

# 2015 CAI Law Seminar

## Best Manuscript Award

Running a Darn Good Meeting:  
What You Need to Know About Parliamentary Procedure

James H. Slaughter, Esq., Rossabi Black Slaughter, PA

The  
**College**  
of Community  
Association  
**Lawyers**



ISBN: 978-1-59618-078-9

© 2015 Community Associations Institute.  
Community Association Law Seminar 2015

***Speakers/authors are solely responsible for obtaining all necessary permissions or licenses from any persons or organizations whose materials are included or used in their presentations and/or contributed to this work.***

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, audio, visual, or otherwise, without the prior written consent of the publisher. Inquiries should be directed to Community Associations Institute.

Community Associations Institute  
6402 Arlington Blvd., Suite 500  
Falls Church, VA 22042

CAI assumes no responsibility for obtaining permission to reprint any previously published materials provided by speakers/authors for this event or this publications. All such responsibility lies with the contributing speaker/author.

*This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.*—From a Declaration of Principles, jointly adopted by a Committee of the American Bar Association and a Committee of Publishers

Printed in the United States of America

# RUNNING A DARN GOOD MEETING: WHAT COMMUNITY ASSOCIATION ATTORNEYS NEED TO KNOW ABOUT PARLIAMENTARY PROCEDURE



*Jim Slaughter, Esq.<sup>1</sup>  
Rossabi Black Slaughter, P.A.*

*Law Firm Site:*

[www.lawfirmrbs.com](http://www.lawfirmrbs.com)

*Parliamentary Site:*

[www.jimslaughter.com](http://www.jimslaughter.com)

---

<sup>1</sup> Jim Slaughter is a partner in the North Carolina law firm of [Rossabi Black Slaughter, PA](http://www.lawfirmrbs.com). He is a Certified Professional Parliamentarian, Professional Registered Parliamentarian, and past President of the American College of Parliamentary Lawyers. Jim served as 2014 President of CAI's College of Community Association Lawyers (CCAL). Many charts and articles on meeting procedure can be found at [www.jimslaughter.com](http://www.jimslaughter.com)

**Table of Contents**  
**(Click on a Link to Go to That Page)**

I.	<a href="#">Introduction</a> .....	6
II.	<a href="#">What is Parliamentary Procedure</a> .....	6
III.	<a href="#">What Procedures Should Be Followed</a> .....	8
	A. <a href="#">Statutory Parliamentary Guidance</a> .....	8
	B. <a href="#">Parliamentary Authority</a> .....	11
	C. <a href="#">Board Meeting vs. Membership Meeting Rules</a> .....	12
IV.	<a href="#">The Order of Business</a> .....	14
	A. <a href="#">Opening the Meeting</a> .....	14
	B. <a href="#">Approval of Minutes</a> .....	14
	C. <a href="#">Reports of Officers, Boards, Standing Committees</a> .....	15
	D. <a href="#">Reports of Special Committees</a> .....	16
	E. <a href="#">Unfinished Business</a> .....	17
	F. <a href="#">New Business</a> .....	17
	G. <a href="#">Closing the Meeting</a> .....	18
V.	<a href="#">Agendas</a> .....	19
	A. <a href="#">The Informal Agenda</a> .....	19
	B. <a href="#">The Adopted Agenda</a> .....	20
	C. <a href="#">The Timed Agenda</a> .....	21
	D. <a href="#">The Adopted Timed Agenda</a> .....	22

VI.	<a href="#"><u>Bringing Business Before the Assembly</u></a>	22
VII.	<a href="#"><u>The Most Used Motions</u></a>	25
VIII.	<a href="#"><u>How Motions Work Together (Precedence)</u></a>	26
IX.	<a href="#"><u>Principles of Decision-Making</u></a>	28
X.	<a href="#"><u>Governing Authority Conflicts</u></a>	30
XI.	<a href="#"><u>Quorum Issues</u></a>	32
XII.	<a href="#"><u>Voting Methods</u></a>	35
A.	<a href="#"><u>Voice Vote</u></a>	36
B.	<a href="#"><u>Rising Vote</u></a>	36
C.	<a href="#"><u>Counted Vote</u></a>	37
D.	<a href="#"><u>Show of Hands Vote</u></a>	38
E.	<a href="#"><u>Unanimous Consent</u></a>	38
F.	<a href="#"><u>Voting Card</u></a>	39
G.	<a href="#"><u>Ballot Vote</u></a>	40
H.	<a href="#"><u>Machine or Electronic Vote</u></a>	44
I.	<a href="#"><u>Roll-Call Vote</u></a>	44
J.	<a href="#"><u>Absentee Voting</u></a>	45
	i. <a href="#"><u>Proxy Voting</u></a>	46
	ii. <a href="#"><u>Voting by Mail</u></a>	47
	iii. <a href="#"><u>Electronic Online Voting</u></a>	49
K.	<a href="#"><u>Cumulative Voting</u></a>	50

L.	<a href="#"><u>Voting by Telephone</u></a>	51
XIII.	<a href="#"><u>Model Nonprofit Corporation Act</u></a>	51
XIV.	<a href="#"><u>Parliamentary Resources</u></a>	55
A.	<a href="#"><u>Parliamentarians</u></a>	55
B.	<a href="#"><u>Parliamentary Organizations</u></a>	56
i.	<a href="#"><u>National Association of Parliamentarians</u></a>	56
ii.	<a href="#"><u>American Institute of Parliamentarians</u></a>	57
iii.	<a href="#"><u>Amer. College of Parliamentary Lawyers</u></a>	58
XV.	<a href="#"><u>Parliamentary Procedure Books</u></a>	59
XVI.	<a href="#"><u>Parliamentary Web Sites</u></a>	61
XVII.	<a href="#"><u>Conclusion</u></a>	62
XVIII.	<a href="#"><u>Attachments</u></a>	63
A.	Preside Like A Pro	
B.	Minutes	
C.	Order of Business	
D.	Handling of a Motion	
E.	Simplified Parliamentary Motions Guide	
F.	Parliamentary Motions Guide (based on <i>Robert's Rules of Order Newly Revised (11th Edition)</i> )	
G.	Presiding Phrases (Using <i>Robert's Rules of Order</i> )	

- H. Parliamentary Motions Match-Up
- I. Parliamentary Strategy
- J. Teller's Report for Motion
- K. Teller's Report for Election
- L. Parliamentary Law Legal Resources
- M. "Better Use of Parliamentary Procedure,"  
Community Association Institute's *Common Ground*, 1998
- N. "Community Associations & the Parliamentarian,"  
National Association of Parliamentarian's *National  
Parliamentarian*, First Quarter 2000
- O. "Parliamentary Procedure for Community Associations,"  
Community Association Institute's *Common Ground*  
(feature/cover story), Sep/Oct 2000
- P. Meeting Myths,"  
Community Association Institute's *Common Ground*,  
Jan/Feb 2003
- Q. "Statutes & Procedures of Community Associations,"  
National Association of Parliamentarian's *National  
Parliamentarian*, First Quarter 2005
- R. "Planning the Effective Meeting,"  
Community Association Institute's *Common Ground*, 2007
- S. "Psst! Executive Sessions are Secret,"  
Community Association Institute's *Common Ground*,  
Mar/Apr 2008

## **I. INTRODUCTION**

Legal counsel to community associations must be aware of parliamentary procedure basics. Numerous states have adopted statutes requiring associations to follow a specific parliamentary manual in association meetings. Even without such a mandate, courts generally hold that all organizations are subject to the principles and rules of common parliamentary law. In other words, all of these organizations must observe proper rules when meeting to transact business.

In addition to these legal obligations, many community associations adopt a rule (typically in the bylaws) that they will follow a particular procedural book, such as *Robert's Rules of Order*. Members who act contrary to the rules they have adopted can be held liable for their actions. As a result, ignoring or incorrectly applying parliamentary procedure can lead to embarrassment and even lawsuits.

The benefits of a well-run meeting extend beyond questions of liability. Proper procedure can help turn long, confrontational meetings into short, painless ones. As a result, attorneys advising homeowner and condominium associations should make every effort to learn the essentials of parliamentary procedure.

## **II. WHAT IS PARLIAMENTARY PROCEDURE?**

Parliamentary procedure is all the rules that govern the transaction of business in meetings. The term “parliamentary procedure” is likely broader than you think. That’s because the phrase encompasses everything that goes into running a legal and effective meeting, including these procedures:

- Giving proper notice of the meeting to members
- Waiting until enough members show up before starting the meeting

- Discussing and voting on issues at the meeting

All of these considerations and more fall under the heading “parliamentary procedure.”

Contrary to common perception, parliamentary procedure is not *Robert’s Rules of Order Newly Revised (11th Edition)* (“RONR”). Instead, RONR is the most used of several parliamentary authorities (various versions are used by approximately 85% of all organizations in the U.S.). Another popular book is *The Standard Code of Parliamentary Procedure (4th Edition)*<sup>2</sup> (also known as “Sturgis”). A recent work based on the principles of *Sturgis* is the *American Institute of Parliamentarians Standard Code of Parliamentary Procedure*. Other parliamentary texts include *Mason’s Manual of Legislative Procedure* (used by many state legislatures) and *Bourinot’s Rules of Order* (used in Canada). The fact that RONR is the most used and the easiest to locate argues in its favor as a parliamentary authority.

RONR is an excellent resource for counsel to community associations. The book has sections on effective presiding, drafting good minutes, the duties of officers, running elections (including proxy, cumulative, and mail ballot procedures), writing and amending bylaws, holding board and committee meetings, and handling troublesome members. RONR is fairly easy to find—just buy the right book. There are numerous RONR “clones” and earlier editions that are easy to get by mistake.

---

<sup>2</sup> For a comparison of *Robert’s* and *Sturgis*, you may wish to visit the online [Parliamentary Motions Guide Based on Robert’s Rules of Order Newly Revised \(11th Edition\)](#) and [Parliamentary Motions Guide Based on Sturgis Standard Code of Parliamentary Procedure \(4th Ed.\)](#).

Since 1970 a new edition of *Robert's Rules of Order Newly Revised* has been published about every ten years. *Robert's Rules of Order Newly Revised (11<sup>th</sup> Edition)* became available in late 2011 and is now the "most recent edition" for statutes and bylaws that use such language. While there are some 120 noted changes from the prior 10<sup>th</sup> Edition, few will impact most community association meetings. Smaller board meetings can still be quite informal. Annual meetings and conventions should be more formal. One significant change: "Point of Information," the traditional method for asking a question during a meeting, was renamed "Request for Information," in hopes that members would understand the term should be used to request information, not to provide information. The latest *RONR* is available in hardback and soft cover, is 716 pages, and can be identified by "11<sup>th</sup> Edition" on its cover (and can be purchased from the [CAI Bookstore](#)).

### **III. WHAT PROCEDURES SHOULD BE FOLLOWED?**

#### **A. STATUTORY PARLIAMENTARY GUIDANCE**

More and more states are providing statutory guidance to community associations on the meeting procedures to be followed. For instance, the following states all have specific guidance on the procedures to be used during association board and membership meetings:

Hawaii statutes provide as follows for planned community and condominium associations: "All association and board of

directors meetings shall be conducted in accordance with the most current edition of Robert’s Rules of Order, Newly Revised.”

[Haw. Rev. Stat. § 421J-6](#) and [§ 514A-82\(a\)\(16\)](#) (interestingly, the condominium statute omits the words “Newly Revised”).

Almost identical language can be found in North Carolina for both planned communities and condominium associations:

“Except as otherwise provided in the bylaws, meetings of the association and the executive board shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised.”

N.C. Gen. Stat. [§ 47C-3-108\(c\)](#) and [§ 47F-3-108\(c\)](#).

Similarly, an Oregon statute provides that as to planned communities: “Unless other rules of order are required by the declaration or bylaws or by a resolution of the association or its board of directors, meetings of the association and the board of directors shall be conducted according to the latest edition of Robert s Rules of Order published by the Robert s Rules Association.”

[OR Rev. Stat. § 94.657](#).

A California statute governing community associations is

somewhat less specific: “Meetings of the membership of the association shall be conducted in accordance with a recognized system of parliamentary procedure or any parliamentary procedures the association may adopt.”

[Cal. Civ. Code § 1363\(d\).](#)

A recent change to the Connecticut Uniform Common Interest Ownership Act provides that, “Meetings of the association shall be conducted in accordance with the most recent edition of Roberts' Rules of Order Newly Revised unless (1) the declaration, bylaws or other law otherwise provides, or (2) two-thirds of the votes allocated to owners present at the meeting are cast to suspend those rules.

[CN Chapter 828 § 47-250\(c\).](#)

Such statutory language prescribing a parliamentary authority is likely to become more common. Both the [Uniform Common Interest Ownership Act \(2008 As Amended in 2014\)](#) (“UCIOA 2008”) and the [Uniform Common Interest Owners Bill of Rights Act](#) provide that “Except as otherwise provided in the bylaws, meetings of the association must be conducted in accordance with the most recent edition of Roberts’ Rules of Order Newly Revised.” [UCIOA 2008 § 3-108\(a\)\(7\)](#); [UCIOA Bill of Rights § 11\(g\)](#).

Even so, at present many states have no statutory language on the procedures to be followed by community associations. The result is that there is

no specific, unambiguous direction regarding the rules of procedure to be followed. However, courts have held that deliberative bodies are bound by certain principles of parliamentary procedure even in the absence of specific rules. ("All profit and nonprofit corporations and associations and the boards, councils, commissions, and committees of government must observe parliamentary law." *The Standard Code*, p. 3) "In the absence of any duly adopted rules of procedure or of sufficient statutory regulation, the generally accepted rules of parliamentary procedure control . . . ." 59 Am Jur 2d *Parliamentary Law* § 4 (2014)(citations omitted). "If there is no specific, unambiguous statute or charter provision, resort may be had to *Robert's Rules of Order [Newly Revised]* for light on relevant parliamentary usages of deliberative assemblies." 59 Am Jur 2d *Parliamentary Law* § 4 (2014)(citations omitted).

## **B. PARLIAMENTARY AUTHORITY**

Unfortunately, "generally accepted rules of parliamentary procedure" are difficult to define. As a result, for those associations without a mandated statutory parliamentary authority, the association should consider formally adopting written rules of parliamentary procedure. The usual method by which an organization provides itself with suitable rules of order is to adopt a parliamentary authority such as *Robert's Rules of Order Newly Revised (11<sup>th</sup> Edition)*. A parliamentary authority can be adopted by a bylaws provision that the current edition of a specified manual of parliamentary law shall be the parliamentary authority. For example:

## Parliamentary Authority

The rules contained in the current edition of *Robert's Rules of Order Newly Revised* shall govern the [Association] in all cases to which they are applicable and in which they are not inconsistent with these bylaws and any special rules of order the [Association] may adopt.

See *RONR* § 56, p. 588. Similarly, some associations provide language denoting a parliamentary authority in the restrictive covenants (or “Declaration,” “Covenants, Conditions and Restrictions,” “Declaration of Condominium,” or “Master Deed”). The procedural rules in that book then govern in all cases in which the rules are not inconsistent with higher authority, such as state law or the articles of incorporation. This parliamentary authority can also be supplemented with specific rules to cover specific situations.

### **C. BOARD MEETING VS. MEMBERSHIP MEETING RULES**

Board meetings and membership meetings should be conducted differently. Large annual meetings must be fairly formal. Informal discussion of matters is impractical due to the number of members present. Limits on debate must be observed to keep the meeting on schedule. Formal votes help avoid legal challenges. In contrast, smaller boards and committees can be less formal. *RONR* notes that formality can hinder business in a meeting of fewer than a dozen. As a result, in smaller boards *RONR* recommends that:

- Members may raise a hand instead of standing when seeking to obtain the floor
- Members may remain seated while speaking or making motions.

- Motions need no second.
- Discussion of a subject is permitted while no motion is pending.
- When a proposal is clear, a vote can be taken without a formal motion.
- There is no limit to the number of times a member may speak to a subject or motion.
- Motions to limit debate or to close debate (Previous Question) are in order, but “occasions where they are necessary or appropriate may be rarer . . . .”
- The chair is typically a full participant and can debate, make motions, and vote.
- Votes can often taken by a show of hands

*RONR* § 49, p. 487-89.<sup>3</sup> In contrast, large boards follow more formal procedures.

Some smaller boards dislike the informality suggested by *RONR* and follow a more formal procedure at all meetings. Even informal boards should be more formal on matters of sufficient importance or controversy.

To avoid confusion as to what procedures to follow, some boards adopt a motion as to what procedural rules govern board meetings. At a minimum, a board should adopt a rule that a particular book shall serve as the parliamentary authority if no such provision exists in other governing documents.

---

<sup>3</sup> See also online article “[Board Procedures Versus a Membership Meeting or Convention.](#)”

## **IV. THE ORDER OF BUSINESS**

Part of any meeting should be a systematic plan for the orderly conduct of business. The sequence in which business is taken up during a meeting is known as the “Order of Business.” The Order of Business is a blueprint for the meeting and typically has the following components (which will vary slightly depending on whether the meeting is a board meeting or an annual member meeting). (See [“Order of Business”](#) online or attached as ATTACHMENT C)

### **A. OPENING THE MEETING**

The presiding officer should never call the meeting to order until a quorum is present. A quorum is the number of members entitled to vote who must be present in order for business to be legally transacted. Quorum is typically defined in the governing documents of community associations, but may also be prescribed by statute.

Once the time to begin a meeting arrives and a quorum is present, the chair calls the meeting to order. The formal manner of doing this is for the presiding officer to announce, “The meeting will come to order.” At that moment, the meeting becomes official and the members present can transact business on behalf of the entire organization.

### **B. APPROVAL OF MINUTES**

Annual meetings typically do not approve minutes. Instead, the board or another committee should be authorized to approve the minutes. Such a practice

makes sense because few members are likely to remember what occurred at a meeting held a year ago, and the members in attendance may be completely different.

In meetings where minutes are to be approved, the minutes are typically distributed to all members so that they do not have to be read aloud. Corrections and approval are normally done by unanimous consent. That is, the presiding officer can ask, “Is there any objection to approving the minutes as read [or distributed].” If there is no objection, the minutes are approved. (For more information on details to include in minutes, see “[Minutes](#)” online or attached as ATTACHMENT B)

### **C. REPORTS OF OFFICERS, BOARDS, AND STANDING COMMITTEES**

One of the first substantive items of business in a meeting is to hear from officers and established boards and committees. Such an arrangement is logical. Those who have been working on business for the organization should be given priority over new business items. While some chairs just go through the list of committee names each meeting, it makes much more sense for the chair to find out in advance who needs to report and only call on those officers, boards, and committees that have reports.

Reports can be presented for information only, in which case they don’t require a motion or vote. An example of a report that should not be automatically adopted is a standard financial report. Associations everywhere hear the treasurer give a financial report and then move to Adopt the treasurer’s

report. *Robert's* says you shouldn't do that, as we don't have the slightest idea if any of the bank amounts are accurate. Or even truthful. *Robert's* goes so far as to provide: "No action of acceptance by the assembly is required—or proper—on a financial report of the treasurer unless it is of sufficient importance, as an annual report, to be referred to auditors." The auditors' report is what should later be adopted by the body.

If a report is presented for action, it is common that the reporting member end by making a motion with a specific recommendation for action. For example, the landscape committee may have studied the common area surrounding the pool. In her report, the committee chairman might thank the members of the committee for their hard work and explain in detail the committee's position and reasoning. At the end of her report, the committee chair would close by saying, "On behalf of the committee, I move that we alter the landscaping around the pool at follows: . . . ."

#### **D. REPORTS OF SPECIAL COMMITTEES**

Unlike standing committees established in the governing documents, special committees do not have continual existence. Instead, special committees exist solely for the purpose of a specific project. For example, a special committee might be created to plan a specific function or event. Special committees typically go out of existence upon their final report. Because of their transitory nature, special committees rank slightly below standing committees in the standard order of business.

## **E. UNFINISHED BUSINESS**

Unfinished business refers to matters carried over from a previous meeting. This category of business is sometime incorrectly referred to as “old business.” “Old business” is a misnomer in that unfinished business is not simply items that have been discussed previously. Instead, unfinished business items typically fall into one of several specific categories. For organizations that meet at least four times a year, unfinished business may include:

- (1) any matter that was on the previous meeting’s agenda but didn’t get reached
- (2) any matter that was being discussed at the previous meeting when the meeting adjourned
- (3) any matter that was being discussed at the previous meeting that was postponed to the current meeting.

The chair never needs to ask if there is any unfinished business because she should know what did or didn’t get finished at the prior meeting. As a result, the presiding officer simply states the question on the first item of unfinished business. Or if there is no unfinished business, the chair can skip this category altogether or simply announce that there is no unfinished business.

## **F. NEW BUSINESS**

Typically, most work in a meeting is accomplished when dealing with new business. In this agenda category, members can introduce new items for

consideration. Unless there is a rule or a statute to the contrary, anyone can propose most anything. That obviously can make planning a meeting quite difficult, so some community associations have notice requirements in their bylaws or through a special rule of order (or even by statute) to require business items be submitted in advance. Such a requirement makes sense for most any organization, as it helps when preparing the agenda and avoids last-minute surprises.

In an organization without advance-notice requirements, the presiding officer introduces the category by simply asking, "Is there any new business?" Members can then introduce a motion by being recognized, making the motion, and getting a second. Following the consideration of each item of business, the chair repeatedly asks, "Is there any further new business?" This process continues until there are no additional business items (or members tire of new business and move to Adjourn).

## **G. CLOSING THE MEETING**

In most assemblies the presiding officer can adjourn the meeting without waiting for a motion to Adjourn. Once all items of business have been considered, the chair can ask, "Is there any further business?" If no one responds, the chair can state, "Since there is no further business, the meeting is adjourned."

If custom or tradition requires that a motion to Adjourn be made, the presiding officer can ask, "Is there a motion to Adjourn?" Once the motion is made and seconded, the presiding officer can ask, "Is there any objection to

adjourning the meeting? [PAUSE] Hearing no objection, the meeting is adjourned.” As with other instances of unanimous consent, if anyone objects, the chair can process the motion formally.

## V. AGENDAS

An agenda—although based on the standard order of business— is an even more valuable tool for keeping meetings on track. After all, the standard order of business is still just a general outline for the meeting. That is, reports or new business are *kinds* of business and don’t really give you the specific items that will arise at the meeting.

If you really want to manage your meeting, you need an agenda. With an agenda, the specific items that are expected to come up at a meeting are placed into the order of business. That is, the three unfinished items from last month are listed under “Unfinished Business.” The two new motions that you know will be introduced are placed under “New Business.”

There is no better use of a presiding officer’s time than preparing a good agenda. With that said, it’s important to realize that there are several types of agendas.

### A. THE INFORMAL AGENDA

A typical agenda lists all items in the order they are expected to occur. For instance, an agenda might look like this:

## **Agenda**

[Call to Order]

Minutes of March 12 Meeting

Reports

- a. Landscaping Committee
- b. Legal Counsel Update (in Executive Session)

Adjourn

Such an agenda is simply handed out before or at the beginning of the meeting. No vote is taken on it. As a result, the agenda is really just a general guide to items that are expected to be handled at the meeting. How does this help? Because you expect members to behave differently if they know there are 2 versus 15 business items. The purpose of an informal agenda is simply to give everyone an idea of how much work is before the group. The downside to such an agenda is that it is not binding.

### **B. THE ADOPTED AGENDA**

The assembly can also adopt an agenda, either through a motion and vote or through unanimous consent. This is frequently done near the beginning of the meeting, often in the Consent Agenda. By adopting the agenda, the assembly “locks in” both the items of business as well as their order. Now, if a member wants to change the order of items or introduce a new item, he must ask the body to change the agenda. Adopted agendas are particularly useful in conventions or annual meetings where members don’t have a lot of time and

don't need surprises.

### C. THE TIMED AGENDA

The timed agenda is a more recent trend. This type of agenda looks similar to the earlier informal agenda, but a time is listed next to each item.

#### Timed Agenda

7:00	[Call to Order]
7:01	Minutes of March 12 Meeting
7:02	Reports
7:02	a. Landscaping Committee
7:30	b. Legal Counsel Update (in Executive Session)
8:30	Adjourn

As to each item, the chair (or chair and staff) has estimated how long each item on the agenda will take. Does this sound like a lot of work? Absolutely. But it may be worth the effort. After all, how can a chair know how long a meeting will take if no thought has been given to the length of items on the agenda? To prepare a timed agenda, the chair typically starts with the end time of the meeting and works backward, giving more time to some items and less to others. Like the informal agenda, the timed agenda is simply a suggested guide. Without question, it speeds the meeting along. About five minutes after an item on a timed agenda was supposed to start, you can see members start to look at their watches! Still, like the informal agenda, a timed agenda isn't binding.

#### **D. THE ADOPTED TIMED AGENDA**

For groups in need of serious intervention, an adopted timed agenda may be the answer. Once adopted, not only is the order of items locked in, but so are the actual times. For instance, at 7:30 p.m., the chair would say something like: “It’s now 7:30. We decided as a group by a vote that at 7:30 we would move into the legal counsel update. Unless someone wishes to make a motion to change the agenda, we will now begin the legal counsel update.”

Why would a group subject itself to such a rigid schedule? Well, there are two obvious reasons. Some organizations simply can’t rein in the length of their meetings, and an adopted timed agenda may help. A second use of an adopted timed agenda is when there is limited time for several important items. Let’s say that an organization has two hours to consider two important motions. Human nature is that the group will spend most of the time on the first matter, and then hurriedly deal with the second matter in the last few minutes. With an adopted timed agenda, the organization can guarantee one hour to each motion.

#### **VI. BRINGING BUSINESS BEFORE THE ASSEMBLY**

In assemblies following formal procedure, no discussion should occur without being preceded by a “motion” to take action. A motion is a formal proposal for consideration and action. In a formal meeting, all items of business—whether a proposal to spend \$50,000 on common area improvements or to take a five minute break—are accomplished by proposing a motion.

The steps for considering a motion are quite similar, regardless of the

specific motion. The three steps for bringing a motion before an assembly are:

**1. A member makes the motion.**

For most motions, a member must seek recognition from the presiding officer. Once recognized, the member stands and makes a motion by saying, "I move that . . . ."

**2. Another member seconds the motion.**

Once made, a motion must be seconded by another member. The seconder does not need to be recognized and can simply yell out "second." The purpose in requiring a second is that an assembly should not waste its time discussing a matter unless at least two members want to consider it.

**3. The chair states the question.**

Once a motion is made and seconded, the presiding officer repeats the motion by stating, "It is moved and seconded that . . . ." Stating the question serves two purposes: (1) The chair can verify the wording of the motion; and (2) The motion does not become official until stated by the chair. Before being stated by the chair, a motion belongs to its maker and can be withdrawn at any time. After being stated by the chair, a motion belongs to the assembly and must be processed with debate and a vote.

Once properly before the assembly, a motion is considered in three steps:

**1. Members debate the motion (unless undebatable)**

Several rules govern who get to speak in debate:

- The maker of the motion gets to speak first.
- Anyone who has not spoken gets recognized before anyone who has already spoken.
- If possible, debate alternates pro and con.
- Members can only speak twice to a motion.

## **2. Chair puts question to a vote**

When debate ends (either because no one seeks the floor or because a motion to close debate is adopted), the chair repeats the motion by saying, “The question is on the adoption of . . . .” The vote can be taken by voice (“AYES” and “NOES”), standing, hand, or some other means.

