

COVID-19 Update – New Measures in effect September 23, 2021

Dear Members:

The Province of NB recently announced that effective 11:59pm on September 21, 2021, the province will implement new measures in an effort to reduce the impact of the fourth wave of COVID-19.

Travel Registration (for all) & Self Isolation Requirements (for unvaccinated)

All travellers entering New Brunswick, including any New Brunswickers who are returning after travelling outside of the province must register their travel through the New Brunswick Travel Registration Program. When registering, travellers must upload their proof of vaccination. Individuals who are not fully vaccinated must isolate for 14 days. These individuals can stop isolating if they receive a negative COVID-19 test after day 10. The system to register travel will be active on Tuesday September 21 and can be found at the following link: [Travel Registration](#). REALTORS® working with individuals who are planning to move to this province should be prepared to inform their clients of the need to register their travel and to prepare to self-isolate if they are not fully vaccinated.

Masks Mandatory

Beginning 11:59pm on September 21, 2021, masks will be mandatory across the province for all indoor public places including spaces where the public and employees interact and in common areas like lobbies, elevators, hallways and publicly shared spaces including those in private sector and government workspaces. REALTORS® and their clients should be prepared to wear masks at all showings.

Vaccination Passports

All individuals will be required to show proof of vaccination when accessing certain non-essential events, services and businesses including the following:

- Indoor festivals, performing arts and sporting events.
- Indoor and outdoor dining and drinking at restaurants, pubs, and bars.
- Movie theatres, nightclubs, amusement centres, pool halls, bowling alleys and casinos
- Gyms, indoor pools, and indoor recreation facilities.
- Indoor group exercise facilities.
- Indoor organized gatherings including weddings, funerals, parties (excluding parties in a private dwelling), conferences and workshops.
- Indoor organized group recreational sports, classes, and activities and
- Visiting long-term care facilities.

Proof of vaccination for these situations listed above may be provided by showing an immunization record or photograph of an immunization record from a regional health authority

clinic, pharmacy, NB Public Health or another jurisdiction or from MyHealthNB record. Alternatively, if you are not able to get a vaccination, you may also show a medical exemption certificate signed by a healthcare provider.

Real estate showings are an essential service and therefore they are not included in the government directives for required proof of vaccination. However, please be aware of the Canadian Real Estate Association's recent advice on this issue (see next page), advising that it is important for REALTORS® to respect the wishes of sellers who are in the best position to judge their own circumstances when it comes to the health of themselves and their families.

In the absence of a request from a client to verify vaccination status, any Agents that choose as part of their operational plans (if applicable) or their communicable disease prevention plans (CDPP) (if applicable) to permit the request of proof of vaccination from their clients should be cautioned that there could be legal considerations. REALTORS® should be cautioned that any adverse treatment of an individual because of their vaccination status in relation to employment or the sale of a property (subsection 5(2)) of the *Human Rights Act*) could violate their rights under the *Human Rights Act*.

It is unclear if a voluntary decision to remain unvaccinated would engage protection from discrimination under the heading of "physical disability" However, it is very possible that it would be a breach to treat someone adversely because they are not vaccinated if their failure to vaccinate is because it is medically risky or impossible for that person. If you encounter such situations, NBREA recommends you seek your own legal advice to determine if any action you take could lead to a breach of the *Human Rights Act*.

Remember, the best way to protect you and your clients from COVID-19 is to wear masks, physical distance and wash your hands frequently.

For more information on the new regulations under the *Public Health Act*, [click here](#).

Thank you for doing your part to protect your clients, your fellow REALTORS® and all New Brunswickers!

COVID-19 Vaccine FAQs: Answers from the Canadian Real Estate Association (CREA)

Please note that these FAQs should be understood in the extraordinary context of the COVID-19 pandemic. REALTORS®, Boards and Associations should also ensure that they abide by any local or provincial requirements and consult their legal counsel to ensure compliance with provincial or local law.

What is CREA's position with respect to COVID-19 Vaccines?

