

## **COVID-19 Update – Frequently Asked Questions (FAQ) – Vaccinations and other topics.**

- 1. Can sellers impose a requirement that anyone entering their home for the purpose of a real estate transaction (REALTORS®, potential buyers, inspectors, etc.) be fully vaccinated?**

YES. 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, sellers who are 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.

- 2. Is refusing entry to an MLS® system property by unvaccinated REALTORS® against Real Estate Board rules with respect to fair and cooperative access by all members?**

NO. In extraordinary circumstances such as a global pandemic, it is reasonable for sellers to judge their own circumstances when it comes to their health. Vaccine requirements for in-person showings are not considered to be a barrier to REALTOR® cooperation given that proven alternatives to in-person showings exist, such as virtual showings.

- 3. Is a verbal confirmation of vaccination sufficient, or must proof of vaccination be shown to the listing REALTOR®? What if the sellers want to see that proof of vaccination?**

Sellers who permit only fully-vaccinated individuals to enter their home may accept verbal confirmation that the potential buyer's REALTOR® has personally seen proof of vaccination.

However, sellers have the right to direct that they or their own REALTOR® be presented with proof of vaccination for each person who enters the home.

REALTORS® are cautioned to avoid digitizing and transmitting or retaining proof of vaccination (such as taking a photo and emailing or texting it), since this may result in a breach of privacy rights.

- 4. Are REALTORS® required to proactively disclose to sellers the vaccination status of customers or clients viewing their property?**

NO. REALTORS® who are not asked for the vaccination status of buyer customers or clients are not obliged to proactively disclose this information to sellers. However, if verification or proof of vaccination status is requested, it must be disclosed. As a best practice REALTORS® should, from the outset of initial communications, determine and view proof of their customers' and clients' vaccination status. Customers and clients who refuse to answer or refuse to show proof should be treated as if they are unvaccinated.

**5. Can a seller refuse entry to a buyer's unvaccinated children under the age of 12 and who are not eligible for vaccination?**

YES. REALTORS® must respect their sellers' wishes. A seller can refuse to permit entry by unvaccinated persons, including children under the age of 12 who are not eligible for vaccination, whether their parents are vaccinated or unvaccinated.

**6. Are REALTORS® required to proactively disclose to individuals who attend showing appointments whether anyone who resides in the seller's property is unvaccinated?**

There is no obligation to proactively disclose the vaccination status of those who reside in a seller's property. In many cases, unvaccinated children under the age of 12 – who are not eligible for vaccination – will reside there.

However, customers or clients are entitled to an answer if they ask about sellers' vaccination status as the basis for whether they will enter the home for a showing appointment. REALTORS® should have clear instructions from their customers and clients about whether they require only confirmation of vaccination or if they wish to see proof.

REALTORS® are cautioned to avoid digitizing and transmitting or retaining proof of vaccination (such as taking a photo and emailing or texting it), since this may result in a breach of privacy rights.

**7. Can sellers impose a requirement that anyone entering their home for the purpose of a real estate transaction (REALTORS®, potential buyers, inspectors, etc.) comply with certain safety requirements such as hand sanitizing, wearing masks, and/or screening for potential exposure to COVID-19?**

YES. Sellers have the right to determine the health and safety conditions under which they will permit access into their private home. In addition, it is NBREA's position that, during all showing appointments and customer and client interactions, REALTORS® should follow all current recommended public health measures such as physical distancing, wearing masks, hand washing or sanitizing, screening, enhanced cleaning procedures, and contact tracing.

**8. Could REALTORS® be at risk of a lawsuit or complaint if they institute a blanket practice to prohibit in-person showings to all those who are not fully vaccinated?**

YES. There is a small risk but there are actions REALTORS® can take to mitigate this risk. The New Brunswick Human Rights Commission does not prevent a service provider from requiring all clients to be fully-vaccinated; however, if the reason a client is unable to get vaccinated is as a result of a one or more of the protected grounds listed in the Human Rights Act, then the client has a duty to inform the service provider of their inability to get the vaccine due to the protected ground. Generally speaking, the protected

grounds will most likely be a physical or mental disability, but other grounds are possible. The service provider is also permitted to ask for documentation to support that the client is unable to get the vaccine due to a protected ground. This would likely include a valid medical exemption document provided by the Province and signed by a medical practitioner. Once this documentation is provided, the service provider has a duty to accommodate the disability to the point of undue hardship to provide the service. For REALTORS® a reasonable accommodation could be to provide alternatives to in-person showings/meetings such as virtual showings/meetings.

For more information you may click on the at the following link to the [FAQ issued by the NB Human Rights Commission](#)

**9. Should REALTORS® proactively disclose their vaccination status to clients and customers when they are not asked about it?**

YES. As a best practice, REALTORS® should disclose their vaccination status from the outset of initial communications with customers or clients, prior to any in-person contact, to give them an opportunity to consider any affect this may have on ongoing interactions.

It could be argued that REALTORS® are not required to disclose their vaccination status unless they are asked; however, it is possible a court of law could determine that REALTORS® who fail to disclose this are in breach of their fiduciary duty to act in their client's best interest.

