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# Understanding Non-cash Gift Deductibility Rules

*by Richard Koontz, LAWINRC Director*

**W**hen a nonprofit receives monetary gifts, there is no question of the value of the gift for purposes of the donor getting a deduction. I send your nonprofit a check for \$25 and I get to deduct \$25 on my federal and state income tax returns, assuming I itemize. When a nonprofit receives gifts that are not cash this valuation question becomes more difficult. Any gift that is not cash is called, not surprisingly, a “non-cash gift” by the I.R.S. This is primarily a donor issue, but a nonprofit does not want to give its donors inaccurate information about non-cash gifts, and so it is wise to keep up on the issues involved in donations of non-cash gifts that your nonprofit receives.

Here’s an example. An exempt food pantry to help the needy receives gifts of canned food from a local supermarket. Does the supermarket get to deduct its current retail price for each can of food donated, or is it the wholesale price at which the canned food was purchased by the supermarket? What if the retail price changed last week for a two-day sale? And what does the supermarket do if it got one case of food at one wholesale price, and another at a different wholesale price, and doesn’t know whether there are cans from both shipments in those donated?

The basic deductibility rule for non-cash gifts provides that the fair market value of a donated non-cash gift can be used as the amount deducted by

the donor. But there are special rules in the tax code for “inventory” (I.R.C. 170(e)(3)) and for “food inventory” specifically. (I.R.C. 170(e)(3)(C))

Food inventory is any “apparently fit grocery product,” meaning a grocery product that meets all quality and labeling standards imposed by federal, state, and local laws and regulations even though the product may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.” (42 U.S.C. 1791) If it falls within this definition then donated food items are deductible at the value of the original cost (basis) plus half the unrealized profit (the retail price minus the wholesale price).

This rule about deductible value of inventory can change in some circumstances (see Treasury Regulations 1.170A-4A(c)).

Many kinds of non-cash gifts have different issues of valuation. These include art, clothing, taxidermy, vehicles, conservation easements, and collectibles. I.R.S. Publication 561 sets out some of the ways that valuation of non-cash gifts can be done. (See I.R.S. Publication 561 at <https://www.irs.gov/pub/irs-pdf/p561.pdf>)

When a charity receives a non-cash gift (or a group of related items) with a value over \$5,000, it

## Appraisals, assessing value, auction donations represent common non-cash scenarios

must sign Part IV of an I.R.S. Form 8283 recognizing the gift and return the form to the donor. (See I.R.S. website at <https://www.irs.gov/pub/irs-pdf/f8283.pdf?ga=1.138196464.15162914.1400790499>). In most instances the donor must get a certified appraiser to give an opinion that the item(s) donated are equal to the value the donor claims. The charity should NOT do this appraisal on behalf of the donor. Regardless of the value claimed by the donor of his or her gift on the Form 8283, if the charity sells the item(s) within three years of receipt, it is the sale price that is the final determination of value for purposes of charitable tax deduction. The sale of donated item(s) within three years of receipt must be reported by the charity to the I.R.S. on Form 8282 (see <https://www.irs.gov/pub/irs-pdf/f8282.pdf>)

One of the important issues arising when there are non-cash gifts to charities is whether the value of the item(s) donated has appreciated over time. Can a donor deduct his or her original purchase price for a piece of art they own, or assuming the value of the item has tripled in the ten years they have owned it, can that value be what is used when reporting the deduction on their return? The most central issue is whether the appreciated property has a related use for the recipient charity. (See box to check affirming related use on Part IV of Form 8283). For instance, a painting given to an art museum clearly has a related use at the museum, but given to an animal shelter, it likely cannot be argued to have a related use. So the painting's donor will get to deduct the current appreciated value if given to the art museum, but only the original purchase price if given to the animal shelter.

