

# Community Association Management *Insider*<sup>®</sup>

MAY 2014

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### Court: Responsibility to Pay Assessments Not Excusable

Illinois homeowners who are unhappy about their community association cannot stop paying their assessments, according to a recent Illinois Supreme Court ruling—a decision applauded by the Community Association Institute (CAI) and its members.

In 2010, a Highland Park association sued a homeowner who refused to pay her assessments because she claimed that the association didn't repair a leaking roof that damaged her condo. The court ruled in favor of the association. But that ruling was overturned by an appeals court, a decision that was troublesome to association experts who said that if a single owner could refuse to pay assessments based on a disagreement with the association, the ability to govern and fund expenses would be threatened.

CAI's Illinois chapter assisted with the appeal to the Illinois Supreme Court. CAI Chief Executive Officer Tom Skiba, CAE, said in a statement that CAI was eager to support this landmark decision. Skiba noted that it clarifies that an owner's responsibility

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## FEATURE

### Use Parliamentary Procedure to Run Effective Association Meetings

by Jim Slaughter, Esq.

There are more than 320,000 community associations in the United States, according to the Community Associations Institute. Think of all the membership, board, and committee meetings that take place! Since statutes and governing documents often require such meetings to follow certain rules, it's important for managers and board members to know about parliamentary procedure, which, when used properly, can also serve to streamline meetings and make association life easier and more productive for everyone.

#### What Is Parliamentary Procedure?

"Parliamentary procedure" includes everything that goes into running legal and effective meetings, including:

- Giving proper notice of the meeting to members;
- Waiting until enough members show up before starting the meeting; and
- Discussing and voting on issues at the meeting.

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## Q & A

### Enforcing Condo's Minimum Lease Term Restriction

**Q** Our condominium's documents state that members can rent their units for a one-month minimum. Some members believe if they rent for one or two weeks in a month, and they don't rent for the rest of the month, they're complying with the documents. But the board and I feel that this is "cheating" the system and renders the restriction—which was put into place because short-term renters seemed to be less serious about respecting members and our building—useless. Can we stop members from renting for less than a month?

**A** Yes. Minimum lease term restrictions are common because many condominiums want to avoid having the "hotel-like" atmosphere that comes with short and frequent rentals. In fact, in

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*Community Association Management Insider* [ISSN 1537-1093 (PRINT), 1938-3088 (ONLINE)] is published by Vendome Group, LLC, 216 East 45th St., 6th Fl., New York, NY 10017.

Volume 13, Issue 12

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## Parliamentary Procedure (continued from p. 1)

Such requirements can be found in state statute, the association's governing documents, such as bylaws, or even court decisions. It's important for managers and board members to care about parliamentary procedure. That's because states often have laws that require associations to follow specific rules as to notice of meetings, quorum, voting, or even which parliamentary book governs. For instance, a North Carolina statute provides that "meetings of the association and the executive board (in HOAs and condos) shall be conducted in accordance with the most recent edition of *Robert's Rules of Order Newly Revised*." Several model acts, including the 2008 Uniform Common Interest Ownership Act (UCIOA) and the model Uniform Common Interest Owners Bill of Rights Act, have similar language.

Even without a statutory requirement, associations often dictate in governing documents that a parliamentary book will be followed when transacting business. In addition to such legal requirements, proper procedure can lead to shorter and fairer meetings, so it's worth knowing at least the basics.

### Consider Robert's Rules of Order

*Robert's Rules of Order* is the best-known and most used of many books on parliamentary procedure. Some courts have even held that *Robert's* can be relied upon in the absence of specific parliamentary rules. While there are lots of books with "Robert's Rules" in the title, there is only one official *Robert's Rules*. The current book is *Robert's Rules of Order Newly Revised (11th Edition)*, published in 2011. Each new edition brings changes to procedure (the *11th Edition* has 120 listed changes from the previous edition), so make sure that if you choose to use this, you're following the latest version.

### Procedure Varies According to Membership, Board Meetings

Rules aren't one size fits all. Instead, rules should be like clothes—they should fit the organization they are meant to serve. Most parliamentary manuals provide that board meetings and membership meetings are conducted differently. Large meetings must be fairly

## Responsibility to Pay (continued from p. 1)

to pay assessments is independent of a board's obligation to repair and maintain common elements. He urged people to consider the potential ramifications if owners could skirt their financial obligations in cases like this.

