



## LEGAL

### PARLIAMENTARY LAW AND PROCEDURES

Parliamentary Law is common sense used in a gracious manner. That is – Courtesy and Justice to all. Consider one thing at a time. The minority must be heard and the majority must prevail.

#### Basic Definitions:

Parliamentary Procedure is the application of parliamentary law to the conduct of an organization. It is wise for all leaders to familiarize themselves with the accustomed technique of conducting a meeting. While it is important that the members understand the fundamental rules of parliamentary procedure, this knowledge should be used only to insure order, to expedite business, and to develop an organization that will cleave to the objects for which it was organized. For a member constantly to raise points of order and to insist upon the strict observance of every rule in a peaceable assembly where there are members ignorant of these rules and customs is but to defeat the opportunity of gradually accustoming the membership of the proper observance of parliamentary procedure.

**Q:** Why is parliamentary procedure important?

**A:** Because it allows everyone to be heard and to make decisions without confusion.

#### Parliamentary procedures means:

- a. democratic rule
- b. flexibility
- c. protection of rights
- d. a fair hearing for everyone
- e. it can be adapted to fit the needs of any organization

**The Constitution and Bylaws** of an organization contain specific rules for the conduct of its business. General rules and customs for orderly procedure in addition to these specific rules are commonly known as parliamentary law. These rules are needed to guide the deliberations of an organization in order to do the right thing in the right way at the right time, and to secure the best results with the least expenditure of time and effort. The underlying principles of parliamentary law are justice and courtesy to all, one thing at a time, the rule of the majority, and the right of the minority.



**Parliamentary Authority** - It is important for every organization to adopt some authority on parliamentary law, and for the members to be familiar with both the specific and the general rules of the organization. A copy of the by-laws should always be on the commander's desk. Excellent books and small leaflets on parliamentary procedure have been written in simplified form and are available, but Roberts' Rules of Order Revised is the accepted authority for The American Legion.

**Authorized Business** - Authorized and lawful business, which the organization becomes responsible for, can only be transacted at meetings regularly or specially called for that purpose at which meetings there is a quorum present. The notice for a special meeting must state the special business to be transacted, and no other business can be entertained. If no quorum is present, the motion to adjourn and to provide for an adjourned meeting is the only motion in order. If additional knowledge of Parliamentary Procedure is deemed necessary, posts should refer to Roberts' Rules of Order.

**The Chair** – means the Presiding officer, generally the President or Commander. The Chair must be neutral not taking the part of either or any.

To have the Floor – is to have been given, by the Chair, the right to speak. No one may speak until or unless recognized by the Chair for the purpose of speaking.

**Minority** – is the smaller number of two parts or parties; the minority **MUST** be heard and heard from.

**Majority** – is more than half of a given number of a group, the greater part. The majority **MUST** prevail.

**Quorum** – means the lowest number of members, or Posts, or Departments that must be present in order to transact business. The number necessary for a quorum should be stated in the Bylaws.

**Ex-Officio** – means "by virtue of office." The ex-officio member of a committee is a member designated as such by the Bylaws. The ex-officio member has regular committee member privileges; that is, the right to make motions, to join in debate and to vote. The ex-officio member is **NOT** counted in the quorum of a committee.

**A majority vote** is one in which the number of votes cast is greater than one-half the total number of votes cast.

**A plurality vote** is one in which the number of votes is simply the highest number cast, regardless of majority.

**A two-thirds vote** is just what the name implies: Two-thirds of the total number of votes cast.



### **Order of Business or a Fixed Agenda**

- a. Call to order – if a quorum\* is present, the chair says, “The meeting will come to order.
- b. Minutes – the secretary reads a record of the previous meeting.
- c. Treasurer or Finance Officers report -
- d. Officer’s reports –
- e. Committee reports – first come reports of standing (permanent) committees, then from special (temporary) committees.
- f. Special orders – this is important business previously designated for consideration at this at this meeting.
- g. Unfinished business – this is business that has come over from the previous meeting.
- h. Communications or correspondents – are read aloud.
- i. New business – New topics are introduced.
- j. Announcements – these inform the assembly (the people at the meeting) of other subjects and events.
- k. Adjournment – the meeting ends by a vote or by general consent (or by the chair’s decision if the time of adjournment was set by an earlier vote).

### **Motions**

**Q:** How do members get their say?

**A:** They make motions. A motion is a proposal that the assembly takes a stand or takes action on some issue. Members have the right to:

- a. Present motions – make a proposal
- b. Second motions – express support for discussion of another member’s motion
- c. Debate motions – give opinions on the motion
- d. Vote on motions – make a decision

### **How do I present my motion?**

- a. Obtain the floor.
  1. wait until the previous speaker is finished
  2. rise and address the chair, say (Mr. or Madam - Commander, President, Chairman)
  3. give your name, post number, title. The chair will recognize you by repeating it.
- b. Make the motion.
  1. speak clearly and concisely
  2. state your motion affirmatively, says “I move that we do...” instead of saying “I move that we do not . . .”
  3. or presents a resolution to the floor



- c. Second the motion.
  1. another member will say, "I second the motion."
  2. or the chair will call for a second.
  3. if there is no second, your motion will not be considered. Motions made at the direction of a board or committee (of more than one person) does not require a second.
  
- d. The chair states your motion.
  1. the chair must say, "It is moved and seconded that we..."
  2. after this happens, debate or voting occur
  3. your motion is now "assembly property," and you can't change it without the consent of the members
  
- e. Discussion
  1. as the person who made the motion, you are allowed to speak first
  2. direct all comments to the chair
  3. keep to the time limit for speaking
  4. you may speak again after all other speakers are finished
  5. you may speak a third time by a motion to suspend the rules with a 2/3 vote
  
- f. The chair puts the question
  1. the chair asks, "Are you ready for the question?"
  2. if there is no more debate or if a motion to stop debate is adopted, a vote is taken
  3. the chair announces the results
  
- g. Announce the vote
  1. the chair will state the motion carried or not

### **The Method of Voting on a motion.**

Depending on the situation and the Bylaws of your organization, you may vote by:

- a. **Voice** – The chair asks those in favor to say "aye" and those opposed to say "no" (for majority votes only). A member may move for an exact count.
  
- b. **Show of hands** – Members raise their hands to verify a voice vote or as an alternative to it. This does not require a count. A member may move for an exact count.
  
- c. **Roll Call** – If a record of each person's vote is needed, each member answers "yes," "no" or "present" (indicating the choice not to vote) as his or her name is called.



- d. **Ballot** – Member writes their vote on a slip of paper. This is done when secrecy is desired.
- e. **General Consent** – When a motion isn't likely to be opposed, the chair says, "If there is no objection..." Members show consent by their silence. If someone says, "I object," the matter must be put to a vote.

