



Hawaii Condominium Bulletin

Condominium: Steps to Resolving Disputes

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This material can be made
available for individuals with
special needs. Please call the
Senior Condominium Specialist
at (808) 586-2643 to
submit your request.

Steps to Resolving Disputes

While condominium living ideally would be problem free, conflict unfortunately occurs from time to time.

There are several steps that owners and boards may take in resolving conflicts.

Talk to the Board/Owner

A conversation between the parties in a conflict may help resolve problems. Rather than letting potential misunderstandings, or differing expectations of rights and responsibilities fester, continuing to openly discuss the issues may resolve the problems. Many conflicts in condominiums grow because neither party openly communicates.

Members in a dispute should try to suppress the emotional aspect of the dispute and focus on the facts of the conflict. Failure to do so has often resulted in expensive lawsuits that may have been resolved with a conversation.

All parties in the conflict should educate themselves about the rights and responsibilities of those involved to start on common ground.

Mediation

Mediation for owners within registered associations is subsidized by the Hawaii Real Estate Commission. Two types of mediation are available: facilitative and evaluative.

Facilitative mediation is a more relaxed, less costly discussion focused on getting both parties to participate in understanding each other's perspectives.

Evaluative mediation is run by mediators experienced in condominium law, often retired judges or lawyers. It is costlier, but with a greater level of expertise. Evaluative mediation may result in the mediator rendering a decision as to which party is more likely to prevail in arbitration or litigation.

Voluntary Binding Arbitration

Act 196, SLH 2018, expanded the use of subsidized funds to include arbitration. Unlike mediation, arbitration is binding upon both parties. Participants must have attempted evaluative mediation prior to using arbitration and participation is voluntary for both parties.

Civil Litigation or Arbitration

Should all other options fail to resolve the conflict, civil litigation via the court system and regular arbitration are available. These are often the costliest options, with cases sometimes taking years to come to trial or a conclusion.



Message from the Chair

Season's Greetings!

We are entering our 9th month of adjusting our everyday lives to the COVID-19 pandemic. We are all coping as best we can, trying to live our lives as normally as possible. In that regard, in the Real Estate Branch office, real estate licenses are being renewed through December 31, condominium education continues at our website and on electronic platforms, condominium hotel operator re-registrations are ongoing until December 31, 2020, and the legislature will convene its 31st session in January 2021.

If you are a registered condominium hotel operator, your registration terminates on December 31, 2020. To continue uninterrupted short-term rentals out of a condominium association (confirm any pandemic restrictions on short-term rentals on your island), you must register for the 2021-2022 period.

CAI Hawaii is offering pandemic-related seminars for condominium associations in January and February of 2021. The seminars are offered online for the safety of the participants. For further information on these offerings, visit www.caihawaii.org.

The Real Estate Branch is planning an online Condorama educational webinar for January 28, 2021. Check our website for registration, time and topic details.

In this last Condominium Bulletin for 2020, you'll find one of the latest brochures posted at our website, this one having to do with dispute resolution. Then visit our website for more condominium info in small bites on insurance, budget and reserves, board meetings and much more.

In addition to mediations conducted and questions for the Condominium Specialist, you'll find suggestions for conducting safe meetings during the pandemic, technology advice from a recent seminar to carry this out and the REB calendar of online meeting dates for 2021. All are welcome to attend the meetings which are held on Zoom.

You'll also find the latest from Professional Registered Parliamentarian Steve Glanstein on meeting minutes, updated from the 12th edition of Robert's Rules of Order Newly Revised.

To keep up with the latest legislative news and educational events for the condo community, including current office hours for the Real Estate Branch, be sure to subscribe to the Commission's quarterly email subscription service, here, <http://cca.hawaii.gov/reb/subscribe>.

Through December, the Real Estate Branch's office hours will continue to be 7:45-noon for walk-in assistance and until 4:30 for telephone inquiries. Beginning January 4, 2021, the DCCA building will be open from 7:45 – 4:30 to the public for all walk-in services, until further notice.

Until next time, keep up with condominium education virtually and stay safe. We are all hoping for a more positive 2021!

