

April 2013

SURFSIDE III e-NEWSLETTER

Daniel Kessner – Editor

FROM THE BOARD OF DIRECTORS

The April Open & Executive Board Meetings Are Cancelled Due To Lack Of A Quorum

We have discovered that we cannot have a quorum at the open and executive Board meetings regularly scheduled in April. The May Board meeting will be held one week earlier than normally scheduled, and will be held on Saturday, May 4, 2013 and will start at 9:00 am in the Surfside III clubhouse. The agenda of this meeting will be limited, except for emergency items, to the:

CC&R And By-law Update

The draft of our proposed updates to the CC&Rs and to the By-laws has clearly not met the schedule we had planned. There are issues that required more research and co-ordination between the documents than expected. One of these is what was published as part of the Davis-Sterling newsletter in our February 2013 Newsletter and is a copied from the Adams Kessler's Davis.Com Newsletter published December 16, 2012 is as follows:

“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. 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. 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.”

This, like many other proposals in the governing documents, is a proposal that we all have to decide whether we believe that we should adopt or not. However, to make this proposal, it must be in the governing documents in a way that satisfies all of the legal codes. There are provisions that should not require much research, such as not requiring an election when there is only the same number of candidates running as positions available. The crime free program and the insurance requirements have required more study so that they are properly included. The removal of the cost of water from the dues and charging each owner directly for their cost of water does likewise require study because each condominium building will continue to be proportionate within that building. The change requiring each owner to insure and take responsibility for the damage inside their unit regardless of whether or not the HOA infrastructure was responsible will indeed require discussion. The draft of the CC&Rs when it is released will include a letter explaining the reasoning behind each modification.

We have slipped our schedule almost six weeks and expect the proposed governing documents to be on the website by mid April. The May 4th meeting will be devoted to open presentation and discussion. Our attorney will be in attendance and will lead the discussions of the changes. Only items that cannot wait for the June meeting will be added to the May 4th agenda.

The concern has been expressed that we will be presenting our governing documents and then asking for approval. This is NOT the case. We will be discussing a set of all new items that many HOAs are using and which apply to us. We really need 6 out of 10 owners agree and vote for adoption. Unlike the rules and regulations which are the enforcement of the provisions of the governing documents, these are our "constitution." The goal is to agree on a subset of what will be discussed on May 4 and which then will be the document that we will present and discuss at another meeting.

Coastal Commission Hearing On The J Street Drain Project And The BEMP

The J St Drain Project is set to go before the California Coastal Commission on Wednesday, April 10, 2013 in Santa Barbara. We understand from the U.S. Fish and Wildlife Service that many people have been calling to complain about the District's Beach Elevation Management Plan (BEMP), and stating that the grooming actions since 2010 have had a detrimental effect on the Ormond Beach Lagoon. We therefore expect public comments not in support of the BEMP at the Coastal Commission hearing.

The Surfside III community could be at risk if beach grooming is not approved by the Coastal Commission, so it is crucial that Surfside III residents willing to attend the hearing will do so and speak in support of the BEMP, and any other project aspect that they might view as beneficial. It is our hope that representatives from the Surfside III Board and from the Cities of Oxnard and Port Hueneme will attend and express support.

Agenda item 27b. reads:

"Application No. 4-12-051 (Ventura County Watershed Protection District, Oxnard and Port Hueneme) Application of the Ventura County Watershed Protection District to reconstruct the existing concrete walls and bottom of a 3,430 linear foot section of the J Street drainage channel and implement a drainage channel Operations and Maintenance Program and programmatic Beach Elevation Management Plan for five years at J Street Drain and Ormond Lagoon, in the Cities of Oxnard and Port Hueneme, Ventura County. (JB-V)"

This meeting will be held on Wednesday, April 10th, 2013, at 8:30 am. The location is at the El Capitan Canyon Resort, 11560 Calle Real, Santa Barbara, CA 93117. (415)407-3211 will only be in service when the meeting is in session. The draft agenda is available at <http://www.coastal.ca.gov/mtgcurr.html>.

Capital Projects

With the building envelope work completed, the association would like to tackle approximately 30 smaller projects that total ~\$600,000. While some will be completed many of them will not be done.

This year the association will do the following capital projects.

Contractor retention payments – invoice hold back	\$120,000
Sealcoat, stripe streets and parking areas	26,000
Maintenance repairs on roofs	28,000
Clean sewer laterals and mains	70,000
Partial street light replacement	20,000

Next year \$130,000 will be available for capital projects.

Most of the funds placed into the capital reserve account go to paying the principal and interest on the building envelope repair loan. \$700,000 is contributed to reserves from the checking account each year. \$570,000 goes to paying the loan. This leaves \$130,000 for projects of which \$70,000 is used for cyclical sewer lateral and main line cleaning. This leaves \$60,000 for other projects.

From 2015 to 2027 funds will be set aside for roofs, so as their useful life ends funds are available to replace them without another special assessment.

