



February 2013

SURFSIDE III e-NEWSLETTER

Daniel Kessner – Editor



FROM THE BOARD OF DIRECTORS

February 9th Board Meeting

At this meeting, with Bill Betts' scheduled absence, we will have a "short" Board. Major executive session homeowner issues will be deferred to the following month.

Lateral Drain Cleaning

At the February 9th meeting the Board will take up the issue of cleaning the p-traps, which are a homeowner financial responsibility. The proposal will be to charge owners of 1 bath + kitchen \$100 and to charge owners of 2 bath + kitchen \$150 to clean these p-traps while we are doing the laterals in their units.

J Street Drain Project

By the February 9th meeting, the VCWPD will have finished their work and evaluation of the effect of the new plan on our tree line and vegetation. They will present their new plan using sheet pile, and will show the effects of their new plan on Surfside III at the February 9th meeting.

Here is a summary of their current plan. The work is being done by Jordan, Gilbert, and Bain (JGB) for the VCWPD on those trees on SSIII property whose roots extend onto District property. They will evaluate the potential effects of the revised design on their survivability. JGB are pruning roots at the sheetpile line marked in the field by a County survey crew. The purpose of this is two-fold: (1) by pruning the roots before construction, sheetpile press-in would not adversely affect the trees by pushing down on the root system, and (2) qualified personnel can carefully document the size and health of roots to be pruned, and determine if a tree is likely to survive the process. This topic will be put on the February 9th meeting agenda if at all possible.

CC&Rs

The draft of the proposed CC&Rs will be published on our website in early March. The April 13th Board Meeting will be a CC&Rs meeting. Our attorney will take us through the proposed changes and we will have an open discussion of value of fairness of all the proposed changes.

March 9th Board Meeting--Rules & Regulations--general information and recent developments

New rules are proposed to the Board, and if the Board believes that they have merit, they can approve sending them out to members for review. The civil code requires that the Board send these rules out for a 30 day comment period to get input from the owners. While the Board is not bound by these comments, they are listened to and considered by the Board.

Note that there was an attempt to strengthen the pet rules after some injuries occurred. The changes were contested by owners and the rule changes were not adopted. After several tries, we have given up trying to change the pet rules.

In the current proposal of inspection rules, we have received a very significant number of concerns. The Board did not have time to

have an open discussion of this issue on January 19th, so no action was taken. We will be addressing this rule on March 9th. We will have the discussion at that meeting of the proposal for association inspection for the maintenance of the common area. Because a significant number of owners have objected to this proposal we will have to weigh what should be done, if anything. We hope that those owners with concerns will attend this meeting. The changes to RV parking and oversized vehicle fees will also be discussed at this time.

Board Meeting Agenda

The Open Meeting Act requires that we post the agendas of the Open and Executive Sessions (when held one after the other) at least four full days before the meeting. As a courtesy we also post these agendas. The purpose is to fully inform members of the content of the meeting so that they will attend meetings and be present for subjects that are of concern to them. In spite of our compliance with this important legislation, we have received complaints that members are still not fully informed. Ira Green will attempt, as a Board member, to close this gap.

Owners' Resource Center

Beginning next month, we will be initiating a new section of this newsletter. It will be called the "Owners' Resource Center." With 309 owners at Surfside III, we have a lot of people with special knowhow. Your next door neighbor could be the person to provide the dance music for your child's birthday party in Lighthouse Park. You want a spring clean of your condo and another owner may run that service. Want to remodel your kitchen, but you don't want the hassle of architectural reviews, applications, permits, so use the services of another owner that is a contractor versed in that process.

This section will be at the end of the Newsletter. It is open ONLY to Surfside III owners. We will publish adds each month as long as the owner asks for reposting. Surfside III will not be reviewing or guaranteeing the services; you will have to ask your neighbors for references. Surfside III will reserve the right not to run an add at its sole discretion. Our attorney will provide the "fine print" for the first issue.

This is your invitation to submit an add to Dan Kessner, our editor, for the March 2013 Newsletter. Be sure to provide your unit address, e-mail address, and contact telephone information. We will be checking that you are an owner. Sorry, this is not for tenants.

FROM THE ON-SITE OFFICE

Important Notice Regarding Entry To Clubhouse

Entry into this Clubhouse is **strictly** limited to residents who *qualify* (see CC&Rs of Surfside III) *and* who have valid Card/Keys. If you don't have a valid Card/Key, you cannot come inside unless escorted by a person with a valid Card/Key. **Don't knock, strike, or beat on the doors & windows to seek entry.** It is a *serious* violation to attempt entry, other than with a valid Card/Key or accompanied by a Resident. Residents with Card/Keys are legally liable if they admit *anyone* (resident or persons of unknown status) who don't have a valid Card/Key (*CC&Rs of Surfside III*). Surveillance cameras are installed to detect violations. Surfside III participates actively in NEIGHBORHOOD WATCH. Violators will be prosecuted fully.

