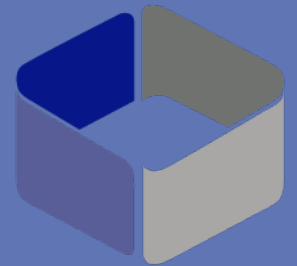


**STRATA MEETINGS  
VACCINATION  
PASSPORTS  
(AND OTHER STUFF)**



**PRESENTED BY SHAWN M. SMITH**



**Cleveland  
Doan LLP**

**Strata  
Lawyers**



# WHO WE ARE AND WHAT WE DO

Cleveland Doan LLP is a broad service law firm with a focus on strata property law and other real estate issues. We assist strata corporations, strata managers, owners and others with strata issues.

[www.clevelanddoan.com](http://www.clevelanddoan.com)

The information provided during this presentation is of a general nature and should not be taken as legal advice about a specific situation. It is also subject to change given the nature of the battle against Covid-19.



# WHAT WE WILL TALK ABOUT

- Mask mandates;
- Vaccine passport requirements;
- Holdings general meetings;
- What restrictions can strata corporations impose;
- Employee vaccine requirements;
- Limiting potential liability



# PUBLIC HEALTH ORDERS

The applicable Public Health Orders (PHO) are:

- **FACE COVERINGS (COVID-19)**
- **GATHERINGS AND EVENTS**

There may be other regional orders in place as well.



# MASK MANDATES

The Face Covering PHO applies to:

- Indoor public spaces,
- Inside events (as defined in Gathering PHO)

Applies to people 5 and up.

Both the “owner” and the “operator” are responsible for compliance. In both cases, that is the strata corporation.



# MASK MANDATES

“indoor public space” means the indoor area of any of the following...:

(a) a building or structure that is provided for the common use of all occupants and invitees of the building or structure, including lobbies, hallways, public bathrooms and elevators, that is used as

- (i) a retail or service business,
- (ii) an office building
- (iii) a hotel
- (iv) a mall or shopping centre
- (v) a fitness facility or a sport facility

It does not apply to residential strata corporations, other than:

- A stand alone recreation facility/clubhouse;
- Inside events in a common room with more than 50 people;
- Any interior portion of the strata that is for retail, commercial or hotel use;



# VACCINE MANDATES

Events and Gathering PHO applies to:

- Owners and operators of *places*
- Persons who organize *events*
- Persons who attend events

PHO restricts access to certain “events” based on vaccination status.





# VACCINE MANDATES

What is a “place” and what is an “event”?

“place” means a venue, **other than a private residence**, and includes a hotel ballroom or conference room, a banquet hall, conference hall, auditorium, recreation centre, theatre, movie theatre, multi-movie theatre complex, casino, work-out gym, exercise or dance facility or studio, recreational facility arena, stadium, vacation accommodation, or a tent;



# VACCINE MANDATES

## **"inside event" means**

- (a) An organized seated gathering of more than 50 participants in an inside place for...business purposes...lecture, presentation, workshop...**
- (b) An organized standing gathering of more than 50 participants in an inside place for social, recreational or business purposes...**
- (c) An organized gathering of any number of participants in an inside place for the purpose of an adult sports activity, an adult exercise or fitness activity or class, or an adult dance class;**



# VACCINE MANDATES

The PHO contains a list of places it does not apply to, including:

- swimming pools, unless the location of an event;
- fitness facilities which are located in a residential building for the benefit of residents;
- workers at a workplace when engaged in their work activities, including staff meetings;

No specific strata exemption.



# VACCINE MANDATES

**Additional local restrictions may be in effect (Interior Health, Northern Health, Fraser East).**

- **Number changes to 10 people**
- **Household plus 5 people for personal gathering (unless all vaccinated)**

**Restrictions for private residences likely apply to common room**



# VACCINE MANDATES

- Obligations are placed on the organizer of the event as well as the owner of the place to ensure compliance.
- “Organizer”
  - in the case of a private function would be the owner who booked the room
  - if an AGM/SGM or strata sponsored social event it would be the strata



# VACCINE MANDATES

- The PHO also requires the “owner” of the place to ensure that the person organizing the event is aware of the requirement of the order and has the capacity to fulfill them.
- Strata corporations will be “owners” .
- Rules and procedures should be put in place to assist in ensuring compliance.
- Consider forms for owners to sign prior to use.



# GENERAL MEETINGS

What does this mean for AGM's and SGM's?

- If more than 50 people attend they all must be fully vaccinated;
- “50” includes owners/tenants/occupants but not strata managers and strata council;
- Certain conditions must be met during the meeting;



# GENERAL MEETINGS

- Each participant must have a seat available for them;
- Seating should be spread out to use all available space;
- Toilet facilities with running water must be available;
- Hand sanitation stations are available;
- No capacity limits (except in Northern Health and interior Health);
- Need to check vaccine cards and photo identification before permitting entry;





# GENERAL MEETINGS

Difficult for strata corporations to limit the number of people who can attend a meeting. Some ways to approach this:

- Voluntary compliance
- Hybrid meetings – sign up for in person or online
- Virtual meetings only – need a bylaw after December
- Amend the bylaws re participation of “other than eligible voters”
- Cannot force participation by proxy



# COMMON ROOM

- Social events with more than 50 participants (or less if regional restrictions);
- Vaccine cards are required for all participants over 12;
- Organizer of the event will be required to check;
- Hand sanitation and toilet facilities required
- No dancing
- How does strata make sure that happens?



