September 2013

SURFSIDE III e-NEWSLETTER

Daniel Kessner – Editor

FROM THE BOARD OF DIRECTORS

At the last open meeting, the Board voted to have one meeting every two months, beginning immediately. The next open meeting will be held on Saturday, October 5th, 2013.

Normally the nomination forms for the Board are mailed with the August Statement from our management company. This was overlooked this year. While the Davis-Stirling Act would allow the website to suffice, our own election rules adopted by the Board require mailing of the nomination forms. To correct this oversight, the nomination forms have recently been mailed out, and with a deadline extended to Monday, September 16, 2013, at 5:00 pm. As a result, the Annual Meeting will now be held on Saturday, December 14, 2013. The regular Board meeting in October will still be held on October 5th as planned.

The website has been updated to reflect these changes.

Satellite Dishes

Both Dish Network and Direct TV do not follow the requirements for correct installation of their dishes. Our experience is they do not seem to care about the property on which they install their equipment. Our adopted Rules and Regulations require installation that does not damage our property, and this document refers to our specifications which are on our website and tells you how to find them. Go to http://www.surfsideiii.com/docs/committee/Architectural/2007-05-09SatelliteDishStandards.htm. If you have allowed these providers to violate our installation specifications, you will be responsible for the cost to repair the common area and install the dish property. We are extremely sensitive to this situation. We have spent in excess of 15 million dollars, half of which we all paid and the other half is borrowed to repair our property.

FROM THE ON-SITE OFFICE

Bikes

The bike rooms have been cleaned out, and yet a number of bikes still remain without any identification. The on-site office requests that all bikes be locked and have a permanent name affixed to them. This does not include post-its. As a convenience to you, the on-site office will provide a permanent laminated tape and put your name on it. Therefore, we are requesting that you stop by or contact the office prior to October 4th, at which point all bikes not labeled will be moved to the maintenance shed.

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

The August meeting was small, but vocal..... and the food was good. It appears we now have three dumpster divers. Keep calling the police to report these folks, and hopefully we can get rid of them. We went over the Police Log in detail. It was a relatively quiet 4th of July weekend, and the Police have been cracking down on loud and disturbing skateboarders.

I attended a live broadcast of http://www.kadytv.net/ of a Neighborhood Watch meeting for the whole city. It is aimed at folks who for any reason are unable to attend their local meetings. Be sure to check it out. The Police gave us safety tips and crime stats for May, June and July, 2013. There were also presenters on our Dispatch system and procedures, and on the most "popular" scams in Port Hueneme to separate us from our money.

Meanwhile, our Surfside III meeting will be on Thursday, September 5, at 7 pm in the clubhouse. Questions and reports can go 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

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@surfsideiii.com
Alexander Urmersbach - Treasurer alex.urmersbach@surfsideiii.com

Phone: 800-729-5673
For after-hours emergencies, dial 5 or
626-771-1075

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)

Davis-Stirling.com Newsletter by AK Adams Kessler
Serving California's Community Associations June 23, 30, July 21, 28, August 4, 11-2013

MINIMUM INSURANCE LIMITS PER STATUTE

QUESTION: To save money, can we purchase liability coverage of $1 million per occurrence with an aggregate limit of $1 million plus an umbrella policy of $1 million? An insurance agent who wants our business said this would satisfy the Davis-Stirling Act and protect owners from litigation. Our board is not convinced and would like your guidance.

ANSWER: First, a little background. Minimum insurance requirements were added to the Davis-Stirling Act after the Ruoff v. Harbor Creek decision in 1992. Ms. Ruoff, a guest of a member, suffered catastrophic injuries falling down defective common area stairs. Her husband sued the association and every owner in the association, each of whom, he argued, had common liability because they jointly owned the stairs.

The court of appeals agreed and held that every owner in the complex was jointly and severally liable for her injuries, the cost of which greatly exceeded the $1 million limit in the association's insurance policy. The case sent a chill through the industry and the Legislature responded by adding Civil Code §1365.9. The statute protects owners from individual liability, provided the association maintains at least minimum levels of insurance as follows:
• $2 million for HOAs with 100 or fewer units, and
• $3 million for HOAs with more than 100 units.
Umbrella. To answer your question, assuming your association has fewer than 100 units and assuming the $1 million umbrella is written to act as excess to the underlying $1 million general liability per occurrence, the combination of the two policies would provide the required $2 million for a single tort action brought against the association.

