

COVID-19: ONTARIO PROVIDES TEMPORARY RELIEF TO ONTARIO CONDOMINIUM CORPORATIONS

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On April 24, 2020, Ontario amended O.Reg 107/20, an order under subsection 7.1(2) of the Emergency Management and Civil Protection Act, RSO 1990, c. E.9, granting temporary relief to business corporations, to include similar relief for both co-operative corporations and condominium corporations in relation to meetings (the "**Order**"). See our article on [relief for Ontario business corporations](#).

Due to the outbreak of COVID-19 and the government-imposed restrictions on gatherings, condominium corporations are facing challenges in hosting meetings. In order to facilitate the proper convening of meetings during this emergency situation, Ontario has, by regulation, temporarily suspended and replaced certain provisions of Ontario's Condominium Act, 1998, SO 1998, c. 19 (the "**Condo Act**"). The Order is retroactive to March 17, 2020. This article outlines the impact of such relief for condominium corporations created under the Condo Act.

Meetings of directors – Delivery of notice

Under section 35(2) of the Condo Act, a person calling a meeting of directors must give written notice of the meeting to every director of the corporation at least 10 days before the day of the meeting, unless the by-laws specify otherwise, by personal delivery and by sending the notice by prepaid mail, courier delivery, or electronic communication.

During this emergency situation, Ontario has temporarily suspended the requirement that notice of a meeting of directors be sent by both personal delivery and by prepaid mail, courier delivery, or electronic communication. Instead, the notice may be sent by either

personal delivery, prepaid mail or courier delivery, or by sending an electronic communication to the director.

Meetings of directors – Consent

The operation of section 35(5) has also been temporarily suspended. Pursuant to section 35(5), a meeting of directors could only be held by teleconference or another form of communication if all directors of the corporation consented to the means used for holding the meeting. Pursuant to the Order, consent is no longer required for meetings of directors to be held by teleconference or other forms of communications and is now permissible with or without consent of the directors.

Annual general meetings – Time extension

Section 45(2) of the Condo Act requires that the board hold a general meeting of owners not more than three months after the registration of a declaration and description, and subsequently within six months of each fiscal year of the corporation.

In this emergency situation, Ontario is providing additional time for condominium corporations to host their annual general meetings as follows:

- If the last day on which the meeting is required to be held falls within the period of the declared emergency (beginning March 17, 2020 and continuing until the declared emergency is terminated), the meeting may be held no later than 90 days after the declared emergency is terminated.
- If the last day on which a meeting is required to be held falls within the 30-day period that begins on the day after the day the emergency is terminated, the last day on which the meeting is instead required to be held is no later than the 120th day after the day the emergency is terminated.

Electronic means of providing notice, meeting quorum, voting and service

There has also been relief granted with respect to holding meetings electronically in ways that were not available to all condominium corporations previously. As a general rule prior to the Order, only those condominium corporations who provided for electronic means in their bylaws or who had the written consent of those entitled to the notice were permitted

to hold meetings electronically or serve documents electronically. However pursuant to the Order a number of requirements with respect to holding meetings have been amended whether or not provided for in the condominium corporation's by-laws or consented to in order to permit electronic meetings, service and voting.

The method of giving notice of a meeting of the owners for condominium corporations requires notice to be given in person unless otherwise provided in the by-laws or unless otherwise consented to by a mortgagee. Section 47(1) of the Condo Act requires that any notice required under the Condo Act:

- be in writing;
- be given at least 15 days before the day of the meeting, if the notice a notice of meeting of owners;
- if the notice is a preliminary notice described in section 45.1(1), be given at least 20 days before the subsequent notice of meeting of owners described in that subsection;
- be given to owners in accordance with section 47(4); and
- if the notice is a notice of meeting of owners or a preliminary notice described in section 45.1(1), be given to the mortgagees described in subsections (2) and (3) in accordance with subsection (5).

In this emergency situation, Ontario has granted flexibility to condominium corporations by relaxing the manner in which notice is given for changes to the date, time or place of meetings of owners. If a notice of a meeting has already been sent, and the meeting would occur during the period of the declared emergency, and the time, date or place of the meeting is changed to hold the meeting by telephonic or electronic means, another notice is not required to be given. However, the persons entitled to receive the notice must be informed of the changes in a manner and within a time that is reasonable in the circumstances.

Section 54 of the Condo Act provides that, unless indicated otherwise, anything required to be given to an owner or a mortgagee under the Condo Act is sufficiently served if it is given in accordance with the methods of service set out in section 47(4) or 47(5), as the case may be. In accordance with sections 47(5) and 47(5), in order for an owner or mortgagee to be served by fax, e-mail or any other method of electronic communication, the owner or mortgagee would have to agree to be given notice by such a method.

Pursuant to the Order, electronic service has been deemed sufficient for anything required to be given to an owner or a mortgagee in respect of any meeting, even if the owner or mortgagee has not agreed to service by fax, e-mail or any other method of electronic

communication.

As well, in this emergency situation, any matters or material required or permitted to be placed before a meeting of owners may be placed by electronic means. Electronic means is defined as any means that uses any electronic or other technological means to transmit information or data, including fax, e-mail, computer or computer networks. If the Condo Act has specified the form in which a document or information shall be given, the document or information may be modified as necessary in order to reflect these accommodations.

Meetings of owners – Electronic means and quorum

Pursuant to section 50(2) of the Condo Act, an owner must be entitled to vote at a meeting and be present at the meeting or represented by proxy in order to count towards quorum.

The Order clarifies that during the temporary suspension period, despite any by-law, a meeting of owners may be held by telephonic or electronic means. This allows condominium corporations to host virtual meetings of owners without having to amend their by-laws during the occurrence of the declared emergency.

As well, the Order provides that an owner or a mortgagee who, personally or by proxy, votes at the meeting or establishes a communications link to the meeting shall be deemed to be present at the meeting or represented by proxy, as the case may be. This provides certainty that virtual meetings can be properly convened with quorum met for condominium corporations during the declared emergency.

Voting – Electronic means

In accordance with section 52(1) of the Condo Act, votes can usually be cast at a meeting by:

- a show of hands, personally or by proxy; or
- by a recorded vote that is,
 - marked on a ballot cast personally or by proxy;
 - marked on an instrument appointing a proxy; or
 - indicated by telephonic or electronic means, if the by-laws so permit.

In this emergency situation, the Order allows for votes to be cast by recorded votes indicated by telephonic or electronic means, whether or not the by-laws permit voting in such manner. Again, this allows for condominium corporations to host virtual meetings and hold meaningful votes without having to amend their by-laws during the declared emergency.

Enacting solutions for virtual meetings

The updated temporary relief provides solutions for some of the challenges faced by condominium corporations as a result of the COVID-19 pandemic and the declared state of emergency. Condominium corporations can choose to delay their meetings until the declared emergency is terminated or can choose to conduct their meetings by electronic means whether or not their by-laws already provide for electronic means. We recommend consulting with your legal counsel at an early stage to ensure all applicable laws are being complied with.

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Authors

Rosa Lupo

Partner - [Waterloo Region](#)

 Email

rosa.lupo@gowlingwlg.com

 Phone

+1 519-575-7511

 vCard

Rosa Lupo