Covid-19: Can An Organization Conduct A Virtual AGM?

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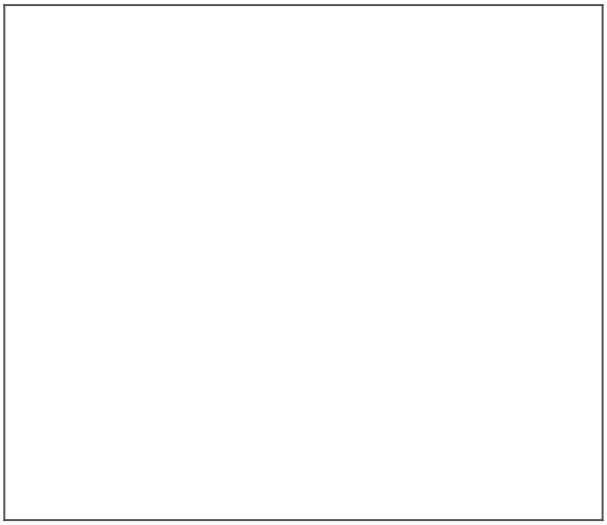
We have recently been asked by several clients whether an organization, be it a condominium corporation, non-profit organization or share capital corporation, can host its annual general meeting (AGM) virtually in light of the current Manitoba public health restriction on indoor gatherings in excess of 25 people.



The Corporations Act (Manitoba) does allow for virtual AGMs provided that a corporation's by-laws specifically contemplate the possibility. As we have all heard, the current pandemic is "unprecedented" so it is not surprising that most organizations' by-laws do not contain the required provisions.

Similarly, *The Condominium Act* (Manitoba) provides that a condominium corporation may, by by-law, allow for virtual attendance at AGMs if a communication system is provided that allows for concurrent participation by all unit owners. Again, however, most condominium corporation by-laws do not contemplate virtual AGMs.

This can leave an organization in the awkward situation of having to potentially postpone its AGM in contravention of government regulations and/or its own by-laws; or having to attempt to host some kind of distanced hybrid AGM, potentially in breach of public health order.

Fortunately, the Province of Manitoba has now provided the required relief. On May 13, 2020, the provincial government made an emergency order under *The Emergency Measures Act* that temporarily suspends corporate meeting provisions. This order applies to condominium corporations, cooperatives, share and non-share capital corporations and credit unions and has 4 key impacts on organizations faced with difficult decisions surrounding their AGMs:

Attendance

Until September 30, 2020, a qualifying organization may host and allow for virtual attendance and voting at its AGM if it provides a communication service which allows all

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persons participating in the meeting to communicate with each other adequately during the meeting.

Notice

If notice of the AGM has already been circulated to members, shareholders or unit owners stating the time and place of the meeting, the board of directors of the organization may provide reasonable notice that the AGM will be held virtually. An organization can do this by sending the information by e-mail to each person entitled to receive notice at the e-mail address they provided to the organization and by posting the information on the organization's website (if applicable). A revised formal notice is not required.

Delivery of Material

In addition, until September 30, 2020, organizations are permitted to give notice and other materials to shareholders, members or unit owners by e-mail, even if e-mail delivery is not specifically contemplated in an organization's by-laws.

Deadlines

Lastly, organizations that were required to host their AGMs on or after March 31, 2020 and before September 1, 2020, may now host their meeting no later than September 30, 2020.

Overall, organizations should bear in mind that this order is temporary and is only in effect until September 30, 2020. Boards of directors should also consider whether it is time to amend their by-laws to allow for virtual AGMs in the future.

For more information on the Province of Manitoba's order, how your organization might take advantage of it, how to arrange a virtual AGM or how to amend your organization's by-laws, consider contacting a member of our **Corporate and Commercial** team to help your business navigate the "new normal".

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