



May 2009

# SURFSIDE III NEWSLETTER

Daniel Kessner - Editor



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## FROM THE BOARD OF DIRECTORS

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### Results Of Survey To Prohibit Smoking On Balconies

Only 26 units responded or 8.4%. Of these there were 5.2% yes and 3.2% no

These results are certainly not a mandate to take on this issue. We would appreciate it if more owners would respond to [ira.green@surfsideiii.com](mailto:ira.green@surfsideiii.com). If you do not have e-mail please respond to Carol Short at 600 Sunfish Way, Port Hueneme, CA 93041. While we don't have a mandate, it is clear that those that favor the ban really have a problem with second hand smoke and we need to be better neighbors. Scott Walker and Ira Green will be attending a seminar on May 19<sup>th</sup> that includes this topic.

Some comments were:

While my husband and I do not smoke, we both think this ban of smoking on balconies is rubbish! When is this \*\*\*\* going to stop, this is one's own home, talk about discrimination.....

Thank you for presenting a proposal to eliminate second hand smoke from invading neighboring units. Hopefully, that will be interpreted to include the walkways also, as all the bedrooms in some condo units are on that side and even with windows closed the smell and therefore apparently the smoke seeps inside into the bedrooms.

If I have my patio door open in the summer, I get a strong smell of smoke coming inside my house. So I vote yes, yes, yes to prohibit smoking on patios.

YES. YES, YES. No smoking on balconies. I am afraid to open my balcony window because of the smoke next to me and below me. It seems to me if people want to smoke they should keep it to themselves. Many times I wish I could sue someone because second hand smoke is a deadly weapon. Being an alumnus of UCLA medical center where I did medical research, including the results from smoking and second hand smoke, I found that smoking is a deadly as a gun. It just takes a little longer to kill. Ironically, my father died from smoking with a coronary thrombosis.

I think it is a healthy ban considering the proximity of the units. My neighbors smoke on the patio on and off all night (seems like it is about every 30 minutes)...until sometimes 6 AM. If I leave my bedroom window open, the smoke finds its way in within about 30 seconds from the time I hear the flick of their lighter. My two \$700 air purifiers kind of clean things up after a while. When they take smoke breaks together or bring a cell phone outside....there are never quite whispers. I play my AM radio all night to drown out the noise, but often they slam the sliding glass door waking me up throughout the night. They are very appeasing about it when we come over and talk to them they say it will never happen again, but it does. Smoking on the patio is very inconsiderate in such a small living space.

It is unfortunate people are not better neighbors, but I vote no. We should not prohibit smoking on balconies.

### Ron Pierson Leaves For Other Pastures

We are sorry to lose the go-to person for the cleanup items associated with the re-plumbing, Ron Pierson. He left us for the City of Oxnard, and started that job on April 7th.

### If You Were Notified Of A Mechanics Lien?

There are some key contract related issues that we have demanded Ace Duraflo satisfy before we release the final check to them. The funds are set aside. The checks are signed and are in the office. As soon as the information and documentation the association is entitled to is received the funds will be released. While it is doubtful they will proceed with their threat as it is an expensive process for them, if they do, the association will retain funds from their final payment to engage legal services to clear it up.

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## FROM THE ON-SITE STAFF

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### Airsoft Gun

The use of the Airsoft Gun has become a serious problem here at Surfside III. It's been reported that a number of cars have been hit with the BBs; but more seriously, one of the children was hit on the face short of her right eye.

The Port Hueneme Police Department is advising that if you see anyone misusing the Airsoft gun, contact them immediately. They are actively making an attempt to educate the younger kids using them and warn them of the danger and the damage it can cause.

If you can identify anyone misusing these guns, please feel free to stop by the on-site office.

### Window Coverings

It is each homeowner's responsibility to maintain the interior of their unit including window coverings. Unfortunately, a number of the units along the walkway areas are using sheets or broken blinds as their window covering. According to the CC&Rs Article VII, Section 2, "if an owner fails to so maintain his unit or make repairs thereto, in such manner as may be deemed necessary in the judgment of the Board, to preserve and protect the **attractive appearance and value of the project**, the Board shall give written notice to such owner, stating with particularity, the work of maintenance or repair which the Board finds to be required, and requesting that same be carried out within a period of sixty (60) days from the giving of such notice." If the unit is a rental, we recommend that it is inspected by the owner in order to insure that the renter carries out such maintenance.

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## COMMITTEE BRIEFS

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

Please contact the committee chair to volunteer.

