# The American Legion, Department of Maryland, Inc.

# Judge Advocate's Manual

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## JUDGE ADVOCATE

The primary duty of the Judge Advocate is to supply advice based on legal training or past American Legion experience, which have prepared one for the office. The Judge Advocate is the interpreter of the Constitution and Bylaws of the Post, Region, or District and at any time may be called upon by the Commander and other officers and members to rule on the legality of their actions and decisions in so far as they affect the good of The American Legion.

The Judge Advocate must protect the integrity of The American Legion and keep alight the torch of truth and fidelity that symbolizes the high and ennobling ideals under which The American Legion was founded. The Judge Advocate is charged with protecting this proud heritage with wise counsel and fairness in all actions and advice.

The Judge Advocate can supply valuable assistance to other Post, Region, or District committees and officers; and should be available to the Service Officer for advice and to the Americanism Committee on matters relating to the education and naturalization laws. Any committee can benefit from the Judge Advocate's contacts with local government.

**Note: Should a Judge Advocate ever be in doubt, or not sure, of the legality of his/her decision, contact the District, Region, or Department Judge Advocate for clarification.**

**A Judge Advocate should never answer questions or render a decision based on personal beliefs or opinions.**

**A Post Judge Advocate must be familiar with the Standard Post Constitution and ByLaws, and be reminded that they are the governing document for Post operations. Should you encounter a problem not covered by the Post Constitution and ByLaws, contact Department Headquarters.**

## CONSTITUTION AND BYLAWS

Each Post in the Department of Maryland shall utilize the standard Post Constitution and ByLaws, and they cannot conflict with the Constitution and ByLaws of The American Legion and/or the Department of Maryland.

Post Judge Advocates should familiarize themselves with The American Legion and Department of Maryland Constitution and By-Laws to successfully perform their duties.

## PARLIAMENTARY PROCEDURE (Roberts Rules of Order)

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 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 to constantly raise points of order and to insist upon the strict observance of every rule in peaceable assembly, where there are members ignorant of those rules and customs, is but to defeat the opportunity of gradually accustoming the membership of the proper observance of parliamentary procedure.

It is important for an American Legion Post 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 Post ByLaws should always be on the Commander's desk.

Most all Maryland Posts Constitution and Bylaws contain a reference to Roberts Rules of Order as the parliamentary procedure for use in meetings of the Post. But what does this really mean? What are Roberts Rules? Why do we need a set of parliamentary procedures?

To be honest the following was taken from a website http://www.robertsrules.org/rulesintro.htm. These explanations, along with the Cheat Sheet are good references to keep on hand.

**What Is Parliamentary Procedure?**

> It is a set of rules for conduct at meetings, which allows everyone to be heard and to make decisions without confusion.

**Why is Parliamentary Procedure Important?**

> Because it's a time tested method of conducting business at meetings and public gatherings. It can be adapted to fit the needs of any organization. Today, Robert's Rules of Order newly revised is the basic handbook of operation for most clubs, organizations and other groups. So it's important that everyone know these basic rules!

Posts using Roberts Rules usually follow a fixed order of business. Below is a typical example:

1. Call to order.
2. Roll call of members present (or Officers).
3. Reading of minutes of last meeting.
4. Officers' reports.
5. Committee reports.
6. Old Business --- Important business from previous sessions designated for consideration at this meeting.
7. Unfinished business.
8. New business.
9. Good of The American Legion.
10. Adjournment.

The method used by members to express themselves is in the form of moving motions. A motion is a proposal that the entire membership take action or a stand on an issue. Individual members can:

1. Call to order.
2. Second motions.
3. Debate motions.

4. Vote on motions.

There are four Basic Types of Motions:

1. Main Motions: The purpose of a main motion is to introduce items to the membership for their consideration. They cannot be made when any other motion is on the floor, and yield to privileged, subsidiary, and incidental motions.
2. Subsidiary Motions: Their purpose is to change or affect how a main motion is handled, and is voted on before a main motion.
3. Privileged Motions: Their purpose is to bring up items that are urgent about special or important matters unrelated to pending business.
4. Incidental Motions: Their purpose is to provide a means of questioning procedure concerning other motions and must be considered before the other motion.

**How are Motions Presented?**

1. Obtaining the floor
    a. Wait until the last speaker has finished.
    b. Rise and address the Commander by saying, "Mr. Commander, or Madame Commander."
    c. Wait until the Commander recognizes you.
2. Make Your Motion
    a. Speak in a clear and concise manner.
    b. Always state a motion affirmatively. Say, "I move that we ..." rather than, "I move that we do not ...".
    c. Avoid personalities and stay on your subject.
3. Wait for Someone to Second Your Motion
4. Another member will second your motion or the Commander will call for a second.
5. If there is no second to your motion it is lost. (If someone begins debate on the motion without a second; the need for a second is immaterial and debate should proceed)
6. The Commander States Your Motion
    a. The Commander will say, "it has been moved and seconded that we ..." Thus placing your motion before the membership for consideration and action.
    b. The membership then either debates your motion, or may move directly to a vote.
    c. Once your motion is presented to the membership by the Commander it becomes "assembly property", and cannot be changed by you without the consent of the members.
7. Expanding on Your Motion
    a. The time for you to speak in favor of your motion is at this point in time, rather than at the time you present it.
    b. The mover is always allowed to speak first.
    c. All comments and debate must be directed to the Commander.
    d. Keep to the time limit for speaking that has been established.
    e. The mover may speak again only after other speakers are finished, unless called upon by the Commander.
8. Putting the Question to the Membership
    a. The Commander asks, "Are you ready to vote on the question?"
    b. If there is no more discussion, a vote is taken.
    c. On a motion to move the previous question may be adapted.

**Voting on a Motion:**

The method of vote on any motion depends on the situation and the by-laws of policy of your organization. There are five methods used to vote by most organizations, they are:

1. By Voice -- The Commander asks those in favor to say, "aye", those opposed to say "no". Any member may move for a exact count.
2. By Roll Call -- Each member answers "yes" or "no" as his name is called. This method is used when a record of each person's vote is required.
3. By General Consent -- When a motion is not likely to be opposed, the Commander says, "if there is no objection ..." The membership shows agreement by their silence, however if one member says, "I object," the item must be put to a vote.
4. By Division -- This is a slight verification of a voice vote. It does not require a count unless the Commander so desires. Members raise their hands or stand.
5. By Ballot -- Members write their vote on a slip of paper, this method is used when secrecy is desired.

There are two other motions that are commonly used that relate to voting.

1. Motion to Table -- This motion is often used in the attempt to "kill" a motion. The option is always present, however, to "take from the table", for reconsideration by the membership.
2. Motion to Postpone Indefinitely -- This is often used as a means of parliamentary strategy and allows opponents of motion to test their strength without an actual vote being taken. Also, debate is once again open on the main motion.

Parliamentary Procedure is the best way to get things done at your meetings. But, it will only work if you use it properly.

1. Allow motions that are in order.
2. Have members obtain the floor properly.
3. Speak clearly and concisely.
4. Obey the rules of debate.

Most importantly, *BE COURTEOUS*.

## NO MOTIONS NECESSARY ON MATTERS THAT REQUIRE AN AUDIT

In the case of the Post Finance Report, Club Room Report, Lounge Report should be referred to an auditing committee, as the vote to accept the report does not endorse the accuracy of the figures, for the assembly can only be sure of that by having the report audited. Whenever such a financial report is made, the chair, without any motion, should say it is referred to the auditing committee or auditors, if there are any. If there are none, then the proper motion is to refer it to an auditing committee to be appointed by the chair. When the auditing committee reports, this report should be accepted, or adopted, which carries with it the endorsement of the financial report. If the motion passes to refer the report is approved, it must be made available for audit in accordance with the audit procedures contained in the Constitution and ByLaws.

# ROBERTS RULES CHEAT SHEET

| To: | You say: | Interrupt Speaker | Second Needed | Debatable | Amendable | Vote Needed |
|---|---|---|---|---|---|---|
| Adjourn | "I move that we adjourn" | No | Yes | No | No | Majority |
| Recess | "I move that we recess until..." | No | Yes | No | Yes | Majority |
| Complain about noise, room temp., etc. | "Point of privilege" | Yes | No | No | No | Chair Decides |
| Suspend further consideration of something for a more pressing issue | "I move that we table it" | No | Yes | No | No | Majority |
| End debate | "I move the previous question" | No | Yes | No | No | 2/3 |
| Postpone consideration of something | "I move we postpone this matter until..." | No | Yes | Yes | Yes | Majority |
| Amend a motion | "I move that this motion be amended by..." | No | Yes | Yes | Yes | Majority |
| Introduce business (a primary motion) | "I move that..." | No | Yes | Yes | Yes | Majority |

The above listed motions and points are listed in established order of precedence. When any one of them is pending, you may not introduce another that is listed below, but you may introduce another that is listed above it.

| To: | You say: | Interrupt Speaker | Second Needed | Debatable | Amendable | Vote Needed |
|---|---|---|---|---|---|---|
| Object to procedure or personal affront | "Point of order" | Yes | No | No | No | Chair decides |
| Request information | "Point of information" | Yes | No | No | No | None |
| Ask for vote by actual count to verify voice vote | "I call for a division of the house" | Must be done before new motion | No | No | No | None unless someone objects |
| Object to considering some undiplomatic or improper matter | "I object to consideration of this question" | Yes | No | No | No | 2/3 |
| Take up matter previously tabled | "I move we take from the table..." | Yes | Yes | No | No | Majority |
| Reconsider something already disposed of | "I move we now (or later) reconsider our action relative to..." | Yes | Yes | Only if original motion was debatable | No | Majority |
| Consider something out of its scheduled order | "I move we suspend the rules and consider..." | No | Yes | No | No | 2/3 |
| Vote on a ruling by the Chair | "I appeal the Chair's decision" | Yes | Yes | Yes | No | Majority |

The motions, points and proposals listed above have no established order of preference; any of them may be introduced at any time except when meeting is considering one of the top three matters listed from the first chart (Motion to Adjourn, Recess or Point of Privilege).

# PROCEDURE FOR HANDLING A MAIN MOTION

**NOTE:** Nothing goes to discussion without a motion being on the floor.

**Obtaining and assigning the floor**

A member raises hand when no one else has the floor

- The chair recognizes the member by name

**How the Motion is Brought Before the Assembly**

- The member makes the motion: I move that (or "to") ... and resumes his seat.
- Another member seconds the motion: I second the motion or I second it or second.
- The chair states the motion: It is moved and seconded that ... Are you ready for the question?

**Consideration of the Motion**

1. Members can debate the motion.
2. Before speaking in debate, members obtain the floor.
3. The maker of the motion has first right to the floor if he claims it properly
4. Debate must be confined to the merits of the motion.
5. Debate can be closed only by order of the assembly (2/3 vote) or by the chair if no one seeks the floor for further debate.

