SOUTH COAST HOMEOWNERS ASSOCIATION

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IN THIS ISSUE

UPCOMING SOUTH COAST HOA MEETING–DECEMBER 3

"Board Survival 101"

Board service is difficult enough, but could it be that some of the difficulty is self-inflicted?

Basic attitudes and understandings about volunteer board service can enhance or reduce the amount of stress in serving as a director of your community.

In this seminar, we will discuss how your volunteer "night job" is different from your "day job".. and why it matters; attitudes of service rather than control; and the proper role of corporate process, the "Business Judgment Rule" and your volunteer immunities; in a practical way. The session will end with a "Lightning Round" of quick tips to streamline and shorten your board meetings.

Invest an hour and fifteen minutes, and learn how board service can be ... and should be... survivable.

Our speaker is Kelly G. Richardson, Esq. He is the co-founder and senior partner in Richardson Harman Ober PC, a 12-attorney law firm headquartered in Pasadena. He is a current member of the board of trustees of the Community Associations Institute (CAI) and is a member of their College of Community Association Lawyers. He is the author of the newspaper column, HOA Homefront, which appears in newspapers throughout California including the Sunday Real Estate section of the Santa Barbara News-Press.

See Following Page for Date, Time and Location

Date – Monday, December 3, 2012
Time – 7 PM
Place - Encina Royale Clubhouse - 250 Moreton Bay Lane, Goleta (Fairview exit North from 101)

Light refreshments will be served

UP IN FLAMES!

New year's arsonist causes $3 million in property damage

By: Timothy Cline, CIRMS
Timothy Cline Insurance Agency, Inc. Santa Monica
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Editor's Note: In late January, Mr. Cline wrote the following article for his clients. I had asked for permission to publish it at that time but I got snowed under with my usual year-end work by then and did not get it out to you. The issues remain just as relevant now. Mr. Cline is a long-time South Coast member and supporter. His contact information appears at the end of the newsletter.

It was an especially long New Year's Weekend for condominium and apartment building residents in Hollywood and West Hollywood. An arsonist was on the loose and few owners felt safe. Over 50 separate arson events occurred over a three-day period with many fires impacting cars parked in multi-family structures. With blazes erupting all over the Westside, taxing fire department resources, police officials recommended residents to take two very simple preventive measures: 1) Leave their porch and carport lights on and 2) Keep their eyes open.

According to Federal Investigators, these recent fire-setting incidents represented the worst crime spree in California since the 1992 race riots. On Tuesday morning, January 3, 2012, at approximately 3 AM, the police arrested a suspect – an apparently disenfranchised 24-year old – angry over his mother's legal troubles. He had acted out by launching a three-night rampage, attacking cars parked in carports and parking garages. Shortly after the arrest, fire officials pegged the resulting damages at a whopping $3 million.

Even with this suspect in custody, arson unfortunately remains a very common occurrence. According to the United States Fire Administration data, from 2004 to 2006 an estimated 210,300 intentionally set fires occurred each year in the United States. Intentionally set fires account for 13 percent of fires responded to by fire departments across the nation.

There are steps Associations can take to make them less venerable to an arsonist:

- Evaluate the quality of the lighting in your Association's Common Areas – with special attention to garage/carport exteriors, driveways and pathways. Good lighting will make it easier to detect unauthorized visitors.

- Trim back trees and bushes away from the structures. Dark portions of the premises can be attractive to would-be arsonists. Remove all excess vegetation that is capable of being ignited.

- Check with your agent/broker to make certain there is sufficient building coverage – with special attention to appurtenant structures such as clubhouses, carports, garages, and any other commonly vacant, free-standing structures.

- Ask your agent/broker about coverage for fire damage to trees, lawns, plants and shrubs.

- Remove all possible sources of ignition from the garage/carport areas such as stored cardboard /newspapers, flammable liquids (including barbecue lighting fluids) and unused gas containers.

- Remove abandoned cars and vehicles. The NFPA (National Fire Protection Association) has estimated an average of 25,328 intentional fires involved these types of vehicles. An abandoned car is a target for arson.

- Secure vacant units which could become potential arson targets.

- Encourage the fire department to conduct frequent fire code inspections.

