October 2012

SURFSIDE III e-NEWSLETTER

Daniel Kessner – Editor

FROM THE BOARD OF DIRECTORS

Annual Board Election – We need your ballot for a quorum

If you have not yet returned your secret ballot, please do so now. We do NOT have a quorum at this time and the Board will be forced to delay the annual meeting, which will reduce our quorum requirement from 50% to 25% in hopes of being able to hold the meeting with a quorum at the later date. If we do not have a quorum the annual part of the October 13th will be adjourned and held during the regular Board meeting on November 10th. Please spare us this delay by returning your ballot today.

CC&Rs Rewrite

We have been discussing rewriting the CC&Rs at the open Board meetings and the reasons behind our decision to update the governing documents. There are many sections that are outdated, inapplicable, and are in conflict with current law. We have been contacted by homeowners asking why the Board would want to change the CC&Rs and how owners can have input? We are currently in the process of reviewing drafts of the new CC&Rs and are conferring with our attorney. Within the next few months, a proposed draft of the new CC&Rs will be generated. These then will be posted on the website for all owners to review, and a special open meeting will be held to discuss the provisions. An example of what must be decided is how many pets should be allowed in a unit. The current CC&Rs only allow ONE pet! We do know that many owners currently have two dogs, and some three. The city of Port Hueneme allows up to four pets before animal control becomes involved. We have to decide what limits, if any, we wish to legislate in the CC&Rs. Some of the items we want to address are:

Utilities:
We want the authority to set up the payment of water by each townhome owner, and a split by each owner in each condominium building. I would also like to include 1/309th of the cost of common area water in each bill. Currently when we have our units listed for sale, our dues are compared against others. This is a difficult comparison because of the variety of costs in the different homeowners associations. We will compare more favorably if our dues did not contain the cost of water.

Pets:
Should there be a two-pet limit? Should we say something about dangerous breeds? Safety and noise are issues here.

Amendments To CC&Rs
The CC&Rs should be able to be amended by one vote more than 50% of those eligible to vote. Eligibility is lost if there is a lien filed because of delinquency. Today it is very difficult to get a quorum of 50% at the annual Board election meeting.

Insurance
Owners should be required to take insurance to protect them in case either their appliance fails or the infrastructure fails. The homeowner insurance should cover everything inside the drywall. The cost to Surfside III, sometimes well over $50,000 to repair a unit would be greatly reduced. This would save both Surfside III on insurance costs and allows us to reduce this budget item in our homeowner budget which directly relates to our dues. Currently our deductible is $10,000. We expect that all problems will then be under the deductible. If we continue to have losses in this area chargeable to our insurance, we will get cancelled. This would make

the current $24,000 increase in premiums look small. When the problem is owner caused, the owner must pay for all the repairs. Examples would be a washing machine overflow, a broken flex line, or a failed ice maker line causing water damage, or smoking causing a fire. All owners should carry insurance now! Our policy does not cover these things NOW! While we could do the repairs our insurance company would go after the responsible homeowner.

Crime Free Rental Program
The CC&Rs should allow us to implement the Crime Free Rental Program. Should it require that an owner must review a financial and background (including criminal) check that we run at their expense? There are upgrades the crime free program requires that should be required of all units being rented. Should owners be required to include the Crime Free Rental Addendum as part of their lease?

Election Of Directors
Should the annual Board Meeting Election Of Directors require only a 25% vote count of eligible voters to have a quorum, and should the Board members be elected for two year terms but rotating 2 and 3 every two years? Should the election be suspended if only 5 members are running? Should the current system of the directors all being elected every year and a 50% quorum required be kept? Our current system allows the meeting to be suspended if the quorum is not met, and when it is called again the quorum is 25%.

Bids
At what level should we be able to just have the work done without three bids? Shall that level be $1000?

Short Term Rentals
Current CC&Rs prohibit rentals less than 30 days. This is often violated and homeowners that are discovered doing this are irate when caught. This must be discussed. Furthermore, it would actually be best if homeowners were required to begin any rental with a one year lease which contains the crime free addendum after review the financial and complete background check including criminal.

