

MEMORANDUM

To: Utah Residence Lien Recovery Fund Advisory Board
From: Lien Recovery Fund Staff
Date: January 2, 2014
Subject: Information Packet for Upcoming Board Meeting

Enclosed please find the application reports and other documents for the upcoming Board meeting. That meeting is scheduled to begin at **8:15 am on Wednesday, January 8, 2014** in the **North Conference Room**, on the first floor of the Heber M. Wells Building - **160 East 300 South, Salt Lake City, Utah**. We anticipate the meeting will last until 9:30 a.m.

We appreciate your service on the Board - see you at the meeting.

Agenda

Utah Residence Lien Recovery Fund Advisory Board

January 8, 2014 8:15 am
North Conference Room, First Floor
Heber M. Wells Building
160 E. 300 S. Salt Lake City, Utah

This agenda is subject to change up to 24 hours prior to the meeting.

ADMINISTRATIVE BUSINESS

1. Review and approve minutes from previous board meeting
2. Travel reimbursement

HOMEOWNER CERTIFICATE OF COMPLIANCE APPROVED PRIOR TO BOARD MEETING

- a) Alys Geertsen v Picasso Custom Homes LLC

HOMEOWNER AFFIDAVIT OF COMPLIANCE APPROVED PRIOR TO BOARD MEETING

- a) Ron & Ruth Hansen v Ashley Drywall Inc

CLAIMS FOR REVIEW

1. Recommended for Approval and No Explanation Required
 - a) LRF-2013-1031-01 ProBuild Company LLC v v SMA Enterprises Inc dba Elite Builder Group (Anderson) – Dane
 - b) LRF-2013-1031-02 ProBuild Company LLC v SMA Enterprises Inc dba Elite Builder Group (Smith) – Dane

BOARD REVIEW AND TRAINING

1. Review the administrative expenditures made by the Division
2. Annual Open Public Meetings Act training

NEXT SCHEDULED MEETING:

February 12, 2014

Note: In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting should notify, Dave Taylor, ADA Coordinator, at least three working days prior to the meeting. Division of Occupational & Professional Licensing, 160 East 300 South, Salt Lake City, Utah 84115, 801-530-6628 or toll-free in Utah only 866-275-3675

MINUTES

**UTAH
RESIDENCE LIEN RECOVERY FUND
ADVISORY BOARD
MEETING**

**December 11, 2013
North Conference Room– 8:15 a.m.
Heber Wells Building
Salt Lake City, UT 84111**

CONVENED: 8:18

ADJOURNED : 8:30

Board Members Present:

Bradley Stevens, Chair
Jeff Richards
Douglas Darrington
Jeff Park
Dave McArthur

Board Members Absent:

Patty Fullmer, Vice Chair
Calvin Bowen

DOPL Staff Present:

Division Director, Mark Steinagel
Program Manager, Dane Ishihara
Fund Secretary, Tracy Naff

Guests:

James & Carolyn Rideout

TOPICS FOR DISCUSSION

DECISIONS AND RECOMMENDATIONS

ADMINISTRATIVE BUSINESS:

Review and approve minutes from the November 13, 2013 Board meeting.

Mr Richards made a motion to approve the November 13, 2013 Board minutes. Mr McArthur seconded the motion. Motion passed by unanimous vote.

Homeowner applications for Review

1. Recommended for Denial & Explanation Required
 - a) ASHRID001 James & Carolyn Rideout v Ashley Drywall Inc - Mr Ishihara gave a brief explanation of the application. Mrs Rideout provided new evidence of acceptance to the written contract. Mr Darrington made a motion to approve the application. Mr Richards seconded the motion. Motion passed by unanimous vote.

Claims for Review

1. Recommended for Approval & No Explanation Required

- a) LRF-2013-1009-01 BMC West Corporation dba BMC Select v SMA Enterprises Inc dba Elite Builder Group (Sylva) – Mr Richards made a motion to approve the application. Mr Park seconded the motion. Motion passed by unanimous vote.

