



**SEDONA WEST**  
**PROPERTY OWNERS ASSN., INC.**  
POST OFFICE BOX 3143 · WEST SEDONA, ARIZONA 86340

**NEWS FROM "THE WEST"**

**Dear Sedona West Property Owners,**

As many of you are aware, the Sedona West Property Owners Association ("SWPOA") has experienced significant turmoil, conflict and emotional resignations over how to best serve Sedona West and its property owners. Per Article II of the Bylaws:

"The purpose of this organization shall be to maintain the quality of environment of the Sedona West Subdivisions and to protect and maintain the covenants and restrictions applicable to these subdivisions."

For the past half century, and with the best of intentions for the common good, many Sedona West property owners have worked together to create SWPOA. SWPOA has focused on providing services to all of the Sedona West property owners in order to both improve and protect our extraordinary quality of life and right to the quiet enjoyment of our homes. Over the years, our collective voice has been heard at city council meetings on issues such as ball field lights, amplified outdoor events, cell tower installations, park, school and tourism activities – all things that could have adversely compromised our serene neighborhood environment. The SWPOA Architectural Control Committee has ensured that hundreds of new homes enhance our streetscapes, and our Public Relations representatives have respectfully resolved a wide variety of violations and disputes with only three minor court actions in the late 1980's. The Association's bi-annual dumpster program has been economical, convenient, and effective in our collective effort to keep Sedona West beautiful.

All was quite calm in the neighborhood and at board meetings until Arizona SB1350 was passed in 2016, which allowed short term rentals to operate in residential areas without any specific restrictions. This regulation, however, does not apply to home owners associations or otherwise negate valid CC&R's.

Many of you have probably heard rumors and misinformation regarding the activities and existence of SWPOA, as well as the validity of Sedona West's 2007 Restated Declaration of Covenants, Conditions and Restrictions. We sincerely apologize for the lack of complete answers, but the board has been diligently reacting to a constant stream of legal challenges that require careful consideration and confidentiality. This letter is intended to inform all Sedona West property owners of recent events, your property rights, and any ownership responsibilities going forward.

## SUMMARY OF FACTS

### 1. Timeline: Original CC&R's to Restated CC&R's

On January 31, 1962, Sedona West's original Declaration of Covenants, Conditions, and Restrictions was born (the "original CC&R's"). The original CC&R's were amended and/or restated throughout the years. In 1971, Sedona West approved the formation of SWPOA, at which time the SWPOA board of directors (the "board") adopted its Articles of Incorporation and original By-laws, which were amended throughout the years.

In 1972 SWPOA received its Certificate of Incorporation, which was in effect for 25 years, and in 1997 renewed in perpetuity. In 1994, over 51% of the recorded property owners approved the Restated CC&R's which went into effect in 1995. In 2007 the Restated CC&R's (the Declaration) were amended and re-recorded.

### 2. The Big Question: Are the 2007 Restated CC&R's valid?

**Short answer: Yes, the 2007 Restated Covenants, Conditions and Restrictions ("2007 Restated CC&Rs") are valid.**

Throughout the years, some homeowners have questioned the validity of the 2007 Restated CC&Rs. In 2015, SWPOA hired Beth McFarland of McFarland & Bostock, PLLC, who ultimately determined that since the 2007 Restated CC&R's were merely a "restatement" of the original CC&R's, and not completely new CC&R's, the board only needed a 51% affirmative vote of the property owners. The board received a 66% affirmative vote and, therefore, Ms. McFarland believes that the 2007 Restated CC&R's are valid. In 2017, SWPOA also hired HOA specialist Jason Miller of Carpenter Hazelwood, P.C., for guidance regarding SWPOA's right to enforce the 2007 Restated CC&R's. Mr. Miller also determined that the Restated CC&R's were valid and, in his opinion, SWPOA likely still had the right to enforce them so long as SWPOA acted as a designated agent of one or more property owners in Sedona West.

Further, in 2019, prior to taking enforcement actions, SWPOA hired another well-known HOA specialist, Beth Mulcahy of Mulcahy Law Firm, P.C., who agreed with the previous two legal opinions and felt that "with no doubt" the 2007 CC&R's are valid, enforceable, and defensible. There are no legal opinions that guarantee a court would agree, but there are arguments that would support this position.

Therefore, the 2007 Restated CC&R's are binding to all Sedona West property owners alike, and any property owner may enforce the CC&R's against another property owner.