**There are 5 general types of motions:**

- a. **Main motions** – These introduce subjects for consideration and bring new propositions before the assembly. They cannot be made when another motion is before the assembly. They yield to privileged, subsidiary and incidental motions. For example "I move that we purchase..." Most of the business of any Post, Unit, Squadron Meeting and District or Department Convention is done by means of Main Motions. A motion that presents a new question is called a Main Motion. There can be but only one Main Motion before the meeting at one time; they are open to debate and usually require a majority vote to carry them. To rescind is a main motion requiring a vote if previous notice has not been given.
- b. **Subsidiary motions** – These change or affect how the main motion is handled. They are attached to other questions for one or more of three purposes: To modify (amend), to delay action, and to stop debate. It is important to know the order of precedence when dealing with subsidiary motions. They are voted on before the main motion. For example: "I move to amend the motion by striking out..."
- c. **Privileged motions** – Are so important that they may break in almost any time. These concern special or important matters not related to pending business. In general they are considered before other types of motions. Three commonly used are to take a recess, to adjourn and to fix time and place to adjourn. For example: "I move that we adjourn."
- d. **Incidental motions** – Are used to keep the business of an organization moving properly should matters become too complex and confusing. They must be considered before the other motion. For example: "I move to suspend the rules for the purpose of ..." Commonly used are:
  - 1. **Withdrawal of a motion** – may be asked for by the maker, and if no one objects, withdrawal is allowed. If anyone objects, it is necessary to make a motion to permit its withdrawal.
  - 2. **Point of order** – is made to call attention to a parliamentary mistake.



3. **Appeal from the decision of the Chair** – is made if a member disagrees with the presiding officer's decision. The assembly may vote either to sustain or overrule the Chair's decision. An appeal is usually debatable.
- e. **Motions that bring a question again before the assembly.** – These enable certain items to be reconsidered. In general, they are brought up when no business is pending. For example: "I move to reconsider...."

### **Facts about Motions:**

#### **A. Main Motions**

- a. Made first and lowest in rank.
- b. Motion once voted may be brought before the meeting by proper method: Reconsider (same day). Made by one who voted on prevailing side. Rescind (? vote).

#### **B. Postpone (Indefinitely)**

- a. A motion to postpone (indefinitely) cannot be amended but is debatable and opens the main question to debate.
- b. A negative vote cannot be reconsidered.
- c. If lost, the motion cannot be renewed.
- d. The object of this motion is not to postpone but to reject the main motion.
- e. If carried, the main motion is suppressed for the session.

#### **C. To Amend**

- a. A motion to amend the main motion is debatable only if the main motion is debatable and can be amended. However, an amendment to the amendment cannot be amended.
- b. A motion to amend is a proposition to change the phraseology of a motion to which it applies and it should state by what method the change is to be made.
- c. Say, "I move to amend by" and not, "I amend."
- d. The motion to amend is not an amendment until it is voted on affirmatively, so say, "I second the motion." Motion to amend is made by adding, deleting, inserting, for substituting.
- e. Two amendments may be pending at the same time and the second must be germane to the first.

#### **D. Refer or Commit.**

- a. This motion has a delaying action.
- b. Is amendable.



- c. Is debatable, but only as to the propriety of committing the main question to a special committee, to a standing committee, for information or for recommended action.
  - d. Pending amendments go with the main motion to the committee.
  - e. If the committee to which the motion is committed is a "special one," it is necessary to designate the number to serve on the committee and how it is to be appointed. It is also necessary to designate what action the committee is to take (information-action).
- E. Postpone (to a definite time)**
- a. This motion has a delaying action. It allows limited debate.
  - b. It must not go into the merits of the main motion.
  - c. It is amendable as to time. The time must not be beyond the next regular session.
  - d. It becomes the order of the day for the time to which it was postponed.
- F. Limit or Extend Limits of Debate.** (Undebatable and amendable)
- a. Takes two-third vote to carry. "Is one of two motions to limit or extend limits of debate by which an assembly can exercise special control over debate... on pending questions?"
  - b. The other motion serving such a purpose is previous question.
- G. Previous Question.** (Undebatable. Not amendable)
- a. Takes two-third vote to carry. To make this motion say, "I move the previous question on (state the motion)." This motion means "I move that debate now cease and voting begin." When this motion is made, the presiding officer says, "The Chair would remind the members that it requires a two-third vote to carry the motion, and if carried, debate on the pending motion (or motions) will cease."
- H. Lay on the Table.** (Undebatable. Cannot be amended.)
- a. Cannot be qualified.
  - b. Cannot be repeated the same day on the same question, if lost.
- I. Take from the Table**
- a. Motion to take from the Table cannot be amended; cannot be renewed until business is transacted since it is lost.
  - b. Cannot be reconsidered.
  - c. Business must transact between it and motion to Lay on the table.



- J. **Adjourn.** (Undebatable. Cannot be amended.)
- a. A motion to adjourn is always in order after the moment the meeting opens, even if there is business to be transacted. Therefore, the Presiding Officer should not say, "A motion to adjourn is in order," but rather, "If there is no further business, will someone move to adjourn?"
- K. **Fix Time and Place.** (To which to adjourn)
- a. This motion is undebatable but amendable.
  - b. Time must be before the next regularly called meeting.
  - c. At the time this meeting is held, it is an adjourned meeting of the first and is recorded as such, and would take up business where it was left off previously.
- L. **To Reconsider.** (Cannot be amended)
- a. A motion to reconsider means, "I move to annul the vote and reconsider the motion."
  - b. Must be made by one who voted on the prevailing side, unless the vote was taken by ballot; then any member may make the motion to reconsider.
  - c. Can be made only at the meeting at which the vote was taken unless special rules provide otherwise in the Bylaws. Say "I move to reconsider the vote on the amendment striking out... and inserting..."
  - d. The Presiding Officer says, "Did the member vote on the prevailing side?"
  - e. The following may not be reconsidered:
    - i. Nominations.
    - ii. Fix time and place to adjourn.
    - iii. To adjourn.
    - iv. Take from the table.
    - v. Lay on the table.
- M. **Rescind or Amend Something Previously Adopted.**
- a. Rescind (also known as repeal or annual) is the motion by which a previous action or order can be cancelled or countermanded.
  - b. Amend something previously adopted is the motion that can be used if it is desired to change only a part of the text, or to substitute a different version. A two-thirds vote is required if no previous notice was given, otherwise majority vote carries.





