

**Specially Prepared for the Aloha-Ohana Unit of Parliamentarians  
These issues occurred from September 2003 through June 2004**

There are a total of 160 issues that occurred during this period. They occurred at about 70 meetings.

**Bylaw Issues (15 items)**

1. Bylaw amendments were required at a special meeting. A majority of the board was not present and there was no policy about casting the board majority votes. This jeopardized the adoption of the amendments.
2. Bylaw amendments were required at a special meeting. The vice-president showed us a notarized acknowledgment stating that the amendment was adopted at the meeting that had not begun.
3. Property manager didn't follow our advice regarding numerous bylaw amendments. They ended up on the meeting notice and ultimately none of them were presented at the annual meeting.
4. Check bylaws carefully. Some bylaws have a different order of business.
5. Articles of Incorporation required a board of ten members even though bylaws required nine members. Nobody had caught this error during the entire association's 10+ year history.
6. A *Point of Order* was made about the number of directors and included a threat to sue the association. Bottom line is to know the bylaws and the number of directors.
7. One association had an opportunity to fix their bylaw problem at the annual meeting. Both groups had enough animosity that they wouldn't agree to any amendments.
8. Bylaws require meeting on first Monday, hired as parliamentarian on Thursday prior to Saturday meeting. Ethically, can't serve this association again under the same circumstances.
9. Association articles of incorporation provided that the owners could direct the board. The owners adopted a motion instructing the board to drop a controversial lawsuit relating to vacation rentals.
10. Association organized under HRS §514A had more than 65% voting percentage present at an annual meeting. Several problem bylaws were amended unanimously. The attorney has previously approved amendments for this association under similar circumstances.
11. A letter from the same attorney to another association organized under HRS §514A said they could not amend their bylaws by a motion made at the annual meeting.

The letter said in part, "In addition, having been a Board member for many years, you should know that only items included on the Annual Meeting Agenda may be discussed and voted on

at the meeting. Accordingly, several proposals . . . may not be voted on at today's Annual Meeting."

The inconsistency of this opinion with a similar association does not serve the legal profession nor the community association profession well. (Ref: 514A-82(b)(2))

12. Cooperatives – some bylaws may violate state law. It is important to have legal personnel available. For example, one cooperative's bylaws prohibited non-owners from holding a proxy. The attorney advised that this bylaw violated state law and could not be enforced.
13. The presentation of 23 bylaw amendments at an annual meeting is too much.
14. Last minute discovery of errors with bylaw amendments required a two-hour meeting with the attorney prior to the meeting. Fortunately the amendments were fixable. The errors occurred when an additional section was added and the cross references were not updated. Additionally, the copying of specific language from the state law failed to include "and" when necessary.
15. Approval of specific types of awnings was presented at an annual meeting even though it was a board function. Confusion could have resulted if a vote was taken on a motion that violated the association's bylaws.

#### **Proxy Issues (7 items)**

1. Notice of solicitation never posted for association organized under HRS §514A. Proxies solicited by board using AOA funds could not be used for election.
2. Community association manager used an incorrect date for the proxy deadline. Community association manager didn't notice that Martin Luther King day is a Federal, State, and City holiday. Result: Several proxies could not be used.
3. In another case, property manager decided to simply require the proxies to be turned in 3 days earlier.
4. At least two property management companies attempted to impose a fine for failure to send in a proxy form.
5. Consider returning voided proxies to individuals who wish to vote at the annual meeting.
6. Demand by one individual to review proxies immediately following the meeting held the staff "hostage." Demand compounded by (a) parliamentarian's explanation to member that this was an internal matter between property management and the association and (b) property manager decided to permit complete review immediately after the meeting adjourned at 7:10 p.m.
7. Proxy deadline for a Saturday meeting was incorrectly set as Wednesday. Association attorney agreed that Thursday was correct only after the proxy review and consultation with the president. President attempted to cite Bush v. Gore as argument that proxies received should

not be permitted. It didn't help that the meeting notice also contained an incorrect proxy deadline date.