# GOING FURTHER

Can a strata corporation go further?

Mask mandates – yes – rule or bylaw

Vaccine requirements - possibly, but its complicated.

- Personal Information Protection Act issues
- Human Rights Code considerations
- Legislative constraints (SPA)



# GOING FURTHER - PIPA

- Asking for vaccination status is collecting “personal information”
- If subject to the PHO, then authorized by law to do so
- If not subject to PHO, then need a bylaw or rule
- Only permitted to collect personal information where it is reasonable to do so (and less intrusive methods not effective)
- OIPC – “the necessity, effectiveness and proportionality of vaccine passports must be established for each specific context in which they will be used.”;



# GOING FURTHER - HUMAN RIGHTS

- Not automatically discrimination to require masks or proof of vaccine
- Duty to accommodate persons who cannot comply due to health or religious grounds
- Acceptable only if other less intrusive means of preventing COVID-19 transmission are inadequate for the setting and if due consideration is given to the human rights of everyone involved



# GOING FURTHER

Vaccination status policies should be justified by scientific **evidence** relevant to the specific context, **time-limited** and regularly reviewed, **proportional** to the risks they seek to address, **necessary** due to a lack of less-intrusive alternatives and respectful of **privacy** to the extent required by law. In applying such a vaccination status policy, duty bearers must **accommodate** those who cannot receive a vaccine to the point of undue hardship.

BC Human Rights Commissioner



# LEGISLATIVE CONSTRAINTS

## Strata Property Act

- **S.71** prohibits a significant change in the use of the common property without a  $\frac{3}{4}$  vote (which means a Rule likely cannot be used to impose a vaccine requirement);
- **S.164** provides for relief against significantly unfair decisions and actions of the strata corporation (where those are burdensome, harsh, unjust, etc.);
- Is there an alternative approach?



# EMPLOYEES

- **Employment situations to consider:**
  - concierge staff
  - resident managers
  - maintenance staff
  - agents/managers
- **Worksafe requires a “communicable disease prevention plan”**
- **Employers also have a duty to provide a safe work place – safety protocols (masks, barriers, air circulation).**





# EMPLOYEES

- Privacy and human rights issues to consider re vaccine mandates
- Asking “Are you vaccinated?” is the collection of personal information – need employee consent or legal basis to ask (i.e. PHO requires it)
- Must also protect and not disclose the privacy of a person’s vaccination status once known
- A mandatory vaccine policy must include processes to deal with exceptions for workers who are unable for medical reasons to be vaccinated (accommodation under the HRC)



# EMPLOYEES

**Mandatory vaccination policies should only be implemented after:**

- **Considering other safety protocols that could safely protect staff and the public short of a vaccine;**
- **Establishing that those protocols would be ineffective in the particular circumstances**

**Firing a non-vaccinated employee could lead to the need to pay severance – so proceed cautiously and get legal advice.**



# LIMITING LIABILITY

*Occupiers Liability Act* – “occupier” has a duty to take reasonable steps to ensure premises are safe for use.

That duty applies to:

- condition of the premises,
- activities on the premises, or
- conduct of third parties on the premises.

“occupier” means a person who is in physical possession of or has responsibility for, and control over, the condition of, the activities conducted on and the persons allowed to enter those premises.



# LIMITING LIABILITY

## Ways to limit liability:

- Do not allow use of the facilities;
- Restrict use (vaccinated only);
- Waivers and indemnities
- Follow recognized safety protocols



# LIMITING LIABILITY

## Do not allow use

- To shut down the facility need a  $\frac{3}{4}$  vote – s.71 SPA
- Brogan v. The Owners, Strata Plan 845, 2020 BCCRT 1196

## Vaccinated users only

- Not as easy as it may seems (earlier discussion)



# LIMITING LIABILITY

## Waivers and indemnities

- Waiver – legal agreement not to sue if injured
- Indemnity – legal agreement to compensate someone if they are sued

Waivers and indemnities are contractual in nature (notices are not always effective).

Can only waive (release) your own rights, not those of others.

Waivers work for gyms but not really other facilities. An indemnity would be needed if outside attendees are coming.



# LIMITING LIABILITY

## Safety Protocols

If follow health guidelines would likely meet the reasonable test under the Occupiers Liability Act.

*Covid-19 (Limits On Actions And Proceedings) Regulation* – provides protection to activities that benefit the community and activities carried on for direct or indirect gain or profit where they follow applicable public health guidance.



# QUESTIONS

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