

April 13, 2020

Colorado Division of Real Estate Issues Guidance on the COVID-19 Stay-at-Home Order

- ✓ Executive Order D 2020 017, amended by Executive Order D 2020 024, went into effect on March 26, 2020. It expires on April 26, 2020, unless further extended by the Governor.
- ✓ The Executive Order requires all Coloradans to stay at home and all businesses to close due to the presence of COVID-19 in Colorado unless the business is designated as a “critical business.”
- ✓ Real estate transactions are identified in the current order as a “critical business” function without any definition of what specific real estate activities are exempt. Conflicting views were expressed by the Colorado Governor, the Colorado Attorney General, the Colorado Department of Public Health, the Colorado Real Estate Commission, and the Colorado Division of Real Estate, not to mention the different legal opinions of private attorneys. This led to confusion among employing brokers, buyer’s agents, seller’s agents, consumers, home inspectors, appraisers, and title agents.
- ✓ On April 9, 2020, the Colorado Department of Regulatory Agencies, Division of Real Estate issued a statement entitled “Guidance: Practicing Real Estate During a Pandemic”.
- ✓ All real estate professionals should familiarize themselves with these guidelines.
- ✓ Per the published guidelines, real estate appraisals and closings are considered critical services to complete real estate transactions.
- ✓ Home inspections and final walkthroughs after a buyer has signed a purchase contract, are conditions precedent to the actual transfer of property, and are, therefore, essential parts of the real estate transaction.
- ✓ Elements that are fundamental to the real estate transaction are deemed essential to support market activity. This statement does not eliminate but adds to the gray area. For example, is taking photographs or video of a listed property “essential to support market activity”?
- ✓ What is clear is that showing a property and conducting an open house in-person during the COVID-19 pandemic are prohibited and are considered violations of the executive and public health orders.

- ✓ The message to real estate professionals and consumers that is emerging from the different offices of the Colorado government is a recognition that people still need to find shelter as a basic human physiological need, just like the need for food, sleep, water, and air. Real estate brokers are critical to filling that need in today's modern era. However, brokers are being called upon to do their part to prevent the spread of the coronavirus. As a result, brokers must not encourage members of the public to engage in non-essential travel, such as taking clients to or asking residents to leave their residences for the purpose of viewing real property. Brokers who do this will be deemed by the authorities to have unnecessarily compromised public health by expanding public exposure.
- ✓ Listing agents should discuss the practical limitations of marketing a property with sellers during this time. If a seller desires to have the property professionally photographed or videoed for a virtual tour, the seller's agent must refrain from giving a legal opinion to the professional photographer or videographer regarding whether such work is a "critical business" function and tell them to obtain a legal opinion on their own if there is a concern.
- ✓ There is no distinction between vacant or occupied properties as far as the prohibition on showings, marketing, or open houses.
- ✓ Brokers are advised to utilize the COVID-19 Addendum form once a property goes under contract because the current executive order could be extended in duration or scope.
- ✓ Brokers should limit the number of people attending inspections and appraisals. For example, a buyer should not bring his or her children, parents, or friends to an inspection.
- ✓ Brokers also should advise their clients to keep the performance of repairs to an absolute minimum.
- ✓ Any act by a broker found to be in violation of the executive order, the public health order, or the April 9, 2020, guidance could be considered a licensing violation. Such a violation could subject the broker to a complaint, investigation, administrative, and criminal legal action, and, ultimately, discipline or punishment. No broker wants to endure the stigmatizing effect of such a charge on their record and character.
- ✓ Brokers need to continue to do their part to prevent the spread of COVID-19 in Colorado. Brokers have a particularly difficult task in carrying out that mission as they try to facilitate housing needs. It is critically important for all Colorado brokers to keep informed of the latest developments.
- ✓ Please continue to check back on the CRES website for an update on these developments and other relevant COVID-19 news for Colorado brokers.

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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.