CREA encourages all REALTORS® to get vaccinated against COVID-19, unless there are medical or religious reasons that prevent them from doing so. It is incumbent on REALTORS®, as professionals, to follow all public health recommendations, including getting vaccinated, in order to help bring an end to the pandemic and ensure the lives and safety of our fellow Canadians.

Recently some listings have stated that anyone visiting the property for an in-person showing must be fully vaccinated. Should a Board permit such listings to be placed on their MLS® System?

Yes.

In extraordinary circumstances, such as a global pandemic, it is reasonable for the seller to request proof of vaccination, as it is to require the use of masks, social distancing and other measures as per advice from local and provincial health authorities.

Background

Ultimately, subject to any health directive or legal requirement, CREA believes that it is important for REALTORS® to respect the wishes of sellers who are in the best position to judge their own circumstances when it comes to the health of themselves and their families. For example, a seller who is immunocompromised may decide that they do not want to risk contracting COVID-19 from unvaccinated persons who might attend an in-person showing of their home. Precluding their listings from being placed on a Board MLS® System could deprive these sellers of a valuable REALTOR® service.

Are such COVID-19 vaccination requirements a barrier to REALTOR® cooperation?

No.

In the context of the COVID-19 pandemic, CREA does not believe that COVID-19 vaccine requirements for in-person showings are a barrier to REALTOR® cooperation given that proven alternatives to in-person showings exist; in particular, virtual showings.

Background

CREA believes Boards and Associations can and should be flexible when interpreting their MLS® System Rules regarding showings and recognize that, in these extraordinary circumstances, virtual showings can be a substitute for showings conducted in person.

Conversely, should a Board require that REALTORS® only conduct in-person showings with fully vaccinated persons?

No.

In the context of the COVID-19 pandemic, CREA is of the view that, subject to any health directive or legal requirement, sellers are in the best position to judge their own circumstances when it comes to vaccines.

Further, as is explained below, vaccine requirements may expose REALTORS® and a Board/Association to the risk of a lawsuit or complaint. A strict vaccination requirement issued by the Board could therefore inadvertently expose REALTORS® and Boards and Associations to such risks.

Could REALTORS® or a Board/Association be at risk of a lawsuit or complaint if they institute a business practice that prohibits in-person showings to those who are not fully vaccinated?

Yes.

There may be privacy, human rights and competition law issues if a REALTOR® or Board/Association institutes a business practice that prohibits in-person showings from those who are not fully vaccinated unless directed to do so by provincial or federal authorities. For this reason, there is a risk of a lawsuit or complaint being made.

What can REALTORS® or a Board/Association do to mitigate the risk of a lawsuit or complaint being successful if they institute a business practice that prohibits in-person showings to individuals that are not fully vaccinated?

To mitigate such risks, Boards, Associations and REALTORS® should consider using reasonable alternatives to in-person showings, such as virtual showings, for the duration of the COVID-19 pandemic.

Background

Canada's Privacy Commissioners have cautioned against the use of vaccine passports as a condition of receiving a service absent a public health order or law requiring the presentation of a vaccine passport to enter a premise or receive a service. Further, requiring all persons attending in-person showings to be fully vaccinated could also raise issues under provincial human rights legislation.

However, in the context of vaccines, provincial human rights commissions have stressed the importance of being flexible and encourage organizations to explore whether accommodation is possible. For example, a reasonable alternative to an in-person showing would be a virtual showing. Accordingly, REALTORS®, Boards and Associations that institute a business practice that prohibits in-person showings to individuals that are not fully vaccinated should consider using such reasonable alternatives to in-person showings in order to reduce the risk of a privacy or human rights complaint being successful.

While offering reasonable alternatives may mitigate the risk of a lawsuit or complaint being successful, it does not stop a complaint or suit from being made in the first place. Defending such suits/complaints can take time and energy. For this reason, REALTORS® or Boards/Associations who are interested in implementing a business practice that mandates that in-person showings only be conducted with those who are fully vaccinated (or who are considering any other business practice where service is dependent on another persons' vaccine status) should speak to legal counsel so they understand the risks involved with any proposed practice and how to properly implement it.