## **3. Chair announces vote**

The last step in considering a motion is for the chair to announce whether the motion was adopted or rejected (or “lost”).

The process for considering a motion can seem repetitive. However, there is no worse situation in a meeting than when members don’t understand what is being discussed or voted upon. A primary purpose of proper procedure is to assure that all members know the parliamentary situation at any given moment. (See also “[Handling of a Motion](#)” online or attached as ATTACHMENT D)

## VII. THE MOST USED MOTIONS

Many motions exist in parliamentary procedure (*RONR* lists 84 variations in a table near the end). However, most business in meetings is accomplished through the use of about a dozen motions.

- **Main Motion** – brings business before the assembly and permitted only when no other motion is pending.
- **Amendment** – allows changes to another motion by adding, deleting, or changing words.
- **Refer** – allows a matter to be sent to a smaller group to consider and report back.
- **Postpone** – delays consideration of a matter.
- **Limit Debate** – places a limit on the time or number of speakers.
- **Previous Question** – ends debate immediately.
- **Table** – temporarily delays a matter when something of urgency arises.
- **Recess** – permits a short break.
- **Adjourn** – ends the meeting.
- **Point of Order** – calls attention to an error in procedure.
- **Request for Information** – allows a member to ask a question.
- **Division of the Assembly** – demands a rising (but not counted) vote after a voice vote.

Each motion has detailed rules on when it can be introduced, whether it needs a second, whether it is debatable, and the vote required for adoption. (See

also “Simplified Parliamentary Motions Guide” attached as ATTACHMENT E, and the “[Parliamentary Motions Guide](#)” online or attached as ATTACHMENT F)

## **VIII. HOW MOTIONS WORK TOGETHER (“PRECEDENCE”)**

Not all motions are in order at any given moment. Instead, certain motions are considered ahead of other motions in formal procedure. This concept is known as “precedence” (pree-SEED-n’s). The order of precedence from highest-ranking motion to lowest is as follows:

- Adjourn
- Recess
- Lay on the Table
- Previous Question
- Limit/Extend Debate
- Postpone to a Certain Time
- Commit
- Amend
- Main Motion

There are two rules that govern precedence:

- (1) When a motion is being considered, any motion higher on the list may be proposed, but no motion of lower precedence.
- (2) Motions are considered and voted on in reverse order of proposal. That is, the motion last proposed (and highest on the list) is considered and decided first.

Suppose the main motion being discussed is to renovate the clubhouse at a cost not to exceed \$50,000. A motion is made to Amend the motion by striking “\$50,000” and inserting “\$25,000” (which is in order as the motion to Amend is higher on the list). Discussion begins on the amendment. A motion is made to Refer the matter to the Building and Grounds Committee (which is in order). Discussion begins on the motion to Refer. A motion is made to Postpone the matter until next month’s board meeting (which is in order). A member then moves to Adjourn (which is in order). Prior to voting on the motion to Adjourn, a member obtains the floor and moves to Recess for 5 minutes. The motion to Recess is out of order in that it is lower in the order of precedence than the motion to Adjourn.

The pending motions are considered in reverse order (from highest to lowest). In other words, a vote is taken on the motion to Adjourn. If the motion passes, the meeting ends and everyone goes home. If the motion to Adjourn fails, the assembly considers the motion to Postpone. If the motion to Postpone passes, consideration of the matter ends in that it has been postponed. If the motion to Postpone fails, the assembly considers the motion to Refer. If the motion to Refer passes, consideration of the matter ends in that it has been sent to committee. If the motion to Refer fails, the assembly considers the motion to Amend. The proposed amendment (to change the amount) will pass or fail. Finally, the assembly considers and votes on the main motion to renovate the clubhouse (either as originally proposed or as amended, depending on the outcome of the amendment). Before the final vote on the main motion, other

motions may be introduced and considered so long as they are higher in order of precedence than the pending motion.

## **IX. PRINCIPLES OF DECISION-MAKING<sup>4</sup>**

An initial question to ask prior to any vote in a community association context is: “Is a vote at a meeting necessary?” For instance, the [Uniform Planned Community Act](#) (“UPCA”) and the [Uniform Common Interest Ownership Act \(2008 As Amended in 2014\)](#) (“UCIOA 2008”) provide that the declaration “may be amended only by vote or agreement of unit owners of units to which at least [67] percent of the votes in the association are allocated . . . .” [UPCA § 2-117\(a\)](#); [UCIOA 2008 § 2-117](#). Similar language exists as to terminating a planned community, which can be accomplished “by agreement of unit owners of units to which at least 80 percent of the votes in the association are allocated.” [UPCA § 2-118\(a\)](#); *see also* [UCIOA 2008 § 2-118](#). Certainly, such votes could be taken at an association meeting. However, potential problems at such a meeting are legion—even a unanimous vote by those at the meeting might not be enough to adopt the motion (because the vote is based on the total number of unit owners and not those attending the meeting); quorum rules must be followed; proxies must be recognized; motions raised at the meeting may further complicate the issue. Rather than attempt such a vote, a simpler solution might be to choose the second option—avoid a meeting altogether. Instead, obtain the “agreement of

---

<sup>4</sup> See also “[Community Association Voting: Evolving Trends in Membership Elections of Directors and the Authorization of Corporate Action](#),” by David Graf of Moeller Graf, P.C. and Steve Weil at Berding & Weil, LLP, which was selected as the “Best Manuscript” from CAI’s 2014 Community Association Law Seminar.

unit owners” by canvassing the association and obtaining the written consent of the required percentage of members.

If a meeting and vote is necessary for a particular decision, another essential question is: “What is the required vote based on statute and/or the governing documents?” Frequently, the presence or absence of a single word can drastically alter the required vote. For example: A special meeting is called to vote on an issue, which results in 50 “yes” and 48 “no” votes. 100 members are in attendance (but 2 abstain from voting). The association has 200 members. The outcome will vary depending on the basis of the vote. That is,

A majority vote is	50 (total votes=98)
A majority of the members present is	51
A majority of the entire membership	101
A plurality vote is	the most votes

Generally, votes are determined based on the number of members *present and voting*. RONR § 44, p. 401. In such a case, the vote of 50 to 48 would adopt the motion. However, the same motion would be defeated if the basis of the vote was something else, such as a “majority of the members present” or a “majority of the entire membership.” Because the bases for votes are often modified by statute<sup>5</sup> or governing documents, it pays to carefully review such wording.

---

<sup>5</sup> For example: “*Notwithstanding any provision of the declaration or bylaws to the contrary*, the unit owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant.” [UPCA § 3-103\(g\)](#)(emphasis added); *see also* [UCIOA 2008 § 3-122\(a\)](#).

Some associations determine their board elections by “plurality vote” because it is quite easy to determine which candidate received the most votes. However, elections determined by plurality vote are unlikely to represent the will of the members. In fact, *RONR* provides that:

A plurality that is not a majority never chooses a proposition or elects anyone to office except by virtue of a special rule previously adopted. If such a rule is to apply to the election of officers, it must be prescribed in the bylaws. A rule that a plurality shall elect is unlikely to be in the best interests of the average organization.

*RONR* § 44, p. 405. Despite such language, many state statutes and governing documents provide that directors are elected by plurality vote. (See [Model Nonprofit Corporation Act Third Edition](#))

## **X. GOVERNING AUTHORITY CONFLICTS**

Voting issues in the community association world are often the result of conflicts among governing authorities. At times, there are even conflicts within the applicable statutes themselves. For instance, the UPCA provides that “the [community] association shall be organized as a profit or nonprofit corporation [or as an unincorporated association].” [UPCA § 3-101](#). In such situations, it is possible for state statutory provisions governing planned communities to conflict with similar provisions for profit or nonprofit corporations on matters such as quorum, notices of meetings, votes required, or proxies. The UCIOA attempts to

make this conflict less confusing with the statement, “The principles of law and equity, including the law of corporations [,] [and] any other form of organization authorized by the law of this state [,and unincorporated associations], the law of real estate, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this [act], except to the extent inconsistent with this [act].” [UCIOA 2008 § 1-108](#).

In addition to all such pertinent statutes, community association attorneys must also be aware of the wording of multiple governing documents as well as the potential for conflict between these documents, including the following:

- Declaration; Declaration of Covenants, Conditions, and Restrictions (CCR’s); Declaration of Condominium; Master Deed
- Supplemental or Amended Declaration
- Articles of Incorporation (for-profit or nonprofit); Corporate Charter; Certificate of Incorporation
- Constitution
- Bylaws (if separate from the Constitution)
- Parliamentary authority
- Board resolutions

Conflicts between these various governing documents can at times be difficult to reconcile. Without question, some governing documents are weightier than others. For instance, UCIOA 2008 provides as follows: “If a conflict exists

between the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this [act].” [UCIOA 2008 § 2-103\(c\)](#). Other conflicts may have less precise answers. For instance, which document governs if the articles of incorporation adopted by the Board conflict with the declarations adopted by the unit owners?

At times, the governing documents may delineate a hierarchy among themselves. In addition, general principles of document interpretation may be of assistance (e.g., a general statement or rule is of less authority than a specific statement or rule and yields to it; more current documents take priority over earlier versions; when a provision is susceptible to two meanings, one of which conflicts with or renders absurd another provision and the other meaning does not, the latter must be the true meaning; etc.). Unlike other disputes involving the meaning of legal documents, “intent” of the original parties may carry little weight in the association context. After all, the documents were likely drafted by or on behalf of the developer, who may be difficult to locate in older developments and whose intent may bear little relationship to the present situation.

## **XI. QUORUM ISSUES**

A quorum, which is usually defined by statute or the governing documents, is the number of voting members who must be present in order that business can be validly transacted. *RONR* § 40, p. 345. Quorum refers to the number of members *present*, not the number of members *voting* on an issue. Under general parliamentary law, a quorum must be present for business to be

legally transacted. “In the absence of a quorum, any business transacted (except for the procedural actions noted in the next paragraph) is null and void.” *RONR* § 40, p. 347. *RONR* also suggests that, “The quorum should be as large a number of members as can reasonably be depended on to be present at any meeting, except in very bad weather or other exceptionally unfavorable conditions.” *RONR* § 40, p. 346.

The purpose of quorum requirements is to prevent a small, unrepresentative group of members from taking action on behalf of the entire association. At the same time, however, too high a quorum requirement can paralyze a community (if, for instance, directors cannot be elected or a budget approved). Some statutes and governing documents address this challenge by setting very low requirements for association meetings, but limit the actions that can be taken to those specifically noticed in the call of the meeting. For more important decisions, such as amending the declaration or pledging property as collateral, the required approval may be stated as a percentage or fraction of all the voting power in the association, rather than as a percentage of those present and voting.

Community association attorneys should be aware that state statutes often modify the general rules concerning quorum. As with many non-profit corporation statutes, the UPCA and UCIOA provide that if a quorum is established at the beginning of a meeting, the quorum remains regardless of how many members leave: “Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast [20] percent of the votes which may be cast for election of the executive board are

present in person or by proxy at the beginning of the meeting.” [UPCA § 3-109](#); [UCIOA 2008 § 3-109](#). Many states, however, have altered this uniform language even further. For instance, in Florida the quorum for a condominium association meeting is “a majority of the voting interests,” while the quorum for a homeowners’ association meeting is “30 percent of the total voting interests” (although either can be lowered by express bylaws language). [Florida Statutes § 718.112\(2\)\(b\)\(1\)](#); [Florida Statutes § 720.306\(1\)\(a\)](#). The [North Carolina Condominium Act](#) quotes the UPCA language verbatim. [N.C.G.S. § 47C-3-109 \(2014\)](#). However, the [North Carolina Planned Community Act](#) reduces the required percentage to ten percent (10%). [N.C.G.S. § 47F-3-109\(a\)\(2014\)](#). The N.C. Planned Community Act then provides that in the event a quorum is not present at a meeting, the meeting can adjourn to another date, at which time the quorum requirement “shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum.” [N.C.G.S. § 47F-3-109\(c\)\(2014\)](#). This quorum-reducing provision continues from meeting to meeting “until such time as a quorum is present and business can be conducted.” [N.C.G.S. § 47F-3-109\(c\)\(2014\)](#).

State statutes also often tinker with the quorum for board meetings. Under general parliamentary law, the quorum for a board meeting is a majority (“more than half”) of the membership. *See RONR* § 40, p. 347. Pre-2008 UCIOA language ([UCIOA 1994 § 3-109\(b\)](#)) and some state statutes define the quorum of a planned community executive board as fifty percent (50%) of the members—a number which is different than and may be smaller than a majority. *See* N.C.G.S. § [47C-3-109\(b\)\(2014\)](#) and [47F-3-109\(b\)\(2014\)](#). (The 2008 UCIOA amendments

changed this language to a majority of votes on the board. [UCIOA 2008 § 3-109\(b\)](#)) In addition, slight differences in statutory wording can alter board quorum requirements depending on whether quorum is based on the number of directors in office or the number of director positions (as these numbers may be different).

Further, some community association statutes remove quorum requirements altogether for certain actions. For instance, the UPCA mandates a “budget ratification meeting” at which the proposed budget is presented to unit owners. “Unless at that meeting a majority of all the unit owners or any larger vote specified in the declaration reject the budget, the budget is ratified, *whether or not a quorum is present.*” [UPCA § 3-103\(c\)](#)(emphasis added); *see also* [UCIOA 2008 § 3-23\(a\)](#).

## **XII. VOTING METHODS**

Many different voting methods are used in community associations—all of which have advantages and disadvantages. Before taking any vote, attention should be given as to which method is most practicable and will provide the most representative and accurate results. For instance, certain voting methods are best used when each person voting has an equal vote and proposals are to be adopted by a percentage vote of those present and voting. Different voting methods should be utilized if voters carry unequal votes, either because of differences in the number of units owned or due to proxies. Similarly, if a proposal requires a specified percentage of the total association membership to pass, an exact count by name and number of votes may be necessary.

The following is a list of the voting methods most commonly used by community associations:

#### **A. VOICE VOTE**

Voting by voice (or *viva-voce*) is the most common method of voting when only a majority vote is required. To take such a vote, the presiding officer puts the question in the following form:

‘The question is on the adoption of the motion to [or ‘that’] . . . [repeating or clearly identifying the motion]. Those in favor of the motion, say *aye*. [Pausing for response,] . . . Those opposed, say *no*.’ (Alternative forms are: ‘All those in favor . . .’; ‘All in favor . . .’; or the wording formerly prescribed in Congress, ‘As many as are in favor . . .’)

*RONR* § 4, p. 45-46. Slight variations may be used, depending on the circumstances, such as: “The question is on the adoption of the following resolution: [reading it]. Those in favor of adopting the resolution that was just read, say *aye*. . . . Those opposed, say *no*.” *RONR* § 4, p. 46.

#### **B. RISING VOTE**

An uncounted rising vote is often used to verify an inconclusive voice vote. In addition, rising votes are often used for votes requiring something other than a majority vote (for instance, it can be difficult to determine a two-thirds vote by a voice vote). Under *RONR*, whenever a member doubts the result of a

voice vote or a vote by show of hands, he can call for a “Division of the Assembly,” which requires that the vote to be taken again as an uncounted rising vote. *RONR* § 29, p. 280.

An uncounted rising vote can be taken using the following form: “Those in favor of the motion to invite Mr. Jones to be guest speaker at our next meeting will rise. [Or, ‘stand.’] . . . Be seated. . . . Those opposed will rise. . . . Be seated.” *RONR* § 4, p. 47.

### C. COUNTED VOTE

If an uncounted rising vote is inconclusive, the Chair or the assembly can order that the vote be counted. The form used then is as follows: “The question is on the motion to limit all speeches at this meeting to two minutes. Those in favor of the motion will rise and remain standing until counted. . . . Be seated. . . . Those opposed will rise and remain standing until counted. . . . Be seated.” *RONR* § 4, p. 47.

A counted vote can at times be a lengthy and complicated process. On the other hand, it may be the only appropriate method for determining the vote in meetings where members have different numbers of votes. For instance, in a meeting with 200 votes present, a voice vote or uncounted rising vote will provide little guidance if one member carries 80 proxies. Some assemblies try to balance these concerns by adopting rules that allow votes to first be taken by voice or uncounted rising, but then allowing a single member or a specified small percentage of members to demand a counted vote. Under such circumstances, the first vote may determine the outcome if the minority realizes

it simply does not have the votes to win and does not wish to force a time-consuming counted vote.

#### **D. SHOW OF HANDS VOTE**

In small boards and committees, a vote by a show of hands is often used as an alternative to a voice vote. The form for such votes is as follows: “The question is on the motion that the bill for building repairs be paid as rendered. All those in favor of the motion will raise the right hand. . . . Lower hands. [Or, nodding, ‘Thank you.’] Those opposed will raise the right hand. . . . Lower hands.” *RONR* § 4, p. 47.

#### **E. UNANIMOUS CONSENT**

Many matters at meetings can be resolved through “general consent” or “unanimous consent.” See *RONR* § 4, p. 54-55. Under this method, the presiding officer asks, “Is there any objection to . . . ?” For example, “Is there any objection to ending debate?” If no one objects, the debate is closed. If a member objects, the matter should be resolved with a motion and vote.

Unanimous consent allows an assembly to move quickly through non-controversial issues, so that more time can be spent on controversial issues. Reports and motions can be adopted, minutes can be approved, and debate can be ended with general consent. Even in assemblies where votes are difficult to calculate (due to weighted votes), unanimous consent may be appropriate for routine business.

A similar concept is the “consent calendar,” or “consent agenda,” which is

often on the agenda near the start of a meeting. While the exact process of consent calendars vary and should be established by a special rule of order, a typical practice is to include all non-controversial items, such as adoption of the minutes. Any member may request that an item be removed and placed on the regular agenda for consideration and vote. The remaining consent-calendar items are then unanimously approved as a unit without discussion.

#### **F. VOTING CARD**

Although not as common, some associations prefer to use large, brightly colored cardboard voters' cards. If this method of voting is to be used, it should be authorized by a special rule of order. One advantage to the use of voting cards is that such cards can be used to reflect multiple votes. That is, if a member is carrying several votes, the member can be given additional cards to reflect those votes. In such cases, a voting card vote will more accurately reflect the vote than a voice or standing vote (due to the fact that a person can't vote multiple times by voice or by standing).

When using voting cards, the vote is typically taken in a form similar to a "Show of Hands" vote: "The question is on the motion that the bill for building repairs be paid as rendered. As many as are in favor of the motion ,raise your voters' cards. . . . Down. Those opposed, raise your voters' cards. . . . Down." *RONR* § 45, p. 411.

## G. BALLOT VOTE

In contrast to the previous methods of voting, a ballot vote is typically used when secrecy is desired. In addition, ballots can be used when members have weighted votes (such as with proxies) and a voice or standing vote will be inaccurate. A similar device is the “signed ballot” (or “open ballot”) which members sign and is not a secret vote (but can be used to verify that members have not cast more than their allotted votes). While ballots are often used for elections, some community associations take all votes by signed or secret ballot, given that members may carry very different numbers of votes.

The governing documents may provide for a ballot vote on certain issues. If so, *RONR* provides that “If the bylaws require the election of officers to be by ballot and there is only one nominee for an office, the ballot must nevertheless be taken for that office unless the bylaws provide for an exception in such a case.” *RONR* § 45, p. 441. If not specifically authorized, balloting can be ordered by a majority vote.

If possible, ballots should be prepared in advance for distribution at the proper time (both to ensure accuracy and to make certain that only authorized ballots are in circulation). If blank pieces of paper are used, different colors should be used to distinguish different ballotings. The language for a ballot vote on a motion can be as simple as follows:

**Indicate vote with X.**

Shall John Smith be removed from the Executive Board?

Yes \_\_\_\_\_

No \_\_\_\_\_

In contrast, “yes” and “no” or “for” and “against” boxes are never used in elections. Instead, members should be instructed to mark or to write a specific name (so that a voter can only vote against one candidate by voting for another or by writing in the name of another). The language for a ballot vote in an election can be as follows:

**Mark only one candidate for each office.**

For President:

Alma Apple \_\_\_\_\_

Betty Boop \_\_\_\_\_

Chuck Capps \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_

The standard procedure for balloting is that tellers are appointed by the chair to distribute, collect, and count ballots as well as to report the vote. Tellers should be chosen for accuracy and dependability, should not have a direct personal involvement in the question, and may be selected so as to represent each side of an issue. Methods of folding ballots should be announced in

advance or stated on the ballot. There should be no interruption during the taking of a vote once any member has actually voted, unless the ballots have been collected and other business is being transacted during the counting of the vote. *RONR* § 45, p. 408.

Once balloting appears to have been completed, the chair should direct the tellers to collect the ballots by having members (1) drop their ballots into a receptacle passed by the tellers; (2) drop their ballots into a central ballot box monitored by the tellers; or (3) hand their ballots to a teller. *See RONR* § 45, p. 414-415. When everyone appears to have voted, the Chair should inquire, “Have all voted who wish to do so?” If no one responds to this request, the Chair should state, “If no one else wishes to vote . . . . [pause], the polls are closed,” thus declaring the polls closed by unanimous consent. Without such unanimous consent, a two-thirds vote is required to close the polls. Any motion to reopen the polls only requires a majority vote. *RONR* § 45, p. 415. Generally, tellers count the ballots in another room.

In recording votes, the tellers should ignore blank ballots as scrap paper. Such blanks are not reported and do not affect the election in any way. *RONR* § 45, p. 415. In contrast, “ballots that indicate a preference—provided they have been cast by persons entitled to vote—are taken into account in determining the number of votes cast for purposes of computing the majority. *RONR* § 45, p. 415. In other words, votes cast for “Mickey Mouse” or a ballot that is unintelligible can alter the outcome of an election. As a result, a sample tellers report might appear as follows:

**TELLERS' REPORT**

Office: President

Number of Votes Cast ..... 100  
Necessary for Election..... 51  
.....  
Betty Boop received..... 60  
Alma Apple received. .... 20  
Chuck Capps received ..... 17  
Ziggy Zappo (write-in) received ..... 1

*Illegal Votes*

One unidentifiable ballot..... 1  
Mickey Mouse ..... 1

ATTACHMENT J shows the general form of a tellers' report when balloting for a motion. ATTACHMENT K shows the general form of a tellers' report when balloting for an election.

The reporting teller never declares the result of a ballot vote, which is done by the Chair. Such results should include the actual vote count. Announcing the votes received by each candidate has procedural and political benefits. By hearing actual numbers, members may realize a counting or procedural error occurred in the balloting, which can then be corrected. In addition, candidates

not elected may be less enthusiastic about challenging the results when they realize the vote spread was quite large. *Robert's* advises that the "tellers' report is entered in full in the minutes, becoming a part of the official record of the organization. Under no circumstances should this be omitted in an election or in a vote on a critical motion out of a mistaken deference to the feelings of unsuccessful candidates or members of the losing side." *RONR* § 45, p. 418. After the completion of ballot vote, the ballots can be ordered destroyed or filed for a certain time if there is no possibility that the assembly may order a recount by a majority vote.

#### **H. MACHINE OR ELECTRONIC VOTE**

In some organizations, technology has replaced paper ballots. For instance, larger community associations may vote in elections using machines similar to those used in political elections. Similarly, handheld electronic keypads are used in some annual meetings to quickly determine close votes. Considerations before using such devices include cost and the learning curve involved. Advance notice and even demonstrations of the technology to members may be necessary.

#### **I. ROLL-CALL VOTE**

Taking a vote by roll-call (or by the "yeas" and "nays") places each member on record as to his vote. Although time-consuming, a roll-call is sometimes used to ensure that weighted votes or proxies are accurately reflected. A roll-call may be demanded by a majority vote, if there is no governing

document provision for such votes. In a roll-call vote, the roll is called alphabetically and each member may vote “aye” (or “yes” or “yea”) or “no” (or “nay”). A member may also answer “present” (or “abstain”) if he does not wish to vote or “pass” if he is not ready to vote but wishes to be called upon again. In roll-call voting, a record of how each member voted and total voting results are entered in full in the minutes.

## **J. ABSENTEE VOTING**

A fundamental principal of parliamentary law is that the right to vote is limited to members of an organization actually present at the time a vote is taken during a regular or properly called meeting. *RONR* § 45, p. 423. Exceptions to this rule may be permitted in the governing documents and can include (a) voting by mail, or (b) proxy voting.

Voting problems are sometimes caused by confusion between or a blending of different types of absentee voting. For instance, proxies mailed to members cannot be “dropped off” at the meeting like a ballot, unless a proxy is named in the document and present at the meeting. In fact, *RONR* provides the following admonition (which is not always practicable in the community association context):

An organization should never adopt a bylaw permitting a question to be decided by a voting procedure in which the votes of persons attending the meeting are counted together with ballots mailed in by absentees. The votes of those present could be affected by debate, by amendments, and perhaps by the need for repeated balloting,

while those absent would be unable to adjust their votes to reflect these factors.

RONR § 45, p. 423. With that said, the 2008 UCIOA amendments and some state statutes blend the concepts of voting in person at a meeting and voting by absentee ballot, at least for purposes of determining quorum:

(a) Unless the bylaws otherwise provide, a quorum is present throughout any meeting of the unit owners if persons entitled to cast [20] percent of the votes in the association:

(1) are present in person or by proxy at the beginning of the meeting;

(2) have cast absentee ballots solicited in accordance with Section 3-110 (c)(4) which have been delivered to the secretary in a timely manner; or

*(3) are present by any combination of paragraphs (1) and (2)* [in other words, whether at the meeting in person or having sent in a ballot].

[UCIOA 2008 § 3-109](#) (emphasis added); [UCIOA Bill of Rights § 13\(a\)](#).

**(i) PROXY VOTING:** A proxy is a power of attorney given to another to vote in the member's stead. It is not a ballot or an absentee ballot. Giving a proxy does not cast the member's vote. It appoints the proxy holder to cast the member's vote at meetings of the association. Proxy voting is generally permitted in community

associations by statute, and the governing documents should provide additional details on methods of proxy voting.

Unless restricted by statute or the governing documents, there are generally recognized to be five different types of proxies:

- **General proxy:** The holder of the proxy has discretion to do whatever he or she wishes at the meeting
- **Limited proxy:** The holder of the proxy can only vote on certain issues at the meeting
- **Directed proxy:** The holder of the proxy can only vote as directed
- **Limited directed proxy:** The holder of the proxy can only vote on certain issues as directed
- **Quorum proxy:** The proxy only counts for purposes of obtaining a quorum and nothing else

As a change from the standard common law regarding proxies, UCIOA and the UCIOA Bill of Rights provide that “A person may not cast undirected proxies representing more than [15] percent of the votes in the association.” [UCIOA 2008 § 3-110\(c\)\(6\); UCIOA Bill of Rights § 14\(c\)\(6\).](#)

**(ii) VOTING BY MAIL:** Votes by mail are generally reserved to situations in which few members attend meetings, but a full vote of the membership is desired. While votes by mail are used by large national associations, most community associations typically do not

vote by mail. Instead, an actual meeting with proxy voting is more typical and more likely to run smoothly. However, applicable state statutes and governing documents should be carefully examined, in that certain votes may be required to be by mail, such as the election of directors, to encourage wide participation by unit owners or in instances where many units are investor-owned by individuals living out-of-state.

