



NADLAN-HARRIS PROPERTY MANAGEMENT INC. FALL, 2021 NEWSLETTER

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Message from the President

Dear Board of Directors,

That first day of fall is always one of the best of the year, when the temperature finally drops, and the air becomes crisp.

We're sure you're looking forward to the return of the sweater weather as much as we are.

Life now is finally returning to normal! We would like to thank you all for your support through the various stages of this COVID-19 pandemic.

Our condo boards and managers have been working tirelessly to ensure the health and safety of their residents and service providers.

Please take the time to read through our Fall issue and enjoy the articles we have chosen for you.
Happy Fall!



Sincerely,

Liron
Daniels
President
R.C.M., P.P.L., B.E.S. O.L.C.M.

Company News

*We encourage all residents to log into your community website and use the fantastic features, as it is a great means of connecting with the community. **NEW features such as mobile access and consent to receive electronic communication have been implemented.** The platform will allow Nadlan-Harris Property Management Inc. to facilitate better communication, increase efficiency and allow residents an opportunity to provide their valued feedback. We look forward to connecting with you.*

Vaccine Passports and Indoor Condo Amenities ¹

Ontario recently released the [text of the upcoming changes to the Rules for Areas in Step 3](#), and as expected, vaccine passports/certificates will not be mandatory for the use of amenities in condominium corporations.

The [Minister of Health has confirmed](#) that residential condominium corporations and their amenities are considered private dwellings and are not businesses or places that are open to the public that will require mandatory vaccine passports/certificates.



Even though it will not be mandatory, corporations likely can require that individuals be fully vaccinated before they use the indoor amenities. We recommend that corporations considering implementing this requirement pass a rule rather than rely on a policy.

Whether a corporation should implement a vaccine requirement is a different question, and one that each individual Board should consider carefully.

Generally, we think Boards should consider imposing a vaccine requirement because this is consistent with the guidance from public health authorities.

We understand that this is not possible for every corporation. Requiring proof of vaccination is straightforward for buildings with available on-site staff – a staff member can

review the printout or, after October 22, scan the QR code, and verify the person's vaccination status each time the person has a booking.

But for buildings without on-site staff, it may be impossible to control and track who is going in and out of amenities. We do not recommend passing rules that cannot be enforced.

While we do not expect vaccines will become mandatory for condominium corporations, the regulations are complex and constantly changing. We will keep you updated as the situation changes and new rules are introduced.



¹ <mailto:https://www.srcondolaw.com/newsletters/2021/9/20/vaccine-passports-and-indoor-condo-amenities>

Mandatory Vaccination Policies in Condos ²

After the various stages of the COVID-19 pandemic, we're now at a point in the pandemic where vaccinations are widely available in Canada and the vast majority (over 70%) of Ontarians are fully vaccinated. However, the dangers associated with COVID-19 persist as we enter the fourth wave of the pandemic fueled by the Delta variant.



How will COVID-19 impact budgeting?

There have been increasing calls on the provincial government to provide guidance on mandatory vaccination policies—including from Mayor Tory. Many are anxiously awaiting this guidance, hoping the province steps up to the plate. Currently, businesses, institutions, and condo corporations must fend for themselves, resulting in hesitancy, inconsistency, confusion, and obstacles to enforcement.

Condos are grappling with the question: how can we keep our residents and service providers as safe as possible AND open the amenities?

Can Condos Implement Mandatory Vaccination Policies for the Amenities?

A resident's right to use the gym, party room, lounge, or any other amenity is not absolute; they are not permitted to use the amenity if doing so would risk the health and safety of others on the property. As a shared communal space, the risk of COVID-19 transmission is present in the amenities. This is where a vaccination policy can come into play.

Let's recap some of the **condo corporation's authority and obligations**:

- ensure the property is reasonably safe,
- manage the common elements,
- prevent dangerous conditions on the property, and
- maintain a safe and healthy workplace and take all necessary precautions for the protection of the workers (including those tasked with cleaning the amenities).

These are found in the

- *Condominium Act*,
- the *Occupational Health and Safety, Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, and
- the *Occupiers Liability Act*.

The guidance from public health authorities and the scientific community is clear: vaccinations reduce the likelihood of getting COVID-19 and are incredibly effective at protecting from severe illness and hospitalization from COVID-19.

As such, requiring those who use the amenities (particularly amenities that pose a high risk of COVID-19 transmission) to be fully vaccinated would help ensure the health and safety of residents and service providers on the property and help prevent COVID-19 outbreaks.