Laurie A. Lee
Chair, Condominium Review Committee



Technology Issues Affecting Community Associations

by Ron Lewis

Conducting and effectuating Association business in a time of COVID-19 has certainly presented new challenges for Associations.

CAI Hawaii's September Seminar on "Technology Issues Affecting Community Associations" provided great insight as to the latest technological advances and issues affecting Community Associations.

A key topic discussed was whether Associations are allowed to use online voting to run their Annual meetings. Speaker Steve Glanstein, a Professional Registered Parliamentarian since 1984, provided information that Condominium and Planned Community Associations conduct association meetings using the current edition of *Robert's Rules of Order Newly Revised* (Robert's Rules). The current edition of *Robert's Rules* provides that in-person meetings are still mandated unless otherwise provided in the law or governing documents, i.e. no online meetings unless authorized in the law or governing documents of the Association. Steve recommended to always check with your attorney regarding the applicability of any law.

Additional topics discussed at the September Seminar included:

- Electronic Voting
- Ballot voting
- Social Media
- Electric and Autonomous Vehicles
- In person board meetings and annual meetings
- Cyber-Security
- Online Applications
- Drones

In summary, Associations should check their governing documents to see whether they contain provisions that allow for electronic association meetings, and if not, consider seeking the advice of their legal counsel to amend their governing documents to allow electronic meetings in the future.

For a full recording of the presentations, email caihawaii@hawaiiantel.net.

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Condominium: Steps to Resolving Disputes (cont. from page 1)

Additional Information

Please review the Commission's Mediation brochures at www.hawaii.gov/hirec.

Learn more about the Real Estate Branch (REB) of the Department of Commerce and Consumer Affairs.

Check out the REB website www.hawaii.gov/hirec for more information and some frequently asked questions.

- What services does the REB provide to the condominium community?
- What laws apply to my condominium association?
- How do I obtain a real estate license?
- Where do I file a complaint against my association?
- How do I get a copy of my association documents?
- What are the laws and rules for real estate licensees?

Real Estate Branch - About Us

The Real Estate Branch, as part of the Professional and Vocational Licensing Division, assists the Real Estate Commission in carrying out its responsibility for the education, licensure and discipline of real estate licensees; registration of condominium projects, condominium associations, condominium managing agents, and condominium hotel operators; and intervening in court cases involving the real estate recovery fund.

Subscribe - Receive emails on relevant condominium educational materials. Sign up now at <http://cca.hawaii.gov/reb/subscribe/>

Contact Us - Condominium Hotline: 808-586-2644 Hours: 9:00 AM – 3:00 PM Email: hirec@dcca.hawaii.gov www.hawaii.gov/hirec

This is for informational purposes only and not intended for the purpose of providing legal advice. Information provided is subject to change.

MINUTES: CONTENTS

by Steve Glanstein, Professional Registered Parliamentarian

Introduction:

This explanation of minutes is based upon the current edition of *Robert's Rules of Order Newly Revised* 12th edition, (abbreviated RONR, followed by section and paragraph numbers) RONR 41:9-41:12; 48:1-48:16.

This article was originally published in 1998 and was based upon the 9th edition of RONR. The 10th and 11th editions of RONR made only minor changes to the requirements for minutes. The 12th edition was released September 1, 2020 and made a few clarifying changes. They are included here. There has been an increased need to provide this information with updated references, some experience related tips, and a few examples to assist with appropriate drafting of minutes. This article is oriented towards Hawaii's Condominium and Community Associations which are required to conduct their meetings in accordance with RONR.

Minutes-Defined:

Minutes are the **official records** of the proceedings of a deliberative assembly. Hawaii's condominium property regimes, cooperatives, community associations, and the board of directors function as deliberative assemblies. Minutes may be circulated before approval.

However, the minutes do not become the official record of the proceedings until they have been approved (RONR 41:12).

TIP: When the minutes are approved, the word "Approved" with the secretary's initials and date should be written at the bottom.

The actions of an organization start immediately when a motion is adopted and not when the minutes are approved. Notwithstanding any official approval, minutes may be amended even years later by the motion to *Amend Something Previously Adopted*.

There is no requirement that an individual be present at a specific meeting in order to be eligible to vote to approve that particular meeting's minutes. Even if the regular secretary was not present at a specific annual meeting, the secretary, if a voting member, may still participate and vote, if necessary, to approve the minutes.