**Parliamentary Motions:**

1. Debatable:
  - a. Main Motions – made first and amendable
  - b. Postpone indefinitely
  - c. Amendment to Main Motion – amendable
    - i. Amendment to the Amendment
    - ii. Refer or Commit – amendable
    - iii. Postpone to a Definite Time – amendable
2. Undebatable:
  - a. Limit or Extend Limits of Debate -? Vote
  - b. Previous Question -? Vote
  - c. Lay on the Table
  - d. Adjourn
  - e. Fix Time and Place to which to Adjourn – amendable

**Some questions relating to motions:**

1. Is it in order? – Your motion must relate to the business at hand and be presented at the right time. It must not be obstructive, frivolous or against the bylaws.
2. May I interrupt the speaker? – Some motions are so important that the speaker may be interrupted to make them. The original speaker regains the floor after the interruption has been attended to.
3. Do I need a second? – Usually, yes. A second indicates that another member would like to consider the motion. It prevents spending time on a question that interests only one person.
4. Is it debatable? – Parliamentary procedure guards the right to free and full debate on most motions. However, some subsidiary, privileged and incidental motions are not debatable.
5. Can it be amended? – Striking out or inserting wording, or both can change some motions. Amendments must relate to the subject as presented in the main motion.
6. Can it be reconsidered? – Some motions can be debated again and re-voted to give members a chance to change their minds. The motion to reconsider must come from the winning side.
7. What vote is needed? – Most require only a majority vote (more than half the members present and voting). But, motions concerning the rights of the assembly or its members need a 2/3 vote to be adopted.



## Amendments

After the presiding officer has stated the question to the assembly, it may be desirable to change it in some way. A member may rise, address the Chair, and after being recognized by the Chair, say, "I move to amend the motion by adding the words (with proper supervision) after the word (playground)." After the motion to amend has been seconded, and the motion repeated, as it will read if amended so all may understand the effect the amendment will have on the main motion, the Chair then calls for remarks on the amendment.

The discussion is now upon the proposed amendment. After discussion is over, the Chair puts the question and calls for a vote on the amendment. For example, "The question is on adding the words (with proper supervision) to the motion we take action to secure a playground for this community. All those in favor of this amendment please say (aye), those opposed say (no)." After announcing the result of the vote on the amendment, the Chair will then restate the motion before the house, in its original form if the amendment has been lost, or as amended if the amendment has been carried and the vote is then taken upon the question in its final form (if no further amendments are offered).

An amendment may be offered in any of the following forms: "I move to amend by inserting," or "adding" if at the end of the motion; "I move to amend by striking out and inserting," or "by substituting" in case of any entire resolution, by-laws or paragraph.

Only one amendment of the first degree is permitted at a time when a motion or resolution is under consideration, but one amendment of that amendment—that is, an amendment of the second degree—is also in order. While there may be only one amendment of each degree pending at the same time, any number of them may be offered in succession after disposing of the prior amendment. An amendment must relate to the subject to be amended.

The amendment of the second degree, if there is one before the assembly receives first consideration. After disposal, unless another secondary amendment is offered, the amendment of the first degree is then pending. After all amendments have been disposed of, the main motion as amended (or in its original form if all the amendments have been lost), is placed before the assembly for action.



### What shall I do?

1. To introduce business? Make the main motion.
2. To modify the motion? Amend, commit or refer.
3. To defer action? Postpone to a certain time; make a special order (require a two-thirds vote); lay on table.
4. To suppress or limit debate? Move the previous question (two-thirds vote); limit debate (two-thirds vote).
5. To suppress the question? Object to the consideration (two-thirds vote); postpone indefinitely; lay on the table.
6. To consider a question a second time? Take from the table; reconsider; rescind.
7. To prevent action from becoming final? Reconsider and have entered on the minutes.
8. To reverse the decision of the Chair? Appeal.
9. To make a request for: Parliamentary inquiry; information; permission to withdraw a motion; reading papers, excused from duty, any other privilege. (See Roberts' Rules of Order, 44 to 51.)
10. To correct a mistake? Rise to a point of order.

A motion that's been carried, lost, or postponed indefinitely can't be considered again during the same session except by a motion to reconsider the vote disposing of the question, or to rescind the action taken.

The motion to reconsider can be made only by one who voted on the prevailing side. The motion to reconsider must be made on the same day or the calendar day (not counting Sundays or holidays) after the vote, which is to be reconsidered, was taken. Any member may second this motion. The motion to reconsider, if carried, annuls the vote already taken and brings the motion before the assembly again for action.

A motion to rescind an action may be made if the motion to reconsider is not already pending. The motion to rescind may be made by any member. Its purpose is to undo some action already taken and is identical with the motion to amend by striking out something previously adopted, such as a by-law, resolution, section, or paragraph. If made on the same day, it only requires a majority vote, but on a subsequent day, if without notice of intention to rescind it, requires a two-thirds vote.

In case of doubts as to parliamentary procedure, or if difficult questions arise, such as to lay on the table, to postpone, to limit debate, to reconsider, point of order, etc. consult the parliamentary authority.



**Motions Classified in Order of Priority**

- i. **Privileged Motions:** Fix time to Adjourn; To Adjourn; To Recess \*\*; Question of Personal Privilege\*, Call for Order of Business.
- ii. **Incidental Motions:** Point of Order, Appeal\*, Objection (2/3), Read Paper, Divide Motion, Withdraw Motion, Suspend Rules (2/3)
- iii. **Subsidiary Motions:** Lay on Table; Previous Question (2/3); Postpone to Indefinite Time \*, Refer to Committee \*; Postpone \*; Amend Amendment \*; Amend \*; Objection to Consideration (2/3).
- iv. **Main Motion** \*: A main motion is used to bring before the meeting any particular subject for consideration of the assembly.

NOTE: \*Are debatable—others are not.

\*\* Debatable only when no other motion pending.

Those not marked with (2/3) require only majority vote.

See Table 1 - For more Information on Motions (page 29)



## RESOLUTIONS

### The American Legion National Headquarters Procedures for Resolutions

#### ***Why?***

Resolutions are necessary for The American Legion to go forward. As noted by PNC Smith in the April issue of the 2001 magazine, "Without the resolution process, our organization would not have guidance in developing programs, allocating funds to help veterans or targeting Congress with issues that affect you, me and the rest of this great country of ours."

#### ***Origination***

Departments are responsible for transmitting resolutions to National Headquarters for action at the National Executive Committee or the National Convention. They basically are written at the Post or Department levels.

#### ***Post as originator***

A Post passes a resolution and transmits it either as an info copy to the Department or with the intent that the Department should consider it at one of its meetings. After consideration, the question is, should the Department deal with it at its Department Convention or DEC?

- Is the subject matter of only a local concern to the Post?
- Might there be a wider implication affecting Posts other than the one who submitted it?

#### ***Subject of resolutions***

Example, the local posts resolves to award a medal to a local fireman who has saved a life. Probably there is no reason for the Department to consider it for further action at its own meetings.

But if there had been a number of such brave efforts by firemen around your state, maybe that could call for a state-wide resolution recognizing this.

#### ***Department procedure***

After determining to accept or not, the Department might submit the resolution through one of its own meetings due to a state wide or national issue, using a special form developed in the department for this.

