



October 2013

SURFSIDE III e-NEWSLETTER

Daniel Kessner – Editor



FROM THE BOARD OF DIRECTORS

Confused About All The Changes In the Date Of This Upcoming Board Meeting?

In order to avoid the possibility that there would not be a quorum at the next open Board meeting we have moved the Board meeting to Saturday, September 28, 2013, at the usual 9:00 am starting time. You are correct, this is the second time it was changed.

After attending a CAI lecture on how these Board meetings should be run, the next Board meeting will limit all input to three minutes per person. You must sign the presentation sheet and only homeowners may speak. You will be timed and you cannot give your time to someone else. Besides your issues, you will then have a chance to comment on any Board decisions that were made at that meeting during your three minutes. The "Homeowner Session" will be the last item before adjournment.

Proposed CC&Rs Update

Terry Smith smithannterry@yahoo.com at 805-340-0343 has volunteered to pull together homeowner input and questions regarding the proposed rewrite of the CC&Rs. Marcella Jennings, Jerry Markell, and Dulce Setterfield worked with her to gather and document information.

They have submitted their review and homeowners' questions regarding the proposed CC&Rs to the Board for their consideration and response back to the homeowners. The next task they are undertaking is to compare the present CC&Rs with the proposed to see if there is anything in the present that has not been carried forward into the proposal that homeowners consider important and would want incorporated into the proposed CC&Rs. Dulce Setterfield is the contact person if you are interested in joining this task force to make the comparison. She can be reached at dulceonthecoast@gmail.com.

While our review shows that there are misconceptions about what the proposal is saying, the fact that the document is misleading is a problem in itself. In addition there are changes in the way the dues are allocated that are being proposed. This proposal results in our largest units paying a larger burden. One argument is that they bought in using a system of equal shares. Perhaps a compromise could be to grandfather the larger units until they are sold, rather than throwing out the whole idea could be accomplished. What is needed is some real open discussions and not divisiveness that some are claiming is the result of this suggestion.

The new Board being elected on December 14, 2013 must review the document referred to above and information provided by the attorney that authored the proposed CC&Rs. This information will be shared and we must all come together with a CC&Rs we can support. The draft that Terry Smith submitted is posted on the website in the "Records" section. The link is <http://www.surfsideiii.com/docs/records/2013-09Terry-Dulce-Jerry-Marcella.htm>.

Finally after all this is done, it is hoped that this group will continue their work with our Rules and Regulations and become an official committee.

Owner Participation & Bi-monthly meetings

The Board does try and respond to owner input. We have had many owners tell us that our meetings are too long and there are some owners saying the same things over and over again. The new format in the posted agenda is a response to this criticism. In addition our staff suggested that we would be better off with bimonthly meetings and the Board agreed. As such we have missed meetings in April,

July, & September. Currently there is no November meeting scheduled, but it may be scheduled when we meet on September 28, 2013 to meet a December 1, 2013 budget deadline.

2013 Update

As we come to the final quarter of the year it's time to check progress.

We completed the following capital projects:

1. We paid the majority of the building envelope retention payments. We are holding back final payment on painting.
2. Streets and parking areas were seal coated and stripped.
3. Life extending roof maintenance will be done this fall.
4. Condo sewer lateral cleaning is in progress.

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

Rumors

Again there are more rumors about a massive special assessment being planned. There is no truth to it.

There will likely be a dues increase in 2014 due to some changes in capital funding requirements.

In the past we have funded tree maintenance from capital reserves. That line item has been removed from the capital reserve study. Since we can't do that any longer we will have to add funds to the operating budget.

In addition, we have to maintain our termite protection and add \$24,000 to the operating budget in 2014 for unit inspections and spot treatment.

Election

The annual election is upon us and there are eight candidates running for the Board. Three candidates have indicated they are unhappy about several Board decisions.

The first decision is about controlling the time an owner can talk. Since 2006 there has been a free exchange of information between owners and Board during the open meetings. Our President Bill Betts instituted that in 2006. Over time several owners have abused this privilege and their fellow owners have complained to the Board. There have been at least four written complaints, and two verbal to the Board. It is difficult to ignore these complaints. In response the Board will start limiting owners to 3 minutes starting with the September meeting.