Recommended for Denial & Explanation Required

- a) LRF-2012-1019-01 Allred's Inc v Jake's Heating & Air Conditioning Inc (Smith) – Application was tabled.
- b) LRF-2012-1019-03 Allred's Inc v Jake's Heating & Air Conditioning Inc (Mortimer) - Application was tabled.
- c) LRF-2012-1019-04 Allred's Inc v Jake's Heating & Air Conditioning Inc (Baldwin) - Application was tabled.
- d) LRF-2012-1019-05 Allred's Inc v Jake's Heating & Air Conditioning Inc (Habitat for Humanity) - Application was tabled.
- e) LRF-2012-1019-06 Allred's Inc v Jake's Heating & Air Conditioning Inc (Hall) - Application was tabled.
- f) LRF-2012-1019-07 Allred's Inc v Jake's Heating & Air Conditioning Inc (Schumann) - Application was tabled.
- g) LRF-2012-1019-09 Allred's Inc v Jake's Heating & Air Conditioning Inc (Anderson) – Application was tabled.

ADJOURN:

Meeting adjourned 8:30

Note: These minutes are not intended to be a verbatim transcript but are intended to record the significant features of the business conducted in this meeting. Discussed items are not necessarily shown in the chronological order they occurred.

Date Approved

(ss) Brad Stevens
Chairperson, Residence Lien Recovery Fund Advisory Board

Date Approved

(ss) Dane Ishihara
Program Coordinator, Division of Occupational & Professional Licensing

Applications for Certificate of Compliance Disposition Report

December 31, 2013

Processing Status	Active Pending Action By	Disposition	Number of Apps	
Active	Homeowner		3	0.2%
Active	LRF		48	2.6%
Closed		Approved	1133	62.2%
Closed		Denied	554	30.4%
Closed		Withdrawn	74	4.1%
Prolonged			10	0.5%
Total Applications Filed			1,822	

Claim Disposition Report

December 31, 2013

Processing Status	Active Pending Action By	Disposition	Number of Claims	
Active	Claimant		11	0.4%
Active	LRF		1	0.0%
Closed		Denied	562	20.0%
Closed		Dismissed	242	8.6%
Closed		Paid	1,977	70.5%
Prolonged			12	0.4%
Total Claims Filed			2,805	

Summary of Payments

Sorted by Claimant Type

December 31, 2013

Claimant Type	Number of Paid Claims	Total Payments	
Contractor	826	4,682,528.21	37.9%
Laborer	10	17,070.17	0.1%
Other	1	3,001.75	0.0%
Supplier	1140	7,660,157.35	62.0%
Total Paymen	1977	\$12,362,757.49	100.0%

Summary of Payments

Sorted by Nonpaying Party Type

December 31, 2013

Nonpaying Party Type	Number of Paid Claims	Total Payments	
Home Builder	1217	7,800,341.00	63.1%
Other	25	179,357.47	1.5%
Real Estate Developer	72	462,183.51	3.7%
Specialty Contractor	663	3,920,875.51	31.7%
Total Payments	1977	\$12,362,757.49	100.0%

APPLICATION FOR PAYMENT

RECOMMENDED FOR APPROVAL

- NO EXPLANATION REQUIRED-

Claim Report

Informal Claim

Claim Number LRF-2013-1031-01

December 19, 2013

Claim Examined by: Dane

Claimant: ProBuild Company LLC

LRF Registration #:

Registration Date:

Expiration Date:

Contractor License #: 7919125

Issue Date: 2/24/2011

Expiration Date: 11/30/2015

Claimant Classification: Contractor

Claimant's Attorney: Jason Robinson

Nonpaying Party: SMA Enterprises Inc dba Elite Builders Group

Contractor License # 7806577

NPP Classification: Home Builder

Original Contractor: SMA Enterprises Inc dba Elite Builders Group

Type: Licensed Contractor

Contractor License #: 7806577

License Issuance Date: 01/13/2011

License End Date: 11/30/2013

Homeowner(s) Bryan & Kari Anderson

Abstract and Recommendation

Division's recommended disposition: Approve Full Payment

Detailed Analysis and Findings of Facts

Date of Final Completion of Contract

7/12/2012

Evidence in support of date: C of O

Date Claimant file civil action or NPP filed bankruptcy: 8/16/2012

Evidence in support of date: Complaint

Number of days difference: 34

Did Claimant obtain judgment against NPP? Yes

Date Claimant obtained judgment or NPP filed for bankruptcy 11/1/2012

Evidence in support of date: Judgment

Is Claimant a qualified beneficiary? Yes

Did Homeowner enter into a written contract with Original Contractor for the performance of qualified services? Yes