**The chair puts the motion to a vote**

1. The chair asks: Are you ready for the question? If no one rises to claim the floor, the chair proceeds to take the vote.
2. The chair says: The question is on the adoption of the motion that ... As many as are in favor, say ‘Aye’. (Pause for response.) Those opposed, say 'Nay'. (Pause for response.) Those abstained please say ‘Aye’.

**The chair announces the result of the vote.**

1 The ayes have it, the motion carries, and ... (indicating the effect of the vote) or
2 The nays have it and the motion fails

**WHEN DEBATING YOUR MOTIONS**

1. Listen to the other side
2. Focus on issues, not personalities; only address the Chair; never someone else
3. Avoid questioning motives
4. Be polite

# HOW TO ACCOMPLISH WHAT YOU WANT TO DO IN MEETINGS

**MAIN MOTION**

You want to propose a new idea or action for the group.

- After recognition, make a main motion.
- Member: "Madame Chairman, I move that _____."

**AMENDING A MOTION**

You want to change some of the wording that is being discussed.

- After recognition, "Madame Chairman, I move that the motion be amended by adding the following words _____."
- After recognition, "Madame Chairman, I move that the motion be amended by striking out the following words _____."
- After recognition, "Madame Chairman, I move that the motion be amended by striking out the following words, _____, and adding in their place the following words _____."

**REFER TO A COMMITTEE**

You feel that an idea or proposal being discussed needs more study and investigation.

- After recognition, "Madame Chairman, I move that the question be referred to a committee made up of members Smith, Jones and Brown."

**POSTPONE DEFINITELY**

You want the membership to have more time to consider the question under discussion and you want to postpone it to a definite time or day, and have it come up for further consideration. Many times a motion to Lay on the Table is improperly used in this instance.

- After recognition, "Madame Chairman, I move to postpone the question until _____."

**LAY ON THE TABLE**

The subsidiary motion to lay on the table is properly used only when it is necessary to suspend consideration of a main motion in order to deal with another matter that has come up unexpectedly and which must be dealt with before the pending motion can be properly addressed. It has, however, become common to misuse this motion to end consideration of the pending main motion without debate, or to mistakenly assume that its adoption prevents further consideration of the main motion at all, or until a specified time. The use of the motion to lay on the table to kill a motion is improper; instead, a motion to postpone indefinitely should be used.

- After recognition, "Madame Chairman, I move to lay the pending question on the table."

**QUESTION**

You think discussion has gone on for too long and you want to stop discussion and vote.

- After recognition, "Madam President, I move the previous question."

**LIMIT DEBATE**

You think discussion is getting long, but you want to give a reasonable length of time for consideration of the question.

- After recognition, "Madam President, I move to limit discussion to two minutes per speaker."

**POSTPONE INDEFINITELY**

You want to kill a motion that is being discussed without voting on the merits of the motion.

• After recognition, "Madam Moderator, I move to postpone the question indefinitely."

**POSTPONE INDEFINITELY**

You are against a motion just proposed and want to learn who is for and who is against the motion.

• After recognition, "Madame President, I move to postpone the motion indefinitely."

**RECESS**

You want to take a break for a while.

• After recognition, "Madame Moderator, I move to recess for ten minutes."

**ADJOURNMENT**

You want the meeting to end.

• After recognition, "Madame Chairman, I move to adjourn."

**PERMISSION TO WITHDRAW A MOTION**

You have made a motion and after discussion, are sorry you made it.

• After recognition, "Madam President, I ask permission to withdraw my motion."

**CALL FOR ORDERS OF THE DAY**

At the beginning of the meeting, the agenda was adopted. The chairman is not following the order of the approved agenda.

• Without recognition, "Call for orders of the day."

**SUSPENDING THE RULES**

The agenda has been approved and as the meeting progressed, it became obvious that an item you are interested in will not come up before adjournment.

• After recognition, "Madam Chairman, I move to suspend the rules and move item 5 to position 2."

**POINT OF PERSONAL PRIVILEGE**

The noise outside the meeting has become so great that you are having trouble hearing.

- Without recognition, "Point of personal privilege."
- Chairman: "State your point."
- Member: "There is too much noise, I can't hear."

**COMMITTEE OF THE WHOLE**

You are going to propose a question that is likely to be controversial and you feel that some of the members will try to kill it by various maneuvers. Also you want to keep out visitors and the press.

• After recognition, "Madame Chairman, I move that we go into a committee of the whole."

**POINT OF ORDER**

It is obvious that the meeting is not following proper rules.

- Without recognition, "I rise to a point of order," or "Point of order."

**POINT OF INFORMATION**

You are wondering about some of the facts under discussion, such as the balance in the treasury when expenditures are being discussed.

- Without recognition, "Point of information."

**POINT OF PARLIAMENTARY INQUIRY**

You are confused about some of the parliamentary rules.

- Without recognition, "Point of parliamentary inquiry."

**APPEAL FROM THE DECISION OF THE CHAIR**

Without recognition, "I appeal from the decision of the chair."

**Rule Classification and Requirements**
**General Principles**
**(Order of Precedence in Governing Documents)**

| Class of Rule | Requirements to Adopt | Requirements to Suspend |
|---|---|---|
| Charter | Adopted by majority vote or as provided by law or governing authority | Cannot be suspended |
| Constitution and Bylaws | Standard C&BL as adopted | Cannot be suspended |
| Special Rules of Order | Previous notice & 2/3 vote, or a majority of entire membership | 2/3 Vote |
| Standing Rules | Majority vote | Can be suspended for session by majority vote during a meeting |
| Modified Roberts Rules of Order | Adopted in bylaws | depends on provision |

## INVESTIGATIONS AND RESOLUTION D9924

Often conflicts of personalities or different opinions on management styles will result in conflicts within a Post. In most cases these conflicts involve the Post lounge, financial concerns, or other issues involving Post operations. These matters should be resolved by the Post leadership whenever possible.

Resolution D9924 approved by the Department Executive Committee on February 18, 2024 establishes a Department policy on Internal Affairs for Post Issues and Investigations.

**WHEREAS, In 2008 the Department Executive Committee (DEC) adopted Resolution D3808 which established policies for Department involvement in Post issues and investigations; and**

**WHEREAS, The policy objectives of encouraging the investigation and resolution of Post issues without the Department's involvement has been successful in allowing the Department to focus on the most critical issues and encouraging Posts to work through many issues without outside involvement; and**

**WHEREAS, All American Legion Posts have a responsibility to conduct all Post activities professionally, legally, and ethically; and**

**WHEREAS, Posts are reminded that the DEC has a long-standing policy, most recently affirmed on February 19, 1995, that Posts must conduct their operations and programs in strict conformance with all local, state, and federal laws, regulations, and ordinances and in compliance with the Constitutions and By-Laws of the National organization and the Department and that Posts violating this policy may face Department disciplinary proceedings; and**

**WHEREAS, The importance of maintaining The American Legion's organizational integrity and prestige is critical, and Posts must never allow actions that may bring discredit upon The American Legion or its members, such actions including wrongful discrimination, sexual harassment, alcohol infractions, and other illegal/immoral practices'; and**

**WHEREAS, Posts, their members, and guests may have issues that need to be investigated and resolved; and**

**WHEREAS, Post activities in many areas are subject to regulation by local law enforcement and regulatory agencies that serve a critical role in maintaining community safety and accountability, and**

**WHEREAS, Establishing clear procedures for the redress of complaints and for access to the proper resources are critical to the investigation and resolution of issues at and within the Post; therefore, be it**

**RESOLVED, By the Department Executive Committee of The American Legion, Department of Maryland, Inc. in a regular meeting assembled in Kent Island Post 278, Stevensville, Maryland, on February 18, 2024, that the Department Policy on Internal Affairs for Post Issues and Investigations, in the form attached hereto, is hereby adopted, provided, however, that nothing contained therein shall supersede any contrary right to action by the Department in accordance with the Constitutions and By-Laws of the National organization and the Department; and, be it further**

**RESOLVED, that the DEC shall have authority to amend the policy from time-to-time to reflect the Department's experience with the policy or for other reasons; and, be it finally**

**The American Legion, Department of Maryland, Inc.**
**Department Policy on Internal Affairs for Post Issues and Investigations**
**(as Enacted by the Department Executive Committee on February 18, 2024)**

The principle that Post issues in nearly all cases are best investigated and resolved by the Posts and their members has been central to the conduct and management of the Department's internal affairs. While there are instances when Department intervention may be warranted, as, for example, where the reputation of the American Legion organization is at stake, these instances are few, and they must be clearly of that nature to circumvent a Post's internal processes. Caution also must be taken by all concerned to avoid interference with the activities of any regulatory or law enforcement agency with authority over a particular circumstance or occurrence.

Posts are reminded that the Department Executive Committee (DEC) has a long-standing policy, most recently affirmed on February 19, 1995, that Posts must conduct their operations and programs in strict conformance with all local, state, and federal laws, regulations, and ordinances and in compliance with the Constitutions and By-Laws of the National organization and the Department.

Posts, their members, and guests should expect that all Post activities will be conducted professionally, legally, and ethically. Having a policy that provides guidance for Posts, members, and guests having complaints, grievances, or other similar issues is critical to the proper management of these expectations.

I. An Important Clarification as to Post Discipline:

Post discipline of its members is the purview of the Post with certain circumstances allowing for an appeal to the Department. The National organization can take no role (by federal Charter) in the discipline by Posts of their members.

Post discipline that affects the Post Constitutional rights of a member (e.g., attending meetings and voting) may not be imposed without a hearing and any decision is subject to appeal per The American Legion, Department of Maryland, Inc. Uniform Code for Discipline of Post Members. This document is available on the Department website as part of the Judge Advocate Manual.

Post discipline in relation to the use of Post facilities or similar matters that do not affect the Post Constitutional rights of the member (e.g.,. participation in social activities at the Post) is subject to certain limitations as outlined in ARTICLE XIII, Discipline of Post Members, Section 7, of the Department By-Laws. Such discipline is not appealable to the DEC, and the decision of the Post is final.

II. Basic Principles for all Post Issues:

1. Post issues are to be handled as a rule exclusively by the Post or, if appropriate, by a regulatory or enforcement agency with authority over the issue.
a. All complaints, grievances, or other Post issues should be brought initially to the attention of a Post Officer or an Executive Committee Member, with the exception of alleged criminal activity by a Post official (see "Criminal Activity" below). Most Post issues can be resolved by allowing the matter to be investigated and addressed at the local level.
b. Post Officers and Executive Committee Members must be familiar with their responsibilities to receive reports of alleged wrongdoing to conduct investigations, and to mediate, adjudicate, or otherwise resolve disputes. Problem resolution at the Post must be a priority.