"What if owners withheld assessments every time they believe work wasn't done—or just not completed to their satisfaction? Associations need to do their very best to fulfill their responsibilities, but this scenario could jeopardize the financial stability of many associations and pose an unfair burden on owners who are paying their fair share," said Skiba. ♦

formal. However, formality can hinder business in smaller bodies. For small boards and committees, *Robert's* recommends less formal rules, such as:

- No seconds to motions;
- No limits on debate; and
- The chair can debate and vote.

Smaller boards that dislike this informality may follow more formal procedures. But even informal boards may choose to be more formal on important or controversial matters to make sure things are handled absolutely correctly.

So how is business handled in a formal meeting? In assemblies following formal procedure (such as larger membership meetings), 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 spend \$50,000 on the common area or to take a five-minute break—are accomplished by proposing a motion.

The steps for considering a motion are similar, regardless of the specific motion. The three steps for bringing a motion before an assembly are:

**Step #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...” and stating her intention.

**Step #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 sec-

ond is that an assembly should not waste its time discussing a matter unless at least two members want to consider it.

**Step #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...” and stating the relevant information. Stating the question serves two purposes. First, the chair can verify the wording of the motion. Second, the motion doesn’t 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:

**Step #1: Members debate the motion, unless it’s undebatable.**

Several rules govern who gets 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 for and against the motion; and
- Members can speak only twice to a motion.

**Step #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...” and states the relevant information. The vote can be taken by voice (“AYES” and “NOES”), standing, hand, ballot, or some other means,

depending on legal requirements and the circumstances.

**Step #3: Chair announces vote.** The last step in considering a motion is for the chair to announce whether the motion was adopted or rejected (also known as being “lost”).

While the process for considering a motion may seem repetitive, there is no worse situation in a meeting than when members don’t understand what is being discussed or voted on. A primary purpose of proper procedure is to assure that all members know the parliamentary situation at any given moment.

### Formal Motion and Vote Aren’t Always Required

Noncontroversial matters can often be resolved without debate through “general” or “unanimous” consent. Using this method, the presiding officer asks, “Is there any objection to...?” and states the proposal. For example, “Is there any objection to approving the minutes?” If no one objects, the minutes are approved. If a member objects, a formal motion and second are necessary. Unanimous consent allows an assembly to move quickly through non-contested issues.

### Which Are the Most Used Motions?

Many motions exist in parliamentary procedure (*Robert's* lists 84), but most business can be accomplished through about a dozen motions. Here are the motions and their purposes:

- ◆ **Main Motion**—brings business before the assembly and is permitted only when no other motion is pending.

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## Parliamentary Procedure

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◆ **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 our Model Charts: Simplified Parliamentary Motions Guide, for specific information about these rules.

### How Do Motions Work Together?

In formal procedure, not all motions are in order at any given moment. Instead, certain motions must be considered ahead of other motions. This concept is known as “precedence.” The order of precedence from highest-ranking motion to lowest is as follows:

- Adjourn
- Recess

## MODEL CHARTS

### Simplified Parliamentary Motions Guide

The following charts include some of the rules governing the most frequently used motions in *Robert's Rules of Order Newly Revised* (11th Edition). The motions in Chart 1 are listed in order of precedence. (Note that a motion can be introduced if it is higher on the list than the pending motion.) The motions in Chart 2 have no order of precedence and are decided immediately.

#### CHART 1: MOTIONS IN ORDER OF PRECEDENCE

MOTION	SECOND?	DEBATABLE?	AMEND?	VOTE?
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

#### CHART 2: MOTIONS THAT CAN BE DECIDED IMMEDIATELY

MOTION	SECOND?	DEBATE?	AMEND?	VOTE?
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

- 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. First, when a motion is being considered, any motion higher on the list may be proposed, but no motion of lower precedence. Second, 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.

For example, suppose the 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 a committee (which is in

order). Discussion begins on the motion to refer.

