December 2012

SURFSIDE III e-NEWSLETTER

Daniel Kessner – Editor

FROM THE BOARD OF DIRECTORS

December Board Meeting

The December Board meeting is being moved to Saturday, December 15, 2012.

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Ormond Beach Lagoon Breached In Preparation For The Upcoming Storm

Reported by Angela Bonfiglio Allen, Environmental Planner, Ventura County Watershed Protection District

On Wednesday, November 28, 2012, the District's Operations and Maintenance personnel groomed the beach adjacent to Ormond Lagoon. If the lagoon/J Street Drain/Oxnard Industrial Drain water surface elevation rises to about 7.4 feet NGVD (National Geodetic Vertical Datum) during rainfall these next few days, the lagoon is expected to breach on its own.

Reported by Jeffrey S. Miller, City Of Oxnard, Water Resources, Wastewater Maintenance Manager:

Slightly before 4:00 this morning, Friday, November 30, 2012, the Ormond Beach Lagoon breached the sand berm, significantly lowering the water level in the Lagoon and the J street canal. Perfect timing as we are expecting about ½ inch of rain through Sunday. Thank you, Ms. Angela, for being so proactive in grooming the beach.

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Annual Meeting Election

While the proposed CC&Rs will make it unnecessary to have an election if only five owners are running for the Board, we currently must hold an election. We met the 25% quorum requirement for our second annual meeting after the first one was suspended for lack of the 50% quorum needed.

The votes received were:

Bill Betts 117 - Elected – incumbent and President
Ira Green 115 – Elected – incumbent and Vice-President
Mike Madrigal 115 – Elected – incumbent and Director at Large
Tony Truex 114 – Elected – new member and Secretary
Alex Urmersbach 113 – Elected – new member and Treasurer

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Anonymous Correspondence

While no motions were made, it was reiterated at the Open Board meeting on Saturday, November 10, 2012, that it is a Surfside III policy not to respond to anonymous correspondence. Often questions arise, and our inability to sit down with the resident to really understand their concerns makes our job much too difficult and time consuming. Sorry, but just come to a Board meeting or to the office; we really "don't bite."

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Board Approves $21 Dues Increase Effective January 2013

At the open meeting on November 10, 2012, there was a discussion of the reserves and the resulting remaining items of infrastructure renovation. The new Board will have to revisit exactly what should be done and when and how this will affect our reserve resources used to accomplish these projects. It was clear that we needed some cushion to be sure that our loan payments could not be jeopardized. The 2013 budget was passed with the dues being increased by $21 to $470/unit/month. The special assessment addition of $166.67 to the current $449 will be complete with your December payments. Thus, our dues payment will actually go from $615.67 to $470 in January 2013, which is actually about a 25% decrease in our current payments.

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Paving

Paving is underway and nearly complete. Rainy weather and damp surfaces last week held up the project. The remaining surfaces will be paved shortly. In 2013 all paved surfaces will be seal-coated, including parking lots. All concrete parking stops will be replaced. It is expected that this will be done in June 2013. Cars will have to be removed from the complex for this work. Notices will be sent in advance. During the paving process 15 cars had to be towed because they were parked in the paving area. Please heed the notices in 2013 and avoid the $240 towing expense.

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Proposed Changes to Rules and Regulations

The proposed changes to the Rules and Regulations included near the end of this issue are being submitted for a 30-day comment period, which is required by the Davis-Stirling Act, before the Board can adopt them. Please send Ira Green your comments at ira.green@surfsideiii.com. He will be assembling all the input regarding the Rules & Regulations modifications for the Board. The committee responsible for the Rules & Regulations has disbanded.

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

Our November meeting was enriched by the attendance of a representative from Surfside II. As Surfside II has only 54 units and a stable occupancy, most issues are very different. What we do share is the awareness that watching and reporting is essential to all of our safety and security. Senior Officer Bates went over the police log and answered questions. He also shared general information about crime in the city, and a "controlled substance" sting Task Force which he organized and commanded. Good job, PHPD!