2. If an alleged wrongful activity may be a crime or another violation of a governmental statute or regulation, the appropriate regulatory authority or law enforcement agency should be contacted, and the allegations reported by the Post, in order to allow these authorities to address the issues as they deem appropriate.
3. If there is no avenue to address the issue either internally or with a local regulatory/law enforcement agency, the Post, member, or guest should contact the District Commander of the District to which the Post is assigned. The District Commander should take steps to investigate and resolve the issue or refer the Post or individual to the appropriate resources or authorities. If in the opinion of the District Commander all avenues to address the issue at the Post were not exhausted the matter should be referred back to the Post for appropriate actions or remediations. If the District Commander determines that the issue is of a nature needing further investigation and that the District is unable to resolve the issue, the matter should be referred, in writing, together with all pertinent documentation, to the Region Commander for appropriate action.
4. When a matter is referred to the Region Commander, the Region Commander should take steps to investigate and resolve the issue or refer the Post or individual to the appropriate resources or authorities. If in the opinion of the Region Commander all avenues to address the issue at the Post were not exhausted the matter should be referred back to the Post for appropriate actions or remediations. If the Region Commander determines that the issue is of a nature needing further investigation and that the Region is unable to resolve the issue, the matter should be referred, in writing, together with all pertinent documentation, to the Department Commander for appropriate action.
5. Matters received at the Department which have not gone through the above procedures will be examined by the Department Judge Advocate and/or Department Adjutant to determine if the circumstances require the Department's intervention on an emergency basis. If no such emergency is found to exist, the Department will refer the matter to the appropriate Post, District, or Region Commander for the regular process to commence or resume.
6. Anytime the Department acts on a Post matter, where the decision does not impact the Post Charters, the decision shall be rendered, on a case-by-case basis, by the DEC, and they are final and may not be appealed to the National organization. In the event of any challenge to a DEC decision, whether to the National organization, the courts, or otherwise, the challenger shall bear all of the costs incurred by the Department in defending the decision of the DEC, including the Department's reasonable attorneys' fees, except as a competent authority may, for good cause, rule otherwise.

## III. Principal Categories of Post Issues:

1. Administrative/Internal procedures
2. Criminal activity
3. Violations of Local Ordinances, Rules, or Regulations
4. Corporate Issues
a. Employment Issues
b. Contractual Issues
c. IRS or other Tax Issues

1. Alleged Violations of Administrative/Internal Procedures
a. Violations of Post Procedures
i. These issues almost always can be resolved at the Post level.
ii. The Post Officers and Executive Committee should be given the opportunity to take appropriate action to resolve these matters.
iii. If the Post Commander, Post Adjutant, or five (5) Post members in good standing nevertheless make a written complaint about such a violation to the District Commander, the provisions of II. above shall apply, and. the District Commander shall take appropriate action.
b. Discipline of Post Officers
i. Posts should be given the first opportunity to consider discipline of their Officers
ii. Article XIII, Section 8, of the Department By-Laws allows Posts without formal charging to remove locally-elected Post Officers. There are notice requirements. This action can be accomplished by a motion from any member from the floor with a 2/3rds vote of the Post members present and voting.
iii. Article X, Discipline, Section 4, of the Department By-Laws reserves to the Department the right to discipline Post Officers regardless of any other action (or inaction) by the Post.
c. Violations of Constitution and Bylaws of National, Department, or Post
i. In most cases these alleged violations can be resolved through addressing the issue to the Post leaders. Many times, the problem is a lack of understanding or a mistaken reading of the governing documents.
ii. If the Post Commander, Post Adjutant, or five (5) Post members in good standing make a written request to the District Commander, the provisions of II. above shall apply, and the District Commander shall take appropriate action.
iii. The Department reserves the right to discipline a Post for violations of the Post, Department, or National Constitution and Bylaws in accordance with the Department Constitution and Bylaws and the Rules of the DEC.
2. Alleged Criminal Activity
a. The proper authority for receiving reports of and investigating criminal activity is local law enforcement and the States Attorney for the jurisdiction of the alleged activity. Reporting these violations to the Department or National organization may only slow appropriate action.
b. Post investigation of alleged criminal activity may otherwise harm the case, especially if evidence that a law enforcement agency may need to carry out its duties comes to be altered.
c. If unsure how to proceed, Post Officers should contact the proper authorities for assistance on how to conduct an internal investigation and properly handle potential evidence.
3. Alleged Violations of Local Ordinances, Rules, or Regulations
a. Health Code Violations. Posts or members suspecting a health code violation should report such violation to the local health department in the jurisdiction of the offending entity. Reporting these violations to the Department or National organization may only slow appropriate action. These local regulatory agencies have power to investigate, issue violations/citations, and take corrective actions against violators.
b. Liquor Code Violations. Posts or members suspecting a liquor code violation should report such violation to the Liquor Control Board in the jurisdiction of the offending entity. Reporting these violations to the Department or National organization may only slow appropriate action. These local regulatory agencies have power to investigate, issue violations/citations, and take corrective actions against violators.
c. Other Code Violations. Posts or members suspecting a violation of any other local code or ordinance should report such a violation to the appropriate regulatory body in the jurisdiction of the offending entity. Reporting these violations to the Department or National organization may only slow appropriate action. These local regulatory agencies have power to investigate, issue violations/citations, and take corrective actions against violators.

4. Corporate Issues
a. Employment Complaints/Issues. Posts are separately incorporated and are solely responsible for all Post employment matters, including tax withholding and classification issues. Complaints about Post employment practices should be reported to the appropriate government agency for the type of complaint alleged.Reporting these violations to the Department or National organization may only slow appropriate action. These regulatory agencies have power to investigate, issue violations/citations, and take corrective actions against violators. Some worker guidance for pursuing employment complaints may be found at https://mdcourts.gov/legalhelp/employment.
b. Contractual issues. Individuals with contractual disputes with Posts should present the issue to the Post in writing and seek a resolution. If no resolution is found, the parties may wish to pursue arbitration or mediation through the auspices of the Maryland courts (if a lawsuit has been filed) or private agencies such as the American Arbitration Association. Otherwise the parties should consider any other resolution mechanisms prescribed in their contracts. Except in rare circumstances, the Department is not party to Post contractual agreements and assumes no liability or responsibility in these matters.
5. Federal (IRS) or State Tax Issues. Suspected tax fraud or any other suspected violation of tax codes (local, state or national) should be reported to the appropriate taxing authority.

**RESOLUTION ON Post operations**

Post are reminded that the Department Executive Committee has had a long standing policy that Posts must conduct all operation and programs shall conform to and abide by all local, state and federal laws, codes and ordinances and shall be in compliance with all articles of the Constitutions and By-Laws of THE AMERICAN LEGION and of The American Legion, Department of Maryland, Inc. The DEC on February 19, 1995 reaffirmed this mandate. Posts violating this may face disciplinary proceedings at the Department of Maryland. The importance of maintaining our organizational integrity and prestige is critical and Posts must never allow actions that may bring discredit upon The American Legion or its member. Actions such as discrimination based off of Federal or State protected classes, Sexual Harassment, Alcohol violations, or other illegal/immoral practices shall be prohibited and those engaging in such activities shall be disciplined appropriately.

**FREQUENTLY ASKED QUESTIONS ARTICLES (ASSISTANCE TO THE JUDGE ADVOCATE)**

A series of articles is available for Post reference. Post Officers should be advise to read and understand these critical topics. The articles can be accessed at the following link:

https://home.mycloud.com/action/share/1804803e-5076-439f-8d3f-22799545aeea

**Audits (Internal/External)**

Most Maryland Posts operate many different programs and businesses. One question that usually pops up several times a month and is directed for answer to Department HQs is about Audits. An attempt to answer all the many different questions with specificity is hard without detailed knowledge of Post operations. There is a great resource, and much more able to answer most of the questions, and this link: https://www.councilofnonprofits.org/nonprofit-audit-guide

**Must the Post have an annual Audit?**
The Standard Post Constitution and ByLaws in force in all MD Posts does require an annual audit. However, the whether the audit is an external or internal audit is a decision each Post should incorporate in their Standing Rules.

**Article VI - Finance - Section 11.** The accounts of the Post shall be audited, internally or externally, within ninety (90) days after the end of the fiscal year, and the final report of the audit shall be delivered to the members of the Post at the next Post Membership Meeting. If an internal audit is to be conducted, the Post Executive Committee shall appoint an Audit Committee charged with the duty of auditing Post financial accounts. No Officer having the duties of authorizing disbursements, or signing checks may serve on the Audit Committee. The audit shall be done at least annually, or more frequently at their discretion.

**Is an Independent Audit a good idea (It costs too much)?**
There is no way to answer that question for a Post's membership. If it is mandated in the Post Standing Rules, then the Post feels it is necessary and it must be conducted. Many argue that the costs are too high for an audit, and audits can be expensive. But, when considered relative to the fact that the average loss from a single person fraud case in small nonprofits is **$80,000**, the cost of the audit doesn't seem so outrageous. Does the Post get a financial review instead of an audit? How does the Post safeguard against fraud? All questions no one can answer except a Post's membership. But fraud and mismanagement of financial matters destroy Posts and deprive the organization of money to help the community. Everyone must be constantly vigilant about these issues.

**Is an Internal Audit good enough?**
Again, being able to answer this question is impossible.

Audits are not the most effective way to uncover fraud (but that doesn't mean they are unnecessary). First, most cases of fraud are uncovered by tips from employees and members of the Posts. They see something and know it is not right, and then point it out to someone. This website has some great tips on ways to reduce fraud and set up a culture that encourages employees and members to report suspected fraud. https://www.councilofnonprofits.org/nonprofit-audit-guide/myth-audits-uncover-fraud

The best way to combat fraud is through Governance! The article here https://www.councilofnonprofits.org/nonprofit-audit-guide/myth-audits-uncover-fraud explains this idea much better than we can at Department Headquarters.

**What is the bottom line in all this?**
The Post Constitution and Bylaws in force in all MD Posts requires audit annually. But in addition implementing safeguards to fraud and theft such as review of financial reports and bank statements, separation of financial duties, setting up adequate whistle-blower reporting methods, checks and balances, and regularly scheduled reconciliations done by parties not involved in the issuing of checks or making deposits are recommended as a part of the overall Post plan for combating these threats.

If the Post Officers believe that an issue exists do not ignore and hope it resolves itself, take steps to insure good governance/checks and balances are in place, and that the financial statements reflect the true position of the Post. If there are continuing questions, then even without a CBL mandate for an external audit, the Post should engage an auditor. The Post membership's approval must be obtained for such an audit and expense.

**More information on Audits**
https://www.councilofnonprofits.org/nonprofit-audit-guide/frequently-asked-questions

**Source:**
https://www.councilofnonprofits.org/nonprofit-audit-guide

# The American Legion, Department of Maryland, Inc.
# Uniform Code for Discipline of Post Members
## (as Enacted by the Department Executive Committee on August 19, 2018)

**Excerpt from Department Bylaws on Discipline:**

### ARTICLE XIII
### Discipline of Post Members

Section 1. Each Post has the power to discipline its own membership as such, subject to the restrictions of the National and Department Constitutions and ByLaws.

Section 2. Members may be suspended or expelled from The American Legion only upon a proper showing of cause. Charges shall be based upon disloyalty, neglect of duty, dishonesty or conduct unbecoming a member of The American Legion. All charges shall be made under oath, in writing, by the accuser or accusers, and no member in good standing shall lose their membership until given a fair trial by the Post in such manner and form as are provided herein.

