

# **Nebraska Open Meetings Law:**

**"Cliff Notes (Highlighted) Version"**

**Discussion with the Board, staff and  
citizens of the Village of Table Rock  
May 8, 2017**

**Prepared by Michael Nolan, Executive Director  
League Association of Risk Management (LARM)**



**84-1407. Act, how cited.**

Sections 84-1407 to 84-1414 shall be known and may be cited as the Open Meetings Act.

**84-1408. Declaration of intent; meetings open to public.**

It is hereby declared to be the policy of this state that the formation of public policy is public business and may not be conducted in secret.

Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of Nebraska, federal statutes, and the Open Meetings Act.

**84-1409. Terms, defined.**

For purposes of the Open Meetings Act, unless the context otherwise requires:

(1)(a) Public body means (i) governing bodies of all political subdivisions of the State of Nebraska, (ii) governing bodies of all agencies, created by the Constitution of Nebraska, statute, or otherwise pursuant to law, of the executive department of the State of Nebraska, (iii) all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies created by the Constitution of Nebraska, statute, or otherwise pursuant to law, (iv) all study or advisory committees of the executive department of the State of Nebraska whether having continuing existence or appointed as special committees with limited existence, (v) advisory committees of the bodies referred to in subdivisions (i), (ii), and (iii) of this subdivision, and (vi) instrumentalities exercising essentially public functions.

(b) Public body does not include (i) subcommittees of such bodies unless a quorum of the public body attends a subcommittee meeting or unless such subcommittees are holding hearings, making policy, or taking

formal action on behalf of their parent body, except that all meetings of any subcommittee established under section 81-15,175 are subject to the Open Meetings Act, and (ii) entities conducting judicial proceedings unless a court or other judicial body is exercising rulemaking authority, deliberating, or deciding upon the issuance of administrative orders;

(2) Meeting means all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body; and

(3) Videoconferencing means conducting a meeting involving participants at two or more locations through the use of audio-video equipment which allows participants at each location to hear and see each meeting participant at each other location, including public input. Interaction between meeting participants shall be possible at all meeting locations.

**84-1410. Closed session; when; purpose; reasons listed; procedure; right to challenge; prohibited acts; chance meetings, conventions, or workshops.**

(1) Any public body may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close. Closed sessions may be held for, but shall not be limited to, such reasons as:

(a) Strategy sessions with respect to collective bargaining, real estate purchases, pending litigation, or litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the public body;

(b) Discussion regarding deployment of



**From:** [REDACTED]  
**Sent:** March 16, 2017 9:35 AM  
**To:** K  
**Subject:** RE: Checking Status on three (3) projects

I just noticed that you copied the mayor and what appears to be all of the council members on the email below. Let me caution you about that practice. The Nebraska Open Meetings Act contains a provision which prohibits the use of telephone conferences, video conferences, or any other electronic means to circumvent to requirements of the Open Meetings Act. Recently, I've heard several other lawyers who represent entities subject to the Open Meetings Act say that courts other states who have similar provisions in their laws have specifically held that e-mailing all of the public body at once can be considered a "meeting", especially if any discussion occurs. Everyone I've spoken with has begun cautioning their public entity clients on this issue.

The way to avoid an Open Meetings Act issue is to email information to subgroups that do not constitute a quorum of the whole Board (i.e. - specific committees). That way, you can share information with key members of the Council without triggering the other requirements of the Act.

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**IRS CIRCULAR 230 DISCLOSURE:** Pursuant to U.S. Treasury Regulations, we are now required to advise you that, unless explicitly stated above to the contrary: (1) the contents and conclusions (if any) contained in this communication (including any attachments) are preliminary in nature and do not express a formal opinion contemplated by IRS Circular 230; (2) nothing contained in this communication (including any attachments) is intended to be used, or may be relied upon or used, by any taxpayer for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code; and (3) any statement contained in this communication (including any attachments) relating to any federal tax issue may not be used by any person to support the promotion, marketing of, or used to recommend any transaction or matter addressed in this communication.

Sent: Wednesday, March 15, 2017 4:27:04 PM  
To: [REDACTED]



security personnel or devices;

(c) Investigative proceedings regarding allegations of criminal misconduct; or

(d) Evaluation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if such person has not requested a public meeting.

(e) For the Community Trust created under section 81-1801.02, discussion regarding the amounts to be paid to individuals who have suffered from a tragedy of violence or natural disaster.

(f) For public hospitals, governing board peer review activities, professional review activities, review and discussion of medical staff investigations or disciplinary actions, and any strategy session concerning transactional negotiations with any referral source that is required by federal law to be conducted at arms length.

