



# Hawaii Condominium Bulletin

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## Minutes: Contents and Rules by Steve Glanstein, Professional Registered Parliamentarian

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Professional Registered  
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to submit your request.



*This piece was originally printed in the June 2019 edition of the Condominium Bulletin. Since then, as Mr. Glanstein notes, Robert's Rules has been revised and references updated. We are pleased to provide this update from him on meeting minutes.*

#### **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 9:27, 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 were included in the November 2020 article. This article is an update which includes updated references, some experience related tips, and a few examples to assist with appropriate drafting of minutes; it is oriented towards Hawaii's Condominium and Planned 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).

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!**

*continued page 2*

# Message from the Chair

Aloha,

I hope everyone had a rejuvenating summer.

In this edition of our Condominium Bulletin, we've included an update of the 2023 legislative session with the condominium bills enacted into law; Ask the Condo Specialist discusses increasing the annual budget; The Akamai Buyer gives tips on assuring that when purchasing your unit you're getting the parking stall legally attached to the unit; and Professional Registered Parliamentarian Steve Glanstein gives us the latest meeting minutes protocol in time for us to digest it all for the upcoming 2024 association meeting season. We've also included summaries of condominium mediations that have been conducted in the last few months.

Keep up with the current condo news and issues, legislative action affecting condos, and educational events being held for the condo community by signing up for the Commission's quarterly email subscription service. Sign up for it at the link here, <http://cca.hawaii.gov/reb/subscribe>. By signing up you'll get the latest news for the condo community emailed directly to your inbox. The emails are also posted at the Real Estate Branch website if you prefer, including our latest from April 2023.

To view any of our short and informative educational videos on various aspects of condo living, click the link here <https://cca.hawaii.gov/reb/hawaii-condo-living-guide/>.

Plan to join the Commission at one of its meetings in 2023. There are just a few more left for this year. A calendar of our meetings for the rest of this year is included inside. All are welcome and encouraged to attend any of the monthly meetings which are held on Zoom; simply go to our website and click on the agenda for the link to the Zoom meeting, here [https://cca.hawaii.gov/reb/agendas\\_minutes/](https://cca.hawaii.gov/reb/agendas_minutes/).

Stay informed. Thank you for your continued interest in condominium education and for taking the time to read the Condominium Bulletin.

John R. Love  
Chair, Condominium Review Committee



## Minutes: Contents and Rules (cont. from page 1)

### **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.

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.

# Minutes: Contents and Rules (cont. from page 2)

## **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. the 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(s) 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 misuse of a Point of Order motion 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: Contents and Rules (cont. from page 3)

## **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 additional information in the minutes of a particular meeting (RONR 48:3). This may contain information of legal significance recommended for inclusion by the association's counsel.

## **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 to comply with these procedures should be in writing and filed with the association records.

## **Approval of Minutes:**

An organization takes official action by adoption of a main motion. The action is effective immediately (unless otherwise specified in the motion) and does not depend upon the production or approval of the minutes. Notwithstanding any official approval, minutes may be amended even years later by the motion to Amend Something Previously Adopted.

No vote is taken on the approval of the minutes even if a motion has been made to approve them. A member's absence from a meeting does not prevent the member from participating in the correction or approval of the meeting minutes (RONR 41:11).

Executive session minutes are only approved in executive session (RONR 9:27).

TIP: According to RONR 41:11, the **only way to object** to the approval of the secretary's draft of the minutes is to propose: (a) a correction, (b) referral to a committee, or (c) to postpone approval to a certain time.

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

# Minutes: Contents and Rules (cont. from page 4)

## **Final Notes:**

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 about 40 years and more than 2,000 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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## 2023 Legislative Session Update

The 2023 legislative session adjourned with several condominium bills enacted into law. Please consult with legal professionals regarding these new laws. The following descriptions are summarizations of a few Acts meant to provide only general information.

### **House Bills:**

**Act 189, SLH 2023**, creates two common Interest Development Task forces, one to examine the efficacy of alternative dispute resolution, and another to examine if: (1) the various owner rights in chapter 514B, HRS, should be extended to planned development communities and; (2) if board members should have additional duties and fiduciary responsibilities. Both task forces will report its findings in following sessions and develop appropriate legislation to achieve policy goals.



### **Senate Bills:**

**Act 29, SLH 2023**, clarifies that an association’s legal right of action against their developer cannot be affected sooner than two years after developer transfers power to their association and ends their control period.