Evidence of a written contract Certificate of Compliance

Was Original Contractor Licensed on contract date? Yes

Did Homeowner pay Original Contractor in full? Yes

Evidence of full payment: Certificate of Compliance

Does residence qualify as "owner-occupied"? Yes

Evidence of Owner Occupancy: Certificate of Compliance

Did Claimant provide qualified services? Yes

Evidence of qualified services: Invoice

Was NPP Licensed? Yes

Did NPP pay Claimant for qualified services? No

Evidence of nonpayment: Judgment

Did Claimant exhaust collection remedies? Yes

Payment Checklist

	<u>Claimed</u>	<u>Approved</u>	<u>Difference*</u>
Qualified Services: \$	5,907.04	\$ 5,907.04	\$ 0.00
Pre-judgment Atty Fees:	294.89	294.89	0.00
Pre-judgment Costs:	0.00	0.00	0.00
Post-judgment Atty Fees:	383.04	383.34	0.30
Post-judgment Costs:	15.93	15.93	0.00
Interest:	191.61	328.21	136.60
Totals \$	6,792.51	\$ 6,929.41	\$ 136.90

* Positive differences denote amounts approved in excess of amounts claimed; negative differences denote amounts denied.

Evidence of qualified services amount: Invoice

Evidence of pre-judgment attorney fee amount: Judgment

Attorney fees limit per Utah Code Ann. § 38-11-203(3)(f) \$886.06

Evidence of pre-judgment costs: Judgment

Evidence of post-judgment attorney fees: Attorney's Affidavit

**Schedule of Interest
All Payments Due in Same Calendar Year
LRF-2013-1031-01**

Terms of Sale: N30
Claim Filing Date: 10/31/2013
Payment Due Date: 4/12/2012
Interest Rate per UCA 38-11-203(3)(c) 3.250%
Daily Interest Rate 0.0089%

Total Interest Allowed per UCA 38-11-203(3)(c) \$ 328.21

<u>Event Date</u>	<u>Stop Interest?</u>	<u>Event Description</u>	<u>Changes to Qualified Service Balance</u>	<u>Qualified Service Balance</u>	<u>Number of Days Since Last Event</u>	<u>Interest Accrued Since Last Event</u>
4/15/2012	N	Payment due	\$ 5,907.04	5,907.04	0	\$ -
7/12/2012	N	Project completion date		5,907.04	88	46.29
8/16/2012	N	Claimant filed complaint against NPP		5,907.04	35	18.41
11/1/2012	N	Claimant obtained judgment against NPP		5,907.04	77	40.50
10/31/2013	N	Claimant filed application for payment		5,907.04	364	191.45
12/2/2013	Y	Application conditionally denied		5,907.04	32	16.83
12/1/2013	N	Claimant responded to conditional denial		5,907.04	9	-
1/8/2014	N	Division director authorizes payment		5,907.04	28	14.73

Allocation Schedule
LRF-2013-1031-01
December 12, 2013

Gross Qualified Services for all Related Properties	138,445.28	(1)
Gross Qualified Services for Claim	5,907.04	(2)
Allocation Ratio for Claim Items	0.0427	(3)=(2)÷(1)
Pre-Judgment Items (total items if no judgment)		
Attorney Fees	6,906.00	(4)
Costs	-	(5)
Payments Received (if any)	-	(6)
Post-Judgment Items		
Attorney Fees	8,977.50	(7)
Costs	373.00	(8)
Allocation of Items		
Pre-Judgment Attorney Fees	294.89	(9)=(4)×(3)
Pre-Judgment Costs	-	(10)=(5)×(3)
Post-Judgment Attorney Fees	383.34	(11)=(7)×(3)
Post-Judgment Costs	15.93	(12)=(8)×(3)
Payments Received	-	(12)=(6)×(3)

Claim Report

Informal Claim

Claim Number LRF-2013-1031-02

December 23, 2013

Claim Examined by: Dane

Claimant: ProBuild Company LLC

LRF Registration #:

Registration Date:

Expiration Date:

