



## Strata Corporations and Vaccine Passports

October 2021 (Updated)

By Shawn M. Smith

Since the introduction by the Province of vaccine card requirements there have been many questions regarding their application to strata corporations. Combined with capacity restrictions on indoor gatherings, this has given strata corporations much to think about. The most recent Provincial Health Officer's Order ("PHO Order") has clarified some of those (and changed other requirements).

Vaccine card requirements potentially apply to the following strata corporation activities:

- General meetings (AGM's and SGM's);
- The use of common rooms for social gatherings;
- The use of gyms and other recreational facilities such as pools;

### **General Meetings**

When it comes to the first category, the PHO Order requires all persons attending most indoor gatherings at which there are more than 50 people, to be fully vaccinated. If the meeting has less than 50 people, vaccine cards are not required. Certain requirements such as remaining seated and having washroom facilities and hand sanitation supplies available still apply regardless of size.

Except in certain regions (currently Interior Health, Northern Health and Fraser East) there is no longer any capacity restriction on the number of participants (i.e. if a common room has a capacity of 100, there can now be 100 fully vaccinated attendees).

If a strata corporation intends to hold an in person general meeting at which more than 50 people will attend then it, as "organizer", is required to ensure that only persons with a vaccine card enter the meeting. This means having someone check both the person's identification and the vaccine card against the owner's list. Those persons who do not meet the vaccine card requirement cannot be permitted entry to the meeting. They will need to give a proxy to a vaccinated person who can attend in their place.

Unfortunately, a strata corporation cannot, of its own initiative, limit attendance in order to keep the number of attendees (owners, tenants, spouses, strata managers and

guests) below 50. Every owner has the right to attend if they wish. Owners cannot be forced to give a proxy simply because a certain number of attendees has been reached. Only in the case of a hybrid meeting (i.e. a combination of in person and virtual attendance) might that be possible.

### **Social Gatherings**

The current PHO also includes social gatherings at which the participants are not required to be seated. This means that if the strata corporation or a resident were to host an event in the common room or clubhouse and more than 50 people attend, all persons 12 and older who are attending must be fully vaccinated. The PHO Order requires that the owner of the place at which the event is being held “be satisfied that the organizer is aware of the conditions and requirements in [the order] and has the capacity to fulfill them.” This means that the strata corporation will ultimately be responsible for ensuring compliance at non-strata events.

A requirement to enforce vaccine cards will undoubtedly create logistical issues in terms of verification and control of access. That may in turn lead to a desire to close amenity facilities. If that is the wish of council, that decision can only be made by a  $\frac{3}{4}$  vote of the owners. Most issues regarding controlling the use of such facilities can be addressed through the passage of Rules.

### **Gyms and Recreation Facilities**

The current PHO Order specifically exempts “fitness facilities which are located... in a residential building for the benefit of residents”. The prior one did not. This change means that vaccine cards would therefore only be required in the case of use by visitors and non-resident owners. Pools are generally exempt from the vaccine card requirements unless they are being used to host an event for more than 50 people.

The status of recreation facilities which are shared with other strata corporation(s) is not entirely clear. However, given that the PHO Order also specifically exempts such facilities when located in a work place or a hotel, the “residential” exemption would seem to apply to such facilities as well.

A strata corporation may want to enact a bylaw imposing its own requirements for vaccination in order to access services and facilities not captured by the mandatory requirements of the PHO Order. However, great care and a good deal of thought and planning need to go into such a decision. There are several potentially problematic legal issues to navigate, such as:

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

- Privacy issues arising under the *Personal Information Protection Act* regarding the need to disclose vocational status (the Office of Information and Privacy Commissioner has said that “the necessity, effectiveness and proportionality of vaccine cards must be established for each specific context in which they will be used.”);
- The obligations owed to owners and others under the *Human Rights Code* (the Human Rights Commissioner has said that “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.”);

While strata corporations must comply with vaccine card requirements in certain settings, they should be cautious to implement them in others (and perhaps not if other procedures, such as mask mandates, would provide sufficient protection). Legal advice should be sought before enacting any such bylaw or rule.

*This article is intended for information purposes only and should not be taken as the provision of legal advice. Shawn M. Smith is lawyer whose practice focuses on strata property law. He frequently writes and lectures for strata associations. He is a partner with the law firm of Cleveland Doan LLP and can be reached at (604)536-5002 or [shawn@clevelanddoan.com](mailto:shawn@clevelanddoan.com). He can be followed on Twitter @stratashawn.*