Another issue is the Board's decision to meet bi-monthly (once every two months) rather than every month. Over the years the Board has adapted its schedule to fit the needs. In the past the Board has met as often as weekly. With the plumbing renovation done and the building envelope completed there are no major pressing infrastructure issues that require meeting more often than every other month. Surfside IV meets quarterly. While the Board decided to meet bi-monthly, it hasn't acted on it. We will meet in September, due to the 2014 budget we will have to meet in November, and the annual meeting is in December. This will mean the Board will meet in open session 9 times in 2013.

The CC&R re-write is an issue that the Board is seeking owner input on. These changes will allow us to strategically control finances and correct issues with the current CC&Rs that requires us to go to our attorney for advice due to conflicts between them and current law. Our attorney has advised that the best approach is a complete re-write rather than a piecemeal approach. There is concern about the impact of these changes on owners. The CC&R changes will be discussed in future open meetings, which may include subject matter experts to explain the changes. The Board cannot approve the CC&R revisions. It requires that owners vote on them. While change is difficult, once these changes are better understood owners will vote in favor.

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

Senior Officer Bates and volunteer Dolores Dyer attended our meeting on the 5th. It was exciting to learn that the folks next door in the new construction are organizing a Watch also. It means that we all will have more eyes watching to keep our neighborhood safe. Inside Surfside III, it was relatively quiet, with no major happenings. In Port Hueneme as a whole, our police were busy with 729 Service Calls and 65 arrests in August. The police continue to rely on all of us to contact them when we see something or hear something "not right." Our next meeting will be on Thursday, October 3, at 7:00 pm in the Clubhouse. Contact Val Lameka with any questions or reports.

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. If you wish to send your material as an attachment, please send only Word files, not pdf or other formats. 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."

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.

SSIII Owners' Corner 2013 candidate statement submitted by William Betts (incumbent President)

I have been a Board member for 9 years and president for 7. I have led the association through the worst time in its history. There were major plumbing problems such that 37 units could not be occupied due to sewerage and mold. By 2010, all of the plumbing drain lines were replaced and the supply lines epoxied. While that was underway, Mike Madrigal led the planning for the building envelope repairs which was completed in 2012.

Since the completion of the building envelope repairs we have been planning for the future. We don't want to repeat the mistakes of the past.

This means having enough funds to do capital repairs without special assessments and modeling and operating like other successful associations.

We had the capital reserve study updated for the next three years and conducted long range planning for roof replacement in 10-12 years.

We realized that allied to the capital needs and planning we have to change how we operate. Our CC&Rs are costly. They have conservatively cost us \$180,000 over the last 10 years. Two legal actions (one filed two months ago) and countless legal opinions because they are so outdated and contradictory. The CC&Rs will be replaced with a current legal version modeled after successful associations.

The proposed CC&Rs will do the following;

1. Distribute dues by unit size. Larger condo units and townhouses will pay more since it costs more to repair the common areas/exteriors of larger units.
2. Eliminate lawsuits and clearly define who is responsible for what. Require owners to insure the interior of their units and their possessions. The association will continue to insure the common areas of the buildings and grounds.
3. Remove water, sewer and trash from the budget and bill it separately. This will reduce dues by \$70. per unit per month.
4. Require new owners to pay a capital contribution and transfer fee at escrow closing.
5. Reduce tenant occupancy. Limit unit rentals so that new owners cannot rent their units for two years. 49.5% of the units are rented, up from 35% in 2005.
6. Create program consistency. Board terms will become three years but be staggered so some members will be elected each year.
7. Update them to current law and simplify them.

These proposed changes have created some controversy and resulted in new candidates for the Board. All are townhouse owners and have indicated their concern over the proposed CC&Rs. It is good there is some interest in joining the Board because new perspectives are helpful. The problem is that the new candidates are interested in a single issue that impacts them directly and have not articulated a broader vision on issues that impact the community.

One candidate was asked to resign from the Board in 2005 after a petition was signed by more than 200 owners.

An ad hoc committee has finished reviewing the proposed CC&Rs and has raised questions about various parts. The Board will have the questions addressed; perhaps they will be made into frequently asked questions. In combination with open meetings owners will realize the proposed CC&Rs make more sense than keeping the current ones.