### **Notice Issues (7 items)**

1. Notice contained number of directors to be elected at annual meeting. This could have changed.
2. Notice contained improper items. For example, contained the date of next annual meeting, which was not specifically authorized in the bylaws.
3. Notice had a different meeting start time than the newsletter. The chair started 30 minutes late. Food helped.
4. Notice should contain an earlier check-in time if delays are anticipated. This will help the meeting to start on time.
5. Property manager customarily did meeting at wrong time/date of year. (\*)
6. Notice was required to be by certified or registered mail. We don't know if that was done.
7. Association was a non-profit corporation with cumulative voting for one-third of the director positions (naturally expiring positions only). Notice was reviewed by president and association attorney. Both missed the cumulative voting provision. Numerous angry owners were present. They were led to believe that the property management company was responsible for the error. The result was that the election was held without cumulative voting.

### **Meeting Issues - Scripts (10 items)**

1. Script prepared by association president instead of parliamentarian. There were 18 suggestions for correcting the president's script, which doubled the bill.
2. Last minute script changes by a general manager with a year of law school could have backfired.
3. Sometimes it is better to minimize the distribution of extra copies of the president's script. This helps to avoid micro-management of the president's script.
4. Chair had trouble reading script. Double-sided script made it more difficult for chair to read. Use single-sided script with large text.
5. Names on the ballot must match the script. Property manager and parliamentarian need to make sure that the names are correct and in the same order on the script.
6. Certificates for outgoing board members – make it during meeting. It should be in the script.

Parliamentarian should be forewarned when awards are to be provided. Advance notification will ensure that the chair doesn't forget to present the award.

7. Make sure the correct years are used in the tax resolution. It should come from the CPA. Be careful of associations with a fiscal year that is not the calendar year.
8. Approval of property management contract was skipped in 2003. It was caught and corrected in 2004.
9. Courtesy resolutions, if any, should be included in the script.
10. Parliamentarian needs all pages of the script, not just the even ones!

### **Meeting Issues - Chairmanship (22 items)**

1. Start on time. (\*)
2. Chair holds others hostage with long speeches. For example, the chair provided a 2-3 minute historical background of each board member, adding 15 minutes to the meeting time, and angering many owners. (\*)
3. Chair needs to know how to pronounce people's names.
4. Politicians and attorneys at the meeting can delay the meeting. My experience has been that they do not adhere to time limits. Make them wait. Don't delay the election. Chair can request that a non-member (i.e. a politician or an attorney) "summarize" in order to finish his/her speech. (\*)
5. Chair's under-breath comments can carry. Chair must be especially careful when a live microphone is used.
6. President's report should be larger text.
7. Make sure that the names of the tellers are clearly articulated.
8. Chair starts meeting by making a short statement slandering various groups. Sets the stage for 100+ angry owners.
9. Chair attempted to impose two minute rule on owners except the chair.
10. Children need to be controlled. The chair needs to take action before they cause a disturbance to the meeting. (\*)
11. Chair lost temper due to financial and personal stake in a commercial operation. This is a case where a professional presiding officer would have conducted a better meeting.

12. President should not preside when a removal motion is only for him/her.
13. When an individual acts as chair (e.g., the vice-president) the individual must not debate.
14. Chair forced the board committee reports on the members.
15. President didn't have his reading glasses. This handicapped the entire meeting process. The vice-president should take the chair if the president is physically challenged.
16. The chair's 10 minute answers to 10 second questions caused the meeting to continue for an extra 45 minutes.
17. Don't start the meeting early.
18. One chair had a special eye condition and smaller print was required.
19. Some people don't appreciate the use of a claw hammer as a gavel!
20. The chair juggled the nominating speech order despite advise from the parliamentarian.
21. Chair has a responsibility to protect the assembly from any disturbances. A special rule is not needed.
22. Chairs must be aware that some people may have a physical impairment that prevents them from standing up and addressing the chair.

