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## MEMORANDUM

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### **COVID-19 AND ITS IMPACT ON FLORIDA REAL ESTATE TRANSACTIONS** **March 25, 2020**

We are in uncharted territory in the midst of this national COVID-19 crisis. All professions, schools, universities, and institutions are impacted. For Florida real estate professionals, this is especially significant, due to the profession relying heavily upon face-to-face interaction and interpersonal communication.

This situation continues to evolve daily, and realtors need to stay current with changes as they occur. For example, it was just recently announced that the March 31, 2020 renewal deadline for real estate licensees has been extended to April 30, 2020. No late fee will be assessed on an eligible license renewal during this period.

CRES and its Florida attorneys present the following information and insights as to where we currently stand:

#### **Non-Essential Business Closures:**

On a daily, and county-by-county basis, it is critical to monitor the ongoing executive orders which are being issued, and those which require “non-essential” business to shut down. For example, Broward County, which has been one of the counties hardest hit to date by the virus, issued Emergency Order 20-01 on March 23, following the lead taken by Miami-Dade County several days earlier, which ordered the closure of all “non-essential” businesses. The list of Broward County businesses deemed “essential” is very extensive. For example, it not only includes banks and related financial institutions, it also includes “insurance firms.” Unfortunately, real estate offices are not included within the list of “essential” businesses. However, realtors have been utilizing creative means to continue to perform their professional services, including:

- Replacing open houses with virtual tours. A brief perusal of Zillow indicates that this has already become a widely popular practice.
- Making use of Florida’s recently enacted Remote Notary Law. Remote notarizations which became legal on January 1, 2020, allow buyers and sellers to close on a home

without being in the same room. This is a powerful tool to utilize during the COVID-19 pandemic. However, as a cautionary note, realtors should confirm in advance with lenders that the lender will be willing to accept the remote notarization. In addition, Florida notaries must register with the state as an online notary before they are authorized to perform this service.

- Making use of online tools such as Zoom and Facebook Live. These and other similar tools allow realtors to have personal interaction with clients and others while maintaining social distancing.
- Communicating often with clients via telephone, email, and video conference. Trying to become aware of clients' health conditions, e.g., if they or a member of their household are developing flu-like symptoms, etc. Learning what the client has been doing in terms of social distancing. Are they using common sense and taking necessary precautions, or are they unnecessarily risking not only themselves, but others with whom they come into contact, including their agents and brokers?
- If clients insist upon viewing properties in person, communicating with the seller's agent so that the showing can be limited to one or two people, with preferably the homeowner not present. Agents should drive to the property separately from the client.
- Agents should discuss with the seller what precautions should be put in place for any inspections and showings. This should include discussing the importance of sanitizing items that would come into human contact, such as light switches, doorknobs, cabinet handles, and faucets, and possibly also the use of latex gloves prior to entering the property.
- If the seller has experienced flu-like symptoms, has not tested positive for COVID-19, and wishes to continue listing the property, all in-person viewings should be suspended in an abundance of caution.

### **COVID-19 Addendum to Contract:**

The Florida Realtors Association recently released a new contract extension addendum that will allow for time periods and dates to be extended, if an extension is needed due to COVID-19 issues. This addendum can be entered into on an already existing contract. The extension will either be for a date specific, or a specified number of dates. Realtors need to rely upon the underlying language of the contract to determine how the days are calculated. For example, in the Standard Fla Bar "AS IS" Residential Contract, calendar days are used in computing time periods. Other contracts may use business days which will exclude weekends and holidays.

Realtors should utilize a standard extension addendum if the need for the extension is not related to COVID-19.

The Force Majeure clause in Standard G of the "As Is" contract does not address, and cannot be relied upon, to provide assistance if seeking an extension based on COVID-19. Force Majeure is defined in Standard G as: "Hurricanes, floods, extreme weather, earthquakes, fire, or other acts of God, unusual transportation delays, or wars, insurrections, or acts of terrorism..." It should be noted that, pursuant to the final paragraph in the COVID-19 extension addendum, if the lender refuses or is unable to fund the loan due to COVID-19 restrictions, the Buyer is presented with an opportunity to cancel the contract pursuant to the terms of that paragraph.

## **Duty to Disclose:**

Pursuant to §475.278(2)(d) Fla. Stat., realtors are required by law to disclose “all known facts that materially affect the value of residential real property and are not readily observable to the buyer.” As real estate professionals know, sellers are under a similar disclosure requirement pursuant to the Florida Supreme Court case *Johnson v. Davis*. An “AS IS” Contract does not negate this obligation in residential transactions.

Limiting or excluding in-person inspections can pose a risk to sellers and sellers’ agents for failing to disclose defective material conditions. When a condition is open and obvious, the non-disclosure is less likely to become an issue, because the personal inspection and/or home inspection should reveal the problem. Accordingly, seller’s agents should discuss these issues with the seller and the importance of a complete and thorough video virtual tour of all parts of the property. Accurately and diligently completed Sellers Disclosure forms, while not currently mandated by law, are more important than ever, with ever-increasing transactions that may omit any personal inspection or touring of the property.

If the seller or a member of the seller’s household has experienced flu-like symptoms or has contracted COVID-19, the seller should be advised to put their listing on hold. In that event, the realtor must be ready to prepare the appropriate amendment, extension, or termination on the listing agreement to reflect the seller’s decision.

## **Conclusion:**

In this continually changing and fluid environment, it is critical to maintain open lines of communication with fellow professionals and clients, and to check key websites on a daily basis, such as the Florida Department of Health’s and the National Association of Realtors. We all need to remain informed and vigilant while the industry weathers this pandemic.

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