

# IN ASSOCIATION

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A Newsletter from  
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## ORDER! ORDER! CONDUCTING PRODUCTIVE MEETINGS USING PARLIAMENTARY PROCEDURES

*Unruly or disorganized meetings interfere with the ability of the association to effectively conduct business. The use of parliamentary procedures can enable the association to accomplish much more, and with much less distraction.*

Association meetings can often deteriorate into ugly confrontations, where a difference of opinion becomes an invitation for personal attacks. Often times, a single person or a small group of like-minded people dominate the conversation, either through insistence or intimidation. These problems make it much more difficult for the association to conduct an orderly and productive meeting.

To eliminate these problems, we recommend that associations conduct their meetings using a published set of parliamentary procedures. One of the most widely used compilations of parliamentary procedures is Robert's Rules of Order (10<sup>th</sup> Edition). Many of our association clients have found that they can encourage the exchange of opinions, reduce ugly confrontations and accomplish much more by adopting and following parliamentary procedures.

In short, parliamentary procedures are rules for conducting meetings of a group of people, called the assembly. Parliamentary procedures such as Robert's contain rules that specifically govern the making of motions, the rules of debate, and methods of taking the vote of the membership. Issues cannot be brought before the assembly unless a member of the assembly makes a motion at the appropriate time, and another member seconds the motion. If the motion is properly

made and seconded, the assembly may then conduct a debate on the matter. The rules governing debate enable the free exchange of ideas and opinions while also prohibiting personal attacks. The assembly may adopt additional rules that limit the length and number of times that a member may speak during debate. The rules also provide how the assembly closes the debate and proceeds with a vote. Votes are taken and counted in an organized manner. If a member of the assembly refuses to abide by the rules of procedure, the assembly may adjourn the meeting to another time.

The use of parliamentary procedures requires a disciplined chairperson. First, the chairperson should be familiar with the rules of parliamentary procedure so that he or she can maintain order. Second, and equally important, the chairperson must have the ability and patience to listen to the members of the assembly. Only by listening can he or she assist the assembly in flushing out issues and effectively addressing them.

While the president of the association usually chairs the meeting, there are times when the association should consider bringing in an outsider to serve as chairperson. First, the president may not have enough knowledge of parliamentary procedure to serve as an effective chairperson. Secondly, the chairperson cannot take part in the debate. There are times when the president needs to participate in the debate. During these times, someone else should serve as chairperson. Robert's contains a procedure by which the assembly may appoint an outsider as chairperson.

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The association's attorney may be familiar with the use of parliamentary procedures, as is our office, and could serve as the chairperson. The association may also consider hiring a professional parliamentarian to serve as the chairperson.

The following are points that the board of the association, and especially the chairperson, should keep in mind when preparing for and conducting a meeting:

- Prepare in advance! Know before the meeting the issues that will be discussed and prepare answers to the questions most likely to be raised. If the purpose of the meeting is to vote on a particular issue, make every effort to have enough signed proxies or agreements prior to the meeting to ensure the outcome of the vote.
- Everyone is entitled to his or her own opinion. Allow people to share their observations and concerns, so long as they do so calmly and without attacking each other personally.

- Listen. You cannot effectively address an issue if you have not identified its source. Also, people often feel better just knowing that they have been heard. Further, you never know where the next great idea will come from. Attempt to give equal time to both sides of the issue.
- Not every opinion requires a response. Once someone has been given a chance to state his or her opinion, "Thank you" is a perfectly acceptable response.
- Be firm when needed, but always respectful.
- Losing your temper means you have lost the battle. Don't get personal. Personal attacks are unnecessary. On the other hand, not every criticism is a personal attack.

By effectively using parliamentary procedures and keeping the above tips in mind, the association can conduct its business in a much more orderly, efficient and productive manner.