² <https://www.lashcondolaw.com/mandatory-vaccination-policies-in-condos/>



Privacy and Human Rights Issues

Two primary concerns with mandatory vaccinations are **privacy** and **human rights**.

Any mandatory vaccination policy would be required to make exceptions under the *Human Rights Code* for people who are unable to get the vaccine due to religious or medical grounds, or other relevant code-protected ground. Where these exceptions apply, condo corporations will need to accommodate these individuals to the point of undue hardship.

Although mandating medical treatment and requiring the disclosure of a person's immunization status may infringe on that person's privacy rights, these rights may be limited when there are health and safety issues at play.

The decision about implementing a mandatory vaccination policy may depend on the type of amenity (for example, is it an outdoor terrace or an indoor gym?). While the courts have yet to weigh in on the enforceability of mandatory COVID-19 vaccination, the various sectors (including the federal government) starting to implement mandatory vaccination policies provides some guidance.

Ontario requiring vaccination policies³

On September 1, 2021, Ontario announced that it is imposing a so-called **vaccination passport** and will require proof of vaccination in certain settings.



Until the regulations are adopted, we are basing the below information on Ontario's press release

and the live press conference.

³ <https://condoadviser.ca/2021/08/mandatory-vaccination-policies-in-condos>

Where proof of vaccination is required

As of September 22, Ontarians will be required to provide proof of their vaccination status (along with a photo ID) to access certain businesses, facilities, and settings. In our view, this may include certain facilities in condos. Time will tell.

Today's announcement confirmed that proof of vaccination will be required for the following condo-relevant settings:

- ✚ Indoor meeting and event spaces; and,
- ✚ Indoor sports and fitness activities and personal fitness training, such as gyms, fitness, and recreational facilities (except for youth recreational sports).

We don't know yet whether exceptions will apply to these settings in condos but, considering that no such exception was adopted when imposing masks and face covering, we suspect that proof of vaccination will also be required for condo gyms.

Where proof of vaccination is **not** required

Today's announcement confirmed that proof of vaccination will not be required for outdoor settings, including patios. It is fair to assume that the outdoor exception will also apply to condos.

Young Ontarians who are ineligible to be vaccinated (less than 12 years old) will also be exempt from having to provide proof of vaccination.

Medical exemptions

Medical exemptions will be permitted but those needing to benefit from this exception will need to provide a medical note (until medical exemptions can be integrated as part of a digital vaccine certificate). Thankfully, today's announcement did not leave us in the uncomfortable position created by mask regulations where Ontarians were able to simply state they were exempt without having to provide any proof of it. Things will be much clearer and easier to implement if those

seeking an exemption are required to provide some basic proof supporting their requests.

Public Health Units Vaccination Policies

Prior to the adoption of a provincial vaccination passport, on August 24, 2021, Ontario discretely amended its regulation under the [*Reopening Ontario Act*](#) to expressly:

“...require businesses and organizations to establish, implement and comply with *COVID-19 vaccination policies* based on advice, recommendations and instructions issued by the Office of the Chief Medical Officer of Health...”

This means that, when and if Medical Officers of Health recommend the adoption of vaccination policies, businesses, and organizations (this includes condos) will have to adopt and implement such policies. For now, vaccination policies are not mandated for occupants or residents using indoor amenities.

Solutions Ensuring Safety ⁴



With the progression of the COVID pandemic, many residents are putting pressure on their condo Board of Directors to keep them safe.

Two solutions have been presented within the industry, to ensure the **health** and **safety** of the community.

(1) Contractors working in the building

Normally workers in the condo corporation are contracted. These people are employees of the incumbent. Condo corporations can implement a policy immediately, requiring contractors in the building to be

vaccinated.

Firms are reacting to this requirement differently. Most are sending an assurance that the dispatched workers are double vaccinated or have passed a Rapid Test. The cost of the test is covered by the incumbent.

Double vaccination policy can be implemented immediately and sent out to contracted companies for compliance.

In the same way as we do vendor vetting for *Certificate of Liability of Insurance*, and *WSIB clearance*, *COVID Compliance Assurance* is collected from the contracted companies.

Individual corporations can also implement their own verification checkpoints. This largely depends on the structure of the condominium building and whether there is a security or concierge desk available. In the same way as when contractors are checked-in at the security gate or concierge desk, an additional step is added where the worker can present the vaccination receipt on-site.

Condominium corporations can discuss with their security companies and consider the logistics with the aforementioned change of procedures. Additional security guards can be hired to facilitate these types of checkpoints as well, where no infrastructure exists.

