

Reopening Condo Amenities COVID Protocol

Background

While condo dwellers are anxious to have access to their amenities (including swimming pools, patios and fitness rooms), condominium corporations ought to be very prudent when considering whether to reopen these amenities and, if so, under what conditions.

Corporation liability

A condominium corporation is the “occupier” of all common elements. As such, it is potentially liable and responsible for injuries (including virus infection) which may occur on said common elements. Under the *Occupiers Liability Act*, condominium corporations must take all reasonable steps to ensure the reasonable safety of those on their premises.

In line with this, condominium corporations, through their Board of Directors, have a duty to control, manage and administer the common elements and the assets of the corporation.

The risks associated with a community infection are unknown but the stakes are high. A community infection can result in serious and permanent health consequences, including death. It may also result in claims being advanced against corporations in a setting where it is far from certain whether the insurance industry will cover COVID-related claims. Even if covered by the insurer, litigation is costly, lengthy and stressful. Litigation must also be clearly noted on the Status Certificate and on PICs, which can potentially have an impact on units’ marketability and value.

Waivers and “use at own risks”

In our view, corporations cannot offload onto owners its responsibility to ensure the safety and security of those on its premises.

Similarly, we are at the view that corporations cannot force owners to sign “waivers of liability” as a precondition to using some of the amenities. While waivers may (on a purely contractual basis) afford some additional protection to the Corporation, the actual level of protection and the enforceability of these waivers may be limited.

Moreover, we question whether corporations can ban owners who have not signed these waivers from using the amenities. It may also be difficult to control who has signed a waivers and who has not.

A range of options from “unsafe” to “safest”

Having stated the above, it may be more and more difficult to keep all amenities indefinitely closed until they are “absolutely safe” to open. There may not be a vaccine for many months (perhaps more than a year).

In circumstances where we are faced with a global pandemic, with ever changing directions and guidelines from various health authorities, corporations ought to be very prudent in their approach on this question.

Corporations are faced with a range of options going from “unsafe” (opening all amenities without any precautions) to “safest” (not opening amenities until there is a vaccine).

Corporations must balance risks, rewards and costs in finding the “sweet spot” where they have taken sufficient reasonable precautions. Indeed, corporations are not “insurers”. They are not expected to guarantee absolute safety, but they must take “reasonable steps to ensure the reasonable safety” of those on their premises. In the balance, the corporation must also consider the costs of reopening their amenities in a “safer” environment.

Measures/Protocols

If you are considering re-opening your amenities, you should consider implementing as many of the following safeguards and precautions as reasonably possible:

Regarding users

1. All users should be required to complete a health-screening questionnaire, which would contain an undertaking to abide by the new COVID-related protocols and an undertaking to stop using the amenities if their personal COVID-related circumstances were to change.
2. Access to the amenities should be restricted to occupants [no guests and no visitors].
3. The corporation should consider reducing the number of individuals using the amenities at any given time. The number of users to be allowed will vary depending on:
 - The existing provincial or municipal COVID-related restrictions;
 - Whether the amenity is interior or exterior;
 - The otherwise legal capacity limits of the amenity;
 - The size and layout of your amenities;
 - Your ability to implement as many of these measures as possible; and,
 - The density of your corporation and its demographics.

4. Consider implementing a booking system or a rotation schedule. This will:
 - Allow more individuals with an opportunity to use the amenity;
 - Facilitate traffic control to and from the amenity;
 - Allow for thorough cleaning and disinfecting between rotations.

5. Consider implementing a booking or reservation process. The province is presently recommending that such booking be done online. This scheduling process should include gathering information on the users (such as who used the amenity; when and how to contact them). This will both:
 - Assist in controlling how many users are using the amenity at any given time;
 - Assist in tracing back who has use the amenity at any given time in the event that there is a community flare up.

6. The corporation should ensure that there's no undue or unnecessary gatherings on common elements (including in the amenities):
 - Fitness classes, parties, functions or group activities should be cancelled/prevented;
 - Those not actively using the amenity should not be allowed to congregate in/on them (unless they are required to supervise children or for other health/safety reasons (think of lifeguards, etc.)).

7. Users should maintain a 2 metres distance and should be encouraged to follow proper hygienic measures.

8. Masks should be made mandatory (or at the very least be strongly encouraged) while using amenities, unless some exception applies (young children or individuals who cannot easily/safely use masks or unless engaged in an activity making wearing a mask difficult (while eating, drinking or while exercising)).

9. For pools, users should be encouraged to wear goggles/water masks.

10. Consider remove BBQs or reducing their numbers. Consider not providing cooking tools, cooking space and other tools that people would otherwise share.

11. The corporation should think of how they can enforce these measures and limits. Using a "reservation" system is one way. Using security guards or lifeguards may be another option, although it may not always be required. You need to find a solution that works.

Physical changes/precautions

12. The corporation should consider installing physical barriers, directional signage to manage traffic and visual cues to ensure physical distancing and to remind users of the required heightened hygienic measures.
13. Access to the amenities should be controlled:
 - If possible, the corporation could consider making some doors “entry” points only and other doors, “exit” points only, to avoid in/out traffic through the same door.
 - If possible, consider granting access to the amenity from an exterior entry point, rather than through the building.
14. If applicable, the corporation should consider closing any lockers and shower facilities and instead recommend that users shower/change at home, in their unit, prior to accessing the pool.
15. The corporation should consider removing any non-essential furniture/tools (or pool toys/accessories) provided by the corporation.
 - Owners should be encouraged to bring their own but same should be kept to a minimum.
 - This will minimize the risk of cross-infection and will also reduce the cleaning requirement between users.
 - For pools: the corporation should consider prohibiting any pool toys or accessories [with the exception of flotation devices].
16. Saunas, steam rooms, whirlpools, diving boards, rope swings and water slides must remain closed at this time.
17. Some corporations have installed HEPA filters in interior amenities to assist in filtering and circulating the air.
18. Plexiglas shields should be installed where useful and applicable and if you have a customer service desk (to protect workers and users).
19. If washrooms are opened, consider only opening one and making it unisex or consider closing every second urinal and every second sink.

Sanitizing and gathering controls

20. The corporation should implement its own stringent and regular cleaning/disinfecting schedule, preferably between each users or, at the very least, on a regular and frequent schedule (or at key points: morning, lunch, supper, closure).
21. For pools, consider disinfecting any and all equipment and high touch surfaces which are not regularly in contact with chlorinated water.
22. The corporation should provide adequate and sufficient hand sanitizing products at the entrances and throughout (depending on the size of the amenity).
23. The corporation should provide adequate and sufficient disinfecting cleaning products for users to thoroughly disinfect high touch surfaces, including doors, door handles, railings, etc. (This is in addition to the corporation's own cleaning/disinfecting schedule).
24. Consider having a lifeguard or a security guard to control access to the amenities and to avoid social gatherings.
25. Finally, consider having a newsletter and posting permanent signs educating users on these new protocols.

Conclusion

We are not suggesting that *all* of these precautions are necessarily required or mandatory. Some of these precautions will change over time, news ones will become required and some may no longer be necessary.

The concept however is to implement reasonable precautions and protocols to ensure that, in the event of a community flare up, the corporation is able to demonstrate that it has taken all reasonably required precautions to ensure the safety and health of its occupants.

Naturally, there may very well be a cost associated with some of these precautions. This may be the cost of doing business in this COVID era.

Please do not hesitate to contact us regarding this. We would be happy to discuss with you and your board how to best rollout reopening any amenities.