Nothing in this section shall permit a closed meeting for discussion of the appointment or election of a new member to any public body.

(2) The vote to hold a closed session shall be taken in open session. The entire motion, the vote of each member on the question of holding a closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes. If the motion to close passes, then the presiding officer immediately prior to the closed session shall restate on the record the limitation of the subject matter of the closed session. The public body holding such a closed session shall restrict its consideration of matters during the closed portions to only those purposes set forth in the motion to close as the reason for the closed session. The meeting shall be reconvened in open session before any formal action may be taken. For purposes of this section, formal action shall mean a collective decision or a collective commitment or promise to make a decision on any question, motion, proposal, resolution, order, or ordinance or formation of a position or policy but shall not include negotiating guidance given by members of the public body to legal counsel or other negotiators in closed sessions authorized under subdivision (1)(a) of this section.

(3) Any member of any public body shall have the right to challenge the continuation of a closed session if the member determines that the session has exceeded the reason stated in the original motion to hold a closed session or if the member contends that the closed session is neither clearly necessary for (a) the protection of the public interest or (b) the prevention of needless injury to the reputation of an individual. Such challenge shall be overruled only by a majority vote of the members of the public body. Such challenge and its disposition shall be recorded in the minutes.

(4) Nothing in this section shall be construed to require that any meeting be closed to the public. No person or public body shall fail to invite a portion of its members to a meeting, and no public body shall designate itself a subcommittee of the whole body for the purpose of circumventing the Open Meetings Act. No closed session, informal meeting, chance meeting, social gathering, email, fax, or other electronic communication shall be used for the purpose of circumventing the requirements of the act.

(5) The act does not apply to chance meetings or to attendance at or travel to conventions or workshops of members of a public body at which there is no meeting of the body then intentionally convened, if there is no vote or other action taken regarding any matter over which the public body has supervision, control, jurisdiction, or advisory power.

**84-1411. Meetings of public body; notice; contents; when available; right to modify; duties concerning notice; videoconferencing or telephone conferencing authorized; emergency meeting without notice; appearance before public body.**

(1) Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such



## CLOSED SESSION

1. (Council member) I move that we go into Closed Session for the purpose of discussing \_\_\_\_\_.

Purpose of Closed Sessions are for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. These sessions may held for, but not limited to, such reasons as:

- a.) Strategy sessions with respect to collective bargaining, real estate purchases, pending litigation, or litigation which is imminent as evidence by communication of a claim or threat of litigation to or by the public body;
- b.) Discussion regarding deployment of security personnel or devices
- c.) Investigative proceedings regarding allegations of criminal misconduct
- d.) Evaluation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if such person has not requested a public meeting.

2. (Council member) I second the motion.

3. (Mayor) A motion has been made and seconded to go into Closed Session for the purpose of discussing \_\_\_\_\_.

4. (Mayor) Is there any discussion?

5. (Mayor) The pending motion is to go into Closed Session for the purpose of discussing \_\_\_\_\_ Roll call vote.

6. (Clerk) Motion adopted/failed.

7. (Mayor) A motion to go into Closed Session for the purpose of discussing \_\_\_\_\_ has been adopted/denied.

From the City of Grand Island



notice shall be transmitted to all members of the public body and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than (a) twenty-four hours before the scheduled commencement of the meeting or (b) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

(2) A meeting of a state agency, state board, state commission, state council, or state committee, of an advisory committee of any such state entity, of an organization created under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, of the governing body of a public power district having a chartered territory of more than one county in this state, of the governing body of a public power and irrigation district having a chartered territory of more than one county in this state, of a board of an educational service unit, of the Educational Service Unit Coordinating Council, of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act, or of a community college board of governors may be held by means of videoconferencing or, in the case of the Judicial Resources Commission in those cases specified in section 24-1204, by telephone conference, if:

(a) Reasonable advance publicized notice is given;

(b) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating,

recording by audio or visual recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if videoconferencing or telephone conferencing was not used;

(c) At least one copy of all documents being considered is available to the public at each site of the videoconference or telephone conference;

(d) At least one member of the state entity, advisory committee, board, council, or governing body is present at each site of the videoconference or telephone conference; and

(e) No more than one-half of the state entity's, advisory committee's, board's, council's, or governing body's meetings in a calendar year are held by videoconference or telephone conference.

