



FREQUENTLY ASKED QUESTIONS COVID-19 STAY AT HOME, STAY HEALTHY ORDER

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WR Legal Hotline Lawyer Annie Fitzsimmons and NWMLS Counsel Justin Haag have put together this list of frequently asked questions to help us all understand how Governor Inslee's "Stay Home, Stay Healthy" emergency order impacts real estate brokers and related professionals.

Contrary to rumors, real estate has not been "shut down" but is working in limited capacity for the next two weeks as mandated by Governor Inslee. Real estate professionals are working to facilitate the 17,000 transactions currently in the pipeline and some of these questions may clarify what REALTORS® can and cannot do, as well as address some of the related industries we all rely upon to close a transaction. Washington REALTORS® has been working with the cabinet-level staff within the Governor's office but the Governor's order remains very clear about certain things. Please review the list of FAQs below and if you have further questions, email comment@warealtor.org. Thank you for being a Washington REALTORS® Member.

WR LEGAL HOTLINE FAQ

QUESTION:

There is significant confusion in the industry about how to meet the needs of our real estate clients in light of Governor Inslee's "Stay Home, Stay Healthy" order.

1. Can real estate brokers provide private showings for buyers, utilizing all social distancing and disease control measures?

2. Can home inspections occur while the emergency order is in effect?

3. Can photographers continue to access seller's home while the emergency order is in effect, to create marketing materials including virtual tours?

ANSWER:

The answer to all three of these questions is "no" and that answer should be crystal clear.

There should be no confusion! The first "order" of Governor Inslee's emergency decree says:

All people in Washington State shall immediately cease leaving their home or place of residence except: (1) to conduct or participate in essential activities, and/or (2) for employment in essential business services. This prohibition shall remain in effect until midnight on April 6, 2020, unless extended beyond that date.

To implement this mandate, **I hereby order that all people in Washington State are immediately prohibited from leaving their home or place of residence** except to conduct or participate in (1) essential activities, and/or (2) employment in providing essential business services:

This is the Governor's order. *Do NOT leave your home!* There is nothing confusing or unclear about

that order. This order applies to EVERY person in Washington State. The order applies to real estate brokers, photographers and inspectors alike.

The only work-related exceptions to this order relate to people who are specifically identified on the Governor's list of "Essential Critical Infrastructure Workers" and personnel who perform minimum basic operations essential to a business* (see definition below). **If you are not identified on the list of "Essential Critical Infrastructure Workers", then you are not allowed to leave your home to engage in any work-related endeavor.* Real estate brokers, photographers and home inspectors are NOT on the list of "Essential Critical Infrastructure Workers."**

Real estate brokers are not allowed to leave their home to show a seller's home to buyer. That is a work-related activity. There are no exceptions to this and the statement is not confusing.

Professional photographers are not allowed to leave their home to photograph a seller's home. That is a work-related activity. There are no exceptions to this and the statement is not confusing.

Professional home inspectors are not allowed to leave their home to inspect a seller's home. That is a work-related activity. There are no exceptions to this and the statement is not confusing.

The fact that real estate brokers, inspectors or photographers attempt to interpret the very clear order as not applying to them disrespects the health and life of everyone around them and their community at large. To the extent real estate brokers either facilitate or enable home inspectors or photographers to disregard the very clear restriction imposed by the emergency order, they create liability for themselves and their firms.

Recall that real estate brokers can still work and real estate brokers can still provide real estate brokerage services so long as those services are provided remotely, from broker's home. Further, the order allows people to go to their place of business only to conduct "minimum basic operations." This is defined as follows:

"... minimum basic operations are the minimum activities necessary to maintain the value of the business' inventory, preserve the condition of the business' physical plant and equipment, ensure security, process payroll and employee benefits, facilitate employees of the business being able to continue to work remotely from their residences, and related functions."

In the context of a real estate firm, the designated broker/owner/office manager or IT staff are likely the only people within the firm to whom this exception will apply. But this exception has nothing to do with the questions regarding out-of-home activities such as private showings, photography, or home inspection.

FAQS FROM THE NWMLS

What is the Stay Home, Stay Healthy Order?

To help prevent the spread of COVID-19 (Coronavirus), effective midnight on Wednesday, March 25th, Governor Inslee issued a statewide "Stay Home, Stay Healthy" order. The Order will initially last for two weeks and requires the closure of all "non-essential critical infrastructure businesses." Workers that are considered non-essential and who do not have in-person contact with others, can continue to work remotely from home only. The Order may be extended and may be modified.

Are real estate brokerage services considered "essential"?

No. Real estate brokerage services are not on the list of essential services.