Throughout this, Board members should be mindful of their operating budget, and the resulting impact from hiring additional staff to enforce this policy.

The Board of Directors interested in implementing this policy will need to reach out to their condo lawyer to have a draft prepared.

For reference, lawyers are costing the aforementioned policy at:

A **Vaccine Policy for on-site staff** - \$650.00 plus HST, includes custom policy, board resolution to approve the policy, and opinion letter explaining how to implement the policy answering common questions about how the policy works and what happens if employees refuse to comply.

(2) Restricting amenity access to non-vaccinated residents

A rule can be drafted, presented to the ownership, and



passed in 30 days, which restricts non-vaccinated residents from using the Corporation's amenity spaces. In the same way as mentioned earlier, this rule's effectiveness largely depends on the building's infrastructure, and whether a concierge or security guard is available to verify vaccination status. In this scenario, residents who are not double-vaccinated, are not permitted use of any amenity spaces.

The Board of Directors interested in implementing this rule will need to reach out to their condo lawyer to have one drafted.

Legal costs for this rule as approximately:

A Vaccine Rule for non-essential amenities - \$875.00 plus HST, includes a custom rule, notice of rule, board resolution to approve the rule, memo re: how to pass a rule, and cover letter.

Additional Comments

It should be noted that some challenges can arise from implementing the aforementioned rules and policies:

- ❖ As you may have heard, a spokesperson for the Minister of Health announced on September 2, 2021, that the province's vaccine rules for public gyms, etc. do **NOT** apply to residential condominium buildings, as condominium gyms are not considered by this government to be "public" spaces. Unfortunately, the relevant regulation which just came out yesterday is less than clear on this point.
- ❖ Neither policy nor a rule has been tested in court - Board members should be aware that arguments can be made from either point of view:
 - ◆ Owners who are denied access to amenity spaces can potentially argue that they continue to fund this amenity through their maintenance fees. Currently there is no way to waive or rebate residents for portions of their maintenance fees.
 - ◆ Some have claimed Human Rights violations through imposing vaccines in a workplace setting.

The issue remains multifaceted, and Board members

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need to consider their options when balancing resident safety with rules and policies.

Tips to Prepare You for the Heating Season ⁵

Now's the best time to prepare your building for a more efficient heating season, says a long-time Energy Solutions Advisor.



1. Get a walkthrough or energy assessment

The report can inform you of the state of your boiler plant and help you determine what can be done to maintain a stable, efficient working boiler plant for this heating season and beyond.

2. Boost boiler performance

Preventative maintenance is crucial to commercial boiler optimization. Routine maintenance includes venting, combustion air, gas supply piping and/or filtration, water quality and piping, controls and more.

3. Address last season's issues

Last winter, did you notice heating issues, such as irregular temperatures or boilers running extended periods to provide necessary heat? If so, the cooling season is the best time to execute on any necessary upgrades to mechanical systems.

4. Clean rooftop make-up air units and air handling units

The best time to do this is when it's not snowing! This includes cleaning of filters, evaporator coils and condenser coils to ensure optimal performance and that good indoor air quality is maintained.

5. Decalcify heat exchangers

In the off-season, have heat exchangers inspected for calcification and sedimentation buildup.

6. Calibrate set points

Make sure temperature set points and control strategies are



ideal, so you're not heating areas that don't need to be heated.

7. Check your neutralizer

Neutralizers prevent acid condensate from going down the drain, which helps the environment. Twice a year would be ideal for this, but even once a year is good.

Who plays a role in managing vested interests? ⁶



Have you ever heard the director proclaim at the board meeting: "my son is an electrician and can do this job for free" or "I have a cousin who can do this for half price?" What about situations where it is a little more complicated?

For example, a stepson of the board's president is a security guard working full time and the president has not disclosed this relationship to the board or otherwise. Should the president have disclosed it at all?

The board of directors for condominium corporations is accountable and responsible for millions of dollars in assets. Condominiums are lucrative investments, holdings and, for many people, their only homes. As a result, vested interests on the board of directors are a topic that often raises ire of many owners and prospective buyers.

Stories of the "infamous three" who took control over downtown Toronto condos still plague the industry.

How do you resolve or mitigate such conflicts?

Let's break it down by role.

The role of the owner

-Owners must always ask themselves what is in it for the director. Is there a potential direct or perceived conflict? Does it pass "the sniff test?"

With the amended *Condominium Act, 1998 (the Act)*, owners have the right to request records with prescribed forms and deadlines.