Section 3. The charges shall be filed with the Post Commander or Adjutant, and a copy of the charges shall be served upon the accused either by an officer of the Post who shall certify as to delivery of said charges into the presence of the accused, or by registered mail directed to the address of the accused shown on the current year's membership record of the Post. The copy of the charges so served shall contain a notice to the accused of the date, time and place of the hearing of such charges, such date to be not sooner than 15 days after service has been obtained, A copy of all papers served upon the accused, and the certification of the officer who made the service, or the return receipt, signed by the accused, reflecting the registered mail service, shall be preserved in the Post records for reference in the event of appeal. The accused shall be entitled to obtain representation at the hearing and to cross-examine all witnesses against him/her. Reasonable postponement should be accorded to permit the hearing to be held at such time as will best insure the production of all real evidence bearing on the charges provided, however, that the accused may insist upon the hearing within 30 days of the service of charges upon the charged member.

Section 4. Punishment. By a two-thirds majority of those present and voting, upon a finding of guilty a member may be reprimanded, or suspended for a time not to exceed one year, or expelled from The American Legion. Notice of suspension or expulsion of any member shall immediately be sent to the Department Adjutant. The decision of the Post shall be final unless changed by the Department Executive Committee.

Section 5. Appeal. Any member who has been so disciplined has the right to appeal to the Department Executive Committee, whose decision on appeal shall be final. Said appeal must be in writing and filed with the Department within thirty (30) days after the action appealed from is taken, provided however, if the punishment is suspension or expulsion from The American Legion, the accused may also appear personally before an Appeals Committee named by the Department Commander; which Committee shall report its findings and recommendations to the Department Executive Committee.

Section 6. When an appeal is taken, the Post shall be notified by Department and given at least twenty days within which to answer said appeal. When a request is made to appear before the Appeals Committee, the Post shall be given at least twenty days notice and afforded an opportunity to also appear.

Section 7. In order to maintain order and decorum within the Post facilities, nothing contained herein shall prohibit a Post, with or without a hearing, from suspending a member from the use of the Post facilities for a period not to exceed 90 days, provided however, that the member shall have the right to a hearing before the Post Executive Committee or the Post Membership if the member requests same in writing within ten (10) days after being advised of said suspension and said hearing shall be held within ten (10) days after the Post is so notified.

Section 8. A Post Officer, after being given 30 days notice of the intended action, may be removed from office for neglect of duty, or conduct unbecoming the office the member holds, by action of two-thirds of the membership of the Post present and voting at a regular meeting and no formal charges shall be necessary to initiate such removal. Provided, however, that such Post Officer shall be entitled to know the reasons for such action and upon his/her request to be heard at a regular meeting in his/her own defense either before or after the action shall have been taken; and if this defense is first heard after the action has been taken, the membership of the Post shall reconsider his/her removal from office.

**DEC ESTABLISHED RULES GOVERNING TRIALS**

These rules shall govern any and all trials held by any Post within the American Legion Department of Maryland.

*1.* Any disciplinary action where the potential punishment is suspension or expulsion from the American Legion, or suspension of use of Post Facilities for a period greater than 90 days, against any Member shall be upon sworn or verified written charges by the accuser(s).(sample as Attch 1) *(Note: In order to maintain order and decorum within the Post facilities, nothing contained herein shall prohibit a Post, with or without a hearing, from suspending a member from the use of the Post facilities for a period not to exceed 90 days, provided however, that the member shall have the right to a hearing before the Post Executive Committee or the Post Membership if the member requests same in writing within ten (10) days after being advised of said suspension and said hearing shall be held within ten (10) days after the Post is so notified.)*

2. Said sworn or verified written charges shall be filed with the Post Commander or Post Adjutant. The charges shall be based upon disloyalty, neglect of duty, dishonesty or conduct unbecoming a member of The American Legion. All charges shall be made under oath, in writing, by the accuser or accusers, and no member in good standing shall lose their membership until given a fair trial by the Post in such manner and form as are provided herein.

3. The accuser(s) must be a Member(s) of the same Post as the Accused (except as provided in Article X Discipline, Section 4 of The American Legion, Department of Maryland, Inc. Constitution) and shall set forth the charges of disloyalty, dishonesty, and/or conduct unbecoming a Member of the American Legion in terms whereby the Accused shall be able to determine what conduct is being complained of, which shall at a minimum, include the date, time, place, and the details of the offensive conduct, in order that the Accused may properly prepare a defense.

4. A copy of the sworn or verified written charges shall be served upon the Accused, either in person by an officer of the Post who shall certify as to delivery of said charges into the presence of the accused, or by registered mail directed to the address of the accused shown on the current year's membership record of the Post.

5. The copy of the charges so served shall be accompanied by the following information:

a. A Summons for the Accused to appear on a specified date, time, and location for atrial. No trial shall be held until fifteen (15) days have lapsed from the time of service of the charges upon the Accused.

b. A copy of the The American Legion, Department of Maryland, Inc., of this Uniform Code for Discipline of Post Members must be included in the service to the accused in order to notify of all rights during the disciplinary process.

6. A copy of all papers served upon the accused, and the certification of the officer who made the service, or the return receipt, SIGNED BY THE ACCUSED, reflecting the registered mail service, shall be preserved in the Post records for reference in the event of appeal.

7. The Accused shall be entitled to obtain representation, however any costs for said representation shall be the responsibility of the accused. Counsel may be a member of the American Legion or a licensed attorney. However, lack of licensed counsel, or inadequate representation shall not be a valid reason to overturn a decision on appeal.

8. The Accused shall be entitled to cross-examine all witnesses against him/her.

9. The Accused may appear at the trial in person, through written answer, or with counsel.

10. Either the Convening Authority (Post) or the Accused may apply for a continuance before the day of the trial. However, such a request must be in writing, show just cause for said request, and be sworn to by the moving party. The presiding Judge Advocate shall rule on any such motion filed. Reasonable postponements shall be accorded to permit the hearing to be held at such time as will best insure the production of the charges except/ provided that the accused may INSIST UPON the hearing within thirty (30) days of the service of charges upon him.

11. The Judge Advocate of the Convening Authority shall preside at the trial and shall have the power and authority to pass upon the materiality and relevancy of any evidence presented, and shall have general power to prescribe the necessary and reasonable rules and regulations for the orderly procedure of said trial.

12. In the event that the Judge Advocate of the Convening Authority is unable to preside at the trial, the Department Commander shall be noticed of said inability, and the Department Commander will then appoint a Judge Advocate from within the physical jurisdiction of the American Legion Department of Maryland, to preside over the trial. The Post shall bear the expense of any Judge Advocate so appointed.

13. The Convening Authority has the option to follow one of two methods for the actual hearing/trial. All the procedures above, including notification requirements and mandated waiting periods are in force no matter the method of hearing/trial selected.

a. Trial held before a Trial Committee, acting as jury. In this method the Committee then reports findings to the next General Post meeting and Post membership votes as outlined in this policy on those recommendations.

b. Trial held before the General Post Membership in Regular or Special Meeting. This method may be more desirable in smaller Posts where usual meeting attendance is less than 10 members.

## Procedures for Trial before Trial Committee

14. The Trial Committee for the trial shall be selected by the presiding Judge Advocate from the members of the Post where the charges were filed. The Convening Authority shall select ten (10) such members. All members selected must be in good standing. Any member so selected shall be disqualified to serve as a juror if they are an accuser or witness at the trial.

15. If any Trial Committee member so selected states that he or she cannot fairly and impartially render a verdict in accordance with the evidence, then the presiding Judge Advocate shall strike those individuals as Trial Committee members.

16. The Accused shall have the right to strike two (2) Trial Committee members from the panel without showing any cause for such challenge. The Post shall have the right to strike two (2) Trial Committee members from the panel without showing any cause for such challenge. If the number of Trial Committee is

reduced below six (6), then the presiding Judge Advocate shall select additional Post members in good standing as needed to reach six (6) on the trial committee.

17. The Trial Committee actually selected to hear the facts shall consist of an even number of members and at least six (6) individuals.

18. If six (6) impartial individuals cannot be selected from the Post then the presiding Judge Advocate shall so notify the Department Commander and the Department Commander shall detail additional members from the American Legion, within the Department of Maryland to act as Trial Committee. The entity bringing the charges shall be responsible for any cost associated therewith.

19. At any time before the trial commences, the charges may be amended. However, if the charges are amended the Accused must be served with the amended charges and allowed fourteen (15) days before the trial can commence.

20. All testimony of witnesses must be taken under oath. The Accused shall have the right to confront and cross-examine any witnesses against him or her. No written statements, whether sworn or not, shall be admitted into evidence if the person who wrote the statement is not present to confront and be cross-examined by the Accused or counsel.

21. The Post SHALL maintain a record of the trial and associated proceedings recorded by tape, video, or court reporter. The Post should maintain the record of the trial proceedings in all disciplinary hearings in case of appeal. Failure of the Post to maintain the record of proceedings is grounds for reversal on appeal.

22. By two-thirds of the majority of the Trial Committee present and voting and upon the finding of a member guilty (means it requires 2/3 vote to find the member guilty), the Trial Committee shall prepare a written report detailing their findings and a recommended punishment. The member (1) may be reprimanded; (2) have membership, suspended for a time not to exceed one year; (3) suspension from the use of the Post facilities for a period not to exceed 90 days, or (4) expelled from membership in The American Legion.

23. The Trial Committee's findings and recommendations must be presented to the membership of the Post at the next regularly scheduled meeting of the Post. The accused may appear before the Post Meeting in person, through written answer, or with counsel and be permitted a reasonable amount of time (not less than 5 minutes, and not to exceed twice the amount of time the Trial Committee report presentation) to support or rebut the findings of the Trial Committee. At that meeting, the membership of the Post by 2/3 vote of the members present and casting a vote may approve, disapprove, or modify the findings of the Trial Committee and any punishment awarded. Such decision at the general membership meeting of the Post shall be binding upon the Accused and the Post unless the Accused, within Thirty (30) days from such decision, appeals to the American Legion, Department of Maryland. Any appeals, including filing deadlines, shall be governed by those rules enacted by the Department Executive Committee entitled "DEC Rules Governing Appeals."

24. In the event of a conflict between these Rules and either the Constitution or By-Laws of The American Legion, Department of Maryland, Inc., said Constitution and/or By-Laws shall be controlling.

## Procedures for Trial before Post Membership in Regular or Special Meeting

25. If the Post selects to conduct the trial before the Post membership in Regular or Special Meeting, All members in good standing attending that meeting, excluding the accuser, defendant, or witness at the trial are eligible to be jury members.

26. If any member in good standing present for the meeting states that he or she cannot fairly and impartially render a verdict in accordance with the evidence, then the presiding Judge Advocate shall strike those individuals as jury members, and dismiss that member from the proceedings.

27. The remaining members in good standing shall serve as jurors during the trial, but shall consist of at least six (6) individuals.