- Have your fire extinguishers, smoke detectors and fire sprinkler systems serviced annually.

- Encourage members of your HOA to participate in a local Neighborhood Watch program. These active volunteers can help deter crime (including arson) by reporting license plates of suspicious vehicles and potential suspect descriptions. (If you don't have a Neighborhood Watch program already active in your community, contact the business line at your local police department or go to www.usaonwatch.org.)

HOA COULD BE SUED IN TRAYVON MARTIN CASE

By: Michael Ashley
Timothy Cline Insurance Agency, Inc. Santa Monica

Editor's Note: This case has gotten as much national press as anything during 2012. The general media does not know how to explore the fact that this incident occurred in an HOA in Florida. Apparently, a Neighborhood Watch was sanctioned by the HOA as you will see in the article. The "takeaway" here is that if the Association forms a Neighborhood Watch, it has to be very careful. In Goleta as well as other areas, the police have a designated officer to interface with for the Watch program.

In yet another instance of real-life insurance repercussions ripped from today's headlines, the homeowners association of the neighborhood where Trayvon Martin's tragic shooting happened could be sued.

The reason: George Zimmerman's [the neighborhood watcher who allegedly shot Martin] could be found not guilty by a judge or jury due to Florida's so-called Stand Your Ground Law.*

*(*See box following for an explanation of this law.)*

Zimmerman's clearance and/or acquittal wouldn't necessarily stop Martin's parents from suing The Retreat at Twin Lakes HOA who authorized the neighborhood watch. After all, the HOA's insurance policies and assets make it a more lucrative target than Zimmerman, even if he is found guilty of a crime.

According to legal experts, Exhibit A could very well likely be the association newsletter sent to residents in February, the same month as the shooting occurred. Under the heading Neighborhood Watch, the newsletter recommended that residents first call the police and then "Please contact our Captain George Zimmerman… so he can be aware and help address the issue with other residents."

By designating Zimmerman the neighborhood watch captain in writing through the newsletter, the HOA may have opened itself up to liability claims since a court could interpret that Zimmerman was acting as a "rented" or "volunteer" police officer for the neighborhood, especially since his actions in that capacity resulted in the death of another human being.

However, even if the association were to be sued in connection to the killing it could ultimately be dismissed from any action and/or not found liable, especially since there is evidence that the HOA reached out to the local sheriff's office to set up the local neighborhood watch and relied on their experience and expertise.

Whichever way this potential lawsuit shakes out could have a serious impact on the nature of volunteerism, which is at the heart of many healthy and properly managed homeowners associations throughout the country.

If there is anything that we in the HOA community can take from this tragedy, it's the hope that future associations heed the message that voluntary prudence is crucial for our communities. Each association has an obligation to take pronounced steps to ensure that they have the right volunteers and oversight in place. And it's important that those volunteers are very keenly aware of their limitations, obligations, and the potential liability they incur simply by donating their time and efforts for the benefit of their community. The benefits of volunteering are great, as are the consequences should something go wrong.

1) Stand Your Ground Law Definition*:
A stand-your-ground law states that a person may use force in self-defense when there is reasonable belief of a threat, without an obligation to retreat first.

*Laws and their application of this doctrine vary by state

2) 2011 Florida Stand Your Ground Law Statutes:
CHAPTER 776 JUSTIFIABLE USE OF FORCE

Use of force in defense of person.

776.012—A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force.

However, a person is justified in the use of deadly force and does not have a duty to retreat if:
He or she reasonably believes that such force is necessary to prevent
(1) imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony; or
(2) Under those circumstances permitted pursuant to s. 776.013.

HOA SUCCESSFULLY RECOVERS ATTORNEYS' FEES AFTER BANKRUPTCY OF INDIVIDUAL HOMEOWNER

By: Christopher Haskell, Esq.

Editor's Note: Mr. Haskell is a partner at Price Postel & Parma LLP, one of the oldest firms in the Western United States, tracing its Santa Barbara roots to 1852. Mr. Haskell's practice focuses on real estate and construction. He has represented numerous Homeowners Associations in the Santa Barbara Area. Mr. Haskell's firm is a South Coast member and contact information appears at the end of the newsletter.