RONR 48:2 is definitive about the contents of minutes. It states, "In an ordinary society, the minutes should contain mainly a record of what was done at the meeting, not what was said by the members. The minutes must never reflect the secretary's opinion, favorable or otherwise, on anything said or done." The minutes are supposed to be a record of **what was done and not what was said!**

Minutes don't contain the following:

1. the engineer's opinion or report;
2. the lawyer's opinion or report;
3. the parliamentarian's opinion or report;
4. the community association manager's opinion or report;
5. the resident manager's opinion or report;
6. the secretary's opinion or report;
7. the treasurer's opinion or report;
8. the names of members speaking in favor of or opposed to a motion or their statements;
9. individual members' or non-members' demands for their, "remarks to be in the minutes", "remarks to be in the record"; or
10. post-meeting comments such as owners' forum remarks.

TIP: The details of the officers' reports, resident manager's report, community association manager's report, etc. are rarely formally endorsed by an association or a board. Therefore, the minutes should simply state that the report was presented. Do not attach the report to the minutes unless it was formally endorsed.

Minutes don't need to contain the following:

1. an individual's apartment number, unit number, or address;
2. the name of the seconder, unless **specifically ordered** by the group; or
3. the name of every guest who attends the meeting, unless **specifically ordered** by the group.

MINUTES: CONTENTS (cont. from page 4)

Each of the above items has appeared in minutes of more than one Hawaii community association or board meeting. Many of these items have caused some form of conflict at either an association annual meeting or a board of directors' meeting. This handout will describe a few situations where minutes have negatively impacted association management. It will also provide information for a good set of minutes, and provide internet links to a sample set of meeting minutes for a fictitious annual association meeting and board meeting.

Incorrect or Missing Minutes can have unforeseen consequences:

Generic names are used to protect the well-intentioned guilty!

1. One set of annual meeting minutes included comments from the owners' forum. The minutes contained the statement, "John and Jane Doe donated their time to plant the new palm trees at the back of the building."
2. Although this statement seems very helpful for the association, it has created a documented history of work being done by individuals on the common area. Their license status is unknown. Were they considered employees? What if somebody is injured by an improperly placed palm tree? Since it was in the annual meeting minutes, it is now available to future purchasers, owners, litigants, etc.
3. Another set of minutes contained the following, mistakenly included under New Business: "Mrs. Roe requested clarification regarding the progress of the installation of a handicapped parking space on the premises. The president clarified that the association does not fall under ADA standards, but regardless is working to install a loading area suitable for handicapped vehicle requirements for the benefit of residents. Further, she noted that the main obstacle to the AOAO's progress is finding sufficient space for a fully compliant parking/loading area."
4. Regardless of whether the president's ADA statement is correct, issues are created if there is no loading area installed. Even the explanation about the "main obstacle" can be used against an association if it can be shown in the future that there was sufficient space in some other area.
5. A set of board minutes described in detail an owner's concern about black mold on the property. Even though the board investigated, there was nothing in the minutes to indicate that a complete investigation was done and/or that the problem was resolved.
6. The minutes of a meeting several years ago consisted entirely of the notes of a secretary, paraphrasing various statements and motions. There was a dispute that became a court case. The attorney's argument, even referencing Robert's Rules, failed to dissuade the court from using the paraphrased statements as if they were official action, even though the statements differed from the real decisions of the group.
7. Another case is developing where the board approved a contract in executive session but failed to keep executive session minutes substantiating their action. The new board is investigating and there is no substantiation that the contract was properly approved.

Minutes should contain the following information:

1. the name of the organization;
2. type of meeting, for example, annual, regular, special, etc.;
3. the date, time, and place, if not always the same;
4. the fact that the regular chairman and secretary were present, or the names of the persons who substituted for them; and
5. whether the minutes of the previous meeting were read and approved or first corrected and then approved with the corrections. The specific corrections don't need to be included in the current set of minutes.

TIP: Make sure that the minutes include items that may be legally required (e.g. votes of board members at a regular board meeting). There may be additional legal reasons to place extra information in the minutes. For example, at a condominium association board meeting, a board member may declare a conflict of interest and abstain. That abstention could be noted in the minutes due to legal requirements. The attorney should be able to provide guidance with respect to legal issues.