Videoconferencing, telephone conferencing, or conferencing by other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(3) A meeting of a board of an educational service unit, of the Educational Service Unit Coordinating Council, of the governing body of an entity formed under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act, of a community college board of governors, of the governing body of a public power district, or of the governing body of a public power and irrigation district may be held by telephone conference call if:

(a) The territory represented by the educational service unit, member educational service units, community college board of governors, public power district, public power and irrigation district, or member public agencies of the entity or pool covers more than one county;

(b) Reasonable advance publicized notice is given which identifies each telephone conference location at which an educational service unit board member, a council member, a



member of a community college board of governors, a member of the governing body of a public power district, a member of the governing body of a public power and irrigation district, or a member of the entity's or pool's governing body will be present;

(c) All telephone conference meeting sites identified in the notice are located within public buildings used by members of the educational service unit board, council, community college board of governors, governing body of the public power district, governing body of the public power and irrigation district, or entity or pool or at a place which will accommodate the anticipated audience;

(d) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if a telephone conference call was not used;

(e) At least one copy of all documents being considered is available to the public at each site of the telephone conference call;

(f) At least one member of the educational service unit board, council, community college board of governors, governing body of the public power district, governing body of the public power and irrigation district, or governing body of the entity or pool is present at each site of the telephone conference call identified in the public notice;

(g) The telephone conference call lasts no more than two hours; and

(h) No more than one-half of the board's, entity's, or pool's meetings in a calendar year are held by telephone conference call, except that a governing body of a risk management pool that meets at least quarterly and the advisory committees of the governing body may each hold more than one-half of its meetings by telephone conference call if the governing body's quarterly meetings are not held by telephone conference call or videoconferencing. Nothing in this subsection shall prevent the participation of consultants, members of the

press, and other nonmembers of the governing body at sites not identified in the public notice. Telephone conference calls, emails, faxes, or other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(4) The secretary or other designee of each public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting.

(5) When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such emergency meetings may be held by means of electronic or telecommunication equipment. The provisions of subsection (4) of this section shall be complied with in conducting emergency meetings. Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by no later than the end of the next regular business day.

(6) A public body may allow a member of the public or any other witness other than a member of the public body to appear before the public body by means of video or telecommunications equipment.

#### **84-1412. Meetings of public body; rights of public; public body; powers and duties.**

(1) Subject to the Open Meetings Act, the public has the right to attend and the right to speak at meetings of public bodies, and all or any part of a meeting of a public body, except for closed sessions called pursuant to section 84-1410, may be videotaped, televised, photographed, broadcast, or recorded by any person in attendance by means of a tape recorder, camera, video equipment, or any other means of pictorial or sonic reproduction or in writing.



(2) It shall not be a violation of subsection (1) of this section for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings. A body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings.

(3) No public body shall require members of the public to identify themselves as a condition for admission to the meeting nor shall such body require that the name of any member of the public be placed on the agenda prior to such meeting in order to speak about items on the agenda. The body may require any member of the public desiring to address the body to identify himself or herself.

(4) No public body shall, for the purpose of circumventing the Open Meetings Act, hold a meeting in a place known by the body to be too small to accommodate the anticipated audience.

(5) No public body shall be deemed in violation of this section if it holds its meeting in its traditional meeting place which is located in this state.

(6) No public body shall be deemed in violation of this section if it holds a meeting outside of this state if, but only if:

(a) A member entity of the public body is located outside of this state and the meeting is in that member's jurisdiction;

(b) All out-of-state locations identified in the notice are located within public buildings used by members of the entity or at a place which will accommodate the anticipated audience;

(c) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including making a telephone conference call available at an instate location to members, the public, or the press, if requested twenty-four hours in advance;

(d) No more than twenty-five percent of the public body's meetings in a calendar year are held out-of-state;

(e) Out-of-state meetings are not used to circumvent any of the public government purposes established in the Open Meetings Act;

(f) Reasonable arrangements are made to provide viewing at other instate locations for a videoconference meeting if requested fourteen days in advance and if economically and reasonably available in the area; and

(g) The public body publishes notice of the out-of-state meeting at least twenty-one days before the date of the meeting in a legal newspaper of statewide circulation.

(7) The public body shall, upon request, make a reasonable effort to accommodate the public's right to hear the discussion and testimony presented at the meeting.

(8) Public bodies shall make available at the meeting or the instate location for a telephone conference call or videoconference, for examination and copying by members of the public, at least one copy of all reproducible written material to be discussed at an open meeting. Public bodies shall make available at least one current copy of the Open Meetings Act posted in the meeting room at a location accessible to members of the public. At the beginning of the meeting, the public shall be informed about the location of the posted information.