Please report violations to the office or if you feel threatened, call the Port Hueneme Police Department at (805)986-6530. Let's avoid the Board having to spend more money on security.

Pets

Over the past few months, there has been increased negligence of immediate clean-up. Perhaps because it is dark in the evening and no one sees it, we forget that it causes damage to our property, not to mention the strong odor, staining and added work for maintenance or other residents to clean-up/pick-up. PLEASE take personal responsibility for cleaning up after your pets on the common areas as well as on your patios/balconies. Anyone violating this rule will be subject to the initial fine without the benefit of a warning for special circumstances of \$100.

Just a reminder that all pets MUST be on a leash and accompanied at all times when outside the confines of the individual units, patios and balconies - \$25 fine.

Taking Responsibility

It was recently reported that there were toddlers walking in the parking lot area without an adult in sight. Please, please make certain that if a child is dropped off in the complex, they need to be accompanied to their appropriate unit/townhome and in sight of an adult at all times.

Condo Heaters (repeated from August 2011)

Once again, there are more homeowners contacting the on-site office requesting vendor information for inspections of their heaters.

In all cases, the heaters are the original ones installed when the complex was built. It's been reported that the heaters either had a slow leak, burned wires, or other work which needed to be done. After some investigation it was recommended by a vendor that if the heaters are 30 years or older they most likely would need to be replaced. We request that homeowners pay particular attention to this matter and consider an inspection of their heaters before the cooler weather sets in. It is inevitable that the older the heaters are, the more dangerous they become. Please consider a "Safety Inspection." The Gas Company will come out for a one-time free of charge inspection to determine if there is a potential problem.

Keys

Within the next few months, the Association will be conducting the "Preventive Maintenance" work that was done in 2012. Advance notices will be sent out to each Building owner/resident. The Maintenance work conducted in 2012 improved the safety of the drain lines in the condo units.

In doing the work, the on-site office needs to make certain that we have a key to the unit in order to gain access. If you don't know if we have your current key, please feel free to stop by the office during office hours. If you wish to be home at the time your stack is scheduled, just contact the on-site office and we will make arrangements to accommodate you. More details to come on this later.

Skateboarding/Bicycle Riding

It's been reported that we've had a few close calls with skateboards recently. Let's all remember that, according to the Rules & Regulations, "Bicycle riding and skateboarding on sidewalks, common area walkways on the first, second and third floor condo buildings and landscaped areas are strictly prohibited at all times. For everyone's safety, when entering and exiting the complex, please walk to/from your home rather than ride. It is sometimes difficult for someone parked in a carport to see you coming from behind them. Thanks for your cooperation.

Lost and Found

If you've lost a set of keys, check with the on-site office. If you think that you've left some clothing, glasses, etc. behind in the Clubhouse Pool area, give us a call. We can be reached at (805) 488-8484. All lost wallets are turned over to the Port Hueneme Police Department if not picked up within 24 hours.

"One man's trash is another man's treasure"

Prior to the holidays and after the New Year, the on-site Maintenance staff has been very busy picking up appliances, mattresses and household items that the Port Hueneme Refuse will leave behind. It would be helpful to either contact the on-site office for assistance or call some of the vendors available in the area. Periodically, we keep the large blue dumpster for drop-offs for your convenience; but if you don't see it, then please make a few calls to see who available for dropping off your item.

If you have furniture or other household items you no longer want or need, contact the local thrift stores in the area to see if they will take them. Please, please, do not put them at the Maintenance Shed and RV Parking Area. Here are a few names to call:

Pete's Recycle 909-647-6778 (and they may pick up mattresses)

Mar's Major Appliance Recycling Service – 800-960-2125 or 805-986-6500 – Appliances

Goodwill Industries – 805-981-0130 (for drop off locations) Household Goods, Small Major Appliances, Furniture, Misc.

Salvation Army – 800-958-7825 (for pick-ups) Household Goods, Major Appliances, Miscellaneous

Quiet Hours

Please be respectful of your neighbors during the quiet time hours. **"All excessive noise**, such as made by — but not limited to — stereos, musical instruments, TVs, loud voices, parties, barking dogs, car and motorcycle engines, construction, loud household appliances (use limited from 8 am to 9 pm) and any other noise which disturbs nearby neighbors — is prohibited.

Construction and homeowner repairs are allowed Monday thru Saturday from 8 am to 8 pm and 10 am to 6 pm on Sundays.

