

## COVID-19 & CONDOS: Update 2 - Owners' Meetings & Dangerous Activities

March 17th, 2020.

### Introduction

As COVID-19 continues its spread, the situation continues to evolve on an almost hourly basis. As we have seen in the past days, schools are closed, the borders shut, the province has declared a state of emergency, even the courts are hearing only the most urgent of cases. In an effort to assist and inform communities, the Canadian government has posted risk considerations, stressed "social distancing" and advised against "mass gatherings". What does this mean for AGMs and owners' meetings?

### Social Distancing and Mass Gatherings

In combating the spread of COVID-19, the Canadian government has recommended "social distancing" and advised against "mass gatherings", with the purpose of minimizing close contact with others in the community. This can include quarantines, self-isolation and avoiding crowds. Although these efforts can be made by individuals there are also community-based measures that can be taken by, among others, communal-living settings, such as condominiums. As gatherings of people within a confined space has the potential for serious public health consequences, the Canadian government has recommended canceling or postponing such events. Factors that should play a role in such a decision include, but are not limited to:

- The number of attendees expected;
- Demographics (age of attendees, prior travel of attendees, are attendees of a vulnerable or increased risk category);
- Location (is the event indoors); and,
- Density (will individuals be able to remain 2 meters apart).

### Owners Meetings and AGMs

Section 45(2) of the *Condominium Act, 1998* (the "Act") requires that the board hold the annual general meeting ("AGM") within six (6) months of the end of the fiscal year. With AGM season just around the corner, such a meeting may likely result in a gathering of a large number of people in a condominium's common element room or lobby. Such a congregation may add to the risk of further spread of COVID-19. Should an AGM be upcoming in the next couple of weeks boards may be in a difficult position in

balancing their duty to hold meetings, with their duty to prevent dangerous activities.

### Dangerous Activities

Section 117 of the *Act* prohibits dangerous conditions and activities. "Dangerous Activities" include those that are likely to cause damage to property or injury to individuals. Case law interpreting the *Act* has found that situations which may endanger the health and safety of individuals, such as bedbug and cockroach infestations, are sufficiently dangerous to trigger section 117. In addition, although not in force, coming amendments to section 117 may provide guidance. The proposed amendments to section 117 include among "dangerous activities", conditions and activities that are likely to cause "illness to an individual". As such, boards may be left with a dilemma: call the meeting and risk the spread of the virus, or postpone the meeting and risk missing statutory deadlines.

### Bottom Line

In the present circumstances, boards should get a legal opinion when considering postponing their AGMs and owners' meetings. That said, with federal and provincial leaders urging social distancing and self-isolation, it appears postponing an owners' meeting may be permitted, relying on section 117 of the *Condominium Act, 1998*.

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