SSIII Owners' Corner 2013 candidate statement submitted by Linda Kaplan (former Board member)

I have served a number of years on two separate Boards for Homeowners associations. The past four years I have been serving as a Board member for the Community Association Institute for the Channel Islands Chapter of Ventura County. This Association is where Board members and HOA managers go for education and updating of the civil code that provides the insight and direction of the required civil code to manage an association. Additionally, I have taken the managers certification course to gain additional insight and knowledge for running an association. I network with professionals in the industry and work on an Expo committee that provides education twice a year to Board members, managers and homeowners.

Issues have come up this past year that have created some divisiveness amongst the homeowners. We have also seen some hostility towards homeowners coming from board members and only received bi monthly meetings this year. It is my belief that it is time for a board turnover and we need new blood to serve our community. We need people who are willing to take care of board business once a month, rather than bi monthly so we don't miss the important "must do" dates (such as our election prep). Alex, is our one new blood board member that has done a superb job this past year and I hope to be able to work with him. Ira and Michael, I see often at the Community Association luncheons getting their updates and am pleased to see them on top of furthering their HOA education.

Its time for Surfside III to turn another corner.

SSIII Owners' Corner 2013 candidate statement submitted by Albert (Al) Galluzzo (new candidate)

Dear fellow owners:

I have been a fulltime resident of Surfside III since July 2005 and intend to have this be my home for years to come. The area is special to my wife and me. We enjoy the cool weather, clean air and proximity to the ocean. While many of us do not know each other by name, my dog TinkerBelle drags me around the neighborhood every day so more than likely we have met casually at some time. Also, I have the opportunity to observe this living community on a daily basis.

I believe that there are things every resident can do to maintain and improve the quality of life in this complex. Actions such as picking up trash on and around our properties, planting and maintaining gardens and promptly reporting disrespectful or illegal activities, or

damaged property will go a long way toward improving the look of our campus. These are some of many things that we all can and should be doing to create a better living environment.

Until this year, I have been happy with the Board's performance by arranging financing and conducting needed renovations and refurbishments. I have not agreed with every decision but I have believed the Board was acting in the best interests of the community. This year, there has been a marked change in direction evident by deliberate actions to discourage feedback and consolidate power in the Board. It is my view that this strategy is arrogant and has created distrust. The Board reports to the homeowners and serves at their pleasure, not the other way around.

In summary, I believe new leadership is necessary and I offer to put to work my 40+ years of experience as a business person in the banking industry. My goal is simple, to put in place policies that will increase all of our property values as quickly as possible. Specifically this will mean 1) paying off the debt that is weighing us down and funding reserves promptly so as to ensure our financial stability; 2) improving the security, safety and appearance of our campus and 3) reducing and stabilizing dues for all homeowners. This undertaking will not be easy and frankly, will require continued sacrifices, however like a diet, with persistence we will lose the pounds that are threatening our health. Most importantly, this needs to be a collective effort. We all need to work together for the greater good. Rather than pushing you away, I welcome your help and I challenge you to be involved. At the end of the day I will be accountable to you and ask for your support.

Sincerely,

Al Galluzzo
633 Lighthouse Way

SSIII Owners' Corner 2013 candidate statement submitted by Nathan V. Bruck (new candidate)

Dear Fellow Residents,

I have been a resident of Surfside III since 2000. This is the first time I have ever owned a home that I live in. I live here with my wife Martina (who can often be seen being taken for a walk by our two Golden Retrievers) and my daughter Chrystalyn.

I have worked as the Chief Financial Officer for Channel Islands Air National Guard Base (next to Point Mugu NAS) since 2006 and as the Budget Officer from 2001 to 2006. I understand well the concept of "living within our means". I have delivered 13 consecutive balanced budgets, never once have I over spent.

Among the programs I have fiduciary responsibility for is the sustainment, restoration, and modernization (SRM) of the facility (2-3 million dollars annually). Having a fixed budget does not allow me to tax tenants when I cannot make ends meet. It means I must carefully prioritize the needs of the facility to ensure the most important items are completed while sacrificing lower priorities to stay within budget limitations.

Because I believe both my family and the HOA needs to live within our means; I cannot imagine a scenario where I can support an increase in our monthly dues, emergency assessment, and certainly not another special assessment. I believe I have the experience and ability to prevent increases to our monthly dues.

While I have not always been happy with our current Board of Directors; I do believe they have served faithfully and deserve our appreciation and I commend them for their efforts. However, it has become apparent that some members of the current board have created an environment of hostility and distrust and their actions have created an atmosphere of "us against them". This is not an acceptable situation and must be changed.

