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## Working with Sellers during COVID-19 - Colorado

These are unprecedented times and these issues could not have been anticipated. The Colorado real estate form contracts do not expressly address situations like this. No one in the industry has experienced a similar event on such a scale. Nevertheless, CRES and its Colorado attorneys are analyzing the situation to anticipate legal and practical challenges that face real estate professionals and consumers.

CRES and their Colorado attorneys offer the following insights and thoughts:

- ✓ Brokers should encourage infected sellers to disclose the fact of potential exposure consistent with current medical knowledge about how the virus is transmitted and current public health policies. Brokers should document such conversations, the seller's decision, and the basis of the decision. See CP-46 Commission Position on Broker Disclosure of Adverse Material Facts (revised 08/01/2017):

The Commission's primary purpose is to protect the public. *Albright v. McDermond*, 14 P.3d 318, 322 (Colo. 2000). The Commission believes it is in the public's best interest for brokers to disclose all known adverse material facts to the parties to a real estate transaction because this disclosure increases each party's awareness of those facts prior to completion of the transaction, it reduces the potential for creating an unfair transaction, and it otherwise protects the overall integrity of the transaction.

The Commission suggests that brokers have robust conversations with their clients about broker disclosures, with an eye towards full and complete disclosure. Brokers who are aware of either of the two factual scenarios set forth in C.R.S. § 38-35.5-101 are encouraged to obtain their clients' consent to permit disclosure of these facts.

- ✓ Brokers need to be sensitive to sellers' concerns about showings, inspections, appraisals, and other strangers entering a seller's home.
- ✓ Brokers should discuss early on what precautions a seller may want in place for showings and inspections to feel safe.
- ✓ The discussion should touch upon the importance of sanitizing all items that regularly come into human contact such as light switches, doorknobs, cabinet handles, toilet seats, climate control devices, and faucets. Brokers are now starting to install hand sanitation stations at the front door with a sign asking people to sanitize their hands before entering the property and to refrain from any unnecessary touching.
- ✓ Sellers may want to add specific showing instructions asking buyers' brokers to refrain from showing the home to anyone exhibiting signs of sickness and to sanitize all hands before entering the home.
- ✓ Sellers may withhold permission for in-person showings altogether. In that situation, brokers may have to become more creative with technology such as offering virtual tours.
- ✓ Limiting or excluding in-person tours or inspections poses risks to sellers and sellers' agents for failing to disclose adverse material conditions. Often times, adverse material conditions go undisclosed because the condition is open and obvious. A walk-through of the property or a home inspection will reveal the problem and cure the non-disclosure. If the buyer is not allowed to do a walk-through or an inspection and the condition is not included in the video or disclosed in writing, these open and obvious adverse conditions will not be made known to the buyer. For example, rarely are crawlspaces or attics included in virtual tour marketing videos. Yet, crawlspaces and attics are frequently where adverse material conditions exist and are apparent. Examples include building code violations, health and safety issues with electrical wiring, foundation problems, and evidence of water intrusions or leaks.
- ✓ If the seller does not allow in-person showings or inspections, then the seller's agent must document the discussion of the risks and the importance of a thorough and complete video virtual tour of all parts of the property.
- ✓ Sellers may decide to withdraw their listing or take a break. Respect the seller's choices. If the seller does decide to withdraw or take a break, brokers must prepare the appropriate amend/extend or termination form to reflect these decisions

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**DISCLAIMER:** This article is a brief overview and survey of COVID-19 issues facing real estate professionals in general. The article is designed and its purpose is to serve only as a general discussion of these issues. This article does not constitute legal advice. The reader should consult with a licensed, experienced attorney on any specific or general matter in the reader's particular jurisdiction. We hope that all real estate practitioners find this article to be a useful and practical tool in identifying COVID-19 issues.