

STATE OF ILLINOIS PREPARES TO MOVE INTO PHASE 5: WHAT DOES THIS MEAN FOR COMMUNITY ASSOCIATIONS?



Illinois is set to fully reopen and enter Phase 5 on June 11, 2021. What exactly does the future hold for Illinoisans in Phase 5? Governor Pritzker recently issued guidelines. These include:

- Businesses, large-scale events, conventions, amusement parks and seated spectator venues, among others, will be able to operate at full capacity.
- Fully vaccinated people can resume activities without wearing a mask, except where required by federal, state, local, tribal and territorial laws, and rules and regulations. This includes local business and workplace guidance.
- All sectors of the economy can resume at regular capacity.
- Removes requirements of daily health screenings of employees and visitors.
- The state will continue to recommend masking for unvaccinated persons, and require it for all people while traveling on public transportation (buses, trains, etc.), in congregated settings (veteran homes, long-term care facilities), health care setting, as well as in schools, daycares, and educational institutions.
- The state will still recommend social distancing in businesses and venues to the extent possible but is no longer mandatory.

City of Chicago Mayor Lightfoot simply parroted that Chicago will follow whatever the State of Illinois' Phase 5 guidelines are at this time, no separate restrictions/guidelines have been established by the City of Chicago.

The move to Phase 5 leaves many members of community associations wondering what this mean for their community? Here are some common questions we are hearing:

Question: Should our association require proof of vaccination (e.g. vaccination card) to allow individuals to not wear a mask or socially distance in common facilities?

Answer: This is not our recommendation. To require proof of vaccination may raise privacy concerns and create a precedent for requiring proof of health for use of common facilities. Such a requirement may result in the Board having bitten off more than they can chew. We recommend that the association simply follow the state's guidelines. Associations should encourage masks to be worn by those who are not fully vaccinated, while they maintain social distancing. Associations should also allow members to self-certify whether they have been vaccinated.

Question: Should our association open its community pool given that

Phase 5 no longer will have capacity limitations?

Answer: Whether this should be done will depend on whether it is cost effective for the association to open the pool at this time. That is, due to the limited time the pool can be open in Illinois, is it worth it to open it approximately halfway through the month of June. The answer may differ for each community.

Question: Should the association continue to send warnings to residents when they do not wear masks in common areas?

Answer: No. Under Phase 5, there are very limited locations where masks will continue to be required (public transportation, healthcare settings, et cetera.) Otherwise, in Phase 5, it is *recommended* that *unvaccinated* individuals continue to wear a mask. While it is true that Illinois' Phase 5 reopening guidelines allow private business to implement mask requirements that are more stringent than the State's, as discussed in prior newsletters, it is not advisable for the Board to involve itself in confirming the vaccination status of residents. As of the date of this update, over 55% of Illinois residents are partially vaccinated, and over 40% are fully vaccinated. Meaning, every day, the likelihood that someone is foregoing a mask because they are vaccinated (rather than simply not following guidelines) increases. Hence, while the Board may continue to encourage all residents to continue to wear masks in common areas, given the increasing number of vaccinated adults and relaxed CDC and IDPH recommendations regarding masking, we do not believe the Board should take corrective action if a resident declines to follow the recommendation.

Question: We opened our fitness center a while ago and have been performing enhanced sanitation since. Should we continue to follow this practice?

Answer: Yes. While the lifting of capacity restrictions with Phase 5 is an indication that COVID is decreasing and community activities are generally safer, it does not mean that all risk of COVID has been eliminated. Until the CDC and IDPH have removed all COVID-related safety recommendations, we advise that it is a best practice for associations to continue enhanced cleaning and sanitation of common areas – especially amenities such as fitness centers and party rooms – to the greatest extent possible.

Question: When will evictions resume?

Answer: We understand that it is the Governor's intent to lift the eviction moratorium in August. Unfortunately, at this time, we do not know how soon after the lifting of the moratorium, that actual evictions will occur. From a practical standpoint and given our understanding of the current backlog, we do not expect to see actual evictions fully resume until sometime in 2022. Therefore, Boards must continue to be patient as things "return to normal."

Question: Can we go back to having in-person meetings again?

Answer: Yes. However, Boards should be mindful that requirements regarding masks for unvaccinated individuals still need to be followed. With that said, while Boards can return to in-person meetings, should they? Certainly, conducting an annual meeting in person is easier than conducting it virtually (especially for those condominium associations, who have not adopted Rules allowing for electronic voting or mail-in ballots). For Board meetings, though, we believe that virtual meetings (through zoom or other platforms) run more efficiently than in-person meetings (in that the Board can conduct its business without being interrupted) and it is more accessible to members. If virtual Board meetings have worked for your Board and community association manager, there is no reason for them not to

continue in the future.

Question: Should we require our employees to be vaccinated?

Answer: While many say employers can require employees to be vaccinated, associations should consider whether they want to take on this responsibility. As we have said many times before during this pandemic, we do not want the association to take on more liability than is needed, especially when the association has union employees. After all, vaccination is not a requirement for union membership. Rather, associations should require employees who are unvaccinated to wear a mask at all times when on the property (even when on break) and to maintain social distancing. Similarly, the association should require its vendors to ensure that all contractors that are not fully vaccinated are properly masked at all time when on association property.

If you have any questions about reopening and transitioning to Phase 5, please do not hesitate to contact us.

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NEXT WEBINAR:

WHAT WOULD YOU DO??

June 16, 2021 at 12:00 p.m.

How many times have you seen a situation arise within the association that you manage or live, and you thought, "I wonder what the attorney would do?" How many times did you have a question and want to know what would the attorney do, but were a bit gun shy to ask during the presentation? How many times did you want to know what the attorney would do, but the budget did not warrant incurring the attorney's fees? And how many times did you just want to try and stump an attorney? Well, June 16th is the day when you will have your chance for all of the above!! Join the attorneys of Keough & Moody in a webinar where YOUR questions will be the subject of the presentation and the fun!

In addition to registering for this webinar, to participate, you must email your questions in advance to Jonathan Wassell at jdw@kmlegal.com. Please clarify whether your association is a condominium, townhome, or homeowner's association. Jon is the only one who will review your questions in advance. He will then randomly present the questions to Gabby and Dawn. The person with the most challenging questions who truly stumps (or comes close to stumping) Gabby or Dawn will win a prize! Please remember, questions cannot require the attorneys to be familiar with an association's governing documents. In addition, the answers to the questions are not intended to be and should not be considered legal advice to any specific situation or association.

Please submit your questions by June 14, 2021. We hope you join us for what will likely be a fun and different webinar!

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