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### **Neighborhood Watch Committee** – Val Lameka; 805-986-2855; [v.lameka@yahoo.com](mailto:v.lameka@yahoo.com)

The April 8 meeting was very well attended, along with a guest from Beachport Cottages. The presentation by Do It Best Hardware was excellent, and we handled many effective products to add to the security of our units. Andy Michrina from Hueneme Bay, a volunteer PH policeman, also gave an overview of his duties, and reminded us that ride-alongs are always available. Sr. Officer Ron Burns informed us that for the first time in two years we had ZERO crime in Surfside III. Next meeting is May 7, in the clubhouse, at 7:00 pm. Contact Valerie Lameka for reports or more information.

### **Environmental Concerns Committee** – Freda Wiggins; [fredawigg@yahoo.com](mailto:fredawigg@yahoo.com)

The Environmental Concerns Committee has been re-activated under the able leadership of Freda Wiggins. Four Surfside III residents had attended the EPA meeting regarding progress at the Halaco Superfund site located so close to our community. We met on April 3 to evaluate the EPA's information. Freda also gathered concerned citizens from South Oxnard and Oxnard College who were experienced in community organizing. There are many polluting sources in our area, but Halaco is the most serious, and the most likely to affect us. We developed an action plan and divided up tasks, but we are just beginning. All are welcome to the next meeting May 8 in the Clubhouse (7:00 to 8:30 pm). We particularly invite high school and college students, and all young adults to attend. For more information, contact Freda Wiggins.

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## PROPOSED CHANGES TO THE RULES AND REGULATIONS

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The following proposed changes are open for discussion for 30 days. Please send Ira Green your comments at [ira.green@surfsideiii.com](mailto:ira.green@surfsideiii.com). He will be assembling all the input for the committee responsible for these changes and the Board for the Rules & Regulations modifications regarding 1) drying wetsuits and 2) plumbing repairs.

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1) DRYING WETSUITS

RE: PART 2 GENERAL No. 3: BALCONIES

REVISION: ADD to first sentence ; after the word "etc" :

" ... except wetsuits may be dried on plastic chairs."

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2) PLUMBING REPAIRS

RE: PART II GENERAL: No. 19

PROPOSAL: ADD No 19. "SPECIAL NOTICE: PLUMBING PROCEDURES"

"19. RE: PLUMBING REPAIRS: Any owner/ renter/resident is hereby informed that they MUST REFER TO SPECIAL ACE DURAFLO PROCEDURES REGARDING PLUMBING REPAIRS that are available on a flyer in the on-site office and on the Surfside III website BEFORE STARTING ANY PLUMBING WORK!!!"

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3) CC&R: VIOLATIONS PROCESS: VALIDATION OF VIOLATIONS; VIOLATION NOTICE LETTER

"10 day deadline"

CHANGE 10 day to 15 day deadline in order for owners to have more time to respond.

PROPOSED:

- Management Company: VIOLATION NOTICE LETTER: 15 day deadline for response [If necessary, owner may request time-extension from manager]
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## **CONTACT INFORMATION**

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### **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**

**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](mailto:manager@surfsideiii.com)

Phone: 805-488-8484

#### **Scott Walker, On-site Property Manager**

**Carol Short, Assistant 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

**Donalea Bauer, Vice President, community manager**

Email: [donaleabauer@lordonmanagement.com](mailto:donaleabauer@lordonmanagement.com)

Phone: 800-729-5673 x 3342

**Jennifer M. Critchfield, assistant community manager**

Email: [jcritchfield@lordonmanagement.com](mailto:jcritchfield@lordonmanagement.com)

Phone: 800-729-5673 x 3380

#### **Our Board:**

Bill Betts - President [bill.betts@surfsideiii.com](mailto:bill.betts@surfsideiii.com)

Ira Green - Vice-president [ira.green@surfsidediii.com](mailto:ira.green@surfsidediii.com)

Skip Perry - Treasurer [skip.perry@surfsideiii.com](mailto:skip.perry@surfsideiii.com)

Michael Madrigal - Secretary [michael.madrigal@surfsideiii.com](mailto:michael.madrigal@surfsideiii.com)

Inna Giler - Director [inna.giler@surfsideiii.com](mailto:inna.giler@surfsideiii.com)

## LORDON MANAGEMENT: OTHER DEPARTMENT EXTENSIONS

All escrow issues: Chelia, ext. 3339; [crubalcava@lordonmanagement.com](mailto:crubalcava@lordonmanagement.com)

All insurance, lien, and other legal matters: Patty, ext. 3337; [pbarrios@lordonmanagement.com](mailto:pbarrios@lordonmanagement.com)

Your account, billing address, etc: Cara, ext. 3319; [cwoellhof@lordonmanagement.com](mailto:cwoellhof@lordonmanagement.com)



Loewenthal, Hillshafer &  
Rosen, LLP

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*Newsletter*

## LHR Newsletter Vol. 3, No. 2

Contact us Toll-Free: 1-866-474-5529 ext. 251

([info@lhrlaw.net](mailto:info@lhrlaw.net))

Neighbor to Neighbor Disputes

By: David A. Loewenthal, Esq.