If the action or problem involves a national issue, and if the resolution passes at the Department level, a resolution should be submitted to National HQ.



### ***Department as originator***

The Department may determine that an issue is very important and needs to be addressed at national level. How that committee at Department level brings about the resolution is at the discretion of the Department. However, all resolutions must be certified by the Department Adjutant that they were considered and approved at either the Department Convention or the Department Executive Committee meeting.

### ***National Executive Committee or National Convention***

Generally, both the National Convention and the National Executive Committee have the same authority to consider the same subject matters and pass resolutions.

Exceptions are:

- Financial (the National Convention delegates can only set the dues and the NEC can only allocate the monies of the organization)
- Setting of eligibility (only the National Convention delegates recommend to Congress that the eligibility criteria is to change). So when you determine that the subject matter of a resolution is of national significance, then it can be sent for consideration to either of the two national meetings.

### ***Germaneness or relevancy of subject matter***

Is the subject matter really germane? Does the Legion consider such a position within the mandates as outlined in its preamble?

- A resolution that calls for saving the environment of the spotted woodpecker might make some people happy, but what does this do with the Legion's main mission?

Has The American Legion already a current position on the subject?

- Sending in a resolution that concerns something we already have a position on, means that the action of the NEC or National Convention to the resolution will be "received and recorded".

Can the subject matter be taken care of administratively without the need of a resolution that might not be considered for a number of months?

- A resolution that asks for the department cap patch to be changed from one design to another can be dealt with directly with Emblem Sales; no need for a resolution at national level. But a copy of a resolution passed at the Department Convention could be used as authority when submitting to Emblem Sales that the Department wants to bring about the change.

Does the resolution involve a local issue?

- Giving a plaque to a local VA official need not be put into a resolution for national approval, assuming that the wording on the plaque would be non-controversial.



It is reasonable that the intent of the resolution can be realistically attained?

- A resolution that calls for the elimination of terrorism sounds great, but why pass such a resolution if it cannot realistically be accomplished, unless there are sound ideas and suggestions in the resolution as to how this can be done.

Does the resolution deal with a politically sensitive issue, such as the recommendation of a political appointment?

- Recommendations as to who should be appointed to a government job takes us too close to a political action, and we are supposed to be non-partisan.

Is the resolution in proper format?

- If a constitutional amendment is not specific as to what it wants as an action, plus if there is not a written description of what the change should be, the resolution most likely will be ruled out of order.

Should The American Legion be involved in the issue?

- Because we normally do not have research physicians on staff to make a recommendation to the DVA as to the suitability of a particular drug over another, we should not be advocating medication. But we certainly could call upon the DVA to use the most appropriate medication to treat the patients under their care, regardless of cost.

### ***Simple or complex***

Each resolution should be about one subject. Don't combine different objectives into one resolution, such as increased funding for the Army and better voting for troops overseas. Submit two separate resolutions.

### ***Judgment calls***

Sometimes whether or not a resolution is sent to National HQ is a judgment call. To see if there is a current position already on the books, check the latest digest of the National Convention or National Executive Committee. Or telephone me and I will be very glad to help.

### ***Which form to use?***

Once you know that the resolution is appropriate to be sent for National action, the proper form should be used.

### ***NEC Forms***

Your NEC form until last year was only a legal size four part form with carbon paper. Now we have an electronic form. See your sample.



The same NEC template will work for all NEC meetings. There are no dates on it as to which NEC meeting it is for.

The resolve clause that you are to use in the NEC resolution should reflect Department action, unlike the National Convention resolution.

- RESOLVED, By the Department Executive Committee of The American Legion, Department of North Carolina, assembled in Greensboro on September 25, 1999, that etc...

**National Convention Form:**

In the 1980s, if not earlier, 5-part carbon-less legal size forms were used for National Convention resolutions. A few years later, we changed to a single legal size form. Last year for the first time, we sent to the Departments a computer file template. See your sample of the printout.

Next year for the 2002 National Convention, I hope to have a form on the Legion's web site that can be completed for your resolution for transmission. This should make it easier to complete than with the templates and it won't matter whether you have a pc or a Mac, MS Word or WordPerfect.

The National Convention form can only be used for that particular meeting, unlike the NEC form, and the actual date of the convention is noted on the form.

The resolve clause in the National Convention resolution reflects National action.

- RESOLVED. By The American Legion in National Convention assembled in San Antonio, Texas, August 28, 29, 30, 2001, That The American Legion strongly urges...

**Deadlines:**

Timeliness is an issue for all resolutions sent to National. For the NEC, we will process and the committees and commissions will endeavor to study and make recommendations to the NEC as soon as possible.

The National Convention resolutions need to be at National Headquarters 14 days before the start of the Convention. But Constitutional Amendment resolutions need to be here no later than 20 days before the Convention. *It is not the postmark that is important if sending via US Mail but receipt at Headquarters by end of business day on that particular Wednesday.*

**Computer file vs. paper:**

If you have computer problems and want to print out the resolutions onto paper, that is permissible. Just get them in ASAP. However, they MUST be on resolution forms that were issued from National Headquarters.





***Assignment at National Headquarters:***

Once we receive the resolutions, in whatever format, we will assign the committee, title the resolution, number it and produce and return a copy for your records. If you don't hear from me within fourteen days, give me a call.

Sending resolutions to us in an electronic version means that we can quickly send the material to the committees for study and they, in turn, can produce the final version as to the text, assuming it is to be recommended for approval.

***Supporting documentation:***

We always emphasize that supporting material should accompany each resolution. Sometimes the subject matter is such that it may not be required. But often there may be a local interest in a particular issue that is unknown to the committee at national level that will study the issue.

Indicating on the electronic form that there is supporting material and then sending it in the US Mail, faxing, or scanning and emailing the material, will help the committee to understand why the resolution should be voted upon.

***Whereas and Resolve clauses:***

Writing the resolution is also important. Remember, if the reader doesn't understand the resolution by only reading the resolve clause, then more work needs to be done on the text. See the digests for examples of resolutions. While most of the resolutions in these digests are in pretty good form, even some represented here could use a little help.

**How to Write a Resolution**

Because the resolutions adopted by your membership represent a formal expression of the official opinion or will of the post, extreme care should be devoted to both their preparation and thought content. The following guidelines and suggestions relate primarily to the *form* your post's resolutions should take, rather than their content. However, when considering resolutions, keep in mind that any proposal transmitted beyond your post and within the organization of the Legion must be "germane"—that is, closely related to the purpose for which The American Legion exists.

Resolutions requiring county, district or department consideration must be prepared and forwarded in accordance with their respective regulations and by-laws. A well-written resolution stands a better chance of getting favorable consideration at your county, district, or department convention than a resolution which is vaguely worded and carelessly formulated.