Specifically:

1. Homeowners must have more input to any changes to the CC&R's
2. The board of directors cannot adequately receive and assimilate owner input by meeting every other month.
3. Limiting home owner input to 3 minutes per board meeting is not only elitist, but hinders the home owner's ability to be heard
4. Homeowners must be confident the Board of Directors is working hard for their interests.

Thank you for your support to make Surfside III a better place to live.

Respectfully
Nathan Bruck

SSIII Owners' Corner 2013 candidate statement submitted by Alex Urmersbach (incumbent Treasurer)

Following are a few comments from a financial perspective as we enter the 4th quarter:

- **On Budget:** Operational expenses are on budget. Loan payments and reserve contributions have been made per plan. Actually, we're running slightly below budget since we were successful in collecting outstanding debt from current and former owners during this year. Absent any unforeseen issues we'll close the year on budget.
- **Living within Means:** As Treasurer I'm committed to manage the finances carefully and conservatively. We won't add services/costs for nice-to-have things. But we also need to be realistic since certain expenses are not controlled by the HOA: Loan Payments, Utility Charges and insurance premiums.
- **Maintain Financial Stability and Minimize financial Risks:** Significant repairs have been made over the recent years that were financed via special assessments and bank loans. We must pay down the loans as soon as possible to avoid the risk of rising interest rates (remember the loan interest is variable). We also need to update the CC&Rs to limit financial risk to all owners and legal exposure to the HOA.
- **Prepare for the Long-Term:** As you know, there will be larger capital expenses in the future (replacement of the roofs and other). We need to prepare properly since we can't fund them via more loans. We still have time; the earlier we start the less difficult the choices are.

I believe in collaboration with the home owners and in financial transparency. Financial transparency helps us make good decisions. If re-elected to the Board I'll continue to work hard to control expenses without putting the gains at risk. Good financial management is a key to make Surfside III a better place to live and to increase the value of our investments.

Best regards,

Alex Urmersbach

SSIII Owners' Corner 2013 candidate statement submitted by Ira Green (incumbent Vice president)

Since I am the officer assigned to publish the newsletter, I am the last one to see it before it goes out, so clearly I read it all before writing this statement. However, the first draft is always sent to the Board, Association Management and contributors. Late submissions always delay its publication.

Bill Betts and I, and three other Board members struggled in 2006 with a Homeowner's Association whose reserves were depleted and costly infrastructure failures were forcing us into a situation where we could not pay for backup sewer damage as fast as it was occurring. Our president at that time, Skip, had an unbelievable challenge. While Bill Betts, later joined by Michael Madrigal was tackling the infrastructure situation, I concentrated on communications with the owners by building a website, developing a newsletter, and being active with e-mails and legal questions. After a five week lawsuit, in which I attended every session as the homeowner representative the judge told us, among other things that our website was a model for the homeowner industry and was instrumental in our winning because of the transparency it exhibited. He also said that the Board has handled the infrastructure and financial crisis in a way that set a standard. We not only won on every point, but \$250,000 of legal fees was assessed to the loser which resulted in a bankruptcy and their loss of his unit.

I am really pained when I hear owners say the Board is doing a power grab or that the owners talk about divisiveness and that they view the Board as 'us versus them'. They say that the owners have not had enough input to the CC&Rs. I have personally gotten hundreds of e-mails over the last three or more years and made notes of what owners want to see in the CC&Rs. I have looked at what is working in the CC&Rs that are currently being written for new homeowner associations. With no one stepping up to form an official committee, we got an owner to volunteer who has generated an 18 page document on the CC&Rs with the help of three other owners and input from others. Working through this document to understand the issues and some misconceptions so that we can discuss it is still a step to come. How can it be said that the Board is not using input from the owners.

Another issue is how we allocate our dues. Perhaps we can grandfather the larger units into a 2 bedroom 2 bath category until they are sold. We can also just drop the issue which will be a departure from how new homeowners association allocate their dues today. This is

just but one issue which we must all weigh.

There are statements made that our budget needs to be trimmed. A previous budget committee suggested things like lower the pool temperature and cutting hours of the clubhouse. We tried things like this including having only one onsite manager. Not only was all of this highly unpopular, but the reality is that we keep getting requests, and valid ones, for things not in the budget. Trimming our trees is one of them. Unfortunately our dues, if we are going to be fiscally responsible, must be increased. Remember, when I joined the Board, we had NO reserves.

