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COVID -19 – CERTAINTY OF CHANGE IN TEXAS REAL ESTATE

Even as this is being written and published, I am certain situations/conditions are changing. The purpose of this is to provide you some things to consider, plan for, so that you will not be caught completely without a plan when/if you are faced with these.

The State of Texas does not currently have a uniform “shelter-in-place” directive. Each city and county are addressing its own particular situation. As a result, you need to be familiar on a daily basis of the changes taking place.

Here are some of the sources I highly encourage you to read immediately and continue to check as information changes at least daily: [cdc.gov](https://www.cdc.gov); [CISA.gov](https://www.cisa.gov); [TREC.texas.gov](https://www.trec.texas.gov); [texasrealestate.com](https://www.texasrealestate.com) (TAR), as well as your specific local governing entity’s website.

For those areas that are under specific shelter or stay at home orders, the federal government guidelines are often used to define “essential” services. You can find a list of, explanation and more information on essential services/workers at [CISA.gov](https://www.cisa.gov). Basically, there are sixteen categories: communications, chemical, critical manufacturing, commercial facilities, dams, defense industrial base, energy services, energy, financial, food & agriculture, government facilities, healthcare & public health, information technology, nuclear reactors materials & waste, transportation systems, and water. *See, CISA.gov.*

Office: Determine the current requirements. For example, there are approximately eighteen counties/cities in Texas that have stay at home--work safe and/or “shelter-in-place” orders including Houston, Dallas, San Antonio, and Austin (to name a few), as do other communities and that will likely be expanded to numerous areas. Yet, each is different. Thus, for your business, know your county and city requirements. Many brokerages in Texas operate in an area that includes both “city” and “county” guidelines and/or orders. As a result, you must be mindful and adhere to both (especially if you have multiple locations).

Be prepared for work at home. Know what questions you can ask employees related to travel outside the US and exposure to the virus. Adhere to the CDC guidelines for your workplace in addition to the local orders regarding social distancing, etc.

Sales: Pending transactions will vary case-by-case depending on your area and the particular facts of each transaction as well as the parties. The Texas Association of Realtors has a COVID-19 Form that may be used by buyers and sellers when appropriate. However, that addendum may or may not cover every situation. Also, do not forget that many of the other forms available in typical real estate transactions may also be applicable. It appears that title companies are attempting to make accommodations to achieve closings. However, there will be buyers that may no longer qualify due to a change in employment/income. There may be parties to the transaction that are infected with coronavirus and unable to effectuate closing as stated in the contract. There may be sellers that cannot close on their purchase for some reason, that become unwilling to close on the sale of their existing property (the domino effect). Another point to consider is that inspections, for instance, may take longer, as might obtaining quotes for repairs. These may be points for consideration related to the length of the negotiated option period. Encourage the parties to negotiate the issues and to seek legal counsel concerning the consequences of their decisions (ideally prior to making a decision or taking a position that creates a dispute).

While Texas real estate professionals have experienced past situations, such as natural disasters, that impact pending transactions, this is uncharted territory. The contract does not address termination as a result of a pandemic. **If a party is seeking to terminate, you need to advise them, orally and in writing, to seek the counsel of an attorney (preferably one that has experience in Texas real estate).** The TREC website contains some specific FAQs for you to read regarding this situation. Please remember, you are not an attorney and CANNOT give legal advice.

Leasing: There are many points for consideration concerning leasing and property management as they relate to COVID-19. Be mindful of issues concerning access for repairs, notice to tenants, etc. As you are certainly aware, there is a moratorium on evictions and foreclosures. Another point of consideration is whether or not tenant is entitled to accommodations under another statute or law (such as the FHA or ADA) and how that might affect the particular situation.

Disclosure: Sellers should disclose the fact that they have tested positive for COVID-19. If you are aware of a positive test, be mindful that in these times governmental entities have to be informed of positive tests as well and are tracking interactions with infected persons.

Commercial: Be mindful of the delays and negotiations that will occur as a result of COVID-19 whether due to a tenant not being able to be open for business and how that relates to terms of the lease, to leases and sales currently being negotiated and/or finalized. For those in current negotiations, the effect and restrictions related to COVID-19 may impact timing, construction, and specific terms of the lease/sale.

Conclusion: In addition to the certainty of change, there are going to be numerous conflicts arise between buyers and sellers whether over an impending closing, a contract and/or disclosure related to positive test for the virus. I cannot stress enough that you (the real estate professional) need to (1) keep the communication between all parties to the transaction open; and (2) refer your clients to legal counsel to answer questions when they are making decisions in the transaction (especially concerning termination).

You are going to be faced with many clients looking to you for advice. While it is frustrating not to be able to just give them an answer, remember to focus on your duties, responsibilities, and ethical standards. Remember who you represent. Do not forget to stay informed. Rely on the resources available to you when you have questions.

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