Hard Flooring On the Second and Third Floors

This has been and continues to be a problem for owners under such a unit. We must define what role the homeowner association must play with regard to new installations and what to do about existing installations, those not approved and those approved. The recommendations vary from not taking any stand to that of require carpeting and heavy padding. Currently there are standards in place.

Interior Unit Repairs
Owners have experienced significant losses from repairs made by unlicensed repair personnel, and to make matters worse, they had no insurance and found themselves responsible for thousands of dollars of repairs, and their neighbors had to endure the inconvenience that comes with getting everything put back in order. We should consider making it a requirement that only licensed contractors be used at Surfside III.

Unit Inspections
We need to decide if everyone would be served by a homeowner's association inspection program. We could catch defective toilets and other obvious maintenance problems which would protect the owner and his neighbors.
Note that the CC&Rs must be approved by 75% of the owners eligible to vote. We would have to petition the court to approve the new CC&Rs if we do not reach that amount.

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

We continue to have no major crime problems in our Surfside III community. Sr. Officer Bates has been keeping tabs on cars following into the complex, and we really appreciate the attention. We learned there were rumored gang-related issues in Surfside I.

So, keep up the good work of reporting suspicious activity to the police. We also had a crash course in radar and lidar (a more accurate laser-type). Playing with the lidar was fun for everyone.

Because of a Neighborhood Watch Captains meeting at the police department on our regular meeting night, our next Watch meeting will be Thursday, November 1, at 7:00 pm in the Clubhouse. Questions and reports 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: www.ci.port-hueneme.ca.us, then in the column at the far left, click on "Sign Up for E-News."

OWNERS' CORNER

The Owners' Corner is a place in the newsletter for owners to voice their observations and suggestions about the association operations or make announcements about any Surfside III social event or activity. While the newsletter Editor and the Board do review these submissions, the opinions and content only represent the author and not the association. We will refuse and return to the author for re-writing any material that is not factual or is in bad taste or denigrates any individual. We are not perfect and apologize in advance if you find the content of anything in this section offensive.

The Surfside III Condominium Association ("association") is not responsible for the content and accuracy of any information provided by owners or third parties. The association and its Board of Directors will not accept any liability for any direct, indirect, incidental, special or consequential damages that result from or are related to material submitted by the owners or other third parties. By submitting any material for publication in this newsletter, all individuals agree to indemnify, defend and hold the association, its officers, directors, members, representatives, managers and agents harmless to the fullest extent permitted by California Law, from any and all claims, actions, and/or lawsuits, arising out of or related in any way to their material published in this newsletter.

Over and Out – The Ramblings of a Retiring Board Member

Having spent over two years volunteering on the SS III Board, and interfacing with many of you at meetings, committees, clean-up days or on the beach, I wanted to close this chapter with a few insights.

First and most important, we are 309 units trying to get the best life style, living conditions and long term investment with minimal cost and effort. So both board, staff, owners and tenants should take a deep breath and not be so very demanding of one another. If we pause before blaming each other, the board, the management or the city, we will all have a much more pleasant journey.

I am pleased by the number of residents that are willing to contribute time and money to committees, boards, clean-up, and timely reporting of problems to Lordon and Carol. It is much appreciated and makes it all a better place to live. My thanks goes to all that help make this a safe place to live from Val and the Neighborhood Watch Committee to everyone who has reported a suspicious car or character.

All of us board, staff, owners and residents have been through some major events from re-piping to the total exterior upgrading, now in its final stages. I think we all owe a large debt to Bill, Mike, Ira and Skip for having found a way out of the swamp and put us back on

the road to good housing. There will always be more to do and we should all be cautioned that spending or borrowing more than we can reasonably pay back comes at a very high risk.

I know finding a workable solution on a committee or on a board is often challenging, and we seldom end up with all of our own ideas being incorporated. But I think it of utmost importance that those who care about their investment and their community find time to attend the meetings and staff the committees to assist our community. That can be as a onetime clean-up volunteer, a committee member for a year, or even sustained involvement on the board or a committee.

In closing I thank all of you for your input and contributions. I urge all of you to be vigilant and understand and question when necessary the plans and piloting of this multimillion dollar association that binds us together.

I'll see most of you at future meetings, planting flower beds or walking the dog each day.

