



November 2012

SURFSIDE III e-NEWSLETTER

Daniel Kessner – Editor



FROM THE BOARD OF DIRECTORS

Tenant Background Checks

Homeowners are reminded that the Association encourages all owners to perform sufficient background investigations on potential tenants in an effort to assist in promoting a safe and healthy environment for the members and their guests. There are various resources that owners may utilize to achieve this goal, including third-party vendors, your neighbors, and the management office. If you have any questions, please contact Carol Short.

Open Agenda Items and Executive Meeting Attendance

Several owners have attempted to “walk-in” to the Board Executive sessions to discuss issues with the Board. The Board is required to publish an open and executive meeting agenda 4 days prior to those scheduled meetings. This means any owner who would like to discuss an issue with the Board must do so by requesting to be put on the agenda for the executive Session. We cannot accept “walk-ins.” The only exception would be if the item is an emergency and then you need to contact a Board member before the session so that it could be added to the agenda.

The issues that can be discussed in an executive session must be related to owner disciplinary actions taken or being considered by the Board such as unit delinquency, bill-backs for damage or loss to a common element or rules violations. The available topics for the Executive Session are clearly outlined in the published executive agenda. Open meeting items can NOT be discussed in the executive session.

Building Envelope Repairs

The building envelope repairs are done. An audit of all invoices has been completed by a third party architect to ensure we did not overpay due to incorrect or duplicate invoices. The adjustments are less than \$5,000. The contractors will complete some final paperwork and we will consider releasing the retention we held back from their invoices during the construction. The retention is approximately \$400,000.

If you have any exterior building envelope work that was not completed or any punch list items please email them to Carol Short. Her contact information is in this newsletter.

Once the retention is paid, the contractor will warrant the work for 3 years. The stucco is warranted for 20 years.

State of the Association

The association has capital reserves of \$600,000, and \$125,000 in the checking account. Thus far we have a budget surplus of approximately \$40,000.

The association has one loan of \$6 million. The association is making principal and interest payments on the loan, which has a 20 year term.

The association also has a \$1.5 million line of credit with \$500,000 remaining. This will become a loan by 4/15/2013.

The following capital restorations have been completed since 2007.

Drain lines replaced in condo buildings
Supply lines epoxied in all buildings
Elevators renovated
Building envelopes restored - 3 year warranty will commence after invoice retention is settled.

Paving soon
Exterior lighting soon

In 2013 the association has the following objectives:

Develop a maintenance plan and schedule
Define maintenance tasks that can be done "in house"
Define tasks that need a contractor license or equipment
Repair grading around buildings and consider landscape bed mulch
Develop a long term sustainable capital replacement funding plan
Remove pass through line items from budget through CC&Rs revisions
Clearly define association and owner insurance responsibilities
Develop a marketing and branding program for value enhancement
Replace CC&Rs
Implement Crime Free Program
Develop a welcome program for new owners.
Develop an online compulsory tenant orientation program.
Update employee manual
Revamp association web site

Paving

Contract negotiation has resulted in delays in getting the paving scheduled. We require a 3 year warranty which was not detailed in the contract and the pricing did not match the proposal. These issues are corrected and notices should be going out soon.

We also changed the paving process which will result in a 4 year warranty.

We will pave Seawind Way, Lighthouse Way, Bluewater Way and the area in front of the clubhouse. All parking lots will be stripped. In the spring of 2013 the entire complex will be checked and repaired where needed, seal coated, restriped, and parking lot stops replaced.

Communication in Owners' Corner From Our Retiring Treasurer

Note that our retiring treasurer points out that no decisions have been made. In addition, the outgoing Board was not unanimous on many of the new proposed items. We expect that two new members will be elected when the annual meeting is re-convened in November. We are fortunate that both of these new members bring extensive finance and budgeting experience to the Board. They will certainly be reviewing how we are spending our money and looking at whether to commit the last \$500,000 of our line of credit on items on the To Do List, or pay for them as we go. Some may get deferred. Look for some lively open meeting discussions in 2013.