Several homeowners and tenants have reported that their neighboring unit residents slam their doors. Please be conscious of others because you do, after all, live in a close environment and the sounds and noises pass on to others easily. Thank you.

COMMITTEE BRIEFS

For more information visit: <http://www.surfsideiii.com/docs/committee/committee.htm>

Please contact the chair to volunteer.

Neighborhood Watch Committee: Val Lameka; 805-986-2855; v.lameka@yahoo.com

Acting Chief Bob Gager, Sr. Officer Bates, and Volunteer Dolores Dyer attended the Thursday Night meeting, and discussed crime reports in Surfside III (very low), and in the city as a whole. The Officers were very complimentary of the SS III watchers. As always,

they encourage calling with possible problems. They gave us handouts of questions the Dispatcher must ask, and explained their need for as much information as possible while rolling on a call. In the whole city in December, the Police had 639 service calls and 56 arrests. They were happy that our group watched in the community as a whole also. On December 30 at 10:30 am, a watcher in Building 1 called to report someone breaking into a car in the city lot across the street. This timely call resulted in TWO arrests. Way to go!

The next Neighborhood Watch meeting will be Thursday, February 7, at 7 pm in the Clubhouse. Questions or reports to: Val Lameka

FROM THE EDITOR

Please send all newsletter submissions to me at dkessner@csun.edu. Please avoid any special formatting and use Arial 10-point font if you have it. The deadline is the 20th of each month for the following month's issue. Owners and renters should be aware that the Newsletter is always available on the website: www.surfsideiii.com. This includes back issues.

The **Owners' Corner** is a forum for all of you to voice your opinions on anything that might be of interest to everyone else. Please feel free to take advantage of this.

The City of Port Hueneme has a free electronic newsletter with information on various city-related matters and events. To sign up to receive it, visit the city website: <http://www.ci.port-hueneme.ca.us>, then in the column at the far left, click on "Sign Up for E-News."

OWNERS' CORNER

The Owners' Corner is a place in the newsletter for owners to voice their observations and suggestions about the association operations or make announcements about any Surfside III social event or activity. While the newsletter Editor and the Board do review these submissions, the opinions and content only represent the author and not the association. We will refuse and return to the author for re-writing any material that is not factual or is in bad taste or denigrates any individual. We are not perfect and apologize in advance if you find the content of anything in this section offensive.

The Surfside III Condominium Association ("association") is not responsible for the content and accuracy of any information provided by owners or third parties. The association and its Board of Directors will not accept any liability for any direct, indirect, incidental, special or consequential damages that result from or are related to material submitted by the owners or other third parties. By submitting any material for publication in this newsletter, all individuals agree to indemnify, defend and hold the association, its officers, directors, members, representatives, managers and agents harmless to the fullest extent permitted by California Law, from any and all claims, actions, and/or lawsuits, arising out of or related in any way to their material published in this newsletter.

Return after a two-month absence

After having been away for more than two months of travel, Dolly and I came back to Surfside III about a month ago. What a great surprise to see several long-term projects reach their completion. The new look of the Clubhouse and the newly paved streets is fabulous. Those, along with the recent repainting of the buildings and the replacement of the railings, have all really transformed the look of Surfside III from what had become a very ordinary complex into something truly attractive.

Our thanks to the Board, the On-Site Manager, and everyone else involved with the various projects. You have done us a great service, and we appreciate it very much.

Yours, Dan Kessner, Editor

Put your car keys beside your bed at night

Tell your spouse, your children, your neighbors, your parents, your doctor's office, the check-out girl at the market, everyone you run across: Put your car keys beside your bed at night.

If you hear a noise outside your home or someone trying to get in your house, just press the panic button for your car. The alarm will be set off, and the horn will continue to sound until either you turn it off or the car battery dies.

This tip came from a neighborhood watch coordinator. Next time you come home for the night and you start to put your keys away, think of this: It's a security alarm system that you probably already have and requires no installation. Test it. It will go off from most everywhere inside your house and will keep honking until your battery runs down or until you reset it with the button on the key fob chain. It works if you park in your driveway or garage.

If your car alarm goes off when someone is trying to break into your house, odds are the burglar/rapist won't stick around. After a few seconds, all the neighbors will be looking out their windows to see who is out there, and sure enough the criminal won't want that. And remember to carry your keys while walking to your car in a parking lot. The alarm can work the same way there. This is something that should really be shared with everyone. Maybe it could save a life or a sexual abuse crime.

P.S. I am sending this to everyone I know because I think it is fantastic. It would also be useful for any emergency, such as a heart attack, where you can't reach a phone. My Mom has suggested to my Dad that he carry his car keys with him in case he falls outside and she doesn't hear him. He can activate the car alarm and then she'll know there's a problem.