Before any vote by mail, detailed rules as to the marking and returning of ballots should be adopted. Typically, an inner-return envelope is sent to the voter with the ballot in addition to a self-addressed outer return envelope. In this manner, the vote of the member can be kept secret.

“Preferential voting” is the term applied to any number of voting methods by which the second or less-preferred choices of voters can be taken into account on a single ballot.<sup>6</sup> In other words, preferential voting allows a modicum of “repeated balloting” with a single ballot. While much more complicated than other methods of voting, preferential voting is useful and fair in an election by mail if it is impractical to take more than one ballot. In one form of

---

<sup>6</sup> Many published and online articles examine the advantages and disadvantages of different preferential voting methods, which include the Weighted System, Bucklin or Grand Junction System, Limited System, Single Transferable Vote or English System, Preferential Vote Majority System, Single Transferable Vote with Quota, American System, and West Australian or Hare-Ware System. See Hare-Mustin, Rachel T. “Preferential Voting Systems,” *Readings in Parliamentary Law*. Dubuque, Iowa: Kendall/Hunt Publishing Company, 1992.

preferential voting, voters are asked to indicate the order (e.g., #1 through #3) of their choice of candidates. If a candidate does not receive enough first choice votes to win, the ballots are redistributed into piles based on second choice votes. By eliminating the least popular candidate or proposition, a candidate or candidates will eventually obtain a majority vote.

**(iii) ELECTRONIC ONLINE VOTING.** Provisions in *Robert's* as to making decisions by Internet are few and generally require “an opportunity for simultaneous aural communication among members equivalent to those of meetings held in one room or area.” *RONR* § 9, p. 97. This is due, in part, to *Robert's* philosophy on page 1 that “A group that attempts to conduct the deliberative process in writing—such as by . . . electronic mail (e-mail)—does not constitute a deliberative assembly. When making decisions by such means, many situations unprecedented in parliamentary law will arise, and many of its rules and customs will not be applicable.” *RONR* § 1, p. 1. Despite such language, model acts and state laws are moving towards electronic absentee ballots, and any such processes should follow the statutes precisely. Virginia, Washington, and Texas all have variations on statutes that permit electronic voting and/or absentee ballots to be cast electronically. UCIOA 2008 provides that membership votes can be conducted without a meeting (unless prohibited or limited by the declaration or bylaws) by “deliver[ing]

a paper or electronic ballot to every unit owner entitled to vote on the matter.” [UCIOA 2008 § 3-110\(d\); UCIOA Bill of Rights § 14\(d\)](#). Similar new language can be found in some state nonprofit corporation statutes which have long permitted corporate decisions to be made through “action by written [mail] ballot” in lieu of a membership meeting. Such statutes now sometimes include a provision that: “Any requirement that any vote of the members be made by written ballot may be satisfied by a ballot submitted by electronic transmission, including electronic mail, provided that such electronic transmission shall either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the member or the member’s proxy.” [N.C.G.S. § 55A-7-08\(a\)\(2014\)](#).

## **K. CUMULATIVE VOTING**

Though not as common in community associations, cumulative voting is often used by for-profit (and sometimes non-profit) corporations. In an election by cumulative voting, a member can cast one vote for each position to be filled. As a result, if three directors are to be elected, each member may cast three votes, which can be distributed among three individuals or all cast for one candidate. Cumulative voting allows a minority group to secure the election of a minority member of a board. See *RONR* § 46, p. 443-444. Some state statutes limit or regulate the use of cumulative voting or permit it only if authorized by the certificate of incorporation or bylaws.

## L. VOTING BY TELEPHONE

Voting by telephone is sometimes used by boards in lieu of an actual meeting, but must be authorized either by statute or the governing documents. An important distinction must be made between an authorized telephone meeting and collecting the individual votes of board members by telephone. According to *RONR*, “The personal approval of a proposed action obtained separately by telephone, by individual interviews, or in writing, even from every member of a board, is not the approval of the board, since the members lacked the opportunity to mutually debate and decide the matter as a deliberative body.” *RONR* § 49, p. 487.

## XIII. MODEL NONPROFIT CORPORATION ACT

In 2008 the American Bar Association adopted the [Model Nonprofit Corporation Act Third Edition](#). A number of governance changes were incorporated into the model language, which is a successor to the MNPCA from 1952 and the Revised MNPCA from 1988. The model language was then forwarded to state legislatures for consideration and possible adoption.

In some states, community association meetings are governed by nonprofit corporation statutes, in that there are no separate HOA/condo meeting statutes. In other states, nonprofit statutes supplement community association statutes or govern older associations predating planned community schemes. As a result, nonprofit act amendments could be adopted with little notice by community association practitioners, but significantly impact associations.

Without question, there are both philosophical and substantive changes in the Act. Here are a few highlights of the Model Act:

**MNPCA Third Edition mandatory provisions:**

- In emergencies, board may modify lines of succession for directors and officers.
- Resignation of member, director, or officer effective immediately or when stipulated by individual. No acceptance required, except for prospective resignations.
- Board or 25 percent of membership may call special membership meetings.
- Notice required for regular (including annual) and special meetings.
- Secretary, or whoever tabulates ballots, is final arbiter of ballot validity.
- Once quorum present, meeting or adjourned meeting may continue without quorum.
- Inspectors of elections (tellers) are final arbiters of eligible voters; number of voters; validity of votes, ballots, and proxies; counting votes; and results.
- Directors' terms may not be shortened by bylaw amendment decreasing number of directors.
- Directors can only be removed by members at a meeting with prior notice.
- A vote of a majority of the directors present is required for board action, unless the articles or the bylaws require greater vote (i.e.,

- abstentions are equal to voting “no”).
- Board can create committees of directors with some of the powers of the board.
  - Meeting, notice, quorum, voting, and waiver provisions applicable to board also apply to board committees.
  - Board authorized to appoint additional officers not provided in the bylaws.

**The following default provisions of the MNPCA Third Edition may be superseded by articles of incorporation or bylaws:**

- In emergencies, only notice that is practicable needed for board meetings.
- Regular (including annual) and special membership meetings take place at principal office of corporation.
- 10 percent of the membership can call a special membership meeting (percentage can vary between 10% and 25% of membership).
- Membership meeting notice must be between 10 and 60 days.
- Board chooses the membership meeting chair; otherwise, members may choose chair.
- Chair of membership meeting establishes meeting rules and agenda.
- Mail ballot permissible on any action.
- If meeting adjourns for lack of quorum, adjourned meeting has no quorum requirement.
- Directors elected by plurality vote.

- All power vested in the board. Some powers of board may be vested in “designated body,” which can include members.
- Directors continue serving until successors elected and qualified.
- Directors may remove a member-elected director for certain reasons, such as loss of eligibility for office or failure to attend bylaw-mandated number of meetings.
- Telephonic participation in meetings of the board may be permitted by the board.
- Special board meetings require written two days’ notice, need not state particular business in the call, not restricted to business in the call, and may be called by chair of the board, highest-ranking officer, or 20% of board.
- Board may remove any officer, with or without cause, and without notice.
- Members may amend bylaws by majority vote without notice. Board may amend bylaws, except provisions relating to member rights, director quorum and vote requirements, and director removal.
- Bylaws or articles may provide for regular (including annual) or special membership electronic meetings with members having only rights to hear or read proceedings, ask questions, make comments, and vote.

Full provisions of the MNPCA Third Edition can be viewed online at

<http://ali.state.al.us/docs/Nonprofit-Corp-Act-8-2008.pdf>.<sup>7</sup> The ABA intends to keep the MNPCA current through continuing revisions, so it is possible that present MNPCA provisions may change with little notice.

## **XIV. PARLIAMENTARY RESOURCES**

### **A. PARLIAMENTARIANS**

A parliamentarian is a consultant who advises the president and legal counsel, as well as other officers, committees, and members, on matters of parliamentary procedure. Professional and trade associations frequently retain parliamentarians to advise on procedure during annual conventions and board meetings. Similarly, community associations may need the assistance of a parliamentarian during a particularly contentious annual meeting.

Many organizations only utilize parliamentarians to ensure that meetings are conducted properly and efficiently. A professional parliamentarian can provide many additional useful services, including the following:

- Conduct training on procedure for officers or members;
- Supervise elections;
- Preside over particularly contentious meetings;
- Provide formal parliamentary opinions;

---

<sup>7</sup> For additional information on the MNPCA Third Edition, see the following articles by attorney and parliamentarian Michael Malamut: “[Issues of Concern to Parliamentarians Raised by the 2008 Revised Model Nonprofit Corporation Act](#)” and “[Sample Bylaw Provisions for Overriding the Default Provisions of the 2008 Model Nonprofit Corporation Act, Part I](#)” and [Part II](#).

- Serve as an expert witness regarding procedure;
- Create, revise, or make recommendations on bylaws;
- Advise on parliamentary tactics and strategy.

Unfortunately, finding a skilled parliamentarian can be difficult. Yellow pages and city directories seldom have a listing for "Parliamentarians." The best means for finding a professional and objective parliamentarian is to contact the two non-profit organizations that examine and certify parliamentarians: the American Institute of Parliamentarians and the National Association of Parliamentarians. Each organization has various classifications of membership, ranging from beginner to the highest levels of parliamentary proficiency. In addition, each organization makes referrals of parliamentarians.

## **B. PARLIAMENTARY ORGANIZATIONS**

Three national organizations deserve mention. The National Association of Parliamentarians and the American Institute of Parliamentarians certify parliamentarians as well as provide parliamentary procedure programs and publications. A third organization, the American College of Parliamentary Lawyers, is a forum for the exchange of information among lawyers with parliamentary credentials.

### **(i) National Association of Parliamentarians (NAP)**

[The National Association of Parliamentarians](#) was founded in 1930 and is the oldest and largest nonprofit parliamentary

organization. It publishes the quarterly journal National Parliamentarian, which contains educational articles on parliamentary procedure as well as articles on NAP activities and chapters.

NAP membership classifications include Members (Regular and Honorary) and Credentialed Members (Registered Parliamentarian [RP], Professional Registered Parliamentarian [PRP], and Retired Credentialed Parliamentarian). There is an examination requirement for NAP membership based upon the latest edition of Robert's.

For more information:

National Association of Parliamentarians  
213 South Main Street  
Independence, MO 64050-3850  
888-NAP-2929  
[www.parliamentarians.org](http://www.parliamentarians.org)

**(ii) American Institute of Parliamentarians (AIP)**

[The American Institute of Parliamentarians](http://www.americaninstituteofparliamentarians.org) was founded in 1958 by Robert W. English. A traditional distinction between NAP and AIP has been a greater emphasis in AIP on parliamentary authorities beyond Robert's.

AIP may be best known for its parliamentary practicums, which are multiday programs offering intensive education in parliamentary procedure, including lectures, workshops, and group projects.

AIP's quarterly Parliamentary Journal contains educational articles on parliamentary procedure. AIP publishes a separate newsletter with articles on the activities of AIP and its chapters.

AIP membership classifications include Individual (Regular, Certified Parliamentarian [CP], Certified Professional Parliamentarian [CPP], Retired, and Full-Time Student) and Associate (for associations, institutions, or corporations).

Certified and certified professional parliamentarians may complete an additional program for accreditation as a teacher of parliamentary procedure. There is no examination requirement for AIP membership.

For more information:

American Institute of Parliamentarians  
550M Ritchie Highway #271  
Severna Park, MD 21146  
888-664-0428  
[www.aipparl.org](http://www.aipparl.org)

**(iii) American College of Parliamentary Lawyers (ACPL)**

[The American College of Parliamentary Lawyers](#) was founded in 2007 with the purpose of acknowledging attorneys who have distinguished themselves in the practice of parliamentary law, providing a forum for the exchange of information among experienced legal professionals, and offering educational opportunities for members and nonmembers to discuss, advance,

and improve the public's knowledge of parliamentary law. To be eligible for membership in the college, an attorney must be credentialed within NAP or AIP and have contributed to the parliamentary profession through teaching and writings. For more information:

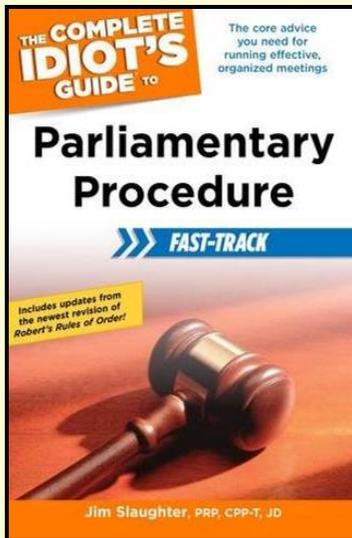
For more information:

American College of Parliamentary Lawyers  
30 Elm Street  
Dedham, MA 02026-5915  
[www.parliamentarylawyers.org](http://www.parliamentarylawyers.org)

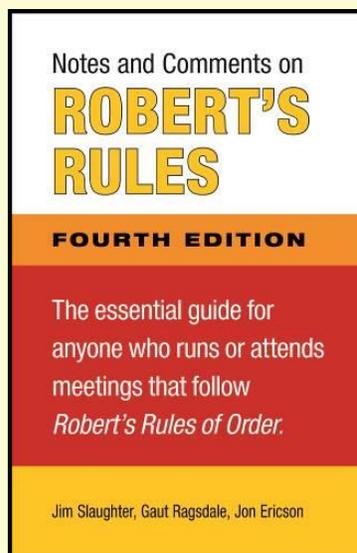
## **XV. PARLIAMENTARY PROCEDURE BOOKS**

Without question, anyone studying parliamentary procedure should own (and preferably have opened) the official, latest Robert's, which is *Robert's Rules of Order Newly Revised (11<sup>th</sup> Edition)*.

I'm biased, of course, but the following two recently released books are excellent for learning parliamentary procedure. The books have a different purpose and different audiences (and the links that follow will take you to reviews of the books).



[\*The Complete Idiot's Guide to Parliamentary Procedure Fast Track\*](#) is focused on smaller meetings, such as boards and committees, and provides details on the most used motions, appropriate informal procedures for smaller boards, and general advice for shortening meetings.



[\*Notes and Comments on Robert's Rules, Fourth Edition\*](#) is a user's guide to the new 716 page edition of Robert's Rules of Order Newly Revised (11th Edition) and uses a question-and-answer format to cover the most misused and asked-about provisions, including those that apply to larger membership meetings. Notes and Comments received the 2013 Phiifer Award from the National Communication Association.

Both books are available from Amazon, Barnes & Noble, traditional and online bookstores, as well as electronically for the Kindle, Nook and iPad.

Other parliamentary manuals and guides:

*Robert's Rules of Order Newly Revised in Brief (Second Edition)*, by Henry M.

III Robert, William J. Evans, Daniel H. Honemann, and Thomas J. Balch. Da Capo Press, 2011. A shorter introduction to the latest Robert's by the Robert's authors.

*The Standard Code of Parliamentary Procedure (Fourth Edition, Revised by the AIP)*. McGraw-Hill, 2001. Originally by Alice Sturgis, *The Standard Code* has for decades served as a shorter, simpler alternative to *Robert's*, but has recently gone out of print.

*American Institute of Parliamentarians Standard Code of Parliamentary Procedure*. McGraw-Hill, 2012. While not a direct successor to *The Standard Code of Parliamentary Procedure (Fourth Edition)*, this new work is based on the principles of Sturgis.

*Demeter's Manual of Parliamentary Law and Procedure*, by George Demeter. Little Brown & Co, 1969. While out of print, *Demeter's Manual* is an excellent source to use when double-checking an answer to complicated problems.

## **XVI. PARLIAMENTARY WEB SITES**

- [www.aipparl.org](http://www.aipparl.org) - American Institute of Parliamentarians
- <http://groups.yahoo.com/group> - Parliamentary Online discussion of parliamentary law and procedure, including various parliamentary authorities

- [www.jimslaughter.com](http://www.jimslaughter.com) - My website, which includes many charts and articles on meeting procedure, parliamentary news updates, and links to numerous parliamentary resources
- [www.lawfirmrbs.com/blog/category/parliamentary-law](http://www.lawfirmrbs.com/blog/category/parliamentary-law) - Various parliamentary posts from our law firm blog at Rossabi Black Slaughter, PA.
- [www.notesonrobertsrules.com](http://www.notesonrobertsrules.com) - The website of *Notes and Comments on Robert's Rules (Fourth Edition)*
- [www.parliamentarians.org](http://www.parliamentarians.org) - National Association of Parliamentarians
- [www.parliamentarylawyers.org](http://www.parliamentarylawyers.org) - American College of Parliamentary Lawyers
- [www.robertsrules.com](http://www.robertsrules.com) - Official Robert's Rules of Order website
- <https://sites.google.com/site/enapunit> - Electronic Unit of the National Association of Parliamentarians (eNAP), an electronic unit of the National Association of Parliamentarians

## **XVII. CONCLUSION**

For attorneys who advise community associations, learning the basics of parliamentary procedure is both desirable and achievable. A solid foundation of procedural knowledge can enhance credibility, make the difference between legitimate actions and illegal ones, and increase the likelihood of running a darn good meeting.

## **XVIII. ATTACHMENTS**

- (A) Preside Like A Pro
- (B) Minutes
- (C) Order of Business
- (D) Handling of A Motion
- (E) Simplified Parliamentary Motions Guide
- (F) Parliamentary Motions Guide  
(based on *Robert's Rules of Order Newly Revised (11<sup>th</sup> Edition)*)
- (G) Presiding Phrases (Using *Robert's Rules of Order*)
- (H) Parliamentary Motions Match-Up
- (I) Parliamentary Strategy
- (J) Teller's Report for Motion
- (K) Teller's Report for Election
- (L) Parliamentary Law Legal Resources
- (M) "Better Use of Parliamentary Procedure,"  
Community Association Institute's *Common Ground*, 1998

- (N) "Community Associations & the Parliamentarian,"  
National Association of Parliamentarian's *National Parliamentarian*,  
First Quarter 2000
  
- (O) "Parliamentary Procedure for Community Associations,"  
Community Association Institute's *Common Ground* (feature/cover  
story), Sep/Oct 2000
  
- (P) "Meeting Myths,"  
Community Association Institute's *Common Ground*, Jan/Feb 2003
  
- (Q) "Statutes & Procedures of Community Associations,"  
*National Association of Parliamentarian's National Parliamentarian*,  
First Quarter 2005
  
- (R) "Planning the Effective Meeting,"  
Community Association Institute's *Common Ground*, 2007
  
- (S) "Psst! Executive Sessions are Secret,"  
Community Association Institute's *Common Ground*, Mar/Apr 2008

# EXHIBIT A

## **THE ORDER OF BUSINESS**

The "order of business" is the established sequence in which business is taken up during a meeting. It is a blueprint for meetings and provides a systematic plan for the orderly conduct of business.

**I. READING AND APPROVAL OF MINUTES** – Following any corrections or additions, the minutes should be approved. Approval is usually handled by unanimous consent.

**II. REPORTS OF OFFICERS, BOARDS, AND STANDING COMMITTEES** – The chair usually calls on only those members who have reports.

**III. REPORTS OF SPECIAL COMMITTEES** – Special committees do not have continual existence, but exist solely for the purposes of a specific project.

**IV. UNFINISHED BUSINESS** – Unfinished business (sometimes incorrectly referred to as "old business") refers to questions that have carried over from the previous meeting as a result of that meeting having adjourned without completing its order of business.

**V. NEW BUSINESS** – Following any unfinished business, the chair asks, "Is there is any new business?" Members can introduce new items of business.

Optional headings may include **OPENING CEREMONIES**, **ROLL CALL** of members, **CONSENT CALENDAR** for disposing of routine business by unanimous consent, **ANNOUNCEMENTS**, or **PROGRAM**. Any item of business can be taken out of its proper order by adopting a motion to suspend the rules with a two-thirds vote, although this is usually arranged by unanimous consent.

*Jim Slaughter is an attorney, Certified Professional Parliamentarian, Professional Registered Parliamentarian and past President of the American College of Parliamentary Lawyers. His Web site at [www.jimslaughter.com](http://www.jimslaughter.com) contains many articles and charts on meeting procedure.*

# ***PRESIDE LIKE A PRO!***

**Jim Slaughter**  
Parliamentarian  
&  
Professional Presider

P.O. Box 41027  
Greensboro, NC 27404  
336-378-1899  
[jim@jimslaughter.com](mailto:jim@jimslaughter.com)  
[www.jimslaughter.com](http://www.jimslaughter.com)

## PHRASES FOR THE PRESIDING OFFICER

Listed below are phrases for the presiding officer as found in *Robert's Rules of Order Newly Revised (11<sup>th</sup> Edition)*. Slight variations of the given language may work just as well.

- **OPENING THE MEETING** (after quorum is present)  
"The meeting will come to order."
- **RECOGNIZING MEMBERS**  
"The chair recognizes . . ."
- **STATING THE QUESTION** (following motion and second)  
"It is moved and seconded that [or "to"] . . ."
- **WHEN DEBATE APPEARS TO HAVE ENDED** (if no objection, chair can proceed to vote)  
"Are you ready for the question?" or "Is there any further debate?"
- **TAKING A VOTE** (once debate appears to have ended or vote has been ordered)
  - Voice Vote  
"The question is on the adoption of the motion to \_\_\_\_\_. Those in favor of the motion, say AYE. [Pause] Those opposed, say NO."
  - Rising Vote  
"Those in favor of the motion to \_\_\_\_\_ will rise [or, "stand"]." [Pause] "Be seated. Those opposed will rise." [Pause] "Be seated."
  - Counted Rising Vote  
"The question is on the adoption of the motion to \_\_\_\_\_. Those in favor of the motion to \_\_\_\_\_ will rise and remain standing until counted." [Count vote.] "Be seated. Those opposed will rise and remain standing until counted." [Count vote.] "Be seated."

### Vote by Show of Hands

"The question is on the adoption of the motion to \_\_\_\_\_. All those in favor of the motion will raise the right hand." [Count hands.] "Lower hands. Those opposed will raise the right hand." [Count hands.] "Lower hands."

- **ANNOUNCING VOTE** (immediately following vote)

### Voice Vote

"The ayes have it and the motion is adopted [or "carried"]."  
Or, "The noes have it and the motion is lost."

### Uncounted Rising or Show of Hands Vote

"The affirmative has it and the motion is adopted."  
Or, "The negative has it and the motion is lost."

### Counted Rising Vote or Show of Hands Vote

"There are 32 in the affirmative and 30 in the negative. The affirmative has it and the motion is adopted."  
Or, "There are 29 in the affirmative and 33 in the negative. The negative has it and the motion is lost."

- **APPROVAL OF MINUTES**

"Are there any corrections to the minutes? If there are no corrections [or "no further corrections"], the minutes stand [or "are"] approved [or "approved as read," or "approved as corrected"]."

- **PROCEEDING THROUGH BUSINESS**

"The next item of business is . . ."  
(Do **NOT** say "The next order of business.")

- **DISCIPLINE**

### Motion Out of Order or Motion Not in Order

"The chair rules that the motion is out of order [or "not in order"] because . . ."

### Member Out of Order (serious offense while speaking)

"The member is out of order and will be seated."

# EXHIBIT B

# Minutes

Based on *Robert's Rules of Order Newly Revised (11<sup>th</sup> Edition)*

***THEME: Minutes are a record of what was done at the meeting  
NOT what was said by members or guests.***

## **INCLUDE:**

- ✓ First Paragraph:
  - Kind of meeting (regular, special, adjourned)
  - Name of board
  - Date and time of meeting
  - Place of meeting, if varies
  - Fact that Chairman and Clerk were present or name of substitute
  - Whether minutes of previous meeting were read and approved
- ✓ Separate paragraph for each subject matter with name of mover:
  - All main motions or motions to bring a main question again before the assembly (except any withdrawn, *see below*) stating
    - The wording in which adopted or disposed of
    - The disposition of motion (including amendments or motions)
  - Secondary motions that were not lost or withdrawn
  - All notices of motion
  - All points of order and appeals, whether sustained or lost
- ✓ Last Paragraph:
  - Hour of adjournment
- ✓ Number of votes if count ordered or ballot vote
- ✓ Names and votes if roll call vote
- ✓ Signature of Clerk (“Respectfully submitted” unnecessary)

## **DO NOT INCLUDE:**

- ✗ Secunder’s name
- ✗ Remarks of guest speakers
- ✗ Motions that were withdrawn (see *RONR* § 48, page 469 for exceptions)
- ✗ Personal opinion on anything said or done

## **Sample Minutes**

Based on *Robert's Rules of Order Newly Revised (11<sup>th</sup> Edition)*

The regular monthly meeting of the Alpha County School Board was held on Tuesday, November 6, 2001, at 7:00 p.m., at Smith High School, the Chairman and the Clerk being present. The minutes of the October meeting were read and approved as corrected.

The report of the Superintendent was received and placed on file.

The motion relating to the public comment period of the meeting, which was postponed from the October meeting, was then taken up. On motion of Mr. Smith, the motion was referred to a committee of three to be appointed by the chair with instructions to report at the next meeting.

Mr. Rogers moved “that the Board participate in a leadership retreat to be held the second weekend of February.” After amendment and further debate, the motion was adopted as follows: “That the Board participate in a leadership retreat to be held on two consecutive weekends beginning the first weekend in June.”

The meeting adjourned at 8:40 p.m.

---

Wyatt Freeman McKinley, Clerk

# EXHIBIT C

## **Order of Business**

Based on *Robert's Rules of Order Newly Revised (11<sup>th</sup> Edition)*

*Part of any meeting should be a systematic plan for the orderly conduct of business. The sequence in which business is taken up during a meeting is known as the "Order of Business." The Order of Business is a blueprint for the meeting and typically has the following components:*

### ○ **OPENING THE MEETING**

The presiding officer should never call the meeting to order until a quorum is present. A quorum is the number of members entitled to vote who must be present in order for business to be legally transacted. Quorum is typically defined in the governing documents.

Once a quorum is present, the presiding officer calls the meeting to order by stating, "The meeting will come to order."

### ○ **APPROVAL OF MINUTES**

In meetings when minutes are to be approved, the minutes are typically distributed to all members so that they do not have to be read aloud. Corrections and approval are normally done by unanimous consent. That is, the presiding officer can ask, "Is there any objection to approving the minutes as read [or distributed]?" If there is no objection, the minutes are approved.

### ○ **REPORTS OF OFFICERS, BOARDS, AND STANDING COMMITTEES**

The first substantive item of business in meetings is typically hearing from the officers and established boards and committees. The logic in this order of arrangement is to give priority to the items of business from the leadership. Typically, the presiding officer learns in advance who needs to report and only calls on those officers, boards, and committees that have reports.

Reports are generally for information only. In such instances, no motion is necessary following the reports unless there are recommendations to be implemented. A motion "to adopt" or "to accept" a report is seldom wise except when the report is to be issued or published in the name of the organization. On the other hand, it is common that the reporting member end by making a motion if there is a specific recommendation for action.

For example, the Facilities Committee may have studied the buildings and grounds. In her report, the committee chairman might thank the members of the committee for their hard work and explain in detail the committee's position and reasoning. At the end of her report, the committee chair would close by saying something to the effect of, "On behalf of the committee, I move that Building X be renovated at a cost not to exceed \$50,000.00."