**Meeting Issues - Reports (9 items)**

1. Property managers are in an ideal position to review reports prior to distribution to the owners.
2. President's report should not be a nominating speech. (\*)
3. Resident manager presented a surprise report. There is generally no authority in the bylaws for the resident manager to present this report directly to the owners.
4. Resident manager's report, if any, should also have a time-limit that is authorized by the association.
5. Resident manager's report at an association meeting "bought time" for the election to be concluded. It also had a calming influence on the members.
6. Reports are made to the appointing authority. This includes committee reports. Committees appointed by the board report to the board. (\*)
7. Auditor's report wasn't reviewed by the board and owners asked substantial questions about it. Auditor's answers were not helpful. This led to a motion to *Fix the Time to Which to Adjourn* followed by a counted vote on approval of the auditor's report.
8. Treasurer had surprise handout and insisted on going through it line by line. This added an extra 15-20 minutes to the meeting. This could have been reviewed during the balloting instead of prior to the election.
9. Last minute presentation by a non-owner prior to the election required a suspension of the rules.

**Meeting Issues - Rules (6 items)**

1. Make sure boards know that meeting rules will be in the check-in packet. Include them in packet so that they are not highlighted in a negative manner.
2. Property manager didn't include the meeting rules in the packet. Debate limit without rules is 10 minutes and there was no authority for preventing taping of the meeting.
3. Property manager didn't have rules ready. Twenty minutes before meeting president had to copy and distribute, drawing unnecessary attention to them.
4. Meeting rules never permanently adopted. This severely handicapped the chair's ability to keep order.
5. Rule requiring that cell phones be placed in the "silent mode" should be added. (\*)
6. Recording of meeting was permitted. In one case there were three tape-recorders and one vide-

camera used for recording the meeting. Chair specifically wanted the rule against recording to be omitted.

**Meeting Issues - Voting (40 items)**

1. Parliamentarian's written suggestions about correcting the voting explanation and the ballots were ignored. Result was that butterfly ballot was continued and instructions were incomplete.
2. Large groups should use ballot boxes. These boxes can be a source of cheap advertising.
3. Approval of travel expenses by a show of hands does not necessarily reach the level required by the law. Obtain legal assistance.
4. Attempt to require a roll-call vote on the removal of directors.
5. Attempt to require a signed ballot vote on the removal of directors.
6. Attempt to combine an unauthorized mail ballot with the voting process at the meeting.
7. Property manager was there alone with a calculator, but no tape.
8. Voting results should be in indelible ink. This helps preserve the information, especially after water has been spilled.
9. New property managers (and some older ones) should have a supplemental script that explains the ballot process.
10. A pro-rated ballot where the board majority is split along uneven percentage lines presents several problems. An informed owner or teller may be able to raise a *Point of Order* that such a ballot cannot be counted.
11. Voting started and members wanted to re-open nominations. It was too late.
12. Chair didn't understand board majority versus majority present. Consider a backup handout that explains what these terms mean.
13. Election still deadlocked after several (6) attempts. Bylaws required a secret ballot. Nobody would blink. The quorum only selection handicapped this association. Consider a change to permit a plurality vote to elect. RONR 429 provides that an election should be completed or an adjourned meeting scheduled. Board members usually stay on until their successors are elected. (\*)
14. One of the board members was confused and used an incorrect ballot so property manager decided to "scrap" the first vote and take another one. In this case any voting could have been done without the "incorrect ballot" that was handed in.