Conny Ortiz

CONTACT INFORMATION

MAINTENANCE/RESIDENT SUPPORT (PHONE NUMBERS AND E-MAILS BELOW):

Contact Lordon Management, Jennifer Critchfield; for e-mails always copy Donalea Bauer

Include your phone number(s) and/or e-mail for response before end of next business day. If you get her voice mail, but would like to speak with her directly, hit zero and talk to the operator.

If more urgent, call Donalea Bauer.

Surfside III On-site Property Manager's Office: 600 Sunfish Way, Port Hueneme, CA 93041

Phone: 805-488-8484

OFFICE OPEN:

Mondays & Fridays – 8 am-12 noon

Wednesdays – 1-5 pm

THERE WILL BE NO ON-SITE TELEPHONE SERVICE WHEN THE OFFICE IS CLOSED.

Please note that calls regarding maintenance or billing should be directed to Lordon Management.

Surfside III Direct Contact:

Surfside III COA
600 Sunfish Way
Port Hueneme, CA 93041
<http://www.surfsideiii.com>
manager@surfsideiii.com
Phone: 805-488-8484

Carol Short, On-site Property Manager

Management Company:

Lordon Property Management

Donalea Bauer, Vice President, community manager

Email: donalea@lordonmanagement.com

Phone: 800-729-5673 x 3342

Jennifer M. Critchfield, assistant community manager

Email: jcritchfield@lordonmanagement.com

Phone: 800-729-5673 x 3380

Our Board:

Bill Betts - President bill.betts@surfsideiii.com

1275 Center Court Drive
Covina, CA 91724
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For after-hours emergencies, dial 5 or
626-771-1075

Ira Green - Vice-president ira.green@surfsidediii.com
Alexander Urmersbach - Treasurer alex.urmersbach@surfsidediii.com
Anthony Truex - Secretary tony.truex@surfsidediii.com
Michael Madrigal - Director michael.madrigal@surfsidediii.com

LORDON MANAGEMENT: OTHER DEPARTMENT EXTENSIONS

All escrow matters: Nicole Castillo, ext. 3339; nicole@lordonmanagement.com
All insurance and collections: Emily Polchow, ext. 3337; epolchow@lordonmanagement.com
Your account, billing address, etc: Liz Lopez, ext. 3319; llopez@lordonmanagement.com
Liens, legal issues: Donalea Bauer (see above)



Serving California's Community Associations

December 2,9, 16 2012

FINES ON UNPAID FINES

QUESTION: Is it legal to fine someone twice on the same violation if they refuse to pay the first fine and have remedied what the fine was for in the first place?

ANSWER: The imposition of monetary penalties requires [due process](#), which must be done in accordance with the association's [published fine policy](#). I've never seen language in any governing document that allows a board to levy fines on unpaid fines or two fines on a single violation. If your board had a written, published policy that allowed for fines on fines, I suspect a court would find it unreasonable.

Board Options. If an owner refuses to pay a fine, boards have two options. The first is to take the person to small claims court for a judgment in the amount of the fine. This approach is not always successful--small claims judges are a bit unpredictable. The second option is to hold a hearing and find the person "[not in good standing](#)" and suspend their privileges and voting rights until the fines are paid.

RECOMMENDATION: Boards should have their association's legal counsel review their governing documents and advise them on how best to levy and pursue monetary penalties.

DAVIS-STIRLING REWRITE FULLY INDEXED

Thanks to my Office Administrator Laura Whipple, the rewritten Davis-Stirling Act has been divided into individual pages, reformatted and fully indexed with titles for easy reference.

In addition, page-to-page links have been added so you can easily move between "next" and "previous" sections in the new Act.

Laura is also adding internal statutory links to each page as well as cross-links between the old and new. The cross-linking should be completed in the next week or two. You can find the Rewrite Index on our website at [Davis-Stirling Rewrite](#).

RESIGNATIONS AND APPOINTMENTS

QUESTION: Our board president resigned because he sold his home and moved. He had more than one year

remaining on his term. Our treasurer, who is up for election this year, resigned his seat and was appointed by fellow directors to fill the seat vacated by the president and assume the remaining year of his term. Is this allowed?

ANSWER: Yes, it's allowed. The Corporations Code and most bylaws authorize the [appointment](#) of replacement directors whenever there is a vacancy on the board. There is nothing illegal or improper when a board appoints an existing director to fill the longer term of a resigning director. Term limits might preclude the appointment depending on how the restriction is worded.

FEEDBACK

Borrowed Reserves #1. Can a board use reserve funds designated for a particular line item in the reserve study for another reserve item if it needs attention immediately? If so, do funds have to be paid back?-Linda D.

