



March 2013

SURFSIDE III e-NEWSLETTER

Daniel Kessner – Editor



FROM THE BOARD OF DIRECTORS

Clubhouse Closure

The clubhouse evening hours have been suspended since January 21.

The camera system DVR failed and there have been numerous burglar protection system problems. At the February Board meeting it was decided that the clubhouse will remain closed until all of the technical problems are solved.

Also, the two clubhouse attendants who worked part-time evenings have recently resigned. Management is recruiting replacements.

The clubhouse is open from 6 am to 5 pm every day until further notice.

Long Range Capital Replacement Planning

At the January meeting the Board reviewed a report from a roof consultant. It revealed that we have longer than we thought until we have to replace the roofs. Also, on Friday, March 1, 2013 Facility Advisors, Inc. visited SSIII to update the reserve study and walked the grounds. They were very impressed with the improvements we've made over the past couple of years and stated that we compare very favorably with other properties. The reserve study will be available in a few weeks and will lay out the funding needs over time to maintain the property. The Board will update the owners of the findings at one of the upcoming meetings.

Below are excerpts from the capital replacement plan the Board initially prepared in 2007, and revises annually.

The funding for this plan will be a combination of a loan and cash in the form of annual contributions to the capital reserve account from operations.

Loan:

The association will use a line of credit for \$7,500,000. The \$7,500,000 line of credit will be used as cash ahead of our future capital reserve contributions. These funds will be used to conduct capital replacement repairs defined above.

Cash:

The Board imposed a special assessment of \$2,000 per unit in 2012 to increase matching funds for the capital repairs. In addition, the association will make the following contributions to the capital reserve fund from operating over the next three years.

2012 - \$1,198,000 (580,000 plus \$618,000 from a special assessment of \$2,000 per unit in 2012)

2013 - \$700,000

2014 - \$700,000

The line of credit is broken down into two facilities. A \$6,000,000 line of credit was converted to a loan on May 1, 2012, and monthly principal and interest payments are being made. The term of the line is 15 years, amortized for 20 years. The remaining balance at the 15 year point will be re-financed for 5 additional years.

The other facility is a 1,500,000 line of credit which is being used to fund the remaining building envelope repairs and other projects. This line of credit will become a loan no later than May 1, 2013. The term is 15 years, amortized over 20 years. The balloon payment due at the end of the 15th will re-finance for an additional 5 years.

Principal and interest payments are \$570,000 per year for 15 years. At 15 years a balloon payment would be required. The association will refinance the loan at that point.

The loan resets every five years. At that point the loan will be refinanced for another 20 years. The loan principal will be adjusted at that point to provide funds for a building envelope re-fit.

Ex: Loan principal amount in 2017 will be \$6,200,000. The loan principal will be increased to \$6,800,000 to provide funds for a building envelope refit and the loan will be re-financed for 20 years. Payments will be \$516,000 for five years. The same thing will be done at the ten year point. At ten years the loan principal amount will drop to \$6,200,000 and be re-financed for 20 more years. Yearly payments will be \$470,000. This process will continue until the loan is paid off.

Contingencies and Caveats

The interest rate is variable and will reset every 5 years. The interest rate for the first five years is 4.5%.

As discovered with the drain line re-pipe and the supply line epoxy process, Surfside III has insidious deficiencies that have increased some of the costs.

Areas of potential problems that may result in plan adjustment are as follows:

- Common area underground electric
- Premature roof failure
- Common area concrete retaining walls
- Common area recreation facilities
- Sewer laterals and mains: premature cracking or failure

This capital replacement plan does not replace all capital assets; it covers only those defined in the plan.

Global and local economic conditions may have an impact on this capital replacement plan.

It may be necessary to impose one or more special assessments to make up for cash flow deficiencies.

Homeowners That Do NOT Have Homeowner's Insurance – Please Read

The Association encourages owners to purchase insurance for the interior of their units and their personal property. There appears to be a misconception among some members of the community that the Association's master insurance policy covers all losses or damage to the interior of the units. While the Association's master policy may or may not cover the damage to the interior of the unit, the CC&Rs, in most cases, prohibit the Association from covering the loss.