Another common situation for nonprofits is non-cash items given for auctions. The issue that arises is whether those bidding on the auction items will characterize their purchase of the auction item as part purchase, part donation, or solely as purchase. The I.R.S. position is that the charity must value each

item in the auction and inform bidders of this value. If this is done, and the final bid exceeds the valued item, then that amount over the valuation is donative and can be deducted. However, if this list of values of auctioned items is not done, donors face a challenge trying to make any portion of the auction price as a tax deduction, regardless of how much more it was than the actual fair market value of the item.

If your nonprofit is large enough, having over \$200,000 of gross receipts a year (and the value of non-cash gifts are included in determining this \$200,000 amount), then on the Form 990 there is a Schedule M, which is used to report non-cash gifts, once they reach a certain level. (See the I.R.S. website at <https://www.irs.gov/pub/irs-pdf/f990sm.pdf?ga=1.134086094.15162914.1400790499>).

Use of Schedule M is triggered by either more than \$25,000 in non-cash gifts or receipt of items such as art or conservation easements. Whether Schedule M is required or not, there is reporting of non-cash gifts on the core Form 990. And remember, Form 990-EZ has some schedules, but filers of Form 990-EZ cannot use Schedule M.

For purposes of Iowa law, most charities do not file an annual return at all in Iowa. Hospitals and foundations are the primary exceptions. When a return is required in Iowa, it is not done on an Iowa-generated form but done by a copy of the federal Form 990, and this would include the Schedule M listing non-cash gifts, if it was appropriate to file that federally. With respect to a charity's individual donor, they would file Form IA 1040 with a schedule A itemizing deductions for the charitable giving. (For the most part, Iowa follows the federal rules on charitable deductions (See Iowa Code 422.9(2)).



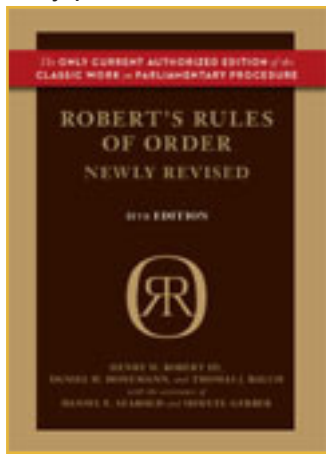
# Parliamentary Procedure Lends Order, Credibility, Fairness to Meetings

by Diane DeBok, LAWINRC Editor and Content Manager

Parliamentary procedure can be confusing or even intimidating if you have little or no familiarity with it, but as a board or committee member, you will encounter others who have some experience in its use. It's worthwhile to learn a few of the basics.

At its simplest, parliamentary procedure is, as blogger and parliamentarian Jim Slaughter ([www.jimslaughter.com](http://www.jimslaughter.com)) defines it, "the means by which organizations make decisions".

Robert's Rules of Order are the oldest rules of parliamentary procedure used in the United States by social organizations. Some might assume that Robert's Rules and parliamentary procedure are interchangeable terms, but parliamentary procedure refers to many

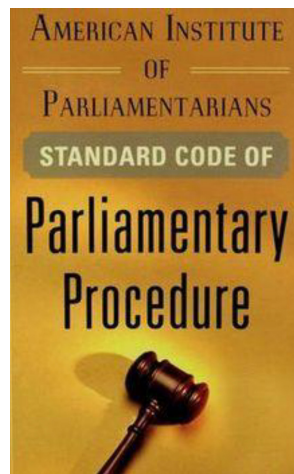


different codes of procedure of which Robert's Rules is only one.

The second most popular parliamentary authority is The Standard Code of Parliamentary Procedure. The Standard Code, or TSC, is issued by the American Institute of Parliamentarians and is popular because many of its procedures are more streamlined than Robert's Rules.

Why should organizations concern themselves with parliamentary procedure at all? Meetings of three or four people can usually

work without rules. A group of six will probably benefit from a few informal rules, but twelve people or more will require some extensive regulation to ensure that everyone has a voice. Adhering to a design-



ated set of rules lends credibility to your proceedings and helps keep meetings orderly.