Bob Banfill

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
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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: 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 Adams Kessler

Serving California's Community Associations

September 9, 16, & 23, 2012

DAVIS-STIRLING REWRITE SIGNED INTO LAW

On Friday, August 17th, Governor Brown signed into law the long-anticipated rewrite of the Davis-Stirling Act. The bill reorganizes and renumbers the Act to make it more user-friendly. In addition, the rewrite made substantive changes which I will cover in future newsletters.

Current CC&R Restatements. Associations that are currently restating their CC&Rs and Bylaws do not need to wait for the rewrite to take effect. One of the provisions in the bill allows boards to update their governing documents by replacing old statutory references with new ones without the need for a membership vote:
Civil Code §4235(a) Notwithstanding any other provision of law or provision of the governing documents, if the governing documents include a reference to a provision of the Davis-Stirling Common Interest Development Act that was repealed and continued in a new provision by the act that added this section, the board may amend the governing documents, solely to correct the cross-reference, by adopting a board resolution that shows the correction. Member approval is not required in order to adopt a resolution pursuant to this section.
Sneak Peak. Although signed a few weeks ago, the rewrite does not go into effect until January 1, 2014 so as to give everyone a chance to familiarize themselves with the new Act. To get a peak at the new Davis-Stirling Act, see Assembly Bill 805.

DEVELOPER ARBITRATION

On August 16, developers won a major victory in the *Pinnacle Museum Tower* case. The California Supreme Court reversed direction from prior decisions and held that homeowner associations are bound by arbitration provisions in their CC&Rs, even though those provisions were written and recorded by the developers. In other words, associations lose their right to go to court for a trial before a judge and a jury.

The expected benefit to developers is the elimination of large jury verdicts by removing juries from the process. Historically, monetary awards by judges and arbitrators are smaller than those given by juries. As a result of the *Pinnacle* decision, developers may offer smaller settlements for construction defects. If their offers are rejected, HOAs will be forced to prove their cases in binding arbitration. Even so, the arbitration process is streamlined and less expensive than litigation and could produce good results if the association can prove its case to the arbitrator. Only time will tell what effect it will have on the industry.

The bulk of existing associations in California will not be affected by the *Pinnacle* decision. Only those developments less than 10 years old that have construction defects and an arbitration provision will be affected (unless they are already in litigation).

RECOMMENDATION: If your development is less than ten years old, various statutes of limitations are running on any defect claims you may have. To avoid losing your rights, you should contact legal counsel to determine your best course of action. To read the case in its entirety, see Pinnacle Museum Tower Assn v. Pinnacle Market Development.

ASSEMBLY BILL 2273

Good news! On Friday, September 7, Governor Brown signed AB 2273.
The bill requires lenders to record foreclosure sales within 30 days of the foreclosure. It makes banks accountable for the properties they acquire, i.e., once the sale is recorded, the lender must pay HOA dues and assessments.

As expected, lenders strenuously opposed the bill. Thanks to the thousands of letters you sent to legislators and the efforts of CAI's legislative advocate Skip Daum and others the bill overcame lender opposition.

FEEDBACK

Budget. In your August 12th newsletter under the topic of "Distributing the Budget" the person's bylaws stated "no less than 45 days prior to the start of the new fiscal year" and D-S states "not less than 30 days nor more than 90." Your reply stated that these two are in conflict. In reality, they are not as the 45-day requirement of their bylaws easily falls within the 30-90 day requirement of D-S. They merely need to send their budget out at least 45-days, but no more than 90-days, to be in full compliance with both. -Bruce F.

RESPONSE: If the budget is sent out 30 days before the start of the fiscal year, it violates the CC&Rs. Which prevails? The statute. The Davis-Stirling Act gives associations more flexibility when it comes to distributing the budget and controls over any provisions to the contrary in the governing documents. Civil Code §1365(a)4.

Association v. Membership. The feedback from "Diana S." is way off base, at least in the discussion of incorporated associations. There is definitely a specific "entity separate" from the membership. Such corporations, defined in Corporations Code §7110 et seq clearly defines these entities. Corporate officers and directors of the corporation owe their fiduciary duties and responsibilities to that entity, NOT the members. Officers and directors are responsible to maintain the operational and physical assets of the corporation such that it is capable of delivering to the members those goods and services appurtenant to membership in that association. The benefits derived from membership in the association come from the corporate entity, not from the members themselves. Misunderstanding that concept causes many members to expect or demand from boards more than is appropriate. -Ted L.