RESPONSE: Monies can shift between line items in a reserve account. It is normal to make adjustments from year to year to reallocate funds to cover items that fail prematurely or cost less to repair than was anticipated. For example, if a boiler fails in year eight instead year ten as projected by the reserve study, funds can be shifted from other line items to cover the unexpected early expense. Or, if a pool heater replacement ends up costing half the projected cost, the left-over funds can be assigned to other reserve line items. Such reallocations are not unusual.

Major Expense. In the example I gave last week, the reserves were wiped out by a large unexpected, unreserved for item. The \$400,000 expense I gave was not a minor adjustment--it was a complete depletion of the reserves. The unexpected and unreserved major expense is better addressed through an emergency special assessment. Or, in the alternative, "borrowing" from the reserves and using a combination of regular and special assessments to accelerate replenishment of the funds.

Consequences. An unplanned emptying of the reserve account will clearly have consequences. Per statute, the association will have published a reserve summary that showed \$400,000 allocated for plumbing, painting and paving expenses--those expenses do not go away just because a roof emergency intervened. They will hit at some point with no monies to pay for them. Accordingly, the prudent course of action is to replenish the reserve funds. Some reserve specialists have weighed-in on this topic. See their responses below.

Borrowed Reserves #2. We keep track of the major repair and replacement components at the individual component level as part of estimating the overall obligation. But the investment portfolio is handled as a pool of money. There is no "roof" money or "painting" money. It would be like having a bank account for every line item of revenue and expense. What is really going on here is that associations levy assessments sufficient to perform its duties. The annual assessment level is designed to handle the year's estimated routine operating expenses and to charge current owners a sufficient amount that covers the "annual wearing out cost" of common area major components that the association is contractually (CC&Rs) and legally (California law) obligated to maintain at a known and ascertainable standard. Acquiring and managing the investments is a mutually exclusive process from estimating what money you need to meet current and future cash flow requirements and deciding who pays for what when. It is a more technical conversation, but that is the essence of the matter. -Donald Haney, CPA, MBA, MS(Tax), [haneyinc](#)

Borrowed Reserves #3. Assuming monies are set aside for the items you mentioned, however, for some reason, the roof is not included in the reserve study, and therefore no monies had been set aside for their replacement, the monies in the reserve fund can still be used for replacement of the roof. It's all one bucket of money and it can be used to replace components the association is obligated to repair, replace, maintain or restore. My rationale is:

1. Is the component the responsibility of the association?
2. Is the component in need of replacement?

Assuming yes to each, why would an HOA have to borrow its own money to replace a component it is responsible to replace? The fact that the component was excluded from the reserve study [error by the preparer or believed to be 30+ remaining life] is irrelevant to the responsibility and needs of the association. The monies are set aside to maintain the facility, the reserve study is simply a tool to help identify and estimate the costs to do so. There will inevitably be costs to maintain a facility that are unforeseen, limiting the HOA's available resources to the items specifically identified in a reserve study seems imprudent. -Scott Clements, RS, PRA, CMI, [Reserve Studies Inc.](#)

Borrowed Reserves #4. On the subject of reserves and borrowing, we define an appropriate reserve project as meeting the National Reserve Study Standards four-part test, meaning the component/project is:

1. A common area maintenance responsibility,

2. Life limited (expected to realistically occur in the future),
3. Predictable (not randomly occurring), and
4. Above a minimum threshold cost (often in the .5% to 1% of annual budget range).

There are three primary reasons why an association may be in a situation to overspend from reserves: the expense is higher than expected, the expense is earlier than expected, or the expense wasn't anticipated. All three demonstrate the need to update the reserve study regularly, learning from experience to make the reserve component list better and more accurate each year, and helping board/management know the reserve contribution needs of the association.

Realistically, those reserve contribution needs of the association will likely increase the year after reserves have been overspent as the reserve strength of the association needs to be rebuilt! In those cases I believe a special assessment may be necessary due to cash flow issues, but I don't believe a special assessment or "repay within 12 months" is automatically triggered. -Robert Nordlund, PE, RS, [Association Reserves, Inc.](#)

Alligators #1. How far do you go with the visual blight that an excess of signage creates? Do you warn against all wild mammals that could carry rabies - squirrels, raccoons, feral cats, bobcats, mountain lions, coyotes, etc? Do you warn of stray dogs that might be off lead? How about black widows, brown recluse, and bedbugs? This list goes on ad infinitum and ad nauseam. Someone needs to come up with a sign at the gate that says, "WARNING: There are things in life that can hurt you." -Jim S.

RESPONSE: Don't forget to include rabid lawyers.

