

## SAPOA Board of Directors 2/13/2021 Workshop

I would like to officially welcome the board members that were elected in last year's election, our newly appointed board member and welcome back an existing board member elected to the board in 2019. I'd also like to thank the two board members who left the board at the end of last year. Their service was very much appreciated. Members of this board come from different backgrounds, but every single one brings expertise and energy to their volunteer role. It's a pleasure to serve with you. I know from years of experience in serving on boards and reporting to boards the value a simple orientation can bring when a new board is seated. It is with that intent, I suggested this workshop.

There's a lot to cover so I thought we'd break it up a bit and discuss various issues in a workshop setting over the next few months. As you know, last year we spent considerable time researching and finding ways to address the inconsistencies we found in several areas of SAPOA's guiding documents and also areas where we were not in compliance with state law. These were presented to the membership in the form of proposed Bylaws and an updated budget. While neither one was approved [Budget 63 Yes/64 No and Bylaws 55 Yes/74 No], these issues do not go away and must be addressed moving forward. Hopefully these workshops will give all of us an understanding of the issues, problems and solutions so we can make informed decisions for our membership and community.

After each workshop, I suggest we share this information with the membership in a newsletter. For this first newsletter, I just want everyone to know that I won't be able to put the newsletter together until after a major presentation I am giving next Thursday. It's a major undertaking to develop and distribute the newsletter and I just don't have the time to devote to it next week.

### **GUIDING DOCUMENTS**

#### **RCWs—**

64.38 provides guidance for HOAs. Even though we are a POA, we fall under this RCW. (11) "Homeowners' association" or "association" means a corporation, unincorporated association, or other legal entity, each member of which is an owner of residential real property located within the association's jurisdiction, as described in the governing documents, and by virtue of membership or ownership of property is obligated to pay real property taxes, insurance premiums, maintenance costs, or for improvement of real property other than that which is owned by the member. "Homeowners' association" does not mean an association created under chapter **64.32** or **64.34** RCW. [Condominiums]

42.30 Open Public Meetings. By definition, in the RCW, public agency means: any state board, commission, committee, department, educational institution or other state agency which is created by or pursuant to statute, other than courts and the legislature, any county, city, school district, special purpose district, or other municipal corporation or political subdivision of the state of Washington, any subagency of a public agency which

is created by or pursuant to statute, ordinance, or other legislative act (like planning commissions, libraries or park boards) and publicly owned utilities.

The RCW refers to proper notification of meetings [Federal Register or 20 days prior if the meeting differs from what is posted in the Federal Register at the beginning of the year.] Section 7.4 of SAPOA Bylaws states that "The Board of Directors shall hold Regular Board of Directors meetings with open attendance to all members as required by Washington State Law by giving notification at least seven (7) days in advance [website, reader board or email if the BOD decides to do so]. We are not required under our Bylaws or the RCW to post an agenda.

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### **Articles of Incorporation—**

SAPOA's Articles of Incorporation were adopted 10/28/1980 and the document was filed 3/31/1981. The purpose was to enhance the welfare of all of the property owners within Sunshine Acres, for the orderly growth and development of the area and to stimulate interest in the active participation in all civic and municipal affairs. We are a not-for-profit organization.

### **CC&Rs—**

The CC&Rs set out the rules of the HOA community. They describe the requirements and limitations of what you can do with your property. The goal of the CC&Rs is to protect, preserve, and enhance property values in the community.

### **Bylaws—**

The bylaws, on the other hand, govern how the HOA operates. They describe how to run the HOA as a business, including board and general meetings of the membership, closed meetings, membership, voting, general finances, SAPOA common property, and communications. Like other corporations, the HOA is governed by a board of directors who are elected by the members and a set of rules called "bylaws." SAPOA Bylaws were adopted 10/27/1980 and 2/27/93; and amended 7/17/93, 7/9/94, 1/3/98 and 12/5/2008. The last revision was 12/3/2014.

### **Hierarchy—**

So how do they all work together? Although these are separate documents, they are meant to work in conjunction with, and compliment each other.

The laws of the land take precedence over all other HOA documents. State laws come before local laws, while federal laws outweigh everything else. Whether you're drafting your governing documents or deciding which one to follow, it's important to always check the law first. This way, you're not acting against the laws of the land.

Next up on the HOA documents hierarchy is the map or plat that your association recorded with the county office. It's simply the recorded plan of your entire subdivision or community. This document establishes maintenance responsibility and property location. It also shows the exact dimensions of each unit, easements, and setback requirements.

The Declaration of Covenants, Conditions, and Restrictions (CC&Rs) take the third spot on the HOA documents hierarchy. This document details the rights of homeowners and the responsibilities of the HOA board members. They are known as the rules of the community. It guides homeowners on what they can and can't do, particularly when it comes to property use and other aspects of HOA living.