-If in doubt, they should request the minutes of the meeting where such "conflicting" transactions were voted on.

-Lastly, and most importantly, owners should take the time and thoroughly acquaint themselves with the condo's governing documents.

The role of the condo manager

What If the manager discovers vested interests on the board? What steps can he or she take to facilitate a resolution?

Determine the client

Who's the client? Is it the president who signed the management agreement and has a potential conflict of interest? Or is it the corporation itself?

Seek advice

When in doubt, the manager should seek advice of the supervising licensee or the principal condo manager.

Walk away

If the conduct of the board is of egregious nature, the manager should consider resigning and walking away from such conflict.

The role of the board

If a fellow member of the board is in a position of a conflict of interest, remaining directors should feel empowered to address the issue directly at a duly called meeting without personal repercussion. All disclosure obligations must be met and recorded accordingly

The board should follow **three simple guidelines:**

1. Adopt a procurement policy for the corporation, which would list the proper bidding requirements.
2. If possible, engage a third-party minute taker to ensure that impartial record keeping is done.
3. Exercise caution and awareness when the fellow

⁵ <https://www.enbridgegas.com/business-industrial/newsletters/energy-insider/>

⁶ <https://www.reminetwork.com/articles/managing-vested-interests/>



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director is an “industry insider” (e.g., regional manager of a major condo management firm, condo lawyer or developer’s affiliate).

In all cases, the mindset of equal vote and participation should be maintained. Condos are complex entities. One of the most valuable assets in maintaining this delicate balance between self and collective interests is the strength and integrity of the property manager.



A healthy board can only exist if fundamental practices in disclosures, procurement and transparency are maintained, and meticulous record-keeping is king.

Could a Florida condo collapse happen in Ontario? ⁷

Following the horrific collapse of the 12-storey Champlain Towers South condominium in Surfside, Florida, people have been speculating whether such a disaster could happen in Canada.



While we don’t know exactly what caused the collapse, we know the following: in 2018, the board of directors received an engineering report finding

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“major structural damage” to the building, which would require timely and expensive repairs.

The report did not warn of imminent collapse but stated that the repairs would be directed at “maintaining the structural integrity” of the building. At the time of the collapse, these repairs had not yet been completed.

How would this scenario unfold in Ontario?

Leaving aside the construction process itself, there are vast differences between Ontario and Florida condominium laws that would have given the Champlain Towers significant added protections following registration.

Ontario law is far more engaged and interventionist. Here, condominiums must establish and maintain a reserve fund, which must be used only for the purpose of major repairs and replacement of the common elements and assets of the condominium.

These parts of the condominium complex belong to all owners and generally include everything other than the individual units where people reside.

The size of the condominium reserve fund is determined based upon a reserve fund study, which is also mandated by law, to establish the building’s current status and to forecast when repairs will be required.

The initial reserve fund study must be completed within a year following registration of the condominium corporation.

Of course, hopefully after one year, there will be no required repairs. Thereafter, the reserve fund study must be updated every three years, giving ownership a moving picture of the state of repairs and the rate at which building systems are deteriorating.

Another difference between Ontario and Florida condominium law is in the treatment of condominium directors.

In Ontario and Florida, residential condo directors are selected among the condo corporation’s unit owners.

The board is then responsible for hundreds of thousands or millions of dollars in operating and overseeing the management of the condominium.

Several years ago, Ontario recognized the need to ensure that these directors receive formal training to learn how to carry out their duties. Mandatory director education is now required within six months of a director's appointment, failing which they are disqualified. The training is available online and one key area covered is **"Maintaining the Condominium's Physical Integrity"**. There are also training modules for contract procurement processes—for both major and minor contracts. These condominium director education materials are relatively short and will not turn new board members into instant experts on all aspects of governance including maintenance. But it helps.

Many things had to go wrong for a building to collapse. If the law is followed, the legal protections in Ontario significantly reduce the likelihood of this tragic event occurring here.

Transferring Condo Corporation Records ⁸

The CMSA requires licensees to transfer all records and documents relating to the corporation back to the client (the condominium corporation) within 15 days upon termination of the condominium management services contract. The outgoing licensee may transfer the records to the incoming condominium manager or management provider business, if requested by the client.

In a recent case presented by the CMRAO to the Ontario Superior Court of Justice, it was found that a condominium manager and management provider business (the respondents) failed to comply with this requirement.