## ○ **REPORTS OF SPECIAL COMMITTEES**

Unlike standing committees established in the governing documents, special committees do not have continual existence. Instead, special committees exist solely for the purpose of a specific project. For example, a special committee might be created to plan a specific function or event. Special committees typically go out of existence upon their final report.

## ○ **UNFINISHED BUSINESS**

Unfinished business refers to matters carried over from a previous meeting. This category of business is sometime incorrectly referred to as “old business.” “Old business” is a misnomer in that unfinished business is not simply items that have been discussed previously. Instead, unfinished business items typically fall into one of several specific categories. For organizations that meet at least four times a year, unfinished business may include: (1) any matter that was pending when the previous meeting adjourned; (2) any matters on the previous meeting’s agenda that were not reached; or (3) matters that were postponed to the present meeting.

The presiding officer should know if there are any items to be considered under unfinished business. As a result, the presiding officer should not ask, “Is there any unfinished business?” Instead, the presiding officer should simply state the question on the first item of business. If there is no unfinished business, the presiding officer should skip this category of business.

## ○ **NEW BUSINESS**

Much of the work in a meeting is accomplished during the heading of new business. In this category of business, members can introduce any new item of for consideration (unless there are notice requirements that must be considered). In some instances, the presiding officer may be unaware of what items of business will arise under new business.

The presiding officer introduces the heading of new business by asking, “Is there any new business?” Any member can then introduce new items of business by making a motion and obtaining a second. Following the consideration of each item, the chair repeatedly asks, “Is there any further new business?” This process continues until there are no additional business items.

## ○ **CLOSING THE MEETING**

In most assemblies the presiding officer can adjourn the meeting without waiting for a motion to adjourn. If all items of business have been considered, the presiding officer can ask, “Is there any further business?” If there is no response, the presiding officer simply states, “Since there is no further business, the meeting is adjourned.”

If custom or tradition requires that a motion to adjourn be made, the presiding officer can ask, “Is there a motion to adjourn?” Once the motion is made and seconded, the presiding officer can ask, “Is there any objection to adjourning the meeting? Hearing no objection, the meeting is adjourned.”

# EXHIBIT D

# Handling of a Motion

Based on *Robert's Rules of Order Newly Revised (11<sup>th</sup> Edition)*

## I. BRINGING A MOTION BEFORE THE ASSEMBLY

1. A member makes the motion ("I move that ...")
2. Another member seconds the motion  
    Secunder does not need to be recognized
3. The chair states the question  
    "It is moved and seconded that (or "to") ..."

## II. CONSIDERING THE MOTION

1. Members debate the motion (unless undebatable)  
    Preference in recognition:
  1. Member who made motion
  2. Member who has not spoken first time
  3. If possible, alternate for and against

2. Chair puts question to a vote  
    "The question is on the adoption of ..."

### **(Voice vote)**

"Those in favor of the motion, say aye."

"Those opposed, say no."

### **(Rising vote)**

"Those in favor of the motion will rise [or "stand"]. Be seated."

"Those opposed will rise [or "stand"]. Be seated."

3. Chair announces result of vote  
    "The ayes have it and the motion is adopted." (or)  
    "The noes have it and the motion is lost."

"The affirmative has it and the motion is adopted." (or)

"The negative has it and the motion is lost."

American Institute of Parliamentarians, 888-664-0428, [www.aipparl.org](http://www.aipparl.org)

National Association of Parliamentarians, 888-627-2929, [www.parliamentarians.org](http://www.parliamentarians.org)

---

**Jim Slaughter, Certified Professional & Professional Registered Parliamentarian**

336-378-1899(W) 336-378-1850(F)

web site – [www.jimslaughter.com](http://www.jimslaughter.com)

# EXHIBIT E

## *Simplified Parliamentary Motions Guide*

Below are some of the rules governing the most frequently used motions. More detailed information can be obtained from *Robert's Rules of Order Newly Revised (11th Edition)*.

The following motions are listed in order of precedence. A motion can be introduced if it is higher on the list than the pending motion.

<b>Motion</b>	<b>Second?</b>	<b>Debatable?</b>	<b>Amend?</b>	<b>Vote?</b>
Adjourn	Yes	No	No	Majority
Recess	Yes	No	Yes	Majority
Table	Yes	No	No	Majority
Previous Question	Yes	No	No	2/3
Limit Debate	Yes	No	Yes	2/3
Postpone	Yes	Yes	Yes	Majority
Refer	Yes	Yes	Yes	Majority
Amend	Yes	Yes	Yes	Majority
Main Motion	Yes	Yes	Yes	Majority

The following motions have no order of precedence and are decided immediately:

<b>Motion</b>	<b>Second?</b>	<b>Debate?</b>	<b>Amend?</b>	<b>Vote?</b>
Point of Order	No	No	No	None
Appeal	Yes	Varies	No	Majority
Suspend Rules	Yes	No	No	2/3
Division	No	No	No	None
Request for Information	No	No	No	None

# EXHIBIT F

## Parliamentary Motions Guide

The following guide provides details on commonly used parliamentary motions from *Robert's Rules of Order Newly Revised (11th Edition)*. Some of these motions take up almost 20 pages in *Robert's*. So if you have questions about any specific motion, you may want to check out the book!

Here's an explanation of the headings and symbol on the chart:

- You Want To: What you want to do.
- You Say: How to phrase the motion.
- Interrupt: Whether the maker can interrupt business. That is, must the maker await recognition from the chair or can he interrupt the process by attempting to make the motion while someone else is speaking?
- 2nd: Whether or not the motion needs a second in a larger assembly or body following more formal procedure.
- Debate: Whether the motion is debatable.
- Amend: Whether the motion can be amended.
- Vote: Vote required on the motion.
- §: The section in *Robert's* to learn all about the motion is given at the far left.

# *Parliamentary Motions Guide*

Based on *Robert's Rules of Order Newly Revised (11<sup>th</sup> Edition)*

The motions below are listed in order of precedence. Any motion can be introduced if it is higher on the chart than the pending motion.

<b>YOU WANT TO:</b>	<b>YOU SAY:</b>	<b>INTERRUPT?</b>	<b>2<sup>ND</sup>?</b>	<b>DEBATE?</b>	<b>AMEND?</b>	<b>VOTE?</b>
§21 Close meeting	I move to <b>adjourn</b>	No	Yes	No	No	Majority
§20 Take break	I move to <b>recess</b> for	No	Yes	No	Yes	Majority
§19 Register complaint	I rise to a <b>question of privilege</b>	Yes	No	No	No	None
§18 Make follow agenda	I call for the <b>orders of the day</b>	Yes	No	No	No	None
§17 Lay aside temporarily	I move to <b>lay</b> the question <b>on the table</b>	No	Yes	No	No	Majority
§16 Close debate	I move the <b>previous question</b>	No	Yes	No	No	2/3
§15 <b>Limit or extend debate</b>	I move that debate be limited to ...	No	Yes	No	Yes	2/3
§14 <b>Postpone to a certain time</b>	I move to postpone the motion to ...	No	Yes	Yes	Yes	Majority
§13 <b>Refer</b> to committee	I move to refer the motion to ...	No	Yes	Yes	Yes	Majority
§12 Modify wording of motion	I move to <b>amend</b> the motion by ...	No	Yes	Yes	Yes	Majority
§11 Kill main motion	I move that the motion be <b>postponed indefinitely</b>	No	Yes	Yes	No	Majority
§10 Bring business before assembly (a <b>main motion</b> )	I move that [or "to"] ...	No	Yes	Yes	Yes	Majority

# *Parliamentary Motions Guide*

Based on *Robert's Rules of Order Newly Revised (11<sup>th</sup> Edition)*

**Incidental Motions** - No order of precedence. Arise incidentally and decided immediately.

<b>YOU WANT TO:</b>	<b>YOU SAY:</b>	<b>INTERRUPT?</b>	<b>2<sup>ND</sup>?</b>	<b>DEBATE?</b>	<b>AMEND?</b>	<b>VOTE?</b>
§23 Enforce rules	<b>Point of order</b>	Yes	No	No	No	None
§24 Submit matter to assembly	<b>I appeal</b> from the decision of the chair	Yes	Yes	Varies	No	Majority
§25 Suspend rules	I move to <b>suspend the rules</b> which ...	No	Yes	No	No	2/3
§26 Avoid main motion altogether	<b>I object to the consideration</b> of the question	Yes	No	No	No	2/3
§27 Divide motion	I move to <b>divide the question</b>	No	Yes	No	Yes	Majority
§29 Demand rising vote	I call for a <b>division</b>	Yes	No	No	No	None
§33 Parliamentary law question	<b>Parliamentary inquiry</b>	Yes (if urgent)	No	No	No	None
§33 Request information	<b>Request for information</b>	Yes (if urgent)	No	No	No	None

**Motions That Bring a Question Again Before the Assembly** - no order of precedence. Introduce only when nothing else pending.

§34 Take matter from table	I move to <b>take from the table</b> ...	No	Yes	No	No	Majority
§35 Cancel or change previous action	I move to <b>rescind/ amend something previously adopted...</b>	No	Yes	Yes	Yes	2/3 or maj. w/ notice
§37 Reconsider motion	I move to <b>reconsider</b> the vote ...	No	Yes	Varies	No	Majority

# EXHIBIT G

## Presiding Phrases (Side A)

1. OPEN THE MEETING
2. RECOGNIZE A MEMBER  
"The chair recognizes . . . ."
3. NO SECOND TO A MOTION (following request by chair "Is there a second?")
4. STATE THE QUESTION ON A MOTION  
"It is moved and seconded that [or "to"] . . ."
5. STATE THE QUESTION ON A RESOLUTION
6. STATEMENT WHEN DEBATE APPEARS TO HAVE ENDED  
"Are you ready for the question?"
7. TAKE A VOICE VOTE
8. TAKE A RISING VOTE  
"Those in favor of the motion to . . . will rise [or, "stand"]. . . . Be seated. Those opposed will rise. . . . Be seated."
9. TAKE A VOTE BY SHOW OF HANDS
10. ANNOUNCE THE RESULT OF A VOICE VOTE  
"The ayes have it and the motion is adopted [or "carried"]."  
Or, "The noes have it and the motion is lost."
11. ANNOUNCE THE RESULT OF AN UNCOUNTED RISING VOTE/SHOW OF HANDS
12. ANNOUNCE THE RESULT OF A COUNTED RISING VOTE  
"There are 8 in the affirmative and 4 in the negative. The affirmative has it and the motion is adopted." (or)  
"There are 4 in the affirmative and 8 in the negative. The negative has it and the motion is lost."
13. APPROVE THE MINUTES
14. ANNOUNCE THE NEXT PIECE OF BUSINESS  
"The next item of business is . . . ." or "The next business in order is . . . ."  
(NEVER say "The next order of business.")
15. RULE A MOTION OUT OF ORDER AND THEN A MEMBER OUT OF ORDER



# EXHIBIT H

## **Parliamentary Motions Match-Up**

Based on *Robert's Rules of Order Newly Revised (11<sup>th</sup> Edition)*

- |  |  |
|--|--|
| _____ Request for Information                    | a. demands a rising (but not counted) vote after a voice vote                          |
| _____ Amend                                      | b. places a limit on the time or number of speakers                                    |
| _____ Parliamentary Inquiry                      | c. allows a matter to be sent to a smaller group to consider and report back           |
| _____ Division of the Assembly                   | d. “kills” main motion   |
| _____ Rescind/Amend Something Previously Adopted | e. delays consideration of a matter  |
| _____ Point of Order                             | f. ends debate immediately   |
| _____ Adjourn                                    | g. permits a short break   |
| _____ Recess                                     | h. allows a member to ask a question relevant to business (but not procedure)          |
| _____ Previous Question                          | i. calls attention to an error in procedure  |
| _____ Table                                      | j. allows a member to ask a procedural question  |
| _____ Appeal                                     | k. temporarily delays a matter when something of urgency arises                        |
| _____ Postpone Indefinitely                      | l. brings business before the assembly; permitted only when no other motion is pending |
| _____ Refer                                      | m. revisit motion already voted on at same meeting                                     |
| _____ Postpone                                   | n. strikes or modifies motion adopted at prior meeting                                 |
| _____ Limit/Extend Debate                        | o. allows modification to another motion by adding, deleting, or changing words        |
| _____ Reconsider                                 | p. takes decision from chair and gives to assembly                                     |
| _____ Main Motion                                | q. ends the meeting  |

# EXHIBIT I

## Parliamentary Strategy

### To Help Adopt Motion

1. Propose well-conceived motion in good language
2. Second the motion
3. Speak for motion
4. Vote for motion
5. Vote against any motion to *Postpone Indefinitely*
6. *Amend* to perfect or improve motion
7. Vote against any motion to *Refer* to act on now\*
8. Vote against any motion to *Postpone* to act on now\*
9. Vote against *Previous Question* to allow debate\*
10. Move to *Recess* if need more votes\*
11. If adopted, vote against their motion to *Reconsider*
12. If defeated, move to *Reconsider*
13. Vote against any motion to *Adjourn*\*
14. At subsequent meeting, vote against any motion to *Rescind*
15. **Only votes win. Get your votes to the meeting**

### To Help Defeat Motion

1. Propose in hastily written or ill-conceived language
2. Do not second the motion
3. Speak against motion
4. Vote against motion
5. Move to *Postpone Indefinitely* to “kill” motion
6. *Amend* to encumber or complicate motion
7. Move to *Refer* to committee to delay action\*
8. Move to *Postpone* to delay action\*
9. Move *Previous Question* before debate complete\*
10. Move to *Recess* if need more votes\*
11. If adopted, move to *Reconsider*
12. If defeated, vote against their motion to *Reconsider*
13. Move to *Adjourn* to delay action\*
14. At subsequent meeting, move to *Rescind*
15. **Only votes win. Get your votes to the meeting**

\* Your position on these motions may vary depending on whether or not you have the most votes. For example, if you wish to adopt the motion and things are going well, you will be against efforts to delay the motion (i.e., *Postpone*, *Refer*, *Recess*, etc.). However, if things are not going well, you will support efforts to delay in hopes of obtaining more support.

**This chart is a variation on suggestions in *Demeter’s Manual of Parliamentary Law*, p. 28.**

# EXHIBIT J

# Tellers' Report for Motion

**Motion:** \_\_\_\_\_

Number of Votes Cast . . . . . \_\_\_\_\_

Necessary for Adoption (Majority) . . . . . \_\_\_\_\_

Votes for Motion . . . . . \_\_\_\_\_

Votes Against Motion . . . . . \_\_\_\_\_

**Illegal votes (unintelligible ballots, etc.)\***

Illegal Ballots . . . . . \_\_\_\_\_

*\* Illegal votes cast by persons entitled to vote are taken into account in determining the number of votes cast for purposes of computing the majority (or other vote) necessary for adoption. See RONR (11<sup>th</sup> Ed.) § 45 (p. 415-418).*

\_\_\_\_\_  
Tellers' Chairman

# EXHIBIT K

# Tellers' Report for Election

Office: \_\_\_\_\_

Number of Votes Cast . . . . . \_\_\_\_\_

Necessary for Election . . . . . \_\_\_\_\_

\_\_\_\_\_ received . . . . . \_\_\_\_\_

**Illegal votes (unintelligible, ballots cast for fictional characters, etc.)\***

Illegal Ballots . . . . . \_\_\_\_\_

*\* Illegal votes cast by persons entitled to vote are taken into account in determining the number of votes cast for purposes of computing the majority (or other vote) necessary for adoption. See RONR (11<sup>th</sup> Ed.) § 45 (p. 415-418).*

\_\_\_\_\_  
Tellers' Chairman

# EXHIBIT L

## *Parliamentary Law Legal Resources*

The following resources cite cases on meeting and convention procedures or discuss issues of the law and parliamentary procedure:

59 Am. Jur. 2d *Parliamentary Law*.

American Institute of Parliamentarians. *American Institute of Parliamentarians Standard Code of Parliamentary Procedure*. McGraw-Hill, 2012.

Balch, Burke and Michael Malamut. "ABA Revision Raises Concerns for Democracy and Parliamentary Law in Nonprofits," *National Parliamentarian*, First Quarter 2008.

Boggins, Joseph C. "Noteworthy Court Decision," *National Parliamentarian*, Fourth Quarter 1990.

Bosmajian, Haig A. "Court Decisions Related to Freedom of Assembly and Parliamentary Procedures," *Readings in Parliamentary Law*. Harper & Row: New York, 1968.

Carson, Walter E. "The Parliamentarian and the Law: Proxy Voting Absent Bylaw Provision," *Parliamentary Journal*, January 1997.

Demeter, George. *Demeter's Manual of Parliamentary Law and Procedure*. Boston: Little, Brown, 1969.

Grace, Charles H. "Relationship of Law to Parliamentary Procedure," *National Parliamentarian*, Fourth Quarter 1996.

Lofton, J. David. "Must One Prevail to Change One's Mind? The Court's Treatment of the Motion to Reconsider," *Parliamentary Journal*, July 1987.

Luce, Robert. *Legislative Procedure: Parliamentary Practices and the Course of Business in the Framing of Statutes*. Boston: Houghton Mifflin Company, 1922.

Luce, Robert. "The Quorum," *Readings in Parliamentary Law*. New York: Harper & Row, 1968.

Malamut, Michael E. "District of Columbia Enacts Member-Friendly Corporation Law, Part 1, 2 and 3," *National Parliamentarian*, Second, Third and Fourth Quarter 2011.

Malamut, Michael E. "Issues of Concern to Parliamentarians Raised by the 1952 Model Nonprofit Corporation Act," *National Parliamentarian*, Third Quarter 2008

Malamut, Michael E. "Issues Raised by the 2008 Revision of the Model Nonprofit Corporation Act," *National Parliamentarian*, First Quarter 2009.

Malamut, Michael E. "Musings on General or Common Parliamentary Law," *Parliamentary Journal*, July 2008.

Malamut, Michael E. "Sample Bylaws for Overriding Default Provisions of 2008 Model Nonprofit



# EXHIBIT M

## **BETTER USE OF PARLIAMENTARY PROCEDURE**

Jim Slaughter, JD, CPP-T, PRP

**Updated from "Prescription for Troubled Meetings: Better Use of Parliamentary Procedure," *Common Ground*, 1998**

Running an association meeting by proper parliamentary procedure is smart for two reasons. First, it helps to avoid legal challenges to your actions; second, it produces better, more productive meetings.

A presiding officer who properly applies parliamentary procedure can turn long, confrontational meetings into short, painless ones. One association had such a difficult time conducting annual meetings that all the officers dreaded attending them. None wanted to preside. The association dealt with the problem by hiring a professional parliamentarian. The professional provided the expert advice needed to keep the meeting flowing in an orderly fashion.

While a lengthy and badly run meeting can cast a pall on all other accomplishments during the year, a successful and well-run meeting will please and invigorate members. One homeowners association had annual meetings that routinely ran overtime and failed to complete business. By engaging a parliamentarian, the board found that at subsequent meetings, it not only completed all business but ended early—earning praise from participants.

### **WHICH RULE BOOK?**

Parliamentary procedure is the means by which organizations make decisions. Stated another way, parliamentary procedure is all of the laws and rules of organizations that govern the transaction of business. Contrary to common perception, parliamentary procedure is not synonymous with the book *Robert's Rules of Order (10th Edition)*.

Instead, there are several major parliamentary books, with *Robert's* being the most popular. It is used by approximately 85 percent of U.S. organizations. Another well-known parliamentary authority is *Sturgis Standard Code of Parliamentary Procedure*, used by approximately 10 percent of organizations. Other excellent manuals of parliamentary procedure are available. However, the fact that *Robert's* is the most widely used book as well as the easiest to locate argues in its favor as a parliamentary authority.

*Robert's* is an excellent resource for association leaders. The book includes sections on presiding, the duties of officers, running elections, writing and amending bylaws, counting votes, and holding board and committee meetings. *Robert's* is fairly easy to find—just be sure to buy the right one. There are numerous *Robert's* “clones” and earlier editions that are easy to pick up by mistake. Identify *Robert's Rules of Order* by its publisher, Perseus Publishing, and by the number of pages (704). It's available in both hardback and softcover.

## **ADOPT WRITTEN RULES**

Most groups formally adopt written rules of procedure. The group normally approves a bylaws provision that a particular book shall be the parliamentary authority. The procedural rules in that book then govern the association in all cases in which the rules are not inconsistent with higher authority, such as state or federal law or the governing documents of the association. This parliamentary authority can also be supplemented with specific rules to cover specific situations.

The conduct of business in an assembly often varies by size. Annual meetings of large organizations are typically formal in procedure. Similarly, business conducted in a board of more than a dozen members follows the same formal procedure. Some characteristics of formal parliamentary procedure are as follows:

- Members must be recognized by the presiding officer before speaking;

- A motion to take action must precede any discussion of an issue;
- Motions must be seconded;
- Members may only speak to a specific issue twice;
- The presiding officer does not participate in discussion; and
- Formal votes are taken by voice or ballot.

In contrast, formal procedure in a meeting of fewer than a dozen may actually hinder business. *Robert's Rules of Order* recommends that the procedure in smaller boards be less formal, such that:

- Members are not required to obtain the floor and can make motions or speak while seated;
- Motions need not be seconded;
- There is no limit to the number of times a member can speak to a question, and motions to close or limit debate generally should not be entertained (unless the group has adopted a rule to the contrary);
- The chair need not rise while putting questions to vote;
- The chair can speak in discussion without rising or leaving the chair; and
- Subject to rule or custom, the chair usually can make motions and usually votes on all questions.

While smaller boards can operate more informally, there are times that more formal procedure may be warranted. If a particular issue is hotly contested or likely to subject the board to publicity or a lawsuit, more formal procedure can ensure that procedural safeguards have been observed.

## **CONCLUSION**

In summary, officers of community associations need to be aware of proper parliamentary procedure. Such knowledge can enhance leadership credibility, produce

better meetings, and make the difference between official actions that stand up in court—and illegal ones that don't.

**Sidebar:**

**Parliamentary Resources**

Two non-profit organizations promote parliamentary procedure and certify parliamentarians: the American Institute of Parliamentarians and the National Association of Parliamentarians. Each organization makes referrals of skilled parliamentarians.

The American Institute of Parliamentarians (AIP) has two levels of parliamentary proficiency-- the basic Certified Parliamentarian and AIP's highest parliamentary classification, Certified Professional Parliamentarian (CPP).

The American Institute of Parliamentarians can be contacted at 618 Church Street, Suite 220, Nashville, TN 37219, phone number 615-250-7776, fax number 615-248-9253. The AIP Web site is located at **[www.aipparl.org/site/](http://www.aipparl.org/site/)**

The National Association of Parliamentarians (NAP) also has two levels of parliamentary proficiency--Registered Parliamentarian and NAP's highest parliamentary classification, Professional Registered Parliamentarian (PRP).

The National Association of Parliamentarians can be contacted at 213 South Main Street, Independence, MO 64050-3850, phone number 816-833-3892, fax number 816-833-3893. The NAP Web site is located at **[www.parliamentarians.org](http://www.parliamentarians.org)**

\*\*\*\*\*

**Jim Slaughter is President of the law firm of Rossabi Black Slaughter, P.A., and is an attorney, Professional Registered Parliamentarian, and Certified Professional Parliamentarian-Teacher. Jim's Web site at [www.jimslaughter.com](http://www.jimslaughter.com) contains many articles and charts on meeting procedure.**

# EXHIBIT N

# Community Associations and the Parliamentarian

*James H. Slaughter, PRP*

“O BRAVE NEW WORLD that has such people in it!” These words from Shakespeare’s *The Tempest* aptly describe community associations. For parliamentarians, community associations represent a brave new world of opportunity. Statistics from the Community Association Institute (CAI) reveal that the number of community associations has ballooned from 500 in 1965 to more than 205,000 today.<sup>1</sup> Forty-two million Americans live within community associations. Fifty percent of all new development in metropolitan areas is within community associations. Some 6,000–8,000 new community associations are created each year.

Although a tremendous opportunity for service, community associations are foreign to many parliamentarians. Parliamentarians venturing into this area must become familiar with the language of community associations, complex governing authorities, and some unique problems affecting community associations.

## What Are Community Associations?

A “community association” is a residential development in which the owner is bound to membership in an organization by a set of governing documents that require adherence to a set of rules and, often, the payment of assessments. Membership in the community association is automatic upon purchase of a dwelling. Unlike other associations parliamentarians serve, community associations are not voluntary.

Various terms are used to describe the types of community associations (and definitions vary by state). In a “condominium” a person owns an individual unit and is a tenant and common owner of the common elements. In a “planned community” a person owns an individual unit while a corporation holds title to the common areas. In a “cooperative” a corporation owns all

units and common areas and a lease gives rights of occupancy in a unit. Other terms for particular community associations include townhouses, detached single family residences, homeowners associations, and master associations. According to CAI the most popular architectural styles of community associations include townhouses (42%), detached single family residences (18%), and mid-high rise buildings (23%).

## Governing Documents

Parliamentarians serving voluntary associations must typically focus on only the constitution (if applicable) and bylaws. The community association parliamentarian, however, must be aware of multiple governing documents as well as the potential for conflict between these documents. Governing documents for community associations include (1) statutes, (2) covenants, conditions, and restrictions, (3) articles of incorporation, (4) constitution and/or bylaws, and (5) parliamentary authority.

## Statutes

Statutes may govern many procedural aspects of community associations, including notice and meeting requirements. Unfortunately, a parliamentarian can have a difficult time deciding which statutes apply, if any. Condominium acts have existed in many states for some years governing solely condominiums. However, condominium acts traditionally do not govern either homeowners associations or townhouses. As a result, other types of community associations have in the past incorporated and become subject to their state’s non-profit corporation statutes.

A more recent development is the enactment of “planned community acts” to govern all community associations. These acts typically

exclude condominiums if there is already a condominium act. In addition, such statutes do *not* govern community associations created before the adoption of the statutes in most cases (unless the community association chooses to be subject to the act).<sup>2</sup>

Statutes governing community associations often alter the standard procedures regarding quorum, voting, and proper meetings. Statutes often define a quorum as a specified percentage of members that may be as low as 10 percent of unit owners (the Uniform Planned Community Act recommends a quorum of 20 percent for association meetings and 50 percent for board meetings).<sup>3</sup> Statutes often provide that once a quorum is present at a meeting, the quorum remains throughout the meeting regardless of how many members leave.<sup>4</sup> Some planned community acts provide that if a meeting is unable to convene due to a lack of quorum, any subsequent adjourned meeting will only require a quorum of one-half the original quorum.<sup>5</sup>

Statutes often include elaborate procedures for proxy voting and cumulative voting. These provisions may govern the community association even if the bylaws and other governing documents are silent as to voting.

Traditional meeting practices can also be modified by statute. Statutes often permit boards of directors to meet by telephone whether or not such language is included in the bylaws. Decisions by any means (including facsimile, e-mail, or calling each board member individually) may be valid by statute if later put in writing and signed by all board members.

### **Covenants, Conditions, and Restrictions (Declaration)**

The Covenants, Conditions and Restrictions (CCR's) (sometimes referred to as the "Declaration") may be the most important document governing a community association. CCR's are created before the development of the community association and are recorded with other real estate documents in the same manner as a

deed. The purpose of the CCR's is to establish rules for living within the association. Although CCR's vary by association, such restrictions may cover anything from forbidding pools and out-buildings to detailing appropriate paint colors and flowers. CCR's may also contain restrictions as to the board's size and method of election as well as meeting procedures.<sup>6</sup>

CCR's *cannot* be violated. After all, the CCR's are a legal and binding contract by anyone who chooses to purchase property within the planned community. Also, unlike statutes which often only provide minimum standards, CCR's are typically worded in terms of what "must" or "shall" be done. As a result, parliamentarians serving community associations must be aware of the contents of the CCR's. One community association elected six members of the board of directors based on the language of the bylaws. Association leaders later realized that the CCR's only provided for five members and had to hold another election.