Minutes should contain the following information related to each subject matter:

1. all main motions or motions that bring a main question back to the organization (*Take from the Table, Rescind or Amend Something Previously Adopted, Discharge a Committee, and Reconsider*);
2. the disposition of main motions or motions that bring a main question back to the organization B if one of these motions is temporarily disposed of (for example, postponed to the next meeting, referred to a committee, etc.), then any motions directly related to the original motion must also be included in the minutes;
3. other motions that were not lost or withdrawn in cases where it is necessary to record them for completeness or clarity;
4. formal notices of motions to be brought up at a future meeting;
5. the motions *Point of Order and Appeal* (demand for enforcement of the rules [RONR 23:1] and an attempt to reverse the chair's ruling [RONR 24:1], respectively), whether sustained or lost, including the reason for the chair's ruling; and
6. any declaration by the chair in "naming" an offending member as a part of disciplinary procedures—as well as any disorderly word that led to such naming and that the chair directed the secretary to take down (RONR 61:12-14).

TIP: Make sure that the **exact wording** of the adopted motion or a notice of motion is placed in the minutes. There are numerous examples of disputes that have occurred regarding the actual wording of a specific motion.

TIP: The *Point of Order* is one of the few motions where the minutes will have the chair's reason for a decision. Occasionally, a supportive opinion from the lawyer or parliamentarian becomes the basis for a chair's ruling. In these cases, some organizations provide a specific reference to or include the document in the minutes because it relates to and forms the basis for a particular ruling.

TIP: Sometimes a Point of Order motion is **used erroneously** to provide information, debate, or ask a question. **This is not** a true *Point of Order* motion. This type of information **should** not be in the minutes. (The proper motion for asking questions is a *Parliamentary Inquiry* RONR 33:3 or a *Request for Information* RONR 33:6.)

Minutes are also subject to several additional rules:

1. When a count is ordered or the vote is by ballot, the number of votes should be entered. In the case of an election, all votes must be disclosed both to the membership and in the minutes, **including improper votes and votes received by individuals who were not elected.**
2. When the voting requires the entering of the votes in the minutes (such as a regular or special board meeting conducted for an organization complying with Hawaii Revised Statutes Chapters 421I, 421J, or 514B), then the names of those voting on each side should be entered in the minutes.
3. The name of a committee and the reporting member can be entered in the minutes when a committee report is provided. Do not attach or include the report as a part of the minutes unless **specifically ordered** by the group.
4. A Planned Community Association (reference is made to Hawaii Revised Statutes Section 421J-5[f]) has additional rules regarding content of board minutes relating to the appointment of committees or subcommittees.
5. The name and subject of a guest speaker can be entered but no effort should be made to summarize the remarks.

Modification of the Rules for Minutes:

1. An assembly (which includes a board) may override the rules for minutes in RONR by adopting a special rule of order (RONR 2:14-2:22; 48:3).
2. One example of such a rule may be to provide that un-seconded motions are not recorded in the minutes (the default rule is to record motions in the minutes regardless of whether they're seconded).
3. In specific cases, the assembly, by majority vote, may direct the inclusion of specific additional information in the minutes of a particular meeting (RONR 48:3).

Executive session minutes:

1. Make sure that executive session minutes are maintained with very tight secrecy and confidentiality.
2. Minutes should be taken of *all official board meetings*. The failure to take proper minutes of executive session meetings can lead to disputes about whether certain decisions were actually authorized. It can also be used to demonstrate that a board has a history of taking action that has never been properly authorized in an appropriate set of minutes.
3. Motions in executive session do not go in the minutes of the regular meeting unless the board, in executive session, **specifically** orders their release.

For example, a motion authorizing the hiring of a resident manager at a specific salary may be approved in executive session. However, the board, in executive session, could also authorize publication in the regular meeting minutes the decision to hire the resident manager, redacting any salary information.

Other examples which have actually occurred in Hawaii include motions authorizing settlement of a legal matter for not more than a specific amount or a confidential ADA settlement agreement. Disclosure of this information could damage the association or void an agreement.

