

Annual Meetings and Elections During State of Emergency

Note that this only applies during the COVID-19 State of Emergency. Most Associations would need to amend their Bylaws to use these options during other times.

Most Associations are not able to hold their Annual Meetings and elections in person right now. Even those that are small enough to meet in person under the current orders are opting to hold virtual meetings to maximize member participation and safety. Oregon laws do not allow using a written ballot in lieu of an Annual Meeting, but there are still some ways to meet the legal requirements for an election with a virtual meeting. Here are three options for Boards to consider:

1. Postpone Annual Meeting and Election

Associations are required to hold at least one Annual Meeting each year. Some Bylaws even include requirements for when those meetings are to be held. However, there are no negative legal consequences for failing to hold that meeting on the specific date required by the Bylaws. ORS 65.201 states that “the failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation’s bylaws does not affect the validity of any corporate action.” In other words, if you postpone the meeting and hold it later in the year, your late election will still be valid. In most cases, your current Directors will remain in office until their successors are elected. You should check your Bylaws to be sure, but as long as your current Directors are willing to continue serving until everyone can safely hold an in-person meeting, this is a good option to consider.

2. Hold Election by Mail and Announce Results at Virtual Annual Meeting

Oregon has statutes permitting a vote by written ballot. Using written ballots cannot replace the Annual Meeting, but you can use them in addition to holding the Annual Meeting. Following are the steps to use this option:

- a. Solicit nominees for open board positions.
- b. Once you have nominees, send out a notice letting owners know you will be holding the election by mail. This notice should include statements from candidates and other information about the terms/election.
- c. 10 days after sending the notice described above, send out ballots to the members and a notice of the virtual Annual Meeting with an agenda and a proxy. The ballot must include the following:
 - Names of nominees and blank lines for write-in candidates
 - The number of ballots that must be received for a valid election (this is likely the same as the quorum requirement in your Bylaws for your annual meeting/election)
 - Instructions for returning the ballot
 - Instructions for cancelling a ballot (or that cancellation will not be permitted)
 - Deadline for return of the ballot (the day of the Annual Meeting)

The agenda for the Annual Meeting should include “Announcement of Election Results”.

You will need to establish quorum for the virtual meeting because you will be taking the action of announcing election results. For that reason, you should send out proxies with the meeting notice. If you have not received sufficient votes to announce election results, then you will need to vote on a motion at that virtual meeting to extend the deadline for ballots (and you will need to ensure you establish a quorum at that virtual meeting). That is one of the challenges of holding the election before the Annual Meeting. Another challenge is that owners do not have the opportunity to hear statements from the candidates during the Annual Meeting before casting their votes.

3. Hold Virtual Annual Meeting and Hold Election by Mail Following Meeting

This is my preferred option because I think it allows the most flexibility, and provides members with the most information before casting their votes.

- a. Send out a Notice of Virtual Annual Meeting (with an agenda) and a Notice of Election by Written Ballot. This should be mailed providing the number of days’ notice required in your Bylaws for Annual Meetings, but not less than 14 days before the scheduled meeting. The agenda for the annual meeting should include “Statements by candidates”. The Notice of Election should let people know that you will be sending them a ballot in 10 days.
- b. 10 days after sending the notice described above, send out ballots to the members that include the following:
 - Names of nominees and blank lines for write-in candidates
 - The number of ballots that must be received for a valid election (this is likely the same as the quorum requirement in your Bylaws for your annual meeting/election)
 - Instructions for returning the ballot
 - Instructions for cancelling a ballot (or that cancellation will not be permitted)
 - Deadline for return of the ballot (at least two days after the scheduled Annual Meeting, but allowing automatic extensions if an insufficient number of ballots is received to meet quorum)

Some people will likely return their ballots before the Annual Meeting, but others will choose to attend the virtual Annual Meeting and hear statements from candidates. Also, attendees at the Annual Meeting may choose to volunteer at the last minute and will have the opportunity to be elected as write-in candidates. The day after the virtual Annual Meeting, the Board/Manager can count the ballots. If you have not received sufficient ballots to meet quorum, you can send another solicitation for ballots and extend the deadline simply by notifying the owners in writing.

Since you’re not voting on anything at the Annual Meeting, you do not technically need to establish quorum, so proxies are not necessary. It is excellent to keep track of attendees and establish quorum, but it can be difficult in virtual meetings, so it is nice to have the option of not doing it.

There are also options for online voting in real time during virtual meetings, and third-party services that will manage online voting and virtual elections for Associations. Those options require the Association to incur some additional cost and require members to be willing to embrace new technology, which I realize

is a challenge in some communities. I encourage Boards to explore those new options, but the options described above are available using the typical mail/email methods.

Of course, there are likely other options that would also work, and there may be provisions in your governing documents that would prevent use of the options described above. I encourage all Boards to speak with their attorneys to consider the best options for their communities.

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