From the standpoint of the policies and practices of The American Legion as a whole, resolutions are all-important. The National Organization cannot act on a given problem in the absence of a controlling resolution; and, conversely, it must act on a matter when mandated to do so by a



resolution which has been properly adopted by the national Convention or National Executive Committee. If your post seeks to be a leader in the policies and practices of The American Legion, it can do so only through the resolution method.

### **Post Procedures May Vary**

In some posts, the member who moves the adoption of a resolution must present it in writing at the time the motion is offered. Other posts follow the practice of assigning one member, or special committee, the task of drafting or editing those resolutions to be sent forward for convention consideration. However, it remains the responsibility of the Post Commander to make sure each resolution truly reflects the sense of the action taken by the post—and is presented in the best possible form.

Except for certain details (noted in the discussion of *resolving* clauses below) the National Organization has not established an official style guide for the preparation of American Legion resolutions. However, the National Executive Committee has expressed (Res. No. 20 and 21, May 1960) certain general considerations are applicable to all resolutions being forwarded for action by the National Organization as follows:

- A resolution should contain “supporting documents,” and its intent should be clearly defined.
- A resolution should be free of errors of fact and law.
- A resolution should have material relevance to the purposes and programs of The American Legion. (On the latter point, the NEC specifically cautions Legion Posts to beware of becoming a channel through which non-Legion organizations seek to achieve their goals.)

A resolution should deal with only one subject. Those which attempt to treat more than one subject are unwieldy to process at conventions, especially if they involve matters which do not fall within the jurisdiction of a single committee of the convention. They are generally rejected or amended to delete reference to more than one subject.

Resolutions have two major parts, a *preamble* and a *resolving section*. Each consists of one or more clauses (sometimes called paragraphs) and the whole is read in its entirety, beginning with the preamble, as one continuous, complex sentence. The preamble sets forth the reasons for the resolution; the resolving section sets forth the intent of the resolution.



### Prepare Preamble Last

Although it precedes the resolving section in appearance, the preamble of a resolution should be prepared after the resolving section has been put into final form. Once the intent of the resolution has been clearly stated, it is much easier to decide what statements need to be in the preamble to make clear the reasons for the resolution. Also, during committee or floor debate, a preamble is always amended last because changes in the resolution may require changes in the preamble. The resolving section of a resolution begins with the word “*RESOLVED*,” usually printed in capital letters and followed by a comma. Between this opening word and the statement of the resolution’s intent there should be inserted the following information: (1) identification of resolving authority; (2) the circumstance and place of the action; (3) the date of the action. The first word after this information would be “*That*” with a capital “*T*.”

Example:

“RESOLVED, by Post No. ...., The American Legion, Department of ....., in regular (or special) meeting assembled in ..... (Place and Date) ....., That . . .”

This clause, referred to as the “resolving clause” (similar to the “enacting clause” of a law), should be uniform for every resolution. For National Convention and National Executive Committee resolutions, the resolving clauses have been standardized as follows:

“RESOLVED, by The American Legion in National Convention assembled in ..... (City and State) ....., ..... (Date) ....., That . . .”

The word “*That*” immediately following the resolving clause introduces the clause which is the object of the verb “*RESOLVED*.” It aids the reader to find the point at which the meat of the resolution begins; it aids the drafter of the resolution to launch a strong and unmistakable statement of intent.

Examples:

“RESOLVED, . . . *That The American Legion shall sponsor and support legislation to . . .*”

“RESOLVED, . . . *That The American Legion is opposed to repeal or weakening of . . .*”

Although each resolution should deal with only one subject, it is often necessary or desirable to attach additional clauses (or paragraphs) to a resolution’s resolving section in order to cover matters that are closely related to the main intent. This device is especially useful for spelling out the details of how and by whom the intent of the resolution is to be carried out or accomplished.

Example:

“RESOLVED, by (etc.) . . ., That (etc.) . . ., and be it

“FURTHER RESOLVED, That (etc.) . . ., and be it



(add FURTHER RESOLVED paragraphs as required) . . . , and be it  
“FINALLY RESOLVED, That (etc.) . . .”

As shown here, the identifying information is stated *only once*, in the first paragraph of the resolving section of a resolution, and is not repeated in subsequent paragraphs. A period is used only once— at the close of the last paragraph of the resolving section.

### **Construction of Resolution Preamble**

The preamble of a resolution is made up of one or more clauses (or paragraphs), each of which begins with “*WHEREAS*.” Two or more of these clauses are joined together by a semicolon followed by “*and*.”

Example:

“*WHEREAS*, The American Legion is an organization of war veterans who have dedicated themselves to the service of the community, state and nation; and  
“*WHEREAS*, This service is performed through The American Legion’s basic programs; and (etc.)”

Each clause in the preamble should contain a statement of fact which is logically related to the intent of the resolution and explains and justifies the need for the resolution. Note that each clause would stand alone as a complete sentence if the “*WHEREAS*” were removed and a period were used in place of the semicolon at the end.

The final clause of the preamble is joined to the resolving section of the resolution by a semicolon (or colon), followed usually by the phrase “*now, therefore, be it....*” (acceptable variations in common usage are “*therefore be it*”; or simply “*be it*”).

Example:

“*WHEREAS*, ..... (etc.) .....; and  
“*WHEREAS*, ..... (etc.) .....; and  
“*WHEREAS*, ..... (etc.) .....; now, therefore, be it  
“*RESOLVED*, by ..... (etc.) ....., That ..... (etc.) .....”