Alligators #2. Regarding the article about the unfortunate episode of the alligator eating a human and a subsequent lawsuit: We don't have any alligators but we have members of our HOA who have engaged in 2 verbal assaults and one physical assault on other members. Do we need to let the membership know about this pattern of behavior, both for the protection of individuals and the protection of the board? -Lolly S.

RESPONSE: Human alligators? Warnings should be plastered all over the common areas. But you better check with legal counsel on this one, he/she might not agree. (Problem residents are particularly difficult to deal with and your options are limited. You should get your association's attorney involved. Personally, I would rather deal with real alligators than the two-legged kind--it's a lot easier.)

Commercial Signage #1. Your November 18 Newsletter stated, "A homeowners association is not a governmental entity--it is a private organization with private restrictions, which means the First Amendment does not apply." I thought federal law would always apply, even within the confines of a private organization. -Richard A.

RESPONSE: Not so. The First Amendment states that "*Congress shall make no law....*" Accordingly, the Bill of Rights protects citizens from *governmental* restrictions, not private ones. Thus, businesses and owners of private property can restrict the activities of others in their employ or on their property. That's why an employer can fire someone for giving political speeches or handing out fliers in the workplace or posting racist or homophobic slurs on Facebook. When it comes to homeowners associations, they can adopt restrictions on signage in their developments and restrict speech in their meetings.

Commercial Signage #3 Our association of 647 detached homes does not allow any commercial signage except for real estate sale signs which are controlled. Our rules also state that "commercial vehicles" owned by residents or their guests may not be parked overnight in private driveways or in guest parking spots. -Tom M.

TERMITE TENTING A CAPITAL IMPROVEMENT?

QUESTION: The board wants to tent our entire building for termites. Is this a capital improvement that requires the entire association's vote? If the cost is under 5% of the annual budget, is membership approval required since this is common area?

ANSWER: Termite tenting is not a capital improvement. It is a maintenance/pest control issue. The form of treatment, spot or tenting, is a business decision for the board to make, not the membership or the courts. [Lamden v. La Jolla Shores](#). Regardless of whether the repairs are related to the common areas, the board can approve a special assessment on its own authority for up to 5% of the current year's budgeted gross expenses. [Civil Code §13366\(b\)](#). If the cost is more than 5%, the board can impose a special assessment if the termite treatment is an

[emergency](#).

RESERVES FOR HOA OWNED UNIT?

QUESTION: Our association has done a reserve study and now is taking the necessary steps to increase the reserves. The association owns one of the units free and clear and rents it out. The unit is worth over \$500,000. Shouldn't this count toward the reserve account?

ANSWER: The \$500,000 estimated value of the unit can be included in the HOA's balance sheet but not in its reserve funding calculations. Assuming the unit is a condominium, there is very little that needs to be reserved for inside the unit--carpet, cabinets and maybe painting. Depending on the size of your budget, most items in the unit will be addressed through routine annual maintenance.

Property Taxes & Insurance. Non-reserve items that are sometimes overlooked are the need to insure the unit and pay property taxes.

Separate Interest. If the unit was acquired through foreclosure, it will have a parcel number. In that case, [property taxes](#) must be paid and a separate general liability and property insurance policy purchased for the unit.

Common Area Unit. If the unit is part of the common areas, then property taxes are not an issue. That happens most often when a "manager's unit" is created by the developer and included in the common areas. Accordingly, the unit is covered by the association's insurance. However, boards should not assume it's covered--they need to verify it.

Taxable Income. Rent money collected from the unit is subject to taxation as non-dues income. In addition, when the unit is sold the association will incur transaction costs and pay taxes on any gain on the sale. The gain on this asset sale produces "non exempt function" income, which is taxed at ordinary corporate rates. These rates go up to 35% for federal and 11% for California. There is also a "basis" for gain or loss issue to resolve when the unit is sold. Therefore, the net realizable value may be substantially less than \$500,000.

Thank you to Donald Haney, CPA, MBA, MS(Tax) of [haneyinc](#) and Scott Clements, RS, PRA, CMI of [Reserve Studies, Inc.](#) for their input on this question.

NO QUORUM FOR PAST FOUR YEARS

QUESTION: I have been a board member three times. The last four years our annual election was held by mail. We never had a quorum. Do we need a new election or can we count the original ballots at the next meeting?

ANSWER: Sorry, you cannot carry over ballots from year to year until you get enough to hold a meeting. Ballots count for the election for which they were noticed (and any [adjournments](#) of that year's meeting). Consequently, you need to issue a new notice and new ballots for each annual election.

ELECTRONIC CONSENT FORMS

QUESTION: I know that owners must sign a "consent form" before the association can electronically send documents. If we make these documents available on a website and only send owners an email notice that they are available, do we still need a signed consent form?