Owners in community associations are often not aware of the CCR's control over their lives. CAI surveys suggest that 13 percent of community association owners learn of the restrictions at closing. Even worse, 31 percent of community association owners learn of CCR provisions *after* moving into their unit. Another study found that 62 percent of those surveyed knew of someone who was unaware of the restrictions when they moved to the premises.

Parliamentarians should also be aware of the difficulty in amending CCR's. Some CCR's require a 100 percent vote of all unit owners to amend (an almost impossible requirement). The Uniform Act recommends a floating vote requirement depending on the nature of the amendment. While an amendment that changes the boundaries or uses of a unit requires the unanimous consent of all unit owners, other types of amendment only require the consent of 67 percent of unit owners.<sup>7</sup> Approximately one-third of community associations require a

three-fourths vote of all unit owners to amend the CCR's.

### **Corporate Charter**

The corporate charter (sometimes called “articles of incorporation” or “certificate of incorporation”) contains the information needed for incorporating under the laws of that particular state. Because not all community associations incorporate, there may or may not be a corporate charter.

*Robert's Rules of Order Newly Revised (RONR 1990)* states that, “The corporate charter supersedes all its other rules, none of which can legally contain anything in conflict with the charter” (*RONR 1990*, p. 11). However, the corporate charter in a community association is subsidiary to and cannot conflict with applicable statutes or the CCR's.

### **Constitution and/or Bylaws**

The constitution and/or bylaws contain the basic rules relating to the community association as an organization. *RONR 1990* examines the composition and interpretation of bylaws in detail.<sup>8</sup> The bylaws cannot conflict with applicable statutes, the CCR's, or the corporate charter.

### **Parliamentary Authority**

The parliamentary authority is the manual of parliamentary law adopted (often in the bylaws) by the community association as rules of order. Few state statutes mandate that a parliamentary manual be adopted.<sup>9</sup> As a result, many community association bylaws do not provide for any parliamentary authority. In the event no parliamentary authority is prescribed in the bylaws, the association at a meeting may adopt a parliamentary authority for that meeting with previous notice and a two-thirds vote (or without notice a vote of a majority of the entire membership).<sup>10</sup>

These numerous governing authorities may conflict and lead to confusion in the context of community associations. For instance, the legal

counsel in a recent homeowners' association election in Florida refused to tally write-in ballots in an annual election, changing the outcome of the election. All major parliamentary authorities permit write-in ballots, and bylaws rarely limit an election solely to nominated candidates. However, the attorney argued that state community association law permitted candidates to nominate themselves, so that all ballots with write-in candidates were disqualified.

### **Conflict in Community Associations**

In addition to unusual governing documents, community associations present other unusual problems. Parliamentarians are often surprised at the level of conflict in community association meetings.

According to Michael Van Dyk in “Homeowner Associations: Wild West for Parliamentarians” (*National Parliamentarian*, Third Quarter, 1995), community association board meetings “can be a nightmare for any civilized, law-abiding citizen.” Actual instances are given of cursing matches, fist fights, broken bones, and thrown furniture. Van Dyk describes a condominium owner who had a knife held to her throat. According to the *Florida Press Journal* (March 6, 1999), a condominium owner allegedly shot and killed another owner at a condominium association meeting over a dispute concerning a garden hose.

The types of issues regulated by community associations can also contribute to disputes. Several lawsuits may be lurking behind any community association decision. One annual meeting I assisted had five lawyers attending in a formal capacity (two representing the association, two representing a dissident member, and one representing the developer). Two video cameras and a court stenographer recorded the entire meeting.

Some authors suggest that ulterior motives may add to friction in the community association context. Van Dyk notes that many community association leaders have the highest motives

and altruistic reasons for their service. However, he describes some leaders as “corrupt, arrogant mini-dictators, living off fat kickbacks from big maintenance contracts.” Van Dyk makes reference to a New York investigation in which eighty association managers and presidents were arrested for bribery, kickbacks, and extortion.

While conflict and emotions are not the primary focus of parliamentary procedure, such concerns could impact the conduct of community association meetings. A parliamentarian serving a community association should make every effort to determine in advance the potential impact of personalities and emotions upon an orderly meeting. In such a setting a working knowledge of the dynamics of conflict and techniques for managing conflict may also be desirable.

## Conclusion

Without question, community associations could benefit from the assistance of skilled parliamentarians. Annual meetings and board meetings would be shorter and more efficient by an adherence to proper meeting procedures. More than one million volunteers serve on boards and committees of community associations in the United States. These volunteers represent potential members of parliamentary organizations and students at parliamentary workshops. However, parliamentarians must become better aware of the language, authorities, and problems of community associations if we are to succeed in this brave new world.

6 The Uniform Act provides that the “*declaration may contain any other matters the declarant deems appropriate.*” Uniform Planned Community Act § 2-105(b).

7 Uniform Planned Community Act § 2-117.

8 See RONR 1990 §§ 2, 55-56.

9 See e.g., California Code § 1363 which provides: “*Meetings of the membership of the association shall be conducted in accordance with a recognized system of parliamentary procedure or any parliamentary procedures the association may adopt.*”

10 RONR 1990 § 2 (p. 17).

*Jim Slaughter regularly assists community associations as a parliamentarian and is one of only several attorneys in the country who is both a Professional Registered Parliamentarian and a Certified Professional Parliamentarian-Teacher.*

*His Web site at <[www.jimslaughter.com](http://www.jimslaughter.com)> contains many articles and helpful hints on meeting procedure.*

*For reprints of this and other articles from the National Parliamentarian®, contact the National Association of Parliamentarians at (888) NAP-2929, or by e-mail at [hq@nap2.org](mailto:hq@nap2.org). The NAP Web site is at [www.parliamentarians.org](http://www.parliamentarians.org).*

1 All community association statistics are from the Community Associations Institute (CAI) Web site at <[www.caionline.org](http://www.caionline.org)>.

2 See e.g., N.C.G.S. § 47F-1-102 (“*Any planned community created prior to the effective date of this Chapter may elect to make the provisions of this Chapter applicable to it by amending its declaration to provide that this Chapter shall apply to that planned community.*”)

3 Uniform Planned Community Act § 3-109.

4 Uniform Planned Community Act § 3-109.

5 See e.g., N.C.G.S. § 47F-1-110.

# EXHIBIT O

# PARLIAMENTARY PROCEDURE FOR COMMUNITY ASSOCIATIONS

Jim Slaughter, JD, CPP-T, PRP

**Updated from “Heads-Up Meetings: Taming the Monster,”**  
*Common Ground* cover story, 2000

A BAD MEETING is like the mythical Hydra. Cut off one head, and two more sprout up. But you can tame this unfocused monstrosity with parliamentary procedure.

**BUSINESS AS USUAL: a board meeting; a treasurer’s report.** Following the treasurer’s report, a board member moves to “accept” the report. A lengthy discussion follows. There’s a motion to “table the matter to the next meeting.” An argument starts on whether the motion should be to “table” or to “postpone.” By the end of the meeting, the board has spent more time debating procedure than discussing substantive issues. If only the presiding officer had realized the treasurer’s report required no motion or vote whatsoever.

Nobody likes a meeting, and this scenario illustrates why. There always seems to be too much to do and not enough time to do it. Looming above it all is the ever-present threat of tangents and diversions—the treasurer’s report that turns into a procedural debate, or the resident’s question that becomes a filibuster. Indeed, a poorly run meeting can be like the legendary Hydra, a monster that in Greek mythology grew two heads for every one that was cut off.

You don’t have the option of slicing off heads and searing the wounds with fire, as Hercules did to finally defeat the Hydra. But you have the next best thing: parliamentary procedure, which can help turn long, confrontational meetings into short, painless ones. Before you groan at the thought of member after member standing to intone, “Point of order,” at your next meeting, consider: Courts have held that all organizations—including community associations—are subject to the principles and rules of common parliamentary law. Members who act contrary to the rules they have adopted can be held liable for their actions. As a result, ignoring or incorrectly applying parliamentary procedure can lead to embarrassment and even lawsuits.

But the benefits of a well-run meeting extend beyond questions of liability. Presiding officers who make every effort to learn the essentials of parliamentary procedure might find their next meeting a bit less Herculean.

Leaders of community associations must be aware of parliamentary procedure basics. Courts have held that all organizations are subject to the principles and rules of common parliamentary law. Profit and nonprofit corporations and associations must observe proper rules when meeting to transact business.

### **WHAT IS PARLIAMENTARY PROCEDURE?**

Parliamentary procedure is all the rules that govern the transaction of business in meetings. Contrary to common perception, parliamentary procedure is not limited to *Robert's Rules of Order Newly Revised*. True, *Robert's* is the most used authority, But *Sturgis Standard Code of Parliamentary Procedure* is actually an easier book from which to learn parliamentary procedure.

### **WHAT PROCEDURES SHOULD YOU FOLLOW?**

You can formally adopt written rules of procedure by adopting a bylaws provision that a book such as *Robert's* shall be the parliamentary authority. This authority then governs procedure except as spelled out in higher authorities—such as federal or state law, governing documents, or specially adopted rules of order. The parliamentary authority can also be supplemented with specific rules.

How you conduct your business is often determined by the size of your assembly. (To learn more about the total flow of business at a meeting, see “Business to Business,” p. 19.) Smaller boards and committees can and sometimes should be more informal. In fact, *Robert's Rules* notes that formality can actually hinder business in a meeting of fewer than a dozen. As a result, in smaller boards, members aren't required to obtain the floor and can make motions or speak while seated; motions need not be seconded; there is no limit to the number of times a member can speak to a question; motions to close or limit debate generally aren't used; and the chair usually can make motions and vote on all questions.

Small boards can always follow more formal procedure on matters of sufficient importance or controversy.

In contrast, annual meetings of a community association must be more formal due to the number of members present. Debate must be limited to keep the meeting on time, and formal votes help avoid legal challenges to actions that are taken.

## **HOW IS BUSINESS BROUGHT BEFORE THE ASSEMBLY?**

In meetings that follow formal procedure, no discussion should occur without being preceded by a “motion,” a formal proposal for consideration and action. In a formal meeting, every item of business—whether a proposal to spend \$500,000 on building renovations or to take a five minute break—needs one.

There are three steps for bringing a motion before an assembly:

**1. A member makes the motion.** For most motions, a member—which means a board member at a board meeting and an association member at an annual meeting—must seek recognition from the presiding officer. Once recognized, the member stands and says, “I move that . . . .”

**2. Another member seconds the motion.** The seconder doesn’t need to be recognized and can simply yell out “Second!” The idea is that an assembly shouldn’t waste its time discussing a matter unless at least two members want.

**3. The chair states the question.** The presiding officer repeats the motion by stating, “It is moved and seconded that . . . .” allowing the chair to verify the wording. Before being stated by the chair, a motion belongs to its maker and can be withdrawn at any time. After being stated by the chair, a motion belongs to the assembly and must be processed with debate and a vote.

Once properly before the assembly, a motion is considered in three steps:

**1. Members debate the motion (unless undebatable).** Several rules govern who get to speak in debate:

- The maker of the motion gets to speak first.
- Anyone who has not spoken is recognized before anyone who has already spoken.
- If possible, debate alternates pro and con.
- Members can only speak twice to a particular motion.

**2. Chair puts question to a vote.** When debate ends (either because no one seeks the floor or because a motion to close debate is adopted), the chair repeats the motion by saying, “The question is on the adoption of . . . .” The vote can be taken by voice (“aye’s” and “no’s”), standing, hand, or some other means.

**3. Chair announces outcome.** The last step is for the chair to announce whether the motion passed or failed.

The process for considering a motion can seem repetitive. However, there is no worse situation in a meeting than when members don’t understand what is being discussed or voted upon. A core goal of proper procedure is to assure that all members know the parliamentary situation at any given moment.

## WHAT MOTIONS ARE MOST USED?

As you can see, the key to parliamentary procedure is the motion. While there are a lot of them—*Robert’s Rules* lists more than 80 in its central table—most meetings stick to about a dozen.

**Main motion:** brings business before the assembly; permitted only when no other motion is pending.

**Amendment:** allows modification to another motion by adding, deleting, or changing words.

**Refer:** allows a matter to be sent to a smaller group to consider and report back.

**Postpone:** delays consideration of a matter.

**Limit debate** – places a limit on the time or number of speakers.

**Previous question:** ends debate immediately.

**Table:** temporarily delays a matter when something of urgency arises.

**Recess:** permits a short break.

**Adjourn:** ends the meeting.

**Point of order:** calls attention to an error in procedure.

**Point of information:** allows a member to ask a question.

**Division of the assembly:** demands a rising (but not counted) vote after a voice vote.

Each motion has detailed rules on when it can be introduced, whether it needs a second, whether it is debatable, and the vote required for adoption. (See “Motion Detector,” below.)

## **HOW DO MOTIONS WORK TOGETHER?**

Not all motions are in order at any given moment. Instead, certain motions are considered ahead of others in formal procedure. This concept is known as “precedence”. The order of precedence, from highest- to lowest-ranking motion, is as follows: adjourn, recess, lay on the table, previous question, limit/extend debate, postpone to a certain time, refer, amend, and main motion.

Precedence is governed by two rules:

1. When a motion is being considered, any motion higher on the list—but no motion of lower precedence—may be proposed.
2. The motion last proposed (and highest on the list) is considered and decided first.

For example, suppose the motion being discussed is to authorize \$5,000 for painting. A motion is made to amend the motion by striking “\$5,000” and inserting “\$7,500” (which is in order as it is higher on the list than the main motion). The amendment is discussed, and a motion is made to refer the matter to a committee (which is also in order). Discussion begins on a motion to refer. Then a motion is made to postpone the matter until next month’s meeting (again, in order). A member then moves to adjourn (also in order). Prior to voting on the motion to adjourn, a member obtains the floor and moves to recess for five minutes. The motion to recess is out of order in that it is *lower* on the list than the motion to adjourn.

This may seem like an unnecessarily elaborate process—reminiscent of our old friend the Hydra—for what seems like a simple item of business. But consider what has been avoided: unnecessary debate and the multiple motions being discussed at the same time. The assembly had only one question before it at any given moment. As a result, members were required to focus on the immediately pending motion only avoiding distractions.

Parliamentary procedure takes many forms and has many specific rules that are beyond the realm of this article. But the preceding example makes clear the true value of parliamentary procedure to leaders of community associations. A solid foundation of procedural knowledge can enhance credibility, produce shorter and better meetings, and make the difference between legitimate actions and illegal actions. Hercules couldn’t do it any better himself.

**SIDEBAR:**

**Motion Detector**

Here are some of the rules governing the most frequently used motions, listed in order of precedence. Remember, a motion can be introduced if it is higher on the list than the pending motion. (More detailed information can be obtained from *Robert's Rules of Order Newly Revised*.)

<b>Motion</b>	<b>Second?</b>	<b>Debatable?</b>	<b>Amend?</b>	<b>Vote?</b>
Adjourn	Yes	No	No	Majority
Recess	Yes	No	Yes	Majority
Table	Yes	No	No	Majority
Previous Question	Yes	No	No	2/3
Limit Debate	Yes	No	Yes	2/3
Postpone	Yes	Yes	Yes	Majority
Refer	Yes	Yes	Yes	Majority
Amend	Yes	Yes	Yes	Majority
Main Motion	Yes	Yes	Yes	Majority

The following motions have no order of precedence and are decided immediately.

<b>Motion</b>	<b>Second?</b>	<b>Debate?</b>	<b>Amend?</b>	<b>Vote?</b>
Point of Order	No	No	No	None
Appeal	Yes	Varies	No	Majority
Suspend Rules	Yes	No	No	2/3
Division	No	No	No	None
Request for Information	No	No	No	None

\*\*\*\*\*

**Jim Slaughter is an attorney, Certified Professional Parliamentarian, Professional Registered Parliamentarian, and past President of the American College of Parliamentary Lawyers. He is author of *The Complete Idiot's Guide to Parliamentary Procedure Fast-Track* and lead author of *Notes and Comments on Robert's Rules, Fourth Edition*. Jim is a partner in the North Carolina law firm of Rossabi Black Slaughter, PA. For more information, visit [www.jimslaughter.com](http://www.jimslaughter.com).**

# EXHIBIT P

**MEETING MYTHS**  
Jim Slaughter, JD, CPP-T, PRP

**Updated from "Meeting Myth-Understandings,"**  
*Common Ground, Jan/Fed 2003*

Some rules are made to be broken—especially when they aren't really rules in the first place.

The same errors are often made by different chairs, at different meetings, in different associations. Such mistakes are often the result of "meeting myths" that have taken on a life of their own. Things are done a certain way either because "they've always been done that way" or because they are "supposed" to be done that way. Unfortunately, as the Porgy & Bess song says: "It ain't necessarily so."

What follows are "meeting myths" that need to be put to rest. If you can eliminate one improper practice a month over the next year, your meetings will be faster, fairer and more effective.

**MYTH: "WE DON'T USE PARLIAMENTARY PROCEDURE."**

Whether you are aware of it or not, both your board meetings and annual meetings follow parliamentary procedure. Courts have held that all organizations are subject to the principles and rules of common parliamentary law. In other words, boards, committees, assemblies, and annual meetings must all observe proper rules when meeting to transact business.

Many associations also adopt a rule that they will follow a particular procedural book, such as *Robert's Rules of Order*, during meetings. Members who act contrary to the rules they have adopted can be held liable for their actions. As a result, ignoring or incorrectly applying parliamentary procedure can lead to embarrassment and lawsuits.

**MYTH: PARLIAMENTARY PROCEDURE AND ROBERT’S RULES OF ORDER ARE THE SAME THING.**

Parliamentary procedure includes all the rules that govern the transaction of business in meetings. Parliamentary procedure is not identical to Robert's Rules of Order. Instead, *Robert’s Rules of Order Newly Revised (11<sup>th</sup> Edition)*(“RONR”) is the most popular of several parliamentary books. Another well-known parliamentary authority is *The Standard Code of Parliamentary Procedure (4th Edition)*(often referred to simply as “Sturgis”). For the novice, Sturgis can be an easier book from which to learn procedure.

The fact that *RONR* is the most used parliamentary book and the easiest to locate argues in its favor as a parliamentary authority. *RONR* is also an excellent resource and includes sections on presiding, the duties of officers, taking minutes, running elections, writing and amending bylaws, and holding board and committee meetings.

*RONR* is fairly easy to find—just be sure to buy the right book. There are numerous “clones” and earlier editions that are easy to buy by mistake. *RONR* is available in both hardcover and soft cover and can be identified by its gold cover.

**MYTH: RULES ARE THE SAME FOR ALL MEETINGS.**

Board meetings and membership meetings should be conducted differently. Put simply, the level of procedure usually varies by the size of the assembly. Large annual meetings must be fairly formal. Informal discussion of matters is impractical due to the number of members present. Limits on debate must be observed to keep the meeting on time. Formal votes help avoid legal challenges.

In contrast, smaller boards and committees can be less formal. Formality can actually hinder business in a meeting of fewer than about a dozen. As a result, *RONR* recommends that in smaller boards and committees:

- Members are not required to obtain the floor and can make motions or speak while seated.
- Motions need not be seconded.

- There is no limit to the number of times a member can speak to a question, and motions to close or limit debate are generally not used.
- The chair usually can make motions and vote on all questions.
- Some smaller boards dislike the informality suggested by RONR and follow a more formal procedure at all meetings. Even informal boards should be more formal on matters of sufficient importance or controversy.

To avoid confusion as to what procedures to follow, many organizations adopt specific rules governing meetings. Such rules can be lengthy and may even describe what motions can be used during meetings. On the other hand, some organizations simply adopt a rule or two on such matters as recognition and the length of speeches. At a minimum, a rule should be adopted that a particular book will serve as the parliamentary authority.

**MYTH: THE ABSENCE OF A QUORUM IS OKAY IF NOBODY BRINGS IT UP.**

One of the quickest paths to serious trouble is to ignore quorum requirements. A “quorum” is the number of voting members who must be present to have a valid meeting. This number is typically established by statute or the governing documents.

There is a belief that the lack of a quorum can be ignored if no one raises the issue. Not true! The general rule is that any business transacted without a quorum (except for a few procedural motions) is null and void, regardless of whether or not any member raises the issue. While some state laws allow for a meeting to start with a quorum and to continue if a quorum leaves, this is very different from not having a quorum in the first place.

**MYTH: DISCUSSION FIRST, MOTION LATER.**

For groups following formal procedure, no discussion should occur without being preceded by a “motion” to take action. A motion is a formal proposal for consideration and action. In formal meetings, all items of business—whether a proposal to construct a new building or to take a five minute break—are initiated by proposing a motion.

**MYTH: SECONDS ARE REALLY IMPORTANT.**

A second merely implies that at least one other person wants to discuss a motion. In smaller boards, seconds aren’t even required. Even in more formal annual meetings, seconds

should not be overemphasized. The presence of a second determines whether or not an issue will go forward into discussion. If there is no second, there should be no further action on the proposal. However, most parliamentary books provide that after any debate on an issue, the lack of a second is irrelevant. The fact that a motion was never seconded can also be ignored after a vote.

Under *RONR* a seconder does not need to be recognized or even entered in the minutes. If a recommendation is from a committee, no second from the floor is needed.

### **MYTH: VOTE ON ALL REPORTS.**

Committee reports are often for information only. In such instances, no motion is necessary following the report. A motion “to adopt” or “to accept” a report is seldom wise except when the report is to be published in the name of the organization. On the other hand, the reporting member should end by making a motion if the committee has a specific recommendation for action.

For example, the Budget Committee may have studied hiring a new management company. In her report, the committee chair might thank the members of the committee for their hard work and explain in detail the committee’s position and reasoning. At the end of her report, the committee chair would close by saying, “On behalf of the committee, I move that the association retain ABC management pursuant to the terms of the proposed contract.”

In contrast to common practice, treasurers’ reports seldom require action. When a treasurer is simply reporting the cash on hand or receipts minus disbursements, no action is necessary. Such a report should simply be filed for reference.

Treasurers often make more detailed yearly financial reports. Such reports should always be audited (either externally by an accountant or by an internal audit committee, depending on the association’s size and resources). The auditor’s report is then considered and adopted. Approval of the auditor’s report typically relieves the treasurer of responsibility for the period of the report, except in cases of fraud.

**MYTH: A MOTION IS ALWAYS NECESSARY.**

Many matters can be resolved through “general consent” or “unanimous consent.” Under this method, the presiding officer asks, “Is there any objection to . . . ?” For example, “Is there any objection to ending debate?” If no one objects, debate is closed. If a member objects, the matter should be resolved with a motion and vote.

Unanimous consent allows an assembly to move quickly through non-controversial issues, so that more time can be spent on controversial issues. Reports and motions can be adopted, minutes can be approved, and debate can be ended with general consent.

A similar concept is the “consent agenda,” which is often on the agenda near the start of the meeting. The consent agenda (such as the adoption of the minutes) should include all non-controversial items. Any member can request that an item be removed from the consent agenda and transferred to the regular agenda for consideration and vote. The remaining consent agenda items are then unanimously approved as a unit without discussion.

**MYTH: THE MAKER OF A MOTION GETS TO SPEAK FIRST AND LAST.**

The maker of a motion has the right to speak first to a proposal. After that, the maker has no more rights than anyone else with regard to the motion.

**MYTH: ANYBODY CAN SPEAK AT OUR MEETINGS.**

Meetings are for members. Unless there is a rule to the contrary, only members of the particular body are allowed to speak, make motions, or vote. Only board members have a right to participate in board meetings. Only association members have a right to participate in membership meetings. While an assembly can permit anyone to speak, no one but members can demand that right.

**MYTH: A “FRIENDLY AMENDMENT” IS OKAY.**

Some associations have a practice that any two members can amend a motion on the floor. This occurs when a member asks if the change is “friendly” to the original maker of the motion. If so, the change is made. Such a procedure is unfair and violates parliamentary law.

Once a motion is stated by the presiding officer, it belongs to the assembly. After that point, the maker has no more right than any other member to change the motion. Instead of using “friendly amendments,” the proper practice would be to use unanimous consent (“If there is no objection to this change, . . .”) or to require that the amendment be made formally.

**MYTH: “OLD BUSINESS.”**

There is no parliamentary concept of “old” business. The term suggests a time that any old thing ever discussed can be revisited.

What is sometimes misnamed “old business” is actually “unfinished business.”

Unfinished business refers to questions carried over from the previous meeting and includes:

- any matter that was pending when the previous meeting adjourned;
- any matter on the previous meeting’s agenda that was not reached; or
- any matter that was postponed to the present meeting.

The presiding officer will know if there are items of unfinished business. As a result, the presiding officer does not need to ask, “Is there any unfinished business?” Instead, the presiding officer simply states the question on the first item. If there is no unfinished business, this category of business can be skipped. Annual meetings typically have no unfinished business.

**MYTH: THERE ARE TOO MANY MOTIONS IN PARLIAMENTARY PROCEDURE.**

Granted, there are a lot of different motions. (*RONR* lists over 84 variations!) However, most business in meetings is accomplished through the use of about a dozen motions.

The Main Motion brings business before the assembly and is permitted only when no other motion is pending. Many issues can be resolved with this one motion. If you like the

proposal, speak in favor of and vote for the main motion. If you dislike the proposal, speak against and vote against the main motion.

Other motions regularly used in meetings include:

- Amendment – allows changes to another motion by adding, deleting, or changing words.
- Refer – allows a matter to be sent to a committee to consider and report back.
- Postpone – delays consideration of a matter to a specific time or date.
- Limit Debate – places a limit on the time or number of speakers.
- Previous Question – ends debate immediately.
- Recess – permits a short break.
- Adjourn – ends the meeting.
- Point of Order – calls attention to an error in procedure.
- Point of Information – allows a member to ask a question.
- Division of the Assembly – demands a rising (but not counted) vote after a voice vote.

#### **MYTH: CALLING “QUESTION!” STOPS ALL BUSINESS.**

The Previous Question (or motion to close debate) is regularly handled improperly. In some groups, a person simply yelling “Question!” from the audience results in action. In other groups, the making of the motion automatically ends debate. Both procedures are wrong.

The motion to close debate is just another motion. A person wanting to close debate must be recognized by the chair. The Previous Question requires a second. While the motion to close debate is not debatable, a two-thirds vote is required. Only the assembly decides when to end debate.

#### **MYTH: “LAY ON THE TABLE” GETS RID OF STICKY ISSUES.**

The purpose of the motion to Lay on the Table is to temporarily delay a matter when something else of urgency arises. Once the urgent matter is over, the group can then resume the matter that was tabled. Because the motion to Table is undebatable and only requires a majority vote, it should not be used to get rid of a matter. In fact, *RONR* provides that the motion to Lay on the Table should be ruled out of order if the evident intent is to kill or avoid dealing with a measure.

**MYTH: THE CHAIR RUNS THE MEETINGS.**

The chair is the servant of the assembly, not its master. Put another way, the chair can only get away with what the assembly allows.