15. Election deadlocked by majority of owners' requirement.
16. One group was not paying attention and didn't turn in their ballots. There were approximately 150 people at the meeting. The election results were announced and a second election (for the other part of the property) was conducted. After the second election was concluded the group was upset because their votes would have affected the outcome of the election.
17. Bylaws required secret ballot. This needs to be done if in the bylaws. (\*)
18. Property manager attempt to declare election by acclamation. Property manager has no authority to make any procedural declaration at the meeting. (\*)
19. Wrong counts reported on election. Results fortunately did not change election. Since the meeting was in session, we were able to correct the results prior to adjournment.
20. The majority present is based upon more than one-half of the members present, including limited proxies (quorum only).
21. There are different opinions about the notice requirement and requesting requirement for cumulative voting pursuant to HRS §414D. The opinions depend upon the particular law firm.
22. Chair was so busy discussing other issues that he didn't focus on casting his votes properly. This affected the election results.
23. If an election deadlock is expected it is important to pre-establish the order of election of board members. For example, if 3 positions are opened for election and only one can be filled, which position gets filled and which directors remain as holdover incumbents?
24. It is important for property managers to know what to do when a co-owner is present and (a) the other owners are absent or (b) two co-owners disagree about the casting of a vote.
25. The ballot totals didn't balance. It added twenty minutes to the meeting but the error was found. This occurred even though there were only 16 people at the meeting.
26. Arguments occurred over placement of names on the ballot; the individuals were nominated anyway.
27. Different colors were used for the election ballot. One color was used for proxy-holders; another color for individual ballots. This created confusion.
28. Instructions by property manager on ballot must be careful to state, "ballot may be voided" rather than "ballot will be voided." (\*)
29. When new owners are present at a time-share meeting followed by an AOA meeting, it seems to help if the voting processes are explained.

30. One way to handle the deadlocked election where there was one position and four nominees. Three people "blinked" and withdrew. A final ballot was taken which easily elected someone to the fourth position.
31. Nominating speeches are sometimes concluded with a statement of withdrawal followed by a recommendation to support another candidate. Members are allowed to withdraw prior to the election.
32. Motions to table the election to avoid dealing with it at that time are out of order.
33. Motion to permit cumulative voting (§514A and §414D) when (a) bylaws required it, (b) notice of cumulative voting was provided, and (c) nobody requested it was ruled out of order based upon attorney's opinion. These opinions may vary from one law firm to another.
34. Written explanation of cumulative voting had incorrect number of vacancies. Fortunately parliamentarian caught it and made sure that the appropriate corrections were made.
35. Administrative personnel need to make sure that they assist the tellers. In one case, the administrative personnel were chatting affably while the tellers were doing all of the work.
36. Ballot printing was misaligned on some ballots.
37. Cooperatives – Property manager used percentage voting based upon maintenance fees instead of required votes in the Articles of Incorporation.
38. Chair decided the board majority ballot without any formal policy or checking with other board members. Caused dissension with the minority of the board even though the results were not affected.
39. Ballot had some sort of control number which could have violated the secret ballot rule.
40. Property manager unable to report number present or voting according to homeowner association documents. Instead reported as percentages.

**Minutes' Issues (3 items)**

1. Same incorrect minutes each year, same corrections each year needed for the script. This occurred even though the board was authorized to approve the minutes. (HRS 421J)
2. Property manager altered original minutes to indicate the recounted results of an election. Recounted results were done after the meeting was adjourned. Members didn't "trust" the board or property manager and refused to authorize the change to the minutes or the recounted results. The original results remained as the official results. The issue of minutes added 1.5 hours to the meeting.

3. Owners were upset about minutes and adopted a motion requiring that the unapproved draft of the minutes of the annual meeting be sent to them within 30 days after the adjournment of the annual meeting.

**Miscellaneous Issues (32 items)**

1. Previous meeting (including election process) was so bad that property management was financing the entire meeting to elect an entirely new board. No meeting rules, no ballots available for special votes, a re-check in was needed.
2. Approval of written questions and answers to candidates was forced to a vote, adding at least two hours to the election process. 150 people were present at this meeting.
3. Confusion between AOA and time-sharing increased meeting length. Consider a simple information handout that describes the processes.
4. Board members, property managers, and parliamentarian need to be informed when litigation related issues are expected at meetings.
5. Improper motions at special meetings should be ruled out of order. If expected, discuss with parliamentarian in advance.
6. Ownership was based upon members registered with property management instead of actual. If a member provides adequate proof of ownership, then he/she is a member and must be recognized as an owner at the meeting.
7. Check the physical area. In one case the perpetrator was a loud soda machine.
8. Property manager recommended two administrative assistants. However, the board cut it down to one. The result was that it took longer to tally the election results and the owners blamed the property management company.
9. When a large group is present (over 200 people) suggest that more than two administrative assistants be used. Even if the election is computerized, the check-in process needs to be more efficient.
10. Courtesy curtain at head table should be considered. In one case this could have been combined with the video-tape of the meeting.
11. Provide distance between the head table and the front row. Suggest at least 10-15 feet, if possible. (\*)
12. A blackboard or dry-erase board should always be available for nominations and elections. (\*)