Coming in fourth are the Articles of Incorporation, which supersede the HOA bylaws and the operating rules. However, they don't take seniority over the state laws or the CC&Rs. So, if something in your Articles of Incorporation comes into conflict with a provision in your CC&Rs, the latter takes precedence.

The HOA bylaws consist of important information related to how the association is run. Like a business, a board of directors oversees the workings of an HOA. The bylaws simply state the particulars of how to operate the HOA, such as how often to conduct meetings, the process of holding meetings, and voting rights. This document also includes how many board members there should be as well as the functions of each of those board members.

Finally, we have Rules and Regulations. Whereas the CC&Rs and bylaws determine the procedures and responsibilities of the HOA board, the rules and regulations focus on the day-to-day aspect of operations. This can include rules regarding clubhouse use, pets, and even architectural or landscaping specifications. These rules can change from time to time, though the board must ensure that new rules or amendments don't come into conflict with other governing documents.

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## **Proposed Bylaws—**

Today we'll focus on 4 and save the others for future workshops.

### **Architectural rep.**

Problem: A member of the SAPOA board of directors has acted as the architectural rep for plats having no representative. Except for the common areas, the responsibility of approving house/building plans lies with the individual Plat Architectural Committee, not with the SAPOA board. According to Section 9.3, Elected Plat Architectural Representatives shall coordinate, individually, with the Board of Directors. Plat 3 is the only Plat that has an established Architectural Committee at this time, and is the only plat with the authority to approve plans.

Proposed language: We sought to correct that by adding language in a new Section 8.4 that matched language in the covenants and also gave the board the authority to appoint members to a committee if the plat had not done so. Proposed Section 8.4: The Architectural Committees, for each Plat, shall have three members, one member selected by the Board, one elected by the Plat, and one selected by the homeowner whose house plans are under review. Should Plat and/or homeowner fail to elect or select a member, then the Board shall appoint the missing members from the affected Plat who shall serve until such time as the affected plat or homeowner select replacement members. Section 8.3 had the same language as Section 9.3 of the existing Bylaws.

### **Use of proxies.**

Problem: The existing Bylaws have inconsistencies, ambiguities, and gaps throughout. One is the use of proxies to vote. Section 2.2 states "Under no circumstances will proxy votes be allowed." However, Section 7.2 and 7.2.1 that were adopted as part of the 2014 Bylaws revisions, outline how to vote by proxy. As it stands now, we will not be able to vote by proxy because of the inconsistency in the 2014 Bylaws. This inconsistency may have been corrected had the proposed 2014 Bylaws had legal review before being presented to the membership for a vote.

Proposed language: We attempted to clarify the use of proxies in Section 2.2.5 with new language stating member voting will only occur by mail-in ballot.

### **Reserve studies.**

Problem: In January 2012, RCW 64.38 was changed to require HOAs to conduct professional reserve studies of all common properties to ensure the financial viability. The studies must be done by a professional firm, every three years. The cost of such studies and any reserve funds established must be part of the annual budget.

Proposed language: Even though the RCW was adopted in January 2012, last year was the first year the studies were performed and reserve funds set up accordingly. The proposed budget included these studies and reserve funding moving forward to comply with the RCW.

**Dues Assessment.**

Problem: An inconsistency came to light during a variance voting process in one of our plats and also pointed out in our reserve studies that prompted a change in dues assessment. In the variance process, members in the plat believed members should get one vote for each lot/property owned. In the Bylaws, only members in good standing, which includes all dues paid, may vote. Further, Section 2.2 Voting Rights stated that, “Each member is entitled to one vote for each lot or aggregate of lots owned.” There is no language regarding assessment of annual dues; therefore each lot owes annual dues, but we were not assessing or collecting dues on 43 lots. Section 2.1 states that “All Sunshine Acres property owners of developed and undeveloped property shall be members of SAPOA” and 2.1.1 says that SAPOA levies an annual membership fee on all property owners. The board has no authority to waive the one lot, one due assessment without a change in the Bylaws. Further, we cannot interpret the CCRs one way and the Bylaws in another. It cannot be both ways.

Proposed language: We added language in the proposed Bylaws to clarify voting rights. Section 2.2.1. Voting Rights: Each owned lot is entitled to one vote, regardless of the number of owners of a lot. When more than one person holds a financial interest in any lot, all such persons are eligible for membership. The vote for a lot owned by multiple people shall be exercised as the owners determine, but in no event shall more than one vote be cast with respect to any lot. **Voting will be by mail**, only, as outlined herein. Members with delinquent dues, of any kind, may not vote or be heard at a general, special, or board meeting unless all dues and penalties have been paid in full Ten (10) days in advance of the scheduled meeting.

Proposed budget: As pointed out in our reserve study, we also proposed a change in dues assessment so that all 464 properties in SAPOA would be assessed dues, rather than the past practice of only assessing dues to property owners [which excluded owners that own multiple lots] to provide clarity that each member is entitled to one vote for each lot where dues have been assessed and paid.

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