**Act 96, SLH 2023**, establishes a 99-year low-cost leasehold residential condominium program near transit stations on State land to alleviate the housing crisis.

**Act 149, SLH 2023**, requires the Hawaii Real Estate Commission to develop a curriculum for board member leadership training, including information on pertinent sections of chapter 514B, association governing documents, and fiduciary duties of board members.

**Act 199, SLH 2023**, expands the information regarding association budgets and replacement reserves to owners to require a summary detailing the cash or accrual basis, the estimated cost of fire safety equipment, estimated reserve replacement assessments, and an explanation how those estimated reserve replacement assessments are computed following four detailed guidelines.

The Act also defines independent reserve study preparer to mean any “organization, company, or individual with a reserve study certification from an industry organization”, and specifies that a managing agent with such certification is not considered to have a conflict of interest for reviewing that study.

### **Legislative Process:**

Are you interested in the legislative process? Visit the newly redesigned Hawaii State Legislature website (<https://www.capitol.hawaii.gov/>) for the legislative calendar, legislator contact information, citizen’s guide to the legislative process, broadcasts of hearings, bill information, online bill testimony submission, and much more!

The website includes an archive of Acts and bills from prior sessions (<https://www.capitol.hawaii.gov/advreports/main.aspx>). Users can research bills from prior legislative sessions, view their public testimony, committee reports, and various Senate and House drafts. The best time to work on new legislation is before the annual legislative session, which runs from January to early May. Contact legislators during the interim time to voice your concerns and work on drafting a bill. See the legislative calendar (<https://www.capitol.hawaii.gov/legalcal.aspx>) for more legislative deadlines and dates.

# Mediation Case Summaries

From June through August of 2023, the following condominium mediations or arbitrations were conducted pursuant to Hawai'i Revised Statutes §§ 514B-161 and 514B-162.5 and subsidized by the Real Estate Commission for registered condominium associations. The Mediation Center of the Pacific conducted additional condominium mediations through the District Courts while mediation providers conducted community outreach in their respective communities.

## Dispute Prevention and Resolution, Inc.

Owner vs. AOOU	Dispute regarding changing the use of the common elements	Mediated to agreement.
Owner vs. AOOU	Owner alleged selective enforcement of rules by the condo board and harassment of owners.	Mediated to agreement.
Owner vs. AOOU	Dispute over interpretation of provision in the declaration; challenge to this provision by some owners.	Mediated; no agreement.
Owner vs. AOOU	Dispute regarding the cost of common elements as shared among the owners. Participants mediated and have decided to proceed to arbitration.	
Owner vs. AOOU	Allegation of inconsistent enforcement of house rule violations among owners.	Mediated; no agreement.
Owner vs. AOOU	Owners allege lack of any response by AOOU to dog attack and resultant injury to owners. Owners also allege AOOU using unlicensed contractors to repair water leaks into their unit.	Mediated to agreement.

## West Hawai'i Mediation Center

Owner vs. AOOU	Owner disputed fines incurred against her and requested mediation.	Mediated; no agreement.
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## Lou Chang, A Law Corporation

Owner vs. AOOU	Dispute over board policies, board actions, and repair of plumbing damages. Evaluative assessments provided the participants.	Mediated; no agreement.
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To consult with any of our subsidized private mediation services, contact one of the following providers:

### Oahu

**Mediation Center of the Pacific, Inc.**  
1301 Young Street, 2nd Floor  
Honolulu, HI 96814  
Tel: (808) 521-6767  
Fax: (808) 538-1454  
Email: mcp@mediatehawaii.org

### East Hawaii

**Ku'ikahi Mediation Center**  
101 Aupuni St. Ste. 1014 B-2  
Hilo, HI 96720  
Tel: (808) 935-7844  
Fax: (808) 961-9727  
Email: info@hawaiiimmediation.org

### **Charles W. Crumpton**

Crumpton Collaborative Solutions LLLC  
Tel: (808) 439-8600  
Email: crumpton@chjustice.com  
Websites: www.acctm.org; www.nadn.org;  
www.accord3.com; and www.mediate.com

### Maui

**Mediation Services of Maui, Inc.**  
95 Mahalani Street, Suite 25  
Wailuku, HI 96793  
Tel: (808) 244-5744  
Fax: (808) 249-0905  
Email: info@mauimmediation.org