13. Property manager was using special meeting as a means to perform the election and approve minutes. This was occurring for several years. This affected the filling of vacancies by the board.
14. Consider having the sign-in sheets include a statement certifying that the owner received the appropriate ballots and the percentage is correct. (\*)
15. The tax resolution may be easier to manage with large groups if it is included as part of the owners' handout.
16. Microphones should be used whenever there are 40 or more members.
17. Units purchased by the association need advance legal assistance. In one case a majority of the owners never approved the purchase. Creates legal issues that could have been avoided.
18. When a substantial number of new owners are present it may be necessary to educate them about the purpose of the owners' forum and the limited aspect of the annual meeting.
19. Motions out of order may sometimes be presented in the form of a recommendation.
20. Parliamentarians may not ethically serve an organization if their advice is habitually disregarded. One alternative is to have the parliamentarian act as the professional presiding officer.
21. Presentation of motion at the annual meeting ordering board meetings to be opened to all owners and to allow them "free and full participation and deliberation on any issue." Fortunately the attorney was there to interpret the state law and backup the parliamentarian that the motion was out of order.
22. Large number of individuals at head table with no microphones for them. There was only one microphone for the chair. The chair should not have to relinquish his/her microphone.
23. General manager got involved with politics of the filling of a vacancy. Attorney's verbal opinion about the filling of the vacancy was diametrically opposite from the previous year. No bylaws were amended.
24. Attorney got involved in the politics of the organization and attempted to have the chair obtain only the negative vote on numerous structural changes and overrun one individual's problem with eliminating the hot water from the common shower. This individual could have demanded a separate vote on the hot water issue.
25. Most owners don't know the meaning of a *Point of Order*.
26. Dual restraining orders at the annual meeting became an issue. It is important to have legal assistance if there are restraining orders against any individuals.
27. A marker that has a strong smell in a tiny space can cause people to become ill. One person

had an asthma problem.

28. Board discloses the names of anyone with more than 10% of the common interest by proxy. The association attorney was present at the meeting. I hope it doesn't violate the condominium statute. That is the attorney's call.
29. An owner's home was in escrow. The association membership attempted to control the expected vacancy. This was ruled out of order.
30. No motion forms were available for the annual meeting. Suggest that property manager maintain a set of blank motion forms to make sure that there is a proper record.
31. Make sure that the size of the head table is planned for the correct number of board members, property managers, etc.
32. Cooperatives – Failed to file corporate exhibit and was dissolved. Took years to fix. Didn't have an annual meeting for two years.

#### **Owners' Forum Issues (2 items)**

1. Avoid conducting the owners' forum prior to the meeting's adjournment. The presence of new owners has led to motions that were out of order.
2. In one case the owners' forum was conducted during the recess and prior to adjournment. It was successful because of the extensive time required to perform repeated balloting.

#### **Opinion Issues (7 items)**

1. Requirements to provide previous notice of bylaw amendments.
2. Correctness of proceeding for removal and election of directors.
3. Propriety of rationale as part of the mailing for written consent of a bylaw amendment.
4. Bylaws required a ballot. This was not done. Minutes did not reflect an individual's comments. Questions about validity of meeting.
5. Parliamentary issues about attendance at a board meeting.
6. Improper election tally and results after the meeting.
7. Improper election tally, no terms ever stated in association minutes.

Notes:

(\*) Indicates that these issues occurred several times.

Prepared by:

Steve and Rachel Glanstein  
Professional Registered Parliamentarians  
Phone: 808-423-6766 – [mic@aloha.com](mailto:mic@aloha.com)