### 3. Another Big Question: Is the SWPOA a mandatory or voluntary association?

In 1997, Association members approved an amendment to the Bylaws that made membership mandatory. Section 1 of the By-laws state:

"In order to further the purpose and objectives of the Association, any person or persons owning one or more platted lots in Sedona West or Sedona West #2 Subdivisions **shall automatically be members of the Association**. All such persons shall collectively be entitled to only one single vote, per lot owned, regardless of the total number of owners, in all matters which may come before the members."

In January 2017, SWPOA hired Jason Miller, Carpenter Hazelwood, P.C. to provide an opinion regarding the defensibility of mandatory membership if it were to be challenged. Miller stated that in order to impose mandatory memberships on homeowners of a property located within a community development, the requirement must appear in a deed restriction embodied within a recorded instrument. Since SWPOA had some concerns in this regard, SWPOA has decided that it will become a voluntary association to alleviate any concerns of its members.

#### 4. SWPOA is now a voluntary association.

In March of 2019, the board held an annual meeting where it announced to the property owners in attendance that SWPOA will now operate as a **voluntary membership** association going forward. As directed by its attorney, Ms. Mulcahy, the board has amended its By-laws by removing the mandatory membership language in Article III, titled "Membership," and replacing it with voluntary membership language instead. The property owners that decide to join SWPOA's voluntary association will be required to vote to approve the proposed By-law changes pursuant to the procedures outlined in ARS §10-11003.

In order for you all to make an educated decision as to whether or not to join the new voluntary association, we have listed some pros and cons of joining.

The cons is that the property owners who do not wish to be a part of the voluntary association do not pay annual dues, which pays for association fees, insurance, and expenses—including the bi-annual dumpster. Thus, a higher association fee must be employed. Further, SWPOA cannot levy fines or liens against property owners that do not wish to be a part of the voluntary association.

The pros to being a voluntary association include continuing architectural review, having a voice in community affairs, and utilizing SWPOA against CC&R violators.

#### 5. SB1350 – Short Term Rentals

A major issue for residents of Sedona West and SWPOA has been short term rentals of property in this community. On October 15, 2016, SWPOA's then President Kit Hinsley and the board sent out a letter to all homeowners outlining SB1350 and how the new legislation would affect the property owners. The letter explained how short term rentals could not be banned by local governments in Arizona, however, neighborhood associations could still prohibit short term rentals. The letter reiterated that short term rentals are **not allowed** in Sedona West per Section B(5) of the Declaration which states:

"An entire lot, together with any improvements, may be rented for a minimum of thirty (30) days by the owner for single-family occupancy, **but not otherwise**, any property owner or any agency acting on behalf of a property owner, shall inform a person or persons renting said property of these restrictions and ascertain that they are complied with."

Some property owners were, and continue to be, unhappy with this restriction. However, SWPOA has received numerous complaints about short term rental (STR) violations. STR's became a topic of discussion at every board meeting through 2017 without any formal action being taken. In February 2018, an emotional disagreement between board members regarding the SWPOA's responsibility as a CC&R enforcement agent caused numerous resignations and a severe operational disruption. In response to additional complaints, in May 2018, the board hired attorney Miller to send violation of restriction notices to property owners

operating STR's. As a result of those notices, and continued issues raised by residents in this Community, the Board has taken to further investigate these issues in an attempt to resolve the various owners concerns. This letter is, at least in part, an effort toward that end.

## CONCLUSION

### **CC&R COMPLIANCE IS MANDATORY BUT MEMBERSHIP IN THE ASSOCIATION IS VOLUNTARY.**

In the past, our \$30 annual membership dues have covered the cost of the dumpster (approximately \$6,000 per year), corporate fees, insurance, and operational expenses while volunteer board members worked to resolve violations—such as home businesses, inappropriate signs, vehicle storage, street parking, RV's, trailers, architectural issues, and unkempt landscaping, among other things. While legal action is never the board's intent, except as a last resort, enforcing the CC&R violations is costly. Individually, this would be difficult for most property owners. However, depending on the size of our voluntary membership, the board may help the property owners in the voluntary association go after any property owners in Sedona West that choose to violate the CC&R's in the future. SWPOA estimates that an additional \$100 per lot would be sufficient to cover such expenses.

We are hopeful that together, as a voluntary association, we can continue to respectfully protect our unique, beautiful and serene residential community. Please help. **JOIN NOW!**

Respectfully,

SWPOA Board of Directors

Please direct any questions to the Vice President at ([vice.president@sedonawestpoa.org](mailto:vice.president@sedonawestpoa.org)).