

PUBLICATION

AGMs and SGMs during COVID-19

Laurie S. Kiedrowski
Stephanie D. Whyte
Daniel G. MacAulay

February 16, 2021

We continue to receive many questions on how your Condominium Corporation can function in light of the ongoing uncertainty of COVID-19 restrictions. On the one hand the Ministerial Order that suspended the requirement to hold General Meetings expired and Service Alberta tells us we must ‘find a way’ to hold General Meetings. On the other hand there continues to be restrictions placed on gatherings, and whether this is limited to only social gatherings or encompasses all gatherings isn’t clear.

To assist you, below you will find the answers to some of your questions. Please be aware that the answers to these questions are fluid and can change from one day to the next.

Are in person meetings allowed?

The unfortunate answer is that it may depend on who you ask. From Service Alberta we get no guidance, only the directive that “condominium corporations are still required to find a way to conduct their AGMs”. Another branch of the Government, Biz Connect, provides as follows:

AGM requirements have not changed with the new restrictions. AGMs can have up to 100 people maximum if held as a seated/audience event. The meeting should not have a “mix and mingle” element, where people can move around freely to associate, mix or interact.

This seems to fly in the face of what we’re being told by AHS. Hopefully the restrictions on gatherings will be lifted soon, and the confusion around this issue can be put to rest. Until this happens, in the event you are scheduling your AGM it would be best for you to contact Biz Connect yourself prior to holding your meeting. If enough people ask the question perhaps they will turn their minds to a solution. In the absence of that at the very least you’ll have the Government’s answer to fall back on in the event you are challenged.

Can the Condominium Corporation hold a virtual AGM or SGM?

The short answer is no, not in the absence of a Court Order allowing you to do so. Of course, being lawyers, we have a long answer for you as well.

As with all things Condominium we look first to the *Condominium Property Act* (the “Act”) for the answer. The

Act specifically allows for electronic/virtual board meetings, but does not provide the same for general meetings. The legislators clearly turned their minds to the concept of virtual meetings, and had they intended to allow virtual general meetings this too would almost certainly have been included. This is reinforced by the issuance of the Ministerial Order in early 2020, which temporarily granted permission for virtual general meetings at the outset of the pandemic.

It is doubtful your Bylaws have provisions that speak to how a virtual meeting would be handled. Some of the issues that must be considered, and addressed, include the following:

- How do we confirm attendance?
- How do we identify the people present?
- How do we deal with voting? A show of hands might be acceptable, but what do we do at a contentious meeting when someone calls for a poll vote?
- How do we ensure accessibility? This is the one meeting a year the Owners get. What if they don't have the resources or don't know how?

If you do decide to go ahead with a virtual AGM, it would be best if you pass an ordinary resolution at the start of the meeting allowing for the meeting to proceed and be held virtually. Does this cure all of the issues? No, but at least it shows you were acting in accordance with the wishes of the ownership in going ahead with the meeting.

Is your Board still able to conduct business?

If it has been greater than 15 months since the time of your last AGM, yes, you are offside the *Act*, but this does not mean that you are no longer a validly constituted Board. The *Act* provides that the powers and duties of the Corporation shall be exercised and performed by the Board, and there is no time limit on this. You could be a Board Member for a week or for 2 years, and it will still be legal for you to conduct business.

The *Act* also outlines the circumstances in which a Board Member ceases to hold office. For those of you who have passed your own Bylaws there is likely a provision that expands on this. Exceeding 15 months between AGMs is not a deemed resignation provision listed in the *Act*, nor have any of us ever seen this in a set of Bylaws.

The *Act* also contains a bit of a 'get out of jail free card' that would cover circumstances where you've remained in office too long. Section 28(9) specifically provides that for properly elected or appointed Board Members all acts done in good faith are valid even if later it is discovered there was a defect in the member's continuance in office.

What is the potential legal consequence if you don't hold your AGM?

Bluntly, in failing to hold your AGM within the 15 months prescribed you are guilty of improper conduct as defined under section 67 of the *Act*. So, what is the consequence?

Under section 67 of the *Act* an interested party, which includes Owners and lenders, can bring a Court Application seeking an Order compelling you to hold your AGM. Alternatively, rather than going to Court the Owners representing 15% total Unit Factors can requisition an SGM under section 30 of the *Act*. The Corporation then has 30 days to convene the meeting, failing which the Owners who requisitioned the meeting can convene it themselves.

So, what is the consequence of failing to hold your AGM? If no one is causing a fuss then really there is none. You can, and in fact must, still be conducting business. You're not going to be punished and you're not going to be fined for not holding your AGM. Keep everyone informed of the efforts you're making to convene the

meeting, let them know about the business being conducted, send out your financials, and send out your reports. If you keep your Owners informed, they will know that you're doing your best and hopefully will show some understanding and patience while you're working your way through the mess that is COVID-19.

We at McLeod Law hope all of you, your loved ones and friends remain healthy and safe. We are available to assist you, and are happy to help. Please take care of yourselves and we'll be seeing you again when we come out of this on the other side.

Please remember that we are by no means authorities on the COVID-19 virus. Additionally, as with all of the content provided on our website and through social media, this document is provided for general information. It is not to be construed as formal legal advice under retainer or to be relied upon as advice for any particular purpose by any person or organization. Please contact our office or other qualified legal counsel if you require assistance with any particular legal matter.