28. If six (6) impartial individuals cannot be selected from the Post then the presiding Judge Advocate shall so notify the Department Commander and the Department Commander shall detail additional members from the American Legion, within the Department of Maryland to act as a Trial Committee and the proceedings shall revert to the procedures for such a trial.. The entity bringing the charges shall be responsible for any cost associated therewith.

29. At any time before the trial commences, the charges may be amended. However, if the charges are amended the Accused must be served with the amended charges and allowed fourteen (15) days before the trial can commence.

30. All testimony of witnesses must be taken under oath. The Accused shall have the right to confront and cross-examine any witnesses against him or her. No written statements, whether sworn or not, shall be admitted into evidence if the person who wrote the statement is not present to confront and be cross-examined by the Accused or counsel.

31. The Post SHALL maintain a record of the trial and associated proceedings recorded by tape, video, or court reporter. The Post should maintain the record of the trial proceedings in all disciplinary hearings in case of appeal. Failure of the Post to maintain the record of proceedings is grounds for reversal on appeal.

32. By two-thirds of the majority of the Post members in good standing, present and qualified above to serve as the jury, and voting. Upon the finding of a member guilty (means it requires 2/3 vote to find the member guilty), the member (1) may be reprimanded; (2) have membership, suspended for a time not to exceed one year; (3) suspension from the use of the Post facilities for a period not to exceed 90 days, or (4) expelled from membership in The American Legion. Upon the finding of the member not guilty, the trial shall be adjourned and the charges and case are closed.

33. Such decision of the Post Membership in Regular or Special meeting of the Post shall be binding upon the Accused and the Post unless the Accused, within Thirty (30) days from such decision, appeals to the American Legion, Department of Maryland. Any appeals, including filing deadlines, shall be governed by those rules enacted by the Department Executive Committee entitled "DEC Rules Governing Appeals."

34. In the event of a conflict between these Rules and either the Constitution or By-Laws of The American Legion, Department of Maryland, Inc., said Constitution and/or By-Laws shall be controlling.

DEC RULES GOVERNING APPEALS

Any appeal taken from a trial held within the jurisdiction of the American Legion, Department of Maryland shall be governed by these rules.

1. A written Notice of Appeal from the Accused must be received in writing by The American Legion, Department of Maryland, and signed for by the Headquarters staff within thirty (30) days of the final action of the entity bringing the charges or any appeal is waived.

2. The written Notice of Appeal shall contain the following:
   a. The date, location, participants (Accused, Judge Advocate, witnesses and Trial Committee) and verdict.
   b. A concise and specific statement of why the accused believes he or she did not receive a fair trial.
   c. A brief summary of the testimony of each and every witness.
   d. A concise statement of the final disciplinary action taken by the charging entity.
   e. Attached to the Notice of Appeal shall be a copy of the charges against the Accused and any evidentiary material such as papers or photographs used during the trial. If no such documents were used, then this shall be so stated.
   f. A copy of the Notice of Appeal must be delivered to the Commander of the charging entity contemporaneous with delivery to the American Legion, Department of Maryland.

3. The entity that brought the charges shall have a right to respond to any allegations or statements in the accused's Notice of Appeal. Said response shall be in writing and filed with the Department Adjutant within sixty (60) days from the charging entity's decision. Said reply shall contain a copy of all documents relating to the charges and hearing, along with a transcript or recording of the Post hearing.

4. The Department Adjutant shall schedule the appeal at the next regularly scheduled meeting of the Department Executive Committee.

5. The Accused shall be entitled to obtain representation, however any costs for said representation shall be the responsibility of the accused. Counsel may be a member of the American Legion or a licensed attorney. However, lack of licensed counsel, or inadequate representation shall not be a valid reason to overturn a decision on appeal.

6. At the hearing on the appeal before the Department Executive Committee, both the accused, either in person or through counsel, and the charging entity, through a representative designated by the charging entity's Commander or counsel, shall have five (5) minutes to argue their points on appeal. The points on appeal are limited to whether the accused received a fair trial.

7. Any member of the Executive Committee may question either party.

8. The Department Judge Advocate will preside over any such appeal.

9. Upon the Department Executive Committee rendering a decision on the appeal, the Department Judge Advocate shall reduce said decision to writing and direct said opinion to be distributed to each member of the Department Executive Committee, the Accused, and the Convening Authority. The decision of the Department Executive Committee shall be final.

# Charge Sheet (Attch 1)

| Name of Accused:<br>John Doe | Date:<br>12 October 2014 | Time:<br>1800 | Ref No:<br>Doe-CS-1 |
|---|---|---|---|
| Organization:<br>Any Post 1 | Member No.<br>111000111 | | |
| Address and Phone Number<br>1 Main St, , Anytown, MD 22222-2222 | | | |

Charges

1. On, or about, 1 October 2014 at 2215 hours, John Doe, member ID #111000111 was witnessed taking Legion property without permission from the Post premises and placing in his car. John Doe then left with the property and said property has not been returned upon demand of the Post Commander. For these actions John Doe is hereby charged with dishonesty and conduct unbecoming a Legionairre.

| Name of Accuser: | Organization of Accuser |
|---|---|
| Signature of Accuser: | Date: |

Affidavit: Before me, the undersigned, authorized by Post Constitution to administer oaths in cases of character, personally appeared the above named accuser this __12th__day of ____October___, 2014, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Post Constitution, and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

_____ _____

Typed Name of Officer Organization of Officer

_____

Signature

# SWORN STATEMENT

| Location: | Date: | Time: | Ref No: |
|---|---|---|---|
| Last Name, First Name | Member No. | | |
| Address and Phone Number | | | |

I, _____,want to make the following statement under oath:

| Initials of person making statement: | Page ____ of _____ Pages | |
|---|---|---|
| Statement of: | Taken At: | Dated: |

Statement continued:

I,_____, have read or have had read to me this statement which begins on page 1 and ends on page _____. I fully understand the contents of the statement made by me. I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information and belief. I have initialed all corrections and have initialed the bottom of each page containing the statement. I have made this statement freely without hope of reward, without threat of punishment, and without coercion, unlawful influence, or unlawful inducement.

_____

Signature of person making statement

Subscribed or sworn before me. This day_____ of _____

_____

Signature of person administering oath

_____

Typed name of person administering oath

| Initials of person making statement: | Page ____ of _____ Pages |
|---|---|

**The American Legion**
**Any Post # 1**
**1 Main St.**
**Anytown, MD 22222-2222**
**111-111-1111**

February 24, 2008

John Doe
123 Any St.
Anytown, MD 12345

RE: Service of Charges and Summons for trial

Mr. Doe,

You have been formally charged, as attached, with 1) Conduct unbecoming a Legionnaire, 2) Disloyalty, and 3) Dishonesty. These charges were brought against you due to an incident at the Post on the evening of February 17, 2008. A more detailed explanation of the charges is attached, and witness statements are available upon request to the Post Adjutant by yourself or your legal counsel.

This letter serves as your notice that, by order of myself and in accordance with the Constitution of this Post and the Department of Maryland, you are hereby barred from entering onto the grounds of Any Post #1 except to attend meetings in our hall on the first Saturday of each month. This barring shall take effect immediately, and continue until May 24, 2008, or the adjudication of the attached charges, whichever occurs first.

This letter further serves as notice that a hearing on the above charges will be conducted on April 6, 2008 at 7:00 pm. The American Legion, Department of Maryland's Constitution and Bylaws, along with the The American Legion, Department of Maryland's Uniform Code for Discipline of Post Members (attached) should be thoroughly read and understood. This document contains not only the procedures, but details **your rights and obligations** during this process.

Your service to our Country and our Post are greatly appreciated, however the dignity and integrity of the American Legion and this Post are paramount in our deliberations.

I can be reached at any time at 111-111-1111. You can leave a message and I will return your call as soon as possible.

For God and Country,

James Johnson
Commander, Any Post 1, The American Legion

**The American Legion**
**Any Post # 1**
**1 Main St.**
**Anytown, MD 22222-2222**
**111-111-1111**

February 24, 2008

John Doe
123 Any St.
Anytown, MD 12345

RE: Immediate Suspension from Post Facilities

Mr. Doe,

In accordance with The American Legion, Department of Maryland, Inc., Constitution and Bylaws, ARTICLE XIII, Section 7, you, Mr. _____, Member # _____, are hereby being served due notice of suspension, from Any Post 1 American Legion facilities and property, due to an alleged event having taken place in side Post property on 26 January, 2008, for a period up to but not to exceed 90 days from the date of receipt of this notification. Exact length and disciplinary actions shall be determined upon further investigation as determined by the Post Board of Directors and/or Post membership hearing.

During this period of suspension, said member shall be prohibited entering Post property, except for attending Post meetings. Upon entry to a Post meeting, you will be required to directly enter the meeting room and remain in said area until the end of said meeting. At the end of said meeting, you will be required to immediately exit Post property.

You are also being given due notice in accordance with ARTICLE XIII, Section 7, that you have the right to a hearing in this suspension from facilities before the Post Executive Committee and/or the Post membership, if you request same in writing within ten (10) days after being advised of said suspension and said hearing shall be held within ten (10) days after the Post is so notified.

The following is a link to The American Legion, Department of MD, Constitution and Bylaws:

http://www.mdlegion.org/Forms/Const%20&%20By%20Laws.pdf

As per ARTICLE XIII, Section 3, of The American Legion, Dept. of Maryland, Constitution and Bylaws, you have the right to obtain a lawyer at your own expense. You also have the right to cross examine all witnesses. You have the right to receive copies of all witness statements if you so desire, prior to said hearing date.

Respectfully submitted,

James Johnson
Commander, Any Post 1, The American Legion

***Oath to be sworn or affirmed by each person testifying before the trial:***

***Do you solemnly (swear/affirm) that you will tell the truth, the whole truth, and nothing but the truth, so help you God?***

***Note: Person must respond in the affirmative before being allowed to testified.***

THE TRIAL SCRIPT

Sergeant-at-Arms: The hearing in the matter of _____Post# _____ vs. _____ is Now in Session. The Honorable Post (or Special if so appointed) Judge Advocate_____, presiding.

Judge Advocate: In the Matter of (name of Accuser) versus (name of Accused) the record reflects that an Affidavit of Charges was filed by the Accuser with the Adjutant on (date) . The Sergeant-at-Arms served the Accused on (date) , which was more than 15 days prior to the regularly scheduled meeting of the post on (date of meeting) , to which the Accused was summoned. The Accused denied the charges and the trial was set for this date. The jury has been selected and sworn. Is the Accuser ready? (Await the answer of the accused)

Judge Advocate: Adjutant, please read the Affidavit of Charges by the Accuser and the written answer of the Accused. I will instruct the jury that the affidavit and answer are not evidence, the opening statements of the Accuser and the Accused are not evidence, and the closing arguments are not evidence. The evidence will be the sworn testimony of the witnesses and the documents or other items admitted into evidence.

Adjutant: (Read Affidavit of Charges)

Adjutant: (Read written answer of Accused, if any)

Judge. Advocate: The Accuser has five minutes to give an opening statement to tell the jury what the evidence will show, not for an argument.

Accuser: (Opening Statement)

Judge Advocate: Now the Accused will have five minutes for an opening statement.