Under Article I, Definitions, Section 3, Unit. "Unit shall mean the elements of a condominium which are not owned in common with owners of other condominiums in the project." According to Article VII, Use Restrictions, Section 2, Maintenance of Unit, the individual owner is solely responsible for the maintenance, repair, and replacement of the interior components of the unit. In addition, under Article VII, Use Restrictions, Section 6, Owner Liability, owners are responsible for any damage to common area or other units which is the result of an occurrence or activity within their unit.

The governing documents further encourage owners to obtain insurance to cover losses to their own separate interests. Regardless of any potential coverage which may or may not exist under the Association's master policy for damage to any separate interest, the Association's governing documents may prohibit it from providing reimbursement for the risk. As a result, owners should take all necessary steps to protect their units and personal property. BUY INSURANCE!

CC&R Restrictions On Businesses Operated In Surfside III Units – Residential Use

All Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted from any Unit, except that an Owner or other Resident of a Unit may conduct a business activity within a Unit so long as

- (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit,
- (ii) the business activity conforms to all applicable zoning ordinances of the City of Port Hueneme, and
- (iii) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Project, as may be determined from time to time in the sole discretion of the Board.

The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether

- (a) such activity is engaged in full or part time,
- (b) such activity is intended or does generate a profit, or
- (c) a license is required for such activity.

Deck vinegar and water

Balcony decks can be cleaned with vinegar and water solution. Vacuum or sweep first.

Unit Renovations and Water Supply Line Epoxy

If you are having a renovation you must submit an Architectural Modification Request Form (found on the website) detailing the renovations planned. The water supply lines in all units were lined with epoxy several years ago to stop pinhole leaks. Water lines with an epoxy liner cannot be soldered or the epoxy will be ruined. If you plan to move a sink or alter the water lines in the bathroom(s), the existing epoxied lines must be joined with other epoxied pipe sections.

Sewer Line Cleaning and Cleanout Caps

The association has started the sewer lateral line cleaning in the condo buildings. The contractor will be using the cleanouts which can be identified by the chrome disc with the center screw. The contractor will be looking to identify the cleanouts and open them for use in cleaning out the lateral lines. If any of these are covered by tile or other material and cannot be located, the contractor will alert management and a letter will be sent requiring the obstructed cleanouts be revealed at the owner's expense.

FROM THE ON-SITE OFFICE

Pets

All pets must be on a leash and accompanied at all times when outside the confines of the individual units, patios or balconies - \$25 initial fines are imposed.

All pet owners are personally responsible for immediate clean-up after their pets. Anyone violating this rule will be subject to the initial fine without the benefit of a warning for special circumstances of \$100. Thank you for your cooperation and remember to "pick-up."

Clubhouse Keys

If your Clubhouse key does not work, please contact Carol Short in the On-Site Office (see the section on Contact Information). Please do not attempt to force your way into the Clubhouse or enter under someone else's key. The On-Site Office can reactivate your key.

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

Although there was no Watch meeting in February, Sergeant Chavez of the Port Hueneme Police Department attended the Open Board Meeting on Saturday. He stated that the PHPD is conducting an active, ongoing investigation into alleged misconduct at the Clubhouse on Saturday, January 19, 2013. He could not comment further at this stage, except to assure us that the Department did not consider this to be a public safety issue.

It appears that the Clubhouse will continue to be closed evenings while we get our cameras repaired and updated, and hire another pool attendant. If we are able to get into the Clubhouse, our next Watch meeting will be Thursday, March 7, at 7 pm. Questions and 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."

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
1275 Center Court Drive
Covina, CA 91724
Phone: 800-729-5673
For after-hours emergencies, dial 5 or
626-771-1075

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

Owners' Resource Center

The section herein is provided as a courtesy for owners only to afford an opportunity to advertise their business(es). All advertisements will be subject to Board approval. Nothing contained herein should be construed as an endorsement by the Surfside III Condominium Owners Association of any business, product or service. Owners utilize the services offered herein at their own risk. The Association expressly disclaims any responsibility and/or liability for use of the advertised business, product or service and makes no representations regarding its accuracy, quality or suitability.