The *Principles and Practices for Charitable Nonprofit Excellence* states that, "Board meetings are more efficiently run when an agenda is followed, when there are time limits on each agenda item..." (V.C.2.) Assigning time limits to agenda items keeps meetings moving and gives the chair a way to keep participants focused.

Most importantly, procedures afford everyone, both majority and minority members, an opportunity to speak and have their viewpoints go on record. The rules should be followed as a matter of routine and not employed only when the organization experiences complications or discord.

There is no legal requirement that any specific form of parliamentary procedure be used; however, an organization should designate in its bylaws a parliamentary authority to be followed such as Robert's Rules or the TSC. This authority can then be supplemented

with rules specific to the organization.

Information about the parliamentary authority and the supplemental rules should be shared as part of the board's orientation.

The Robert copyright expired years ago, and there are a number of copycat guides on the market that resemble the real thing, but the official version is *Robert's Rules of Order Newly Revised*, 11th edition (RONR). Descendants and trustees of the Robert's Rules Association maintain and update the code and also maintain the official website at [www.robertsrules.com](http://www.robertsrules.com) where many answers and clarifications on the rules are found in the FAQ and Forums sections.

If you need a quick introduction to Robert's Rules or just a refresher, a good resource is the pocket-sized volume *Robert's Rules of Order Newly Revised In Brief*, also published in 2011. Inside the front cover, readers who need to "cram" will find a time-saving guide to specific chapters.

*The Standard Code of Parliamentary Procedure* is revised and updated by the American Institute of Parliamentarians and is also widely available. The most recent edition was published in 2012. Many nonprofit writers and parliamentarians have blogged about RONR and the TSC. Jim Slaughter, mentioned earlier, and others have charts and quick-reference guides to help users quickly grasp information about the most-used procedures of both.

Some familiarity with parliamentary procedure will give you more confidence as a participant in board meetings. Even as an observer, how a meeting is conducted will make more sense when you have a grasp of the basics.

# Parliamentary Procedure—Some Basics

by Diane DeBok, LAWINRC Editor and Content Manager

In a blog post dated November 20, 2014 on the For Small Nonprofits website, Erik Hanberg identifies ways in which many nonprofits adapt parts of Roberts Rules of Order (RONR) to their own uses and clarifies some misunderstood points. He also highlights some RONR procedures worth knowing to help make meetings better. Some of his points along with supporting information from the Roberts Rules official website and The Standard Code of Parliamentary Procedure are incorporated here. Parliamentarian and blogger Jim Slaughter defines parliamentary procedure as “the means by which organizations make decisions.” Motions are the building blocks of decision making at any meeting. Some specifics regarding motions are also included.

## Voting and motions according to RONR

Many of us are accustomed to discussing a topic first, followed by a motion, a second, then a vote taken on the motion. When strictly following RONR, someone makes a motion on the topic then another person seconds it. Making the motion opens the topic for discussion. It is when discussion has concluded that a vote is taken. In either scenario, the secretary records the names of the person who makes the motion and of the person who seconds it. For purposes of clarity, the chair declares whether the motion has passed or failed. The secretary records the results.

## If no one seconds a motion, it is dropped.

When a group puts aside a motion without taking action on it, it is often said that the motion has been tabled. The RONR does not refer to simply tabling a motion but instead defines the three instances below in which action on a motion is deferred. TSC uses similar terminology for postponing indefinitely and postponing to a certain time; however TSC does refer to tabling a motion. According to the TSC, if the aim of the motion to table is to kill the main motion, a vote can be taken to do so.

*Postponing indefinitely* (RONR: p. 126, Sec. 11; TSC: p. 68) means to drop the main motion without voting on it. RONR describes this action as useful in disposing of a “badly chosen motion” that cannot be adopted or rejected without negative consequences. Postponing a motion indefinitely kills it for the remainder of the session and avoids a direct vote.

*Postponing to a certain time or definitely* (RONR: p. 179, Sec. 14; TSC: p. 58) means the motion is put off until a specified time that is determined to be more convenient, after a certain event, or because

debate has shown reasons that the motion should be discussed at a later date.