FROM THE ON-SITE OFFICE

Repair and Maintenance

Frequently, the on-site office receives calls on plumbing, electrical and repair and maintenance issues. Some of these repairs can be handled directly by the homeowner/property manager rather than the office.

Plumbing – if you are experiencing a leaking faucet, flex line (under sink and behind toilet), a running toilet, leak in drain pipe under the sink, leaking shower/tub handles, shower head ... anything visible can be handled by the homeowner. If you hear a gurgling or abnormal sound, a stop-up – these should be reported to the on-site office.

Any repairs involving the shower/tub valves is the responsibility of the homeowner but should be reported to the on-site office in advance to insure that water does not leak downstairs, and the plumber needs to be made aware that the supply lines have been coated.

Several plumbers to contact – Donlon Plumbing: [805-985-8885](tel:805-985-8885); Victors Plumbing: [805-432-1432](tel:805-432-1432).

Electrical – If you experience that the breaker in unit is not working or the receptacle is worn, these are homeowner issues. Anything inside the wall is the Association's responsibility, outside is the homeowner. When in doubt, contact the on-site office.

Several electricians to contact – Straight Line Electric: [805-639-0995](tel:805-639-0995); J&L Electric: [805-431-2399](tel:805-431-2399).

Repair & Maintenance – If you are installing flooring, cabinetry, carpeting you can contact: All Concepts: [818-540-5164](tel:818-540-5164) or Monreal: [805-217-2964](tel:805-217-2964).

Always contact the on-site office in advance of Repairs and upgrades to insure that any paperwork required is filled out in advance for the Architectural Committee and Board of Directors.

UPS/FEDEX Deliveries

Several homeowners/tenants have contacted the on-site office asking if their deliveries can be dropped off at the on-site office. Unfortunately, the on-site office cannot take personal deliveries. Most importantly, do not have deliveries made unless you plan on being home. HAVE YOUR DELIVERIES SENT TO YOUR PLACE OF BUSINESS, FAMILY OR FRIENDS, BUT NOT AT THE DOOR WHEN YOU AREN'T HOME. Call UPS or any other carrier that you may be using and make the appropriate arrangements.

Condo Heaters

Once again, there are more homeowners contacting the on-site office requesting vendor information for inspections of their heaters. In all cases, the heaters are the original ones installed when the complex was built. It's been reported that the heaters either had a slow leak, burned wires, or other work which needed to be done. After some investigation, it was recommended by a vendor that if the heaters are 30 years or older they most likely would need to be replaced. We request that homeowners pay particular attention to this matter and consider an inspection of their heaters before the cooler weather sets in. It is inevitable that the older the heaters are, the more dangerous they become. Please consider a "Safety Inspection." The Gas Company will come out for a one-time free of charge inspection to determine if there is a potential problem.

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

Instead of our usual Neighborhood Watch Meeting, Val Lameka participated in a Captain's Meeting with Police Chief Sheehan. We were all thanked for our vigilance and reminded to call the police when we see things that seem "out of place" or otherwise unusual. I will have details at our next meeting, 7:00 pm in the Clubhouse on Thursday, November 1. Call Val Lameka at [\(805\) 986-2855](tel:805-986-2855) with questions or reports.

Also, the police will give a guest presentation on the "Minor Crime Free" program at our next Board meeting.

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.

BURSTING THE BUBBLE

As the retiring Treasurer of SSIII, (and thank you for the opportunity to serve you) I attempted to give a glimpse of my opinion of the upcoming needs of the association, to the new Board members, as well as the owners of the association at the Open Meeting on 10-13-2012. Below is a summary. **NO DECISIONS HAVE BEEN MADE.**

The association in my opinion has or is going through three stages. We have completed a lot of work in the last 6-7 years but are not done. The first stage was the "Firefighting and Discovery" of issues. We were fixing leaks and back-ups as quick as we could to avoid further damage, and discovering the root causes. The second stage was a renovation of the plumbing, elevators and now winding down on the exteriors. A lot of owners are thinking we are almost done. NO, we are not. Now comes stage three. We still have items on our "To Do List," we have the roofs coming up in the future, and we have the maintenance of all the things we have fixed.