**84-1413. Meetings; minutes; roll call vote; secret ballot; when.**

(1) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(2) Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a municipality, a county, a learning community, a joint entity created pursuant to the Interlocal Cooperation Act, a joint public agency created pursuant to the Joint Public Agency Act, or an agency formed under the Municipal Cooperative Financing Act which



utilizes an electronic voting device which allows the yeas and nays of each member of such city council, village board, county board, or governing body to be readily seen by the public.

(3) The vote to elect leadership within a public body may be taken by secret ballot, but the total number of votes for each candidate shall be recorded in the minutes.

(4) The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection during normal business hours.

(5) Minutes shall be written, except as provided in subsection (6) of this section, and available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier, except that cities of the second class and villages may have an additional ten working days if the employee responsible for writing the minutes is absent due to a serious illness or emergency.

(6) Minutes of the meetings of the board of a school district or educational service unit may be kept as an electronic record.

**84-1414. Unlawful action by public body; declared void or voidable by district court; when; duty to enforce open meeting laws; citizen's suit; procedure; violations; penalties.**

(1) Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in violation of the Open Meetings Act shall be declared void by the district court if the suit is commenced within one hundred twenty days of the meeting of the public body at which the alleged violation occurred. Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in substantial violation of the Open Meetings Act shall be voidable by the district court if the suit is commenced more than one hundred twenty days after but within one year of the meeting of the public body in which the alleged

violation occurred. A suit to void any final action shall be commenced within one year of the action.

(2) The Attorney General and the county attorney of the county in which the public body ordinarily meets shall enforce the Open Meetings Act.

(3) Any citizen of this state may commence a suit in the district court of the county in which the public body ordinarily meets or in which the plaintiff resides for the purpose of requiring compliance with or preventing violations of the Open Meetings Act, for the purpose of declaring an action of a public body void, or for the purpose of determining the applicability of the act to discussions or decisions of the public body. It shall not be a defense that the citizen attended the meeting and failed to object at such time. The court may order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this section.

(4) Any member of a public body who knowingly violates or conspires to violate or who attends or remains at a meeting knowing that the public body is in violation of any provision of the Open Meetings Act shall be guilty of a Class IV misdemeanor for a first offense and a Class III misdemeanor for a second or subsequent offense.

**August 2015**

Distributed by the League of Nebraska Municipalities







A MISTAKE  
REPEATED  
MORE THAN  
ONCE  
IS A  
DECISION



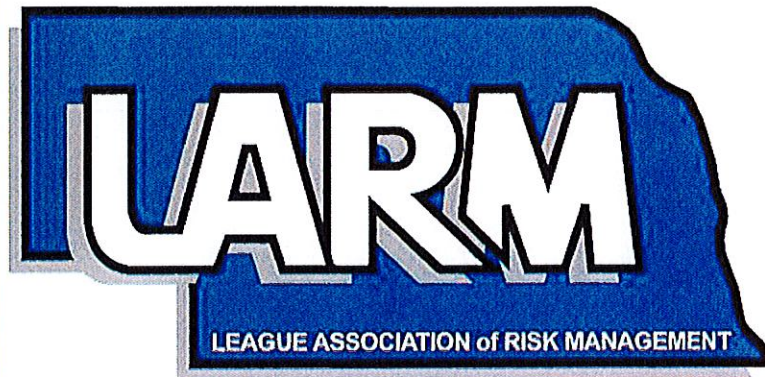


**Section 84-1414(4) provides that any member of a public body who knowingly violates or conspires to violate the Open Meetings Act, or who attends or remains at a meeting knowing that the public body is in violation of any provision of that Act, shall be guilty of a **Class IV misdemeanor for a first offense, and a Class III misdemeanor for a second or subsequent offense.****

**Under Neb. Rev. Stat. § 28-106 (2008), a **Class IV misdemeanor is punishable by a fine of \$100 to \$500 and no imprisonment. In addition, a Class III misdemeanor is punishable by up to 3 months imprisonment or up to a \$500 fine, or both.** A Class III misdemeanor has no minimum penalty.**



# Liability Coverage Document



Nebraska Municipal Cover™

Edition Date 10.01.2015



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## SECTION IV GENERAL EXCLUSIONS

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Unless otherwise stated in the specific Coverage Agreements included in **SECTION V LIABILITY COVERAGE AGREEMENTS**, or by endorsement to this **Coverage Document**, the coverage provided in this **Coverage Document** does not apply to or provide coverage for:

