

WINMARK CORP  
Form DEF 14A  
March 16, 2009

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

**SCHEDULE 14A**

Proxy Statement Pursuant to Section 14(a) of  
the Securities Exchange Act of 1934 (Amendment No. )

Filed by the Registrant  X

Filed by a Party other than the Registrant  O

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

**Winmark Corporation**

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
  - (1) Title of each class of securities to which transaction applies:
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- Fee paid previously with preliminary materials.
- Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.
  - (1) Amount Previously Paid:
  - (2) Form, Schedule or Registration Statement No.:
  - (3) Filing Party:
  - (4) Date Filed:

**NOTICE OF ANNUAL MEETING OF SHAREHOLDERS**

**April 29, 2009**

TO THE SHAREHOLDERS OF WINMARK CORPORATION

Notice is hereby given to the holders of the shares of Common Stock of Winmark Corporation that our Annual Meeting of Shareholders will be held at our corporate offices, 605 Highway 169 N, Suite 100, Minneapolis, Minnesota on Wednesday, April 29, 2009 at 4:00 p.m. Central Daylight Time, to consider and act upon the following matters:

1. To set the number of members of the Board of Directors at six.
2. To elect six directors to serve for a term of one year.
3. To approve an amendment to the Stock Option Plan for Nonemployee Directors (the Plan ) to eliminate the Plan s requirement that the Compensation Committee can only grant options annually, and permit the Compensation Committee the discretion to grant options other than on an annual basis.
4. To ratify the appointment of Grant Thornton LLP as our independent registered public accounting firm for the 2009 fiscal year.
5. To transact such other business as may properly come before the meeting or any adjournments thereof.

Shareholders of record at the close of business on March 12, 2009 will be entitled to vote at the meeting and adjournments of the meeting.

**You are cordially invited to attend the meeting. Even if you do not plan to attend the meeting, we urge you to sign, date and return the proxy at once in the enclosed envelope.**

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By the Order of the Board of Directors

John L. Morgan  
Chairman and Chief Executive Officer

Dated March 16, 2009

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**Winmark Corporation**

**605 Highway 169 North, Suite 100**

**Minneapolis, Minnesota 55441**

**Annual Meeting of Shareholders**

**April 29, 2009**

**PROXY STATEMENT**

**GENERAL**

The Annual Meeting of Shareholders of Winmark Corporation will be held on Wednesday, April 29, 2009, at 4:00 p.m., Central Daylight Time, at our corporate offices, 605 Highway 169 N, Suite 100, Minneapolis, Minnesota 55441, for the purposes set forth in the Notice of Annual Meeting of Shareholders.

The enclosed proxy is solicited by our Board of Directors. Such solicitation is being made by mail and may also be made by directors, officers and regular employees of Winmark personally or by telephone. Any proxy given pursuant to such solicitation may be revoked by the shareholder at any time prior to the voting thereof by so notifying us in writing at the above address, attention: Corporate Secretary, or by appearing in person at the meeting. Shares represented by proxies will be voted as specified in such proxies, and if no choice is specified, will be voted in favor of the proposals set forth in the Notice of Meeting and in favor of the number and slate of directors proposed by the Board of Directors and listed herein.

Shares voted as abstentions on any matter (or a withhold authority vote as to directors) will be counted as present and entitled to vote for purposes of determining a quorum and for purposes of calculating the vote with respect to such matter, but will not be deemed to have been voted in favor of such matter. If a broker submits a non-vote proxy, indicating that the broker does not have discretionary authority to vote certain shares on a particular matter, those shares will be counted as present for purposes of determining a quorum, but will not be considered present and entitled to vote for purposes of calculating the vote with respect to such matter.

All of the expenses involved in preparing, assembling and mailing this proxy statement and the material enclosed herewith will be paid by Winmark. Winmark may reimburse banks, brokerage firms and other custodians, nominees and fiduciaries for reasonable expenses incurred by them in sending proxy material to beneficial owners of stock. This proxy statement and accompanying form of proxy are first being mailed to shareholders on or about March 26, 2009.

