

MINUTES: CONTENTS AND RULES

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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!**

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.

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 AOA'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 – 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 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.

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.

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