



# BIG SKY OWNERS ASSOCIATION

## BOARD OF DIRECTORS POLICY RESOLUTION

### **POLICY: CONFLICT OF INTEREST**

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Date of Board Adoption: September 18, 2020 Policy No: 20-03

Effective Date: September 18, 2020 Date(s) Revised: 19 June, 1997; 17 July, 1997; 29 August, 2014

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### **RESOLUTION:**

Whereas, The Big Sky Owners Association, Inc. (Association) is filed with the Montana Secretary of State as a nonprofit Montana Corporation; and

Whereas, The Association Bylaws (Article V11, Section A) assigns the Board of Directors (Board) all powers and duties necessary for the administration of the affairs of the Association which are enabled by law, the Covenants, The Articles or the Bylaws and which are not exclusively reserved for the membership; and

Whereas, Montana Code Annotated (35-2-418) specifies that certain steps shall be taken to avoid conflict of interest transactions where a Director has a direct or indirect interest with BSOA transactions; and

Whereas, The Board has determined that it is in the best interest of the Association to establish and specify standards of conflict of interest transactions, which reinforce and supplement Montana Code; that personal financial gain is not the only type of conflict of interest to which Board Directors, Officers, Committee members and Employees of the Association are held; and to specify a process for considering contracts, actions, and other issues where an actual, perceived or potential conflict of interest exists, or the appearance thereof;

**NOW THEREFORE, BE IT RESOLVED that this policy applies to all Directors, Officers, Committee members and Employees, hereinafter referred to as Key Persons**

### **I. BACKGROUND:**

Conflicts of interest must be taken very seriously since they can damage the Association's reputation and expose both the Association and key persons to legal liability if not handled appropriately. Even the appearance of a conflict of interest should be avoided, as it could undermine member support for the Association.

Key Persons are required to put the member's interest before their own. Impropriety occurs when a Key Person, faced with conflicting interests, puts his or her personal or financial interest ahead of the membership interest. In the simplest terms, the Key Person reaps a monetary or other benefit from a decision made in his or her public capacity or employment.

Therefore, this policy prohibits Key Persons with a conflict of interest from voting on or improperly influencing deliberations and decisions on matters in which they have a conflict of interest, direct or indirect.

## II. DEFINITIONS

**Conflict of Interest:** In its simplest terms, a conflict of interest can be described as *“using one’s official position to enhance one’s personal interest”*. A conflict of interest occurs when a Key Person has an interest, such as financial, status, knowledge, relationships or reputation, which puts into question whether the Key Person's actions, judgment, and/or decision-making can be unbiased. When used herein, the term "conflict of interest" includes conflicts that are (a) real, perceived or potential and (b) direct and indirect.

**Indirect Conflict of Interest:** A conflict of interest which occurs when a Related Person is a party to the transaction or has a material financial interest therein

**Key person:** A control person or insider of the Association who is in a position to influence the actions of the Association, including Directors, Officers, Committee members and Employees.

**Related Person:** a) A Key Person's spouse; b) A Key Person's child, stepchild, grandchild, parent, stepparent, grandparent, sibling, step sibling, half sibling, aunt, uncle, niece, nephew, or spouse of any of them, or of a Key Person's spouse; c) a natural person living in the same home as a Key Person; d) an entity (other than the Association) controlled by the Key Person or any person specified in (a), (b) or (c); e) a business or nonprofit corporation (other than the Association) of which a Key Person is a director; f) an unincorporated entity of which the Key Person is a general partner or member of the governing body; g) an individual, trust, or estate for whom or of which a Key Person is a trustee, guardian, personal representative, or similar fiduciary; h) a person that is or an entity that is controlled by an employer of a Key Person.

**Transaction:** Any matter considered by the BSOA, whether by the Board, a Committee, Subcommittee, or other capacity, on which official action is taken or contemplated.

### **III. STANDARDS REGARDING CONFLICTS OF INTEREST**

A. **Standards:** The following duties exist for each Key Person:

1. The duty to act in accordance with good faith judgment and in the best interest of the Association
2. The duty of singular loyalty to the Association.
3. The duty to refrain from any action, judgment, or decision making in transactions where a Key Person has a conflict of interest.
4. The duty to disclose any conflict of interest in a transaction.
5. The duty to comply with Montana State Law, and the Governing Documents of the Association
6. The duty to establish by example and attitude an atmosphere of personal integrity.