RECOMMENDATION: Meeting minimum levels of insurance may, however, not be enough. Even though owners are not directly liable for a loss exceeding insurance limits, they are indirectly. Assuming a $4 million judgment against an association, owners would be hit with a special assessment to make up the difference between the $2 million policy and the $4 million judgment.

Accordingly, boards need to talk to their insurance brokers to determine appropriate levels of insurance for their associations. A $5, $10 or $15 million umbrella policy is relatively inexpensive and not uncommon for associations to purchase. In addition, homeowners should individually purchase loss assessment coverage in the event a loss exceeds the association's policy limits.

For their assistance with this question, thank you to Tim Cline of the Timothy Cline Insurance Agency, Inc.; Patrick Prendiville of the Prendiville Insurance Agency; and Mike Rey of Rey Insurance Services.

FORECLOSED UNITS DO NOT BECOME COMMON AREA

QUESTION: Our HOA foreclosed on a unit last year. The new board decided to sell it without notifying or consulting the membership. Doesn't the board need permission from the membership to sell common property?

ANSWER: A unit or lot acquired through foreclosure does not become common area. The property is identified in the governing documents as a separate interest not common area. As a result, members do not have the right to enter and use the property as they would common areas. Instead, the property is under the control of the association through its board of directors, who can either rent or sell it without first obtaining membership approval.

Possible Restriction. There might, however, be language in the governing documents restricting the sale of association property over a certain value without membership approval. Depending on the wording of the restriction, it could affect the board's ability to sell it.

SHARING HOA RECORDS

QUESTION: An owner requested over 4,000 documents which we provided. Does she have the right to share those records with others??

ANSWER: It depends on who the "others" are and for what purpose. Since all members have the right to inspect records, there is nothing improper about members sharing records with other members.

Improper Purpose. Where your homeowner can get herself into trouble is if she uses those records for an improper purpose such as (i) using them for personal gain, (ii) altering the records to defame others, (iii) selling them, or (iv) using them for any other purpose not reasonably related to her interest as a member.

Damages. If an owner uses records for an improper purpose, the association can take legal action against him and is entitled to reasonable attorneys' fees and costs if it prevails. (Civ. Code §1365.2(e)(3))

FINES & COLLECTION AGENCIES

QUESTION: Can an association turn a fine over to a collection agency if an owner refuses to pay?

ANSWER: Only if the fine is first converted into a judgment. Since collection agencies cannot practice law, they cannot go into court to make an association's monetary penalties collectible. The association needs to first sue the owner in small claims court (up to $5,000) or superior court (over $5,000). If the court determines the fines are reasonable, the association will receive a money judgment that can then be turned over to a collection agency. Most collection agencies work on a contingency fee basis and charge between 25% and 40% on any sums recovered.

EV CHARGING STATION

QUESTION: I am a townhome owner and would like to install an EV charging station in my private garage. Do I still need HOA approval?

ANSWER: All of the owner requirements in the Davis-Stirling Act apply to installation of charging stations in common areas or exclusive use common areas. If your garage is solely owned by you as your separate property then the association arguably has no interest in the installation of a charging station in your garage.

Licensed and Insured. However, the association has an interest since your townhouse is connected to other townhouses and an improper installation could result in a fire. So as to protect your neighbors, the association has a legitimate interest in ensuring that you hire a licensed and insured contractor who installs the charging station pursuant to building codes.

FEEDBACK

Yippy Dogs. A magic solution to "yippy Dogs" is Silencer Pro. It's amazing. It runs on a battery or electricity and costs about $90.00. It emits a sound that calms the dog and it doesn't bark. Absolutely heavenly! It works from your house across to the neighbor's dog too (within range) Amazing. -Mary J.

