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SAMPLE LANGUAGE FOR SB 89 REVISIONS TO ASSOCIATION REQUIRED AND RECOMMENDED POLICIES & PROCEDURES

The following generic language is provided to illustrate how an association's required and recommended SB 100 policies and procedures may be revised to comply with SB 89. Please keep in mind that this sample language does not take in account any requirements contained in your association's governing documents or the variations that exist between each association's policies and procedures.

For those associations for whom we drafted the required SB 100 policies and who prefer us to make the necessary revisions to their required SB 100 policies, we are happy to do so for a flat fee of \$195.00.

For those associations for whom we did not draft the required SB100 policies and who prefer us to make the necessary revisions to their required SB 100 policies, we can do so at our regular hourly rates.

For those associations who prefer us to make the necessary revisions to their recommended SB100 policies, regardless of whether our office drafted the policies or not, we can do so at our regular hourly rates.

REQUIRED POLICIES REQUIRING REVISIONS:

INVESTMENT OF RESERVE POLICY

- Add the following paragraph to the policy:

The officers and members of the Board of Directors shall make investment decisions in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the Director or officer reasonably believes to be in the best interests of the Association in accordance with the Colorado Revised Nonprofit Corporation Act.

INSPECTION AND COPYING OF ASSOCIATION RECORDS POLICY

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- Add language to clarify the inspection and copying of the Association's records shall be at the Owner's expense, **and may be collected by the Association in advance.**
- Add language stating the inspection and/or copying of Association records should be during regular business hours at the office of the Association or its managing agent **or during the next regularly scheduled Owner or Board meeting occurring within 30 days of the Owner's request, at the discretion of the Board.**
- Add the following paragraph to the policy:

The Association shall make the requested records available within five business days of the Owner's request or at the next regularly scheduled Owner or Board meeting if the next regularly scheduled Owner or Board meeting is scheduled within thirty days of the Owner's request, in the sole discretion of the Board. The Board shall advise the Owner of the time and place of such inspection in writing within five business days of the Owner's request.

- Modify the policy to clarify the proper purpose for inspection of memberships as follows:

Association records, **including membership lists**, shall not be used by any Owner for:

- (i) Any purpose unrelated to an Owner's interest as an Owner;
- (ii) The purpose of soliciting money or property unless such money or property will be used solely to solicit the votes of the Owners in an election to be held by the Association;
- (iii) Any commercial purpose;
- (iv) For the purpose of giving, selling, or distributing such Association records to any person; or
- (v) Any improper purpose as determined in the sole discretion of the Board.

CONFLICT OF INTEREST POLICY

- Delete any existing definition of conflict of interest and replace with the following definitions:

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- (i) **“Conflicting interest transaction” means a contract, transaction, or other financial relationship between the Association and a Director, or between the Association and a party related to a Director, or between the Association and an entity in which a Director of the Association is a director or officer or has a financial interest.**
- (ii) **“Director” means a member of the Association’s Board of Directors.**
- (iii) **“Party related to a Director” means a spouse, a descendant, an ancestor, a sibling, the spouse or descendant of a sibling, an estate or trust in which the Director or a party related to a Director has a beneficial interest, or an entity in which a party related to a Director is a director or officer or has a financial interest.**

- Add the following paragraph to the policy:

No loans shall be made by the Association to its Directors or officers. Any Director or officer who assents to or participates in the making of any such loan shall be liable to the Association for the amount of the loan until it is repaid.

- If your association desires to allow the Director with the conflict of interest to vote on the matter, revise the relevant paragraph to read:

Any conflicting interest transaction on the part of any Director or party related to a Director shall be verbally disclosed to the other Directors in open session at the first open meeting of the Board of Directors at which the interested Director is present prior to any discussion or vote on the matter. After disclosure, the Director **may** participate in the discussion and may vote on the matter. The minutes of the meeting shall reflect the disclosure made, the composition of the quorum and record who voted for and against.

- Delete any provision which states that any conflicting interest contract or transaction entered into by the Association without proper disclosure or in violation of the Conflicts of Interest Policy is void and replace with the following:

No conflicting interest transaction shall be voidable by an Owner or on behalf of the Association if:

- (i) **The facts about the conflicting interest transaction are disclosed to the Board, and a majority of the**

disinterested Directors, even if less than a quorum, in good faith approves the conflicting interest transaction;

- (ii) The facts about the conflicting interest transaction are disclosed or the Owners entitled to vote on the matter, and the conflicting interest transaction is authorized in good faith by a vote of the Owners entitled to vote on the matter; or*
- (ii) The conflicting interest transaction is fair to the Association.*

CONDUCT OF MEETINGS POLICY

- If the Association is not required by its Bylaws to use secret ballots or if the Association does not desire to use secret ballots for the election of Directors, delete the section in your policy that relates to the use of secret ballots for the election of Directors and replace with the following:
 - (a) Contested elections of Board members, defined as elections in which there are more candidates than positions to be filled, shall be conducted by secret ballot. Each Owner entitled to vote pursuant to the Bylaws shall receive a ballot. The ballot shall contain no identifying information concerning the ballot holder. In the event an Owner holds a proxy for another Owner, upon presentation of such proxy to the Secretary of the Association or the Secretary's designee, the Owner shall receive a secret ballot to cast the vote of the Owner who provided the proxy. The proxy shall be kept and retained by the Association.*
 - (b) Uncontested elections of Board members, defined as elections in which the number of candidates is equal to or less than the positions to be filled, and all other votes taken at a meeting of the Owners shall be taken in such method as determined by the Board of Directors including acclamation, by hand, by voice or by ballot. Notwithstanding the above, uncontested elections of Board members or other votes on matters affecting the community shall be by secret ballot at the discretion of the Board or upon the request of 20% of the Owners who are present at the meeting or represented by proxy.*