Real estate brokers may:

- Provide services to their clients remotely from their house; and
- Use technology services that enable remote business, including online forms, electronic signatures, virtual tours, videos, and similar tools that can be used from home.

Real estate brokers may not:

- Conduct any business outside of their home, including physically showing or previewing properties, conducting in-person listing presentations, taking property photos, staging homes, etc. Any broker who violates the Governor's order not only puts himself/herself and his/her family at great personal risk, but also puts the broker's real estate firm and his/her clients at risk.

Can real estate firms continue "Basic Minimum Operations"?

Yes. Real estate firms can continue to process payroll and benefits, preserve equipment, ensure security, and support brokers' ability to work from home. Social distancing guidelines must be followed. This exception is to continue only basic, minimum business functions for identified essential workers. This is not an exception to the prohibition against a broker leaving home to provide real estate brokerage services.

Can lenders, title, and escrow continue to operate during the Stay Home, Stay Healthy Order?

Yes. The "Financial Services Sector" has been deemed essential. This includes workers who are needed to process and maintain systems for processing financing transactions and services and insurance companies including mortgage lenders, escrow and title insurers.

Because the Financial Services Sector is considered essential, real estate transactions that are under contract may be able to proceed to closing. Of course, there could be delays, which is why the parties should use the new Force Majeure and Closing Addendum (Form 22FM).

Can appraisers conduct in-person appraisals during the Stay Home, Stay Healthy Order?

Probably not. An appraiser can certainly conduct a remote appraisal, if acceptable to the lender. Appraisers are likely prohibited from conducting in-

person appraisals. Washington Realtors and NWMLS are awaiting clarification from the Governor's office regarding certain activities for pending transactions.

Can inspectors conduct home inspections during the Stay Home, Stay Healthy Order?

Currently, no. Inspection services are not considered essential. Washington Realtors and NWMLS are awaiting clarification from the Governor's office regarding certain activities for pending transactions.

Can buyer brokers conduct "buyer walk-throughs" prior to closing during the Stay Home, Stay Healthy Order?

Currently, no. Real estate brokerage services are not considered essential. Washington Realtors and NWMLS are awaiting clarification from the Governor's office regarding certain activities for pending transactions.

Note that the Force Majeure and Closing Addendum (Form 22FM) extends the buyer's time period to complete the walk-through, which would extend closing.

Can brokers retrieve house keys and provide to a buyer after a closed sale?

Currently, no. If keys to the property are not otherwise available to a buyer at closing, a broker in the transaction may make arrangements for a seller to leave a set of keys for the buyer at the property, observing social distancing guidelines. Washington Realtors and NWMLS are awaiting clarification from the Governor's office regarding certain activities for pending transactions.

What if my buyer or seller has questions about their rights and obligations under their purchase and sale agreement or lease?

As always, brokers have a duty to refer their clients to experts regarding matters in which the broker lacks expertise. Particularly in matters affected by

COVID-19 and the Stay Home, Stay Healthy Order, it is unlikely that brokers will have expertise and should advise their clients to seek the advice of an attorney.

Can stagers stage homes and remove furniture from a listing during the Stay Home, Stay Healthy Order?

No. Stagers may not stage homes or remove staged furnishings from a listing for the duration of the order. Washington Realtors and NWMLS are awaiting clarification from the Governor's office regarding certain activities for pending transactions.

Can moving companies move buyers into a property and move sellers out of a property?

Currently, no. These services are not considered essential. Washington Realtors and NWMLS are awaiting clarification from the Governor's office regarding certain activities for pending transactions.

Can for-sale signs be installed at a property during the Stay Home, Stay Healthy Order?

No. Brokers and sign companies are not permitted to leave their home to install for sale signs for the duration of the order.

Can contractors make repairs associated with an inspection response during the Stay Home, Stay Healthy Order?

Generally, no. The only repairs that are allowed are emergency repairs and repairs necessary to the structural integrity of the property. Other repairs or improvements (e.g. for cosmetic purposes) are not allowed. For anything other than emergency or structural repairs, buyers should consider negotiating a price reduction so that a buyer could complete the work after closing and after the order is lifted.

How do I to stay up-to-date with matters affecting real estate brokerage and avoid being misled by false rumors?

There are false rumors and misinformation being circulated. Many brokers have acted in reliance on bad information to their embarrassment and detriment.

Washington Realtors and NWMLS communicate daily, and often more frequently to keep members informed of any developments affecting the industry. Both Washington Realtors' website and NWMLS's websites will continue to offer the latest and most accurate information possible.

FOR MORE INFORMATION PLEASE VISIT:

WAREALTOR.ORG & NWMLS.COM