MANAGER CONTRACT RENEWED

QUESTION: Can a current board obligate future boards to a contract for our general manager? Our board, three of whom are up for reelection this month, gave our general manager a new 3-year contract.

ANSWER: Yes they can. Just as the lame duck administrations of U.S. Presidents continue to function until their term is over, boards can operate until their terms end. While it drives some people crazy and makes others giddy (it depends on whose ox is gored), it's perfectly legal.

Good Managers. In the situation you described, the manager may be doing an excellent job. Unfortunately, perfectly good managers are swept away when homeowners unfairly lump them together with the old board. More often than not, they throw out the baby with the bathwater when they clean house by getting rid of accountants, managers, lawyers, landscapers and anyone else associated with the old board. The newly negotiated contract you describe will slow down the incoming board and force it to evaluate the manager. They may discover the manager isn't so bad after all.

Bad Managers. If the manager truly is incompetent or corrupt (or both) and needs to be fired, he will undoubtedly give the new board cause to terminate his services. Before doing taking action, the board must properly document bad behavior and give appropriate warnings. It cannot create a pretext for termination--that will only backfire. If the board is patient, a bad manager will eventually fire himself.

RECOMMENDATION: Employment litigation is quite costly and can be avoided if disciplinary actions and termination are handled properly. Accordingly, boards should work closely with legal counsel when dealing with personnel issues.

HUD NEGLECTS HOA PROPERTIES

When HUD forecloses on owners who default on FHA insured loans, HUD takes ownership of the property. Unfortunately for associations, the properties go into HUD's REO Department and are promptly neglected. Properties are left unoccupied and unmaintained. Squatters sometimes take over, windows are broken, weeds grow knee-high and graffiti proliferates.

When an association makes demands on HUD to maintain the property, they are ignored. Hearings and fines are meaningless because associations have no jurisdiction over the federal government. A form letter is the standard response to association demands. As noted in the letter, HUD has adopted a policy of selling their properties "as-is" with no repairs, improvements or warranties. Since federal bureaucracies move at a snail's pace (if they move at all), the properties fall into ruin. The City of St. Paul sued HUD to stop this practice and lost. United States v. City of St. Paul.

PENALTY FOR REPEAT VIOLATION

QUESTION: Can an HOA apply fines when an owner receives a second warning of a violation, even though the first violation warning occurred three years ago?

ANSWER: Yes, the association can fine for the violation. Even though three years lapsed between violations, boards can take into account the severity and frequency of all violations involving the owner (is he a chronic violator of HOA rules?), the circumstances surrounding the particular violation (accidental or intentional), and the attitude of the homeowner toward the hearing process. If the

owner is hostile toward the association's rules, directors and the hearing process, the board will be more inclined to fine the owner than someone who apologies for the violation and gives assurances that it will not happen again.

TIE VOTE OVER BUDGET

QUESTION: Our board tied 2-2 when voting on a new budget with a dues increase. One board member was out of town. An emergency meeting has been called when all five directors can attend. The president is calling this an executive session since it is just to vote--no discussion, really--but other board members believe this is an emergency open session. Who is correct?

ANSWER: The open session directors win. Voting on the budget does not fall into the six allowable reasons for holding an executive session meeting.

FEEDBACK

Davis-Stirling Rewrite #1. It's "sneak peek" not "sneak peak"--unless you're being stalked by a mountain. Is your website going to be updated to reflect the rewrite of Davis-Stirling any time soon (what a headache that will be!). -Nancy H.

RESPONSE: Must have been all those peaks I peeked at on my way to the Yukon. The website will be updated but it will be a slow, time-intensive process. I have 2,000-3,000 pages on the website that need to be updated or completely rewritten with about 15,000 internal links to update.

Davis-Stirling Rewrite #3. Thanks for all your information. Is there anything in the rewrite that would make it easier for board members to communicate via email? -Dave K.

RESPONSE: Sorry, no. There are lots of other changes but not when it comes to email communications between directors. I will address all the changes next year as we get closer to the change-over date.