The current "To Do List" is valued at approximately \$600,000. We anticipate that the roofs will need to be done starting in 5-7 years. We have the maintenance of the lateral lines (cleaning), painting the railings, trim, and siding, re-coating the balconies and walkways, slurry coating the new pavement that will be going in, maintaining the seals at the bottom of posts to prevent damage, etc. All together, I estimated this bubble to be \$2.5 to \$3.5 million.

I assumed we would start the roofs in 5 years and do a few buildings at a time, and spread it over 3 years. We would need to get new estimate/bids, but previous ones were \$1.5 million to \$2 million. I used \$1.8 million (in the middle). When you spread \$1.8 million

over 3 years you get \$600k per year. The bubble then in 5 years is about \$1,800,000 with \$800-\$900k for the following two years.

Of course, all these figures are estimates, and a look at 5 years down the road in some cases. The purpose is to plan ahead. We need to start planning now, so that we have the funds when the work needs to be done. This may be our first chance to do this in the 8-9 years I have lived here.

In addition I ran some different scenarios (3) just for examples, and there are so many more options. If we tried to just pay for this work with a dues increase and/or refinancing the loan and using \$500k, dues would need to increase on the average \$80 to \$150 per month for the next 5 years. Dues would be \$529 to \$599 per month starting Jan 2013. This is not acceptable.

Here are some ways to address the needs of the association. **Please keep in mind that no decisions have been made, no one is proposing we do any of this specifically; this is all food for thought so we can plan ahead.** Of course, this is all barring any significant events that could change all these projections. The following items could be done by themselves, and/or in combination with any and all of these items, or any new ideas.

- 1) Increase dues
- 2) Renegotiate Loan
 - a) lower the interest
 - b) Increase term
 - c) Increase loan amount
- 3) Reduce scope of work on the "To Do List," thus reducing costs
- 4) Eliminate some of the "To Do List"
- 5) Better analysis of remaining Roof Life. If it is longer we have more time to collect the funds, thus lowering the monthly burden.
- 6) Special Assessment
- 7) Lowering operational costs, thus allowing more funds to be deposited into Capital Reserves to do this work.
- 8) Shifting the burden of some operational costs directly to the Owners (water, sewage, trash), lowering the dues somewhat, and then increase for the up-coming needs

Once the roofs are repaired, the bubble decreases significantly. I certainly understand the comment that was made that the owners need a break, This could be done for a year, but understand that, for example, if we said we needed to increase dues \$80 a month for 5 years, and now say we want a break for a year, the need would then be to raise dues \$100 for the remaining 4 years to collect the funds in this manner.

All this re-emphasizes our need to reduce costs and save money ... i.e. water usage, pool hours, do we hire someone to paint rails and trim versus using a contractor, a more watchful eye by all owners on misuse of our property and ways to save. Put your thinking caps on and get your pins out and let's **BURST THE BUBBLE.**

-
Skip Perry

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
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)



Serving California's Community Associations

October 21, 2012

**CHAIN and WHEEL HUB
BOARD MEETINGS**

QUESTION: Board members can't discuss HOA business outside a meeting unless it's among less than a majority. Our board meets monthly and it is not enough time to discuss everything in our board packet. We have five board members, can I speak to one or two directors one day and the other one or two another day?

ANSWER: Not really. What you describe is known as a "hub & spokes" board meeting with you at the hub. This type of meeting is not directly addressed by the Davis-Stirling Act. Because it is a gray area, we can turn to the Brown Act for guidance. The Brown Act regulates the meetings of public legislative bodies and local public agencies and was used as a model for the Davis-Stirling Open Meeting Act.