1. **AIRCRAFT** meaning **Claims** for **Damages** arising out of the ownership, maintenance, operation, use, loading, unloading or entrustment to others of any **Aircraft** owned or operated by or rented or loaned to the **Member**.
2. **AIRPORT** meaning **Claims** for **Damages** arising out of the ownership, maintenance, operation, or use of any airport.
3. **ASBESTOS** meaning **Claims** for **Damages** or expenses arising out of:
  - a. Inhaling, ingesting or physical exposure to asbestos or goods or products containing asbestos;
  - b. The use of asbestos in construction or manufacturing any good, product or structure;
  - c. The removal of asbestos from any good, product or structure;
  - d. The manufacture, sale, transportation, storage or disposal of asbestos or goods or products containing asbestos; or
  - e. Investigation or defense of any loss, injury or damage at any cost, fine or penalty or for any expense of **Claim** or **Suit** related to any of the above.
4. **BID SPECIFICATIONS** meaning **Damages** and expenses arising out of or involving:
  - a. Bids on public projects or contracts; or
  - b. Faulty preparation of bid specifications or plans.
5. **BOND ACTIVITIES** meaning **Damages** and expenses in connection with the issuance, purchase, offering, sale, administering, diminution of value, yield income, or failure to comply with any obligation or guarantees on any type of security, bond, or debenture.
6. **BREACH OF CONTRACT** meaning **Claims** for **Damages** or expenses arising out of or involving:
  - a. Amounts actually or allegedly due under the terms of any contract or agreement; or
  - b. **Your** failure, refusal, or inability to enter into, renew, or perform any contract or agreement except breach of any employment contract or agreement.
7. **BUNGEE JUMPING** meaning **Claims** for **Damages** asserted by any person including, but not limited to, participants, performers, volunteers, set-up crew, security personnel, mechanics, stewards, officials, attendants, spectators, crane operators, or drivers:
  - a. Practicing for or participating in any bungee jumping activities; or
  - b. Arising out of the ownership, maintenance or operation of any bungee jumping equipment owned by, leased to, or otherwise in the care, custody, and control of the **Member**.



8. **CONTRACTUAL LIABILITY** meaning **Claims** for **Damages**, fines, civil penalties, or attorneys' fees for which the **Member** is obligated to pay by reason of the assumption of liability under any ordinance, resolution, or contract.

This exclusion does not apply to liability:

- a. The **Member** would have in absence of the contract; or
- b. For **Bodily Injury** or **Property Damage** assumed in a contract that is a **Covered Contract**, provided the **Bodily Injury** or **Property Damage** occurs after the execution of the contract. Solely for the purpose of liability assumed in a **Covered Contract**, reasonable attorneys' fees and litigation expenses incurred by or for a party other than the **Member** are deemed to be **Damages** because of **Bodily Injury** or **Property Damage**, provided:
  - (1) Liability to such party for, or the cost of, that party's defense has also been assumed in the same **Covered Contract**; and
  - (2) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which **Damages** to which this **Coverage Document** applies are alleged.

In no event shall there be coverage for liability assumed under a **Covered Contract** if the **Claim** for **Damages**, fines, civil penalties, or attorneys' fees is otherwise excluded from coverage under this **Coverage Document**.

9. **CRIMINAL ACTS** meaning **Claims** for **Damages** and expenses arising out of or involving any criminal act or the willful violation of a penal statute or ordinance committed by the **Member** or with the **Member's** consent or knowledge. This exclusion shall not apply until it has been judicially established in fact that the **Member** did commit such criminal act or willful violation.

10. **DAM, WATER RESERVOIR, or LEVEE** meaning **Claims** for **Damages** or expenses arising out of the construction, ownership, maintenance or use of any dam, water reservoir or levee, including collapse, flooding, cracking, settling, seepage, under seepage, spilling, subsidence, landslide, earth movement, rupture, bursting, breach, failure, or structural defect in connection thereto.

11. **DAMAGE TO PROPERTY** meaning **Claims** for **Property Damage** to:

- a. Property **You** own;
- b. That particular part of real property on which **You** or any contractors or subcontractors working directly or indirectly on **Your** behalf are performing operations, if the **Property Damage** arises out of those operations; or
- c. Property of others that is in **Your** care, custody, or control.

12. **DAMAGE TO YOUR PRODUCTS** meaning **Claims** for **Property Damage** to **Your Products** arising out of such products or any part of such products.

13. **DEFECTIVE PRODUCT** meaning **Claims** for **Damages** claimed for or due to the withdrawal, inspection, repair, replacement, or loss of use of **Your Products** or work completed by or for **You** or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.