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Davis-Stirling.com
Newsletter

by AK Adams Kessler

Serving California's Community Associations – January 13, 20, 27, 2013

SQUATTER'S RIGHTS TO KEYS?

QUESTION: A longtime owner in her 80s recently died. Her son, a now and again resident and ne'er-do-well, is living in the unit. No maintenance fees have been paid since her death almost 6 months ago. The son is not on the deed and no probate has been filed. We are about to re-key the building. We will be giving keys to each owner of record. Our manager said we must give this squatter a key even though he has provided us with no documentation whatsoever because he is a "resident." Do we have to give him a key?

ANSWER: Your manager is right. Both under the Davis-Stirling Act and landlord-tenant laws, an association cannot block access to the unit. As provided in the Davis-Stirling Act:

Except as otherwise provided in law, an order of the court..., an association may not deny an owner **or occupant** physical access to his or her separate interest, either by restricting access through the common areas to the owner's separate interest, or by restricting access solely to the owner's separate interest. ([Civ. Code §1361.5.](#))

Landlord-Tenant. A similar provision can be found in landlord-tenant laws (Civ. Code 789.3(b)(1)) which includes penalties up to \$100 per day if a landlord locks out a tenant. Even though your association does not own the unit, California courts have analogized associations to landlords and held them to the same standards. ([Frances T v. Village Green.](#)) If you re-key the building and refuse to provide a key to the ne'er-do-well, you would be locking him out of his mother's unit. Whether or not he has a legal right to occupy the s unit is something for the courts to decide, not the board of directors.

Police & Courts. Calling the police to escort the son off the property is not an option since it is a civil matter not criminal and the police will refuse to get involved. Going to court to evict the son via an "unlawful detainer" action will also fail since the association is not the owner of the unit. In short, your HOA has all the liabilities of a landlord but none of the rights.

RECOMMENDATION: Your best bet is to lien the unit for delinquent assessments and foreclose. However, giving proper notice to the mother will be problematic (unless you know where she is buried). You will need to work with legal counsel to pursue the foreclosure.

NO DOGS ALLOWED!

QUESTION: Can the board make a rule not allowing dogs on common area grass?

ANSWER: I suppose they could but that would likely provoke a recall petition the next day. If someone were to challenge the rule in court, the board will have the burden to convince a judge the rule is reasonable. I would not bet the farm on that one. If the board is concerned about dogs relieving themselves on the grass, there are better ways to deal with the problem--fines, suspending privileges and tasers come to mind.

COST OF HOA REMODEL PROJECTS

QUESTION: Are members of an association entitled to know the costs of a remodeling project or is this confidential?

ANSWER: If you mean your neighbor's remodel project, no. If you mean the common areas, you have a right to review (i) [contracts](#) approved by the board for the remodel project, (ii) [monthly financial statements](#) that would reflect HOA expenditures, and (iii) financial records such as invoices and checks. ([Civ. Code §1365.2\(a\)\(2\)](#))

WHO CAN CHANGE THE RULES?

QUESTION: Some owners insist that if we do not enact a rule they want, they will force the board to send a ballot to the membership for a vote. Can they force the board to place a rule change on a ballot or does it stop at the board level?

ANSWER: It stops at the board level. Only the board has the authority to adopt and amend rules. ([Civ. Code §1357.130](#).) Members can, however, veto a rule if they follow the steps described in [Civil Code §1357.140](#) but that is the extent of membership authority (unless the governing documents state otherwise). Although members can petition for a special meeting for any lawful purpose ([Corp. Code §7510\(e\)](#)), forcing a ballot to add or change rules is not within their authority. Indirectly, members can change the rules by electing board members who agree with their position.

MEMBERSHIP MEETING MOTIONS

QUESTION: A ballot requesting a bylaw amendment is mailed to the membership prior to the annual meeting. At the annual meeting, ballots are counted and it is announced that the proposal failed. Can an amendment to the original proposal be offered at that time if a quorum is present?