Our next Neighborhood Watch meeting will be Thursday, December 6, at 7 pm the Clubhouse. Questions and reports to: Val Lameka

FROM THE EDITOR

Please send all newsletter submissions to me at dkessner@csun.edu. Please avoid any special formatting and use Arial 10-point font if you have it. The deadline is the 20th of each month for the following month's issue. Owners and renters should be aware that the Newsletter is always available on the website: www.surfsideiii.com. This includes back issues.

The **Owners' Corner** is a forum for all of you to voice your opinions on anything that might be of interest to everyone else. Please feel free to take advantage of this.

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

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.

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Surfside III Landscape Concepts

Although we can appreciate and understand the concerns of the residents on Building 6 regarding the views of the plant, their exposure to such side is limited since their building views are those direct to the ocean side where residents can sit in their balconies and enjoy beautiful views.

However for residents on Building 7, like us, our views are directly affected by the decision to add landscaping that will completely cover the views of the ocean. In addition, eliminating such views will have a tremendous impact on the property values of not just a few units, but the majority of the units in the building. We have consulted with a realtor and the expected decrease in value may potentially be as high as 30%. Neither the association nor the treatment plant will claim ownership to the loss of value, leaving the owners of Building 7 to absorb the loss of equity and value based on the loss of views alone.

Therefore, if Building 6 is seeking additional privacy from the Treatment Plant Views, Landscape Concept: "Optional Foreground Planting at Building 6" should provide all the shelter that they are seeking when coming in and out of their units, while respecting the views of Building 7. Actually, with this option they will not only be avoiding the views of the Water Plant but the parking lot, giving them additional privacy and reduction of noise from the coming and going traffic.

We are **definitely opposed** to the Landscape Concept: "Spaced Upper Story Planting" in the area directly affecting and completely blocking any potential views from Building 7; in addition, this option provides less shelter than the "Optional Foreground Planting at Building 6" for those residents. On the other hand, we can support the "Lower Story Planning," which provides low level coverage from the canal itself and any fencing. Similarly, we are opposed to the high green mesh fence that will also block the majority of the views. The height of the current fence on the Surfside III side is high enough and can be covered with plantings that grow to that

level. In addition, we continue to be in support of the removal of the existing trees that have been marked and were scheduled for removal.

We are also in support of "Plan 2" for the park area that restores the area to its current condition, provides a park-like atmosphere with the additional greenery, and limits the view of the WTP for the residents of the townhouses.

In our opinion, the decisions should be in support of those residents or building whose "view side" is affected the most. Building 7 balconies face the area of the treatment plant and planting anything along the water channel that obstructs the views will have a direct impact of the building's "view side," while Building 6 balconies face the beach/park area and therefore any changes to the water channel side will NOT have any impact to their "view side" or their property values.

In addition, part of the responsibilities of the COA is to ensure that actions taken within the development preserve and/or enhance the value of the properties as a whole and in the community. In this case, obstructing the views of Building 7, which is the farthest to the views and perhaps what some may consider not the most favorable/desirable location, can only be in detriment of the value the majority of the units in such building.

Please feel free to reach out with any comments or questions.
Cordially,

J. and E. Barnick
Lighthouse Residents (Building 7)

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I am writing regarding your email dated 11/11/12. Apparently, there is a contradiction in landscaping requests between Buildings 6 and 7. Some in Building 6 want a landscaping plan that will directly impact the ocean views for Building 7 owners. This to me is amazing considering the balconies in Building 6 already face the ocean! The only compromise they would be making is the parking lot view from their small bedroom windows. Moreover, the proposed tree plantings will be spaced in a way that will still allow views of the plant. However, from Building 7, the proposed planting will have a stacking effect since they will be in a more perpendicular line to our building. This will screen out much of our ocean view.