### **IV. DISCLOSING CONFLICTS OF INTEREST**

A. A Key Person must disclose to the best of their knowledge all conflicts of interest as soon as they become aware of them and always before any transaction involving the conflict of interest takes place.

B. A Key Person must refrain from voting upon, deliberating upon or influencing the decision upon any matter in which they have a conflict of interest.

C. If a Key Person is uncertain whether a conflict of interest exists, they must disclose the possible conflict and it will be handled pursuant to Section V.

D. If a Key Person fails to disclose a conflict of interest, this failure may be brought to the attention of the Board, Committee or Executive Director in the case of an employee, by another member or employee and shall be handled pursuant to Section V.

E. Directors and members of the BSAC must file an annual disclosure statement in the form attached to this policy resolution. Candidates for Director or BSAC member elected must also file this statement prior to initial election. Forms are to be submitted to the Executive Director.

### **V. DETERMINING WHETHER A CONFLICT OF INTEREST EXISTS**

A. After there has been disclosure of a conflict of interest pursuant to IV (C) or (D) the Board, Committee or Executive Director in the case of an employee, shall determine whether there is a conflict of interest. The Board, Committee or Executive Director may seek information from the Key Person with the conflict. The Board, Committee or Executive Director may allow the Key Person to make a statement on the matter. However, the Key Person shall not be present during the discussion of the conflict nor vote on whether a conflict exists.

B. In determining whether a conflict of interest exists, the Board, Committee or Executive Director shall consider whether any type of participation by the Key Person with the conflict of interest would raise questions of bias, inappropriate use of the Association's assets, or any other impropriety.

C. A conflict always exists where a Key Person or Related Person has a material financial interest in a transaction.

D. If the Board, Committee or Executive Director determines that there is a conflict of interest, the Key Person may appeal the matter to the Executive Committee which shall follow the procedure in V (A), (B) and (C). The decision of the Executive Committee is final.

## **VI. TRANSACTIONS AUTHORIZED**

For purposes of this policy, a transaction in which a key person has a conflict of interest is authorized, approved or ratified if:

A. Prior to approval, the Board, Committee or Executive Committee has considered alternative transactions to the extent available; and

B. The transaction receives the affirmative vote of a majority of the directors or committee members who have no conflict of interest in the transaction; and

C. The majority of the directors or committee members who have no conflict of interest in the transaction determines that the transaction is fair, reasonable and in the Association's best interest at the time of such determination.

D. In the case of an Employee, the Executive Director determines that the transaction is fair, reasonable and in the Association's best interest at the time of such determination.

## **VII. MINUTES AND DOCUMENTATION**

The minutes of any Board or Committee meeting at which a transaction involving a conflict of interest was discussed or voted upon shall include:

A. The name of the key person with the conflict of interest and the nature of the interest;

B. The decision as to whether a conflict of interest exists;

C. Any alternatives to a proposed transaction which were considered; and

D. If the transaction was approved, the basis for the approval

## **VIII. REMEDIES**

Any Director or BSAC member who fails to comply with this COI Policy may, at the discretion of the Board, be found to be a member not in Good Standing in which case the procedure set forth in Bylaw 3.6 and Bylaw 6.5 will apply. Any other Key Person who fails to comply with this COI Policy may be removed at the discretion of the Board of Directors.

*Note: if the amendments to 3.6 and 6.5 don't pass - remedy for elected Directors and elected BSAC members would need to be rewritten.*

## Appendix to the BSOA Conflict of Interest Resolution

**Examples:** Conflicts of Interest include, but are not limited to the following situations:

Situations in which a Key Person:

- Has an investment interest in any third party that the Association deals with or is considering dealing with (*This example could be considered a monetary benefit*);
- Serves on the Board of, participates in the management of, or is otherwise employed by or volunteers with any third party that the Association deals with or is considering dealing with (*This could be perceived as a conflict of interest*);
- Receives or may receive compensation or other benefits in connection with a transaction into which the Association enters (*This would be considered a monetary benefit*);
- Receives or may receive personal gifts or loans from third parties dealing with the Association (*Monetary benefit*);
- Serves on the board of directors of another nonprofit organization that is competing with the Association for a grant or contract (*Example of dual loyalties as opposed to the required standard of singular loyalty to the Association*);
- Has a close personal or business relationship with a participant in a transaction being considered by the Association (*Perceived as a personal conflict of interest*);
- Would like to pursue a transaction being considered by the Association for their personal benefit (*Transactional benefit*).