*Laying on the table* (RONR: p. 209, Sec. 17) or postponing temporarily (TSC p. 68) happens when it is necessary to put the motion aside in order to deal with something else. It halts discussion immediately without debate. This is often incorrectly referred to as tabling a motion. It is out of order if it is used to kill a motion or stop debate as it violates the rights of individuals and minority members.

## Abstentions

Someone might abstain if a conflict of interest exists. Otherwise, everyone should vote on the motion.

## Point of information

To ask for clarification on motion and what a yes or no vote means, merely say “point of information.”

## Call for the question

Forces the group to decide whether to continue debate or to vote. The vote immediately takes place on whether to continue discussion. If two thirds of the group affirm they are ready to vote, the vote must take place immediately.

## Setting the agenda

The meeting chair does not set the agenda. The agenda is proposed at the beginning of the meeting then the body votes to accept it, amend it, or propose other changes before proceeding.

## Other recommendations

Hanberg and others encourage boards to have all of their rules at meetings. If you don't have the RONR, the brief version is good to have on hand for reference. Also have your bylaws, especially if you have rules in addition to the RONR or whatever parliamentary authority your organization uses.

The Official Roberts Rules of Order website: [www.robertsrules.com](http://www.robertsrules.com)

Erik Hanberg's blog post: <http://forsmallnonprofits.com/2014/11/20/the-cheat-sheet-for-roberts-rules-of-order/>

Jim Slaughter's website: [www.jimslaughter.com](http://www.jimslaughter.com)

# Training, Networking, and Related Opportunities

## February 18 Workshop to Assist both Large and Small Nonprofit Startups

LAWINRC Director Richard Koontz will conduct a workshop on **Starting an Iowa Charitable Nonprofit Corporation** from 9 a.m. to 4 p.m. on Saturday, February 18 on the University of Iowa campus.

The workshop is appropriate for persons who wish to create small nonprofits as well as for those setting up larger organizations.

Early registration is encouraged so participants may gather the information necessary to complete the required forms. Cost for the workshop is \$50. Attendees will meet in Room 275 of the Boyd Law Building on the UI campus.

Attendees will benefit from detailed assistance with the required forms such as the 1023, the 1023-EZ for small nonprofits, and the SS-4 to obtain an Employee Identification Number (EIN) and will receive a copy of the recently published monograph *Starting a Small Iowa Charitable Nonprofit Corporation* or *Starting an Iowa Charitable Nonprofit Corporation*, each written by Koontz.

Enrollment is limited to seven participants. For a registration form and additional information, go to [https://inrc.law.uiowa.edu/sites/inrc.law.uiowa.edu/files/start\\_npo\\_reg\\_form\\_2-18-17-revised.pdf](https://inrc.law.uiowa.edu/sites/inrc.law.uiowa.edu/files/start_npo_reg_form_2-18-17-revised.pdf) or telephone 319-335-9765 locally or 866-500-8980 toll free.

## Year-end Planned Maintenance for IRS 990-N (e-Postcard) page

The IRS reports that the Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard) page will be down from December 26, 2016 at 11:59 a.m. until January 6, 2017 at 1:00 p.m. EST due to annual planned maintenance.

## 2017 Nonprofit Summit Organizers Seeking Keynote Speakers

Organizers of the Iowa Nonprofit Summit are seeking keynote presenters for the 2017 summit scheduled for October 24-25, 2017 in Altoona, Iowa.

Speakers who are willing to present one 50- to 60-minute plenary session as well as one, two, or three 75-minute workshop sessions can submit a proposal to be considered by the organizers.

Information about how to prepare a proposal, materials to be submitted with it, and other details are on the Volunteer Iowa website at <https://www.volunteeriowa.org/press-release/2016-11-02/seeking-keynote-presenters-2017-iowa-nonprofit-summit>

Proposals must be submitted by February 1, 2017.