**IMPORTANT NOTICE REGARDING AVAILABILITY**

**OF PROXY MATERIALS FOR THE 2009 ANNUAL MEETING OF SHAREHOLDERS**

**TO BE HELD ON WEDNESDAY, APRIL 29, 2009**

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Under new rules promulgated by the Securities and Exchange Commission, Winmark is providing access to its proxy materials both by sending you this full set of proxy materials and by notifying you of the availability of its proxy materials on the Internet.

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You may access the following proxy materials as of the date they are first mailed to our shareholders at [www.winmarkcorporation.com](http://www.winmarkcorporation.com) by following the tab under Investor Relations and the link for Proxy Materials :

- Notice of 2009 Annual Meeting of Shareholders to be held on Wednesday, April 29, 2009;
- Proxy Statement for 2009 Annual Meeting of Members to be held on Wednesday, April 29, 2009; and
- Annual Report on Form 10-K for the fiscal year ended December 27, 2008.

These proxy materials are available free of charge and will remain available through the conclusion of the Annual Meeting. Additionally, we will not collect information, such as cookies, that would allow us to identify visitors to the site.

### OUTSTANDING SHARES AND VOTING RIGHTS

The Board of Directors has fixed March 12, 2009, as the record date for determining shareholders entitled to vote at the Annual Meeting. Persons who were not shareholders on such date will not be allowed to vote at the Annual Meeting. At the close of business on March 12, 2009, 5,381,669 shares of our Common Stock were issued and outstanding. Common Stock is the only outstanding class of capital stock entitled to vote at the meeting. Each share of Common Stock is entitled to one vote on each matter to be voted on at the meeting. Holders of Common Stock are not entitled to cumulative voting rights.

Under applicable Minnesota law, approval of each of the proposals to be voted on at the meeting except the election of the nominees requires the affirmative vote of the holders of the greater of (i) a majority of the voting power of the shares represented in person or by proxy at the Annual Meeting with authority to vote on such matter or (ii) a majority of the voting power of the minimum number of shares that would constitute a quorum for the transaction of business at the Annual Meeting. The election of the nominees requires the affirmative vote by a plurality of the voting power of the shares present and entitled to vote on the election of directors at a meeting at which a quorum is present.

**ELECTION OF DIRECTORS**

**(Proposals #1 and #2)**

At the meeting, the Board of Directors is to be elected to hold office until the 2010 Annual Meeting or until successors are elected and have qualified. Our Bylaws provide that the number of directors on our Board shall be fixed by the shareholders, subject to increase by the Board of Directors in an interim period between shareholder votes. The Nominating Committee recommended to the Board of Directors that the shareholders set the number of directors at six. The Nominating Committee also recommended to the Board of Directors that the shareholders elect the nominees named below.

Shares represented by executed proxies will be voted, if authority to do so is not withheld, for the election of the nominees named below, unless one or more of such nominees should become unavailable for election, in which event such shares shall be voted for the election of such substitute nominees as the Board of Directors may propose. Each person nominated has agreed to serve if elected, and we know of no reason why any of the listed nominees would be unavailable to serve.

***Information Concerning Nominees:***

**Name and Age**

John L. Morgan

Age: 67

**Principal Occupation and Business Experience for Past Five Years**

Mr. Morgan was elected Chairman of the Board and Chief Executive Officer of Winmark in March 2000. He was an independent investor/business consultant from April 1999 to February 2000. He was the founder of Winthrop Resources Corporation, a business equipment leasing company, and served as its President from March 1982 through March 1999. In addition, Mr. Morgan is currently a private investor and serves as a member of Rush River Group, LLC.

Jenele C. Grassle

Age: 49

Ms. Grassle was elected a director of Winmark in January 2001. She has served as Vice President, Merchandising for Carlson Marketing Worldwide, a division of Carlson Companies, since May 2008. Ms. Grassle served as the Vice President/General Merchandise Manager at Value Vision Media, Inc. from July 2007 to April 2008, as Vice President, Jewelry from July 2006 to July 2007 and as Divisional Merchandise Manager, Ready-to-Wear, Accessories and Cosmetics from March 2005 to July 2006. From July 2000 to June 2004, Ms. Grassle served as the Vice President/General Merchandise Manager of Merchandising at Wilsons Leather, a leading specialty retailer of men's and women's leather apparel and accessories.