Loewenthal, Hillshafer & Rosen, LLP

[daloewenthal@lhrlaw.net](mailto:daloewenthal@lhrlaw.net)

### The Top Ten List

Homeowners associations, their directors, management companies, lawyers and most importantly, the homeowners themselves can be and frequently are confronted by neighbor to neighbor disputes. If not handled properly, these disputes and related costs can get out of control.

This article outlines general areas of common disputes between neighbors and Homeowners Associations, as well as examples and possible mechanisms for resolution.

#### **1. What right does a homeowner have against a neighbor who may be in violation of the Association's governing documents?**

***Since both parties are and hopefully will remain neighbors; it is best to resolve any problems in an informal and collaborative manner.*** Failing this and depending on the specific issues, the aggrieved neighbor may contact the Board. A Board's failure to take action under such circumstances could be a breach of the Board's duties and obligations. However, this varies on a case by case basis.

Conversely resolution of certain issues affecting one neighbor against another may not be the responsibility of the board. *Generally, if the issue affects multiple members, affects common area, is dangerous, illegal or is an architectural violation; then the board should get involved.* If the neighbor is unwilling to comply with a legitimate request for resolution; the aggrieved homeowner may make a demand for Alternative Dispute Resolution (ADR) [Civil Code Section 1354 and 1369-510 through 1369.550]. These sections generally state that before filing of such a lawsuit and if the amount in controversy is \$5,000 or more; the aggrieved party, prior to the filing of a civil action, must make a demand for ADR to the aggravating party. ADR allows for mediation, binding arbitration or non-binding arbitration. An aggravating party, when served, has thirty (30) days in which to either accept or reject or not respond to the request. A non-response is the same as a rejection. If there is a non-response or rejection, the aggrieved party may file a civil action.

***If the parties actually proceed to ADR, and there is no resolution, assuming that it is either mediation or a non-binding arbitration, then the aggrieved party can then proceed forward with the filing of a lawsuit. Given the heavy cost in time and money, a lawsuit should be a last resort.***

## **2.The use of fines by the Association:**

Sometimes the only way to obtain a violating neighbors attention is to threaten and sometimes carry out either discipline and/or a fine. Associations need to include within their Rules and Regulations a written fine policy that specifically spells out for all of the owners the ramifications for violations of the Association's governing documents. Generally, but not always, these policies require a warning letter for a first offense and then a stepped up fining policy for each continuing violation. ***It should be noted that fines are not assessments and therefore cannot be the subject of a lien or foreclosure action.*** However, an Association can file an action against an owner in small claims or superior court to collect on such fines. ***The Board does have that right to levy as long as they are in compliance with Civil Code Section 1363(h):*** Prior to the issuance of a fine or other disciplinary action, an Association must provide at least ten (10) days written notice to the offending homeowner advising them that the Board will meet on a specific date, time and place to determine if discipline or a fine will be instituted against the neighbor for a specific violation. The offending homeowner has a right to attend the hearing and present any information they believe is relevant to the Board, setting forth why disciplinary action should not be taken. Within fifteen (15) days of the hearing, the Board must provide written notification to the offending homeowner of the Board's decision. The Board does not have to provide continuous notices and offers of hearings to subsequent violations of the same issue. However, if a single, distinct violation leads to an issuance of a fine and the conduct continues in the future; the Board can continue to issue new fines without having a second hearing. Conversely, if the offending homeowner commences a different violation of a separate and distinct rule then that would be the cause for a new notice, hearing and written position.

## **3.View disputes between neighbors:**

Under California law, view rights are not protected, unless you are located in certain scenic corridors that may be protected by city and/or state ordinances or, more generally, the view is protected via the Association's CCR's. Barring these elements, view protection is not deemed a protected right under California law. If the Association CCR's provide view protection, then the issue is one of absolute protection or partial protection based upon reasonableness. Certain Associations' governing documents will provide for an absolute protection, i.e. there can be no obstruction of view caused by one neighbor against another.