A motion is made to postpone the matter until next month's 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 five minutes. The motion to recess is out of order in that it is lower on the list 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 post-

pone 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). ♦

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**Jim Slaughter, Esq.** is a North Carolina attorney, Certified Professional Parliamentarian, Professional Registered Parliamentarian, and President of CAI's College of Community Association Lawyers (CCAL). He is the 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*, which received the 2013 Phifer Award from the National Communication Association. For more information about parliamentary procedure, resources, and Slaughter's blog, visit [www.jimslaughter.com](http://www.jimslaughter.com).

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## RECENT COURT RULINGS

### ► Homeowners' Speculative Plans Couldn't Support FHA Claims

**Facts:** An association's governing documents prohibited the use of homes in the community for commercial purposes. Two homeowners announced their intention to open a drug rehabilitation facility in their own home in the community. They asked the association for a reasonable accommodation, but didn't specify what kind of accommodation they wanted and didn't provide any supporting documentation that they were entitled to an accommodation.

Without the association's permission to open and operate the group rehabilitation home, the homeowners nevertheless advertised the services on a billboard nearby and through other means. The association asked an Oregon trial court for a declaratory judgment to enforce the covenants and restrictions prohibiting commercial activities within the community, and an injunction enjoining the homeowners from operating a business on their property. The homeowners sued the association in federal court, claiming that it had violated the Fair Housing Act (FHA) by denying their request for an accommodation.

**Decision:** The federal court ruled in favor of the association and sent the case back to a state court for further proceedings.

**Reasoning:** The association argued that the homeowners lacked standing to bring their FHA claims because they hadn't suffered "a distinct and palpable injury," nor did they bring the claims on behalf of viable tenants with a disability. The federal court pointed out that a plaintiff need not be the victim of the discrimination complained of, but must have suffered some "distinct and palpable injury" from the discriminatory conduct. Accordingly, the homeowners could assert a reasonable accommodation claim on behalf of a person with a disability, even though they themselves are not disabled, but they had to show that they had been harmed.

In this case, the homeowners couldn't show a distinct and palpable injury arising from the association's enforcement of the governing documents. The homeowners argued that they would suffer financial injury if they couldn't open the facility. And they

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## Recent Court Rulings (continued from p. 5)

alleged harm to the people who “might have been able to enjoy the serenity of recovery from their addictions in the unique setting provided by a cliff top house.”

But the association presented undisputed evidence that the homeowners didn’t bring their FHA claims on behalf of an aggrieved party with a disability—one of the homeowners even admitted that he couldn’t identify a single person, by name, who contacted him to participate in the drug rehabilitation home. The federal court noted that the homeowners hadn’t received a contract to provide housing for recovering addicts and their plans to establish a group home were merely speculative, which wasn’t enough to support FHA claims. ♦

- Fishing Rock Owners’ Association, Inc. v. Roberts, March 2014

## RISK MANAGEMENT

### Check Pool Lifeguard’s Qualifications

Many associations hire lifeguards to reduce the likelihood of accidents at the community pool. But if you hire an unqualified lifeguard, you could increase your liability for accidents. Your association can be held legally responsible if the lifeguard you hire lacks the proper training and somebody drowns or gets hurt in the community’s pool because of the lifeguard’s incompetence.

To prevent accidents and avoid liability if any occur, require lifeguards at your community to have certain training, certifications, and qualifications. Use the checklist in our Model Form: Check Certifications, Credentials of Lifeguard Applicants as a guide for what certifications and experience you should look for when hiring a pool lifeguard. Before using the checklist, consult state and local laws to see if you need to add any other requirements to the list. ♦

## Q&A (continued from p. 1)

at least one state—Florida—if a condominium permits rentals of less than 30 days more than three times per year, the condominium is considered a “place of public lodging,” and can be subject to various laws pertaining to “public accommodations,” including Chapter 509 of the Florida Statutes, which is often referred to as Florida’s “hotel/motel” law, says Fort Myers, Fla., attorney Joseph E. Adams.

Some of your members might feel that if the tenant stays for only two weeks, and no other tenants occupy the unit for the next two weeks, that’s better for the community than tenants being present for the full 30-day rental. But some people believe that there’s a significant difference between the

types of use that a two-week tenant makes of a unit as opposed to a monthly tenant. “A common belief is that a two-week tenant is probably on vacation and will ‘live it up’ all 14 days and nights, while a monthly tenant may be more likely to act more like a resident, who keeps traditional hours and treats the property with care and respect,” explains Adams.