Contractor License #: 7919125

Issue Date: 2/24/2011

Expiration Date: 11/30/2015

Claimant Classification: Contractor

Claimant's Attorney: Jason Robinson

Nonpaying Party: SMA Enterprises Inc dba Elite Builders Group

Contractor License # 7806577

NPP Classification: Specialty Contractor

Original Contractor: SMA Enterprises Inc dba Elite Builders Group

Type: Licensed Contractor

Contractor License #: 7806577

License Issuance Date: 01/13/2011

License End Date: 11/30/2013

Homeowner(s) Brett and Melanie Smith

Abstract and Recommendation

Division's recommended disposition: Approve Full Payment

Detailed Analysis and Findings of Facts

Date of Final Completion of Contract

1/27/2012

Evidence in support of date: C of O

Date Claimant file civil action or NPP filed bankruptcy: 8/16/2012

Evidence in support of date: Complaint

Number of days difference: 201

Did Claimant obtain judgment against NPP? Yes

Date Claimant obtained judgment or NPP filed for bankruptcy 11/1/2012

Evidence in support of date: Judgment

Is Claimant a qualified beneficiary? Yes

Did Homeowner enter into a written contract with Original Contractor for the performance of qualified services? Yes

Evidence of a written contract Certificate of Compliance

Was Original Contractor Licensed on contract date? Yes

Did Homeowner pay Original Contractor in full? Yes

Evidence of full payment: Certificate of Compliance

Does residence qualify as "owner-occupied"? Yes

Evidence of Owner Occupancy: Certificate of Compliance

Did Claimant provide qualified services? Yes

Evidence of qualified services: Invoice

Was NPP Licensed? Yes

Did NPP pay Claimant for qualified services? No

Evidence of nonpayment: Judgment

Did Claimant exhaust collection remedies? Yes

Payment Checklist

	<u>Claimed</u>	<u>Approved</u>	<u>Difference*</u>
Qualified Services: \$	15,096.41	\$ 15,096.41	\$ 0.00
Pre-judgment Atty Fees:	752.75	752.75	0.00
Pre-judgment Costs:	0.00	0.00	0.00
Post-judgment Atty Fees:	977.78	978.55	0.77
Post-judgment Costs:	40.66	40.66	0.00
Interest:	489.10	990.56	501.46
Totals \$	17,356.70	\$ 17,858.93	\$ 502.23

* Positive differences denote amounts approved in excess of amounts claimed; negative differences denote amounts denied.

Evidence of qualified services amount: Invoice

Evidence of pre-judgment attorney fee amount: Judgment

Attorney fees limit per Utah Code Ann. § 38-11-203(3)(f) \$2,264.46

Evidence of pre-judgment costs:

Evidence of post-judgment attorney fees: Attorney's Affidavit

**Schedule of Interest
All Payments Due in Same Calendar Year
LRF-2013-1031-02**

Terms of Sale: N30
 Claim Filing Date: 10/31/2013
 Payment Due Date: 12/19/2011
 Interest Rate per UCA 38-11-203(3)(c) 3.250%
 Daily Interest Rate 0.0089%

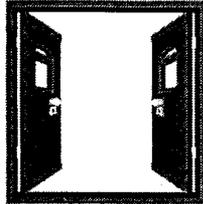
Total Interest Allowed per UCA 38-11-203(3)(c) \$ 990.56

<u>Event Date</u>	<u>Stop Interest?</u>	<u>Event Description</u>	<u>Changes to Qualified Service Balance</u>	<u>Qualified Service Balance</u>	<u>Number of Days Since Last Event</u>	<u>Interest Accrued Since Last Event</u>
12/16/2011	N	Payment due	\$ 8,919.68	8,919.68	0	\$ -
12/23/2011	N	Payment due	113.93	9,033.61	7	5.56
12/26/2011	N	Payment due	3,800.00	12,833.61	3	2.41
12/27/2011	N	Payment due	246.55	13,080.16	1	1.14
1/8/2012	N	Payment due	640.68	13,720.84	12	13.98
1/10/2012	N	Payment due	150.64	13,871.48	2	2.44
1/14/2012	N	Payment due	292.06	14,163.54	4	4.94
3/31/2012	N	Payment due	932.87	15,096.41	77	97.11
8/16/2012	N	Claimant filed complaint against NPP		15,096.41	138	185.50
11/1/2012	N	Claimant obtained judgment against NPP		15,096.41	77	103.50
10/31/2013	N	Claimant filed application for payment		15,096.41	364	489.29
12/12/2013	Y	Application conditionally denied		15,096.41	42	56.46
12/18/2013	N	Claimant responded to conditional denial		15,096.41	6	-
1/8/2014	N	Division director authorizes payment		15,096.41	21	28.23