**10. Why has NBREA not made it a requirement that all REALTORS® must be vaccinated?**

In NBREA's opinion, it does not currently have legislative authority to require all REALTORS® to be fully vaccinated. This legislative authority can only come from the Province of New Brunswick. **However, NBREA strongly urges all REALTORS® to get fully vaccinated as one of the key actions to protect their health, the health of their families, friends, and clients, and the health of all New Brunswickers.**

**11. Can unvaccinated REALTORS® face legal consequences if they spread COVID-19 to their clients and customers, particularly if it results in the death of a client or customer?**

Because the virus can be transmitted both by vaccinated and unvaccinated individuals, it is unlikely that unvaccinated REALTORS® would be found liable for transmitting COVID-19.

However, if a vaccinated or unvaccinated person has the virus and knowingly disregards self-isolation orders or other public health requirements and infects someone, there is potential for liability, however difficult it may be to prove.

REALTORS® are urged to follow all public health recommendations, including getting vaccinated, to protect the lives and safety of fellow New Brunswickers and to help bring an end to the pandemic. *REALTORS® who are symptomatic of illness must avoid face-to-face interactions until they are free of symptoms.*

**12. Can REALTORS® and their customers and clients travel in or out of circuit breaker zones to view houses?**

The circuit breaker is intended to limit the spread of the virus by restricting travel in and out of identified “hotspot” zones. During the circuit-breaker period, movement in and out of the identified circuit-breaker zones is limited to travel for essential purposes, which includes work, health services, child custody, childcare, and post-secondary education. A REALTOR® could travel in/out of zones for real estate services; however, there is some question if a client would be able to do so depending on the individual circumstances of the transaction. It would need to be viewed as essential which is not currently defined in the Mandatory Order.

Although the provincial government has identified real estate as an essential service in the past, not all real estate services are essential. Travel in and out of circuit-breaker zones when there are alternatives such as virtual meetings and showings, may well be considered unnecessary. REALTORS® are not responsible for enforcing the law, but they may be sanctioned if they facilitate unnecessarily travel in or out of a circuit-breaker zone.

For more information about the circuit breaker, including a map of the affected zones and a list of FAQ from the provincial government, [click here](#).

**13. Are real estate companies still required to maintain and follow an Operational Plan? What obligations are companies subject to under the COVID-19 Emergency Order?**

As an employer, real estate companies are required to ensure they and their REALTORS® and staff are complying with the Occupational Health and Safety Act. This Act requires employers to take preventive steps in the workplace to eliminate or minimize the transmission of communicable diseases, including COVID-19. To do this, employers may want to transition their current operational plans to a Communicable Disease Prevention Plan (CDPP). WorkSafe and the Province of NB have also issued resources which will be helpful as you prepare your updated plan.

Source	Resource Link
WorkSafe NB	<a href="#">Communicable Disease Prevention. A guide for New Brunswick Employers</a>
WorkSafe NB	<a href="#">Green and Beyond: Communicable disease prevention (WorkSafe NB website)</a>
Province of NB	<a href="#">Living with COVID-19 Protective Health Measures</a>

**14. Is contract tracing still necessary?**

Public Health may still request this information from individuals who test positive for COVID-19. As a result, it is a best practice for REALTORS® to continue to retain contact tracing information. The retention of this information must be handled with caution to ensure it does not violate any privacy laws.

**15. If a REALTOR's® seller or buyer customer or client has symptoms of undiagnosed illness, should showing appointments continue?**

According to Public Health, vaccinated and unvaccinated individuals who have any COVID-19 symptoms should be tested.

Unvaccinated individuals who experience two or more symptoms must self-isolate while waiting for test results. It can take up to fourteen (14) days after being exposed to COVID-19 for a test to show a positive result; if test results comes back negative, individuals should self-monitor for any new symptoms and get tested immediately if any develop. To assess symptoms, visit the online [Self-Assessment Tool](#) or call 811.

It is a best practice for REALTORS® not to continue with showing appointments involving any vaccinated individuals who are experiencing two or more symptoms of COVID-19. Individuals should continue to follow all Public Health advice, including wearing a mask, washing hands frequently, and maintaining physical distancing in public settings.

**16. What should REALTORS® do if they, their customers, or clients test positive for COVID-19?**

If a diagnosis is confirmed, Public Health is already involved, and any advice provided by Public Health must be followed diligently. Questions about a positive COVID-19 diagnosis should be directed to Public Health Tele-Care. For health-related questions, call 811; for general questions, call 1-844-462-8387.

**17. What role do rapid testing kits play in the real estate industry and where can these kits be obtained?**

The goal of the rapid testing kits program is to identify asymptomatic or pre-symptomatic cases of COVID-19 in the workplace that might otherwise be missed, helping to curb the spread in the workplace, at home, and around the community. These self-administered rapid-antigen tests, which provide immediate results (15-20 mins approximately), are not definitively conclusive; a positive result, however, indicates that the individual should leave the worksite, isolate, and undergo a lab-based PCR test. Rapid antigen tests are available to approved businesses through the local Chambers of Commerce. To apply, visit the applicable Chamber website below.

Fredericton: <https://www.frederictonchamber.ca/covid-19-rapid-testing/>

Moncton: <https://ccgm.ca/rapid-testing/>

Saint John: <https://thechambersj.com/rapid-testing>

Edmundston: <https://ccedmundston.com/en>

*This document was developed for informational purposes only and is based on NBREA's interpretation of policies and advice that were available to us at the time of publication. It is not a substitute for professional medical or legal advice. REALTORS® are urged to act with an abundance of caution and consideration for the safety and wellbeing of themselves, their clients and customers, their fellow members, and the public.*

*Sources: The Canadian Real Estate Association, the Government of New Brunswick*