Accused: (Opening Statement)

Judge Advocate: The Accuser will now call the first witness.

Accuser: I call (name)

Judge Advocate: (Swears in the witness using the following oath: “Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth, so help you God?”

[Use with each new witness]
Accuser: (Direct Examination)

Accused: (Cross Examination)

Accuser: (Re-direct, if any additional questions)

Accused: (Re-Cross, if any additional questions) [Accuser continues until the last witness is called.]

Accuser: The Accuser rests

Judge Advocate: (to the Accused) You may call your first witness.

Accused: (Direct Examination)

Accuser: (Cross Examination)

Accused: (Re-direct)

Accuser: (Re-Cross) [Accuser continues until the last witness is called]

Accused: The Accused rests.

Judge Advocate: (to the Accuser) Do you have any rebuttal witnesses?

[Rebuttal witnesses by the Accuser. Then the Accused.]

Judge Advocate: We will be in recess for 10 minutes. Then each party will have 10 minutes for closing arguments. The Accuser will go first and can reserve some of his/her time to use after the Accused has made his/her closing argument. It is now (time) . We will resume at (time plus 10 minutes) .

[Sergeant-at-Arms places podium in front of jury for closing arguments.]

Judge Advocate: The hearing is now in session. (To the Accuser) You may proceed with your closing argument. I will warn you when you have 2 minutes remaining.

Accuser: (Closing Argument)

Judge Advocate: (To the Accused) You may proceed with your closing argument. I will warn you when you have 2 minutes remaining.

Accused: (Closing Argument)

Judge Advocate: (To the Accuser) You have _____minutes and _____seconds remaining.

Accuser: (Remainder of closing argument)

Judge Advocate: Members of the Jury: After I read these instructions, the jurors, not the alternates, will retire to the jury room to deliberate. Your first task is to select a foreman. Then you will deliberate. The burden of proof is on the Accuser to prove the charges beyond a reasonable doubt. Two thirds of you (i.e. four) must agree on your verdict. The Sergeant-at-Arms will give you a verdict form when you begin your deliberations. When you

reach your verdict, you must each sign the verdict form indicating guilty or not guilty. If you find the Accused guilty, at least 4 of those voting guilty must also agree on the punishment and sign the jury form again regarding punishment. The punishment may be a letter of reprimand, suspension of membership, or expulsion from the American Legion. The same four jurors must agree on the length of suspension. Sergeant-at-Arms, please take the jurors to the jury room to deliberate. We are in recess.

[After the jury reaches their verdict]

Judge Advocate: The hearing is back in session. Sergeant-at-Arms, bring in the jury. [After the jury is seated]

Judge Advocate: Would the Foreman please stand. Have you reached a verdict?

Foreman: Yes.

Judge Advocate: Please hand the verdict to the Sergeant-at-Arms.

[Sergeant-at-Arms gets the verdict form and hands it to the Judge Advocate]
Will the Accused please stand.

Regarding the Charge of _____ the jury finds the Accused guilty or not guilty.

[If guilty] Punishment is _____ [Repeat for each charge]

(To the Accused, if guilty). You have the right to appeal the verdict. There are strict deadlines. You have thirty days from today for your written letter of appeal to be received by the Department Adjutant by certified mail, return receipt requested or by personal service, with a copy to the Post Adjutant by certified mail, return receipt requested or by personal delivery. You must comply with the Uniform Code of Procedure of the American Legion, Department of Maryland.

This trial is adjourned.

[If not guilty adjourn trial immediately]

## POST PROPERTY/ASSET ENCUMBRANCE RULES

### Selling, Renting, Leasing, or Encumbering Post Property

The American Legion, Department of Maryland, Inc, Constitution Article III, Section 4. No real estate or leasehold property belonging to The American Legion, Department of Maryland, Inc., or one of its subordinate organizations shall be sold or disposed of in any way or have its title encumbered in any manner without the Post notifying the District and Region Councils in which it is located, in writing and without thereafter obtaining written consent of the Department Executive Committee of The American Legion, Department of Maryland, Inc.

**What does that mean in plain English?**

The essence of the Section is that no Post can Sell, Give away, or encumber (includes Lines of Credit with the property as collateral) their property, nor mortgage, lease or rent a property without prior permission of the Department of Maryland, Executive Committee.

**So I hear the Department owns our Post property and we can't do what we want with it?**

The Department Adjutant and Judge Advocate get this complaint/question a lot. It is a 2 part question, and the issues are separate.

First, almost all of the Posts within the Department of Maryland are operated as separate Corporations from the Department. These Post Corporations own their property. The Department does not have any titled rights to the property, and this remains true as long as the Post is in good standing within the Department.

Second, when a Post incorporates and requests a Supplemental Charter from The American Legion, The post in its Corporate Status agrees in the application for Supplemental Charter ***"By acceptance of this supplemental charter said Post in its corporate capacity hereby acknowledges irrevocable jurisdiction and declares itself to be in all things subject to the Constitution and By-laws of The American Legion and the Constitution and By-laws of the Department of Maryland and any and all amendments thereof and supplements thereto or repealers thereof now existing or which in the future may be adopted, as well as all the rules, regulations and orders heretofore or hereafter promulgated in pursuance thereof, and further said Post in its corporate capacity pledges itself through its members to uphold, protect and defend the Constitution of the United States of America and the principles of true Americanism for the common welfare of the living and in solemn commemoration of those who died that liberty might not perish from the face of the earth."***

Thus, by agreeing to be bound by the rules, regulations, and orders promulgated in pursuance of The American Legion, Department of Maryland, Inc. Constitution, the Post, can't do what it wants with their property, without permission of the Department Executive Committee (See Article III, Section 4 of Constitution).

**Does that mean we can't sell the Post home?**

No, if all the requirements of the CBL, Rules of the DEC, and Uniform Code are met, and permission granted the Post may sell its Post home in accordance with the orders of the DEC. This means the DEC has a right to demand certain restrictions be placed on the retention and purpose of the funds from the sale.

**Does that mean we can't encumber (Mortgage, take a loan, or take a Line of Credit)the Post home?**

No, if all the requirements of the CBL, Rules of the DEC, and Uniform Code are met, and permission granted the Post may mortgage, take a loan, or take a Line of Credit its Post home in accordance with the orders of the DEC. This means the DEC has a right to demand certain restrictions be placed on the encumbrance

**Can the Post Lease or rent a Property?**

Yes, if all the requirements of the CBL, Rules of the DEC, and Uniform Code are met, and permission granted the Post may rent or lease a property in accordance with the orders of the DEC

**What are all the requirements, and where can I find them?**

The detailed requirements can be found in the Rules of the Department Executive Committee, online at the Department website under Resources, then Forms and Publications. Look for Uniform Codes Section.

The attached checklists were created to give an easy to follow form to gather and organize the necessary paperwork. Choose the situation that best fits and use that checklist. Once the complete packet is assembled, the Post must gain District and Region approval, before being forwarded to Department HQs for consideration.

**Why is the Department involved in Post business?**

To be honest, it is because the Department is **mandated by its Constitution** to be involved in this aspect of Post property.

While the current officers may not understand all the reasons for this requirement, it is safe to assume our predecessors had a good reason. One may be, the property of a Post is an asset derived from donations, labor, and volunteer work over many years. The current officers of a Post are caretakers of that legacy and the faith that the assets are preserved for the future are prime in the organizational principles of The American Legion.

The review and approval process places an independent review of the situation from the Post members and leaders, and provides safeguards against fraud or financial missteps with the proceeds.

**Our Post has to move fast to get the deal done, why does it take so long?**

The approval of these packets is done at the Quarterly meetings of the Department Executive Committee. Planning on the part of the Post is essential for smooth approval. The longest any Post could possibly wait if their paperwork was correct and in order would be 3 months. The issues are incomplete packets, missing approvals, and untimely submissions from the Posts.

**Incomplete packets:** use the attached Checklist and ensure all the papers are complete and present. Without them the packet will be rejected.

**Missing Approvals:** Posts are required to gain approval of District and Region Councils before submission of the packet to Department Headquarters.

**Untimely Submissions:** These fall into 2 categories:

1. Posts submit packets within 1 week of the DEC meeting and expect the Department to complete its review and recommendations with little to no prior knowledge or paperwork. (Submissions to Dept Headquarters of a copy of the packet for review while obtaining District and Region Approval is appropriate).
2. Post submit packets just after the Quarterly DEC meeting which requires a 3 month wait for action of the DEC. If a Post desires for a Special DEC to be called the Post would have to agree to pay the cost of calling the additional meeting. (Approximately $3000 - $5000)

**Role of Post Judge Advocate**

The Post Judge Advocate serves as an advisor in encumbrance matters. The Judge Advocate should use the rules and the attached checklist to assist the Post Officers in assembling the packet correctly. They should also advise on the correct notification procedures to the Post members, and assist with the timely submission of the packet to the District Commander. Time should be given for the District Commander and Judge Advocate to review the packet before the consideration at the District Meeting.

Presentation of the packet should be done in person at the Region Meeting by the requesting Post Commander or representative if requested by Region Commander. The Post Commander and Judge Advocate should present and defend the request at the Department Executive Committee meetings.

**Role of District Judge Advocate**

The District Judge Advocate should review the packet for completeness. Incomplete packets should be returned to the Post immediately. A swift return will aid the Post in meeting the Department requirements. Forwarding of incomplete packets only delays approvals at the Region or Department level.

If packet is complete, the District Judge Advocate should notify the District Commander and the District Commander shall issue an endorsement of completeness to the Region Commander.

**Role of Region Judge Advocate**

The Region Judge Advocate should review the packet for completeness and adequacy. Inadequate or incomplete packets should be returned to the Post immediately. A swift return will aid the Post in meeting the Department requirements. Forwarding of incomplete or inadequate packets only delay approvals at the Department level.

If both the Region Judge Advocate and Region Commander agree the packet is adequate and complete, the Region Commander shall sign an endorsement detailing the approval of the Region Council based off of this review and forward the packet and endorsement to Department Headquarters.

If questions of adequacy exists, the Region Judge Advocate shall notify the Region Commander and the Post of the possible issues. The matter shall be scheduled for the next regular Region council meetng or a special meeting of the Region Council. The Region Judge Advocate should assist the Post in presenting their packet and any issues, and also assist the Region Commander and delegates in consideration of the packet and voting to recommend approval or disapproval to the Department Executive Committee. After hearing the Post's presentation, the Council will then take a vote on the request and will then forward a written report of the Council's actions with the original and copy of the Post's request and the District's approval to the Department Headquarters for staffing and consideration.

**The American Legion, Department of Maryland, Inc.**
**Uniform Code for Post Loan Acquisition / Property Disposal / Lease Procedures/Encumbrance of Post Property**
**(as Enacted by the Department Executive Committee on February 20, 2022)**

Article III Section 10 of the Department Constitution states:

"Section 10. No real estate or leasehold property belonging to The Department, or one of its subordinate organizations shall be sold or disposed of in any way, or have its title encumbered in any manner, without the Post notifying the District and Regional Councils in which it is located, in writing, and without thereafter obtaining written consent of the DEC."

