

Considering cancelling your AGM because of COVID-19? What's a condo to do?

One of the most prominent pieces of advice given by health professionals to help avoid or diminish the spread of the coronavirus COVID-19, is to engage in social distancing. The Public Health Agency of Canada (PHAC) posted on the federal government website, "Social distancing measures are approaches taken to minimize close contact with others in the community" and include community-based measures that may include the cancelling of any "public/mass gathering," including large meetings and conferences.

PHAC warns, "Mass gatherings...can amplify the spread of infectious diseases and have the potential to cause additional strain on the health care system when held during outbreaks." They note, "The transmission of respiratory infections such as influenza has been frequently associated with mass gatherings," and "There have been examples of COVID-19 transmission during mass gatherings." Where possible, PHAC advises that such events be cancelled, postponed, or that alternative means of participation be provided, such as through remote conferencing technology, or live streaming.

An Ontario condominium corporation is under a statutory obligation to hold its annual general meeting no later than six months after the end of its fiscal year. A brand new condominium must hold its first general meeting within three months of the registration of the condominium, and is required to hold its turnover meeting, which might or might not occur at the same time, within 42 days after the declarant ceases to own a majority of the units.

Although the Condominium Act, 1998 (the "Act") allows for multiple attempts to hold any of these meetings (with diminished quorum requirements on the third and later tries), it does not clearly permit cancellation or postponement of the initial attempt. Despite this, it is difficult to believe a court would fault a condominium for making a short postponement on the basis of advice from competent health professionals. Indeed, although (as we have said before) section 117 of the Act was probably not drafted with pandemics in mind, it would seem to support a condominium taking such steps to help ensure they do not permit the existence of a "condition" on the property "likely to... cause injury to an individual." However, it is not necessary that condominiums postpone such general meetings, if they can, instead, make alternative arrangements for attendance and participation.

Condominiums that have already enacted by-law provisions that allow for voting and attendance by telephonic or electronic means (as permitted by s. 52 of the Act and s. 14(0.1)(p) of Ont. Reg. 48/01) have a much easier time of this. They already allow for remote participation in owners' meetings. Those that do not have these sorts of provisions in place can't enact them without holding a meeting, so they have to consider other alternatives. A leading alternative in this case would be encouraging owners not to personally attend the meeting, but to attend by proxy only. Ideally, such proxies would name the condominium manager or a board member as proxy, in order to minimize the number of people who have to be personally present. The condominium should allow proxies to be submitted by mail, facsimile, email or other available and viable technology.

Keep in mind that in such cases, the board should be careful not to diminish an owner's ability to participate effectively, such as being able to ask questions and obtain answers before votes are held. There is no perfect solution to this problem, but one alternative could be to have owners submit questions and concerns in advance and have the board make the questions and answers available to all owners in sufficient time to allow this information to be reflected in their instructions to their proxies. An informal "town hall" conference call prior to the meeting, might also accomplish the same objective. There could be many other solutions that boards and managers should consider. In any event, they should ensure they do not simply take advantage of the COVID-19 crisis to avoid difficult conversations with their unit owners.

Lastly, if an in-person meeting cannot be avoided, appropriate warnings about personal protection should be given to all individuals who might consider attending, and you should study and strive to follow the most current advice of competent health professionals. At the very least, you should structure the meeting so that close contact is minimized, and sanitized conditions are maintained. Have hand-sanitizers present, avoid sharing objects (such as pens), and it is probably best to forego a refreshment table.

Formal, procedural accuracy is important. So is caring for the well-being of your community. Both are legal obligations that condominium boards and managers must find a way to balance. For advice particular to your own condominium community, you should seek the assistance of well-informed legal counsel.