Further, if the unit owner is allowed to resume occupancy for the remaining half of the lease, then the community is burdened with both a short-term rental and full occupancy for the entire 30-day period, albeit by the owner for the remaining lease term—and clearly in that case, the rental restriction is effectively rendered useless, he stresses.

In Adams’s opinion, if an owner submits a proposed “monthly” lease, and the rent to be paid is clearly below market value, or there are other terms or information indicating the intent to actually lease for less than a month, your association (assuming it has lease approval rights) can disapprove that lease as a sham transaction. There may be valid reasons for a reduced rate, so some investigation may need to take place before an official disapproval is given. Be prepared that proving the lease is a sham beforehand might be difficult. But Adams has seen situations where it was discovered that the member was advertising less than monthly rentals on vacation Web sites. In some cases, “weekly” and even “daily”

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**MODEL FORM**

**Check Certifications, Credentials of Lifeguard Applicants**

The information in this checklist covers the basic information that you want to know about lifeguard job candidates for the community pool. Remember to consult your state and local laws and also talk with the association attorney to make sure that you've taken every possible step to make the pool safe for members.

**LIFEGUARD SCREENING CHECKLIST**

APPLICANT'S NAME: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 TEL. #: \_\_\_\_\_ CELL #: \_\_\_\_\_ EMAIL: \_\_\_\_\_  
 MANAGER'S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

**PART A: CERTIFICATIONS (photocopy & attach)**

**1. LIFEGUARD TRAINING**  
 ORGANIZATION ISSUING CERTIFICATE \_\_\_\_\_ EXP. DATE \_\_\_\_\_

**2. FIRST AID**  
 ORGANIZATION ISSUING CERTIFICATE \_\_\_\_\_ EXP. DATE \_\_\_\_\_  
 TYPE OF TRAINING COURSE \_\_\_\_\_

**3. CPR**  
 ORGANIZATION ISSUING CERTIFICATE \_\_\_\_\_ EXP. DATE \_\_\_\_\_  
 TYPE OF TRAINING COURSE \_\_\_\_\_

(OPTIONAL:)

**4. WATER SAFETY INSTRUCTOR**  
 ORGANIZATION ISSUING CERTIFICATE \_\_\_\_\_ EXP. DATE \_\_\_\_\_  
 TYPE OF TRAINING COURSE \_\_\_\_\_

**5. CERTIFIED POOL OPERATOR**  
 ORGANIZATION ISSUING CERTIFICATE \_\_\_\_\_ EXP. DATE \_\_\_\_\_  
 TYPE OF TRAINING COURSE \_\_\_\_\_

**PART B: WORK EXPERIENCE**

PRIOR EMPLOYER \_\_\_\_\_  
 CONTACT PERSON \_\_\_\_\_ CONTACT DATE \_\_\_\_\_

**DID THE APPLICANT:**

DEMONSTRATE COMPETENCY IN LIFEGUARDING SKILLS AND TECHNIQUES?  YES  NO  
 COMMENTS \_\_\_\_\_

AVOID ABSENTEEISM AND TARDINESS?  YES  NO  
 COMMENTS \_\_\_\_\_

SECURE A SUBSTITUTE WHEN ABSENT?  YES  NO  
 COMMENTS \_\_\_\_\_

HANDLE EMERGENCY SITUATIONS WHEN THEY AROSE?  YES  NO  
 COMMENTS \_\_\_\_\_

APPLY THE POOL RULES AND REGULATIONS WITH TACT AND CONSISTENCY?  YES  NO  
 COMMENTS \_\_\_\_\_

TREAT PEOPLE IN A PROFESSIONAL AND COURTEOUS MANNER?  YES  NO  
 COMMENTS \_\_\_\_\_

**ADDITIONAL COMMENTS** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Q&A** (continued from p. 6)

rental rates were posted. That makes it easier for the association to disapprove an apparent sham lease term.

Adams notes that it would be reasonable and consistent in a rental restriction to state that

nobody, not even owners, can occupy a unit if the tenants leave before the lease ends. Consult the association's attorney about whether this can be accomplished through a board-made rule, or whether a document amendment is required before taking any action. "You certainly can't stop any tenant from leaving early, but you can

restrict the use of the unit consistent with the restrictions in the declaration of condominium," emphasizes Adams. ♦

**Insider Source**

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