In early 2021, the CMRAO received two separate complaints, alleging that the respondents had not transferred records to the condominium corporation after the termination of their contracts. In both complaints, the CMRAO contacted the respondents on multiple occasions to remind them of their obligations to transfer records. In each instance, the respondents failed to comply with the CMRAO's direction. Subsequently, the CMRAO filed an application with the Ontario Superior Court of Justice

under section 67 of the CMSA, seeking an order that the respondents transfer all records related to the clients.

On June 22, 2021, the Ontario Superior Court of Justice ordered the respondents to transfer all documents and records relating to management services provided for the corporation within 15 days of the date of the Order. The respondents were also ordered to pay costs in the amount of \$7,500 to the CMRAO within 90 days of the date of the Order.

The respondents have allowed their licences to expire and are no longer providing condominium management services.

The timely transfer of records is essential to professional condominium management. It is also a legal requirement that the CMRAO will enforce as part of its mandate to protect consumers in Ontario's rapidly growing condominium industry. The CMRAO has developed various resources to help condominium managers meet their legal and ethical obligations related to records management:

- [Ontario Superior Court of Justice Order](#)
- [A Guide for Licensees: Records Management for Condo Managers](#)
- [Records Management Reference Guide for Condo Managers](#)



Thank You!!

⁷ <https://www.reminetwork.com/articles/florida-condo-collapse-ontario/>

⁸ https://myemail.constantcontact.com/CMRAO-Quarterly--Summer-2021.html?soid=1129562215076&aid=vGjQf_osjxY

**NADLAN-HARRIS SEMINAR WITH OUR MAIN FOCUS BEING ON
RE-OPENING THE AMENTIES**





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WHAT NADLAN-HARRIS IS DOING ABOUT COVID-19 CORONA VIRUS?

Nadlan-Harris Property Management Inc. deeply cares about our staff's health and safety as well as the communities we work in.

From the beginning Nadlan-Harris has put in place protocols for the safety of our team and residents. The following protocols have been put in place:

- We have increase **cleaning and disinfecting protocols.** The Nadlan-Harris head office is being sprayed 3 times per week with Hypochlorous Acid, which is a primary disinfectant agent of chlorine solutions.
- Nadlan-Harris head office has introduced the GermGuard Treatment Program, which has been proven to last on a surface for up to 6 months. The GermGuard program kills germs on contacts and is a great addition for in between regular cleaning. The treatment provides antimicrobial protection to high touch surfaces to reduce the risk of transmission of germs. (see pictures below)
- Keyless entry has been installed at Nadlan-Harris head office to minimize the touching of surfaces.
- Social distancing protocol has been put in place
 - Keeping a minimum of 6' away from each other.
 - We have staggered our head office employees to work from home.
 - Remote set up was provided to all employees.
 - Accounting personnel rotate their time of coming to head office when needed to pick and drop off information.
- Extra hand sanitizers and spray disinfectant has been supplied at the Head office

We believe in an open communication policy and we constant communicate to all our managers on weekly basis by providing updated information to communicate with their board of directors and the community.

The team at Nadlan-Harris has received some inquiries by directors of the board about approval of invoices and cheques being signed. Our team fully understands the concern.

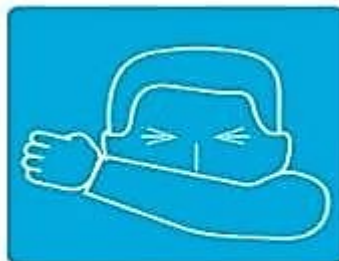
Under the direction of the board, Nadlan-Harris will accept invoice approvals from the board of directors, via email. Cheques can be signed by Liron Daniels the President of Nadlan-Harris Property Management Inc, and only by Liron Daniels. This of course is only temporary. Written direction is needed from the board of directors, to proceed with this option.

The Nadlan-Harris team has been provided Essential Work Documents, in the event they get stopped and questioned as to the intent of their commute

Our head office has been closed to the public since March, and only accommodates visits if it is an urgent matter.



WASH YOUR HANDS



COVER YOUR COUGH



STAY HOME IF SICK



Condominium

|

Residential

|

Commercial

|

Rental



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500 Champagne Drive, Toronto, ON M3J 2T9

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We are a team of dedicated experts, specializing in professional property management of:

- High-Rise/Low-Rise Condominiums
- Residential/Commercial/Industrial
- Town Home Condominiums
- New Condominium Development Consulting
- Customized Community Websites
- Shared Facilities



Proud members of:



Tel: 416-915-9115 Ext. 25 Fax: 416-915-9114 Email: info@nadlan-harris.com
www.nadlan-harris.com