Paul Lewow sued his homeowners association, the Surfside III Condominium Owners Association (HOA), for failure to perform various duties and obligations under the CC&Rs.

Ultimately, Mr. Lewow lost his case against the HOA. A notice of judgment was entered in favor of the HOA on February 10, 2010 and on that same day Mr. Lewow filed for bankruptcy. Mr. Lewow obviously intended to avoid having to pay the judgment, and any subsequent award of attorneys' fees.

Approximately five months later, on July 25, 2010, a notice of dismissal of the bankruptcy was mailed to the HOA. The HOA, 31 days after receiving the notice, filed its motion for attorneys' fees, seeking to recover almost $300,000 in attorneys' fees. Lewow filed a lengthy opposition to the HOA's motion for fees, contending among other things that under the bankruptcy rules the HOA only had 30 days to file its motion after notice of the dismissal. Therefore, Lewow asserted the HOA's motion was untimely (by one day), and should be dismissed. Unfortunately for Lewow, the court disagreed with his position and granted the HOA's motion for fees in full. Interestingly, the appellate court agreed that the applicable filing deadline was 30 days, but found there was good cause to extend the deadline and award the fees since the issue of the deadline was complex and debatable.

It is not unusual for a losing litigant to attempt to avoid paying a judgment and attorneys' fees by filing for bankruptcy. This has become especially prevalent in our current economic climate. This case reflects the courts' disdain for this legal maneuvering. Notwithstanding the court's willingness to bend the rules a bit in favor of the prevailing party (the HOA), a careful attorney should always have a clear understanding of all the applicable deadlines, including any deadlines relating to the filing of a motion for attorneys' fees. Often in disputes involving HOAs and individual members, the attorneys' fees equal or even surpass the principal amount of the

judgment. (*Lewow v. Surfside III Condominium Owners Assn., Inc.*, 203 Cal. App. 4th 128 (Cal. App. 2d Dist. 2012).)

RULES ENFORCEMENT QUESTIONS

by Adrian Adams, Esq.

Mr. Adrian Adams is the founder of Adams Kessler, PLC, a law firm in Southern California specializing in corporate representation of common interest developments Adams Kessler is a South Coast member and perhaps they are best known to us for their Davis-Stirling.com website and their weekly email newsletters on a wide variety of HOA operational and management issues.

1. Is it true that boards can no longer enforce pet restrictions because of ADA laws?

No, that is not true. Pet restrictions are still intact and enforceable. However, boards must reasonably accommodate persons with disabilities who use guide, signal or service dogs. The California Department of Fair Employment and Housing guidelines provide:

> Persons with disabilities have the right to use the services of a guide, signal or service dog or other such designated animal and to keep such animals in or around their dwellings. Landlords may reasonably regulate the presence of the animals on their premises but may not impose any extra charges or security deposits. Tenants, however, are liable for any damage caused by their animals when proof of such damage exists.

Service Animals. The ADA definition of a service animal was revised effective March 15, 2011 to mean "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability." Some, but not all, service animals wear special collars and harnesses. Some, but not all, are licensed or certified and have identification papers.

Companion Dogs. Companion dogs provide emotional support to persons with depression or other psychiatric disabilities.

Therapy Animals. Therapy animals are used by medical and counseling centers to treat patients with various emotional or social problems. Therapy animals include cats, dogs, rabbits, horses, etc.

Proof of Disability. Boards can require proof of disability before allowing an animal that violates the association's restrictions. Boards cannot demand to know the specific disability, only that the person has a disability and the service animal is required. Such proof is usually in the form of a doctor's letter.

Pet Rules. Associations can adopt rules requiring service animals:

- be trained to perform tasks to mitigate the effects of its owner's disability,
- be clean and free of foul odor whenever in the common areas,
- not urinate or defecate in inappropriate locations,

- not create a nuisance by unnecessary barking or whining,
- not show aggression toward people or other animals,
- obey the commands of its owner,
- work calmly and quietly on a harness, leash or other tether,
- be able to lie quietly beside its owner without blocking aisles, and doorways,
- stay within 24" of its owner at all times unless the nature of a trained task requires it to be working at a greater distance.