If anyone seriously looks at what the Board has done and the responsibility we all have to manage current expenses and a 7.2 million dollar loan, we must choose our Board carefully. We were fortunate to have Alex join us when Skip no longer wanted to run. Alex brought significant financial and budgeting talent to the Board.

I have worked to be sure that the new candidates that are running have provided input to this newsletter so that all points of view can be heard. Please carefully read all the input, make a decision and PLEASE vote! The new Board must take its direction from the owners that vote. We have made it easy and even have postage paid ballot envelopes.

SSIII Owners' Corner 2013 submitted by Dulce Setterfield

Surfside III successfully faced a series of challenges within the built environment in recent years. However, barriers to communicating timely and effectively within the HOA have increased. Barriers to owners staying abreast of basic information are formidable and efforts to communicate often feel futile.

Examples:

First, the link titled 'Open Minutes' for 8/10/2013 on the 'Meetings and Minutes' web page within the SSIII website is a barrier. That linkage re-opens the website main page, rather than allowing owners to read recent minutes.

Second, the monthly newsletter, delivered by email and posted to the SSIII website, says to contact the committee chairperson if interested in matters pertaining to any committee. Hence, I clicked on the website link provided for the Architectural committee chairperson. Result: a delivery failure: no email reaches anyone via that link. Futile.

Third, during a recent board meeting, I pointed out that the day's Agenda included reports from certain committees listed as either Inactive on the 'Committees' page of the website, or never listed on that page, ever. With the passage of over five weeks (and counting, by the time the October newsletter is issued), zero corrections to the Committees page have occurred. Owners are thwarted from knowing the full truth of whether a committee actively exists, who chairs it, purpose, progress, and more. Most owners remain unaware of the launch of one or more Secret committees (with a chairperson, membership, meeting dates and minutes known only to a few). In August, one such committee, which has never been revealed via the website, reported its recommendations to the Board, regarding the rules to live by. If owners are to believe the Committees page on the website is a sound source of information, a useful resource in 2013, they are mistaken.

Fourth, in recent weeks the website persisted in the display of a false meeting date for an upcoming meeting. Weeks after a flyer was posted in an elevator at Surfside III, saying our next board meeting is 9/28/2013, the 'Board Meeting Schedule' page of the website continued to show "Annual Board Meeting 9:00 AM in the clubhouse 10/5/2013. Only as recent as 9/17/2013 was a change made to show instead 9/28/2013 as a normal board meeting (with the annual meeting postponed until December). The belated effort to update that page is acknowledged. Prompt updating is encouraged 'next' time the board makes a calendar switch. Surely, if a flyer can get written, proofread, printed, and taped to an elevator wall, why not concurrent updating of the website, to minimize confusion and maximize community awareness?

Progress can seem imperceptibly slow. Surfside folks tolerated scaffolding, construction noise, and congestion for years. A commitment to conscientious progress within the pages and linkages of the SSIII website for the remainder of 2013 would be a refreshing change from the prolonged struggle with gaps, dead ends, and misleading information encountered within the website, again and again.

Additionally, launching only committees that are transparent and accessible would be appreciated. Avoiding inclusion of a committee report as an Agenda item for any phantom committee (not recognized on the website), or any committee marked Inactive on the website, would be appreciated. Avoiding the labeling of a group or activity as a 'committee' in a news flyer (distributed to SSIII door knobs) would also be appreciated, if the website does not clearly identify that same group or activity as an Active committee.

Editors Note: Ira Green, a Board member, and a volunteer, who is responsible for the very existence of the current website cannot fix problems with the website unless he is aware of them. The 8/13/2013 minutes cannot be posted until the office finishes with them. They are posted now. The committee chair's e-mail for the architectural committee has been corrected. Please let Ira Green ira.green@surfsideiii.com know what committees you believe are active that are not shown on the committee webpage. The Rules &

Regulations Committee disbanded before we had a chance to post their existence. Yes, the next meeting was supposed to be the first weekend in October but it was changed to assure a quorum. Carol reminded Ira that he had not yet changed the posting. Hopefully, paid support of the website will avoid some of these problems. We are working on this and are starting a trial period with SmartHOA.

In the meantime, please contact Ira Green at ira.green@surfsideiii.com if you have any problems with the website.