The Rules of the Department Executive Committee Rule 7, (I) I. Post Loan Acquisition / Property Disposal / Lease Procedures states:

The Uniform Code for Post Loan Acquisition / Property Disposal / Lease Procedures/Encumbrance of Post Property then in force must be adhered to by a Post, or intermediate bodies of The American Legion, Department of Maryland, when seeking permission from a District Council, Region Council, and the Department Executive Committee to borrow funds, sell or otherwise encumber The American Legion or American Legion property, These procedures and requirements also apply when a post is seeking permission to establish a contractual lease agreement of longer than 12 months in duration for the usage of post real estate., For example; leasing post property to be used for a cell tower location or any other purpose. Further, the same procedures and requirements must be followed when a post is seeking to establish an agreement lease or rent property for the purpose of using the property as a post home:

The following procedures and requirements detail the Uniform Code as currently in force from the date in the title of this document.

1. Determine the situation from the list below (or use a similar event if not listed directly):
    a. Buying Property for Post Use (With Mortgage) (Attachment 1)
    b. Buying Property for Post Use (NO Mortgage) (Attachment 2)
    c. Selling Post Property (Attachment 3)
    d. Securing Line of Credit/Loan with Post Property (Attachment 4)
    e. Refinancing Existing Mortgage (same amount currently owed; new term and interest rate) (Attachment 5)
    f. Refinancing Existing Mortgage (Increasing Currently Owed amount) (Attachment 6)
    g. New Mortgage or Loan Encumbering Existing Post Property (Attachment 7)
    h. Long term (more than one year) Lease of Property for Post Use (Attachment 8)
    i. Long Term (more than one year term) Lease to another party or entity including cell towers or any other purpose (Attachment 9)

2. Gather all required documents from the appropriate checklist as s elected above.

3. Have the packet reviewed for completeness by the Post Judge Advocate.

4. Post Commander or Adjutant forwards the complete packet with checklist, and 1 copy, to the District Commander.

5. The District Commander shall forward one copy of the packet to the District Judge Advocate for review.

6. Upon verification of completeness by District Judge Advocate (should be given within 7 days of receipt) to the District Commander and Post Commander or Adjutant, the District Commander shall sign an endorsement of completeness and forward original and one copy to the Region Commander.

*Note: Inadequate or incomplete requests will be returned to the post for further action.*

7. The Region Commander shall forward one copy of the packet to the Region Judge Advocate for review for completeness and adequacy.

a. Upon verification of completeness and adequacy by Region Judge Advocate (should be given within 7 days of receipt) to the Region Commander and Post Commander or Adjutant, the Region Commander, if they concur with the findings of the Region Judge Advocate, shall sign an endorsement detailing the Council's actions with the original and copy of the Post's request and the District's approval to the Department Headquarters for staffing and consideration.

b. If the packet is complete, but questions of adequacy exist, the Region Judge Advocate shall notify the Region Commander and the Post of the possible issues. The Region Commander shall schedule the issue for the next regular meeting of the Region Council, or call a special meeting of the Council in accordance with the Region Bylaws. At such meeting the Post shall present their packet as a matter of New Business at the scheduled Region Council meeting. After hearing the Post's presentation, the Council will then take a vote on the request and will then forward a written report of the Council's actions with the original and copy of the Post's request and the District's approval to the Department Headquarters for staffing and consideration.

*Note: Insufficient or incomplete requests will be returned to the post for further action.*

8. Upon completion of the Department's staffing, the Department 's recommendations will be presented by the Department Finance Commission to the Department Executive Committee for decision at the next scheduled DEC meeting, or the Department Commander may take up the issue at a special DEC meeting in accordance with the Rules of the DEC..

a. The approval of these packets is done at the Quarterly meetings, or a special meeting in certain circumstances at the discretion of the Department Commander, of the Department Executive Committee. Planning on the part of the Post is essential for smooth approval. The longest any Post could possibly wait if their paperwork was correct and in order would be 3 months. The issues are incomplete packets, missing approvals, and untimely submissions from the Posts.
b. **Incomplete packets:** use the attached Checklist and ensure all the papers are complete and present. Without them the packet will be rejected.
c. **Missing Approvals:** Posts are required to gain approval of District and Region Councils before submission of the packet to Department Headquarters.
d. **Untimely Submissions:** These fall into 2 categories:

    i. Posts submit packets within 1 week of the DEC meeting and expect the Department to complete its review and recommendations with little to no prior knowledge or paperwork. (Submissions to Dept Headquarters of a copy of the packet for review while obtaining District and Region Approval is appropriate).
    ii. Post submit packets just after the Quarterly DEC meeting which requires a 3 month wait for action of the DEC.If a Post desires for a Special DEC to be called the Post would have to agree in writing to pay the cost of calling the additional meeting. (Approximately $3000 - $5000)

9. The Deparment Adjutant shall notify the Post of the Department Executive Committee's decision promptly after the Department Executive Committee's meeting.

Post Encumbrance Review Checklist Buying Property for Post Use (With Mortgage) (Attachment 1)

| Information Required | | Date of Completion |
|---|---|---|
| **Complete Current Financial Statement of Post** | | |
| | Post Balance Sheet | |
| | Statement of income and expenses for the preceding year | |
| | Copy of the preceding year's Federal form 990 or 990T, 940 and 941 | |
| | Copy of the preceding year's Maryland Form 1 | |
| | Certificate of Good Standing from the State of Maryland; | |
| **Governance and Records of Post** | | |
| | Copy of the Post's Constitution and By Laws | |
| | Copy of the Post's Corporation Papers | |
| | Statement from the Post's Insurance carrier certifying that sufficient insurance coverage including the amount of insurance, types of coverage, and estimated premium; | |
| | Copy of the minutes of the Post General Membership meeting where the Post membership voted to buy and encumber the property or assets of the post<br>***Note: Proper notice of the Post meeting was mailed thirty (30) days prior to said meeting date to all members, setting forth the purpose of the meeting.*** | |
| **Details of Proposal/Business Plan** | | |
| | Appraisal/Valuation of the property to be purchased and encumbered (Bank supplied appraisal is acceptable) | |
| | Business Plan consisting of the following (as appropriate): | |
| | Complete an accurate address and description of the property in question, to include as appropriate: | |
| | Exterior and Interior Photographs of the property in question | |
| | A proposed sketch (drawing) of the property exterior and interior layout | |
| | Narrative description of proposed use of each area the by the Post | |
| | Zoning law clearance that property may be used only for the purposes specifically intended in the lease | |
| | Details of full compliance with all occupancy,health, safety, and fire department attendance regulations | |
| | A detailed listing and estimated cost of equipment or material that the post will need to use for use in each area of the post | |
| | A projected Profit and Loss Statement for the two years after the implementation of the proposed request or contract. | |
| | Copy of the contract from the seller in which the terms and conditions of the sale and loan are stated. | |
| | Disclosure form certifying any relationship (business or personal) of the seller to the Post or any Post member | |
| **Intermediate Review and Approval** | | |
| | District Council Approval Letter | |
| | Region Council Approval letter | |

Post Encumbrance Review Checklist Buying Property for Post Use (Attachment 2)

| Information Required | | Date of Completion |
|---|---|---|
| **Complete Current Financial Statement of Post** | | |
| | Post Balance Sheet | |
| | Statement of income and expenses for the preceding year | |
| | Copy of the preceding year's Federal form 990 or 990T, 940 and 941 | |
| | Copy of the preceding year's Maryland Form 1 | |
| | Certificate of Good Standing from the State of Maryland; | |
| **Governance and Records of Post** | | |
| | Copy of the Post's Constitution and By Laws | |
| | Copy of the Post's Corporation Papers | |
| | Statement from the Post's Insurance carrier certifying that sufficient insurance coverage including the amount of insurance, types of coverage, and estimated premium; | |
| | Copy of the minutes of the Post General Membership meeting where the Post membership voted to buy and encumber the property or assets of the post<br>***Note: Proper notice of the Post meeting was mailed thirty (30) days prior to said meeting date to all members, setting forth the purpose of the meeting.*** | |
| **Details of Proposal/Business Plan** | | |
| | Appraisal/Valuation of the property to be purchased and encumbered (Bank supplied appraisal is acceptable) | |
| | Business Plan consisting of the following (as appropriate): | |
| | Complete an accurate address and description of the property in question, to include as appropriate: | |
| | Exterior and Interior Photographs of the property in question | |
| | A proposed sketch (drawing) of the property exterior and interior layout | |
| | Narrative description of proposed use of each area the by the Post | |
| | Zoning law clearance that property may be used only for the purposes specifically intended in the lease | |
| | Details of full compliance with all occupancy,health, safety, and fire department attendance regulations | |
| | A detailed listing and estimated cost of equipment or material that the post will need to use for use in each area of the post | |
| | A projected Profit and Loss Statement for the two years after the implementation of the proposed request or contract. | |
| | Copy of the contract from the seller in which the terms and conditions of the sale and loan are stated. | |
| | Disclosure form certifying any relationship (business or personal) of the seller to the Post or any Post member | |
| **Intermediate Review and Approval** | | |
| | District Council Approval Letter | |
| | Region Council Approval letter | |

Post Encumbrance Review Checklist Selling Post Property (Attachment 3)

| Information Required | Date of Completion |
|---|---|
| **Complete Current Financial Statement of Post** | |
| Post Balance Sheet | |
| Statement of income and expenses for the preceding year | |
| Copy of the preceding year's Federal form 990 or 990T, 940 and 941 | |
| Copy of the preceding year's Maryland Form 1 | |
| Certificate of Good Standing from the State of Maryland; | |
| **Governance and Records of Post** | |
| Copy of the Post's Constitution and By Laws | |
| Copy of the Post's Corporation Papers | |
| Statement from the Post's Insurance carrier certifying that sufficient insurance coverage including the amount of insurance, types of coverage, and estimated premium; | |
| Copy of the minutes of the Post General Membership meeting where the Post membership voted to sell the property of the post. ***Note: Proper notice of the Post meeting was mailed thirty (30) days prior to said meeting date to all members, setting forth the purpose of the meeting.*** | |
| **Details of Proposal/Business Plan** | |
| Appraisal/Valuation of the property to be sold (Bank supplied appraisal is acceptable) | |
| Business Plan consisting of the following (as appropriate): | |
| Complete an accurate address and description of the property in question, to include as appropriate: | |
| Details of proposed use of funds including details of methods to insure proper use of funds in accordance with Local, State, and Federal Laws; and compliance with IRS Code | |
| Copy of the contract with the buyer (containing contingency of DEC Approval required) in which the terms and conditions of the sale and loan are stated. | |
| Disclosure form certifying any relationship (business or personal) of the buyer to the Post or any Post member | |
| **Intermediate Review and Approval** | |
| District Council Approval Letter | |
| Region Council Approval letter | |