### Kauai

**Kauai Economic Opportunity, Inc.**  
2804 Wehe Road  
Lihue, HI 96766  
Tel: (808) 245-4077 Ext. 229 or 237  
Fax: (808) 245-7476  
Email: keo@keoinc.org

### **Dispute Prevention and Resolution**

1003 Bishop Street, Suite 1155  
Honolulu, HI 96813  
Tel: 523-1234  
Website: <http://www.dprhawaii.com/>

### West Hawaii

**West Hawaii Mediation Center**  
65-1291 Kawaihae Road, #103B  
Kamuela, HI 96743  
Tel: (808) 885-5525 (Kamuela)  
Tel: (808) 326-2666 (Kona)  
Fax: (808) 887-0525  
Email: info@whmediation.org

### **Lou Chang, A Law Corporation**

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# Ask the Condominium Specialist

**Q:** My condominium board increased our annual operating budget by more than 20% for the current fiscal year. My understanding is that for the board to do this the approval of a majority of unit owners had to be obtained. No vote took place. Is the increase valid?

**A:** HRS § 514B-148 (e) provides that “except in emergency situations or with the approval of a majority of the unit owners”, a board may not exceed its total adopted fiscal year budget by more than 20%. If majority owner approval was not obtained, then an “emergency situation” must exist for the budget increase to be legal.

HRS § 514B-148 (h) defines “emergency situation” as an extraordinary expense:

- “(1) Required by an order of a court;
- (2) Necessary to repair or maintain any part of the property for which the association is responsible where a threat to personal safety on the property is discovered;
- (3) Necessary to repair any part of the property for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget;
- (4) Necessary to respond to any legal or administrative proceeding brought against the association that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget; or
- (5) Necessary for the association to obtain adequate insurance for the property that the association must insure.”

If any of these situations exist, the board may legally exceed its budget by over 20%. The board has additional responsibilities to the unit owners, however. It must “adopt a resolution containing written findings as to the necessity of the extraordinary expense” as well as explain why the extraordinary expense could not have been reasonably foreseen.

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

## THE AKAMAI BUYER

### What to Consider Before You Buy a Condo

An often-overlooked consideration when purchasing a condo unit is parking. That's right, the parking stall for the unit you are thinking of buying. Some associations with parking simply make a certain number of stalls available to unit owners without designating them specifically to a unit, while some associations designate each stall to a particular unit as a limited common element.

For associations with designated parking stalls, HRS § 514B-40 provides that “any unit owner may transfer or exchange” a limited common element parking stall assigned to the unit over to another unit. This transfer must be executed and recorded at the Bureau of Conveyances as an amendment to the condominium project's declaration. The amendment need only be executed by the owner of the unit making the transfer and the owner of the unit receiving the limited common element, i.e., the parking stall. A unit with a mortgage or lease may be required to obtain the consent of the mortgagees or lessors. A copy of the amendment must be delivered to the association.

Cautionary note: while the statute requires recordation, thus legal notice, as a practical matter it doesn't always happen. Situations exist where notice of the stall transfer is not given to the association and amendments not filed and recorded at the Bureau of Conveyances. Association records will reflect the stalls for the units prior to the exchange; subsequent owners may continue for years unaware that they are using illegal stalls.

How can you protect yourself as a potential purchaser? If parking stalls are assigned, make sure to get documentation either through the declaration or an amended declaration of the stall legally attached to the unit you are considering purchasing. Does it match up with the seller's record? Is there an amended and recorded declaration documenting a switch that is consistent with information you were provided?

After you've confirmed the stall for your unit, go and look at the stall. Is it large enough to accommodate your current vehicle? Are you able to access the stall reasonably? Is there enough room for you to get in and out of your car when parked?

A parking stall is not a small thing; it can add or detract from your quality of life. It's important to check out the parking situation before you commit to buy. Title companies may not insure assigned parking stalls in their title insurance policies. Knowledge and information are the best tools that a potential buyer can have.

# 2023 Real Estate Commission Meeting Schedule

## **Real Estate Commission – 9:00 a.m.**

Friday, August 25, 2023

Friday, September 22, 2023

Friday, October 27, 2023

Friday, November 17, 2023

Friday, December 15, 2023

All Real Estate Committee Meeting items will be discussed at the Real Estate Commission Meetings until further notice.

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](http://www.hawaii.gov/hirec) or call the Real Estate Commission Office at (808) 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 (808) 586-2643 to submit your request.