14. **DRONE** meaning **Claims** for **Damages** arising out of the ownership, maintenance, operation, use, loading, unloading or entrustment to others of any **Drone** owned or operated by or rented or loaned to the **Member**.
15. **ELECTRONIC DATA** meaning **Claims** for **Damages** or expenses based on the loss of, destruction, disappearance, disclosure or corruption of **Electronic Data**.
16. **EMINENT DOMAIN** meaning any **Claim** made against the **Member** for **Damages** which result from condemnation, inverse condemnation, adverse possession, dedication by adverse use, or other taking of private property for public use.
17. **EMPLOYER S LIABILITY** meaning **Claims** for **Damages** arising out of **Bodily Injury** or **Personal Injury** to:
- a. **Your** employee arising out of and in the course of employment by **You** or while performing duties related to the conduct of **Your** operations; or
  - b. The spouse, child, parent, brother or sister of that employee as a consequence of that employee's **Bodily Injury** or **Personal Injury**.
- This exclusion applies whether **You** may be liable as an employer or in any other capacity and to any obligation to share **Damages** with or repay someone else who must pay **Damages** because of the **Bodily Injury** or **Personal Injury**.
- This exclusion does not apply to **Bodily Injury** or **Personal Injury** to one of **Your** employees caused by a fellow employee while such employee is acting within the scope of their duties for **You**.
18. **ENVIRONMENTAL IMPAIRMENT LIABILITY (EIL)** meaning **Claims** for **Damages** arising out of any negligent, reckless, or intentional acts and/or omissions resulting in damage to the environment.
19. **ERISA** meaning the failure of the **Member**, or their fiduciary, trustee, fiscal agent or insurer, to perform any of their obligations, or fulfill and guarantees, with respect to the Employee Retirement Income Security Act of 1974 (ERISA) including subsequent amendments, or any similar federal, state or local law or regulation.
20. **EXPECTED OR INTENDED INJURY OR PROPERTY DAMAGE** meaning **Claims** for **Damages** resulting from **Bodily Injury**, **Personal Injury**, **Advertising Injury** or **Property Damage** expected or intended from the standpoint of the **Member**. This exclusion does not apply to **Bodily Injury**, **Personal Injury**, **Advertising Injury** or **Property Damage** resulting from the **Member s** use of reasonable force to protect persons or property.
21. **FAILURE TO SUPPLY SERVICE** meaning **Claims** for **Damages** or expenses resulting from:
- a. **Your** failure to adequately procure, produce, process, service or transport gas, oil, water, electricity or steam, unless such failure results from accidental damage to tangible property owned or used by **You** for such purposes; or
  - b. **Your** failure to supply sewer or garbage service or **Your** failure to supply sufficient sewer or garbage service to meet demand.



**22. FIDUCIARY CAPACITY** meaning any **Claim** made against the **Member** based upon or attributable to the **Member** gaining any profit or advantage to which the member was not legally entitled, including remuneration paid in violation of law.

**23. FINES, FEES, CHARGES, OR PENALTIES** meaning:

- a. Fines or penalties imposed by law or **Damages** for which insurance or liability coverage is prohibited by public policy, statute or common law;
- b. Fines, charges, or penalties related to allegations of violations of state or federal law including, but not limited to, those imposed for violations of public records laws or open meetings law;
- c. Fines, or penalties imposed under the Internal Revenue Code or any similar state or local law;
- d. Estimates of probable costs or cost estimates being exceeded;
- e. The calculation of any hook-up charges;
- f. Any tapping fees;
- g. Any impact fees; or
- h. Any other fine, fee, or charge.

**24. FIREWORKS** meaning **Claims** for **Damages** arising out of the igniting or discharging of **Fireworks** in conjunction with any display, demonstration or show, conducted or sponsored by a **Member** unless **Bodily Injury** or **Property Damage** arises out of emergency services the **Member** provide in response to an emergency arising out of or resulting from **Fireworks**.

**25. FLOODING** meaning **Claims** for **Damages** or expenses arising out of or caused by overflow or flooding of water or sewage including, but not limited to:

- a. The overflow of lakes, rivers or streams;
- b. Overflow from sewage treatment facilities; or
- c. Groundwater accumulation.

**26. FUND, APPROPRIATIONS, OR GRANT ACTIVITIES** meaning **Damages** in connection with any allegations of the **Member s** misuse of, failure to apply for, or return of any federal, state, local, or private: monies, funds, appropriations, grants, gifts, loans, or tuition, including sums representing restitution or disgorgement of sums wrongfully paid, received by, or retained by a **Member**.

**27. KNOWING VIOLATION OF RIGHTS OF ANOTHER** meaning **Advertising Injury** or **Personal Injury** caused by or at the direction of the **Member** with the knowledge that the act would violate the rights of another and would inflict **Advertising Injury** or **Personal Injury**.