4. Executive session minutes must have very limited distribution and the board should adopt a formal distribution policy. Here is a sample policy:
 - (a) Executive session minutes are not to be distributed in any other manner not specifically prescribed below. (This policy would prohibit e-mail, website, or snail-mail distribution.)
 - (b) Number the copies of the executive session minutes and distribute them for board approval in executive session only.
 - (c) If the meeting is online, share them on the computer screen, make the changes, and have the secretary sign the approved minutes.
 - (d) Return all numbered copies to the secretary (if self-managed) or community association manager at the meeting immediately after their approval before anybody leaves.
 - (e) Destroy all copies except retain two originals. One original should be in a separately secured file with the secretary (if self-managed) or community association manager and another one at the attorney's office.
 - (f) Ensure that all executive session minutes are purged from any computer readable media and backup.
 - (g) The agreement by the community association management company to comply with these procedures should be in writing and filed with the association records.

A sample set of minutes in "Word" and "PDF" forms are available through the web-links:

<http://tinyurl.com/Steveghi-Minutes-doc> and <http://tinyurl.com/Steveghi-Minutes-pdf>

The reader is urged to consult appropriate legal counsel for applicability of current laws to the minutes.

Steve Glanstein is a past president of the Hawaii Chapter of the Community Associations Institute as well as the Hawaii State Association of Parliamentarians. He has served in several positions including board member and Treasurer of the National Association of Parliamentarians. He has an extensive resume as a Professional Registered Parliamentarian for over 36 years and more than 1,800 meetings. He has served as an expert witness on parliamentary procedure for many years. He assists many associations in the State of Hawaii and is a frequent contributor for subjects on parliamentary procedure.

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Ask the Condominium Specialist

Q: To stay safe during this pandemic may we have our association meetings on an electronic platform like Zoom?

A: The Real Estate Branch still receives calls occasionally regarding the safest way to conduct association meetings during the pandemic. While annual meetings are generally held in the early months of a year, the pandemic caught some associations unprepared to conduct meetings under appropriate health and safety protocols and they have not yet held their annual meeting. Some associations however have been able to hold successful meetings during this pandemic and offer some suggestions for meeting safely.

The condo law provides in HRS section 514B-121 (e) that if your declaration or bylaws allow, meetings may be conducted by any means that allow all owners to participate fully. In addition to conducting your meeting electronically however, you can take certain steps to maximize attendance and awareness of an in-person meeting while maintaining current health and safety protocols.

Publicize the meeting widely, more so than you normally would because these are not normal times. Let people know the steps you will be taking to keep owners safe to ease concerns about attending the meeting.

For example, allow people to check in, collect their ballots and leave. You may consider assigning check-in times to control the incoming flow of owners to maintain physical distancing. Owners can either go back to their units and wait while watching on Zoom, or perhaps wait outside if a safe space is available. If people wait outside, they can remain in contact with the meeting via their cell phones. If your association has a high owner-occupancy rate meeting in-person in a controlled setting may be a practical alternative that allows you to conduct a successful and safe meeting for all owners. Additionally, informal reports from associations who've conducted their meeting suggest that encouraging directed proxies increases owner participation at the meetings.

If your project documents are silent regarding electronic meetings, now is the time to prepare to either amend them to allow for electronic meetings or start the planning for a safe association meeting for 2021.

Q: In your last column, you responded to a question about whether a unit owner who had contracted Covid could be made public to association members. Would the situation be different if it was a board member who contracted Covid? Should owners in the association be made aware that a board member is sick?

A: A board member is an owner with all the rights of an owner, including the right to privacy of his or her health information. (If your association happens to have a board member who represents an entity owner, that individual still retains rights to his personal health privacy.)

A condominium board may only disclose the name of an infected resident, including a board member, with full written authorization to do so from the resident or resident's attorney. Without written authorization for disclosure from the resident owner or resident owner's attorney, a board may still have a duty to notify residents of the association that a resident of their community has tested positive, without specifying the individual. The other residents are then free to take safety precautions for themselves. The infected board member can continue to perform his fiduciary duties as long as his or her health allows. And of course, the same isolation guidelines apply to the board member as set forth by public health recommendations.