Chain Meetings. The Brown Act prohibits such communications, whether direct, by intermediaries or electronically. Gov. Code §54952.2(b). In a *chain meeting*, also called a serial meeting, "A" talks to "B" who talks to "C" who, in turn, talks to "D." In a *wheel hub*, directors are spokes with "A" at the center--the directors never talk to each other, they all talk individually to A. When deliberations and decisions are made through chain communications or via wheel hubs, they deprive members of their right to see how board decisions are made. If a board were sued under the Davis-Stirling Act for a wheel hub or chain meeting, I suspect the courts would interpret Davis-Stirling using the same principles found in the Brown Act.

RECOMMENDATION. Directors should not discuss board business outside of noticed meetings. I know it puts a significant burden on directors who already have busy home and work schedules. To compensate for the restriction, many boards rely more heavily on their managers to handle day-to-day operations and they schedule more "quickie"

board meetings between regular meetings, i.e., short meetings to address one or two issues (following proper notice to the membership).

SPECIAL ASSESSMENT CONFLICT

QUESTION: To approve special assessments, our CC&Rs require a majority of homeowners. Our bylaws require 75% to approve same. Does one supersede the other?

ANSWER: Both are superseded by the Davis-Stirling Act. The Act states that a [majority of a quorum](#) is sufficient to approve a special assessment. If the law had not addressed special assessments, then your CC&Rs would have trumped your bylaws. This hierarchy of authority was not previously spelled out anywhere. However the Davis-Stirling rewrite (effective January 1, 2014), states that any inconsistencies between governing documents and the law or between governing documents are resolved in the following order of authority: the law, the CC&Rs, articles of incorporation, bylaws and operating rules. (New [Civil Code §4205](#).)

ADJOURNED ANNUAL MEETING

QUESTION: In the event an annual meeting must be postponed on the day of the meeting, what is the procedure to postpone the meeting? And are mailed-in ballots still valid?

ANSWER: The meeting is simply adjourned to a later date by those in attendance at the meeting. Language to that effect is often found in most bylaws. In addition, it is covered by Robert's Rules of Order:
... in the absence of a quorum, the assembly may fix the time to which to adjourn, adjourn, recess, or take measures to obtain a quorum.

... If there is important business that should not be delayed until the next regular meeting, the assembly should fix the time for an adjourned meeting and then adjourn.

... the chair calls the meeting to order, announces the absence of a quorum, and entertains a motion to adjourn [to a later date]. ([Robert's Rules](#), 11th ed., pp. 347-349.)

If a date was not selected and announced when the meeting adjourned to a later date, the board sets the date (which usually requires coordination with the Inspector of Elections) and gives notice to the membership. As long as the ballots were not opened, they remain valid and are brought to the adjourned meeting by the Inspector. Once quorum has been achieved, the ballots are opened and counted.

RECOMMENDATION: If your governing documents are silent, you may want to amend them to address this and other election issues.

SMOKING BANNED INSIDE CONDOMINIUMS

The City of San Rafael, a suburb of San Francisco, passed an ordinance this week banning smoking in condominiums. They become the ninth city to ban smoking in multi-unit housing (which includes condominiums).

I believe this trend is irreversible and may accelerate. In addition, we will likely see associations amending their CC&Rs to ban smoking throughout their developments (including inside units). If readers are aware of condo associations that have already done so, please [let me know](#). I would like to monitor the trend. -Adrian Adams

EMAIL NOTICE OF BBQ

QUESTION: Does the Davis-Stirling Act preclude our association from using member email addresses to invite members to an association organized neighborhood BBQ?

ANSWER: Yes, you can use emails to send invitations. Limitations on electronic notifications are on official notices and disclosures, i.e., those mandated by statute. The most common official notifications are notice of board meetings. Such notices cannot be given electronically unless members execute an "[unrevoked consent](#)" giving the association permission to give notice by email.



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Newsletter

LHC Newsletter Vol. 6, No. 4

Contact us Toll-Free: 1-866-474-5529 ext. 251 (info@lhclawyers.net)

***Civil Code* Section 1365.05 – The Open Meeting Act: Where Are We Now?**

By: David A. Loewenthal, Esq.

Robert D. Hillshafer, Esq.