Kirk A. MacKenzie

Age: 70

Mr. MacKenzie was elected Vice Chairman and a director of Winmark in May 2000. In addition, he is currently a private investor and serves as a member of Rush River Group, LLC. From January 1982 to March 1999, Mr. MacKenzie was Executive Vice President of Winthrop Resources Corporation, a business equipment leasing company.

Dean B. Phillips  
Age: 40

Mr. Phillips was elected a director of Winmark in 2007. He currently serves as President and Chief Executive Officer of Phillips Distilling Company, a position he has held since 2000. From 1993 to 2000, Mr. Phillips held a variety of sales and marketing positions in both the US and Canada at Phillips Distilling Company and Millennium Import, LLC the marketer of Belvedere and Chopin luxury vodkas. Mr. Phillips is Vice-Chairman of the Board of Directors of Allina Health System, serving as Chair of its Investment and Philanthropy Committees, a member of the Advisory Board of the Center for the Study of Politics and Governance at the University of Minnesota's Humphrey Institute and a Trustee of The Jay & Rose Phillips Family Foundation.

Paul C. Reyelts  
Age: 62

Mr. Reyelts was elected a director of Winmark in May 2000. He served as the Executive Vice President of Finance and Chief Financial Officer of The Valspar Corporation, a global leader in the coatings industry, from April 1982 until February 2008. He remains an Executive Vice President of The Valspar Corporation. In addition, Mr. Reyelts serves on the Board of Trustees of Minnesota Public Radio.

Mark L. Wilson  
Age: 60

Mr. Wilson was elected a director of Winmark in May 2000. He currently serves as Of Counsel at the law firm of Henson & Efron, P.A. In 2006, Mr. Wilson served as President of Kettle River Company, LLC, a business consulting firm. From 1999 to 2006, he served as President of Weisman Enterprises, Inc. and its affiliates, a vending and small transaction management company. In addition, Mr. Wilson currently serves on the Board of Directors of the Minnesota Community Foundation, The St. Paul Foundation and Intergenerational Living and Health Care, Inc.

#### **Board Recommendation**

The Board of Directors recommends that the shareholders vote FOR proposal #1 to set the number of members of the Board of Directors at six. The Board of Directors recommends that the shareholders vote FOR each of the six nominees set forth in proposal #2 to serve for a one year term.



## CORPORATE GOVERNANCE

### Code of Ethics and Business Conduct

We have adopted the Winmark Corporation Code of Ethics and Business Conduct (the Code of Conduct ), that applies to our directors, officers and employees. The Code of Conduct is publicly available on our web site at [www.winmarkcorporation.com](http://www.winmarkcorporation.com). If we make any substantive amendments to the Code of Conduct or grant any waiver, including any implicit waiver from a provision of the Code of Conduct to our directors or executive officers, we will disclose the nature of such amendments or waiver on our web site or in a report on Form 8-K.

### Majority of Independent Directors; Committees of Independent Directors

The Board of Directors has determined that Ms. Grassle and Messrs. Phillips, Reyelts, and Wilson, constituting a majority of the Board of Directors, are independent directors in accordance with rules of the Nasdaq since none of them are believed to have any relationships that, in the opinion of the Board of Directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. Messrs. Morgan and MacKenzie are precluded from being considered independent by Nasdaq rules since they either currently serve as executive officers of Winmark and/or have had a relationship with Winmark that preclude them from being deemed independent under Nasdaq rules.

Each member of the Audit Committee, Compensation Committee and Nominating Committee has been determined, in the opinion of the Board of Directors, to be independent in accordance with Nasdaq rules.

### Standing Committees

The Board of Directors has three standing committees, the Audit Committee, the Compensation Committee and the Nominating Committee.