During a meeting any member can raise a “Point of Order” if it is believed that the rules of the assembly are being violated. This motion can interrupt a speaker and does not require a second. For example:

Member: Point of Order!  
Chairman: What is your Point of Order?  
Member: We are about to move to a new topic, but we haven’t voted on the last motion.

The Chair must now rule on the Point of Order. If the Chair doesn’t know how to rule, the question can be submitted to the assembly for a vote.

If a member is not happy with the Chair’s ruling, any two members can Appeal from the decision of the chair. By one member making and another members seconding the Appeal, any question of parliamentary law can be taken from the chair and given to the assembly for decision. The assembly is the ultimate decider of procedural questions during a meeting.

**CONCLUSION**

Proper procedure alone won’t solve all meeting problems. Even so, why encumber your board and annual meeting with practices that shouldn’t be followed at all? Eliminating these myths will bring your meetings more in line with proper procedure and can result in shorter, more effective meetings.

\*\*\*\*\*

*Jim Slaughter is an attorney, Certified Professional Parliamentarian-Teacher, and Professional Registered Parliamentarian. Jim’s Web site at [www.jimslaughter.com](http://www.jimslaughter.com) contains many articles and charts on meeting procedure.*

# EXHIBIT Q

# Statutes and Procedures of Community Associations

*Jim Slaughter, JD, PRP*

*Editor's note: Jim Slaughter previously authored "Community Associations and the Parliamentarian," which appeared in the First Quarter 2000 NP. That article was an introduction for parliamentarians to the language and disputes of community associations. This follow-up article explores the statutes and procedures governing community associations.*

AS A PARLIAMENTARIAN, you will likely be called upon at some point to assist a community association. According to the Community Associations Institute ("CAI"), over 51 million Americans live in association-governed communities.<sup>1</sup> Some 9,000–11,000 new community associations are formed each year, and more than four in five housing starts during the past 5–8 years have been built as part of a community association. Given such statistics, the number of community association meetings must be astronomical—think of all those associations multiplied by one annual meeting, occasional special meetings, monthly board meetings, and regular meetings of committees. As a result, it is worth the effort to learn what community associations are (and are not), how they are organized, and some of the unusual statutes and procedures that govern them.

## **What Are Community Associations?**

There are many different types of community associations, and terms can vary between states. For instance, a "common interest development" ("CID") in California would likely be called a planned unit development ("PUD") in Georgia, or a "homeowners association" ("HOA") in North Carolina.<sup>2</sup> The umbrella term "community association" simply means a real estate development in which the owners are bound to membership in an organization by a set of governing documents that require adherence to a set of rules and, often, the payment of

assessments. This term encompasses homeowners associations, condominiums, cooperatives, planned unit developments, and townhouses. Membership in the community association is automatic upon purchase of the property. Unlike other associations parliamentarians often serve, community associations are *not* voluntary.

A parliamentarian assisting such organizations should have at least a general understanding of the differences between types of community associations. In a "condominium" a person owns an individual unit and is a joint owner of the common elements. (As a result, the condominium association does not own any common property, even though it exerts powers over it.) In a "homeowners association" a person owns an individual unit, while the homeowners association owns the common areas. In a "cooperative" a corporation owns all units and common areas, and a lease gives rights of occupancy to individual units.

The term "property owners association" is at times loosely used in place of "community association." More properly, however, the phrase "property owners association" is restricted to an association composed of vacant lots, rather than finished dwelling units. Large community associations can be layered, with a "master" association comprised of "subassociations" of condominium, homeowner, or property owner associations.<sup>3</sup>

## **Origins and Uniform Acts**

Because community associations are largely creatures of statute, specific community association issues will vary from state to state as the result of variations in state statutes. To complicate matters further, whether or not a specific statute applies to a community association may depend on when the association was formed. (State statutory schemes often provide that some or all of

the statutes do not apply to communities created before adoption of the statute.) Despite these potential differences, a general understanding of the genesis of these associations and governing statutes is useful.

The concept of community associations is not new and can be traced to the 1800s. However, use of this type of ownership was fairly limited until 1961, when the Federal Housing Administration (FHA) began providing mortgage insurance and Chicago Title and Trust began offering title insurance for condominiums. By 1967 every state had adopted some form of condominium statute.<sup>4</sup> In an effort to bring uniformity to the many state statutes, the National Conference of Commissioners on Uniform State Laws published the Uniform Condominium Act (“UCA”) in 1977. Subsequently, the Uniform Planned Community Act (“UPCA”) was created in 1980, with the intent of bringing the same type of uniformity to laws regarding other planned communities. The broader Uniform Common Interest Ownership Act (“UCIOA”) was promulgated in 1982 (and amended in 1995) with the intent of superseding the UCA, UPCA, and the Model Real Estate Cooperative Act.<sup>5</sup>

These uniform acts—the “UCA,” the “UPCA,” and the “UCIOA”—are often referenced in the community association world. However, it is important to note that none of these documents bind anyone. As “uniform” acts, the Conference intended for states to use these models when writing statutory schemes, but none of the uniform acts are binding by themselves. At present, many states have adopted some version of a condominium act and also some version of either the UPCA or the UCIOA. Although the UCA, UPCA, and UCIOA are simply authoring guides, they are worth reviewing in that many unusual procedures in community associations have their origins in these statutory models. All three model acts are available online.<sup>6</sup>

## State Statutes

Without question, parliamentarians must be aware of the actual state statutes governing a particular association. Statutory wording frequently alters the standard parliamentary response to a given situation.

For instance, statutes often modify the general rules concerning quorum. As with many non-profit corporation statutes, the UPCA and UCIOA provide that if a quorum is established at the beginning of a meeting, the quorum remains regardless of how many members leave: “Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast [20] percent of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.”<sup>7</sup> Many states, however, have altered this uniform language even further. For instance, the North Carolina Condominium Act quotes the UPCA language verbatim.<sup>8</sup> However, the North Carolina Planned Community Act reduces the required percentage to ten percent (10%).<sup>9</sup> The N.C. Planned Community Act then provides that in the event a quorum is not present at a meeting, the meeting can adjourn to another date, at which time the quorum requirement “shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum.”<sup>10</sup> This quorum-reducing provision continues from meeting to meeting “until such time as a quorum is present and business can be conducted.”<sup>11</sup>

State statutes also often tinker with the quorum for board meetings. Under general parliamentary law, the quorum for a board meeting is a majority (“more than half”) of the membership.<sup>12</sup> The UCIOA (§ 3-109(b)) and some state statutes define the quorum of a planned community executive board as fifty percent (50%) of the members—a number which is different than and may be smaller than a majority, depending on the number of members.<sup>13</sup> In addition, slight differences in statutory wording can alter board

quorum requirements depending on whether quorum is based on the number of directors in office or the number of director positions (as these numbers may be different).

Further, some community association statutes remove quorum requirements altogether for certain actions. For instance, the UPCA mandates a “budget ratification meeting” at which the proposed budget is presented to unit owners. “Unless at that meeting a majority of all the unit owners or any larger vote specified in the declaration reject the budget, the budget is ratified, *whether or not a quorum is present.*”<sup>14</sup>

### Governing Documents

In addition to statutory language, parliamentarians serving community associations must be aware of multiple governing documents. Governing documents for community associations may include: (1) Covenants, Conditions and Restrictions, (3) corporate charter, (4) constitution and/or bylaws, and (5) parliamentary authority.

**Covenants, Conditions and Restrictions (Declaration).** The Covenants, Conditions and Restrictions (CCRs) (sometimes referred to as the “Declaration,” the “Restrictions,” the “Declaration of Condominium,” or the “Master Deed”) may be the most important document governing a community association. CCRs are created prior to the development of the community association and are recorded with other real estate documents in the same manner as a deed. The purpose of the CCRs is to establish rules for living within the association. Although CCRs vary by association, such restrictions may cover anything from forbidding pools and out-buildings to detailing appropriate paint colors and flowers. CCRs may also contain restrictions as to the board’s size and method of election as well as meeting procedures.<sup>15</sup>

CCRs *cannot* be violated. After all, the CCRs are a legal and binding contract by anyone who chooses to purchase property within the planned community. Also, unlike statutes which

often only provide minimum standards, CCRs are typically worded in terms of what “must” or “shall” be done. As a result, parliamentarians serving community associations *must* be aware of the contents of the CCRs (and any subsequently adopted and filed “supplemental Declaration” or “amendment to Declaration” that may alter the original provisions).

Parliamentarians should also be aware of the difficulty in amending CCRs. Some CCRs require a 100% vote of all unit owners to amend (an almost impossible requirement). Other acts provide for a floating vote requirement depending on the nature of the amendment. While an amendment that changes the boundaries or uses of a unit may require the unanimous consent of all unit owners, other types of amendment may require approval by some other percentage of the owners.<sup>16</sup>

Due to these high vote requirements, amendments to CCRs are often adopted *outside* of meetings by agreements, rather than votes. For example, the Uniform Planned Community Act (“UPCA”) and the Uniform Common Interest Ownership Act (“UCIOA”) provide that the declaration “may be amended only by vote *or agreement* of unit owners of units to which at least [67] percent of the votes in the association are allocated . . .”<sup>17</sup> Similar provision is made for terminating a planned community, which can be accomplished “by agreement of unit owners of units to which at least 80 percent of the votes in the association are allocated.”<sup>18</sup> Certainly, such votes could be taken at an association meeting. However, potential problems at such a meeting are legion: even a unanimous vote by those at the meeting might not be enough to adopt the motion (because the vote is based on the total number of unit owners and not those attending the meeting); quorum rules must be followed; proxies must be recognized; and motions raised at the meeting may further complicate the issue. Rather than attempt such a vote, a simpler solution is to opt for avoiding a meeting altogether. Instead, obtain the “agreement of unit owners”

by canvassing the association and obtaining the written consent of the required percentage of members.

**Corporate charter.** Not all community associations incorporate. For instance, in Virginia the practice is not to incorporate condominium associations on the theory that the condominium statute provides all necessary protections and guidelines.<sup>19</sup> If incorporated, the corporate charter (sometimes called “articles of incorporation” or “certificate of incorporation”) establishes the association as a corporation (either nonprofit or for-profit) and contains the information needed for incorporating in that state.

**Constitution and/or bylaws.** The constitution and/or bylaws contain the basic rules relating to the community association as an organization. *RONR* examines the composition and interpretation of bylaws in detail.<sup>20</sup> The bylaws cannot conflict with applicable statutes, the CCRs, or the corporate charter.

**Parliamentary Authority.** The parliamentary authority is the manual of parliamentary law adopted as rules of order by the community association (often in the bylaws). A few states provide specific statutory guidance to community associations on what meeting procedures should be followed. For instance, a Hawaii statute governing planned community associations provides that “All association and board of directors meetings shall be conducted in accordance with the most current edition of Robert’s Rules of Order, Newly Revised.”<sup>21</sup> Similarly, an Oregon statute provides that for planned communities, “Meetings of the association and the board of directors shall be conducted according to the latest edition of Robert’s Rules of Order published by the Robert’s Rules Association.”<sup>22</sup> A California statute governing community associations is somewhat less specific, providing that: “Meetings of the membership of the association shall be conducted in accordance with a recognized system of parliamentary procedure or any parliamentary procedures the association

may adopt.”<sup>23</sup>

In contrast to these specific provisions, most states have no statutory language on the procedures to be followed by community associations. In the absence of a parliamentary authority prescribed in the bylaws, the association may adopt a parliamentary authority for a meeting with previous notice and a two-thirds vote (or without notice, by a vote of a majority of the entire membership).<sup>24</sup>

### **Governing Authority Conflicts**

While many procedural issues in community associations can be resolved by resort to a parliamentary authority, more complicated problems often arise due to conflicts among governing authorities. At times, there are even conflicts within the applicable statutes themselves. For instance, the UPCA provides that “the [community] association shall be organized as a profit or non-profit corporation [or as an unincorporated association].”<sup>25</sup> As a result, it is possible for state statutory provisions governing planned communities to conflict with similar provisions for profit or non-profit corporations, such as quorum, notices of meetings, votes required, or proxies. The UCIOA attempts to deal with this issue by noting that, “The principles of law and equity, including the law of corporations [and unincorporated associations] . . . supplement the provisions of this [Act], except to the extent inconsistent with this [Act].”<sup>26</sup>

In addition to all such pertinent statutes, community association parliamentarians must also be aware of the wording of the multiple governing documents discussed above as well as the potential for conflict between documents, including the:

- declaration; declaration of covenants, conditions, and restrictions (CCRs); declaration of condominium; master deed
- supplemental declaration
- articles of incorporation (for-profit or non-profit); corporate charter; certificate of incorporation

- constitution
- bylaws (if separate from the constitution)
- parliamentary authority
- board resolutions

Conflicts between these various governing documents can at times be difficult to reconcile. Without question, some governing documents are weightier than others. For instance, the UCIOA provides as follows: “In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with the [Act].”<sup>27</sup> Other conflicts may be harder to reconcile. For instance, which document governs if the articles of incorporation adopted by the board conflict with the declarations adopted by the unit owners?

At times, the governing documents may delineate a hierarchy among themselves. In addition, general principles of interpretation in RONR may be of assistance (e.g., a general statement or rule is of less authority than a specific statement or rule and yields to it; more current documents take priority over earlier versions; when a provision is susceptible to two meanings, one of which conflicts with or renders absurd another provision and the other meaning does not, the latter must be the true meaning; etc.).<sup>28</sup> Unlike other disputes involving the meaning of legal documents, “intent” of the original parties may carry little weight in the association context. After all, the documents were likely drafted by or on behalf of the developer, who may be difficult to locate in older developments and whose intent may bear little relationship to the present situation.

## Conclusion

With history as a guide, the number of community associations will continue to flourish. These developments represent a huge potential market for parliamentary advice. In addition, over 1.5 million volunteers serve on the boards and committees of community associations in the United States. These members would benefit

from attending parliamentary classes or joining a parliamentary organization, such as NAP. However, to better serve these organizations, parliamentarians must become more familiar with the structure of community associations and the procedures that govern them.

## Notes

1. All community association statistics are from the Community Associations Institute (CAI) Web site at [www.caionline.org](http://www.caionline.org).
2. Wayne S. Hyatt, *Condominium and Homeowner Association Practice: Community Association Law (Third Edition)* § 1.06 at 13 (2000).
3. Hyatt § 1.06(c)(5) at 21.
4. Hyatt § 1.05(b) at 11.
5. *Introduction to Uniform Common Interest Ownership Act (1994)* available at Web site of the National Conference of Commissioners on Uniform State Laws ([www.nccusl.org](http://www.nccusl.org)).
6. The uniform acts can be obtained online using Web search engines or through the Web site links under “Resources” at [www.jimslaughter.com](http://www.jimslaughter.com).
7. UPCA § 3-109; UCIOA § 3-109.
8. N.C.G.S. § 47C-3-109 (2004).
9. N.C.G.S. § 47F-3-109(a) (2004).
10. N.C.G.S. § 47F-3-109(c) (2004).
11. N.C.G.S. § 47F-3-109(c) (2004).
12. *See RONR (10th ed.)* § 40 (p. 335).
13. *See* N.C.G.S. § 47C-3-109(b) and 47F-3-109(b).
14. UPCA § 3-103 (emphasis added); *see also* UCIOA § 3-103(c).
15. The Uniform Act provides that the “declaration may contain any other matters the declarant deems appropriate.” UPCA § 2-105(b).
16. UPCA § 2-117.
17. UPCA § 2-117(a); UCIOA § 2-117 (emphasis added).
18. UPCA § 2-118; *see also* UCIOA § 2-118.
19. Hyatt § 1.06(d)(2)(A) at 24.
20. *See RONR (10th ed.)* §§ 2, 56-57.
21. Haw. Rev. Stat. § 421J-6 (2003).
22. Or. Rev. Stat. § 94.657 (2003).
23. Cal. Civil Code § 1363(d)(2004).
24. *RONR (10th ed.)* § 2 (p. 17).
25. UPCA § 3-101.
26. UCIOA § 1-108.
27. UCIOA § 2-103(c).
28. *See RONR (10th ed.)* § 56 (p. 570).

*Jim Slaughter, JD, PRP, CPP-T is president of the law firm of Forman Rossabi Black, P.A. He has served for the past two years as a Distinguished Faculty member of the Community Association Law Seminar of the Community Associations Institute. Jim's Web site at [www.jimslaughter.com](http://www.jimslaughter.com) contains many articles and charts on meeting procedure.*

*For reprints of this and other articles from the National Parliamentarian®, contact the National Association of Parliamentarians at (888) NAP-2929, or by e-mail at [hq@nap2.org](mailto:hq@nap2.org). The NAP Web site is at [www.parliamentarians.org](http://www.parliamentarians.org).*

# EXHIBIT R

## ***PLANNING THE EFFECTIVE MEETING***

**Jim Slaughter, JD, CPP-T, PRP**  
**P.O. Box 41027**  
**Greensboro, NC 27404**  
**(336) 378-1899**



[www.jimslaughter.com](http://www.jimslaughter.com)

Think of the many hours you spend on planning for your organization—things like budget forecasting, strategic planning, and crisis preparation. Do you put the same forethought into organizing your meetings? Probably not. Both board and member meetings tend to be loosely thought-out and implemented by the seat of the pants.

This is unfortunate. Because, just as meticulous preparation leads to a seemingly effortless party, good meeting plans lead to better meetings.

### **BEFORE THE GAVEL STRIKES**

What happens before a meeting is often as important as what happens during the meeting. Indeed, the success of most meetings is determined long before the opening gavel comes down. Start by asking—and answering—each of the following questions before you call your next meeting to order:

**Why meet at all?** Some groups have to come together because statute or their governing documents require so many meetings per year.

However, studies also show that many meetings are a waste of time. Generally, the best reasons for meeting as a group are for decision-making, problem solving, planning, and evaluation. By contrast, if the sole purpose of a meeting is to give information, there may be easier ways to accomplish that, such as via a letter or e-mail.

**What are the desired outcomes?** There's a difference between *discussing* a reassignment plan and *adopting* one. Your meeting plan should reflect such differences. For example, if the desired outcome is to adopt a recommendation, you should arrange the meeting so there is a specific proposal, followed by discussion and a vote (with consideration on how to verify a close vote). To plan an effective agenda, it's essential that you know your desired outcomes.

**Who is responsible for each item on the agenda?** Far too often, the presiding officer handles everything on the agenda. This is understandable, in

that the president usually feels most responsible for a meeting's success. However, meetings run more smoothly, are more inclusive, and likely will be more productive if you give other board members responsibilities as well. Even allowing a member to report on a project can help prepare that member for future leadership roles. Also, you're likely to have better attendance if people have a part on the agenda. And members are more likely to feel they're an important part of the organization if they do more than sit and listen.

**Have you confirmed the setting?** Meetings often fail not because of the items on their agenda, but because of the atmosphere in which they occur. Rooms that are too large or small, hot, cold, or noisy can affect participation. Plus, have you tested all the equipment—lectern, microphone, overhead projector—to make sure it won't malfunction during an inopportune moment?

Even a room's layout can drastically alter the atmosphere. Auditorium or "classroom" style seating, for example, usually leads to less participation by members. In contrast, an oval or circle arrangement invites discussion. That said, depending on the purpose of the meeting, an arrangement around a table can result in too much member participation. A compromise often used for smaller meetings is a horseshoe pattern, with the presiding officer at the leadership position at the open end. This layout encourages participation, but acknowledges the chair is running the meeting. While governmental meetings are often arranged based on what works best for the camera, the effect

of room arrangement on participation should not be ignored.

**Do you follow the standard order of business?** The general outline in which business is taken up during a meeting is known as the "order of business." Parliamentary procedure books, including *Robert's Rules of Order Newly Revised (10<sup>th</sup> Edition)*, recognize a "standard" order of business, the sequence of which will vary depending on the type of meeting:

**A. Opening the meeting.** Once a quorum is present and it's time to begin, the presiding officer calls the meeting to order by stating, "The meeting will come to order."

**B. Approval of minutes.** In meetings where minutes are to be approved, distribute the minutes to members in advance (and have extra copies on hand), so you don't have to read them aloud. The presiding officer can ask, "Is there any objection to approving the minutes?" If there is no objection, the minutes are approved.

**C. Reports of officers, boards, and standing committees.** The first substantive business item is usually to hear from the officers, established boards and committees, and staff. Your presiding officer should find out in advance who needs to report, and only call on those who have reports.

Reports are generally for information only. In such instances, no motion is necessary following the reports. A motion "to adopt" or "to accept" a report is seldom wise except when the report is to be issued or published in the name of the organization or there are recommendations to be implemented. For example, the Building Committee may have studied

renovations of a particular structure. In her report, the committee chair might thank the members of her committee for their hard work and explain in detail the committee's position and reasoning. At the end of her report, the chair would close with, "On behalf of the Building Committee, I move that the headquarters be renovated in an amount not to exceed \$20,000."

**D. Reports of special committees.**

Special committees do not have continual existence. Instead, they exist for the purpose of a specific project—to plan a function or event, for example, or study a particular issue. Special committees typically go out of existence upon their final report.

**E. Unfinished business.** Unfinished business refers to matters carried over from a previous meeting—a category that is sometimes incorrectly referred to as "old business." "Old business" is a misnomer in that unfinished business is not simply items that have been discussed previously. For organizations that meet at least four times a year, unfinished business may include any matter that was pending when the previous meeting adjourned, was on the previous meeting's agenda but wasn't reached, or was postponed to the present meeting.

Your presiding officer should know if there are items to be considered under unfinished business and doesn't need to ask, "Is there any unfinished business?" Instead, the presiding officer simply proceeds to the first unfinished item. If there is no unfinished business, the presiding officer skips this category altogether.

**F. New business.** Most work in a meeting is accomplished during the time slot devoted

to "new business," when members can introduce any new item for consideration. As a result, your presiding officer may be unaware of what items will arise under new business (unless you require advance notice for this category).

The presiding officer introduces the heading of new business by asking, "Is there any new business?" A member then can introduce a new item of business by making a motion and obtaining a second. Following the consideration of each item, the chair asks, "Is there any further new business?" This process continues until there are no additional items. For organizations that require new business items to be submitted in advance (either due to statute or a local rule), the chair can simply call on the next member on the prepared agenda.

**G. Closing the meeting.** In most bodies, the presiding officer can adjourn the meeting without waiting for a motion to adjourn. If all items of business have been considered, your presiding officer can ask, "Is there any further business?" If there is no response, the presiding officer simply states, "Since there is no further business, the meeting is adjourned."

If custom requires that a motion to adjourn be made, the presiding officer can ask, "Is there a motion to adjourn?" Once the motion is made and seconded, the presiding officer asks, "Is there any objection to adjourning the meeting? [Pause.] Hearing no objection, the meeting is adjourned."

**Have you created an effective agenda?** As the structured order of business suggests, there's nothing more important to a successful meeting than

a well-planned agenda. At a minimum, a good agenda has a start *and* an end time for the meeting. Obviously, knowing in advance when the meeting will end requires careful planning and a review of every item on the agenda.

Some groups also like a start and end time for each individual item. (See “Sample Timed Agenda”) Such scheduling is a good idea if you’re trying to rein in long meetings or have several controversial items to be considered. If you do adopt a timed agenda, realize that the start and end points are locked in. When the designated time for finishing an item arrives, your presiding officer announces that the allotted time has elapsed; a vote is taken if the item is for action. Obviously, you can always vote to modify a timed agenda. By contrast, if you don’t adopt a timed agenda, any times listed next to your items of business are for guidance only.

**Sample Timed Agenda**

7:00	Call to Order
7:01	Consent Calendar
	a. Minutes of May Meeting
7:02	Reports
7:02	a. Grounds Committee
7:30	b. Executive Director Search (in Executive Session)
8:30	Adjourn

**Should you require agenda items in advance?** Some governing documents require that business items be submitted in advance. Without

question, it helps in planning your agenda to know if there will be one or 10 business items. Plus, allowing items to be brought up on the fly can lead to poorly thought-out motions—and even if you require prior submission, you probably have a mechanism to suspend the rule on a case-by-case basis.

**Is everyone prepared?** Distribute the agenda and any documents needed for the meeting in advance, even if only by e-mail. In addition, make sure everyone on the agenda knows his or her role.

**DOWN TO BUSINESS**

Of course, all the planning in the world will mean nothing if you can’t then use that planning to run a smooth, productive meeting. Here are some suggestions for putting your plan into action.

**Start on time.** Delaying a meeting encourages members to be late and punishes those who were on time.

**Stick to the agenda.** Stay focused on your desired outcomes by using an agenda. An agenda—particularly a timed one—can keep the meeting from getting bogged down on one issue. If you’re using a timed agenda, stay on track by ending each item on time.

**Have an endpoint.** Similarly, to avoid unproductive tangents and circular discussions, establish an end time in advance—and adjourn the meeting when you reach it.

**Preempt debate.** Resolve non-controversial items through “general consent” or “unanimous consent.” Under this method, the presiding officer asks, “Is there any objection to...?”—for example, “Is there any objection to ending debate?” If no one objects, debate is closed. If a member objects, you can resolve the matter with a motion and vote. Otherwise, you can use general consent to adopt reports and motions, approve minutes, and end debate. In fact, try to place a “consent agenda” near the start of the meeting that includes all non-controversial items, such as adoption of the minutes. Any member can request that an item be removed from the consent agenda and placed on the regular agenda for consideration and vote. The remaining consent-agenda items are then unanimously approved as a unit without discussion.

**Manage discussion.** Set the discussion time prior to addressing potentially lengthy issues: “Is there a motion to limit total debate to 30 minutes?” (Such a motion requires a two-thirds vote.) And encourage new discussion—and prevent repetition—by asking for speakers who have not spoken.

**Alternate pro and con.** After hearing from a proponent, ask, “Is there anyone who wishes to speak against the motion?” When no one wishes to speak on a particular side, ask for unanimous consent to end debate: “Is there any objection to closing discussion? Hearing no objection, discussion is closed.” If people from both sides do continue to speak, pay attention to the length and quality of their remarks. When the discussion seems to have reached

the point of diminishing returns, ask for a motion to end discussion: “Is there a motion to close debate?” Most parliamentary books allow debate to be closed with a two-thirds vote.

**Encourage and equalize participation.** Discussion at meetings is often monopolized by a single person, but several formal parliamentary rules are designed to prevent this. For example, no one should speak a second time while there are members who wish to speak a first time. Ask, “Is there anyone who wishes to speak for [or against] the motion who has not yet spoken?” If a member has not participated during a discussion, your presiding officer might even ask, “Mary, do you have any thoughts on this matter?” If you’re following formal procedure—such as during a particularly controversial issue—once a member has spoken twice to a motion, he or she is finished on that motion for the day.

**Use proper procedures.** Several states have adopted or considered legislation that mandates a parliamentary authority for certain types of meetings. For instance, some school boards and community associations are required to follow the most recent edition of *Robert’s Rules of Order Newly Revised*. If your state has such language, you should obviously follow it. However, even in the absence of a statutory mandate, proper procedure can help turn long, confrontational meetings into short, relatively painless ones.