Allocation Schedule
LRF-2013-1031-02
December 19, 2013

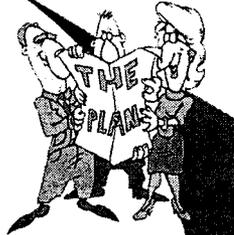
Gross Qualified Services for all Related Properties	138,445.28	(1)
Gross Qualified Services for Claim	15,096.41	(2)
Allocation Ratio for Claim Items	0.1090	(3)=(2)÷(1)
Pre-Judgment Items (total items if no judgment)		
Attorney Fees	6,906.00	(4)
Costs	-	(5)
Payments Received (if any)	-	(6)
Post-Judgment Items		
Attorney Fees	8,977.50	(7)
Costs	373.00	(8)
Allocation of Items		
Pre-Judgment Attorney Fees	752.75	(9)=(4)×(3)
Pre-Judgment Costs	-	(10)=(5)×(3)
Post-Judgment Attorney Fees	978.55	(11)=(7)×(3)
Post-Judgment Costs	40.66	(12)=(8)×(3)
Payments Received	-	(12)=(6)×(3)

Open and Public Meetings Act Training



Training Outline

- Background
- Public Policy
- Definitions
- General Rule
- Notice Requirements
- Minutes of Open Meetings
- Closing a Meeting
- Record of Closed Meetings
- Electronic Meetings
- Disruptive Behavior
- Litigation and Enforcement



Background - Training Requirement - §52-4-104

The presiding officer of each public body is responsible to ensure that all members of the public body are provided with annual training on the Open and Public Meetings Act.



Background: DOPL Licensing Board Structure - §58-1-201

- Typically consist of 5 members: 4 licensees and 1 public member.
- Members nominated by associations, submitted by the Division, confirmed by the Governor, and appointed by the Executive Director of the Department of Consumer Protection.
- Members serve 4-year staggered terms.
- Duties and responsibilities set forth in Utah Code Ann. Sections 58-1-202 and 58-1-203.
- Members elect a chair annually who conducts meetings using parliamentary procedure: Robert's Rules of Order.
- Board Secretary is provided by the Division.
- Division liaison is the Bureau Manager.

Public Policy - §52-4-102

- Public bodies exist to aid in the conduct of the people's business.
- Their actions and deliberations should be open and conducted openly.



Definitions - §52-4-103(4)

- "Meeting" means the convening of a public body, with a quorum present, whether in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body has jurisdiction or advisory power.
- Includes a workshop or executive session of a public body.
- Does not mean a chance or social meeting.



Definitions - §52-4-103(7)

"Public body" means any administrative, advisory, executive, or legislative body of the state or its subdivisions that:

1. is created by the Utah Constitution, a statute, rule, ordinance, or resolution;
2. consists of two or more persons;
3. expends, disburses or is supported in whole or part by tax revenue; and
4. is vested with the authority to make decisions regarding the public's business.

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Definitions - §52-4-103(9)(a)

"Quorum" means a simple majority of membership of a public body, unless otherwise defined by applicable law.



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Definitions - §52-4-103(8)

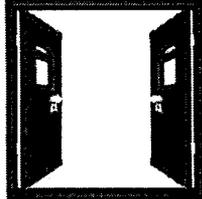
- "Public statement" means a statement made in the ordinary course of business of the public body with the intent that all other members of the public body receive it.



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General Rule - §52-4-201(1)

Every meeting is open to the public unless closed under Sections 52-4-204, 52-4-205, and 52-4-206.



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Notice Requirements - §52-4-202(1)-(3)

- Annual public notice of the date, time, and place of regularly scheduled board meetings.
- At least 24 hour public notice of the agenda, date, time and place of each of its meetings.
- The 24 hour public notice is satisfied by:

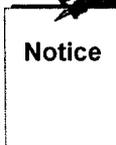


- posting on a public bulletin board at the Wells Building;
- posting a notice on the Utah Public Notice created by Section 63F-1-701, provided it deliver notice to a newspaper or local media correspondent.