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## "IF YOU CAN KEEP IT" CREATING AND KEEPING GOOD LEADERSHIP

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*An association can't buy good leadership. The unit owners have to demand it, and the association's current leaders have to identify and train their successors as early as possible.*

Not long ago, the new board of a 25-year old condominium asked for our assistance. The association was facing a number of problems common to communities with older buildings. Many of the roofs had reached the end of their useful lives and were leaking. The prior board had replaced a few roofs, but the workmanship was questionable. Also, the paving was due to be replaced shortly and the town had condemned the wading pool. An even more immediate problem was that the complex had been built using aluminum wiring, which created a fire hazard. Although the old board

had looked into this matter several times over the years, nothing had been done. As a result of the wiring problem and the leaking roofs, the association's insurance carrier had refused to renew its policy, forcing the association to obtain insurance from an excess line carrier at significantly higher rates.

The association could not find enough volunteers to fill all of the seats on the board. However, a few people did step forward and volunteered to serve as directors. These new directors set to work with enthusiasm and persistence. They examined all of the association's contracts and replaced a number of contractors. They hired a new manager. They hired consultants to help the association prepare a long-term facility maintenance and replacement plan. They also developed a plan

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to correct the wiring problems and replace the leaking roofs.

The association obtained a bank loan to pay for the roofs and wiring. By addressing these issues, the association realized enormous savings in insurance premiums and other expenses. With these savings, the association was able to cover the monthly loan payments without increasing the common charges. The association even planned its first neighborhood holiday party.

As the association's attorneys, we were asked to attend the owners's meeting called to obtain the approvals necessary to obtain the loan and to approve a special assessment for building up the reserves for future repairs. At the meeting, the consultants gave a presentation of the long-range plan. The president and treasurer of the association discussed the changes in the association's finances, the proposed renovations and the loan.

After these presentations, the association then opened the meeting for comments and questions. We have attended many association meetings like this one and so we were familiar with most of the questions and comments raised by unit owners. However, there was one comment, repeated by several unit owners, that was new to us. After thanking the board for its accomplishments, several of the unit owners asked how the association could ensure that future boards were as conscientious and responsible as the current one, continuing plans for the future and paying careful attention to finances.

We responded that the unit owners themselves are the only ones who can guarantee the level of leadership in the future, by electing capable directors and holding them responsible for the operation of the association. As Benjamin Franklin said when asked about the form of the new government created by the new American constitution, "A republic, *if you can keep it.*"

Our associations are, among other things, small democracies. Democracy is not a spectator sport. Unit owners cannot contract for good

government. They must participate by being informed, by voting, and, from time to time, by participating in the leadership and the stewardship of their community. There are, however, a number of things that any association can do to ensure quality leadership in the time to come:

- Encourage the flow of information. Homeowners pay more attention to what the association does if they are kept informed. Boards will make better decisions if they are aware of the homeowners' concerns. Although the unit owners should stay involved regardless of what the board does, the board is primarily responsible for keeping the information flowing.
- Keep the decision making process as open as possible. Closed-door meetings foster suspicion.
- Identify and encourage new leaders. Nobody wants to be an association leader forever. Given enough time, even the best leaders may need and certainly deserve a break. Although not everyone has the ability to be an effective association leader, most people can take their share of responsibility if given an opportunity to learn by working with experienced leaders. The current leadership should encourage unit owners to become involved in the activities of the association. If your association is large enough to have committees, encourage interested homeowners to serve on committees, where they can work with more experienced association leaders. If your community has no committees, you can still encourage homeowners to take on particular projects or even serve on the board.
- Keep a record of checklists and procedures. Memorialize what you learn. For example, prepare checklists for calling and holding

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meetings. Prepare calendars of projects and deadlines for the budget process. If you prepare a list of questions for interviewing contractors, save the checklist for the next time you need to hire a contractor. Keep all of this material in some permanent notebooks so that future leaders can benefit from what you have learned.

- Develop backups for all leadership positions. The vice president should assist the president and learn how to do the president's job. Create an assistant secretary and an assistant treasurer who can learn these jobs and can step in when needed. These assistants are also the most likely candidates to take over these positions when the current occupants step down.

- In many professional and civic organizations, the leaders of the organization "walk the chairs." Each member of the leadership takes a turn holding each of the offices in the organization, ending with the presidency. By the time a person becomes president, he or she will be familiar with all of the operations of the organization. While this is not always possible, it is a good practice to follow. Of course, since the unit owners elect the board, and the board appoints the officers, the unit owners always have the power to change the leadership of the association. Sometimes this is both necessary and important. Most of the time, however, the association's challenge is not changing leadership, but finding leadership.