ANSWER: If you mean revise the failed amendment and put it to a vote on the spot? No. The only thing you can do is have a show of hands on a recommendation to the board to send a revised amendment to the membership. If the board agrees, they can mail out a new amendment together with a ballot for approval. The reason the failed amendment cannot be revised and approved on the spot is that voting must be by secret ballot with a minimum 30-day voting period. ([Civ. Code §1363.03\(b\)&\(e\)](#))

TENANTS AT DISCIPLINARY HEARINGS

QUESTION: If an owner is called into a hearing for the actions of a tenant, can the tenant join him at the hearing? Can the board refuse the tenant since the owner is the one being fined, not the tenant?

ANSWER: The board cannot prohibit the tenant from appearing with the owner. Even though the board will be fining the owner, the fines are because of the tenant's behavior. [Due process](#) requires that the owner and tenant have a right to defend themselves. How can the tenant dispute [evidence](#) at the hearing if he is barred from attending?

DIRECTOR ABSTENTIONS

QUESTION: I have a question concerning abstentions at board meetings. We have seven board members. With six directors present at a recent meeting, three members voted yes, one voted no, one was absent and two abstained. Is the motion approved?

ANSWER: No, the motion is not approved. With six directors present, you needed a majority (four) to approve the motion. The two abstentions essentially acted as "no" votes since they were not "yes" votes. Because three is not a majority of six, the motion failed.

MORE ABSTENTIONS

QUESTION: We are a five member board with one vacancy. We are scheduled for a meeting when one of the four members will be out of the country, leaving three directors for the meeting. What happens if one of the directors abstains from voting on a issue--will the vote of just two directors carry the motion?

ANSWER: Yes the motion will carry. For a five-member board, a quorum is three. If three directors attend a properly noticed meeting, they can conduct business. To pass a motion they need a majority of quorum, i.e., two "yes" votes. It does not matter if the remaining vote is a "no" or an abstention; the motion carries two-to-one. This allows an association to function even when two directors are on vacation, sick or otherwise unavailable. This, of course, can lead to shenanigans. To avoid mischief, directors should attend all meetings even if only by [telephone](#).

ETHICS PLEDGE

QUESTION: We have a board member who refuses to sign a rather benign ethics pledge. All the other board members signed it. This person voted to authorize the pledge but now refuses to sign it. What actions can the board or the membership take short of recalling this fool?

ANSWER: Adopting an ethics policy is something all boards should do. Even though directors cannot be forced to sign a pledge adopted by the board, the membership has a legitimate interest in knowing that a director refused to sign it. That means an article can be placed in the association's newsletter listing which directors signed the pledge and which ones did not. Knowing which directors are ethically-challenged could affect members' votes when it comes to recalls and reelections.

Bylaw Amendment. If you want to make ethics pledge mandatory, you need to amend your bylaws to make it a qualification for serving on the board. Then if nominees refuses to sign it, they cannot run for the board. Even if they mount a write-in campaign, they can be barred from serving regardless of the number of votes they might receive.

RECOMMENDATION: Boards should talk to legal counsel about drafting an [ethics policy](#) and appropriate language for a bylaw amendment.

HANDLING BALLOTS

QUESTION: A homeowner is under the impression that ballots cannot be handled by anyone other than the inspector of elections. We have them sent to the office but no one opens them until the day of the annual meeting. Is this okay or do all ballots have to be sent to the inspector at her home?

ANSWER: It is not uncommon to have the association's management company or its onsite management office receive ballot envelopes on behalf of the inspector of elections. Some inspectors provide a locked ballot box which is placed in the management office. That way owners who want to hand deliver their ballots (in sealed envelopes), they can do so.

Designated Location. Because many inspectors operate with low overhead, they do not have an office outside of their home. For safety and security reasons, they do not want homeowners (who can get a little crazy at election time) showing up on their doorstep. Hence, they designate an alternative address as allowed by the Davis-Stirling Act:

The [ballot] envelope may be mailed or delivered by hand to a location specified by the inspector... ([Civ. Code §1363.03\(e\)\(2\).](#))

Kept Unopened. If the ballots are mailed or delivered to the association's management office, no person, including

directors, employees or vendors, may open ballots prior to the time and place at which the ballots are counted and tabulated. That function is reserved to the inspector of elections who opens and counts them in public at a properly noticed open meeting of the board of directors or members. ([Civ. Code §1363.03\(f\)](#).)