



July 2010

SURFSIDE III NEWSLETTER

Daniel Kessner – Editor



FROM THE BOARD OF DIRECTORS

Capital Replacement Repairs

Now that the plumbing re-pipe is finished, the Board is working on a list of capital repairs.

Building envelope work bidding is currently in process. We hope to get bids by the end of July and start work in August. The main objective with this work is to repair the building exteriors. Here is a list of some of the items that will be completed.

Post and beam repair or replacement

Metal flashing

Siding replacement; T-111 siding will be replaced with composite cedar shakes.

Balcony decks on the condo buildings will be re-finished.

Garage roofs on the townhouses will be replaced.

After this work is done, painting is next.

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

The June meeting was lively, and the donuts were good. Although the police report was absent, the attendees gave comprehensive reports. There were no auto break-ins reported. Random vandalism to community property, like walkway lighting, does continue. With school getting out for the summer, we all need to increase our vigilance, since the little ones will again be roaming and running.

The next Neighborhood Watch meeting will be July 1, Thursday, at 7pm in the clubhouse. Reports and questions go to Valerie Lameka. Be safe, everyone!

Valerie 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 10th 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 now has a free electronic newsletter with information on various city-related matters and events. To sign up to receive it, visit the city website: www.ci.port-hueneme.ca.us, then in the column at the far left, click on "Sign Up for E-News."

Dan Kessner

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

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

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 or
626-771-1075

Donalea Bauer, Vice President, community manager

Email: donaleabauer@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
Skip Perry - Treasurer skip.perry@surfsideiii.com
Michael Madrigal - Secretary michael.madrigal@surfsideiii.com
Bob Banfill - Director bob.banfill@surfsideiii.com

LORDON MANAGEMENT: OTHER DEPARTMENT EXTENSIONS

All escrow matters: Kasey Lane, ext. 3339; klane@lordonmanagement.com

All insurance and collections: Patty Bosch-Barrios, ext. 3337; pbarrios@lordonmanagement.com
Your account, billing address, etc: Liz Lopez, ext. 3319; llopez@lordonmanagement.com
Liens, legal issues: Donalea Bauer (see above)

Davis-Stirling.com
Newsletter
by ADAMS KESSLER PLC

California's Community Associations

May 23, 30 & June 6, 2010

INDEPENDENT INSPECTOR OF ELECTIONS

QUESTION: We hired a professional Inspector of Elections to run our recent election. One of our owners was adamant that since the Inspector was "under contract" to the association she was no longer independent and this violated the Davis-Stirling Act. Is that true?

ANSWER: Your owner should switch to decaf--he's way too hyper. He misread [Civil Code 1363.03\(c\)\(2\)](#), which provides that "An independent third party may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the association for any compensable services unless expressly authorized by rules of the association . . ."

Missed Words. Your caffeinated critic missed the words "currently employed." The board cannot hire someone who is *currently employed* by the association. Since the Inspector you hired was not currently employed by the association, the board can legally hire her to run the election.

Exception to Prohibition. It should be noted that the prohibition against hiring someone "currently employed" by the association has an exception. The statute expressly waives the restriction if the hiring is "expressly authorized by rules of the association." In other words, if your Election Rules authorize the hiring of the association's management company or CPA to serve as an Inspector of Elections, then doing so does not violate the statute.

ILLEGIBLE BALLOT ENVELOPE

QUESTION: Does an HOA or management company have the right to discard and not count ballots if the return signature and address on the return envelope is illegible?

ANSWER: Yes, Inspectors of Election can (and should) set aside and not count envelopes where they cannot identify the voter. To prevent voter fraud, the Davis-Stirling Act requires that owners identify themselves by name, address and signature.

In the upper left hand corner of the second envelope, the voter **shall** sign his or her name, indicate his or her name, and indicate the address or separate interest identifier that entitles him or her to vote. [Civil Code 1363.03\(e\)\(1\)](#).

No Discards. Inspectors should not discard any ballots or outer envelopes. All voided materials should be marked "Void" and kept for at least [one year](#) with the rest of the election materials.

SMOKING ON THE BALCONY A CIVIL RIGHT?

QUESTION: Can the association make it a violation to smoke on your own balcony? Wouldn't that violate your civil rights?

ANSWER: Yes, associations can pass rules against smoking on balconies. No, restricting smoking is not a violation of a person's [civil or constitutional rights](#). Associations have good reason to regulate smoking--it is a health hazard, a fire risk, and a nuisance. There is an increasing trend in associations to [ban smoking](#) altogether.

FEEDBACK ON BALCONY SMOKERS

Quaint. Do people still smoke? How quaint. -C.S.

Libertarian Approach. You may want to look at our libertarian approach to the smoking issue, as well as other personal nuisance issues: residents can do whatever they want, so long as no one else smells/hears/whatever it. - Stu S.

Fight to the End. I would fight to the end against a ban on smoking outside!!! -Steve N.