It is an undeniable fact that water views directly impact property value. It is also undeniable that the proposed planting will impact water views for many units in Building 7. No one I have spoken with who own units in Building 7 believe or accept that "shorter trees" will still maintain views from Building 7. Also, shorter trees overtime grow into taller trees and "shorter" is a subjective term open for interpretation. We all stand opposed to this.

Surfside III is engaged in a design review. A major objective of a design review is preservation of views and the protection of property values. A decision to plant ANYTHING that blocks the water views for owners of Building 7 will have a measurable economic consequence that can extend far beyond Building 7. Lower values in Building 7 mean lower values throughout our complex. It may also result in litigation as the stakes are very high.

Very Respectfully,

Andre Long
andreelong@yahoo.com

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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

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LORDON MANAGEMENT: OTHER DEPARTMENT EXTENSIONS

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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)

ADDENDUM
Proposed Changes to Rules and Regulations
[Please see the note on Page 2.]

The current rule 16 on inspections, in Part II of the Rules & Regulations, effective 2012-06-12, will be replaced with the following:

16. Surfside III will schedule annual inspection of each unit. The inspection cost will become an operating budget expense. Any damage to the structural integrity or mechanical systems of the unit will be verified by a licensed contractor and repaired by Surfside III contractors. When damage must be repaired, the cost of inspection by the licensed contractor and the cost of all repairs required after verification will be billed back to the unit owner. Any cosmetic damage to the interior of the unit is the responsibility of the owner.

If an owner fails to cooperate in scheduling the required inspection, the owner shall be fined $1000. If the owner fails to pay for the costs of inspection and repair of damage to the structural integrity or mechanical systems of the unit, any legal action that is required by SSIII to recover these expenses shall also be the responsibility of the owner and the new owner in the case of a change in ownership.

The current rule 15, in part II Vehicles section, will be modified to reduce the monthly fee to $40. There is no provision for refunding the fee difference from earlier months.

15. NO large vehicle [larger than 229 inches long or 80 inches wide] **or** any open-bed vehicle that is consistently over-loaded [beyond the edge(s) of the bed] with goods or materials, may be parked within the Surfside III complex - except in the designated "oversize" Parking Spaces near the RV Parking Area [no "parallel" parking allowed] or in the RV Parking Area. Residents in townhomes with adequate driveway space may park larger vehicles but not RVs, overloaded vehicles or large vehicles with permanently painted commercial signs. The measurement is from the front bumper, guard, or similar to the back bumper, trailer hitch or other object.

Both Oversize Spaces and RV areas require a reservation and payment of monthly fee of $40.

Owners will be fined $200 for each instance of violation by the owner's, renter's or guest's vehicles. Short-term (active) loading or unloading activities will not be cited.

Davis-Stirling.com Newsletter by AK Adams Kessler
Serving California's Community Associations October 28, November 4, 18, 2012

FREE RIDERS

QUESTION: While checking your website on suspension of common area privileges, I was shocked when I read, "If there are multiple owners of a unit/lot, the suspension of rights/privileges for one owner suspends the rights/privileges of all residents of that unit/lot. The suspension also extends to renters." With all due respect, an HOA is not a military organization where group discipline is used to demand compliance with an order.

ANSWER: If the owner of a unit is delinquent and his privileges are suspended, the people residing in his unit are also suspended, whether family members, guests or tenants. Otherwise, the suspension is meaningless. If residents were not included in the suspension, they would continue to enjoy the association's amenities without paying for them. Giving people a free ride at others' expense is a poor business practice we reserve for our federal government.

Free Riders #1. I loved your answer to "FREE RIDERS"! Very well said! -Ken H.

Free Riders #2. Kudos on your response regarding suspension of common area privileges. I find this practice to be one of the most successful in collecting debt on behalf of my clients. Last month alone, I was able to secure over $30K between two associations either through payment in full or a one year payment plan. I find it funny that revocation of parking transponders, parking tags and pool use is more persuasive than legal action. This process is especially useful when there are tenants in a unit; as soon as tenants are copied on the hearing letter, they put pressure on the unit owner. -Vicki M.

