

COVID-19 Requirements and Options for an Annual General Meeting May 22, 2020

This brief guide has been developed based on publically available information and resources for non-profit housing organizations in Manitoba. It should not replace legal advice for organizations that require it. Information has been adapted from Priti Shah's presentation "HOLDING YOUR AGM IN A COVID WORLD" on May 8, 2020 presented by the World Trade Centre Winnipeg and the Winnipeg Chamber of Commerce.

Purpose of an Annual General Meeting

By law, all corporations must hold an Annual General Meeting (AGM) of shareholders or members every year to:

- ensure that members can make governance decisions based on current information;
- ensure transparency and disclosure; and
- give members the confidence to continue to support the corporation.

What options are being considered as alternatives to the traditional in-person AGM?

1. Postpone
2. Virtual Meeting
3. Hybrid Meeting

Can you postpone your AGM?

A corporation is typically required to call an annual meeting within 18 months of the date the corporation comes into existence. After that, an annual meeting must be called no later than 15 months after the previous annual meeting and no later than 6 months after the corporation's preceding financial year-end.

On May 13, 2020 the Government of Manitoba enacted an [Order Temporarily Suspending Corporate Meeting Provisions in Manitoba under the Emergency Measures Act](#). This Order provides corporations and cooperatives more flexibility in hosting virtual meetings as well as extending the timeframe for their AGMs to be held. It temporarily extends the time to hold an annual meeting that is required to be held on or after March 31, 2020, and before September 1, 2020, to be held *no later than September 30, 2020*. If a meeting had already been scheduled, and will be postponed, notification must be provided in a reasonable time to each person entitled to receive it.

Federally incorporated Not-for-Profits can also delay their annual meeting when it would be detrimental to call the meeting within the normal timeframe. In this instance, organizations must apply using the [online form](#) at least 30 business days before your not-for-profit would send the notice calling its AGM under normal circumstances. Federal business corporations need court approval to delay an AGM.

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Can your organization have a Virtual or Hybrid AGM?

Some corporations have the right to hold meetings virtually using digital technologies. For Manitoba corporations or cooperatives, under the May 13 Order, meetings or voting may now be held by telephone, electronic, or other communication facilities, even if they are not permitted or have been excluded by the organization's by-laws.

- **Virtual meeting:** Participants attend exclusively through a digital or telephone channel that allows participants to communicate with each other during the meeting. Traditionally, the corporation's by-laws must specifically allow virtual meetings. The recently enacted Order permits electronic service, voting, and meetings even where otherwise not permitted by the bylaws of the corporation.
- **Hybrid meeting:** Some participants attend in-person and others participate through a digital or telephone channel. A hybrid meeting may be a viable alternative if participation by virtual means would not be adequate for some members (e.g. they have limited access to electronic means or telephone, or other accessibility requirements that would prevent full participation virtually).

In order to hold a virtual or hybrid AGM, the Board needs to:

1. Provide sufficient explanation of access:
 - a. how to access the meeting electronically, including any device, web browser or internet connectivity requirements;
 - b. when and how participants can submit their questions to the chair of the meeting;
 - c. whether any time or content limits will be imposed on questions and if so, when and how to access the information on these limits at or prior to the meeting;
 - d. when and how participants can vote electronically at the meetings;
 - e. who to contact if participants require technical assistance;
 - f. what information will be available after the meeting, including any video of the AGM or answers to the members' questions.

Such disclosure should make it clear that participants are not being denied an opportunity to communicate with the corporation's management or to ask questions simply because the meeting is held virtually.

2. Ensure Means of Communication – All participants must be able to communicate adequately with each other during the virtual AGM. Notably, participants should have both videoconference and teleconference options, unless all participants have access and experiences with videoconference.

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3. Ensure Means of Voting – According to the Order, if voting is to take place by means of telephonic, electronic or other communication facilities, the board of directors must take reasonable measures to ensure that:
 - a. the identity of each person who votes is verified; and
 - b. each person who votes does so only in their own right or by a valid proxy.

The virtual AGM must have a voting platform that both (i) enables votes to be gathered in a manner that permits subsequent verification, and (ii) permits the tallied votes to be presented to the organization without compromising anonymous voting.

Because of these requirements, the poll feature on popular teleconference platforms, such as Zoom or sli.do, may not be sufficient. If there are also attendees/observers without voting rights in the meeting, these polls cannot track and verify the identity of each voter. Electronic ballots may have to be gathered by a third party (such as the company's auditors or lawyers), or through a voting platform specifically designed for elections (see below).

Videoconferencing Platforms

Many videoconference platforms can connect participants online, such as: Zoom, GoToMeeting, Cisco WebEX, Microsoft Teams, Facetime, Skype, WhatsApp, Google Video Chat, Padlet, Pexip, Adobe Connect, Big Marker. Choosing a platform depends on cost, but more importantly, on accessibility and the ability of all members to adequately participate.

For electronic voting: Election Runner, Simply Voting, VoGo, Election Buddy, or Cloud Voting may be options. These may permit live voting with full service technical support (e.g. Simply Voting), or voting could be open for a reasonable period after the AGM.

Elements involved in virtual AGM planning:

Virtual AGMs are increasingly common, however, they do create some new complexities. Be sure to invest the same time and resources (or more, if necessary) into holding virtual AGM as you would for an in-person AGM to prevent challenges afterwards. Virtual AGMs require:

- Registration
- Use of the virtual AGM platform
- Presentation file for the Agenda, motions
- Use of voting platform
- Technical support; minute taker; poll and presentation manager
- Email communication
- Rehearsal



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Bylaw amendment allowing virtual AGMs

Due to the May 13 Order, corporations do not need to amend their bylaws *before* holding a virtual AGM in 2020. But bylaws changes may still need to be made in 2020 if you intend to, or think you may need to, hold a virtual AGM after September 30, 2020.

Considering your options

Boards considering postponing their AGM or moving it to virtual or hybrid format need to consider:

- Would postponing your AGM create concerns for funders or lenders?
- Would postponing your AGM leave vacancies on your Board/create challenges with quorum in the future?
- Are there contentious issues that require discussion or may require motions from the floor that could be challenging in a virtual environment?
- Do your members have limited access to virtual technology or telephone that would mean inequitable participation?