#### *Audit Committee*

The Audit Committee provides oversight by reviewing financial reports and other financial information of Winmark, reviewing our systems of internal control regarding finance, accounting, legal compliance and ethics, and reviewing our auditing, accounting and financial reporting process. The Audit Committee serves as an independent and objective party to monitor our financial reporting process and internal control system. The Audit Committee coordinates, reviews and appraises the audit efforts of our independent registered public accounting firm. Further, the Audit Committee communicates directly with the independent accountants, financial and senior management and Board of Directors regarding the matters related to the Committee's responsibilities and duties. The Board has determined that Paul C. Reyelts, an independent director, is the Audit Committee financial expert. The current Audit Committee members are Paul C. Reyelts (Chairman), Dean B. Phillips, and Mark L. Wilson. The Audit Committee held four (4) meetings during fiscal 2008.



*Compensation Committee*

The Compensation Committee's purpose is to assist the Board of Directors in the discharge of its responsibilities relating to (a) fair, reasonable, and competitive compensation practices for our executive officers and other key employees which are consistent with our objectives; (b) oversight of broad-based employee compensation policies and programs; and (c) fair, reasonable and competitive compensation and benefit programs for our nonemployee directors. The Compensation Committee, which consists of Mark L. Wilson, Jenele C. Grassle, Dean B. Phillips and Paul C. Reyelts, held one (1) meeting during fiscal 2008. Mark L. Wilson has been appointed the Chairman of the Compensation Committee.

The Compensation Committee's responsibilities, which are discussed in detail in its charter, include, among other duties, the responsibility to:

- Review and approve annually appropriate incentive compensation goals and objectives for the CEO and other executive officers.
  
- Consider and approve the base salary, incentive and equity-based compensation awards and other compensation actions for the CEO based upon an evaluation of the CEO's performance, effectiveness and other relevant considerations.
  
- Review and approve base salaries, incentive and equity-based compensation awards and other compensation actions for all other executive officers, based upon an evaluation of such officer's performance, effectiveness, the recommendations of the CEO and other relevant considerations.

Compensation decisions for our executive officers and nonemployee members of the Board of Directors are made by the Compensation Committee. The Compensation Committee also makes decisions regarding the equity compensation of any other Winmark employees. The Compensation Committee has not elected to utilize the services of a compensation consultant in determining executive compensation, though they have the discretion to utilize the services of a consultant as outlined in the Compensation Committee's Charter. To the extent the Committee determines to expend in excess of \$5,000 during any fiscal year on consultants, it must seek pre-approval from the Board of such excess expenditures.

Our Chief Executive Officer, with the input of other officers at his discretion, provides the Compensation Committee with recommendations for the compensation of all executive officers and nonemployee directors.

*Nominating Committee*

The purpose of the Nominating Committee is to advise the Board of Directors and provide oversight on matters related to (a) the selection and nomination of Board Members; and (b) the appointment of Board Committee Members. The Nominating Committee, which consists of Jenele C. Grassle, Dean B. Phillips, Paul C. Reyelts, and Mark L. Wilson, held one (1) meeting during fiscal 2008. Jenele C. Grassle has been appointed Chairperson of the Nominating Committee.



Winmark does not have a formal policy with regard to the consideration of director candidates recommended by shareholders since it is our practice to consider director recommendations from any source. The Board is comprised of a majority of independent directors, which ensures consideration of director candidates from any source based on the criteria set forth below. Each Nominating Committee member is independent. The Board will consider director candidates recommended by shareholders according to the following membership criteria.

*Board Membership Criteria*

In selecting the new directors, the Committee shall consider any requirements of applicable law or listing standards, a candidate's strength of character, judgment, business experience and specific area of expertise, factors relating to composition of the Board, principles of diversity and such other factors as the Committee shall deem important.

The Nominating Committee will consider the attributes of the candidates and the needs of the Board and will review all candidates in the same manner, regardless of the source of the recommendation.

