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Pre-Meeting Fundamentals for Ontario Not-For-Profit Corporations

Not-for-profit corporations ("**NFPs**") are required to hold various member and director meetings during the course of a year. This article will review different issues that NFPs must consider in preparation for these meetings.

Ontario NFPs are governed by the Ontario *Corporations Act* (the "**OCA**"), which contains numerous provisions regulating the holding of members' and directors' meetings. In addition, the by-laws of an NFP typically address meeting requirements. The letters patent of an NFP may do so as well, although less commonly.

MEMBERS' MEETINGS

Are there different types of members' meetings?

There are two types of members' meetings under the OCA, annual and general. An annual meeting is often called an "annual general meeting" or an "AGM" and a general meeting is frequently called a "special meeting".

What business must be conducted at an annual meeting of members?

At each annual meeting of members, in addition to any other requirements of an NFP's by-laws:

- the members typically elect the directors (unless an election of directors is not required that year because the directors are elected for longer than one year and none of their terms are expiring);
- the members must appoint an auditor (unless exempt – see discussion in our February 2016 newsletter); and
- the financial statements with the auditor's report must be presented to the members.

What business must be conducted at a general (special) meeting of members?

Any business which is not annual business is called special business (such as amending the letters patent or the by-laws) and must be conducted at a general (special) meeting of the members.

Can members pass resolutions other than at a meeting?

Members can pass a resolution (dealing with annual or special business) if it is in writing and signed by 100% of the members entitled to vote on that resolution.



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When must an annual meeting of members be held?

The first annual meeting of the members must be held within 18 months of an NFP coming into existence. Subsequent annual meetings must be held within 15 months of the previous annual meeting but not more than six months after the NFP's financial year end.

When may a general (special) meeting of members be held?

The directors may call a general (special) meeting of the members at any time to consider special business. A special meeting can be held as a standalone meeting or in conjunction with an annual meeting. If a special meeting is held together with an annual meeting, the meeting may be called an "annual special meeting".

Where can members' meetings be held?

Members' meetings can be held wherever specified in the NFP's by-laws, or if not specified in the by-laws, then at a place determined by the directors.

Who must receive notice of a members' meeting?

An NFP must give notice of a members' meeting to all of its members who are entitled to notice of the meeting under its by-laws, to its auditor and to any other persons specified in an NFP's letters patent or by-laws (such as non-voting members).

How can notice of a members' meeting be given?

Notice of a members' meeting must be given to each member individually by prepaid mail or by personal delivery.

If, however, an NFP is a charity, it can give notice of a members' meeting by publishing the notice in a newspaper circulated in the municipality in which a majority of its members reside. The publication must be made at least once a week for two consecutive weeks in the weeks preceding the meeting date.

How much notice must be given for a members' meeting?

At least ten day's notice must be given to the members for a members' meeting although the by-laws can provide for longer notice period.

What must be included in the notice of a members' meeting?

Notice of a members' meeting must specify the time and place of the meeting and any other information required by the NFP's by-laws. If special business will be transacted at the meeting, the notice must also state the general nature of the special business.

DIRECTORS' MEETINGS

Are there different types of directors' meetings?

Under the OCA, there are no specific types of or names for directors' meetings as there are for members' meetings, although the by-laws of some NFPs make a distinction between regular and special meetings. If so, regular meetings are typically directors' meetings scheduled in advance throughout a year, such as 7:00 p.m. on the first Tuesday of every month, whereas special meetings are those called for a specific purpose closer to the date of the meeting on a day other than the day of a regular meeting.

Can directors pass resolutions other than at a meeting?

Directors can pass a resolution (dealing with any business) if it is in writing and signed by 100% of the directors entitled to vote on that resolution.

When should a directors' meeting be held?

Directors should meet regularly to oversee the management of the activities and affairs of the NFP.

In particular, a directors' meeting should be held annually to approve the NFP's financial statements before they are circulated to the members in advance of the annual members' meeting. If an NFP is a Canadian registered charity, the annual Registered Charity Information Return should also be approved at a directors' meeting, before the Return is filed with the Canada Revenue Agency.

In addition, if the directors of an NFP appoint its officers, then a directors' meeting must be held to do so, immediately or shortly after an annual members' meeting, subject to an NFP's by-laws.

What must be included in a notice for a directors' meeting?

Generally, notice of a directors' meeting must only specify the date, time and place of the meeting. It does not need to specify the business to be conducted at the meeting, unless the by-laws provide otherwise.

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Are there any other requirements for the holding of a directors' meeting?

The requirements for a NFP's directors' meeting, such as where and when it can be held, and the notice required, are determined by its by-laws and articles.

When planning a members' or directors' meeting, an NFP should ensure that it is aware of the requirements of the OCA for the specific type of meeting being held. An NFP should also review its articles and by-laws to determine if they contain any provisions that address the holding of the type of meeting being organized.

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