Insurance #1. What associations do not realize is that carrying minimum limits of insurance does not immunize them from judgments in excess of policy limits. Assume an owner pulls out of the parking garage and his view is blocked by the association's hedge that exceeds the city ordinance by a foot. Assume he hits a neurosurgeon riding his bike and turns him into a quadriplegic. The likely judgment against the association would far exceed statutory policy limits and a large special assessment would follow. As you indicated in your newsletter, the cost of insurance is quite reasonable. A $15 million policy for a 20-unit condo would cost $1,500 to $2,000, which is less than what owners pay for auto insurance. -Joel Meskin of McGowan Program Administrators

Insurance #2. What about California Earthquake Authority insurance? If every homeowner carried $50,000 in loss assessment insurance, a small HOA of 20 units could cover $1,000,000 in damage without carrying earthquake insurance, thus keeping the HOA fees down. -Mike G.

RESPONSE: While California Earthquake Authority Insurance is important for all owners to carry, there are risks if the association does not itself carry earthquake insurance and instead relies entirely on the CEA's loss assessment coverage.

1. CEA loss assessment will only pay for residential structure damage. There is no coverage for pools, clubhouses, detached garages, patio coverings, walkways, driveways, fences, etc.

2. It will not pay for bringing residential structures up to building code standards.

3. It will not pay for special assessments to cover bad debt (caused by members who walk away from their units).

4. Relying on owners to carry loss assessment coverage is risky. Many or most owners will not carry it, thereby providing limited resources for rebuilding after an earthquake.

5. The maximum coverage for CEA Loss Assessment is $75,000 and the deductible is 15% of the coverage amount.

Because of these limitations, boards would be ill-advised to forgo earthquake insurance and rely solely on owners purchasing earthquake loss assessment coverage.

Thank you to Patrick Prendiville of the Prendiville Insurance Agency; Mike Rey of Rey Insurance Services; and Tim Cline of the Timothy Cline Insurance Agency, Inc. for their assistance.

TO BUY OR NOT TO BUY, THAT IS THE QUESTION

QUESTION: Several times over the past ten years the board has gone to the membership for a vote on earthquake insurance. Each time it was soundly defeated. The high premiums, high deductibles and low pay-out simply didn't make sense to the majority. Is the board obligated to set aside the vote and purchase earthquake insurance anyway?

ANSWER: That is a tough question. Unless required by their governing documents, associations are not obligated to buy earthquake insurance. Even so, the better course of action for condominium associations in high-risk areas is to buy earthquake insurance. This is especially true since individual members cannot insure the structure around their units, only the association can.

Fiduciary Duty. When members vote against earthquake insurance, they have no duty to act in the best interest of other members, only in their own best interests. Boards, on the other hand, have a fiduciary duty to make decisions that are in the best interests of the association as a whole. Since earthquakes can be devastating, that would argue in favor of overriding the membership's vote if the association is located in an area vulnerable to earthquake damage.

Accordingly, boards should consider risk factors such as the location of fault lines, the type of soil the structures are built on (are they vulnerable to liquefaction) and the type of construction in the development (wood frame, steel & concrete, etc.) plus premium costs, deductibles and pay-out levels.

Funding the Insurance. If the board decides to set aside a membership vote, it faces a practical problem--how to fund the insurance. The board can either increase annual dues or impose a special assessment. For most associations the cost of earthquake insurance is more than the 5% special assessment limitation imposed by the Davis-Stirling Act, which effectively eliminates this funding option.

The other option is to increase annual membership dues up to 20% to cover the cost. However, the dues increase only applies to next year's budget. If the board wants to immediately purchase earthquake insurance, it can bridge the funding gap by borrowing money from reserves and repaying it within one year.

Not Overriding the Vote. If the board chooses not to override the members' vote, its decision is governed by the Business Judgment Rule, which means directors are not subject to personal liability if their decisions are made in good faith, in the best interests of the association and with such care as an ordinarily prudent person would use.

RECOMMENDATION: Obviously, these are not easy decisions for boards to make. Whichever direction they go, to buy or not to buy, the decision should be well supported in the board's minutes and explained to the membership.

Thank you to Michael Berg of the Berg Insurance Agency and Rick Russo of the Russo Insurance Agency for their assistance.

Rentals

Inquire about the percentage of rentals in the development. A high rental population creates problems for rules enforcement, maintenance and oversight of the property. If the rentals are nearing or exceed 15%, you should be cautious. If they exceed 30%, it does not matter how beautiful the condo is, you're stepping into quicksand. At 50%, the development is in a death spiral.