Post Encumbrance Review Checklist Securing Line of Credit/Loan with Post Property (Attachment 4)

| Information Required | | Date of Completion |
|---|---|---|
| **Complete Current Financial Statement of Post** | | |
| | Post Balance Sheet | |
| | Statement of income and expenses for the preceding year | |
| | Copy of the preceding year's Federal form 990 or 990T, 940 and 941 | |
| | Copy of the preceding year's Maryland Form 1 | |
| | Certificate of Good Standing from the State of Maryland; | |
| **Governance and Records of Post** | | |
| | Copy of the Post's Constitution and By Laws | |
| | Copy of the Post's Corporation Papers | |
| | Statement from the Post's Insurance carrier certifying that sufficient insurance coverage including the amount of insurance, types of coverage, and estimated premium; | |
| | Copy of the minutes of the Post General Membership meeting where the Post membership voted to encumber the property of the post for the purpose of a line of credit/loan. ***Note: Proper notice of the Post meeting was mailed thirty (30) days prior to said meeting date to all members, setting forth the purpose of the meeting.*** | |
| **Details of Proposal/Business Plan** | | |
| | Appraisal/Valuation of the property to be encumbered (Bank supplied appraisal is acceptable) | |
| | Business Plan consisting of the following (as appropriate): | |
| | Complete an accurate address and description of the property in question, to include as appropriate: | |
| | Details of proposed use of funds including explanation of reasons for needing to use a line of credit /loan and purpose for which the line of credit/loan shall be used | |
| | Copy of the proposed terms for line of credit/loan | |
| | If for major renovation to be performed by contractor; supply contract and bonding certification for contractor | |
| | Disclosure form certifying any relationship (business or personal) of the contractor to the Post or any Post member | |
| **Intermediate Review and Approval** | | |
| | District Council Approval Letter | |
| | Region Council Approval letter | |

Post Encumbrance Review Checklist — Refinancing Existing Mortgage (same amount currently owed; new term and interest rate)

| Information Required | (Attachment 5) | Date of Completion |
|---|---|---|
| **Complete Current Financial Statement of Post** | | |
| | Post Balance Sheet | |
| | Statement of income and expenses for the preceding year | |
| | Copy of the preceding year's Federal form 990 or 990T, 940 and 941 | |
| | Copy of the preceding year's Maryland Form 1 | |
| | Certificate of Good Standing from the State of Maryland; | |
| **Governance and Records of Post** | | |
| | Copy of the Post's Constitution and By Laws | |
| | Copy of the Post's Corporation Papers | |
| | Statement from the Post's Insurance carrier certifying that sufficient insurance coverage including the amount of insurance, types of coverage, and estimated premium; | |
| | Copy of the minutes of the Post General Membership meeting where the Post membership voted to refinance the mortgage on the property of the post. ***Note: Proper notice of the Post meeting was mailed thirty (30) days prior to said meeting date to all members, setting forth the purpose of the meeting.*** | |
| **Details of Proposal/Business Plan** | | |
| | Appraisal/Valuation of the property to be refinanced (Bank supplied appraisal is acceptable) | |
| | Copy of Current Deed and Terms of Mortgage on property (deed can be located on mdlandrec.net) | |
| | Copy of the proposed/new Mortgage terms from lender | |
| **Intermediate Review and Approval** | | |
| | District Council Approval Letter | |
| | Region Council Approval letter | |

Post Encumbrance Review Checklist Refinancing Existing Mortgage (Increasing Currently Owed amount) (Attachment 6)

| Information Required | | Date of Completion |
|---|---|---|
| **Complete Current Financial Statement of Post** | | |
| | Post Balance Sheet | |
| | Statement of income and expenses for the preceding year | |
| | Copy of the preceding year's Federal form 990 or 990T, 940 and 941 | |
| | Copy of the preceding year's Maryland Form 1 | |
| | Certificate of Good Standing from the State of Maryland; | |
| **Governance and Records of Post** | | |
| | Copy of the Post's Constitution and By Laws | |
| | Copy of the Post's Corporation Papers | |
| | Statement from the Post's Insurance carrier certifying that sufficient insurance coverage including the amount of insurance, types of coverage, and estimated premium; | |
| | Copy of the minutes of the Post General Membership meeting where the Post membership voted to refinance the mortgage on the property of the post. ***Note: Proper notice of the Post meeting was mailed thirty (30) days prior to said meeting date to all members, setting forth the purpose of the meeting.*** | |
| **Details of Proposal/Business Plan** | | |
| | Appraisal/Valuation of the property to be encumbered (Bank supplied appraisal is acceptable) | |
| | Business Plan consisting of the following (as appropriate): | |
| | Copy of Current Deed and Terms of Mortgage on property (deed can be located on mdlandrec.net) | |
| | Details of proposed use of funds including explanation of reasons for needing the new mortgage terms and use of funds from new mortgage if cash out option is being utilized | |
| | Copy of the proposed/new Mortgage terms from lender | |
| | If purpose is for major renovation to be performed by contractor; supply contract and bonding certification for contractor | |
| | Disclosure form certifying any relationship (business or personal) of the contractor to the Post or any Post member | |
| **Intermediate Review and Approval** | | |
| | District Council Approval Letter | |
| | Region Council Approval letter | |

Post Encumbrance Review Checklist  New Mortgage or Loan Encumbering Existing Post Property (Attachment 7)

| Information Required | | Date of Completion |
|---|---|---|
| **Complete Current Financial Statement of Post** | | |
| | Post Balance Sheet | |
| | Statement of income and expenses for the preceding year | |
| | Copy of the preceding year's Federal form 990 or 990T, 940 and 941 | |
| | Copy of the preceding year's Maryland Form 1 | |
| | Certificate of Good Standing from the State of Maryland; | |
| **Governance and Records of Post** | | |
| | Copy of the Post's Constitution and By Laws | |
| | Copy of the Post's Corporation Papers | |
| | Statement from the Post's Insurance carrier certifying that sufficient insurance coverage including the amount of insurance, types of coverage, and estimated premium; | |
| | Copy of the minutes of the Post General Membership meeting where the Post membership voted to acquire a new mortgage on the property of the post. ***Note: Proper notice of the Post meeting was mailed thirty (30) days prior to said meeting date to all members, setting forth the purpose of the meeting.*** | |
| **Details of Proposal/Business Plan** | | |
| | Appraisal/Valuation of the property to be encumbered (Bank supplied appraisal is acceptable) | |
| | Business Plan consisting of the following (as appropriate): | |
| | Copy of Current Deed on property (deed can be located on mdlandrec.net) | |
| | Details of proposed use of funds including explanation of reasons for needing the new mortgage | |
| | Copy of the proposed/new Mortgage terms from lender | |
| | If purpose is for major renovation to be performed by contractor; supply contract and bonding certification for contractor | |
| | Disclosure form certifying any relationship (business or personal) of the contractor to the Post or any Post member | |
| **Intermediate Review and Approval** | | |
| | District Council Approval Letter | |
| | Region Council Approval letter | |

Post Encumbrance Review Checklist Long term (more than one year) Lease of Property for Post Use (Attachment 8)

| Information Required | Date of Completion |
|---|---|

Complete Current Financial Statement of Post

| | | |
|---|---|---|
| | Post Balance Sheet | |
| | Statement of income and expenses for the preceding year | |
| | Copy of the preceding year's Federal form 990 or 990T, 940 and 941 | |
| | Copy of the preceding year's Maryland Form 1 | |
| | Certificate of Good Standing from the State of Maryland; | |

Governance and Records of Post

| | | |
|---|---|---|
| | Copy of the Post's Constitution and By Laws | |
| | Copy of the Post's Corporation Papers | |
| | Statement from the Post's Insurance carrier certifying that sufficient insurance coverage including the amount of insurance, types of coverage, and estimated premium; | |
| | Copy of the minutes of the Post General Membership meeting where the Post membership voted to lease the property of the Post to a another party or entity. | |

***Note: Proper notice of the Post meeting was mailed thirty (30) days prior to said meeting date to all members, setting forth the purpose of the meeting.***

Details of proposal

| | | | |
|---|---|---|---|
| | Appraisal/Valuation of the property to be encumbered (Bank supplied appraisal is acceptable) | | |
| | Business Plan consisting of the following (as appropriate): | | |
| | | Complete an accurate address and description of the property in question, to include as appropriate: | |
| | | Exterior and Interior Photographs of the property in question | |
| | | A proposed sketch (drawing) of the property exterior and interior layout | |
| | | Narrative description of proposed use of each area the by the Post | |
| | | Zoning law clearance that property may be used only for the purposes specifically intended in the lease | |
| | | Details of full compliance with all occupancy,health, safety, and fire department attendance regulations | |
| | | A detailed listing and estimated cost of equipment or material that the post will need to use for use in each area of the post | |

Intermediate Review and Approval

| | | |
|---|---|---|
| | District Council Approval Letter | |
| | Region Council Approval letter | |

Post Encumbrance Review Checklist

| Information Required | Long Term (more than one year term) Lease to another party or entity including cell towers or any other purpose (Attachment 9) | Date of Completion |
|---|---|---|

Complete Current Financial Statement of Post

| | | |
|---|---|---|
| | Post Balance Sheet | |
| | Statement of income and expenses for the preceding year | |
| | Copy of the preceding year's Federal form 990 or 990T, 940 and 941 | |
| | Copy of the preceding year's Maryland Form 1 | |
| | Certificate of Good Standing from the State of Maryland; | |

Governance and Records of Post

| | | |
|---|---|---|
| | Copy of the Post's Constitution and By Laws | |
| | Copy of the Post's Corporation Papers | |
| | Statement from the Post's Insurance carrier certifying that sufficient insurance coverage including the amount of insurance, types of coverage, and estimated premium; | |
| | Copy of the minutes of the Post General Membership meeting where the Post membership voted to lease the property of the Post to a another party or entity. | |

***Note: Proper notice of the Post meeting was mailed thirty (30) days prior to said meeting date to all members, setting forth the purpose of the meeting.***

Details of proposal

| | | | |
|---|---|---|---|
| | | Appraisal/Valuation of the property to be encumbered (Bank supplied appraisal is acceptable) | |
| | | Business Plan consisting of the following (as appropriate): | |
| | | Complete an accurate address and description of the property in question, to include as appropriate: | |
| | | Exterior and Interior Photographs of the property in question | |
| | | A proposed sketch (drawing) of the property exterior and interior layout | |
| | | Narrative description of proposed use of each area the by the Post | |
| | | Zoning law clearance that property may be used only for the purposes specifically intended in the lease | |
| | | Details of full compliance with all occupancy,health, safety, and fire department attendance regulations | |
| | | Copy of the contract from the lessee in which the terms and conditions of the lease are stated. | |

The lease must contain language that provides for the intended use of the property in question and use must be within the goals, aims, and purposes of The American Legion. including the Failure to use the property for any purpose not specifically specified in the approved lease agreement will be cause to immediately activate termination the lease, assessment of damages for loss of income and other associated damages. The lease may not contain a right of purchase or first refusal clause.

Intermediate Review and Approval

| | | |
|---|---|---|
| | District Council Approval Letter | |
| | Region Council Approval letter | |