Davis-Stirling Rewrite #4. I was disappointed to not find clear definitions of funds and accounts in the Act. "Reserve Fund" is undefined and used interchangeably with "Reserve Account." Also, it doesn't address assessments receivable. These amounts are on the balance sheet and should be proportioned between reserves and operations. The problem is they are a non-cash asset that generally overstates the equity of the association. If you have significant A/R you are in effect borrowing from Reserves just to maintain cash for operations. By not providing for fund groups as part of the financial reporting system, associations impacted by the real estate crises will either be in violation of the statute or spend significant time and energy trying to comply with the statute.

AB 2273 #1. OMG, good news for sure that the governor signed AB 2273. We don't currently have the problem in our complex but I sent a letter every time you asked us to. After 16+ years of involvement with our association, I fully understand the problem at issue and that we could easily be the victim in the future. Thanks for your hard work and for letting us know about these things so we can help. Three cheers that we beat the lenders lobby. -Jan B.

AB 2273 #2. It's too bad that a provision wasn't added to the bill to require banks to pay back assessments as soon as the deed is recorded. This would have gone a long ways towards solving our budget problems. Granted, the lending industry would have vigorously opposed the requirement and it would have to be a "cram down." As a retired bank executive I'm disgusted with the current crop of bankers. -John A.

FHA GOOD NEWS

The Federal Housing Administration's policies have been a significant drag on the housing market which, in turn, has slowed our nation's economic recovery. The Community Associations Institute has been in discussions with the Administration over the past few years asking for more sensible regulations. Last week the FHA finally removed some of the onerous requirements they had imposed on condominium developments.

Delinquencies. Previously no more than 15% of the units in a condominium development could be more than 30 days delinquent. That meant that owners who were a few days late in paying their assessments could disqualify the entire development from eligibility for FHA insured loans. The Administration revised their requirement from 30 days to a more reasonable 60 days.

Fidelity Bond. In prior newsletters I had reported on the problems with Administration requiring management companies to carry employee dishonesty insurance covering the associations they manage. The FHA now recognizes the problem and modified their requirements. The new standards now require condo developments with more than 20 units to carry employee dishonesty insurance as follows:

1. The policy must cover all officers, directors and employees of the association and all other persons handling HOA funds;
2. The coverage must be no less than three months assessments plus reserve funds;
3. Their management company, if any, must (i) have its own fidelity coverage that meets FHA requirements; or (ii) the association's policy names the company as an insured; or (iii) the association's policy covers management company employees.

Project Certification. Previously, certification created such significant risks for boards of directors that most law firms advised against signing FHA documents. The FHA has seen the light and scaled back on their requirements. Now, an HOA representative need only attest to the following:

1. To the best of their knowledge, the information is true and accurate;
2. They reviewed the application and upon advice of counsel it meets all state and local condo laws;
3. They reviewed the application and it meets all FHA condo approval requirements, and
4. They have no knowledge of circumstances or conditions that might have an adverse impact on the project (such as construction defects, substantial operational issues, or litigation, mediation or arbitration issues).

COMMENTS: With the above changes, I withdraw my objections to directors signing FHA certification applications. Kudos to the Community Associations Institute for their work on this issue. As Neil Armstrong once said, "One small step for man, one giant leap for the housing industry." See Mortgagee Letter 2012-18 for more detail about the changes.

RENOVATIONS VIOLATE CC&RS

In an unpublished decision, the court of appeals upheld the enforcement of CC&Rs related to tile on balconies and encroachments into the common area.

Remodeling. Larisa Garbar bought a unit in a highrise in San Francisco. She raised the ceilings in her unit, tiled her balcony and installed hardwood floors without submitting plans. The board issued a stop work order and requested that she immediately submit plans. When it learned of the raised ceiling, the board put her on notice of her encroachment into the common areas. As part of a major waterproofing project, the association removed the tile from her balcony. A dispute arose because Garbar sought to re-tile her balcony despite prohibitions in the CC&Rs and warnings that doing so would void the manufacturer's warranties related to the waterproofing.