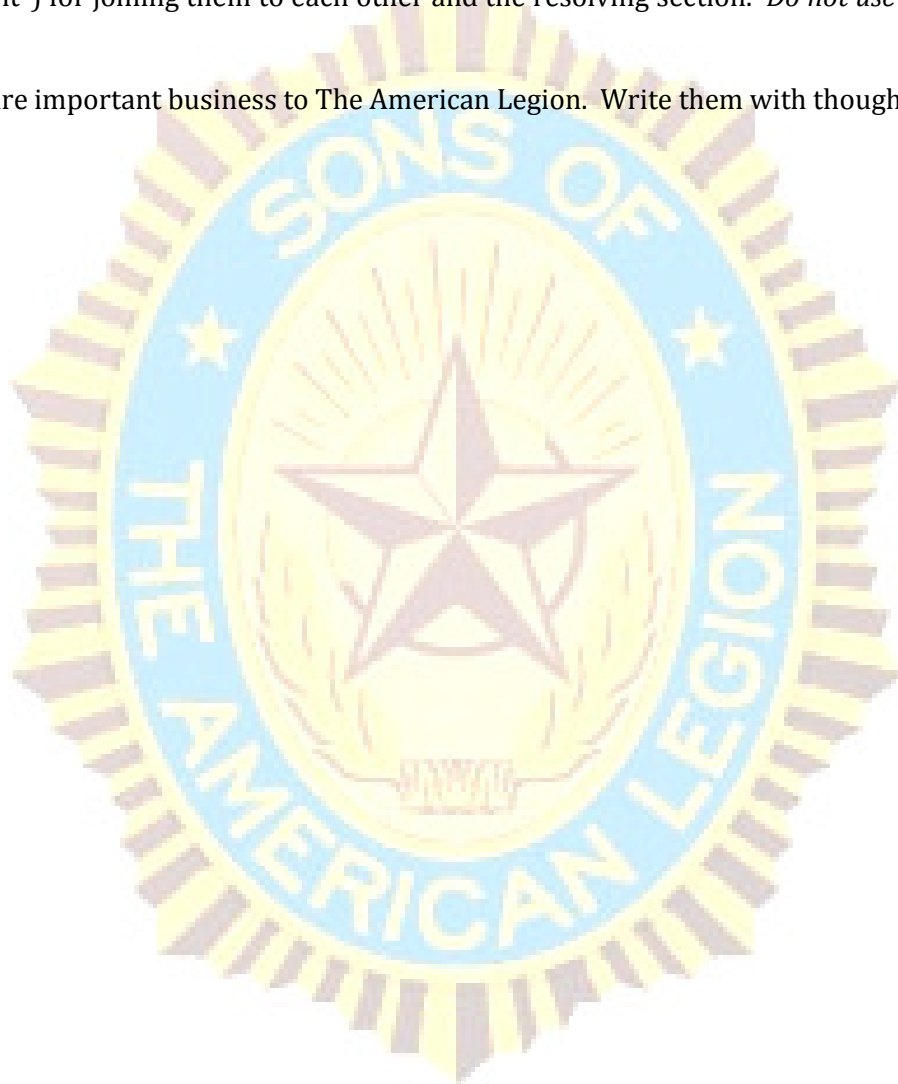
*(Note: The “Whereas” may be set out in capital letters, italics, underscored, etc., depending preference. When capitalized, it is usually followed by a comma, and then the first letter of the following word is capitalized.)*

There is no formula for deciding how many “*WHEREAS*” clauses a resolution should have. In general, the fewer the better, provided the reason or reasons for the resolution are adequately stated. Most of the good reasons for a resolution will have been stated during the debate for its adoption. Use them. It is not necessary, however, to refer in the preamble to every fact or circumstance that has a bearing on the intent of a resolution.



Study the resolving section and get the exact purpose of the resolution firmly in mind. Then start writing down statements of facts, which relate to this purpose. Organize them into a logical sequence (throwing out the weak or unnecessary ones), and then put a "WHEREAS," in front of each, a semicolon at the end of each, plus the appropriate connecting word ("and") or words ("now, therefore, be it") for joining them to each other and the resolving section. *Do not use a period in the preamble.*

Resolutions are important business to The American Legion. Write them with thought and care.





## Taxes

A post or organization of past or present members of the Armed Forces of the United States under § 501(c)(19) must be:

1. a post or organization organized in the United States or any of its possessions,
2. at least 75% of its members are past or present members of the U.S. Armed Forces and that at least 97.5% of all members of the organization are past or present members of the U.S. Armed Forces, cadets (including only students in college or university ROTC programs or at armed services academies) or spouses, widows, or widowers of any of those listed here, and
3. no part of the net earnings inure to the benefit of any private shareholder or individual. In addition, it must be operated exclusively for one or more of the following purposes:
  - a. To promote the social welfare of the community (that is to promote in some way the common good and general welfare of the people of the community);
  - b. To assist disabled and needy war veterans and members of the U. S. Armed Forces and their dependents and the widows and orphans of deceased veterans;
  - c. To provide entertainment, care, and assistance to hospitalized veterans or members of the U.S. Armed Forces;
  - d. To carry on programs to perpetuate the memory of deceased veterans and members of the Armed Forces and to comfort their survivors;
  - e. To conduct programs for religious, charitable, scientific, literary, or educational purposes;
  - f. To sponsor or participate in activities of a patriotic nature;
  - g. To provide insurance benefits for its members or dependents of its members or both; or
  - h. To provide social and recreational activities for its members.



### **Filing Requirements**

Generally, tax-exempt organizations must file an annual information return. Tax-exempt organizations that have annual gross receipts not normally in excess of \$25,000 are not required to file the annual information return. In addition, churches and certain religious organizations, certain state and local instrumentalities, and other organizations are exempted from the annual return filing requirement. For more information, download [Publication 557, Tax-Exempt Status for Your Organization](#).

Tax-exempt organizations, other than private foundations, must file [Form 990, Return of Organization Exempt From Income Tax](#), or [Form 990-EZ, Short Form Return of Organization Exempt From Income Tax](#). The Form 990-EZ is designed for use by small tax-exempt organizations and nonexempt charitable trusts. An organization may file Form 990-EZ, instead of Form 990, only if (1) its gross receipts during the year were less than \$100,000, and (2) its total assets (line 25, Column (B) of Form 990-EZ) at the end of the year were less than \$250,000. If your organization fails to meet either of these conditions, you cannot file Form 990-EZ. Instead you must file Form 990. All private foundations exempt under §501(c)(3) must file [Form 990-PF, Return of Private Foundation](#).

Form 990, Form 990-EZ, or Form 990-PF must be filed by the 15th day of the 5th month after the end of your organization's accounting period. The instructions for these forms indicate the Service Center to which they must be sent.

A tax-exempt organization that fails to file a required return is subject to a penalty of \$20 a day for each day the failure continues. The same penalty will apply if the organization fails to give correct and complete information or required information on its return. The maximum penalty for any one return is the lesser of \$10,000 or 5 percent of the organization's gross receipts for the year. If the organization has gross receipts in excess of \$1,000,000, the penalties are increased to \$100 per day with a maximum penalty of \$50,000.

Even though an organization is recognized as tax exempt, it still may be liable for tax on its unrelated business income. An exempt organization that has \$1,000 or more gross income from an unrelated business must file [Form 990-T, Exempt Organization Business Income Tax Return](#). The obligation to file Form 990-T is in addition to the obligation to file the annual information return. Tax-exempt organizations must make quarterly payments of estimated tax on unrelated business income. An organization must make estimated tax payments if it expects its tax for the year to be \$500 or more. The Form 990-T of a tax-exempt organization must be filed by the 15th day of the 5th month after the tax year ends. An employees' trust must file Form 990-T by the 15th day of the 4th month after its tax year ends. A tax-exempt organization's Form 990-T is not available for public inspection. For additional information, download [Publication 598, Tax on Unrelated Business Income of Exempt Organizations](#).



Every employer, including a tax-exempt organization, who pays wages to employees is responsible for withholding, depositing, paying, and reporting federal income tax, social security taxes (FICA), and federal unemployment tax (FUTA) for such wage payments, unless that employer is specifically exempted by statute from such requirements or if the taxes are clearly inapplicable. For more information, download [Publication 15, Circular E, Employer's Tax Guide](#), [Publication 15-A, Employer's Supplemental Tax Guide](#), [Form 940, Employer's Annual Federal Unemployment \(FUTA\) Tax Return](#) and [Form 941, Employer's Quarterly Federal Tax Return](#).