Partners organizing the Summit include: Volunteer Iowa, the Larned A. Waterman Iowa Nonprofit Resource Center, United Ways of Iowa, Volunteer Centers of Iowa, Iowa Council of Foundations, Iowa Mentoring Partnership, Iowa RSVP, and Foster Grandparent/Senior Companion program directors' associations.



## Preliminary Injunction Blocks Overtime Final Rule

On November 22, a federal district judge in Texas issued a preliminary injunction blocking the Overtime Final Rule that was to take effect on December 1, 2016. Because the outcome is uncertain, guidance given at the LAWINRC's information sessions has not changed.

Learn more about the details of the injunction at the National Council of Nonprofits (NCN) website at <https://www.councilofnonprofits.org/trends-policy-issues/overtime-regulations-and-the-impact-nonprofits>

The NCN urges nonprofits to ensure they understand and comply with existing federal Fair Labor Standards Act regulations. A link to information about correction classification of employees can be found at the NCN web address above.

# Training Opportunities

## LAWINRC staff:

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LAWINRC Director

**Paul Thelen**

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**Brenda Steinmetz**

Admin. Svcs. Coordinator

**Diane DeBok**

Editor & Content Manager

**Sue Troyer**

Secretary

## Lee County Extension: Nonprofit Management Academy

Workshops leading to a Certificate in Nonprofit Management are offered Tuesdays, 9 am-4 pm at the Baymont Inn and Suites, 325 Main St., Keokuk, IA. Courses are \$60 each with CEU credit an additional \$25. Information, registration, and brochure available at [www.extension.iastate.edu/lee/npma](http://www.extension.iastate.edu/lee/npma)

### Grant Writing

**Date:** January 10, 2017

**Presenter:** Terry Jenkins, Program Manager, Tracy Family Foundation

### Collaboration and Coalitions

**Date:** February 14, 2017

**Presenter:** John Gulick, University of Missouri Extension and Shelley Oltmans, Iowa State University Extension and Outreach

### Effective Supervision--Volunteer Management

**Date:** March 14, 2017

**Presenter:** Sue Prochazka, United Way Volunteer Volunteer

### Strategic Planning

**Date:** April 11, 2017

**Presenter:** Carrie McKillip, University of Illinois Extension

## Martin Luther King Jr. Day of Service

Commit to a day of service in your community on **January 16, 2017**. Service opportunities for all ages, lesson plans for teachers, primary-source resources about Dr. King at <https://www.nationalservice.gov/mlkday>

More at United we Serve: [www.serve.gov/volunteer](http://www.serve.gov/volunteer) and Volunteer Iowa at <https://volunteeriowa.org/event/martin-luther-king-jr-day-service>



## Starting an Iowa Charitable Nonprofit

Workshop for persons organizing large and small nonprofits. Information and assistance with forms required to obtain tax exemption, EIN, and related requirements.

**Presenter:** Richard Koontz, Director, LAWINRC

**Date:** February 18, 2017

**Time:** 9 a.m. - 4 p.m.

**Location:** Room 275 Boyd Law Bldg., UI campus

See article on page 5 for details.

## About Our Organization

The Larned A. Waterman Iowa Nonprofit Resource Center is a University of Iowa interdisciplinary collaboration created to make more accessible educational and service programs focused on strengthening the operational capacity of Iowa nonprofit organizations.

The LAWINRC works collaboratively with government agencies, nonprofit organizations and educational institutions to impart new knowledge through activities and provide

information and training resources to help nonprofit organizations and interested persons throughout Iowa. We seek to build the capacity and develop the effectiveness of community-based organizations and enhance the overall effectiveness of local organizations in building communities.

The LAWINRC also introduces students to the nonprofit sector and develops their sense of public and community service.

### Legal Disclaimer:

All newsletter content is provided for informational purposes only and does not constitute legal counsel. Although we have made every attempt to ensure accuracy, the LAWINRC is not responsible for any errors or omissions or for the results obtained from the use of this information. All information is provided with no warranty of any kind.



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