- Educate the present and future leaders. The Community Associations Institute, known as CAI, is a very useful resource for information. The Connecticut

Chapter of CAI offers various seminars designed to introduce unit owners and association leaders to the structure and operation of condominium and homeowner associations. The Chapter also conducts annual trade shows. Every association should encourage its officers and directors to attend these programs. Additionally, CAI offers many useful publications and tapes. The association should purchase these and establish a library for the use of its officers and directors, as well as other interested association leaders and owners.

- Always remember that association leadership positions are positions of service, not positions of power. Every homeowner is entitled to good service from the association and has a duty to share in the responsibility of serving his or her community.
- Your association should consider adopting CAI's "Rights and Responsibilities for Better Communities." These principles strike a thoughtful balance between the needs and concerns of homeowners and the challenges facing association leaders.
- Quality leadership is a must for every community association. Finding and developing new leaders is one of the best ways any association can provide for the future of its community.

Please contact us for more information regarding association leadership or for information regarding CAI.



## RELATIONSHIPS YOU CAN BUILD ON: TIPS FOR PRECEEDING WITH CAPITAL REPAIRS AND IMPROVEMENTS AND CHOOSING THE RIGHT CONTRACTOR

*Preserving and improving the community are some of an association's most challenging duties.*

We have assisted many of our association clients through the difficult process of making capital repairs and improvements. The following outline is designed to provide advice and guidance for an association considering such repairs and improvements.

- I. Define the scope of the project.
- II. Determine whether unit owner approval is necessary under the governing documents.

A. While unit owner approval is rarely needed in the case of routine maintenance, repair or replacements, the governing documents of many communities require the approval of unit owners if the association intends to make an addition, alteration or improvement to the existing community. Some courts that have examined this issue have stated the following:

- 1. If the work is necessary in order to maintain, repair or replace an existing portion of the common elements, it is still maintenance, even if part of the work would constitute, by itself, an addition.
- 2. The fact that the work costs a lot of money does not, by itself, turn an item of maintenance into an addition.
- 3. The question of whether given work is maintenance or an addition depends on the

particular facts and circumstances facing the association and the purpose for which the work is being done. The courts' rulings frequently rely on the testimony of experts.

- 4. In determining whether certain work is necessary to preserve existing common elements, the courts will give deference to the decision of the association's board on the basis of what is commonly referred to as the "business judgment rule." Under the business judgment rule, if the directors make an informed decision, which they believe to be in the best interests of the community, then the courts will most likely enforce that decision.

B. Unit owners may need to approve or ratify the budget or a special assessment to raise the funds to pay for the project.

- III. Determine who will solicit bids and supervise the project. This may be:

- A. The association's manager; or
- B. A paid project manager.

- IV. Choose a contractor.

A. Cheaper does not equal better. Alternatively, the most expensive does not necessarily mean the best. The most important factor is that the association and the unit owners are able to complete the project as smoothly as possible.

B. Do not hire someone's cousin; maintain arm's length distance. Fully disclose any conflicts or the use of

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affiliates of the manager or officers or directors of the association in writing. Keep a record in the association's minutes.

C. Look for positive qualities in a contractor:

1. Reliability and certainty.
2. Experience in working with community associations and their residents. You do not want to be the contractor's first major job at a community association.
3. References, especially from other community associations.
4. Proper licensing.

5. Willingness to be flexible to meet the needs of the community and its residents.

6. Check the contractor's background with the Connecticut Attorney General, the Department of Consumer Protection, the local Building Department, the Better Business Bureau and the Chamber of Commerce. These organizations usually maintain records of complaints.

7. Check for pending litigation against the contractor using the Connecticut Judicial Branch Website:  
[www.jud.state.ct.us](http://www.jud.state.ct.us).

V. Where to begin looking for a contractor:

- A. An experienced project manager may know which local contractors are more reliable than others.
- B. Inquire with the Community
- C. Ask for advice from neighboring communities who have successfully completed their own improvement projects.