Tax-exempt organizations must make their last three annual information returns and their approved application for recognition of exemption with all supporting documents available for public inspection. Pursuant to the Taxpayer Bill of Rights 2, the organization is required to provide copies of these documents upon request without charge (other than a reasonable fee for reproduction and copying costs). Penalties are provided for failure to comply with these requirements. For more information, see our [frequently asked questions](#), the final regulations published in [Internal Revenue Bulletin 1999-17](#), or download [Disclosure Requirements](#). Each American Legion Post has the responsibility to determine the extent of its tax liability and the forms and reports it should file. All Posts should file each year a **Form 990 – Annual Information Return**.

Each Department and Post of The American Legion is required to furnish its **Group Exemption Number (GEN)** at the time of filing its Form 990. The GEN assigned to The American Legion and its subordinates is **0925**.

Accordingly, when each Department and Post of The American Legion files its Form 990, it should insert in Heading, Item G of the form the number 0925.

Further, Federal Tax Regulations require every subordinate unit filing Form 990 must have an **EMPLOYER IDENTIFICATION NUMBER**, which can be obtained by filing **IRS Form SS-4**.

#### **Tax Exempt Status**

Federal Tax Regulations require every subordinate American Legion Post that is obligated to file an Annual Information Return (Form 990), or if they maintain a bank account, must have an **Employer Identification Number (EIN)**.

The American Legion is tax exempt under Section 501 (c)(19) of the Internal Revenue Code of 1954, as amended. **Every** Post needs to obtain an EIN from the government. All newly chartered Posts receive an SS-4 form in their New Post Kit, prepared/sent by National. The instructions should be closely followed in completing/submitting the SS-4 form.





When you receive the Post EIN, send a copy of the number and the **Inclusion Letter** (also in the packet) to National Headquarters so the Post may be listed as a tax-exempt charter of The American Legion. A listing of all new Posts, plus updates, is sent to the IRS each September 30. Your bank and various vendors will also need this number – **Protect it.**

### **Supplemental Charter**

When a Post becomes incorporated, it is necessary to apply for a Supplemental Charter. When a Post incorporates and changes its name, the change is usually enough for it to be considered by the government as a new entity, thereby requiring another Employer Identification Number (EIN). The old one is normally invalid; play it safe, get a new one.

The incorporation of a Post modifies the information sent in on the earlier inclusion letter reporting your EIN with the National Organization. The legal name of the Post will appear on the incorporation papers or corporate charter with the state in which it is located. A change in the name, even just adding "INC" to the name will be reported to the IRS in September.

We need to maintain your **correct, legal and accurate** Post name on this report for IRS exactly as it appears on the Corporate Charter from the state. Any changes are to be sent to the National Office so the IRS records will remain up-to-date and the Post can avoid some IRS issues.

When requesting a supplemental charter, please fill it out in triplicate. A copy of your corporate charter, issued by the state, is a required attachment to the Supplemental Charter Application, which is available from the Department office.

### **Unrelated Business Income Tax**

Even though an organization is recognized as tax exempt, it still may be liable for tax on its unrelated business income. Unrelated business income is income from a trade or business, regularly carried on, that is not substantially related to the performance by the organization of its exempt purpose or function except that the organization needs the profits derived from this activity. An exempt organization that has \$1,000 or more gross income from an unrelated business must file [Form 990-T](#), *Exempt Organization Business Income Tax Return*. The unrelated business income tax (UBIT) applies to all organizations exempt from tax under section 501(a) except certain U.S. instrumentalities. State and municipal colleges and universities are also subject to the UBIT.

All organizations subject to UBIT, except trusts, are taxable at corporate rates on that income. All exempt trusts that are subject to these provisions, and that, if not exempt, would be taxable as trusts, are taxable at trust rates on unrelated business taxable income. However, an exempt trust may not claim the deduction for a personal exemption that is normally allowed to a trust.



An activity will be considered an unrelated business (and subject to UBIT) if it meets the following three requirements: (1) it is a trade or business, (2) it is regularly carried on, and (3) it is not substantially related to the furtherance of the exempt purpose of the organization. However, there are a number of exclusions and modifications to this general rule.

The term "trade or business" generally includes any activity carried on for the production of income from selling goods or performing services. It is not limited to integrated aggregates of assets, activities, and goodwill that comprise businesses for the purposes of certain other provisions of the Internal Revenue Code. Activities of producing or distributing goods or performing services from which gross income is derived do not lose their identity as trades or businesses merely because they are carried on within a larger framework of other activities that may, or may not, be related to the exempt purposes of the organization.

Business activities of an exempt organization ordinarily will be considered to be "regularly carried on" if they show a frequency and continuity, and are pursued in a manner similar to comparable commercial activities of nonexempt organizations.

To determine whether a business activity is or is not "substantially related" requires an examination of the relationship between the business activities that generate the particular income in question and the accomplishment of the organization's exempt purpose. Trade or business is related to exempt purposes, in the statutory sense, only when the conduct of the business activities has causal relationship to the achievement of exempt purposes (other than through the production of income). The causal relationship must be substantial. The activities that generate the income must contribute importantly to the accomplishment of the organization's exempt purposes to be substantially related.

The Code contains a number of modifications, exclusions, and exceptions to unrelated business income. For example, dividends, interest, certain other investment income, royalties, certain rental income, certain income from research activities, and gains or losses from the disposition of property are excluded when computing unrelated business income. In addition, the following activities are also specifically excluded from the definition of unrelated trade or business:

**Volunteer Labor** - Any trade or business is excluded in which substantially all the work is performed for the organization without compensation. Some fund-raising activities, such as volunteer operated bake sales, may meet this exception.

**Convenience of Members** - Any trade or business is excluded that is carried on by an organization described in 501(c)(3) or by a governmental college or university primarily for the convenience of its members, students, patients, officers, or employees. A typical example of this would be a school cafeteria.



**Selling Donated Merchandise** - Any trade or business is excluded that consists of selling merchandise, substantially all of which the organization received as gifts or contributions. Many thrift shop operations run by exempt organizations would meet this exception.

For a discussion of current developments concerning UBIT, download [UBIT: Current Developments](#). For a discussion of the special UBIT rules for organizations described in 501(c)(7), 501(c)(9), or 501(c)(17), see [Unrelated Business Income Tax](#). For more information, download [Publication 598, Tax on Unrelated Business Income of Exempt Organizations](#).