Loan

Since January the Board has tried to seek re-financing on the existing \$7.5 million loans for longer terms or lower interest. Six banks were contacted and all six were not able to provide a loan package better than what we currently have.

Best Photos of Surfside III

The association web site needs to be updated with some nice photos of Surfside and the surrounding beach area. If you have any photos of the view from the buildings to the beach or the beach area and pier, please send them to webmaster@surfsideiii.com. George Gibby, our webmaster, will be updating the website. We will schedule a time for him to come to the open meeting and discuss what other changes should be made to the website.

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:

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

Carol Short, On-site Property Manager

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

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

Our Board:

Bill Betts - President bill.betts@surfsideiii.com
Ira Green - Vice-president ira.green@surfsidediii.com
Alexander Urmersbach - Treasurer alex.urmertsbach@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.

Serving California's Community Associations – March 17, 24 2013

**DO MANAGERS NEED
A CONTRACTOR'S LICENSE?**

AB 2237 went into effect January 1, 2013. The Assembly Bill received very little notice but may have a significant impact on association managers. The Bill was in response to a [court decision](#) that consultants who oversee contracts between project owners and contractors were not required to be licensed. The Bill negated the court's decision by requiring consultants be licensed as contractors. Because of the way it defines "consultant," HOA managers could find themselves in violation of the statute.

Size of the Project. First, any project that costs more than \$500 in combined labor and material costs requires that the work be done by a licensed contractor. (Bus. & Prof. Code §7048.)

Consultant Defined. Second, a contractor is defined to include anyone who oversees bids for a construction project, arranges for subcontractor work and schedules and/or has oversight of a construction project. ([Bus. & Prof. Code §7026.1](#).) Since most associations have their management companies solicit bids and oversee common area maintenance projects and since most projects costs over \$500, management companies and their managers appear to be at risk for criminal and civil penalties.

RECOMMENDATION: The safest position for managers and management companies is to not oversee construction projects for their associations. Clearly, that should be the case for large projects--such work should be done by licensed [construction managers](#). The small ones are the problem. Managers routinely handle them for their boards.

Contractor #1. What if a board member serves as project manager? -Jim P.

RESPONSE: As long as the board member is not paid to oversee the project, there is no violation. The association, through its board, is the owner-builder and as such is not required to be licensed. Make sure you put something in the minutes delegating authority to him to oversee the project on behalf of the association.

Contractor #2.With regards to managers acting as contractors, does this apply to in-house managers who are employed by and work exclusively for an HOA? -Claire M.

RESPONSE: Because your manager is an employee of the association, he is exempt. If you were paying a third party (a management company) to oversee the project, there could be exposure.

Contractor #3. The management contract for our association calls for the management company to "monitor the activities of the contractor... including...the obtaining of contract documents, certificates of insurance, copies of bonds, warranties, releases of liens and other necessary or prudent documentation." -C. L.

RESPONSE: The case that triggered the Legislative action involved a construction manager who engaged in various oversight activities for an owner. Those activities included the following:
...assist, on behalf of the Owner, in **coordinating the activities** of the various workers to enable them to complete their assigned tasks in an organized and efficient manner, on time and on budget; to **maintain records such as insurance certificates**, as well as the financial books and records for the project; to keep the Owner apprised of the status of the project; to **be the onsite "point person"** to respond to issues as they arose; and generally to **act as the Owner's agent** with respect to the various parties connected with the development of the project. Plaintiff had no responsibility or authority to perform any construction work on the project, or to enter into any contract or subcontract for the performance of such work. (*The Fifth Day v. Bolotin* (2009) 172 Cal.App.4th 939, 948.) The court decided that these activities did not make the consultant a contractor. The Legislature disagreed and revised the law to [broaden the definition](#) of who needed a contractor's license. By implication that means that a manager who engages in the above activities would be subject to criminal and civil penalties if not licensed as a contractor.

Contractor #4. WOW! This is a big one. I agree that managers should not oversee construction projects. To do this the HOA manager should not act in the capacity of a general contractor. They should hire a general contractor when multiple trades are involved in the same project. They should never put themselves in a position of coordinating the work between sub contractors or dictating the "means and methods" of work. Managers should not oversee the actual work of the project which includes (from Merriam-Webster): administration, care, charge, control, direction, governance, government, guidance, handling, intendance, management, operation, conduct, presidency, regulation, running, stewardship, superintendence, superintendency, supervision. -Mike G.

RECOMMENDATION: Legislators have a way of targeting one thing and hitting something else. Perhaps if they were members of the NRA, their aim would be better. If a management company would volunteer to be sued, I could nail down how broadly the contractor licensing requirements will be interpreted. Until then, all I can do is recommend that boards and management companies take a close look at how they handle construction projects.

Read more: [Managers as Contractors http://www.davis-stirling.com/Newsletters/2013Newsletters/ManagersasContractors/tabid/3961/Default.aspx#ixzz2Om3mt0tn](http://www.davis-stirling.com/Newsletters/2013Newsletters/ManagersasContractors/tabid/3961/Default.aspx#ixzz2Om3mt0tn)