***Two steps which may help prevent view issues are: 1) The owner making the improvement review in advance the association's documents to ensure the proposed construction is compliant and 2) if possible, discuss and reach such agreements in advance between neighbors.***

## **4.Neighbor to neighbor noise disputes:**

Noise is one of the most frustrating and highly contentious issues that develop between neighbors. Generally, attached condominiums and townhomes will have certain standards set forth within their governing documents including the type of flooring material that can and cannot be used e.g.: carpeting VS wood flooring. In addition to types of flooring material, the use of a unit can also create problems between neighbors. Specifically, what bothers one neighbor may not bother another. Noise issues can be evaluated scientifically through acoustical tests. However, costs are involved, and subjective opinions may or may not change. ***Generally, governing documents will also include a section pertaining to "nuisances" and state that a neighbor's actions cannot be such that could lead to an unreasonable annoyance, disturbance or offensive activity that inhibits another neighbor from using their property.*** If the noise issue is limited to a complaining party and aggravating party, the association may not have to get involved since the complaining party can enforce the governing documents directly.

## **5.Neighbor to neighbor dispute regarding parking issues:**

In developments with designated/assigned parking space, parking issues generally center upon street and guest parking. Where Association streets are private and street parking is allowed; disputes arise when one neighbor consistently parks in front of another's residence. Generally an owner does not have exclusive control over the street parking in front of their residence nor is allowed to use guest parking for their own vehicle(s). ***However, if one party parks in a manner disallowed by governing documents or municipal ordinances; the complaining homeowner and association may act against the violating homeowner.***

## **6.Neighbor to neighbor disputes for water damage between units:**

A serious problem affecting neighbors is water intrusion. Generally this issue arises between neighbors in a condominium or townhome setting where there are attached walls and ceilings. In single family home communities, irrigation water between neighboring lots can also be a source of confrontation. ***Generally, if the item that is the source of the water is a separate interest item, such as a washing machine hose, refrigerator water line, etc.; then the owner in control of that separate interest item would be responsible for the costs associated with the damage. Conversely, if the source is a common area source such as a common area pipe, then the cost of remediation and repair fall to the Association.*** In most instances, drywall on the ceiling and walls is considered to be common

area. Therefore, even if the neighbor refuses to pay for the repair to the drywall; the aggrieved homeowner may have a legitimate claim against the Association since a "common area" has been damaged and the Association is responsible. The Association can generally proceed against the aggravating homeowner and/or their insurer for reimbursements of costs.

#### **7. Neighbor to neighbor disputes regarding landscaping:**

Most often landscaping issues occur in planned unit developments with single family homes, versus multi-unit. In such instances, governing documents generally outline rules for exterior improvement or alteration, and plans and specifications must be submitted to the Board and/or Architectural Review Committee (ARC). In many HOA's, specific restrictions may be set. Disputes may arise over the issue of views. Though as noted above, not all Associations protect views.

**Homeowners should attempt to work out these issues via an agreement between neighbors prior to beginning significant landscaping.** If a dispute still arises; neighbors, as noted above, can make demands to proceed with ADR. If that fails, the parties may seek judicial intervention.

#### **8. Disputes involving tenants and guests:**

Frequently, disputes arise between neighbors when one owner is either renting their residence or consistently entertaining guests who violate the rules. **Violations by tenants and/or guests are ultimately the responsibility of the owner regardless of whether they had actual notice of the violations as they were occurring.** If an owner's tenants and/or guests violate Association rules and regulations to an extent that impacts another neighbors' ability to reasonably use and occupy their property; then that neighbor would have a right to proceed with an ADR demand, and if that fails, litigation. In the case of a continuing nuisance, the Association can also seek a judicial remedy, but in doing so, should consider whether the nuisance is affecting multiple owners or only one. Such claims would be against the owner of the unit since they must comply with the Association's governing documents. **An owner cannot simply say that she/he cannot control his tenants or guests but rather is contractually responsible for their actions.**

#### **9. Pet issues:**

Commonly disputes relate to pets, most notably dogs. Disputes can range from dogs barking, to leash issues, to dog "poop." Often these occur between neighbors and the Association and an offending homeowner. Laws provide certain protections to both associations and pet owners with respect to pet ownership. With proper Association rule amendments, reasonable limitations can be adopted for weight, size, and type of pet so as to avoid potentially dangerous animals. Leash laws do apply in most municipalities, as do requirements to clean up after a dog. Thus certain events may violate both the Association's governing documents and city ordinances. If violations continue, the aggrieved homeowner may go to the Board for help. **The Board may need to be proactive especially with off-leash issues or potentially dangerous dogs. The aggrieved homeowner may also contact the local animal control.**

#### **10. Conclusion:**

**A flexible and collaborative approach to neighbor disputes is by far the best.** If this is not possible, ADR is a next step and if that fails and the aggravation to the aggrieved neighbor is severe; then the courts are open to them. People living within a Homeowners Association agree to be bound by certain restrictions and rules. If such restrictions and rules are not acceptable to a homeowner then a home in a common interest development may not be a good choice for them.

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