ANSWER: Documents can and should be posted on your website so owners can download them as-needed. However, whenever documents are required by statute to be distributed to the membership (budgets, year-end disclosures, annual financial statements, etc.) you will need an [unrevoked consent](#) on file if you want to either distribute them electronically or post them on the website in lieu of distributing them.

RELEASE OF ASSOCIATION RECORDS

QUESTION: Our Reserve Study Committee needs to look at old records, especially ones our old management company turned over to the current one some 7 years ago. The current management rep told our board president he can't let those out of the office. Don't HOA records belong to the HOA and doesn't the HOA have the power to say

where and when the records are kept?

ANSWER: I'm not sure why you need 7-year old records to prepare a reserve study. What you need is a [reserve specialist](#) to (i) [visually inspect](#) your development's [major components](#), (ii) establish an estimated remaining useful life for each component the association is required to maintain, (iii) set a replacement cost for each component, (iv) calculate [interest](#) and inflationary offsets, (v) sprinkle a little pixie dust on it and produce a reserve study/[funding plan](#) that can be used by the board as a guide to [properly fund](#) the reserves. (See [Reserves Menu](#).)

Records Oversight. When a [managing agent](#) is entrusted with the association's records, industry practice is to NOT allow them out of the management office because they can be lost, damaged, destroyed or altered. Accordingly, neither board members nor committee members have the right to remove records from the management office. Only the board as a whole has the power to authorize the "borrowing" of original records. Even so, letting originals out of the office is a bad practice. The better practice is to allow records to be reviewed in the management office or to make copies. An exception is during litigation when original records need to be sent to the association's legal counsel for review and possible production to opposing counsel.

FEEDBACK

Fines #1. In response to "Fine on Fines," our HOA has wording in the fine schedule that all fines will continue monthly until the member is in compliance. Not another fine on top of a fine, but a way to keep homeowners accountable. -Kaye

RESPONSE: I agree. A daily, weekly or monthly fine imposed for a [continuing violation](#) is not a fine on a fine. Ongoing fines can be effective when used in a "carrot and stick" approach to the violation. In other words, fines accumulate daily but will be waived if the violation is cured in an appropriate time period set by the board. If the violation is not timely cured, the fines are not waived and the association then takes legal action to bring the person into compliance.

Conversion Charts. THANK YOU for your and your staff's hard work! The double [cross reference](#) to the "new" to "old" Davis-Stirling Act is a godsend. I only hope our association board and property manager appreciate it as much as I. Thank you, again. -Bruce S.

SUMMARY OF 2012 LEGISLATION & CASE LAW

This was a busy year for legislation and case law. The most significant was the rewrite of the Davis-Stirling Act. To review all the new laws, see [2012 Summary](#) with links to bills, code sections and cases.

I would like to say that no more regulations will be imposed on common interest developments next year but legislators are like drug addicts--they can't help themselves. A number of new bills have already been introduced and are being tracked by [Skip Daum](#) on behalf of the Community Associations Institute. In addition, the [CLRC](#) is proposing clean-up legislation for the [Davis-Stirling rewrite](#). I will report on all of the good, bad and ugly bills in future newsletters.

RENT RESTRICTION ON INHERITED PROPERTY?

QUESTION: Our board will discuss rent restrictions at our next meeting. One restriction would be a 2-year restriction on leasing after purchase. The other, inherited property cannot be rented for two years. Does 1360.2(c) protect inherited property so my son could rent my home since he is not 55+ and cannot live in the community at this time (should I die today)?

ANSWER: A two-year restriction on buyers renting their units is a good restriction. I've been using one for almost twenty years which has been very effective in keeping rentals low. This particular form of restriction offers the same benefits of a rental cap without the problems associated with strict rental ceilings.

Benefits. The chief benefit is that it discourages investors from buying units since they would have to wait two years before they could turn the unit into a rental. As a result, your association gets buyers who want to make your community their home. Owner-occupants are more inclined to take care of their property, follow the rules

and volunteer to serve on committees and boards. Investors and tenants, on the other hand, are not predisposed to take care of their property, follow the rules or volunteer their time to improve the community.

Noncontroversial. By restricting buyers rather than existing owners, the restriction satisfies [Civil Code §1360.2](#) which prohibits the implementation of new rent restrictions against current members. Buyer restrictions give present owners the flexibility to rent their units should they need to. It has been my experience over the past twenty years that a two-year restriction on new owner leasing stabilizes the community and protects property values. It allows rentals to reach a natural level in the 5% to 7% range--a more than acceptable level for a community.

