

## MEMORANDUM

To: San Francisco Apartment Association Members  
From: Janan New, Executive Director  
Date: October 25, 2022  
Cc: SFAA Board of Directors

The purpose of this memorandum is to explain why your Board of Directors believes it is time to update and amend the SFAA's governing documents, the Articles of Incorporation and the Bylaws at the fall Annual Meeting of the members.

### Background

The SFAA was formed in 1957 when its Articles of Incorporation (which have never been updated except for a corporate name change in 1988) were prepared and filed with the California Secretary of State under a nonprofit corporation law that no longer exists. As of January 1, 1980, an entirely new statutory scheme, the California Nonprofit Corporation Law, replaced the earlier nonprofit corporation law. The new statute recognized three kinds of nonprofit corporations in California: public benefit (charitable), mutual benefit (business leagues and trade associations), and religious (churches), each with their own separate body of law.

Additionally, although SFAA was determined by the IRS early on to be tax exempt as a business league or trade association under Section 501(c)(6) of the Internal Revenue Code, neither the articles nor the bylaws mention that statute. Section 501(c)(6) imposes certain critical requirements on trade associations that are different from charities, religious organizations, and business corporations. When the new California Nonprofit Corporation Law was enacted in 1980, the California Secretary of State determined that SFAA should be treated as a mutual benefit nonprofit corporation, although no modifications were ever made to the 1957 Articles of Incorporation.

### Areas for Improvement

Some provisions of the old 1957 Articles of Incorporation are ambiguous or are no longer applicable. For example,

- It requires adherence to a corporate law that is no longer in effect, and omits the currently applicable body of state law;
- The stated purpose of SFAA includes "aid and assistance to owners and *lessees* of rental dwelling properties," (which is contrary to our current focus on the interests of owners and *lessors*);
- The number of directors was between 5-30 (which is different from the upper limit of 15 in the current bylaws);
- In the event of a corporate dissolution, the old articles required distribution of its assets by *an order of the San Francisco Superior Court* (rather than by the Board of Directors);
- Anyone who either "owns *or leases*" an apartment house or multiple dwelling unit is eligible for membership (even though our focus is on the interests of owners and landlords or lessors);
- A members' qualifying property was not required to be in San Francisco, and the SFAA's scope of operations was not limited to San Francisco (even though SFAA is dedicated to the business interests of San Francisco rental property owners only); and

- Although the 1988 amendment changed the name to "San Francisco Apartment Association," nothing changed the rest of the articles to limit its geographic scope to San Francisco.

Additionally, our bylaws have undergone a patchwork of amendments and proposed modifications over the years, but they do not refer to the legal basis for the organization's tax exemption, IRC 501(c)(6), a tax exemption specifically for business leagues and trade associations. Further, the stated purposes in the current bylaws do not align with the original articles of incorporation. Moreover, current law on the use of electronic transmissions (email, video screen conferencing and meetings) has changed and is not reflected in the bylaws. Finally, recently California enacted special statutes governing conducting board meetings and activities during an "emergency" such as a natural disaster or a pandemic.

### Our Recommendations

The Board concludes that SFAA's governing documents should more closely align with the members' expectations and practices and are consistent with current California law.

The attached Restated and Amended Articles of Incorporation go hand-in-hand with the Restated and Amended Bylaws. The proposed new Bylaws incorporate custom provisions from our most recent bylaws that are consistent with the Nonprofit Mutual Benefit Corporation Law. They also contain new sections governing our purpose, electronic communications and meetings, and emergencies.

Your SFAA Board of Directors has approved these draft Restated and Amended documents. To be effective, they must now be accepted by the voting members of SFAA. A motion will be made at the upcoming Annual Meeting for the members to approve and adopt the Restated and Amended Articles and Restated and Amended Bylaws.

Once the necessary approvals are achieved by a majority of a quorum of voting members present at the Annual Meeting in person or by proxy (a quorum being 25% of the voting members), the Restated and Amended Articles of Incorporation will be signed and filed with the Secretary of State. The approved Restated and Amended Bylaws will be certified by the corporate secretary, posted to SFAA's web site and added to our corporate records. Copies of both documents will be submitted to the IRS when the next informational return is filed.

The Board and I feel that adopting the new documents is an important step to align our governing documents with current law and best practices. We hope you agree and will support adoption of them by voting "yes" at the annual meeting.

Please feel free to direct any questions you may have to me or a member of the Board of Directors.

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Janan New, Executive Director