*Shareholder Nomination of Directors*

A shareholder who wishes to recommend one or more directors must provide a written recommendation to our Corporate Secretary at the address below. Notice of a recommendation must include:

with respect to the shareholder:

- name, address, the class and number of shares such shareholder owns;

with respect to the nominee:

- name, age, business address, residence address,
- current principal occupation,
- five year employment history with employer names and a description of the employer's business,
- the number of shares beneficially owned by the nominee,
- whether such nominee can read and understand basic financial statements, and

- Board membership, if any.

The recommendation must be accompanied by a written consent of the nominee to stand for election if nominated by the Board of Directors and to serve if elected by the shareholders. We may require any nominee to furnish additional information that may be needed to determine the eligibility of the nominee.

*Charter Availability*

The Audit Committee, Compensation Committee, and Nominating Committee charters are available on our website at [www.winmarkcorporation.com](http://www.winmarkcorporation.com) under the Investor Relations heading.

**Meeting Attendance**

During fiscal 2008, the Board of Directors held four (4) meetings. All directors attended at least 75% of the meetings of the Board of Directors and committees of the Board of Directors on which they served.

We have not adopted a formal policy with regard to board members attendance at annual meetings of shareholders, however, all directors are encouraged to attend such meetings. All of the directors attended the Annual Meeting last year.

**Shareholder Communications**

Shareholders may communicate directly with the Board of Directors. All communications should be directed to our Corporate Secretary at the address below and should prominently indicate on the outside of the envelope that it is intended for the Board of Directors or for non-management directors. If no director is specified, the communication will be forwarded to the entire Board. Shareholder communications to the Board should be sent to:

Corporate Secretary

Winmark Corporation

Attention: Board of Directors

605 Highway 169 N, Suite 400

Minneapolis, Minnesota 55441

**EXECUTIVE OFFICERS**

The executive officers of Winmark are as follows:

NAME	AGE	POSITION
John L. Morgan	67	Director, Chairman and Chief Executive Officer
Brett D. Heffes	41	President, Finance and Administration and Treasurer
Steven A. Murphy	43	President, Franchising
Steven C. Zola	47	President, Winmark Capital Corporation
Leah A. Goff	47	Vice President, Human Resources
Merry Beth Hovey	45	Vice President, Marketing
Anthony D. Ishaug	37	Chief Financial Officer

**John L. Morgan** was elected Chairman of the Board and Chief Executive Officer of Winmark in March 2000. He was an independent investor/business consultant from April 1999 to February 2000. He was the founder of Winthrop Resources Corporation, a business equipment leasing company, and served as its President from March 1982 through March 1999. In addition, Mr. Morgan is currently a private investor and serves as a member of Rush River Group, LLC.

**Brett D. Heffes** has served as President of Finance and Administration of Winmark since December 2007, and as Treasurer of Winmark since November 2002. From November 2002 to September 2008, Mr. Heffes served as Chief Financial Officer for Winmark.

**Steven A. Murphy** has served as the President of Franchising since October 2006. Mr. Murphy also served as Vice President of Franchise Management of Winmark from December 2003 to October 2006, remaining primarily responsible for the Play It Again Sports® and Music Go Round® brands from December 2003 until March 2006.

**Steven C. Zola** has served as the President of Winmark Capital Corporation since December 2005. Mr. Zola also served as an advisor to Winmark from January 2005 to December 2005. From September 2002 until January 2007, Mr. Zola served in a number of positions, including President and Chief Executive Officer, of CrystalVoice Communications, Inc, a VoIP software company. From March 1990 to January 2002 he was employed by Winthrop Resources Corporation, a technology equipment leasing company, where he served as Senior Vice President of Sales and Marketing prior to his departure.

**Leah A. Goff** has served as Vice President of Human Resources for Winmark since September 2005. From April 1997 to March 2000 and October 2000 to September 2005, Ms. Goff served as Human Resources Manager for Winmark.