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

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
Alexander Urmersbach - Treasurer alex.urmersbach@surfsideiii.com
Anthony Truex - Secretary tony.truex@surfsideiii.com
Michael Madrigal - Director michael.madrigal@surfsideiii.com

LORDON MANAGEMENT: OTHER DEPARTMENT EXTENSIONS

All escrow matters: Nicole Castillo, ext. 3339; nicole@lordonmanagement.com
All insurance and collections: Emily Polchow, ext. 3337; epolchow@lordonmanagement.com
Your account, billing address, etc: Liz Lopez, ext. 3319; llopez@lordonmanagement.com
Liens, legal issues: Donalea Bauer (see above)

Davis-Stirling.com
Newsletter

by AK Adams Kessler

BUYING VOTES?

QUESTION: Our board is doing a rewrite of our bylaws and CC&Rs. My problem is that they are offering \$5 gift cards to those who return their ballots. Is it legal to use HOA funds in this way?

ANSWER: Yes it is legal. Doing so is not the same as buying votes. Instead, it is an incentive to vote and can be used for both annual meetings and amendment approvals.

Annual Meetings. Association elections are different from municipal elections in that HOAs must meet [quorum requirements](#) and cities don't. For example, in the May 2013 mayoral election in Los Angeles, only 19% of eligible voters cast ballots. The dismal turnout did not derail the election as it would in a homeowners association since no quorum was required. Can you imagine the problems and enormous expense if city, state and federal elections needed 50% of the population to vote before they could count ballots? Because associations are not normal, i.e., they are burdened with quorum requirements, boards must nag and cajole members to vote, and sometimes offer incentives.

Amendments. Achieving quorum at membership meetings is difficult enough but reaching supermajority votes for amendments and restatements is nearly impossible. Because of that, the Legislature created the "[1356 Petition](#)" as a mechanism for realistically amending documents. If an association can obtain at least 50% membership approval, it can ask the court to approve amended or restated CC&Rs. By statute, the association must demonstrate to the court that they made extraordinary efforts to obtain voter participation. Offering \$5 gift cards to voters would be one of those efforts (along with extended voting periods, repeated requests to vote, etc.).

RECOMMENDATION: To make board elections more manageable, your association should amend its bylaws to [eliminate quorum](#) requirements and [cumulative voting](#) for the election of directors. In addition, it should lower CC&R [amendment requirements](#) from a supermajority to 50%. Once that is done, future elections will be much more manageable.

DOG GROOMING BUSINESS

QUESTION: We have a homeowner who owns a mobile dog grooming business. While she parks her customized van off-site, we believe she is using HOA water to fill her dog bath tanks almost every day. Can we prevent her from doing this or charge her for the water?

ANSWER: Yes, it would be reasonable for associations that are master-metered, i.e., the association pays for the water, to adopt rules prohibiting members from using water for commercial purposes. Accordingly, you could impose a fine and charge a reimbursement assessment if you could determine they were using the association's water.

Practical Considerations. Determining the amount of water used would be very difficult absent an eyewitness to the violation. Ditto for imposing fines. Any reimbursement assessment or fine must be preceded by a notice and a hearing ([due process](#)).

ADULT SWIM TIMES

QUESTION: I know associations cannot restrict children from using the pool but is there any way you can have an adults-only swim time? We are unable to do laps in our pool because many parents don't supervise their kids and I have had children actually jump in the pool and almost land on top of the swimmer.

ANSWER: Unless yours is a senior community, you cannot restrict children as it would violate various anti-discrimination laws. Instead, you can set a reasonable time period for "laps only" but open it to everyone. Children who want to swim laps can participate (and some may want to). This makes it nondiscriminatory by placing a reasonable restriction on how the pool is used, not who uses it. You may also want to put lane dividers in the pool to help make it clear the pool is for laps only during those hours.

UNHAPPY WITH BOARD ACTION

QUESTION: I am unhappy with a recent board decision. What can I do? What are my rights?