**28. LEAD** meaning **Claims** for **Damages** arising out of, resulting from, caused by or contributed to by:

- a. The toxic or pathological properties of lead, lead compounds, or leads contained in any materials;
- b. The abatement, mitigation, removal, or disposal of lead, lead compounds or lead contained in any materials; or
- c. Any supervision, instructions, recommendations, warnings or advice given or which should have



been given in connection with (a) or (b) above.

**29. LIQUOR LIABILITY** meaning **Claims** for **Damages** resulting from or arising out of:

- a. Causing or contributing to a person's intoxication;
- b. Furnishing alcoholic drinks to a person under the legal drinking age;
- c. Any statute, ordinance or regulation or law relating to selling, giving, distributing or using alcoholic drinks;
- d. Manufacturing, selling, distributing, serving or furnishing of alcoholic drinks; or
- e. Beer gardens.

**30. MEDICAL SERVICES** meaning the rendering of or failure to render **Medical Services**. However, this exclusion shall not apply to **Claims** for **Damages** or expenses arising out of a **Member** rendering or failing to render incidental **Medical Services** or first aid, at the scene of an accident or injury, by any **Member** not regularly engaged in the medical profession.

**31. MOBILE EQUIPMENT** meaning **Claims** for **Damages** arising out of the use of **Mobile Equipment** in, or while in practice or preparation for, a prearranged racing, speed, or demolition contest, or in any stunting activity.

**32. POLLUTION** meaning:

- a. **Claims** for **Damages** arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **Pollutants**:
  - (1) At, on, in or from any premises, site or location which is or was at any time owned or occupied by **You** or rented or loaned to **You**; or
  - (2) At, on, in or from any premises, site or location which is or was at any time used by or for **You** or others for the handling, storage, disposal, processing or treatment of **Waste**;
  - (3) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as **Waste** by or for **You** or any person or organization for whom **You** may be legally responsible.
  - (4) At or from any premises, site or location on which **You** or any contractors or subcontractors working directly or indirectly on **Your** behalf are performing operations:
    - (a) If the **Pollutants** are brought on or to the premises, site or location in connection with such operations by the contractor, subcontractor or **You**;
    - (b) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **Pollutants**; or
    - (c) Which arises from exposure included within the **Completed Operations Hazard**.
  - (5) Caused by or resulting from the ownership, maintenance or use of an **Automobile**.

Paragraphs a. (1) and a. (4) do not apply to injury arising out of heat, smoke or fumes from a hostile fire, meaning one which becomes uncontrollable or breaks out from where it was intended to be.



Paragraph a. (4) (a) of this exclusion shall not apply to any **Claim** or **Suit** for **Damages** which resulted from a **Sudden Event** that takes place during the **Agreement Period** and within the **Agreement Territory**, and which was caused by an actual, alleged, or threatened discharge, dispersal, release, or escape of **Pollutants**.

For purposes of this exclusion only, **Sudden Event** shall mean a **Pollution Accident** where the pollution resulting therefrom and the injury resulting from such pollution all occur within 45 days following the **Pollution Accident**. A related series of **Accidents** shall be deemed to be a single event. In the case of a related series of **Pollution Accidents**, the **Sudden Event** shall be deemed to have taken place when the first **Pollution Accident** in the related series of such **Pollution Accidents** took place.

For purposes of this exclusion only, **Pollution Accident** shall mean an abrupt discharge, dispersal, release, or escape of **Pollutants** neither expected nor intended from the standpoint of the **Member**.

Subject to the provisions in this **Agreement** concerning limits of liability applicable to each **Occurrence** under **SECTION V LIABILITY COVERAGE AGREEMENTS** and the limits of liability for each **Occurrence** stated in the **Declarations** for **Sudden Events** involving **Pollutants**, the total liability of the **Pool** for all **Damages** resulting from **Bodily Injury**, **Property Damage**, or **Personal Injury** within the **Sudden Event** exception described above, regardless of the number of **Sudden Events**, shall not exceed the limits of liability stated in the **Declarations** for the applicable **Pool Year** as aggregate for **SECTION V LIABILITY COVERAGE AGREEMENTS**.

b. Any loss, cost or expense arising out of any:

- (1) Request, demand or order that **You** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **Pollutants**; or
- (2) **Claim** or **Suit** by or on behalf of a governmental authority for **Damages** because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of **Pollutants**.

**33. PUNITIVE OR EXEMPLARY DAMAGES:** In no event shall there be coverage for liability to indemnify another for punitive or exemplary **Damages** of any kind or nature.

