

Can condo owners attend AGMs virtually in the age of COVID-19?

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Q: Our condo board wants to hold its annual general meeting next month. Because of COVID-19, can we have a blended AGM, whereby some people attend in person while others attend virtually by video conference or telephone? Is this legal?

A: Here is the short answer to your question — it is probably not legal to have a blended AGM. At the height of the pandemic-related shutdown earlier in the spring/summer of this year, the Government of Alberta issued Ministerial Order 009/2020. The ministerial order suspended a condominium corporation's obligation to hold an AGM. The order expired on August 14, and was not extended by the Government of Alberta. Therefore, all condominium corporations in Alberta are again required to hold their AGMs in accordance with the Condominium Property Act.

Section 30(2) of the act states that all condominium corporations must convene an AGM no later than 15 months after the immediately preceding AGM. Further, s. 31(1) of the act states that general meetings of condominium corporations must be held in the municipality in which the units are located. The act does provide an alternative for board members to participate remotely at board meetings, but no such alternative is specified for general meetings, such as AGMs.

You should review the bylaws of your condominium corporation. Is there anything in the bylaws as an alternative to in-person attendance at an AGM? It may be possible for condominium bylaws to permit electronic meeting attendance and voting at AGMs, but there is no basis for that under the act, so such a bylaw would be open to a legal challenge. The Courts in Alberta have not formally ruled on this point.

Unlike the exemption for electronic participation of board members at board meetings, the act does not allow owners to attend AGMs virtually. If the bylaws are also silent with respect to attending AGMs virtually, then I do not see how your condominium corporation may hold general meetings of owners with virtual or other electronic participation.

My concern about a virtual AGM is that quorum must be established and the integrity of the voting process must be maintained. Without specific legal direction in either the bylaws or, preferably, the act and/or regulation, or even another ministerial order, the validity of a blended AGM is questionable. How do you verify real-time attendance and participation? How do you verify the person phoning or video conferencing is the person who is entitled to vote?

Therefore, subject to reviewing your bylaws, I do not believe that your condominium corporation may hold a "blended AGM." Such an AGM would be open to challenge as being invalid, which could jeopardize the legitimacy of any board elections or motions carried at such a meeting.

Helpful hint: Quorum must be established either in person or by proxy to ensure the legitimacy of the AGM and voting/election process. Please email the Minister of Service Alberta (ministersa@gov.ab.ca) and ask the minister to issue a new ministerial order to assist condominium corporations with the scheduling of their AGMs.

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