Free Riders #3. Please tell Adrian that I send a HUGE thank you for his comment in yesterday's column that pertained to "giving people a free ride." Amen!!! -Phyllis H.

Free Riders #4. "Giving people a free ride at others' expense is a poor business practice we reserve for our federal government." Bravo! And Amen!! -David C.

Free Riders #5. I loved your answer to "FREE RIDERS"! Very well said! -Ken H.

Free Riders #6. Kudos on your response regarding suspension of common area privileges. I find this practice to be one of the most successful in collecting debt on behalf of my clients. Last month alone, I was able to secure over $30K between two associations either through payment in full or a one year payment plan. I find it funny that revocation of parking transponders, parking tags and pool use is more persuasive than legal action. This process is especially useful when there are tenants in a unit; as soon as tenants are copied on the hearing letter, they put pressure on the unit owner. -Vicki M.

Free Riders #7. Please tell Adrian that I send a HUGE thank you for his comment in yesterday's column that pertained to "giving people a free ride." Amen!!! -Phyllis H.

Free Riders #8. "Giving people a free ride at others' expense is a poor business practice we reserve for our federal government." Bravo! And Amen!! -David C.

NOTE: I had two readers who took offense at the comment because they thought it had political connotations. In our current overwrought political season? Perish the thought! -Adrian

DRE Warning. Regarding the DRE "Consumer Warning," I noticed on page 3 under the second bullet that the DRE implies that an owner is entitled to the "Delinquent Report" from the association. Is that true or am I misunderstanding the intent? -Bob F.

RESPONSE: Yes, owners are entitled to financial information, including a delinquency report. Boards should already be receiving them in their monthly financial reports. However, if names are in the report they need to be redacted before giving copies to owners.

BOARD MEMBERS AS CC&R EXPERTS?

QUESTION: As a board member, am I expected to be an expert on our CC&Rs? I wish I were but, for example, when a homeowner asks who is responsible for repairing damage caused by a water leak in a common wall, I don't feel qualified to give a definitive answer.

ANSWER: I know that some homeowners expect every board member to read and understand every line of their CC&Rs. That is an unrealistic expectation. Volunteer directors are not experts and can get themselves in trouble if they try to be. As a practical matter, boards should have a general understanding of how things work but should defer to an HOA attorney to interpret their CC&Rs.

Maintenance Chart. When it comes to maintenance duties, boards should have legal counsel prepare a maintenance chart that lays out all common maintenance issues and who is responsible for each--the association or owners. That requires a thorough review of your governing documents in conjunction with the Davis-Stirling Act and applicable case law. The chart is then published to the membership. Making everyone aware of their respective duties can minimize or avoid expensive litigation.

RECORDING MOTIONS IN MINUTES

QUESTION: Is there an established doctrine that the individual making a motion and the individual seconding the motion be identified by name in the minutes? I have seen this done by a professional minutes taker, however, my colleague disagrees. What is the accepted rule?

ANSWER: There is no law that requires the name of the person making the motion and the one seconding the motion. While some associations do, many associations simply state that a motion was made and seconded. Over the years, I have seen both practices and both are acceptable. Even though boards of directors are not required to use parliamentary procedures for their board meetings, Robert's Rules of Order serve as a useful guideline for taking minutes. According to Robert's Rules,
The name of the maker of a main motion should be entered in the minutes, but the name of the seconder should not be entered unless ordered by the assembly. (Robert's Rules, 11th ed. p. 470.)
For those associations that can afford it, a professional minute taker provides greater consistency and a quicker turn-

around for minutes.

BOYFRIEND CONFLICT OF INTEREST

QUESTION: We have a board member whose live-in boyfriend is a licensed contractor. She gives him copies of the bids we get on various projects so he can submit a lower bid. Is this legal or ethical? Can board relatives even bid on projects?