ANSWER: Members who are unhappy with board decisions or indecision can do the following:

1. **Remain Silent.** Be part of the silent majority... say nothing and do nothing and hope the problem resolves itself. Things run in cycles, so sometimes it works--you just have to be patient.
2. **Open Forum.** Address the board in [open forum](#). Be respectful and clear in describing your position. The board may not be aware of the problem and your bringing it to their attention should get results. If you are hostile, rambling and make unreasonable demands or threats, the board will label you as a "crazy" and reject your request. A letter from the association's attorney might accompany the rejection.
3. **Write Letters.** If the board does not respond to your open forum request, follow-up with a couple of letters. Do this for two reasons: (i) the squeaky wheel gets the grease and (ii) boards don't like paper trails that create potential liability for the association. Keep your letters respectful and business-like. Do not engage in personal attacks or hyperbole. If your letter sounds like you have squirrels running laps in your head, imagine how a jury (and your neighbors) will view you when your letter is read in open court. Remember, you are trying to persuade board members not alienate them.
4. **IDR.** If the open forum and follow-up letters don't resolve the problem, try [Internal Dispute Resolution](#). I've never seen IDR work but you never know. It keeps the issue in front of the board and it exhausts your friendly attempts to resolve the problem.
5. **Election.** If the above actions don't resolve the issue, run for the board or support responsible members willing to run. First, however, examine your motives. If the reason you want on the board is to get something for yourself at the expense of the community, that would be a breach of [fiduciary duties](#). Make sure you and those you support want to serve the community, not your own agendas.
6. **Recall the Board.** You can launch a [recall](#) of the board. This is a drastic measure and very disruptive to the community. It will permanently damage relationships between neighbors and create life-long enemies. Hence, the issue better be sufficiently serious that it can't wait for the next annual election.
7. **Litigate.** If none of the above works or you're in a hurry to lose money and make enemies, you could always file a lawsuit. Rarely is a lawsuit justified--they are lengthy, expensive, emotionally draining and unpredictable. So carefully weigh the cost of litigation against the hoped-for benefit... and then weigh it again. If you're suing to punish the board because of a perceived sleight or to prove a point, you're one of the crazies.
8. **Move.** If you live in a dysfunctional association, sell your property and get out before they cause you financial and emotional damage. Look for a single-family home not in an association or look for a [good association](#). There are lots of them out there and one will be a good fit for you.

ZERO WASTE

Without getting into a debate on whether global warming is due to humans or to solar activity plus the earth's natural weather cycles, both sides should agree that minimizing waste is a worthy goal.

Many community associations are limited in their ability to recycle. Even so, there may be other ways to reduce waste, whether it be water, electricity or refuse. Boards should consider setting up committees to study what can be done to minimize waste in their communities.

There are many internet resources that can be utilized. One of them is www.zerowaste.com. -Thank you to [Larry Stirling](#) for raising this issue.

RESERVE TRANSFER TO PAY FOR LITIGATION

QUESTION: We spent money from reserves for litigation expenses, do we need to repay the reserve fund? Also, should we add a line item in our reserve study for monies we expect to spend on litigation next year?

ANSWER: Yes you need to repay the funds and no you should not create a litigation line item in your reserve account. The current Davis-Stirling Act is a little ambiguous but the language in the rewrite, effective January 1, is clearer.

Temporary Transfer. The use of reserve funds for litigation is deemed a "temporary transfer" ([Civ. Code §5520](#)).

When temporary transfers are made, boards must explain to the membership the reasons for the transfer and when and how moneys will be repaid to the reserve fund. In addition, the funds must be restored within one year of the date of the initial transfer. ([Civ. Code §1365.5\(c\)&\(d\)](#); [§5515](#).)

Reserve for Expenses. Even though you anticipate litigation expenses next year, they do not qualify as a reserve item. Reserve accounts are for monies "identified for use to defray the future repair or replacement of, or additions to, those major components that the association is obligated to maintain." ([Civ. Code §1365.5\(f\)\(1\)](#); [§5550](#).) Legal expenses do not meet the definition of a "component" nor do they meet [National Reserve Study Standards](#).

Operating Expense. The appropriate place for anticipated legal expenses is the association's operating budget. This will likely increase your budget which may require a dues increase or a special assessment for the next fiscal year. In addition, even though a temporary delay in restoring borrowed reserve funds is allowed, boards must exercise prudent fiscal management in maintaining the integrity of the reserve account "and shall, if necessary, levy a special assessment" to repay the funds within one year. ([Civ. Code §1365.5\(c\)\(2\)](#); [§5515](#).)

CONCLUSION: The statute is a little confusing about the repayment timeline but it is clear that associations cannot leave holes in their reserve accounts by transferring funds for legal expenses and not repaying them.

Thank you to Robert Nordlund, PE, RS of [Association Reserves](#) for his feedback on this issue.