Form 8.20

Annual Meetings of Members – Frequently Asked Questions

# What members meetings are required?

There are two types of meetings of members contemplated in the *Not-for-Profit Corporations Act* (Ontario):an annual meeting and a special meeting. Both the *Not-for-Profit Corporations Act* and Regulation 965 under the *Public Hospitals Act* require that a hospital hold an annual meeting of members.

# When should we begin thinking about the annual meeting of members?

The hospital should begin thinking about the annual meeting of members in early January. A timeline should be developed to ensure that any business that the hospital wishes to conduct at the annual meeting of members will be properly organized. For example: Will by-law amendments be required? Do we have vacancies on the board that we need to recruit for? Will it be clear who the voting members will be at the annual meeting of members? Are we making a change in the office of auditor?

When an action at the annual meeting of members requires prior board approval (for example, a by-law amendment or a matter requiring approval by special resolution) the timeline must take into consideration the approval by the board, usually at the May meeting.

# When is the annual meeting of members required to be held?

The annual meeting of members is required to be held within 15 months of the last annual meeting and between April 1st and July 31st of each year. The requirement to hold the meeting between April 1st and July 31st applies only to public hospitals and is a requirement of Regulation 965 under the *Public Hospitals Act.*

# Who calls the meeting?

Under the *Not-for-Profit Corporations Act* (Ontario), the directors may at any time call a special meeting of the members.

# Who is invited?

Under the *Not-for-Profit Corporations Act* (Ontario), notice must be given to the members, directors, and auditor). Notice may also be given to any special guests and to the public if the meeting is to be open to the public.

# What are the requirements for form, content and timing of the notice?

Under the *Not-for-Profit Corporations Act* (Ontario) notice must be given in accordance with the by-laws, but not less than 10, nor more than 50, days before the meeting. Notice of a meeting of the members at which special business, as defined by the Act, is to be transacted, must state the nature of that business in sufficient detail to permit a member to form a reasoned judgment on the business, and state the text of any special resolution to be submitted to the meeting. Subject to any requirements in the by-laws, notice may be given in person, or to the last address on record for the member by mail, or electronically. However, the *Public Hospitals Act* states that it is not necessary to send written notice of the annual meeting of members to each member. Rather, it is sufficient if notice is given by publication in a newspaper circulated in the municipality in which the members of the hospital reside once per week for two successive weeks before the annual meeting.

Notice of meetings do not need to specify a place if the meeting is to be held entirely by telephonic or electronic means. Notice of telephonic or electronic Board or Members’ meetings must include instructions for attending and participating in the meeting by the telephonic or electronic means that will made available at the meeting, including instructions for voting by such means at the meeting.

# What must be on the agenda of an annual meeting of members?

The typical items on the agenda of an annual meeting of members are:

* + Consideration of the financial statements;
  + Consideration of the audit report;
  + Election of directors; and
  + Re-appointment of the incumbent auditor, or an extraordinary resolution to have a review engagement instead of an audit.

# What other matters may be dealt with at an annual meeting of members?

Other business that may be on the agenda for an annual meeting of members would include reports of the board chair, chief executive officer and chief of staff, board-approved by-law amendments, and any board-approved matters requiring member approval such as a special resolution to increase or decrease in the number of directors. Some annual meeting of members will include a special presentation or a keynote address. Hospitals will sometimes use the annual meeting of members as an opportunity to celebrate success or long-term service and, accordingly, special awards may be presented.

# Who chairs a members meeting?

The by-laws should be reviewed, but generally speaking the board chair will chair the meeting.

# Who votes?

The articles and by-laws should be reviewed, but generally speaking only voting members in good standing may vote. Many by-laws will require that a membership fee be paid a specified number of days in advance of the meeting to entitle the member to vote. Proxy voting is not permitted for a public hospital. Under the *Not-for-Profit Corporations Act* (Ontario), the board may establish a record date a specified number of days before the meeting for the purposes of determining who may receive notice and vote. If the board does not fix a record date, the Act establishes one.

# What are the quorum requirements?

The *Not-for-Profit Corporations Act* (Ontario) provides that unless the by-laws provide otherwise, quorum is a majority of the members entitled to vote.

# How do votes take place?

Subject to the by-laws, the *Not-for-Profit Corporations Act* (Ontario) provides that voting at a meeting of the members shall take place by a show of hands unless a ballot is demanded by a member entitled to vote at the meeting.

# Who are the scrutineers and what is their role?

Scrutineers are individuals who are appointed to oversee the registration of members, confirm quorum and count ballots for any vote that is conducted by way of ballot. Subject to the by-laws or rules of order, scrutineers are usually appointed by the chair of the meeting. Scrutineers may be employees unless the by-laws or rules of order provide otherwise. It is preferable that the scrutineers be independent if a contentious issue is expected.

# Can members participate by telephone or electronic means?

Unless the by-laws provide otherwise, member meetings may be held entirely by telephonic or electronic means or by any combination of in-person attendance and telephonic or electronic means, provided the members are able to reasonably participate.

# Can new business be added at the meeting?

New business (for which proper notice has not been provided) cannot be added at the meeting. Members are entitled to notice that sets out the matters to be dealt with at the meeting and new business that is not on the notice may not be conducted. The reason for this rule is that members make a decision whether or not to attend a meeting based on the business that is intended to be conducted. The duty of the chair of the meeting is to be fair to both those members in attendance and those who have elected not to come. It is not fair to the absent members to add new business to a meeting for which they have not had notice.

# Do conflicts have to be declared at or before the meeting?

No. Members do not have to declare a conflict at the meeting. Members do not have fiduciary duties. They may vote for self-interest and, accordingly, the concept of conflict of interest does not apply to motions and decisions at a meeting of members.

# What motions might be moved by members during the meeting?

Members might move procedural motions. Motions may also be moved to amend or vary any matter that is before the meeting. Such motions must be within the scope of the original motion. Legal advice should be obtained with respect to material matters that come before the meeting, and there should be some anticipation of the types of motions that might be made. The chair of the meeting should receive advice on how to respond to anticipated motions.

# What if we don’t have quorum?

The by-laws and rules of order should be consulted. The general rule is that the meeting is required to be reconvened and additional notice may be required. Under the *Not-for-Profit Corporations Act* (Ontario), the meeting may continue if quorum is present at the opening of the meeting of members, even if that quorum is not present throughout the meeting, unless the by-laws provide otherwise.

# Can notice be waived?

Yes, any person entitled to notice of a meeting of members may waive notice.

# Can resolutions in writing be used in place of a members’ meeting?

Yes, this is permitted under the *Not-for-Profit Corporations Act* (Ontario) provided that all members entitled to vote sign the written resolution. Accordingly, this may not be practical for hospitals with large membership.