ANSWER: It is clearly inappropriate for your ethically-challenged director to provide insider information to her boyfriend.

Problems. It is not illegal for a director's relative to bid on projects if done properly but doing so is fraught with peril. Most boards wisely disallow the practice because of the inherent problems when directors benefit from contracts awarded to themselves or relatives.

Censure. Your self-serving director should resign from the board if she wants her boyfriend to bid on HOA projects. If she refuses to resign and continues to leak information, she can be censured by the board and an executive committee created to review bids. In addition, your board should adopt an ethics policy.

UNDERFUNDED HOAs

As boards everywhere already know, the recession has created significant funding problems for their HOA budgets. That has led to deferred maintenance and underfunded reserves.

The problem is serious enough that California's Department of Real Estate issued a "Consumer Warning."

SANTA MONICA BANS SMOKING

In addition to San Rafael's no smoking ordinance I reported on last week, the city of Santa Monica banned smoking for new tenants of apartments and condos. The ordinance was approved on October 2 and included language giving neighbors the right to take smokers to court if they violate the ban.

Last week I asked if any condominium associations had banned smoking inside units. At least three have done so:

No Smoking #1. Our association prohibits smoking in all areas with the exception of a single location on the roof deck. Because we have a passive ventilation system that is constantly introducing fresh air into the units, smoking inside the units would quickly cause cigarette smoke to propagate between units and is therefore prohibited. In addition to our CC&R restriction, we have a separate smoking restriction policy. -Brian H., San Francisco

No Smoking #2. We amended our documents in 2010 to become a non-smoking facility both within individual units and in the common area. We made an exception for two older residents to continue smoking on their balconies only. These two have now passed away, so we are a smoke-free complex. -Angela D., Los Gatos

No Smoking #3. We successfully amended our CC&Rs to ban smoking throughout our seniors 112-unit condo (including inside units). -Steve R., Torrance

No Smoking #4. We are a 36-unit condo association that recently adopted a no smoking policy both inside the units and in any part of the common area EXCEPT for a designated smoking area in the common owners parking lot. We adopted the policy based on the nuisance clause in our CC&Rs. -Rick H., Canyon Lake, CA

No Smoking #5. Our association has the following restriction: "No owner, family member, tenant, resident, guest, business invitee or visitor shall smoke cigarettes, cigars, or any other tobacco product anywhere within the boundaries of BTH. This prohibition shall include the outside common area, enclosed common area, exclusive common area (balconies and patios) and all units within the project." -Jonathan P., Berkeley, CA

No Smoking #6. I have one association in Tiburon that doesn't allow smoking anywhere on the property, including inside units. "No Smoking Property" signs are at each property entry. -Trudy M.

No Smoking #7. We are a 36-unit condo association that recently adopted a no smoking policy both inside the units and in any part of the common area EXCEPT for a designated smoking area in the common owners parking lot. We adopted the policy based on the nuisance clause in our CC&Rs. -Rick H., Canyon Lake, CA

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No Smoking #9. I have one association in Tiburon that doesn't allow smoking anywhere on the property, including inside units. "No Smoking Property" signs are at each property entry. -Trudy M.

No Smoking #10. You asked readers to share whether they had a ban on smoking in their governing documents. We first banned smoking in the common areas back in 2009. In 2010 members adopted a complete ban ANYWHERE within the four corners of the parcel (common area, inside the units and sidewalk). We extended the ban to members, residents, guests and vendors. -Sandy O, San Francisco.

If other associations have banned smoking in their developments, (including inside units), let me know. Thanks, Adrian

REMOVE MEMBERSHIP FROM DELINQUENT OWNER?

QUESTION: We have a property owner who is in arrears. Can we remove him from membership in the HOA? Our bylaws state that we can suspend voting privileges, which we have done, but we would like to remove him completely from the membership.