VI. The contract.

- A. Provide a structure to the agreement.
- B. Provide mechanisms for making adjustments and dealing with unplanned events.
- C. Flush out and memorialize details. Get everyone on the same page. Clarify the expectations of the parties and hopefully avoid misunderstandings. Increase the likelihood of success.
- D. Provide a basis for a successful recovery of a party does not fulfill all of their responsibilities.

These purposes cannot usually be satisfied with a one-page proposal form!

E. Items to include in the contract:

1. Full names of the parties.  
\* Make sure association is the contracting party, which is acting as the association of unit owners under Section 47-244 of the Connecticut Common Interest Ownership Act and not as a general contractor.
2. Deadlines.
3. Standards and specifications for work and materials.

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4. Hold-backs.
5. Verify licenses and require the contractor to secure necessary permits
6. Verify insurance and name the association as an insured.
7. Require lien waivers in advance to avoid panic by unit owners. Many contractors are reluctant to give these waivers in advance, but mechanics' liens tend to cause confusion and panic among the unit owners, rather than serving a useful purpose.
17. Supervision of work requirements.
18. Hours and days during which work may be completed.
19. The parties may wish to break up the contract into phases of work.
20. If the association is financing the project through a loan, the contract should contain a contingency clause that allows the association to cancel in the event that it cannot close the loan.

*\*Read through preprinted boilerplate language carefully. It often has no application to the project at hand, and may be viciously drafted in favor of the contractor.*

8. Penalties for failure to perform.
9. The parties may wish to include an arbitration provision to avoid costly and time-consuming litigation.
10. Storage of material and risk of loss during the project.
11. Clean up requirements.
12. Warranties.
13. Supervision of work.
14. No assignment without written approval.
15. Immediate notification of unexpected events, delays or overruns, and by which method notice will be given.
16. Itemization or example of what is not included in the contract.

Remember, ask the association's attorney to review the contract in advance. Otherwise, the attorney will only see it if something goes wrong after the fact. As they say, an ounce of prevention is worth a pound of cure.



## NEWS ABOUT OUR PEOPLE

Matt Perlstein has been listed in Best Lawyers in America, a preeminent and exclusive referral guide used in the legal profession. The guide contains a list of the top rated attorneys throughout America in over 50 specialties.

Scott Sandler has been reelected Vice President of the Connecticut Chapter of the Community Associations Institute. This will be Scott's third year of service on the board of the Chapter, and second as its Vice President. Scott also serves as Chairman of the Chapter's Bylaw Revision Committee, Co-Chairman of the Chapter's Hartford Area Trade Show Committee, and is a member of the Chapter's Stamford Area Trade Show Committee.

Larry Malick was a featured speaker at the ABC's Course, a workshop for association leaders, held in Cromwell on October 1, 2005 and sponsored by the Connecticut Chapter of the Community Associations Institute. The members of the boards of many different associations attended the workshop and benefitted from the presentations. Larry also serves on the Chapter's Publication Committee, which oversees preparation of the Chapter's magazine, *Common Interest*.

Barbara Sack has joined our office as a Legal Administrator. Barbara has more than 19 years of experience in law office management and business development. She is an exceptionally skilled organizer, communicator and motivator, and is an accomplished administrator. We welcome Barbara's ability to assist our office in growing and maintaining high standards of professional excellence and efficiency.

Donna Diver has joined our office as a paralegal. Donna has nearly 30 years of experience working in the legal profession. She possesses a level of knowledge and skills that can only be acquired over time. We welcome Donna's ability to provide our clients with the best possible service.

### *Law Offices of Matthew N. Perlstein*

*Providing legal services  
to condominium and  
community associations  
including:*

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*Association Borrowing*

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## OFFICE TELEPHONE SYSTEM

If you should call our office and the automated answering system answers, you may use the following extensions to reach us if we are in the office or to leave a message in our individual voice mailboxes:

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Scott J. Sandler	Extension 15
Lawrence C. Malick	Extension 16
Elizabeth A. Dickens	Extension 10
Donna L. Diver	Extension 14
Barbara S. Sack	Extension 18
Jackie Castonguay	Extension 13