Lawsuits Fly. The association filed suit. Garbar denied that her new ceiling encroached upon the common area. She claimed her unit's boundary extended to a concrete slab that separated the unit from the floor above. She also claimed that balcony tile would actually protect the waterproofing (note: industry evidence shows otherwise).

Ruling. The court found in favor of the association. The CC&Rs were clear and explicit when it came to tile on balconies. The court also concluded that the space above Garbar's ceiling was common area.

RECOMMENDATION: Even though the case is unpublished and cannot be cited as precedent, it shows that courts will defer to recorded restrictions and reasonable enforcement decisions by boards of directors. See Cathedral Hill Tower v. Garbar.

FEEDBACK

Manager Contract #1. Please correct your newsletter, you said something wrong. You are saying that a board needs a reason to change management. That is absurd. No reason is needed and no documentation is necessary UNLESS the board wants to sue for any illegal activities against them. Please do not put out wrong impressions, I'm on a board and I don't need to argue your wrong points when we have HOA stuff to discuss. -Kimberly P.
RESPONSE: Hilarious! Thank you for the comic relief. When you have a manager under contract, they are no longer at-will. You need cause to fire them. If you fire employees willy-nilly, you better have good Employment Practices Liability insurance in place.

Manager Contract #2-#9. I received a number of thoughtful responses asking about the 1-year contract limitation commonly found in CC&Rs.

RESPONSE: The ability of a board to enter into a multi-year employment contract with a manager will depend on the language in an association's governing documents. Following is language found in some old documents that presents no impediment to 3-year agreements. It limits the original developer but not subsequent HOA boards:
Neither Grantor, nor any of its agents, shall enter any contract which would bind the Association or the Board for a period in excess of one (1) year.
Following is more typical language in most of the documents I work with. It limits contracts with vendors, i.e., third parties who provide goods or services to an association. It does not limit employment agreements:

The Association may not take any of the following actions unless approved by a majority of the voting power of Association Members (other than Declarant): (a) Enter into a contract for a term longer than one (1) year with a third person who furnishes goods or services for the Common Area(s) of the Association...
Following is a broader restriction I run into from time to time. It clearly limits manager contracts to one year.
The Board of Directors, on behalf of the Association, may contract with a Manager for the performance of maintenance and repair and for conducting other activities on behalf of the Association, as may be determined by the Board. The maximum term of any such contract ("Management Contract") shall be one (1) year...
I sometimes run into conflicting language on this issue between an association's CC&Rs and its bylaws. When that happens, the CC&Rs prevail. The order of documentary control is explicitly described in the Davis-Stirling rewrite which takes effect January 1, 2014. It states that in the event of inconsistencies, the following hierarchy determines the outcome: the law, the CC&Rs, articles of incorporation, the bylaws, and lastly the rules. See Civil Code §4205.

Budget Tie. It's clear that the vote to break the tie on the budget should not be in executive session. But how is it justified to have the tie-breaking occur at an emergency open meeting? Shouldn't it be a special meeting of the board with four-day notice? Or, can time-sensitive matters (if that was the case) be considered "emergencies"? -Carol R.

RESPONSE: Passing a budget is a time-sensitive matter. If not approved and distributed within a 30-90 day window prior to the start of the association's fiscal year, penalties are imposed. Accordingly, an emergency meeting would be justified if the board were up against that deadline.

DS Rewrite. Isn't the Davis-Stirling Act restriction on what board members may discuss via e-mail or what they can talk about in person outside of board meetings unconstitutional due to our First Amendment right to free speech? It seems to me that the Act can only restrict *decisions* made outside of a board meeting but cannot restrict people from discussing things because of our First Amendment rights. -Steve S.

RESPONSE: There is wide misconception about First Amendment Rights. Too many people believe that "free speech" gives them the unlimited right to say whatever they want whenever they want. That is not the case. The courts have imposed time, place and manner restrictions on speech (such as shouting fire in a crowded theater, disrupting city council meetings, protesting on private property, etc.). In addition, the courts make a distinction between political speech and commercial speech. Commercial speech is heavily regulated. As a member of your association, you can talk about board business pretty much whenever, wherever and to whomever you want. Once you are elected to the board, time, place and manner restrictions are imposed. You must reserve discussions about board business with other directors to noticed meetings of the board as described in the Davis-Stirling Act. See speech limitations.