By now, all Association board members should be fully aware that on January 1, 2012, *Civil Code* Section 1363.05, (commonly known as the Open Meeting Act), was amended in such a way that could dramatically change how many board's operate.

Specifically, the amendment largely eliminated what had historically been one of the ways that association's board of directors met and conducted Association business: discussions and decisions via emails between directors.

Effective January 1, 2012, a Board of Directors ability to meet, conduct business and make decisions via email has been limited to "emergency situations."

For those of us who have been involved in the homeowner association industry for a number of years, it is well understood that the purpose of the Open Meeting Act was and is to ensure that most board meetings and transactions, are to be conducted transparently in noticed meetings in front of the membership. Specifically, *Civil Code* Section 1363.05(b) states as follows: "Any member of the association may attend meetings of the board of directors of the Association, except when the board adjourns to executive session to consider litigation, matters relating to the formation of contracts with third parties, member discipline, personnel matters, or to meet with a member, upon the member's request, regarding the member's payment of assessments." Thus, Board meetings and decision making were to be made in open, with the limited exception of those topics appropriately dealt with in an executive session.

That statute further requires the association provide at least four (4) days notice prior to any meeting, other than an emergency or executive session meeting. Commencing on January 1, 2012, even executive session meetings require two (2) days notice to the membership. In addition, the agendas for both a regular meeting and executive session meeting must be provided along with the notice of the meeting.

Despite the established statutory provisions governing how meetings were to be conducted and decisions made, many associations have discussed, conferred, and made decisions in a less formalistic way through the use of email. A typical example would be a non-emergency issue arising between the regular scheduled meetings, where a board member would transmit the issue to the other board members via email and a discussion would ensue. Generally agreements would be reached during these email discussions and action would be taken based upon those discussions. The benefit to the members of the Board was that it allowed for convenient and quick discussions on items without having to have a formal meeting which would require coordination of a date, time and location. However, the obvious issue with such a decision making process was that it excluded the membership from having notice that such a topic or issue was under consideration. As a result, the members' ability to comment regarding the topic or issue, or receiving notice as to what the decision was that was made on that topic or issue would be forthcoming long after the fact.

The purpose of the amendment to the Open Meeting Act in 2012 was to explicitly ensure that transparency existed with respect to board discussion and decision making by dramatically limiting the ability to discuss and make decisions via the use of email, except for emergency situations.

Specifically, amended Section 1363.05(j)(1) states as follows:

“The board of directors shall not take action on any item of business outside of a meeting.

(2)(A) Notwithstanding Section 7211 of the *Corporations Code*, the board of directors shall not conduct a meeting via a series of electronic transmissions, including, but not limited to, electronic mail, except as specified in subparagraph (B).

(B) Electronic transmissions may be used as a method of conducting an emergency meeting if all members of the board, individually or collectively, consent in writing to that action, and if the written consent or consents are filed with the minutes of the meeting of the board. Written consent to conduct an emergency meeting may be transmitted electronically

(K) As used in this section;

(1)“Item of Business” means any action within the authority of the board, except those actions that the board has validly delegated to any other person or persons, managing agent, officer of the association, or committee of the board comprising less than a majority of the board of directors.

(2)“Meeting” means either of the following:

(A) A congregation of a majority of the members of the board at the same time and place to hear, discuss or deliberate upon any item of business that is within the authority of the board.

(B) A teleconference in which a majority of the members of the board, in different locations, are connected by electronic means, through audio or video or both. A teleconference meeting shall be conducted in a manner that protects the rights of members of the Association and otherwise complies with the requirements of this title. Except for a meeting that will be held solely in executive session, the notice of the teleconference meeting shall identify at least one physical location so that members of the association may attend and at least one member of the board of directors shall be present at that location. Participation of board members in a teleconference meeting constitutes a presence at the meeting as long as all board members participating in the meeting are able to hear one another and members of the association speaking on matters before the board.”