**Merry Beth Hovey** has served as Vice President of Marketing for Winmark since July 2007. From April 2006 until July 2007, Ms. Hovey served as Director of Marketing for Winmark. Prior to joining Winmark, Ms. Hovey was Vice President of Marketing for 2nd Swing Golf from October 2004 to December 2005. Ms. Hovey also held the position of Director of Marketing for Minnesota Public Radio from October 2001 through January 2004.

**Anthony D. Ishaug** has served as Chief Financial Officer for Winmark since September 2008. Prior to joining Winmark, Mr. Ishaug was employed as Chief Operating Officer and Chief Financial Officer of Department 56, Inc., (a division of Lenox Group, Inc.), a giftware and collectible company, from January 2008 until September 2008. From April 2005 to January 2008, Mr. Ishaug served as Controller and Treasurer of Lenox Group, Inc. and from July 2000 to April 2005 as Director, Treasury and Corporate Development at Lenox Group, Inc.

The term of office of each executive officer continues until terminated by Winmark.

There are no arrangements or understandings among any of the executive officers of Winmark and any other person (not an officer or director of Winmark) pursuant to which any of the executive officers were selected as an officer of Winmark.

#### EXECUTIVE COMPENSATION TABLES

The table below summarizes the total compensation paid or earned by each of the Named Executive Officers ( NEOs ) for the fiscal year ended December 27, 2008. Winmark s compensation structure for NEOs emphasizes the collective accountability to our shareholders, employees, and to one another by examining the performance of the NEOs as a group. The overall success of our business was examined to determine NEO salary, bonus, and incentive compensation, including a variety of financial and nonfinancial factors such as the overall performance of the company against long-term financial and strategic objectives, cash flow, human resources management, earnings per share, and the effectiveness of the NEOs as a group. Although our philosophy is to compensate NEOs as a group, we believe it is important to retain the flexibility and discretion to modify all elements of compensation awarded to individuals based upon their general business and company experience, leadership, potential future contribution, and the performance of the businesses for which they are responsible. There are 3 primary components to NEOs compensation: (1) base pay, (2) annual incentive bonus, and (3) equity based compensation.

Base pay provides the NEOs with regular compensation for services performed during the fiscal year, and is used to establish a pay range for the annual incentive bonus. The NEOs base pay is determined in part by examining awards from past years, both for NEOs as a group and for each individual NEO. The annual bonus for each NEO, awarded at the discretion of the Compensation Committee, may range in amount from 0% to 100% of that NEO s salary. The annual incentive bonus is designed to motivate and reward the NEOs as a group for furthering the achievement of the Company s short and long-term objectives during the fiscal year. The third primary component of compensation is long-term incentive compensation in the form of stock options. Options were granted to the NEOs by the Compensation Committee under our current employee stock option plan, with a four year vesting period beginning on the first anniversary of the grant date and a ten year term, both contingent upon the continued employment of the NEO. Although previous awards are considered, the amount of options a NEO receives depends primarily upon the NEOs performance as a group, the total number of option shares recommended for issuance, and the total number of people included in the annual stock option grants.

We entered into an employment agreement with John L. Morgan, CEO, in March 2000, which has been subsequently amended three times. The most recent amendment clarified that Mr. Morgan's base salary will be set annually by the Compensation Committee or a similar body of independent directors in its discretion. Pursuant to the agreement, Mr. Morgan may also receive a bonus determined by the Compensation Committee in its discretion. The agreement is terminable for any reason by either party upon 30 days written notice. In connection with this agreement, Mr. Morgan was granted an option to purchase 600,000 shares of Common Stock at an exercise price of \$5.00 per share in March of 2000. The option has fully vested and has been exercised.

**Summary Compensation Table**

<b>Name and Principal Position</b>	<b>Year</b>	<b>Salary (\$)</b>	<b>Bonus (\$)</b>	<b>Option Awards (\$)(3)</b>	<b>All Other Compensation (\$)(4)</b>	<b>Total (\$)</b>
John L. Morgan						
Chief Executive Officer and	2008	236,000	125,000		7,961	368,961
Chairman of the Board of Directors	2007	230,000	125,000		7,811	362,811