

Updated Memorandum Regarding Cancellation or Continuation of Hawaii Condominium and
Planned Community Association Annual Meetings Due to COVID-19

By: Steve Glanstein, Professional Registered Parliamentarian

Several attorneys, property managers, and board members have requested information regarding last minute cancellation of Annual Meetings due to COVID-19, commonly known as the Coronavirus.

There are currently executive orders on a state and local level regarding COVID-19. Their applicability should be reviewed with legal counsel to ensure that the association and their members comply with the law.

This Memorandum provides some procedural alternatives for associations consistent with *Robert's Rules of Order Newly Revised* (11th ed.) and based on my experience with Hawaii Condominium and Planned Community Association annual meetings. It is not meant to provide medical, legal, or tax advice. For medical, legal, or tax advice, check with an appropriately licensed medical practitioner, attorney, or CPA.

This Memorandum is provided assuming that the organization **has** a requirement to have an annual meeting (which is the case for nearly all associations). It has been updated from the original Memorandum issued on Friday, March 13, 2020 (yes, Friday the thirteenth!).

PRELIMINARY STEPS

The following points relate to and override all of the scenarios presented below.

1. The board generally has **no** authority to cancel a properly called and noticed annual meeting of the association. Check with the association's legal counsel before attempting to notify owners that the meeting was cancelled. There have been different legal opinions on these issues.

There may be some cancellation leeway if the **difference** between the current date and the meeting date is **more** than the required notice date (which is the greater of the minimum days' notice required by law and the minimum days' notice required by the bylaws). However, confirm with legal counsel.

Check with the CPA regarding the consequences of failing to adopt a tax resolution in the current year. Ask the CPA what corrective actions, if any, can be taken if the association doesn't adopt the resolution at its annual meeting.

2. Check the governing documents to determine whether the meeting must be held within **a certain time frame or on a specific date**; and if there are any limitations regarding the continuation of the annual meeting. For example, one association's documents limit the continuation of the meeting to 60 days. Another association's documents have a minimum number of days for continuing the meeting.

There is a risk that procedural challenges may be made to the convening of any annual meeting or its official actions if conducted in violation of the law or bylaws.

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3. If the time frame has to be violated, then check with legal counsel regarding legal ramifications of the failure to have an annual meeting or the rescheduling of an annual meeting to a day not authorized in the governing documents.
4. Review the governing documents for any other business that must be conducted at the annual meeting, such as approval of the managing agent, appointment of an auditor, etc., and consult with legal counsel regarding these requirements.

Associations should make every attempt to comply with the law as well as their governing documents.

SCENARIOS

Here are a few scenarios and suggestions for each of the scenarios. All suggestions are subject to the points discussed above in the Preliminary Steps section of this memorandum.

1. **Scenario: Bylaws require an annual meeting and no notice was sent out to owners.**

The entity (usually the president or the board of directors) responsible for calling the meeting may reschedule it.

If the bylaws require an annual meeting within a specific time frame, then it may be impossible to have an annual meeting that complies with the bylaws. In that case, one of the subsequent scenarios (below) relating to an annual meeting within a certain time frame must be used.

Many bylaws have a section that permits special association meetings. In that case, another option which may be available is to schedule a special meeting to accomplish all of the functions of the annual meeting. This should be reviewed with legal counsel since there may be a technical violation if the association doesn't have an annual meeting but successfully concludes the same business with a special meeting.

2. **Scenario: Bylaws require meeting within a certain time frame and notice was already sent to owners. Owners want to continue the meeting.**

The meeting must be called to order at the time, date, and place specified in the notice (not before). There should be a minimum of 2 owners present, i.e., a presiding officer and a secretary. Make and save a sign-in list if property management is not present. A motion to continue the meeting is a combination of two formal motions that can be done without a quorum present (*Fix the Time to Which to Adjourn* and *Adjourn*).

Motions similar to the following may be adopted to continue the meeting to an appropriate date and location:

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“Resolved, That this meeting is continued to _____ at _____ a/p.m. at _____ (location), or, if not available, as scheduled by the board of directors.”

“Resolved, That this meeting is continued to _____ at _____ a/p.m. at _____ (location), or if not available or a bona fide emergency still exists, as scheduled by the board of directors.”

Note: The association may wish to send a letter of clarification to the owners indicating that no business is anticipated and the meeting is expected to be continued to the new date.

If there's an objection to a unanimous consent motion to continue the meeting using one of the previous motions, a formal motion, second, debate, and vote must be taken. Warning: a majority at the meeting could defeat any proposed adjournment and force the association to conduct business if a quorum is present.

3. Scenario: Bylaws require meeting within a certain time frame and notice was already sent to owners. Owners want to adjourn the meeting.

The meeting must be called to order at the time, date, and place specified in the notice (not before). There should be a minimum of 2 owners present, i.e., a presiding officer and a secretary. Make and save a sign-in list if property management is not present. A motion to adjourn could be made, seconded, and voted upon. Another option, if there is no controversy, is for the presiding officer to make an explanation and adjourn the meeting by unanimous consent.

If there's an objection to a unanimous consent motion to adjourn the meeting, a formal motion, second, and vote must be taken. Usually, in an association annual meeting the unqualified motion to adjourn immediately is not debatable. Warning: a majority at the meeting could defeat any proposed adjournment and force the association to conduct business if a quorum is present.

The association must consider at least the following:

- a. Directors whose terms are expiring are usually held over to the next year, increasing the Board turnover in a following year;
- b. The governing documents may require action on items such as the selection of an auditor, approval of a management contract, etc.
- c. There may be tax ramifications associated with this adjournment. The Board should check with their CPA regarding this matter.

OTHER OPTIONS (Conducting Meeting)

This list is not intended to provide medical advice. Individuals must recognize the risk of gathering together in one room. Consider the following if any business is to be done:

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1. If association employees will be present, address any duties the association may have as employers regarding a safe work place and other issues.
2. Consider obtaining permission by unanimous consent at the meeting for owners who cannot attend to listen on the phone, even if they are not considered present for quorum and voting purposes. Note that it be impossible to control who is listening to the meeting and/or enforce rules prohibiting the recording of meetings.
3. Supply sanitizing wipes for the chairs and desks where people are sitting.
4. Have more physical space between attendees at the meeting.
5. Use approved masks and gloves to handle all materials.
6. Have a separate garbage bag for sanitizing wipes.
7. Use a ballot box to minimize the physical handling of the ballots.
8. Let attendees know that the meeting will be conducted in a manner that will minimize excess verbiage and conclude critical items as efficiently as possible.
9. Avoid verbal reports unless they are very brief; instead, have reports in writing wherever possible.
10. Eliminate the Owners' Forum.
11. Eliminate the serving of food or drinks.

The Centers for Disease Control and Prevention website has additional tips regarding the Coronavirus. The link is: <https://www.cdc.gov/>

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