Pets

If they don't have pet restrictions, is the property a dog patch? If so, barking dogs at all hours of the day and night plus dog doo-doo in the common areas will be a challenge. If they have restrictions, do you have pets that violate those restrictions? If so, are you willing to give up your loved ones for the condo? If your Realtor tells you the rules don't matter because the association will never discover the violation, get a new Realtor.

Parking

Is there sufficient parking in the development? If not, it will create problems for you and your guests. Visit the property on a weekend when everyone is home and see what parking is like.

Noise

Ask the seller about plumbing noise, crying babies, TV and stereo sounds, etc. from surrounding units. If there is a unit above yours, ask about noise from hardwood floors. If all the above can be heard through walls and floors, it indicates cheap construction--a harbinger of future maintenance problems. It also means you won't get any sleep at night.

THE REAL POOP ON POOL DIARRHEA

QUESTION: I recently saw a sign that our association posted at the pool that says if anyone currently has or has had diarrhea in the past 14 days, they should not use the pool. That seems inappropriate. Is the sign necessary?

ANSWER: Yes, the sign is necessary. The California Building Code (CBC) was recently amended to require such signs at all public pools as follows:
A sign in letters at least 1 inch (25 mm) high and in a language or diagram that is clearly stated shall be posted at the entrance area of a public pool which states that persons having currently active diarrhea or who have had active diarrhea within the previous 14 days shall not be allowed to enter the pool water. (CBC §3120B.11.)
"Diagram?" Seriously? Stick with words. Signs can be purchased from various pool supply companies throughout the state in a variety of languages. If a substantial number of your membership speaks a language other than English, you should consider posting signs in those languages.

"But wait," you say, "our pool is not open to the public!" For the purposes of this sign, "public pool" is broadly defined to include associations:
Public pools include those located in or designated as the following: commercial building, hotel, motel, resort, recreational vehicle or mobile home park, campground, apartment house, condominium, townhouse, homeowner association... (CBC §3101B)
Can someone with diarrhea still go in the pool if they wear a swim diaper? That is a bad idea. See "Fecal Teabags." For more information about diarrhea and swimming pools see the information posted on the Centers for Disease Control website.

TRANSIENT HOUSING AND FHA CERTIFICATION

Recently, the Federal Housing Administration took the rather silly step of refusing to certify condominium developments that exempted banks from transient housing restrictions (which, by the way, was an accommodation to the agency).

The FHA has relented. Under its newly revised, newly adjusted, new, new policy, condominium associations have two choices:
1. Amend their governing documents to remove the offending language, or

2. Provide a dated and signed statement on association letterhead that no units in the development are leased for a term of less than 30 days and tenants are not provided services commonly associated with hotels.
Option two is the better option. If you go through the expense of amending your CC&Rs, the FHA will just change their guidelines again. To read more, see CAI Announcement.

FINANCES IN THE MINUTES

QUESTION: Our minutes contain a summary of our financial condition and we are not inclined to share this information with employees, contractors and bidders. Is it acceptable to omit the association's financial information from the openly posted version of the minutes?

ANSWER: Yes, you can omit financial information from the set posted in the common areas. Members, not renters, visitors, guest or vendors, have a right to the association's financial records. Because members have a right to the information, you should either include financials in monthly billing statements or post them in a password protected portion of your website. That way you keep everyone informed without public consumption.

SHOOTING FILMS IN THE COMMON AREA

QUESTION: Our board is considering renting our common area for film shoots. We have done this twice in the past with disastrous results of massive intrusion and abuse of our lovely pools and clubhouse, and cars and trucks and food preparation and consumption. We own 1/240th of the common areas. We are nonprofit also! Does the board have the right to rent it out without a majority vote?

ANSWER: Just because an association is nonprofit does not mean it is prohibited from receiving income from sources other than assessments. The most common non-assessment income for HOAs is from interest on reserves, clubhouse rentals, laundry machines, etc. That means an association can derive income from filming in the common areas.

Board Decision. Although you own a portion of the common areas, the membership's authority over the common area is quite limited. Your duly elected representatives (your board of directors) oversee the common areas. As such they have authority to rent them out if they believe doing so benefits the association. The challenge is balancing the net after-tax income against the inconvenience of a film shoot.