2. Can the board get around enforcing the rules by granting waivers?

Duty to Enforce. Associations can be held liable for their failure to enforce the CC&Rs. Owners may sue the association for damages and an injunction to compel the association to enforce its documents. Boards can enforce restrictions through levying fines, suspension of privileges or filing a lawsuit for injunctive relief.

Discretion to Sue. Boards have discretion when it comes to the decision to litigate to enforce governing documents. Boards can weigh the cost of litigation, the gravity of the violation, and the likely outcome of the litigation, and make a good faith determination to litigate or not to litigate a particular violation.

Waivers. The following guidelines should guide the granting of waivers:

- The waiver should not be a major deviation from your CC&Rs or rules (allowing an owner to have two 80-pound Pit Bulls in a condominium complex that restricts owners to one 20-pound dog).
- The waiver should not change the character of a community (allowing a French Tudor house in a Spanish style community).
- The waiver should be in the minutes of an open meeting with a full explanation why the wavier is necessary. Directors must make their decision in good faith and in the best interests of the association.

3. Our board wants to stay out of neighbor to neighbor disputes. Can we pass a rule that the association will get involved only if more than two neighbors complain about a neighbor?

There was a time when boards were advised to stay out of neighbor to neighbor disputes. Unfortunately, the legislature and the courts have increasingly pushed associations into the role of resolving disputes internally. This seems to extend even to claims of harassment, threats, and physical altercations. There are four lines of reasoning for the board's duty to intervene.

Peaceful Enjoyment. Owners have a general right to peacefully enjoy their property. Because associations have the power to impose fines and suspend privileges, boards have a duty to intervene under the nuisance provisions of their CC&Rs to stop owners from disturbing the peace.

Health and Safety. In addition to nuisance restrictions, most documents contain general statements that the association's purpose is to provide for the health, safety and welfare of the

membership. If an owner poses a threat to other members, the board may have a duty under these provisions to protect the membership from such threats.

Landlord Tenant Relationship. Under landlord-tenant law, landlords must protect members against foreseeable harm and provide for quiet enjoyment by curbing a tenant's disruptive conduct. California's Supreme Court has already compared associations to landlords and owners to tenants. That analogy will likely carry over to a board's duty to protect members from an abusive, harassing or threatening owner.

Hearings. Boards should hold hearings with feuding neighbors and make it clear that any disruptive behavior such as loud stereos, banging on the walls, shouting matches in the common areas, etc. will result in fines and suspension of privileges (as provided for in the governing documents). If the board determines that an owner is a threat to other residents, the board may have a duty to take further action, such as seeking a restraining order.

4. I don't want the board to reveal my name when I complain about my neighbor's violations. I'm afraid he might retaliate. The manager said they have to give him my name. I thought the association was supposed to protect me. Can I sue the association if something happens to me?

Due Process. Penalties such as fines and suspension of privileges cannot be imposed unless due process has been followed. Due process is broadly defined as fairness when it comes to imposing penalties. There are two forms of due process:

- *Substantive Due Process*. This form of due process requires that decisions be reasonable and not arbitrary or capricious.

- *Procedural Due Process*. This form of due process requires that process used for determining violations and imposing penalties be fair. Elements of procedural due process include: (i) giving the accused notice of the alleged violation; (ii) providing a reasonable opportunity for the person to defend themselves; (iii) knowing the identity of the accuser; and (iv) giving the accused an opportunity to examine and refute the evidence.

Anonymous Complaints. Witnesses can remain anonymous if the association can independently verify the violation, i.e., through a security camera recording, an employee's first-hand report, a board member verifying the violation, etc. If an association can develop sufficient evidence on its own, then the complaining neighbor's identity is irrelevant and does not need to be revealed to the accused.

A number of new laws were passed including a total rewrite of the Davis-Stirling Act (effective 2014) during the 2012 legislative session and several court cases were decided affecting association operations. Watch for the notice for this meeting. We expect it to be in late January or early February. We expect the 2013 Condominium Bluebooks to arrive in late December. A copy will be sent to all members who have renewed for 2013. Invoices were sent in mid-November and a $30 discount is available to all who renew by December 15, 2012.

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