### **Use informal procedures when practical.**

Smaller boards can be less formal. In fact, formality can actually hinder business in a meeting of fewer than about a dozen. As a result, *Robert's Rules of Order Newly* recommends that in smaller boards:

- Members are not required to obtain the floor and can make motions or speak while seated.
- Motions need not be seconded.
- There is no limit to the number of times a member can speak to a question.
- Motions to close or limit debate are generally not used.
- The chair can make motions.
- The chair can vote on all questions.

Some smaller boards don't like this informality and stick to formal procedure at every meeting.

Certainly, even informal boards should be more formal on matters of sufficient importance or controversy. That means observing limits on debate to keep the meeting on time and using formal votes to help avoid legal challenges.

### **Control interruptions and digressions.**

Digressions are matters off-point to the issue under discussion. A good presiding officer might acknowledge a tangential issue that has been raised,

but note that it's not relevant to the discussion and should be taken up later. (If you do make such a promise, remember to follow up on it.) Some boards and committees use a chalkboard or flip chart to "park" such digressions. Similarly, take care to deflate any windbags in attendance. If a member attempts to monopolize discussion, you may have to nicely state that because the member has already spoken, other opinions are needed.

**Manage conflict.** During meetings, members should never get into an argument—or even a direct discussion—with each other. If a confrontation begins between two members, your presiding officer should remind everyone to address all remarks to the chair.

**End on a positive note.** You cannot thank your volunteers too often—especially these days, when people can come up with many alternatives to attending board or membership meetings. Thanking members for their time is not only gracious, but likely will result in greater enthusiasm for the organization's work. And that in turn can lead to even better meetings.

**Updated from "An Affair to Remember," *Common Ground*, 2007**

***Jim Slaughter is President of the American College of Parliamentary Lawyers and is a Certified Professional Parliamentarian-Teacher and Professional Registered Parliamentarian. Jim's Web site at [www.jimslaughter.com](http://www.jimslaughter.com) contains many articles and charts on meeting procedure.***

3/1/2008

# EXHIBIT S

## **PSST!**

**Is your board heading into another closed session? Few things breed as much suspicion and distrust as the perception that someone is keeping a secret. Before you leave, here are some things you should know.**

**Jim Slaughter, JD, CPP-T, PRP  
P.O. Box 41027  
Greensboro, NC 27404  
(336) 378-1899**

**[www.jimslaughter.com](http://www.jimslaughter.com)**



Tempers flared in one small East Coast mountain community when the association board decided to exclude homeowners from its meetings. One irate homeowner wrote on his website: “Did you know that in this ‘Live Free or Die’ state of New Hampshire, the board insists on closed-door sessions and that the minutes of these meetings, if distributed, are released often months after each session is held?”

A board member defended the decision, saying that closed sessions were necessary because some homeowners were verbally abusive and threatening. “They were screaming and hollering, and we simply couldn’t get any work done,” the board member was quoted as saying in the local newspaper.

The two sides ultimately ended up in court. Some associations have endured

expensive and lengthy litigation over the issue of closed meetings, whether held for legitimate reasons or not. Such legal and public relations battles should serve as cautionary tales.

Secrecy doesn’t sit well with many Americans. As President John F. Kennedy said, “The very word, secrecy, is repugnant in a free and open society, and we are as a people, inherently and historically opposed to secret societies, to secret oaths and to secret proceedings.”

Yet secret proceedings are not uncommon in the community association world. Homeowners are often asked to leave for all or parts of board meetings. Minutes of these executive sessions are generally kept secret. At times, boards conduct business by telephone or e-mail to avoid public scrutiny.

On one level, it's ironic. For every board that keeps residents out of board meetings, many others are begging for more homeowner involvement.

Without question, your board occasionally will need to do business outside of the public eye. Before doing so, however, it's worth considering whether state laws and your governing documents permit it and how homeowners in your community are likely to react.

Too much secrecy leads to suspicion, distrust and strife within communities. Even a quick Internet search on open meetings will reveal numerous homeowners who are upset over executive sessions. So why would any board want to exclude association members from its meetings? Most often, boards meet in private for one of three reasons. Unfortunately, all three are aimed at avoiding association members. Some boards hold closed sessions to discuss controversial issues. Others develop an us-versus-them attitude and prefer to transact business without members' interference. Or they just don't know they can't.

Not only are these all poor excuses to close a meeting, but most can be resolved by methods that don't involve upsetting the entire neighborhood. For instance, unless there is a rule to the contrary, association members have no right to participate—that is, to make motions or to debate—in board meetings. As a result, a disruptive homeowner can be excluded from a

board meeting without banning all association members from attending.

### **TOP SECRET**

Legitimate reasons for closing a meeting generally concern issues that—if discussed in public—could violate privacy laws or harm or cause embarrassment to the association or another party. A general list of valid reasons for going into closed session includes:

- consulting with the association counsel regarding legal issues;
- discussing litigation or prospective litigation either by the association or against the association;
- reviewing personal information that is confidential or should not be generally known, such as delinquencies in homeowner association dues;
- conferring about contracts or property purchases (after all, it's hard to negotiate if your position is known to all);
- reviewing association employees or personnel issues; or
- handling disciplinary matters or rules violations by association members.

Homeowners regularly ask if parliamentary procedure permits a board to close its meetings. After all, many community associations as a result of statute must follow a particular parliamentary book. In North Carolina, for instance, statutes mandate: “Except as otherwise provided in the bylaws, meetings of the association and the executive board shall be

conducted in accordance with the most recent edition of *Robert's Rules of Order Newly Revised*.” Many more associations follow *Robert's* due to language in their governing documents.

The short answer is that *Robert's* doesn't care whether your meetings are open or closed. In fact, there are no general parliamentary prohibitions on closed meetings or rules for what can happen during the closed portion. *Robert's* allows both discussion and voting during an executive session. In fact, decisions made during a closed meeting don't even have to be revealed to non-board members until the board chooses.

A far more important question is: What do association governing documents and state statutes say about closed meetings? For instance, the declaration or bylaws of an association may limit the circumstances under which a board can go into closed session. At times, the reasons that a board may go into executive session are listed. Other associations simply provide that “all board meetings shall be open to association members.” Generally, such language is too broad and should be changed because there are warranted reasons for meeting in closed session.

A more recent trend is that boards may be restricted from closing their meetings due to state statute. Because such laws vary from state to state, it is important to check with association legal counsel before attempting to close a meeting. Generally, however, such statutes take one of two approaches. In some states, the law

prohibits the board from always meeting in closed session by requiring occasional open meetings. For instance, a North Carolina statute provides that “[a]t regular intervals, the executive board meeting shall provide lot owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues or concerns.”

In contrast, other states have compared community associations to governmental bodies and drafted the equivalent of “sunshine laws” for board meetings. For instance, the California Common Interest Development Open Meeting Act authorizes any member of the association to attend meetings of the board except when the board meets in closed session “to consider litigation, matters relating to the formation of contracts with third parties, member discipline, personnel matters, or to meet with a member, upon the member's request, regarding the member's payment of assessments.”

Slight alterations of this language can be found in several states. For instance, Virginia's condominium statutes provide that all meetings, including committee and board meetings, are open to all unit owners, but can be closed “to consider personnel matters; consult with legal counsel; discuss and consider contracts, probable or pending litigation and matters involving violations of the condominium instruments or rules and regulations...; or discuss and consider the personal liability of unit owners to the unit owners' association.” To prevent efforts to get around the open-meeting

provisions, the statute also provides that “the executive organ shall not use work sessions or other informal gatherings of the executive organ to circumvent the open meeting requirements of this section.”

A Maryland statute adds as a legitimate basis for meeting in closed session the protection of “the privacy or reputation of individuals in matters not related to the homeowners association’s business” as well as “investigative proceedings concerning possible or actual criminal misconduct.” A catch-all provision is also included: “On an individually recorded affirmative vote of two-thirds of the board or committee members present, some other exceptional reason so compelling as to override the general public policy in favor of open meetings.”

### **CONFIDENTIAL BUSINESS**

Once a board determines that it should and can close its meeting, the next question is how to properly conduct an executive session. Generally, boards do not go into closed session by decision of the chair; instead, the decision to hold an executive session belongs to the full board. While this is sometimes accomplished by a majority vote, it can also be accomplished by unanimous consent. That is, the presiding officer can ask, “Is there any objection to going into closed session to discuss...?” If no one objects, the meeting is closed. If a board member objects, the question should be resolved with a motion and vote.

Obviously, the presiding officer does not detail the specific item of business, which would defeat the purpose of closing the meeting. Instead, the presiding officer should only give the general topic to be considered such as “to discuss delinquent assessments.” For associations in states that mandate open meetings, there is generally a statutory checklist for going into executive session. For instance, a Virginia statute provides that a motion to go into closed session “shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes.”

Maryland’s statute goes further and requires that “a statement of the time, place, and purpose of a closed meeting, the record of the vote of each board member or committee member by which the meeting was closed, and the authority for closing a meeting shall be included in the minutes of the next meeting of the board of directors or the committee of the homeowners association.” By statute, the consideration of matters during the closed session is usually restricted to those purposes specifically stated in the motion.

Once the meeting is closed, non-members are asked to leave, but certain guests may remain—the association’s attorney, for example. Again, state statute may permit certain individuals to attend the closed session. For instance, California law provides that “the board of directors of the association shall meet in

executive session, if requested by a member who may be subject to a fine, penalty or other form of discipline, and the member shall be entitled to attend the executive session.”

What boards are permitted to do during an executive session also varies considerably by state and ranges from discussion only to voting on motions. For instance, Colorado law does not prohibit boards from making decisions during an executive session, but does prevent the adoption of rules or regulations. In Virginia, “no contract, motion or other action adopted, passed or agreed to in executive session shall become effective unless the executive organ or subcommittee or other committee thereof, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion or other action which shall have its substance reasonably identified in the open meeting.” In some states, the board must only announce in open session any actions that were taken during the closed session. Other states have no requirement that any information from the executive session be disclosed.

## **INTO THE DAYLIGHT**

Coming out of executive session is very similar to going into executive session. Although a vote can be taken, the decision is usually made by unanimous consent. In states where no votes can occur during a closed session, how does the board vote to come out of executive session? Generally, once the subject of the closed session is completed, the presiding

office simply announces that the closed session is ended and reopens the meeting.

An issue that regularly arises from executive sessions is what record must be kept of the proceedings. Once again, there are general and specific answers that vary by state. Under *Robert's*, minutes are a record of what was done at a meeting, not what was said. That is, unless motions were adopted, there would be no minutes anyway (other than that the board went into executive session and later came out). Minutes should be kept of business transacted during a closed session. However, such minutes are only accessible to those who had a right to be in the executive session. Later, once the subject of the closed session is no longer confidential, the board can choose to open the minutes to the members.

In states that mandate open meetings, there are generally statutes that mandate what records must be maintained. For instance, a California statute provides that “any matter discussed in executive session shall be generally noted in the minutes of the immediately following meeting that is open to the entire membership.” Colorado only requires that minutes be kept indicating an executive session was held and its general subject matter, but the minutes are treated as all other minutes and open to inspection by homeowners.

A distinction also must be made between a discussion held in executive session and a privileged discussion held with an attorney. The purpose of a closed session is to

exclude non-board members and to discuss something in private. However, this does not necessarily mean that the closed-session discussions will remain confidential in the event of a lawsuit. In one Illinois case, a condominium board went into a closed session to discuss a homeowner's grievances as well as a pending lawsuit. A lawsuit was later brought pursuant to the federal Fair Housing Act. The court held that discussions between the association and its legal counsel were protected by the attorney-client privilege and could remain private. In contrast, the executive session alone did not grant protection to all discussions during the closed session.

One final caveat: some boards attempt to avoid open meeting requirements by conducting business through other means, such as by e-mail or Internet discussion groups. Recognize that there may be no authority to support such "meetings." States with open-meeting requirements often specifically prohibit such decisions. Even in the absence of such statutes, most states do not recognize decisions made online as official actions. At best, such decisions have to be later ratified at a meeting at which a quorum is present.

For states that do permit electronic decision-making, there often must also be language in the governing documents that permits business outside of a meeting. *Robert's* frowns upon online voting: "Efforts to conduct the deliberative process by postal or electronic mail or facsimile (fax) transmission—which are not recommended—must be expressly authorized by the bylaws and should be supported by special rules of order and standing rules as appropriate, since so many situations unprecedented in parliamentary law might arise and since many procedures common to the parliamentary law are not applicable."

Numerous statutes and rules can prevent your board from legally meeting in executive session. Approach proposals for closed sessions cautiously and with the advice of legal counsel. Even if permitted by law and your association's governing documents, ask yourself whether it is wise to do so. Not much has changed since President Kennedy noted inherent opposition to secret proceedings. Except for those instances where closed sessions are truly necessary, the cost to the association in terms of controversy and suspicion may do more harm than good.

**Jim Slaughter is an attorney, Certified Professional Parliamentarian, Professional Registered Parliamentarian, and past President of the American College of Parliamentary Lawyers. He is author of *The Complete Idiot's Guide to Parliamentary Procedure Fast-Track* and lead author of *Notes and Comments on Robert's Rules, Fourth Edition*. Jim is a partner in the North Carolina law firm of Rossabi Black Slaughter, PA. For more information, visit [www.jimslaughter.com](http://www.jimslaughter.com)**

*Reprinted with permission from the March/April 2008 issue of Common Ground.*

# Community Associations and the Parliamentarian

*James H. Slaughter, PRP*

“O BRAVE NEW WORLD that has such people in it!” These words from Shakespeare’s *The Tempest* aptly describe community associations. For parliamentarians, community associations represent a brave new world of opportunity. Statistics from the Community Association Institute (CAI) reveal that the number of community associations has ballooned from 500 in 1965 to more than 205,000 today.<sup>1</sup> Forty-two million Americans live within community associations. Fifty percent of all new development in metropolitan areas is within community associations. Some 6,000–8,000 new community associations are created each year.

Although a tremendous opportunity for service, community associations are foreign to many parliamentarians. Parliamentarians venturing into this area must become familiar with the language of community associations, complex governing authorities, and some unique problems affecting community associations.

## What Are Community Associations?

A “community association” is a residential development in which the owner is bound to membership in an organization by a set of governing documents that require adherence to a set of rules and, often, the payment of assessments. Membership in the community association is automatic upon purchase of a dwelling. Unlike other associations parliamentarians serve, community associations are not voluntary.

Various terms are used to describe the types of community associations (and definitions vary by state). In a “condominium” a person owns an individual unit and is a tenant and common owner of the common elements. In a “planned community” a person owns an individual unit while a corporation holds title to the common areas. In a “cooperative” a corporation owns all

units and common areas and a lease gives rights of occupancy in a unit. Other terms for particular community associations include townhouses, detached single family residences, homeowners associations, and master associations. According to CAI the most popular architectural styles of community associations include townhouses (42%), detached single family residences (18%), and mid-high rise buildings (23%).

## Governing Documents

Parliamentarians serving voluntary associations must typically focus on only the constitution (if applicable) and bylaws. The community association parliamentarian, however, must be aware of multiple governing documents as well as the potential for conflict between these documents. Governing documents for community associations include (1) statutes, (2) covenants, conditions, and restrictions, (3) articles of incorporation, (4) constitution and/or bylaws, and (5) parliamentary authority.

## Statutes

Statutes may govern many procedural aspects of community associations, including notice and meeting requirements. Unfortunately, a parliamentarian can have a difficult time deciding which statutes apply, if any. Condominium acts have existed in many states for some years governing solely condominiums. However, condominium acts traditionally do not govern either homeowners associations or townhouses. As a result, other types of community associations have in the past incorporated and become subject to their state’s non-profit corporation statutes.

A more recent development is the enactment of “planned community acts” to govern all community associations. These acts typically

exclude condominiums if there is already a condominium act. In addition, such statutes do *not* govern community associations created before the adoption of the statutes in most cases (unless the community association chooses to be subject to the act).<sup>2</sup>

Statutes governing community associations often alter the standard procedures regarding quorum, voting, and proper meetings. Statutes often define a quorum as a specified percentage of members that may be as low as 10 percent of unit owners (the Uniform Planned Community Act recommends a quorum of 20 percent for association meetings and 50 percent for board meetings).<sup>3</sup> Statutes often provide that once a quorum is present at a meeting, the quorum remains throughout the meeting regardless of how many members leave.<sup>4</sup> Some planned community acts provide that if a meeting is unable to convene due to a lack of quorum, any subsequent adjourned meeting will only require a quorum of one-half the original quorum.<sup>5</sup>

Statutes often include elaborate procedures for proxy voting and cumulative voting. These provisions may govern the community association even if the bylaws and other governing documents are silent as to voting.

Traditional meeting practices can also be modified by statute. Statutes often permit boards of directors to meet by telephone whether or not such language is included in the bylaws. Decisions by any means (including facsimile, e-mail, or calling each board member individually) may be valid by statute if later put in writing and signed by all board members.

### **Covenants, Conditions, and Restrictions (Declaration)**

The Covenants, Conditions and Restrictions (CCR's) (sometimes referred to as the "Declaration") may be the most important document governing a community association. CCR's are created before the development of the community association and are recorded with other real estate documents in the same manner as a

deed. The purpose of the CCR's is to establish rules for living within the association. Although CCR's vary by association, such restrictions may cover anything from forbidding pools and out-buildings to detailing appropriate paint colors and flowers. CCR's may also contain restrictions as to the board's size and method of election as well as meeting procedures.<sup>6</sup>

CCR's *cannot* be violated. After all, the CCR's are a legal and binding contract by anyone who chooses to purchase property within the planned community. Also, unlike statutes which often only provide minimum standards, CCR's are typically worded in terms of what "must" or "shall" be done. As a result, parliamentarians serving community associations must be aware of the contents of the CCR's. One community association elected six members of the board of directors based on the language of the bylaws. Association leaders later realized that the CCR's only provided for five members and had to hold another election.

Owners in community associations are often not aware of the CCR's control over their lives. CAI surveys suggest that 13 percent of community association owners learn of the restrictions at closing. Even worse, 31 percent of community association owners learn of CCR provisions *after* moving into their unit. Another study found that 62 percent of those surveyed knew of someone who was unaware of the restrictions when they moved to the premises.

Parliamentarians should also be aware of the difficulty in amending CCR's. Some CCR's require a 100 percent vote of all unit owners to amend (an almost impossible requirement). The Uniform Act recommends a floating vote requirement depending on the nature of the amendment. While an amendment that changes the boundaries or uses of a unit requires the unanimous consent of all unit owners, other types of amendment only require the consent of 67 percent of unit owners.<sup>7</sup> Approximately one-third of community associations require a

three-fourths vote of all unit owners to amend the CCR's.

### **Corporate Charter**

The corporate charter (sometimes called “articles of incorporation” or “certificate of incorporation”) contains the information needed for incorporating under the laws of that particular state. Because not all community associations incorporate, there may or may not be a corporate charter.

*Robert's Rules of Order Newly Revised (RONR 1990)* states that, “The corporate charter supersedes all its other rules, none of which can legally contain anything in conflict with the charter” (*RONR 1990*, p. 11). However, the corporate charter in a community association is subsidiary to and cannot conflict with applicable statutes or the CCR's.

### **Constitution and/or Bylaws**

The constitution and/or bylaws contain the basic rules relating to the community association as an organization. *RONR 1990* examines the composition and interpretation of bylaws in detail.<sup>8</sup> The bylaws cannot conflict with applicable statutes, the CCR's, or the corporate charter.

### **Parliamentary Authority**

The parliamentary authority is the manual of parliamentary law adopted (often in the bylaws) by the community association as rules of order. Few state statutes mandate that a parliamentary manual be adopted.<sup>9</sup> As a result, many community association bylaws do not provide for any parliamentary authority. In the event no parliamentary authority is prescribed in the bylaws, the association at a meeting may adopt a parliamentary authority for that meeting with previous notice and a two-thirds vote (or without notice a vote of a majority of the entire membership).<sup>10</sup>

These numerous governing authorities may conflict and lead to confusion in the context of community associations. For instance, the legal

counsel in a recent homeowners' association election in Florida refused to tally write-in ballots in an annual election, changing the outcome of the election. All major parliamentary authorities permit write-in ballots, and bylaws rarely limit an election solely to nominated candidates. However, the attorney argued that state community association law permitted candidates to nominate themselves, so that all ballots with write-in candidates were disqualified.

### **Conflict in Community Associations**

In addition to unusual governing documents, community associations present other unusual problems. Parliamentarians are often surprised at the level of conflict in community association meetings.

According to Michael Van Dyk in “Homeowner Associations: Wild West for Parliamentarians” (*National Parliamentarian*, Third Quarter, 1995), community association board meetings “can be a nightmare for any civilized, law-abiding citizen.” Actual instances are given of cursing matches, fist fights, broken bones, and thrown furniture. Van Dyk describes a condominium owner who had a knife held to her throat. According to the *Florida Press Journal* (March 6, 1999), a condominium owner allegedly shot and killed another owner at a condominium association meeting over a dispute concerning a garden hose.

The types of issues regulated by community associations can also contribute to disputes. Several lawsuits may be lurking behind any community association decision. One annual meeting I assisted had five lawyers attending in a formal capacity (two representing the association, two representing a dissident member, and one representing the developer). Two video cameras and a court stenographer recorded the entire meeting.

Some authors suggest that ulterior motives may add to friction in the community association context. Van Dyk notes that many community association leaders have the highest motives

and altruistic reasons for their service. However, he describes some leaders as “corrupt, arrogant mini-dictators, living off fat kickbacks from big maintenance contracts.” Van Dyk makes reference to a New York investigation in which eighty association managers and presidents were arrested for bribery, kickbacks, and extortion.

While conflict and emotions are not the primary focus of parliamentary procedure, such concerns could impact the conduct of community association meetings. A parliamentarian serving a community association should make every effort to determine in advance the potential impact of personalities and emotions upon an orderly meeting. In such a setting a working knowledge of the dynamics of conflict and techniques for managing conflict may also be desirable.

## Conclusion

Without question, community associations could benefit from the assistance of skilled parliamentarians. Annual meetings and board meetings would be shorter and more efficient by an adherence to proper meeting procedures. More than one million volunteers serve on boards and committees of community associations in the United States. These volunteers represent potential members of parliamentary organizations and students at parliamentary workshops. However, parliamentarians must become better aware of the language, authorities, and problems of community associations if we are to succeed in this brave new world.

6 The Uniform Act provides that the “*declaration may contain any other matters the declarant deems appropriate.*” Uniform Planned Community Act § 2-105(b).

7 Uniform Planned Community Act § 2-117.

8 See RONR 1990 §§ 2, 55-56.

9 See e.g., California Code § 1363 which provides: “*Meetings of the membership of the association shall be conducted in accordance with a recognized system of parliamentary procedure or any parliamentary procedures the association may adopt.*”

10 RONR 1990 § 2 (p. 17).

*Jim Slaughter regularly assists community associations as a parliamentarian and is one of only several attorneys in the country who is both a Professional Registered Parliamentarian and a Certified Professional Parliamentarian-Teacher.*

*His Web site at <[www.jimslaughter.com](http://www.jimslaughter.com)> contains many articles and helpful hints on meeting procedure.*

*For reprints of this and other articles from the National Parliamentarian®, contact the National Association of Parliamentarians at (888) NAP-2929, or by e-mail at [hq@nap2.org](mailto:hq@nap2.org). The NAP Web site is at [www.parliamentarians.org](http://www.parliamentarians.org).*

1 All community association statistics are from the Community Associations Institute (CAI) Web site at <[www.caionline.org](http://www.caionline.org)>.

2 See e.g., N.C.G.S. § 47F-1-102 (“*Any planned community created prior to the effective date of this Chapter may elect to make the provisions of this Chapter applicable to it by amending its declaration to provide that this Chapter shall apply to that planned community.*”)

3 Uniform Planned Community Act § 3-109.

4 Uniform Planned Community Act § 3-109.

5 See e.g., N.C.G.S. § 47F-1-110.

# Statutes and Procedures of Community Associations

*Jim Slaughter, JD, PRP*

*Editor's note: Jim Slaughter previously authored "Community Associations and the Parliamentarian," which appeared in the First Quarter 2000 NP. That article was an introduction for parliamentarians to the language and disputes of community associations. This follow-up article explores the statutes and procedures governing community associations.*

AS A PARLIAMENTARIAN, you will likely be called upon at some point to assist a community association. According to the Community Associations Institute ("CAI"), over 51 million Americans live in association-governed communities.<sup>1</sup> Some 9,000–11,000 new community associations are formed each year, and more than four in five housing starts during the past 5–8 years have been built as part of a community association. Given such statistics, the number of community association meetings must be astronomical—think of all those associations multiplied by one annual meeting, occasional special meetings, monthly board meetings, and regular meetings of committees. As a result, it is worth the effort to learn what community associations are (and are not), how they are organized, and some of the unusual statutes and procedures that govern them.

## **What Are Community Associations?**

There are many different types of community associations, and terms can vary between states. For instance, a "common interest development" ("CID") in California would likely be called a planned unit development ("PUD") in Georgia, or a "homeowners association" ("HOA") in North Carolina.<sup>2</sup> The umbrella term "community association" simply means a real estate development in which the owners are bound to membership in an organization by a set of governing documents that require adherence to a set of rules and, often, the payment of

assessments. This term encompasses homeowners associations, condominiums, cooperatives, planned unit developments, and townhouses. Membership in the community association is automatic upon purchase of the property. Unlike other associations parliamentarians often serve, community associations are *not* voluntary.

A parliamentarian assisting such organizations should have at least a general understanding of the differences between types of community associations. In a "condominium" a person owns an individual unit and is a joint owner of the common elements. (As a result, the condominium association does not own any common property, even though it exerts powers over it.) In a "homeowners association" a person owns an individual unit, while the homeowners association owns the common areas. In a "cooperative" a corporation owns all units and common areas, and a lease gives rights of occupancy to individual units.

The term "property owners association" is at times loosely used in place of "community association." More properly, however, the phrase "property owners association" is restricted to an association composed of vacant lots, rather than finished dwelling units. Large community associations can be layered, with a "master" association comprised of "subassociations" of condominium, homeowner, or property owner associations.<sup>3</sup>

## **Origins and Uniform Acts**

Because community associations are largely creatures of statute, specific community association issues will vary from state to state as the result of variations in state statutes. To complicate matters further, whether or not a specific statute applies to a community association may depend on when the association was formed. (State statutory schemes often provide that some or all of

the statutes do not apply to communities created before adoption of the statute.) Despite these potential differences, a general understanding of the genesis of these associations and governing statutes is useful.

The concept of community associations is not new and can be traced to the 1800s. However, use of this type of ownership was fairly limited until 1961, when the Federal Housing Administration (FHA) began providing mortgage insurance and Chicago Title and Trust began offering title insurance for condominiums. By 1967 every state had adopted some form of condominium statute.<sup>4</sup> In an effort to bring uniformity to the many state statutes, the National Conference of Commissioners on Uniform State Laws published the Uniform Condominium Act (“UCA”) in 1977. Subsequently, the Uniform Planned Community Act (“UPCA”) was created in 1980, with the intent of bringing the same type of uniformity to laws regarding other planned communities. The broader Uniform Common Interest Ownership Act (“UCIOA”) was promulgated in 1982 (and amended in 1995) with the intent of superseding the UCA, UPCA, and the Model Real Estate Cooperative Act.<sup>5</sup>

These uniform acts—the “UCA,” the “UPCA,” and the “UCIOA”—are often referenced in the community association world. However, it is important to note that none of these documents bind anyone. As “uniform” acts, the Conference intended for states to use these models when writing statutory schemes, but none of the uniform acts are binding by themselves. At present, many states have adopted some version of a condominium act and also some version of either the UPCA or the UCIOA. Although the UCA, UPCA, and UCIOA are simply authoring guides, they are worth reviewing in that many unusual procedures in community associations have their origins in these statutory models. All three model acts are available online.<sup>6</sup>

## State Statutes

Without question, parliamentarians must be aware of the actual state statutes governing a particular association. Statutory wording frequently alters the standard parliamentary response to a given situation.