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Emergency Meetings - §52-4-202(5)

- When due to unforeseen circumstances it is necessary for a public body to hold an emergency meeting to discuss matters of an emergency or urgent nature, the notice requirements may be disregarded and the best notice practicable given.
- Before such a meeting is held an attempt must be made to notify all of its members and a majority must vote in favor to hold such a meeting.



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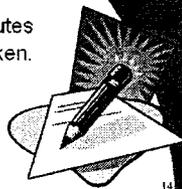
Agenda Requirements - §52-4-202(6)

- A public notice that is required to include an agenda must be specific enough to notify the public as to the topics to be considered at a meeting.
- Except for emergency meetings, a public body may not consider a topic that is not listed under a properly noticed agenda.
- A topic not included on an agenda that is raised by the public during an open meeting may be discussed but no final action may be taken at that meeting.

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Minutes and Recordings of Open Meetings - §52-4-203

- Except for site visits and field tours, written minutes and recordings must be kept of all open meetings.
- The minutes and recordings are public records, but approved minutes are the official record of action taken.
- Anyone in attendance can make their own recording unless it interferes with the conduct of the meeting.



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Minutes and Recordings of Open Meetings - §52-4-203(2)

Written minutes and recordings must include:

- the date, time and place of the meeting;
- the names of members present and absent;
- the substance of all matters proposed, discussed or decided, which may include a summary of comments made by members of the public body;
- a record by individual member, of votes taken;

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Minutes and Recordings of Open Meetings - §52-4-203(2)

(continued):

- the name of each person who is not a member of the public body, and upon recognition by the presiding officer of the public body, provides testimony or comments to the public body;
- the substance, in brief, of the testimony or comments provided by the public; and
- any other information that is a record of the proceedings of a meeting that any member requests be entered in the minutes or recording.

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Minutes and Recordings of Open Meetings - §52-4-203(2)

Written minutes and recordings of an open and public meeting are public records as follows:

- Pending minutes that have been prepared in a meeting awaiting only formal approval by the public body are a public record.
- Pending minutes that have not been adopted by the public body shall be marked "awaiting formal approval" or "unapproved" or with some other similar notice that the minutes are subject to change until formally approved.
- Appropriately marked pending minutes must be made available to the public 30 calendar days after the end of the public meeting.

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Minutes and Recordings of Open Meetings - §52-4-203(2)

(continued):

- A recording of an open meeting must be posted to the Utah Public Notice Website within three business days after the end of the meeting.
- Public bodies are required to establish and implement procedures for the public body's approval of the written minutes of each meeting.
- Written minutes are the official record of action taken at the meeting.
- Within three business days after approving written minutes of an open meeting, a public body is required to post to the Utah Public Notice Website and make available to the public at the public body's primary office the approved minutes and any public materials distributed at a meeting.
- Written minutes and recordings of an open meeting have a permanent retention schedule.

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Closing a Meeting - §52-4-204

Closed meetings are never required, but may be held provided:

- a. a quorum is present;
- b. two-thirds of the members in a properly notified open meeting vote to close the meeting;
- c. the only matters discussed in the closed meeting are those permitted in Section 52-4-205; and
- d. no ordinance, resolution, rule, regulation, contract or appointment is approved in the closed meeting.



NO ADMITTANCE

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Closing a Meeting - §52-4-204(4)

The following must be publicly announced and entered on the minutes of the open meeting:

- the reason or reasons for holding a closed meeting;
- the location where the closed meeting will be held; and
- the vote by name, of each member of the public body, either for or against the motion to hold a closed meeting.



NO ADMITTANCE

Closing a Meeting - §52-4-205

The purposes for closing a meeting include:

- discussion of the character, professional competence, or physical or mental health of an individual;
- strategy sessions to discuss pending or reasonably imminent litigation;
- deployment of security personnel, devices, or systems; and
- investigative proceedings regarding allegations of criminal misconduct.



NO ADMITTANCE

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**Record of Closed Meetings -
§52-4-206(1) & (2)**

- Except where a sworn statement is required, a recording of the closed meeting is required and detailed written minutes may be kept.
- Recordings must be a complete and unedited record from commencement through adjournment of the closed meeting.