Persecuted Underclass. I am a non-smoker and I really do not particularly like being around cigarette smoke BUT I am beginning to see smokers as a persecuted underclass. Perhaps it is not a violation of an individual's civil rights to ban it but what happened to tolerance and learning to get along with your neighbor? Perhaps we need to go back to understanding that if you choose to live in a communal living situation you are going to be confronted with a variety of different choices people make on how they want to live. If you cannot tolerate the great variety of life and its risks, why in god's name are you living in a condo? -Jeffrey S.

Smoker Rights. I completely disagree with your smoking advice. While I am not a smoker or a lawyer, I find it very hard to believe that a legal challenge will lose, and I'm not sure I would want to spend HOA funds defending against such a suit. A smoker has as much right as a non-smoker. To deny them the right in their own home is ludicrous. - Mark M.

RESPONSE: If smoking were harmless and unobtrusive, your arguments might have merit. A court in Colorado has already upheld a complete ban on smoking, including inside units. The judge noted that second-hand smoke is a nuisance and upheld the association's CC&R amendment as proper and reasonable. [Christiansen v. Heritage Hills](#). In addition, the California Court of Appeal upheld a cause of action for nuisance related to second-hand smoke in outdoor common areas. [Birke v. Oakwood](#). Associations clearly have the authority to regulate nuisance complaints that occur inside units and on balconies. "Nuisance" includes both noise and second-hand smoke.

SHORT SALES AND UNPAID ASSESSMENTS

QUESTION: We have an owner who is selling his condo in a short sale. What happens to the delinquent assessments? Are they paid or do we have to write them off?

ANSWER: A "short sale" occurs when an owner of a property seeks to avoid foreclosure by selling the property for less than is owed on the mortgage. Because the lender is taking a loss on the property, a short sale requires the lender's approval.

Failure to Lien. If your association failed to lien the property for the delinquent assessments, it will receive nothing from the sale. The board can still pursue the delinquent owner in court for a [money judgment](#). However, the judgment may be uncollectable.

Lien Filed. If the association filed a lien, then it has a good chance of getting paid. Even so, the board can expect to be pressured by the parties to waive the delinquent assessments and release the lien. That is because the buyer is offering less than is owed on the property. In other words, there is no equity--nothing "extra" in the transaction to pay the association.

For example, if the mortgage was \$350,000 and the short sale is for \$200,000, the bank is taking a loss of \$150,000. If the association has a lien for \$10,000, the sale cannot proceed until the lien is satisfied. Since there is nothing in the sale to satisfy the lien, the parties will pressure the board (sometimes with threats) to release the lien otherwise the sale will fall through.

No Duty to Release Lien. Despite the pressure, the board has no duty to release the lien until the association's claims have been satisfied. Even so, standing firm could cause the sale to fall through. This would leave the

delinquent owner in possession (i) causing more delinquent assessments to accumulate and (ii) triggering a foreclosure sale by the lender, thereby wiping out the association's lien.

Negotiations. The better approach is to negotiate with the parties. If the board waives the association's late fees, interest and collection costs, the buyer could kick in a little extra money on his offer and the realtors could reduce their commission a bit. With everyone contributing a little, the association could recover something rather than nothing. In addition, it puts a dues-paying owner in the property.

RECOMMENDATION: Boards need to be diligent about filing liens on delinquent owners so as to protect the association's position. Without a lien, the association is unsecured and risks losing the entire amount.

SHORT SALE FEEDBACK

Seller's Duty. Regarding the delinquent dues on a short sale... it is the SELLER's responsibility to pay the amount owed. The seller has been forgiven (or at least deferred) payment of the difference between loan balance and sale price. The real estate brokerages involved often have already reduced their fees to make the transaction work. The seller has usually skipped at least a few house payments and should manage to pay the HOA what they're owed. - Maxine C.

Disagreement. The difference between a 'regular' sale and a short sale is the lender has agreed to provide a demand to escrow for less than the amount of loan outstanding. As far as escrow is concerned they still contact me for a HOA payoff balance just like a 'regular' escrow. I have never seen a HOA lose money from a short sale because of not recording a lien. The association may agree to waive some of the outstanding fees to get the deal done, but this has nothing to do with not having a recorded lien. -Bill G.

RESPONSE: I should have used the word "may" instead of "will" receive nothing from the short sale. In some instances a sale can be all cash with a very short escrow. The parties might "forget" to include the association (as happened with one of my associations). If, however, the association records a lien, it can't be ignored. So as to avoid this problem, boards should be diligent in filing liens at the earliest possible date. -Adrian

Property Values. I am concerned over the assessed property value when a home owner has a short sale or their property is foreclosed. This is reflected in the value of all homes in the area, when it is not the true value of the homes. What can we do to stop the use of these properties to decide the value of all other homes? -Ronald W.

RESPONSE: I don't think anything can be done. The market has to correct itself. Unfortunately, that means clearing out the glut of foreclosed properties at fire sale prices. Once the market hits bottom, it will start a slow climb to more realistic price levels. The current administration (some readers don't like it when I say Obama Administration) has been very slow to address ongoing problems with Fannie Mae and Freddie Mac, which creates a continuing drag on the market. In addition, there is disarray when it comes to [VA and FHA approvals](#). That means the housing recovery will likely be anemic well into the foreseeable future. -Adrian