335 55) 14 days after the date the final notice is given.

(3) Subject to rules 21(3) (a) and (b), after the expiry of a financial year and until they become liable for contributions in respect of the next financial year, members are liable for contributions in the same amounts and payable in the same instalments as were due and payable by them during the past financial year.

(4) A member is liable for and must pay to the body corporate all reasonable legal costs and disbursements, as taxed or agreed by the member, incurred by the body corporate in the collection of arrear contributions or any other arrear amounts due

and owing by such member to the body corporate, or in enforcing compliance with these rules, the conduct rules or the Act.

(5) The body corporate must not debit a member's account with any amount that is not a contribution or a charge levied in terms of the Act or these rules without the member's consent or the authority of a judgment or order by a judge, adjudicator or arbitrator.

(6) The body corporate must in its annual financial statements account for all contributions and any other charges debited to members' accounts.

(7) On request in writing by a member the body corporate must make available a full and detailed account of all amounts debited and credited to the member's account with the body corporate.

5. Procedure to be Followed

5.1. Reporting an Offence An offence against the rules of the Estate may be reported by any owner, tenant or other official of the Estate. The report must preferable be in writing detailing as much information as possible describing the offence as well as the date and time. The report must be sent to the Estate Manager who will record the offence in the appropriate format. The Chairman must be informed of all offences recorded.

5.2. 1st Notice/Warning The **Estate Manager** will visit the owner or tenant to try and resolve the offence. The Estate Manager will within 2 working days write a "1st notice/warning letter" to the offender to rectify the offence or to stop the misconduct if the informal visit does not resolve the offence. (The letter is directed to the owner of the apartment whether the offence was committed by the owner or family/friends or a tenant. A copy of the letter is also issued to the tenant. This 1st Notice/Warning will be labelled 1ST Notice.

5.2.1. Whoever is lodging the complaint must do so in writing, detailing the problem, and send it to the body corporate.

5.2.2. The Estate Manager must then inform the owner/tenant of the complaint in writing and give them a reasonable amount of time to respond.

5.2.3. The person who the complaint has been made against must be given as much detail about the alleged transgression and the rules that were broken.

5.2.4. This notice should serve as a warning, and the person must be made aware of the fact that if the behaviour persists, they will be fined.

5.2.5. The possible fine amount must be stipulated.

5.2.6. A copy of the appropriate rule must accompany this notice.

5.2.7. When an owner cannot, or will not, attend a meeting with the Estate Manager the formal documentation must be forwarded to the owner.

5.3. Disciplinary Committee If the 1st notice is not rectified within 7 days or, a reasonable time if 7 days is too short to rectify the problem, the problem is referred to the Disciplinary committee. The Disciplinary committee is constituted by at least two appointed Trustees. If the members of the Disciplinary committee are not available, the matter is referred to the Board of Trustees.

5.4. 2nd Notice The 2nd notice is issued by the **Disciplinary committee** or the Board of Trustees.

5.4.1. The owner or tenant must be informed of this persistence and invited to a meeting with the Disciplinary committee to explain or defend their actions

5.4.2. The person must be given a reasonable amount of time to prepare their side of the story.

5.4.3. The 2nd notice must clearly indicate that if the problem is not rectified, that a fine will be issued.

5.4.4. The possible fine amount must be stipulated in the notice.

5.5. 3rd Notice The issuing of a fine is initiated by the Disciplinary committee, or the Board of Trustees and will be administered through the Managing Agent. This 3rd notice is sent by the **Managing Agent** to the offender and is the start of a formal process of issuing of a fine.

5.6. Tracking of Disciplinary Notices, The Estate Manager will table at Trustee meetings all warnings issued. The Disciplinary committee will table all 2nd notice issued. The Managing Agent will table at Trustee meetings all formal fines issued. The Trustees may decide to apply other disciplinary options such as formal legal action.

5.7. Notices 3rd Notices will be issued by the Managing Agent according to the decisions made at a Trustee meeting.

5.7.1. These notices must be issued within 5 working days after the decision made at the Trustee meeting.

5.7.2. The owner will have 10 working days to dispute the notice.

5.7.3. After 10 working days the fine becomes payable and no further recourse is available.

5.7.4. The owner may dispute a fine in writing on the grounds that the breach did not take place, or very specific reasons why the offence is not valid, or that the fine amount is not suitable.

5.7.5. If the issue still cannot be resolved, the Disciplinary committee must give the person the opportunity to present their case at a hearing.

5.7.6. At the hearing, the person can show evidence and call/ cross-examine any witnesses

5.7.7. After the hearing, once both sides of the story have been heard and considered, the trustees can deliver their verdict and state whether they will be imposing a fine

5.7.8. The owner may suggest alternative sanctions to remedy the situation.

5.7.9. The objections are considered by the Disciplinary committee.

5.7.10. The findings of the Disciplinary committee are conveyed to the owner within 3 working days.

5.7.11. The owner may thereafter declare a dispute within 21 working days and invoke arbitration proceedings as set out in the Management Rules to appeal the finding if he/she is still not satisfied.

5.7.12. The fine amount must be stipulated on all notices send to offenders.

5.8. Summary

5.8.1. 1st notice – Issued by Estate Manager and consist of a formal warning.

5.8.2. 2nd notice – issued by the Disciplinary committee and gives the offender the opportunity to formally discuss the matter with the Trustees.

5.8.3. 3rd notice – issued by the Managing Agent and is the formal start of the fine process.

5.9. Levies in Arears If an owner does not pay his/her levies it is a disciplinary issue.

5.9.1. The Managing Agent will table at each Trustee meeting a list of outstanding/late levy payments. When an owner has an arrangement with the Managing Agent or the Board of Trustees to pay levies in a specific way these arrangements must be considered before indicating late or no payments.

5.9.2. Owners who find it difficult to settle the levy account may voluntarily approach the Disciplinary committee. Alternatively, the Disciplinary committee may request a meeting with the owner who is in arears.

5.9.3. The owner and the Disciplinary committee may come to an agreement to reschedule the payment of levies.

5.9.4. If the levies are not settled as agreed the first meeting is considered the warning or 1st notice meeting. If the settlement is not done by the 7th of the next month a formal in writing 2nd notice is issued by the Managing Agent to the owner. This notice is accompanied with the interest raised for late payment.

5.9.5. Partial or late payments will only be acknowledged if agreed upon by the Disciplinary committee.

5.9.6. The Trustees may decide to follow legal action on all owners who continuously do not pay their levies. The fines issued on late payments stays in place until the account is settled.

6. Typical Fines for Offenders

Offence	Penalty
Illegal alterations	3rd notice – 100% of deposit/month new application and deposit must be filed
Not attending to a leak affecting others	3rd notice - R 1 000/month not attending. 4th and more notices– R 3 000/month
Illegal parking	3rd notice – R 1 000/month
Erecting antennae/dishes	3rd notice – R 1 000/month
Noise	3rd notice - R1 000/occasion 4th and more notices – R 3 000/occasion
Misuse of common property/servitude land	3rd notice – R 2 000/offence 4th and more notices – R 3 000/offence
Displaying illegal items	3rd notice – R 1 000/offence
Not paying monthly levies	2nd notice - 18%p/m interest on outstanding amount 3rd and more notices – legal action
Pet behaviour	3rd notice – R 1 000 per offence 4th notice – R 3 000 per offence 5th and more notice – pet must be removed
Speeding	3rd notice - R 1 000/offence