Film Agreement. I've learned from past film projects involving movies, TV shows and commercials that they take longer than the company claims and the film crews (and their hoards of support staff) trample everything in sight. As a result, I prepare "Film Agreements" to protect my clients from the negligence that seems to surround some (but not all) production companies.

RECOMMENDATION: Associations that allow filming should have legal counsel prepare an agreement to address filming dates and times, protection of the association's name and image, potential damage and injuries, hold harmless and indemnity provisions, and insurance. If done properly, filming can produce significant income for the association with only moderate inconvenience. If done improperly, filming can be a major headache.

NO LAWYERS ALLOWED

A recent case sheds light on whether members can bring their lawyers to board meetings.

The Isla Verde Association is located in Solana Beach, just north of San Diego. Gregg and Janet Short moved into the Association and wanted to remodel their home. The Association disapproved their scope of construction. So they hired a lawyer.

Short on Ethics. The lawyer gave notice that he planned to attend a board meeting. The Association's lawyer denied the request stating that doing so would violate the Rules of Professional Conduct which prohibit communication with a party without the consent of the other lawyer (Rule 2-100). Short's lawyer tried to attend anyway and was denied access.

Skullduggery. The Shorts then transferred their property into a limited liability company (SB Liberty) and executed a power of attorney appointing their attorney as their agent so he could attend board meetings and present requests to the board. He was again turned away.

Litigation. Via their newly formed company, the Shorts sued the Association to stop it from "interfering" with their lawyer's participation in the board's meetings. They lost. A sharp judge told the Short lawyer that boards have the authority to determine how to conduct their own meetings--including the exclusion of nonmembers. Being short on common sense, the Shorts appealed.

Member Defined. The Court of Appeals agreed with the trial court. It found that the Association's CC&Rs defined "member" as the owner on title for the property and the Shorts' lawyer was not on title. Therefore, he was not a member and not entitled to attend meetings.

KUDOS: *Kudos to the law firm of Epsten Grinnell & Howell on their defense of the Association. To read this unpublished case, see SB Liberty v. Isla Verde Association.*

MANAGER AS TREASURER

QUESTION: We recently signed a contract with a management company. The manager informed us that we only need a

president and a secretary since the manager would be acting as treasurer. I thought board members were required to fill all three positions and the management company should not be an officer.

ANSWER: Most but not all bylaws require that officers also be directors. But I've seen bylaws where no such requirement existed. In that case, the board can appoint anyone it chooses to be the association's president, secretary and treasurer. Accordingly, you need to read your bylaws. If they require that your treasurer be a director, then it does not matter what your management company wants, the manager cannot be the treasurer. If, on the other hand, your bylaws are open-ended, the board could make the manager the treasurer. However, doing so would not be prudent.

RECOMMENDATION: For proper internal controls there needs to be a segregation of duties so as to protect the association. You want a board member to be the treasurer so he/she can look over management's shoulder when it comes to handling the association's finances. If your bylaws are open-ended, it may be time to amend them.

MONTHLY FINANCIAL REPORTS

QUESTION: I cannot find anywhere in our bylaws or the Davis-Stirling Act that requires the board to approve the association's unaudited monthly financial statements. Is the board required to approve monthly financial statements?

ANSWER: You can't find it because it's not there. Under the Davis-Stirling Act boards have a duty to review the association's finances. There is nothing in the Act about approving unaudited monthly financials.

Unaudited Financials. Although boards could approve monthly financial statements, doing so carries some risk. As was pointed out in last week's newsletter by William Erlanger, CPA, interim financials are a work in progress and the board could be approving inaccurate numbers.

Industry Practice. Industry practice is to have minutes reflect that "A monthly financial report was submitted to the Board." or "The Treasurer's report was given." or "An interim financial statement was received by the Board along with the Treasurer's report." When the Treasurer's report is given, no action is required by the board, i.e., there is no need to make a motion. (Robert's Rules, 11th ed., p. 473, 477, 479.) The same is true for committee reports. The board does not approve a committee's report, it "receives" it. Moreover, committee reports (and interim financials) are not made part of the minutes unless there is an important reason to do so. (Robert's Rules, 11th ed., p. 473.)