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- If your association's governing documents provide for the election of Directors by delegates on behalf of Owners, subsection (a) above need not be included in the policy.
- Replace the section in your policy related to the counting of ballots by a neutral third party or an Owner or Owners who are not candidates with the following:

Written ballots shall be counted by a neutral third party, excluding the Association's managing agent or legal counsel, or a committee of volunteers who are not Board members, and in the case of a contested election, are not candidates. The committee shall be selected or appointed at an open meeting, in a fair manner, by the Chair of the Board or another person presiding during that portion of the meeting.

- In relation to allowing Owners to speak prior to the Board voting on any matter, revise the relevant section as follows:

After a motion and second has been made on any matter to be discussed, ***at a time determined by the Board***, but prior to a vote by the Directors, Owners, ***or their designated representatives***, present at such time shall be afforded an opportunity to speak on the motion as follows . . .

RECOMMENDED POLICIES REQUIRING REVISIONS:

POLICY FOR CLAIMS SUBMISSIONS TO THE ASSOCIATION'S INSURANCE CARRIER

- Remove the section related to claims made on behalf of Owners and replace with the following:

If an occurrence is made known to an Owner that results in damages or injury to an Owner or an Owner's Unit which may come within the Association's coverage as required in Declaration or under Colorado law, the following procedures should be followed by the Owner:

- a. The Owner(s) shall first promptly notify his or her personal insurance carrier of the damage.
- b. In the event the Owner determines it is in the Owner's best interests to submit a claim under the Owner's insurance policies, the Owner shall follow the procedures set out in those insurance policies describing the insured's duties in the event of an occurrence, claim, or suit.
- c. The Association may require the Owner to provide copies of the claim the Owner may make to his/her own carrier, as well as copies of the adjustment or determination of that carrier as a condition before the Owner makes any claim on any of the Association's policies.
- d. In the event ***the subject matter of the claim may fall within the Association's insurance responsibilities*** under the Declaration or Colorado law, the Owner shall promptly notify the Association of the damage by providing written notice to the Board [or Managing Agent] setting forth the following:
 - i. Owner's home address and phone number and Unit address, if different;
 - ii. The time, place and circumstances of the event;
 - iii. Identification of damaged property; and
 - iv. The names and addresses of the injured and witnesses, if applicable.

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- e. The Board shall then make a determination as to whether the occurrence or claim consists of damages for which the Owner **or the** Association is responsible for insuring under the Declaration. ***The Association shall so notify the Owner in writing of its determination within 15 days of written notification of the damage to the Association.***
- f. ***If the Board determines, in its sole discretion, that the subject matter of the claim is within the Association's insurance obligations, the Board shall submit a claim to the Association's insurance carrier on behalf of the Owner in accordance with the requirements of the insurance policy. In that event, an Owner may not submit a claim to the Association's insurance carrier.***

FLAG POLICY

- Anywhere the policy refers to the rights or obligations of an Owner to install an American or service flag, revise to state an "Owner or occupant".

POLITICAL SIGN POLICY

- Anywhere the policy refers to the rights or obligations of an Owner to display political signs, revise to state "Owner or occupant".
- Revise the provision in your policy related to the number and size of political signs allowed to read:

An Owner may display one Political Sign per political office or ballot issue *that is contested* in the Election. ***A Political Sign may be no larger than 36" x 48" or the maximum allowed by any applicable city, town, or county ordinance that regulates the size of political signs on residential property, whichever is smaller.***

EMERGENCY VEHICLE POLICY

- Anywhere the policy refers to "Owner", replace with "Owner or occupant".
- Revise the definition of an Emergency Vehicle to remove any reference to "other emergency services" as follows:

A motor vehicle that meets all of the following criteria:

- a. The vehicle is required by an Owner's or occupant's employer to be parked at the Owner's or occupant's residence as a condition of the Owner's or occupant's employment; and
 - b. The vehicle has a gross weight of ten thousand pounds or less; and
 - c. The vehicle is used by an Owner or occupant who is a member of a volunteer fire department or employed by **a primary provider of emergency fire fighting, law enforcement, ambulance, or emergency medical services**; and
 - d. The vehicle bears an official emblem or other visible designation of the Emergency Service Provider.
- Revise the provision that relates to the obstruction of streets and driveways by Emergency Vehicles to include obstruction of guest parking spaces as follows:

While parked, the Emergency Vehicle shall not obstruct emergency access or interfere with the reasonable needs of other Owners or occupants to use the streets, driveways, **and guest parking spaces** within the community, as determined by the Board of Directors.

POLICY REGARDING COOPERATING WITH SELLERS IN DISCLOSURE OF INFORMATION

- Delete provision that states a seller is required to deliver to a purchaser certain documents, as previously required by Colorado law.
- Revise the provision related to the Association's obligation in relation to cooperating with sellers in the disclosure of information to buyers to read:

When requested by a seller, the Association shall provide the documents the seller is required to disclose to the buyer that are within the Association's control. Therefore, the Association will make the documents listed above available as a "Seller's Disclosure Package." If authorized by the seller, the Association shall provide the Seller's Disclosure Package directly to the buyer upon payment to the Association of the usual fee charged by the Association to a seller for the Seller's Disclosure Package.