55+ Community. Your son's ability to install tenants after you die (may that be in the distant future), will depend on how the restriction is written. I've drafted restrictions for associations where they made no exception for inherited properties. In those cases, the person inheriting the property would have to sell the property (or leave it empty for two years if he wanted to lease it out). I've had other associations adopt language that allowed inheritees to rent out the property. Most of my clients have opted for language that discourages the conversion of inherited property into rentals. Your membership will have to decide which of those options is best for your community.

RECOMMENDATION: Associations who want to keep renter populations low should consider adopting restrictions described above. Associations can [contact us](#) for more information.

NO BOARD, NO ASSOCIATION?

QUESTION: If all quit, there is no board. It would appear there is no association. Nothing to ask permission for. Nothing more to do. We are no longer.

OBSERVATION: You wouldn't stand a chance as a contestant on the Jeopardy game show--you're supposed to put things in the form of a question. Let me restate what you said, "If everyone on the board resigns, does the association cease to exist?"

ANSWER: No, the association does not cease to exist. All of the association's statutory and governing document duties remain. All that happened by your board's mass resignation is that your association's liabilities are now on an upward trajectory. Somebody better notify the association's insurance carrier and then quickly sell and get out before unpleasant things hits the fan.

CAN BOARDS REMOVE COMPONENTS FROM THE RESERVE STUDY?

QUESTION: I'm on our board and we just completed reviewing our reserve study. There are items on the list with a life that equals or exceeds the estimated life of the buildings. We wanted them removed, but the analyst refused. Doesn't our board have the authority to remove components?

ANSWER: Not really. That's like asking an attorney to change his legal opinion because the board disagrees with it. Or telling a CPA to change his audit report because directors don't like what he found. A reserve specialist is a professional who prepares a report based on his own observations and calculations--it's his report to the board.

Adjustments. Accordingly, boards have no "right" to dictate changes to an independent professional's report. However, adjustments can be made to draft opinions/reports by attorneys, CPAs and reserve specialists if the adjustments are reasonable and the professional agrees. For example if something is unclear or is missing and needs to be addressed by the professional, it can be included in the final report.

Funding. Although reserve specialists establish the list of major components, the board can choose not to fund particular items if it complies with Davis-Stirling disclosure requirements, i.e., the report must disclose: Whether the board of directors of the association has determined to defer or not undertake repairs or replacement of any major component with a remaining life of 30 years or less, including a justification for the deferral or decision not to undertake the repairs or replacement. ([Civil Code §1365\(a\)\(3\)\(A\)](#)) Accordingly, a reserve study could list components in the inventory and then eliminate them from funding calculations with a note that funding was removed at the board's request.

30-Year Plus Life. Including components in the Study with useful life of over 30 years with no funding creates a "marker" for future inclusion in the funding plan when the life expectancy falls below 30 years. This is especially important when it comes to plumbing systems since they are hidden in walls and frequently overlooked by boards--until they fail and large special assessments are needed.

Thank you to Scott Clements, RS, PRA, CMI of [Reserve Studies Inc.](#) and Robert M. Nordlund, PE, RS of [Association Reserves, Inc.](#) for their input on this question.

FEEDBACK

HOA Owned Unit. Regarding reserves on a unit owned by the association, the questioner in last week's newsletter wanted to know if the value of the owned unit could be counted in the percent funded calculation. Civil Code [section 1365.2.5\(a\)\(6\)](#) says that only cash may be used to make the percent funded calculation. Not only is the association-owned unit not part of the percent funded calculation but it also is not part of the funding model. Any anticipated rental income from that unit, though, could be included as part of the reserve funding if it is the board's decision to do this (and not to use the money to offset operating expenses).

As to the income tax issue upon sale of the unit, there are differences of opinion here. There are two different positions: if the association is going to file [Form 1120H](#), then the gain on the sale of the association-owned unit is going to be subject to tax. However, if the association is going to file Form 1120 then, I believe, the gain is from a membership transaction and not subject to tax. -William Erlanger, CPA, [Levy, Erlanger & Company, CPAs.](#)

As the year draws to a close, our thoughts are filled with gratitude towards all of our clients who make our law firm possible. We want to take a moment and let you know how much we appreciate your business and look forward to working with you in 2013.

May you and your families have a beautiful holiday season and the new year be filled with peace, prosperity and happiness. Happy Holidays from all of us at Adams Kessler PLC: Aide Ontiveros, Karen Jacobs, Jasmine Fisher, Larry Stirling, Adrian Adams, Gary Kessler, Tina Chu and Azadeh Saghian.



Merry Christmas and
Happy New Year!

A handwritten signature in blue ink that reads 'Adrian'.

[Adrian J. Adams, Esq.](#)
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