For instance, statutes often modify the general rules concerning quorum. As with many non-profit corporation statutes, the UPCA and UCIOA provide that if a quorum is established at the beginning of a meeting, the quorum remains regardless of how many members leave: “Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast [20] percent of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.”<sup>7</sup> Many states, however, have altered this uniform language even further. For instance, the North Carolina Condominium Act quotes the UPCA language verbatim.<sup>8</sup> However, the North Carolina Planned Community Act reduces the required percentage to ten percent (10%).<sup>9</sup> The N.C. Planned Community Act then provides that in the event a quorum is not present at a meeting, the meeting can adjourn to another date, at which time the quorum requirement “shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum.”<sup>10</sup> This quorum-reducing provision continues from meeting to meeting “until such time as a quorum is present and business can be conducted.”<sup>11</sup>

State statutes also often tinker with the quorum for board meetings. Under general parliamentary law, the quorum for a board meeting is a majority (“more than half”) of the membership.<sup>12</sup> The UCIOA (§ 3-109(b)) and some state statutes define the quorum of a planned community executive board as fifty percent (50%) of the members—a number which is different than and may be smaller than a majority, depending on the number of members.<sup>13</sup> In addition, slight differences in statutory wording can alter board

quorum requirements depending on whether quorum is based on the number of directors in office or the number of director positions (as these numbers may be different).

Further, some community association statutes remove quorum requirements altogether for certain actions. For instance, the UPCA mandates a “budget ratification meeting” at which the proposed budget is presented to unit owners. “Unless at that meeting a majority of all the unit owners or any larger vote specified in the declaration reject the budget, the budget is ratified, *whether or not a quorum is present.*”<sup>14</sup>

### Governing Documents

In addition to statutory language, parliamentarians serving community associations must be aware of multiple governing documents. Governing documents for community associations may include: (1) Covenants, Conditions and Restrictions, (3) corporate charter, (4) constitution and/or bylaws, and (5) parliamentary authority.

**Covenants, Conditions and Restrictions (Declaration).** The Covenants, Conditions and Restrictions (CCRs) (sometimes referred to as the “Declaration,” the “Restrictions,” the “Declaration of Condominium,” or the “Master Deed”) may be the most important document governing a community association. CCRs are created prior to the development of the community association and are recorded with other real estate documents in the same manner as a deed. The purpose of the CCRs is to establish rules for living within the association. Although CCRs vary by association, such restrictions may cover anything from forbidding pools and out-buildings to detailing appropriate paint colors and flowers. CCRs may also contain restrictions as to the board’s size and method of election as well as meeting procedures.<sup>15</sup>

CCRs *cannot* be violated. After all, the CCRs are a legal and binding contract by anyone who chooses to purchase property within the planned community. Also, unlike statutes which

often only provide minimum standards, CCRs are typically worded in terms of what “must” or “shall” be done. As a result, parliamentarians serving community associations *must* be aware of the contents of the CCRs (and any subsequently adopted and filed “supplemental Declaration” or “amendment to Declaration” that may alter the original provisions).

Parliamentarians should also be aware of the difficulty in amending CCRs. Some CCRs require a 100% vote of all unit owners to amend (an almost impossible requirement). Other acts provide for a floating vote requirement depending on the nature of the amendment. While an amendment that changes the boundaries or uses of a unit may require the unanimous consent of all unit owners, other types of amendment may require approval by some other percentage of the owners.<sup>16</sup>

Due to these high vote requirements, amendments to CCRs are often adopted *outside* of meetings by agreements, rather than votes. For example, the Uniform Planned Community Act (“UPCA”) and the Uniform Common Interest Ownership Act (“UCIOA”) provide that the declaration “may be amended only by vote *or agreement* of unit owners of units to which at least [67] percent of the votes in the association are allocated . . .”<sup>17</sup> Similar provision is made for terminating a planned community, which can be accomplished “by agreement of unit owners of units to which at least 80 percent of the votes in the association are allocated.”<sup>18</sup> Certainly, such votes could be taken at an association meeting. However, potential problems at such a meeting are legion: even a unanimous vote by those at the meeting might not be enough to adopt the motion (because the vote is based on the total number of unit owners and not those attending the meeting); quorum rules must be followed; proxies must be recognized; and motions raised at the meeting may further complicate the issue. Rather than attempt such a vote, a simpler solution is to opt for avoiding a meeting altogether. Instead, obtain the “agreement of unit owners”

by canvassing the association and obtaining the written consent of the required percentage of members.

**Corporate charter.** Not all community associations incorporate. For instance, in Virginia the practice is not to incorporate condominium associations on the theory that the condominium statute provides all necessary protections and guidelines.<sup>19</sup> If incorporated, the corporate charter (sometimes called “articles of incorporation” or “certificate of incorporation”) establishes the association as a corporation (either nonprofit or for-profit) and contains the information needed for incorporating in that state.

**Constitution and/or bylaws.** The constitution and/or bylaws contain the basic rules relating to the community association as an organization. *RONR* examines the composition and interpretation of bylaws in detail.<sup>20</sup> The bylaws cannot conflict with applicable statutes, the CCRs, or the corporate charter.

**Parliamentary Authority.** The parliamentary authority is the manual of parliamentary law adopted as rules of order by the community association (often in the bylaws). A few states provide specific statutory guidance to community associations on what meeting procedures should be followed. For instance, a Hawaii statute governing planned community associations provides that “All association and board of directors meetings shall be conducted in accordance with the most current edition of Robert’s Rules of Order, Newly Revised.”<sup>21</sup> Similarly, an Oregon statute provides that for planned communities, “Meetings of the association and the board of directors shall be conducted according to the latest edition of Robert’s Rules of Order published by the Robert’s Rules Association.”<sup>22</sup> A California statute governing community associations is somewhat less specific, providing that: “Meetings of the membership of the association shall be conducted in accordance with a recognized system of parliamentary procedure or any parliamentary procedures the association

may adopt.”<sup>23</sup>

In contrast to these specific provisions, most states have no statutory language on the procedures to be followed by community associations. In the absence of a parliamentary authority prescribed in the bylaws, the association may adopt a parliamentary authority for a meeting with previous notice and a two-thirds vote (or without notice, by a vote of a majority of the entire membership).<sup>24</sup>

### **Governing Authority Conflicts**

While many procedural issues in community associations can be resolved by resort to a parliamentary authority, more complicated problems often arise due to conflicts among governing authorities. At times, there are even conflicts within the applicable statutes themselves. For instance, the UPCA provides that “the [community] association shall be organized as a profit or non-profit corporation [or as an unincorporated association].”<sup>25</sup> As a result, it is possible for state statutory provisions governing planned communities to conflict with similar provisions for profit or non-profit corporations, such as quorum, notices of meetings, votes required, or proxies. The UCIOA attempts to deal with this issue by noting that, “The principles of law and equity, including the law of corporations [and unincorporated associations] . . . supplement the provisions of this [Act], except to the extent inconsistent with this [Act].”<sup>26</sup>

In addition to all such pertinent statutes, community association parliamentarians must also be aware of the wording of the multiple governing documents discussed above as well as the potential for conflict between documents, including the:

- declaration; declaration of covenants, conditions, and restrictions (CCRs); declaration of condominium; master deed
- supplemental declaration
- articles of incorporation (for-profit or non-profit); corporate charter; certificate of incorporation

- constitution
- bylaws (if separate from the constitution)
- parliamentary authority
- board resolutions

Conflicts between these various governing documents can at times be difficult to reconcile. Without question, some governing documents are weightier than others. For instance, the UCIOA provides as follows: “In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with the [Act].”<sup>27</sup> Other conflicts may be harder to reconcile. For instance, which document governs if the articles of incorporation adopted by the board conflict with the declarations adopted by the unit owners?

At times, the governing documents may delineate a hierarchy among themselves. In addition, general principles of interpretation in RONR may be of assistance (e.g., a general statement or rule is of less authority than a specific statement or rule and yields to it; more current documents take priority over earlier versions; when a provision is susceptible to two meanings, one of which conflicts with or renders absurd another provision and the other meaning does not, the latter must be the true meaning; etc.).<sup>28</sup> Unlike other disputes involving the meaning of legal documents, “intent” of the original parties may carry little weight in the association context. After all, the documents were likely drafted by or on behalf of the developer, who may be difficult to locate in older developments and whose intent may bear little relationship to the present situation.

## Conclusion

With history as a guide, the number of community associations will continue to flourish. These developments represent a huge potential market for parliamentary advice. In addition, over 1.5 million volunteers serve on the boards and committees of community associations in the United States. These members would benefit

from attending parliamentary classes or joining a parliamentary organization, such as NAP. However, to better serve these organizations, parliamentarians must become more familiar with the structure of community associations and the procedures that govern them.

## Notes

1. All community association statistics are from the Community Associations Institute (CAI) Web site at [www.caionline.org](http://www.caionline.org).
2. Wayne S. Hyatt, *Condominium and Homeowner Association Practice: Community Association Law (Third Edition)* § 1.06 at 13 (2000).
3. Hyatt § 1.06(c)(5) at 21.
4. Hyatt § 1.05(b) at 11.
5. *Introduction to Uniform Common Interest Ownership Act (1994)* available at Web site of the National Conference of Commissioners on Uniform State Laws ([www.nccusl.org](http://www.nccusl.org)).
6. The uniform acts can be obtained online using Web search engines or through the Web site links under “Resources” at [www.jimslaughter.com](http://www.jimslaughter.com).
7. UPCA § 3-109; UCIOA § 3-109.
8. N.C.G.S. § 47C-3-109 (2004).
9. N.C.G.S. § 47F-3-109(a) (2004).
10. N.C.G.S. § 47F-3-109(c) (2004).
11. N.C.G.S. § 47F-3-109(c) (2004).
12. *See RONR (10th ed.)* § 40 (p. 335).
13. *See* N.C.G.S. § 47C-3-109(b) and 47F-3-109(b).
14. UPCA § 3-103 (emphasis added); *see also* UCIOA § 3-103(c).
15. The Uniform Act provides that the “declaration may contain any other matters the declarant deems appropriate.” UPCA § 2-105(b).
16. UPCA § 2-117.
17. UPCA § 2-117(a); UCIOA § 2-117 (emphasis added).
18. UPCA § 2-118; *see also* UCIOA § 2-118.
19. Hyatt § 1.06(d)(2)(A) at 24.
20. *See RONR (10th ed.)* §§ 2, 56-57.
21. Haw. Rev. Stat. § 421J-6 (2003).
22. Or. Rev. Stat. § 94.657 (2003).
23. Cal. Civil Code § 1363(d)(2004).
24. *RONR (10th ed.)* § 2 (p. 17).
25. UPCA § 3-101.
26. UCIOA § 1-108.
27. UCIOA § 2-103(c).
28. *See RONR (10th ed.)* § 56 (p. 570).

*Jim Slaughter, JD, PRP, CPP-T is president of the law firm of Forman Rossabi Black, P.A. He has served for the past two years as a Distinguished Faculty member of the Community Association Law Seminar of the Community Associations Institute. Jim's Web site at [www.jimslaughter.com](http://www.jimslaughter.com) contains many articles and charts on meeting procedure.*

*For reprints of this and other articles from the National Parliamentarian®, contact the National Association of Parliamentarians at (888) NAP-2929, or by e-mail at [hq@nap2.org](mailto:hq@nap2.org). The NAP Web site is at [www.parliamentarians.org](http://www.parliamentarians.org).*

# EXHIBIT Q

# Statutes and Procedures of Community Associations

*Jim Slaughter, JD, PRP*

*Editor's note: Jim Slaughter previously authored "Community Associations and the Parliamentarian," which appeared in the First Quarter 2000 NP. That article was an introduction for parliamentarians to the language and disputes of community associations. This follow-up article explores the statutes and procedures governing community associations.*

AS A PARLIAMENTARIAN, you will likely be called upon at some point to assist a community association. According to the Community Associations Institute ("CAI"), over 51 million Americans live in association-governed communities.<sup>1</sup> Some 9,000–11,000 new community associations are formed each year, and more than four in five housing starts during the past 5–8 years have been built as part of a community association. Given such statistics, the number of community association meetings must be astronomical—think of all those associations multiplied by one annual meeting, occasional special meetings, monthly board meetings, and regular meetings of committees. As a result, it is worth the effort to learn what community associations are (and are not), how they are organized, and some of the unusual statutes and procedures that govern them.

## **What Are Community Associations?**

There are many different types of community associations, and terms can vary between states. For instance, a "common interest development" ("CID") in California would likely be called a planned unit development ("PUD") in Georgia, or a "homeowners association" ("HOA") in North Carolina.<sup>2</sup> The umbrella term "community association" simply means a real estate development in which the owners are bound to membership in an organization by a set of governing documents that require adherence to a set of rules and, often, the payment of

assessments. This term encompasses homeowners associations, condominiums, cooperatives, planned unit developments, and townhouses. Membership in the community association is automatic upon purchase of the property. Unlike other associations parliamentarians often serve, community associations are *not* voluntary.

A parliamentarian assisting such organizations should have at least a general understanding of the differences between types of community associations. In a "condominium" a person owns an individual unit and is a joint owner of the common elements. (As a result, the condominium association does not own any common property, even though it exerts powers over it.) In a "homeowners association" a person owns an individual unit, while the homeowners association owns the common areas. In a "cooperative" a corporation owns all units and common areas, and a lease gives rights of occupancy to individual units.

The term "property owners association" is at times loosely used in place of "community association." More properly, however, the phrase "property owners association" is restricted to an association composed of vacant lots, rather than finished dwelling units. Large community associations can be layered, with a "master" association comprised of "subassociations" of condominium, homeowner, or property owner associations.<sup>3</sup>

## **Origins and Uniform Acts**

Because community associations are largely creatures of statute, specific community association issues will vary from state to state as the result of variations in state statutes. To complicate matters further, whether or not a specific statute applies to a community association may depend on when the association was formed. (State statutory schemes often provide that some or all of

the statutes do not apply to communities created before adoption of the statute.) Despite these potential differences, a general understanding of the genesis of these associations and governing statutes is useful.

The concept of community associations is not new and can be traced to the 1800s. However, use of this type of ownership was fairly limited until 1961, when the Federal Housing Administration (FHA) began providing mortgage insurance and Chicago Title and Trust began offering title insurance for condominiums. By 1967 every state had adopted some form of condominium statute.<sup>4</sup> In an effort to bring uniformity to the many state statutes, the National Conference of Commissioners on Uniform State Laws published the Uniform Condominium Act (“UCA”) in 1977. Subsequently, the Uniform Planned Community Act (“UPCA”) was created in 1980, with the intent of bringing the same type of uniformity to laws regarding other planned communities. The broader Uniform Common Interest Ownership Act (“UCIOA”) was promulgated in 1982 (and amended in 1995) with the intent of superseding the UCA, UPCA, and the Model Real Estate Cooperative Act.<sup>5</sup>

These uniform acts—the “UCA,” the “UPCA,” and the “UCIOA”—are often referenced in the community association world. However, it is important to note that none of these documents bind anyone. As “uniform” acts, the Conference intended for states to use these models when writing statutory schemes, but none of the uniform acts are binding by themselves. At present, many states have adopted some version of a condominium act and also some version of either the UPCA or the UCIOA. Although the UCA, UPCA, and UCIOA are simply authoring guides, they are worth reviewing in that many unusual procedures in community associations have their origins in these statutory models. All three model acts are available online.<sup>6</sup>

## State Statutes

Without question, parliamentarians must be aware of the actual state statutes governing a particular association. Statutory wording frequently alters the standard parliamentary response to a given situation.

For instance, statutes often modify the general rules concerning quorum. As with many non-profit corporation statutes, the UPCA and UCIOA provide that if a quorum is established at the beginning of a meeting, the quorum remains regardless of how many members leave: “Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast [20] percent of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.”<sup>7</sup> Many states, however, have altered this uniform language even further. For instance, the North Carolina Condominium Act quotes the UPCA language verbatim.<sup>8</sup> However, the North Carolina Planned Community Act reduces the required percentage to ten percent (10%).<sup>9</sup> The N.C. Planned Community Act then provides that in the event a quorum is not present at a meeting, the meeting can adjourn to another date, at which time the quorum requirement “shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum.”<sup>10</sup> This quorum-reducing provision continues from meeting to meeting “until such time as a quorum is present and business can be conducted.”<sup>11</sup>

State statutes also often tinker with the quorum for board meetings. Under general parliamentary law, the quorum for a board meeting is a majority (“more than half”) of the membership.<sup>12</sup> The UCIOA (§ 3-109(b)) and some state statutes define the quorum of a planned community executive board as fifty percent (50%) of the members—a number which is different than and may be smaller than a majority, depending on the number of members.<sup>13</sup> In addition, slight differences in statutory wording can alter board

quorum requirements depending on whether quorum is based on the number of directors in office or the number of director positions (as these numbers may be different).

Further, some community association statutes remove quorum requirements altogether for certain actions. For instance, the UPCA mandates a “budget ratification meeting” at which the proposed budget is presented to unit owners. “Unless at that meeting a majority of all the unit owners or any larger vote specified in the declaration reject the budget, the budget is ratified, *whether or not a quorum is present.*”<sup>14</sup>

### Governing Documents

In addition to statutory language, parliamentarians serving community associations must be aware of multiple governing documents. Governing documents for community associations may include: (1) Covenants, Conditions and Restrictions, (3) corporate charter, (4) constitution and/or bylaws, and (5) parliamentary authority.

**Covenants, Conditions and Restrictions (Declaration).** The Covenants, Conditions and Restrictions (CCRs) (sometimes referred to as the “Declaration,” the “Restrictions,” the “Declaration of Condominium,” or the “Master Deed”) may be the most important document governing a community association. CCRs are created prior to the development of the community association and are recorded with other real estate documents in the same manner as a deed. The purpose of the CCRs is to establish rules for living within the association. Although CCRs vary by association, such restrictions may cover anything from forbidding pools and out-buildings to detailing appropriate paint colors and flowers. CCRs may also contain restrictions as to the board’s size and method of election as well as meeting procedures.<sup>15</sup>

CCRs *cannot* be violated. After all, the CCRs are a legal and binding contract by anyone who chooses to purchase property within the planned community. Also, unlike statutes which

often only provide minimum standards, CCRs are typically worded in terms of what “must” or “shall” be done. As a result, parliamentarians serving community associations *must* be aware of the contents of the CCRs (and any subsequently adopted and filed “supplemental Declaration” or “amendment to Declaration” that may alter the original provisions).

Parliamentarians should also be aware of the difficulty in amending CCRs. Some CCRs require a 100% vote of all unit owners to amend (an almost impossible requirement). Other acts provide for a floating vote requirement depending on the nature of the amendment. While an amendment that changes the boundaries or uses of a unit may require the unanimous consent of all unit owners, other types of amendment may require approval by some other percentage of the owners.<sup>16</sup>

Due to these high vote requirements, amendments to CCRs are often adopted *outside* of meetings by agreements, rather than votes. For example, the Uniform Planned Community Act (“UPCA”) and the Uniform Common Interest Ownership Act (“UCIOA”) provide that the declaration “may be amended only by vote *or agreement* of unit owners of units to which at least [67] percent of the votes in the association are allocated . . .”<sup>17</sup> Similar provision is made for terminating a planned community, which can be accomplished “by agreement of unit owners of units to which at least 80 percent of the votes in the association are allocated.”<sup>18</sup> Certainly, such votes could be taken at an association meeting. However, potential problems at such a meeting are legion: even a unanimous vote by those at the meeting might not be enough to adopt the motion (because the vote is based on the total number of unit owners and not those attending the meeting); quorum rules must be followed; proxies must be recognized; and motions raised at the meeting may further complicate the issue. Rather than attempt such a vote, a simpler solution is to opt for avoiding a meeting altogether. Instead, obtain the “agreement of unit owners”

by canvassing the association and obtaining the written consent of the required percentage of members.

**Corporate charter.** Not all community associations incorporate. For instance, in Virginia the practice is not to incorporate condominium associations on the theory that the condominium statute provides all necessary protections and guidelines.<sup>19</sup> If incorporated, the corporate charter (sometimes called “articles of incorporation” or “certificate of incorporation”) establishes the association as a corporation (either nonprofit or for-profit) and contains the information needed for incorporating in that state.

**Constitution and/or bylaws.** The constitution and/or bylaws contain the basic rules relating to the community association as an organization. *RONR* examines the composition and interpretation of bylaws in detail.<sup>20</sup> The bylaws cannot conflict with applicable statutes, the CCRs, or the corporate charter.

**Parliamentary Authority.** The parliamentary authority is the manual of parliamentary law adopted as rules of order by the community association (often in the bylaws). A few states provide specific statutory guidance to community associations on what meeting procedures should be followed. For instance, a Hawaii statute governing planned community associations provides that “All association and board of directors meetings shall be conducted in accordance with the most current edition of Robert’s Rules of Order, Newly Revised.”<sup>21</sup> Similarly, an Oregon statute provides that for planned communities, “Meetings of the association and the board of directors shall be conducted according to the latest edition of Robert’s Rules of Order published by the Robert’s Rules Association.”<sup>22</sup> A California statute governing community associations is somewhat less specific, providing that: “Meetings of the membership of the association shall be conducted in accordance with a recognized system of parliamentary procedure or any parliamentary procedures the association

may adopt.”<sup>23</sup>

In contrast to these specific provisions, most states have no statutory language on the procedures to be followed by community associations. In the absence of a parliamentary authority prescribed in the bylaws, the association may adopt a parliamentary authority for a meeting with previous notice and a two-thirds vote (or without notice, by a vote of a majority of the entire membership).<sup>24</sup>

### **Governing Authority Conflicts**

While many procedural issues in community associations can be resolved by resort to a parliamentary authority, more complicated problems often arise due to conflicts among governing authorities. At times, there are even conflicts within the applicable statutes themselves. For instance, the UPCA provides that “the [community] association shall be organized as a profit or non-profit corporation [or as an unincorporated association].”<sup>25</sup> As a result, it is possible for state statutory provisions governing planned communities to conflict with similar provisions for profit or non-profit corporations, such as quorum, notices of meetings, votes required, or proxies. The UCIOA attempts to deal with this issue by noting that, “The principles of law and equity, including the law of corporations [and unincorporated associations] . . . supplement the provisions of this [Act], except to the extent inconsistent with this [Act].”<sup>26</sup>

In addition to all such pertinent statutes, community association parliamentarians must also be aware of the wording of the multiple governing documents discussed above as well as the potential for conflict between documents, including the:

- declaration; declaration of covenants, conditions, and restrictions (CCRs); declaration of condominium; master deed
- supplemental declaration
- articles of incorporation (for-profit or non-profit); corporate charter; certificate of incorporation

- constitution
- bylaws (if separate from the constitution)
- parliamentary authority
- board resolutions

Conflicts between these various governing documents can at times be difficult to reconcile. Without question, some governing documents are weightier than others. For instance, the UCIOA provides as follows: “In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with the [Act].”<sup>27</sup> Other conflicts may be harder to reconcile. For instance, which document governs if the articles of incorporation adopted by the board conflict with the declarations adopted by the unit owners?

At times, the governing documents may delineate a hierarchy among themselves. In addition, general principles of interpretation in RONR may be of assistance (e.g., a general statement or rule is of less authority than a specific statement or rule and yields to it; more current documents take priority over earlier versions; when a provision is susceptible to two meanings, one of which conflicts with or renders absurd another provision and the other meaning does not, the latter must be the true meaning; etc.).<sup>28</sup> Unlike other disputes involving the meaning of legal documents, “intent” of the original parties may carry little weight in the association context. After all, the documents were likely drafted by or on behalf of the developer, who may be difficult to locate in older developments and whose intent may bear little relationship to the present situation.

## Conclusion

With history as a guide, the number of community associations will continue to flourish. These developments represent a huge potential market for parliamentary advice. In addition, over 1.5 million volunteers serve on the boards and committees of community associations in the United States. These members would benefit

from attending parliamentary classes or joining a parliamentary organization, such as NAP. However, to better serve these organizations, parliamentarians must become more familiar with the structure of community associations and the procedures that govern them.

## Notes

1. All community association statistics are from the Community Associations Institute (CAI) Web site at [www.caionline.org](http://www.caionline.org).
2. Wayne S. Hyatt, *Condominium and Homeowner Association Practice: Community Association Law (Third Edition)* § 1.06 at 13 (2000).
3. Hyatt § 1.06(c)(5) at 21.
4. Hyatt § 1.05(b) at 11.
5. *Introduction to Uniform Common Interest Ownership Act (1994)* available at Web site of the National Conference of Commissioners on Uniform State Laws ([www.nccusl.org](http://www.nccusl.org)).
6. The uniform acts can be obtained online using Web search engines or through the Web site links under “Resources” at [www.jimslaughter.com](http://www.jimslaughter.com).
7. UPCA § 3-109; UCIOA § 3-109.
8. N.C.G.S. § 47C-3-109 (2004).
9. N.C.G.S. § 47F-3-109(a) (2004).
10. N.C.G.S. § 47F-3-109(c) (2004).
11. N.C.G.S. § 47F-3-109(c) (2004).
12. *See RONR (10th ed.)* § 40 (p. 335).
13. *See* N.C.G.S. § 47C-3-109(b) and 47F-3-109(b).
14. UPCA § 3-103 (emphasis added); *see also* UCIOA § 3-103(c).
15. The Uniform Act provides that the “declaration may contain any other matters the declarant deems appropriate.” UPCA § 2-105(b).
16. UPCA § 2-117.
17. UPCA § 2-117(a); UCIOA § 2-117 (emphasis added).
18. UPCA § 2-118; *see also* UCIOA § 2-118.
19. Hyatt § 1.06(d)(2)(A) at 24.
20. *See RONR (10th ed.)* §§ 2, 56-57.
21. Haw. Rev. Stat. § 421J-6 (2003).
22. Or. Rev. Stat. § 94.657 (2003).
23. Cal. Civil Code § 1363(d)(2004).
24. *RONR (10th ed.)* § 2 (p. 17).
25. UPCA § 3-101.
26. UCIOA § 1-108.
27. UCIOA § 2-103(c).
28. *See RONR (10th ed.)* § 56 (p. 570).

*Jim Slaughter, JD, PRP, CPP-T is president of the law firm of Forman Rossabi Black, P.A. He has served for the past two years as a Distinguished Faculty member of the Community Association Law Seminar of the Community Associations Institute. Jim's Web site at [www.jimslaughter.com](http://www.jimslaughter.com) contains many articles and charts on meeting procedure.*

*For reprints of this and other articles from the National Parliamentarian®, contact the National Association of Parliamentarians at (888) NAP-2929, or by e-mail at [hq@nap2.org](mailto:hq@nap2.org). The NAP Web site is at [www.parliamentarians.org](http://www.parliamentarians.org).*