ANSWER: Sorry, you can't remove his membership. Membership is automatically conferred by ownership of a lot or condominium. Civil Code §1358. The only way you can take away a delinquent owner's membership is to foreclose on his property.

REMINDER ABOUT LENDER FORECLOSURES

All associations should record a blanket "Request for Notice of Sale" to receive notice of lender foreclosure sales. Otherwise, boards will not know who to bill for assessments after the sale occurs.

Recording the Request is important if associations want to benefit from AB 2273 which goes into effect January 1, 2013. This bill requires lenders to record foreclosure sales within 30 days of the sale. It makes banks accountable for the properties they acquire, i.e., once the sale is recorded, the lender must start paying HOA dues and special assessments. Contact us if you need assistance.

INVESTORS HAVE EQUAL VOTES

QUESTION: Our board allows owners of more than one property (rentals) to have equal voting rights for each property. Is this legal?

ANSWER: Your board is not the culprit. Voting rights are established by your governing documents, which ties them to ownership. As a result, owners of a separate interest in a common interest development have the right to cast votes for each property they own--that includes investors.

Problems. Allowing investors to own multiple properties can create problems for associations. The first is the higher rental population they bring to the development and the second is the voting power the investors wield. If an association has cumulative voting, the investor's influence is magnified even further.

Solutions. To contain the problem, associations can amend their CC&Rs to limit ownership to one or two properties per person or entity. At the same time, HOAs should consider adding a requirement that no buyer can rent his property until he has resided in the residence for at least one year (some associations make it two years). This will deter investors from buying units and immediately turning them into rentals. It will bring owner-occupants into associations, which is what you want.

HARDWOOD FLOORS

QUESTION: An owner on the 2nd floor wants to install hardwood flooring. I can't find anything that says that the owner installing the floors must seek approval from the owner below, just the HOA board. Is this correct? I was always under the assumption that the owner that lives below would need to approve the floors.

ANSWER: Unless your governing documents provide otherwise, the architectural committee (or the board, depending on your documents) reviews and approves, modifies or disapproves the remodel application. Some associations (especially PUDs) require notification of surrounding neighbors when remodel applications are submitted so neighbors can attend the architectural meeting to observe the review process. Neighbors can voice their concerns but they cannot veto the proposed project. If the owner meets the association's architectural guidelines, he/she should receive approval for the proposed work.

RECOMMENDATION: When it comes to hardwood floors you need to have objective standards that fit your building's particular construction. Some buildings, especial condo conversions, are so poorly constructed that there is no practical or cost effective way to install hardwood floors that would not create a nuisance to unit owners living below them. Your board should adopt strong architectural guidelines and then enforce them in a consistent and evenhanded manner.

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SMELLY SHOES

QUESTION: Can an association restrict piles of smelly shoes in front of an owner's front door? It has been suggested that if this is a cultural belief the HOA could be faulted for making them remove their shoes.

ANSWER: Smelly/unsightly footwear can be restricted under the nuisance provision of your CC&Rs. In a condominium development where other owners and their guests must walk by the unsightly shoes in a common area hallway, the restriction is reasonable. Cultural sensitivity is a two-way street. Residents should be respectful of their neighbors and keep their shoes inside their units.

SPENDING AND REPLACING RESERVES

QUESTION: Our board insists that if funds from the reserves are used in year one to repair a reserve item then the association must replace the reserves in year two by the amount used in year one. Is this correct?

ANSWER: That is not what the law requires. Reserves are built up over time. If a 20-year roof has reached the end of its life and $400,000 is spent from reserves to replace it, the association is not required to replace the money the following year. Instead, $20,000 per year is put into the account for the next 20 years (the life of the roof). At that point you have enough money to replace the roof again.

Variables. The amount actually transferred into reserves annually will vary over time as your reserve specialist factors in variables such as inflation, interest earned on the funds, projected lifespan of the roof (which depends on how well the roofs are maintained in the intervening 20 years), etc.