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**Record of Closed Meetings -
§52-4-206(3)**

The recording and any minutes of a closed meeting must contain:

- the date, time, and place of the meeting
- the names of members present and absent
- the names of all others present except where disclosure would infringe on the confidentiality necessary to fulfill the original purpose of closing the meeting.

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**Record of Closed Meetings -
Sworn Statements - §52-4-206(6)**

- Instead of a recording, a sworn statement is required from the person presiding at a meeting if a public body closes a meeting exclusively for the purpose of:
 - discussing character, professional competence, or physical or mental health of an individual
 - discussing the deployment of security personnel, devices, or systems.
- DOPL has prepared a sworn statement form to assist the person presiding in closing such a meeting.

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Electronic Meetings - §52-4-207(2)

A public body may not hold an electronic meeting unless it has adopted a resolution, rule, or ordinance governing the use of electronic meetings. Commerce Rule 51-1-2 provides:



- Such meetings are permitted but may be limited based on budget, public policy, or logistical considerations.
- A director or designee may establish such meetings on his or her own initiative or acting upon a timely request from a board member.
- A quorum of a board is not required to be present at a single anchor location.
- Any number of separate connections are permitted unless limited based upon available equipment, etc.

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Electronic Meetings - §52-4-207(3)

A public body convening or conducting an electronic meeting must:

- give public notice under Section 52-4-203;
- post written notice at the anchor location(s);
- provide at least 24-hour notice to the public body including how members will be connected, so members may participate in and be counted as present for all purposes;
- establish one or more anchor locations, at least one of which must be in the normal meeting location; and
- provide space and facilities at the anchor location so interested persons and the public can attend, monitor and participate.

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Definitions - §52-4-103

- **"Electronic meeting"** means a public meeting convened or conducted by means of a conference using electronic communications.
- **"Anchor location"** means the physical location from which an electronic meeting originates or the participants are connected.
- **"Participate"** means the ability to communicate with all of the members of a public body, either verbally or electronically, so that each member of the public body can hear or observe the communication.

27

Disruptive Behavior at a Meeting - §52-4-301



- A public body may remove any person who willfully disrupts a meeting to the extent that the orderly conduct is seriously compromised.
- Such a removal does not constitute closing the meeting.

28

Voiding a Public Meeting - §52-4-302

- Final action in a meeting held in violation of the requirements for open, emergency, and electronic meetings is voidable in court.
- A lawsuit to void any final action must be filed within 90 days after the date of the action.



29

Voiding a Public Meeting - §52-4-302

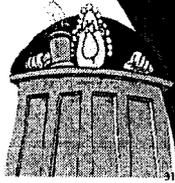
- A court may not void a final action taken by a public body for failure to comply with posting notice on the Open Public Notice Web Site if:
 - the public body otherwise complies with the notice requirements in Section 52-4-202; and
 - the failure was the result of unforeseen Internet hosting or communication technology failure.



30

Criminal Penalty for Improperly Maintaining Records - §63A-12-105

Intentionally mutilating, destroying, or otherwise damaging or disposing of the record-copy of a record knowing it is in violation of the laws governing retention of the record is a class B misdemeanor and the employee involved may also be subject to disciplinary action.



Enforcement of Open and Public Meetings Act - §52-4-303

- The attorney general and county attorneys are responsible for enforcement of the Open and Public Meetings Act.
- The attorney general is required on at least a yearly basis to provide notice to all public bodies of any material changes to the Open and Public Meetings Act.
- A person denied any right under the Act may bring suit to compel compliance with or enjoin violations or determine the applicability of the Act, and may be awarded attorney fees and court costs if successful.

32

Action Challenging Closed Meeting - §52-4-304

- In a lawsuit brought to challenge the legality of a closed meeting a court is required to review the recording or written minutes of the closed meeting in camera to decide the legality of the closed meeting.
- If the court determines that the public body did not violate the Act regarding closed meetings, it must dismiss the case without disclosing or revealing the information from the recording or minutes of the closed meeting.
- If the court determines the public body did violate the Act regarding closed meetings, it must publicly disclose or reveal from the recording or minutes all information about the portion of the meeting that was illegally closed.

33

Criminal Penalty for Closed Meeting Violation - §52-4-305

A knowing or intentional violation or aiding or advising in the violation of the closed meeting provisions of the Open and Public Meetings Act is classified as a class B misdemeanor.



Questions?