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Sarah E. Tucher

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Five Considerations for Planning Your Cooperative's Annual Meeting During the COVID-19 Pandemic

Legal Update

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With harvest in full swing, it is difficult to shift focus to your cooperative's annual meeting. Unfortunately, the ongoing COVID-19 pandemic presents logistical challenges that may require some additional advance planning to keep members safe and engaged. Below are five things to consider as you plan to call and hold your annual meeting:

1. Do you have the authority to go virtual?

Carefully review your governing documents to determine if your Board has the option to declare a virtual or hybrid virtual / in-person annual meeting. If not, there may be guidance from your state or an executive order or disaster proclamation from your state's governor allowing meetings to be held virtually. For example, Minnesota Governor Tim Walz signed Emergency Executive Order 20-86 allowing Minnesota cooperatives to: (1) hold virtual annual meetings, or (2) if a virtual meeting is not feasible, to forego its annual members' meeting if the cooperative wishes to avoid in-person gatherings due to the public health threat caused by the COVID-19 pandemic. You can read more about that Executive Order in our article "Executive Order Assists Minnesota Cooperatives During the COVID-19 Peacetime Emergency."

If you are not able to (or choose not to) hold a fully virtual meeting, refer to your state's guidance regarding social distancing requirements, building capacity limits, required use of masks, or any other sanitizing requirements in order to protect the health and safety of your membership.

2. Do you need to adjust your meeting procedures to elect directors?

Verify that you have authority in your governing documents to use mail ballots or voting by electronic means for the election or removal of directors and have adequately included procedures for their use. If not, there may be an applicable executive order or guidance from your state of formation that provides discretion to conduct director elections via mail.

Beyond the question of authority, consider how you will gather nominees to populate the ballot. Adjust your procedures if you typically gather nominations in a timeframe that will not permit you to generate a mail ballot with a return date before the meeting or if you typically take nominations from the floor at your annual meeting.

3. How will you meet quorum?

While use of mail ballots can and will likely establish quorum to transact business, state statutes typically provide that if a mail ballot has been submitted on a motion, neither the motion nor any resolution to which it pertains may be amended. If the motion or resolution is amended at the meeting of the membership, then any signed ballot not containing the amended motion or resolution is void.

If there will be discussion and new motions or resolutions added to the ballot at the virtual annual meeting, or if nominees for directors will be taken at the meeting, it is important to verify that you will have sufficient member participation in your virtual meeting and to potentially adjust your meeting procedures to accommodate better use of mail ballots.

4. How do you allow and promote member engagement?

To conduct a virtual meeting (or hybrid virtual / in-person meeting), the cooperative probably needs to obtain a license to use virtual conferencing software. The meeting is commonly conducted like a webinar, with the leadership of the cooperative in one location speaking to members who cannot see each other or otherwise interact with each other.

Consider the leadership members or other speakers to whom you would provide access so that their computer screen and audio will be visible as a presenter. Consider whether participants would be permitted to submit questions or comments to the conference administrator and how your team would sort and respond to those questions to keep the meeting flowing.

5. Do you need to make changes to your governing documents?

Ultimately, the way you call and hold your annual meeting this year will depend on how state law and executive orders impact your cooperative's existing articles and bylaws. While there does not appear to be an end to the COVID-19 pandemic in sight, public health emergency declarations and executive orders often contain sunset provisions.

If you have reviewed the points above and found that your governing documents fail to incorporate flexibility that is provided by statute regarding use of mail ballots or other meeting matters, consider whether it makes sense to amend your governing documents.

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The pandemic has changed and will continue to change the way many businesses, including cooperatives, are engaging with their shareholders and members. We are here to help. Please contact a member of the Food & Agribusiness or Cooperatives groups if you need further guidance. And good luck with the harvest!