

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 or continuations 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. They have been constantly changing and differ depending upon the specific County. Their applicability must be reviewed with legal counsel to ensure that the association and their members comply with any updated requirements.

This Memorandum provides some procedural alternatives for associations consistent with *Robert's Rules of Order Newly Revised* (12<sup>th</sup> 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 previous Memorandum dated April 3, 2020.

### PRELIMINARY STEPS

The following points relate to and override all of the prospective scenarios presented on the subsequent pages.

1. The board generally has **no** authority to cancel a properly called and noticed annual meeting of the association.

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).

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.

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. There have been differing CPA opinions, depending on the type of association and tax return.

**The board should obtain such legal or CPA opinions in writing and file them with the association records. They should also consider making sure that the opinions are available if there is a challenge to the board's action.**

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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. Another association's documents require the annual meeting within the first quarter of the year.

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

3. If the time frame for the annual meeting has to be violated, then check with legal counsel regarding any 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 as needed regarding these requirements.
5. There may be scheduling challenges that severely limit whether the prescheduled meeting site can be used on the meeting date. In extreme cases, meetings have been called to order with two people in front of the original meeting site and continued to an appropriate venue.
6. There may be circumstances where an annual meeting is impossible to commence or conduct within the time frame required by the governing documents. This happened during various times last year where associations were prohibited from convening a meeting. In these cases, consult the governing documents to determine if a special meeting can be conducted to include the items normally conducted at the annual meeting.
7. There may be a requirement for an annual or organizational meeting of the board following the association's annual meeting. Generally, the board can conduct board meetings by virtual means (i.e., electronic or teleconferencing). Confirm with legal counsel.

**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.

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If the bylaws require an annual meeting within a specific time frame, then it may still 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 may be used.

If it is entirely impossible or prohibited to conduct an annual meeting, consider the special meeting option. Many bylaws have a section that permits special association meetings. 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. The board wants 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 two owners present (preferably one of them a board member), i.e., a presiding officer and a secretary. Make and save a sign-in list if a representative of the property management company 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* combined with *Adjourn*).

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

“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 an advance letter of clarification to the owners with the notice, indicating that no business is anticipated and the meeting is expected to be continued to the new date.

Note: If there's an objection to a motion to continue the meeting using the previous motion or amendments are offered, a formal motion, second, debate, and vote(s) must be taken.

Warning: A majority at the meeting could either defeat any proposed continuation, or 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. Board wants 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 two owners present, i.e., a presiding officer and a secretary. Make and save a sign-in list if property management is not present.

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A motion to *Adjourn* could be made, seconded, and voted upon. Another option, if there is no controversy, ask for the presiding officer to make an explanation and adjourn the meeting by unanimous consent. Some of our clients have photographed and one even videotaped the two owners onsite, recording the actual procedure in the event of a challenge.

Note: If there's an objection to a motion to adjourn the meeting, a formal motion, second, debate, and vote must be taken. In an association annual meeting, the unqualified motion to *Adjourn* immediately is not debatable.

Warning: A majority at the meeting could either defeat any proposed adjournment, force a continuation, or 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.

### **MEETING SITE SUGGESTIONS**

This list is not intended to be a substitute for or provide legal or medical advice. It is also not all-inclusive. Individuals must recognize the risk of gathering together in one room. The board should strive to comply with the most current guidelines and requirements. Several of the following tasks are identified for associations to consider as part of their meeting planning:

1. If property management or association employees will be present, address any duties the association may have as employers regarding a safe workplace and other issues.
2. Use approved masks and disposable gloves to handle all materials.
3. Consider using an approved plastic shield for individuals performing the check-in and at the head table.
4. Have a separate garbage bag for sanitizing wipes.
5. Check on masking requirements. They became mandatory in Hawaii in 2020 and that requirement may still exist.
6. Supply sanitizing wipes for the chairs and desks where people are sitting, and near microphones (if they are to be used).
7. Have more physical space between attendees at the meeting. Social distancing (6 feet) may be required by government rules.
8. Use a ballot box to minimize the physical handling of the ballots. After a ballot is turned in, all touching of ballot materials should be by individuals wearing gloves until the ballots are placed in an envelope.
9. 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.

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10. Consider using a hybrid system where owners sign in physically onsite, obtain their ballots, and physically return to the meeting site during a voting recess to cast their votes. This usually works best when there is a large quantity of resident owners.
11. Consider obtaining permission by unanimous consent at the meeting for owners who cannot attend to listen or observe using a conferencing system, 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. Note that as of the end of 2020, condominiums have had various limitations on owner participation at the annual meeting.
12. Avoid verbal reports unless they are very brief; instead, have reports in writing wherever possible.
13. Eliminate the Owners' Forum.
14. 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/>. Hawaii has a website that provides additional guidance. The link is: <https://hawaiicovid19.com/guidance/>. Furthermore, the City and County of Honolulu has a website to provide Oahu-specific guidance. The link is: <https://oneoahu.org>.

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