Borrowed Money. If your board borrowed money from your reserves, then it needs to be replaced the following year. Using the roof example, if you had $400,000 in your reserve account but it was allocated to other items (painting, street paving and plumbing) with none set aside for roofs, the board would have to borrow the entire reserve fund to replace the roofs. In that case, the board is correct that the funds would need to be replaced the following year.

COMMERCIAL SIGNS

QUESTION: We have some board members who want to regulate commercial signage on cars, such as a real estate sign or a business sign for an offsite business under a CC&R restriction that does not allow signs on lots. Is this legal? Someone said it is a violation of free speech. Could they then regulate car colors, etc.?

ANSWER: Some car colors should be regulated--if you see a lime green car, call the police. When it comes to commercial signage, most associations prohibit yard signs, business signs in windows, etc. "Commercial" signage advertises products or services the advertiser hopes you will purchase. When it comes to the Davis-Stirling Act, there is no protection of commercial signage. As for the First Amendment, it primarily protects political speech, and to a lesser extent commercial speech, from governmental interference. A homeowners association is not a governmental

entity--it is a private organization with private restrictions, which means the First Amendment does not apply.

Since homeowner associations are residential, it is more than reasonable that they restrict the display of commercial signage. No one wants their neighbor putting a sign in their yard that they're selling medical marijuana or providing palm reading services. Or parking a trailer in front of their house with a sign advertising cigarettes. Homeowners would be up in arms. Does that mean associations can regulate signage on vehicles? Yes it does. As a practical matter, the explosion of advertising that is painted, printed or tattood on everything that moves, including people, makes it difficult to regulate.

RECOMMENDATION. Some CC&Rs are silent on signage issues while others are explicit. Your board should work with legal counsel to review the authorizing language in your CC&Rs and then draft reasonable restrictions on vehicle signage.

ALLIGATOR EATS GUEST
HOA SUED

There is a case out of Georgia that addresses the issue of whether a homeowners association is responsible for protecting its members from attacks by dangerous wildlife.

The Landings HOA is a gated community near Savannah, Georgia in an area where alligators are indigenous. The Association warned residents in newsletters and on its website that alligators lived in its lagoons and were dangerous. It did not, however, post signs near the lagoons.

Ms. Williams was house-sitting for her daughter who was vacationing in Italy. Behind her daughter's house was a common area park adjacent to a lagoon. Ms. Williams went for a walk sometime after 6:00 p.m. At about that time, several boys reported hearing a woman crying for help. The next day Ms. Williams was found floating in the lagoon. An eight-foot alligator was found with her body parts in its stomach. The heirs sued the association for wrongful death.

The Georgia Supreme Court found for the association because testimony showed that Ms. Williams had knowledge that dangerous alligators occupied the lagoons. Knowing that, she still chose to walk at night near a lagoon where alligators were present. The Court reasoned that Ms. Williams either assumed the risk of walking where she knew alligators were present or failed to exercise ordinary care by doing so.

RECOMMENDATION: The case might have gone against the Association if testimony had shown that the association had done nothing to warn residents. I suspect the board has since added signage around the lagoons. To read the court's decision, see The Landings HOA v. Williams. California HOAs in areas where residents are exposed to dangerous wildlife should talk to legal counsel about how best to protect against potential liability.

FEEDBACK

BBQ Notice. We live in Hawaii and have different condo laws, however your newsletter is one of our only informative (not legal for us) sources and we thank you for the timely information. Last week's newsletter discussed email notice of BBQs. Would the board need unrevoked consent to email a newsletter? -Bob A.

RESPONSE: Aloha. I don't know about Hawaii but in California I don’t believe associations need an unrevoked consent to send newsletters via email. The statutory consent is for notifications and disclosures mandated by law and the delivery of documents required by statute. If you want, I can fly out and meet you on a beach and spend a few days reviewing Hawaii's laws.