Look to the Centers for Disease Control and Prevention for the latest Covid-19 guidelines and seek the advice of the association attorney regarding disclosure of a Covid-19 positive resident.

The information provided herein is informal and intended for general informational purposes only. Consult with an attorney familiar with the Hawaii condominium law for specific legal advice regarding your situation.

Mediation Case Summaries

From September 2020, through November 2020, the following condominium mediations or arbitrations were conducted pursuant to Hawai'i Revised Statutes § 514B-161 and subsidized by the Real Estate Commission. The Mediation Center of the Pacific conducted additional condominium mediations in the District Courts and mediation providers conducted community outreach in their respective communities as well.

Dispute Prevention and Resolution, Inc.

Owner vs. AOOU	Dispute involving a special election of a board of directors.	Mediated; no agreement.
Owner vs. AOOU	Dispute over repairs to a unit that was destroyed by fire.	Mediated; no agreement.
Owner vs. AOOU	Owner claims retaliation by the board after allegations of board mismanagement made by the owner.	Mediated; no agreement.
Owner vs. AOOU	Dispute regarding owner's challenge of fines levied for alleged violation of association rules and regulations.	Mediated to agreement.
AOOU vs. Owner	Alleged violation of house rules by owner.	Mediated; no agreement.
AOOU vs. Owner	Issues involving alleged board discrimination regarding a boat slip lease.	Mediated; no agreement.
Owner vs. AOOU	Alleged breach of contract by board.	Mediated; no agreement.
AOOU vs. Owner	Dispute over water damage to unit.	Mediated; no agreement.
Owner vs. AOOU	Owners alleged failure by association to maintain the common elements.	Mediated; no agreement.
Owner vs. AOOU	Dispute over responsibility for lanai areas.	Mediated to agreement.
AOOU vs. Owners	Alleged violation of declaration and bylaws regarding pets.	Mediated; no agreement.
Owner vs. AOOU	Dispute over who is responsible for repair and maintenance of a unit's lanai.	Mediated; no agreement.
Owner vs. AOOU	Alleged violation of bylaws with failure to obtain authorization for capital improvement projects.	Mediated to agreement.
Owner vs. AOOU	Disagreement over responsibility for cleaning a unit of mold pursuant to the condo documents.	Mediated to agreement.

Lou Chang, Esq.

Owner vs. AOOU	Alleged unauthorized installation of a shower stall.	Mediated to agreement.
Owner vs. AOOU	Issues involving an electricity generating project and improvements to the common area roof.	Mediated; no agreement.
Owners vs. AOOU	Dispute over the house rules and the feeding of feral cats.	Mediated to agreement.

Mediation Center of the Pacific

AOOU vs. Owner	Dispute over violation and interpretation of bylaws and house rules.	Mediated; no agreement.
Owner vs. AOOU	Dispute regarding maintenance, safety and fees issues.	Owner withdrew complaint.
Owner vs. AOOU	Dispute over alleged violation of bylaws and house rules regarding maintenance fees.	Mediated to agreement.

2021 Real Estate Commission Meeting Schedule

Real Estate Commission – 9:00 a.m.

Friday, January 29, 2021

Friday, February 26, 2021

Thursday, March 25, 2021

Friday, April 23, 2021

Friday, May 28, 2021

Friday, June 25, 2021

Friday, July 23, 2021

Friday, August 27, 2021

Friday, September 24, 2021

Friday, October 22, 2021

Friday, November 19, 2021

Friday, December 17, 2021

Until further notice, Laws & Rules Review Committee, Condominium Review Committee, and Education Review Committee Meeting items will be discussed at Real Estate Commission Meetings.

Real Estate Commission Meetings will be held online via the Zoom platform until the Department resumes in-person meetings. Thereafter, all meetings will be held in the Queen Liliuokalani Conference Room of the King Kalakaua Building, 335 Merchant Street, First Floor.

Meeting dates, locations and times are subject to change without notice. Please visit the Commission's website at www.hawaii.gov/hirec or call the Real Estate Commission Office at 586-2643 to confirm the dates, times and locations of the meetings. This material can be made available to individuals with special needs. Please contact the Executive Officer at 586- 2643 to submit your request.



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