The primary exception to the statutory limit on use of emails in this context is an emergency meeting. However, to prevent Board’s from characterizing everything as an emergency, *Civil Code* Section 1363.05(g) sets forth clear requirements in order to hold an emergency meeting. Specifically, this section states as follows: “An emergency meeting of the board may be called by the president of the association, or by any two members of the governing body other than the president, if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the board, and which of necessity makes it impracticable to provide notice as required by this section.”

Consequently, only an emergency meeting as defined under Section 1363.05(g) may be conducted electronically pursuant to Section 1363.05(j)(2)(B). Essential in determining whether or not a board can confer and make decisions via the use of email requires the following objective analysis:

1. Is the circumstance actually an emergency? (*Civil Code* Section 1363.05(g)).
2. Is the meeting being called by either the president or two other members of the board of directors? (*Civil Code* Section 1363.05(g))
3. Are the circumstances constituting the “emergency” such that it could not have been reasonably foreseen?
4. Does the circumstance require immediate attention and possible action by the board and which, by necessity, make it impracticable to provide notice? (*Civil Code* Section 1363.05(g)).
5. Did all of the members unanimously consent in writing to both the fact that the situation was an emergency and to hold the meeting electronically? (*Civil Code* Section 1363.05(j)(2)(B)).

In order to be legitimately characterized as an emergency meeting, the above questions must each be answered in the affirmative to authorize an email board meeting and decision making.

It should be noted that emails between less than a majority of a board of directors may not violate the language of the Open Meeting Act since a meeting cannot be conducted if there is less than a quorum present. However, Directors should avoid attempting to circumvent the intent of the email restrictions by manipulating this quorum requirement through an intentional “chain” of emails that are between directors less than a quorum. It is not worth the risk of having a business decision unwound because of an attempt to manipulate the statutory language.

However, there is no limitation in the statute concerning email transmission of information or documents by management or vendors to directors. Vendors and management can certainly email the board members with updates and other information without violating the Open Meeting Act since the Act pertains only to board meetings and decisions. Distribution of materials via email that will be on the agenda for discussion at the next open meeting is perfectly appropriate. Similarly, management recommendations to the Board concerning topics to be discussed at a meeting are also not inappropriate. However, the line is crossed if the management email solicits comments or feedback that constitutes a discussion amongst the board or solicits a decision which would trigger a potential violation of the Open Meeting Act unless the parameters for an “emergency” are met.

This “restrictive environment” associated with conducting Association business in transparent open meetings adds to the already significant burden placed on the volunteer director who has a busy life and schedule outside of doing the board’s business. A legitimate way for Board’s to mitigate these restrictions and resulting burdens is for Board’s to take advantage of its power of delegation in favor of executive committees or management, which are not subject to the same requirement of open meetings. *Civil Code* Section 1363.05(k)(1) authorizes the creation of executive committees to conduct certain items of Association business. Specifically, Association business is defined as “any action within the authority of the Board, except those actions that the Board has validly delegated to any other person(s), managing agent, officers of the Association or committee of the Board comprising less than a majority of directors.” The actions of properly authorized delegates are not subject to the requirements of the Open Meeting Act.

California *Corporations Code* Section 7212 allows a board of directors to create an executive committee if all of the following terms and conditions are met:

1. That a majority of the board of directors votes to create an executive committee, provided that a quorum is present at the time of creation;
2. Executive committee must consist of at least two (2) members of the board of directors, but less than a quorum;
3. The executive committee exists at the discretion of the board for as long as the board so chooses;
4. The executive committee will have the power of the board of directors, to the extent that the board has delegated such authority through their board resolution, except for those non-delegable duties as set forth under *Corporations Code* Section 7212(a)(1)-(8)

If certain duties are delegated, it is important that the parameters and limitations of such delegation are specifically identified so as to both protect the committee, officers or managing agent and to prevent abuse. Board’s should be very circumspect about how far they go in delegating when it is primarily for the sake of convenience, because the fact that duties and decision making have been delegated does not relieve the Board of its legal and fiduciary obligations and generally will not qualify for protection under the Business Judgment Rule.

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