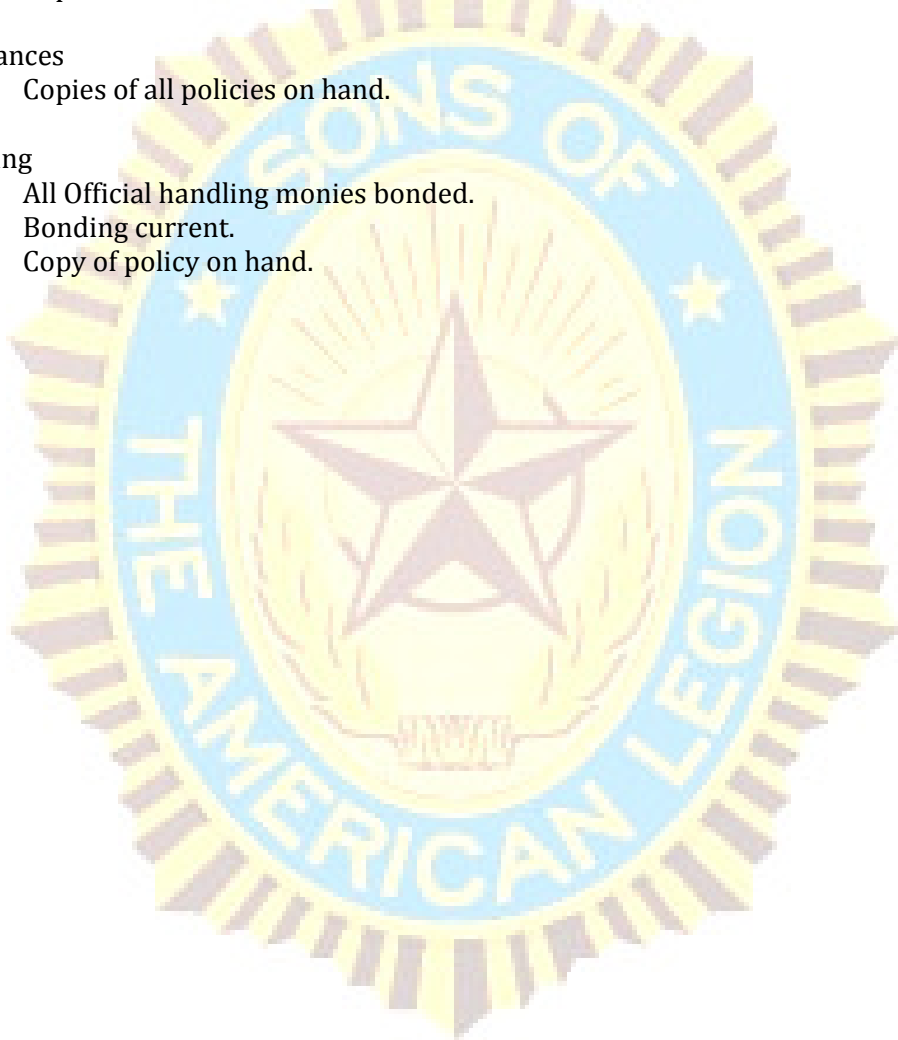
### **LEGAL ITEMS**

All Post should have the following items on file in the Post Home for quick reference.

1. Post Constitution and Bylaws
  - a. Current copy on hand and posted.
  - b. Should be reviewed annual.
  - c. All resolutions and changes should be filed.
2. Officers Certification Forms.
  - a. Current – updated after election and as changes occur.
  - b. Historian / Adjutant file copies.
  - c. Copy to Department & District Adjutant.
3. Incorporation paperwork
  - a. On hand and current.
  - b. Yearly fees paid.
4. Licensees.
  - a. Liquor.
  - b. Gambling.
  - c. Food servers.
  - d. Other Local licenses that may be required.
5. Taxes
  - a. Copies of last 5 years returns on file (minimum).
  - b. SS-4 on file.
  - c. Employee tax payment records on hand.
  - d. DD214 as proof of membership eligibly.



6. Audit and financial records
  - a. Copies of all audits on file. (5 years minimum)
  - b. Copies of monthly financial statements with bank account statements
  - c. Copy of Post minutes to show authorization of expenditure.
  - d. Copies of Post property inventories.
  - e. Copies of all Post Bar or restaurant records.
7. Insurances
  - a. Copies of all policies on hand.
8. Bonding
  - a. All Official handling monies bonded.
  - b. Bonding current.
  - c. Copy of policy on hand.





**PARTIAMENTARY PROCEDURE AT A GLANCE**

**TABLE 1**

<b>To do this:</b>	<b>You say this:</b>	May you interrupt the speaker	Do you need a second?	Is it debatable?	Can it be amended	What vote is needed?	Can it be reconsidered?
Adjourn meeting	"I move that we adjourn."	No	Yes	No	No	Majority	No
Call an intermission	"I move that we recess for..."	No	Yes	No (1)	Yes	Majority	No
Complain about the heat, noise, etc.	"I rise to a question of privilege."	Yes	No	No	No	No vote	No
Temporarily suspend consideration of an issue	"I move to table the motion."	No	Yes	No	No	Majority	No (2)
End debate and amendments	"I move the previous question."	No	Yes	No	No	?	Yes (3)
Postpone discussion for a certain time	"I move to postpone the discussion until..."	No	Yes	Yes	Yes	Majority	Yes
Give closer study of something	"I move to refer the matter to committee."	No	Yes	Yes	Yes	Majority	Yes (4)
Amend a motion	"I move to amend the motion by..."	No	Yes	Yes (5)	Yes	Majority	Yes
Introduce business	"I move that..."	No	Yes	Yes	Yes	Majority	Yes

**The motions listed above are in order of precedence.  
Below, there is no order.**

Protest breach of rules of conduct	"I rise to a point of order."	Yes	No	No	No	No vote (6)	No
Vote on ruling of the chair	"I appeal from the chair's decision."	Yes	Yes	Yes	No	Majority	Yes
Suspend rules temporary	"I move to suspend the rules so that..."	No	Yes	No	No	?	No
Avoid considering an improper matter	"I object to consideration of this motion."	Yes	No	No	No	? (7)	Yes (8)
Verify a voice vote by having members stand	"I call for a division," or "Division!"	Yes	No	No	No	No vote	No
Request information	"Point of information..."	Yes	No	No	No	No vote	No
Take up a matter previously tabled	"I move to take from the table..."	No	Yes	No	No	Majority	No
Reconsider a hasty action	"I move to reconsider the vote on..."	Yes	Yes	Yes (9)	No	Majority	No

Notes:

1. Unless moved when no question is pending.
2. Affirmative votes may not be reconsidered.
3. Unless vote on question has begun.
4. Unless the committee has already taken up the subject.
5. Unless the motion to be amended is not debatable.
6. Unless the chair submits to the assembly for decision.
7. A vote in negative is needed to prevent consideration of main motion.
8. Only if the main question has not been debated yet.
9. Unless the motion to be reconsidered is not debatable.