**34. SEWER** meaning **Claims** for **Damages** arising out of the backup of water or sewage in or from storm sewers, sanitary sewers, drains or other parts of a sewage or water system regardless of how caused.

**35. SEXUAL ABUSE** meaning any **Claim** made against the **Member** arising out of or resulting from **Sexual Abuse** by the **Member**.

**36. TAX ACTIVITIES** meaning:

- a. Any tax assessment, tax fine, tax fee, or tax adjustment;
- b. The collection, refund, disbursement or application of any taxes;
- c. The failure to anticipate any tax revenue shortfalls; or
- d. Taxes imposed under the Internal Revenue Code or any similar state or local law.

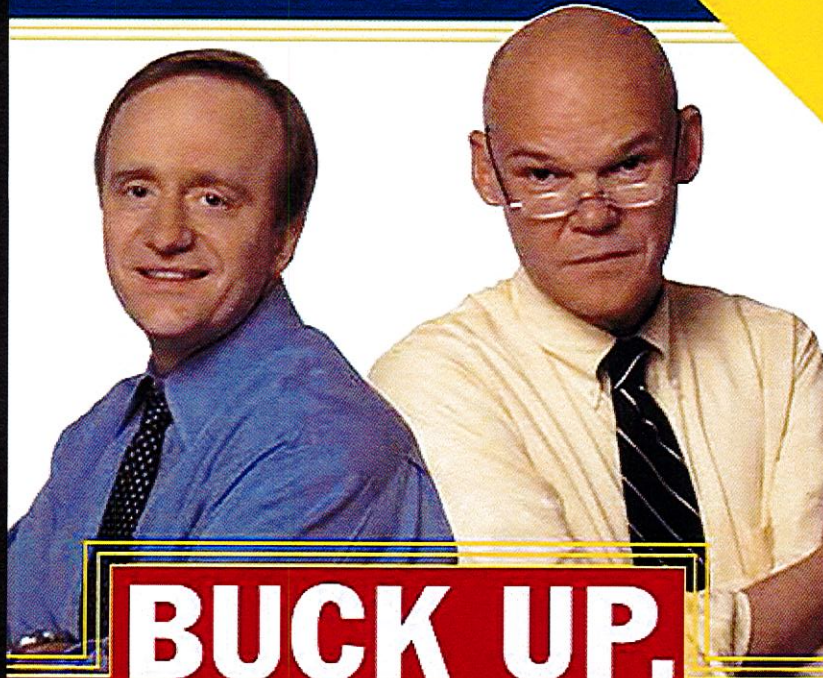


- 37. TERRORISM** meaning *Claims* for *Damages* arising directly or indirectly out of acts of *Terrorism*, including action in hindering or defending against an actual or expected incident of *Terrorism*. All such *Damages* are excluded regardless of any other cause or event that contributes concurrently or in any sequence to such *Damages*.
- 38. VOLUNTEER FIREFIGHTERS** meaning *Claims* for *Damages* for *Bodily Injury* to any volunteer firefighter while in the course and scope of his or her duties as such.
- 39. WAR** meaning *Claims* for *Damages* due to or resulting from war, whether or not declared hostile or warlike action in time of peace or war, civil war, insurrection, revolution, rebellion, acts of military force, or to any act or condition incident to any of the foregoing. This exclusion also extends to an act by government authority in hindering, combating or defending against an action otherwise identified in this exclusion or an actual impending or expected attack by:
- a. Any government or sovereign power (de facto or de jure) or by any military, navel, or air forces;
  - b. Military, navel or air forces; or
  - c. An agent of such government, power, authority or forces.
- 40. WORKERS COMPENSATION** meaning *Claims* for *Damages* arising out of any obligation for which *You* or any carrier as *Your* its insurer may be held liable under the workers' compensation, unemployment compensation, or disability benefits laws, or under any similar laws; nor any *Claims* or *Suits* for *Damages* to volunteers, elected officials, or appointed officials if *You* provided coverage to the volunteer, elected official, or appointed official under the above laws.



*JAMES  
CARVILLE &  
PAUL BEGALA*

THE  
BUSINESS  
WEEK  
BESTSELLER



**BUCK UP,  
SUCK UP...**

*AND COME BACK WHEN  
YOU FOUL UP*

**12 WINNING SECRETS FROM THE WAR ROOM**

"Information technology has made the first take more important than ever. Because once the news story is filed, it is forevermore available through computer-assisted research devices like LexisNexis. Nowadays too many reporters are not really reporters; they're repeaters. Their editors order them to jump on a story, and the first thing they do is punch up what everyone else has written on it. This makes the first impression all the more important, because it becomes the basis, the starting point for every subsequent story."