

Dear NYSAR Members,

NYSAR is well aware of the disruption to your business because of the stay at home order for businesses that have not been deemed essential by the state. We have received many questions from our membership as to what real estate related activities are permissible. We are in contact with NYS and actively seeking answers to your questions.

Below is the most recent information regarding the most common questions that we have received. Please check back on NYSAR's dedicated COVID-19 webpage at nysarcovidupdates.com often. We will update this FAQ as new information becomes available.

We hope you and your family are healthy and safe. Rest assured that NYSAR is working full time to help our members to get through these unprecedented times.

This FAQ is effective as of 5:00pm on 3/24/2020 and supersedes any prior information provided by NYSAR.

Issues related to general licensed real estate activities:

Q: *Can licensees still take a listing?*

A: Yes. If you are listing the property but will not be interacting with the owner or public in-person, the licensee will not be violating the provisions of the mandate. The licensee will need to explain to the seller that until further notice, the licensee is unable to conduct in-person showings.

Q: *Can a licensee perform in-person showings or in-person open houses?*

A: No. The Governor's mandate is to prevent person to person contact. Furthermore, during his press conference the Governor specifically stated, "by my mandate you couldn't even have your real estate agent showing the apartment. Same with commercial tenants." Relying on the fact the real estate related activities are not deemed to be essential as well as the Governor's statement, showings and open houses are not permitted.

Q: *Are we allowed to list properties and post them as "unaccompanied showings only"?*

A: NYSAR is unable to provide guidance on this matter and has submitted a request to the State to have this activity deemed permissible. When NYSAR receives a response, members will be notified by email.

Q: *Are we allowed to do a virtual showing?*

A: NYSAR is unable to provide guidance on this matter and has submitted a request to the State to have this activity deemed permissible. When NYSAR receives a response, members will be notified by email.

Q: *Can I go to a vacant home or vacant land to view it or take photographs for a listing?*

A: NYSAR is unable to provide guidance on this matter and has submitted a request to the State to have this activity deemed permissible. When NYSAR receives a response, members will be notified by email.

Q: *What is liability if a broker allows an agent from another broker to show property or violate the mandate in other ways?*

A: The Governor's mandate is to prevent person to person contact. The listing agent should not permit showings where a licensee will be accompanying members of the general public. If the listing agent is permitting such showings, they may be liable as well. Penalties can range from a fine of \$2,000, being charged with a misdemeanor and possible license suspension or revocation.

Q: *What kind of marketing can I do?*

A: You may not make any unsolicited phone calls during a State of Emergency. General business Law §599-z(5)(a) states "*It shall be unlawful for any telemarketer doing business in this state to knowingly make an unsolicited telemarketing sales call to any person in a county, city, town or village under a declared state of emergency or disaster emergency as described in sections twenty-four or twenty-eight of the executive law.*" All other types of marketing such as mailers, billboards, social media, internet etc. are permitted. You may call a FSBO if you have an identifiable purchaser interested in the property. You are prohibited from calling the FSBO to solicit the listing.

Q: *I am a single employee business; may I continue to perform licensed activities under the Governor's mandate?*

A: No. The "single occupant/employee" exemption only relates to whether an application must be made if the business provides an essential function. During the press conference announcing the EO, the Governor specifically stated, "by my mandate you couldn't even have your real estate agent showing the apartment. Same with commercial tenants." The Governor's statement can only be interpreted to mean that real estate related activities such as in-person showings, open houses and in-person listing presentations are not an essential function or service. Since those activities are prohibited, the "single occupant/employee" exemption is not applicable. There are no exceptions or loopholes. You are not precluded from most work that you can accomplish from your home but you are prohibited from any in-person contact with clients/customers and other licensees.

Q: *Are property managers an essential business?*

A: According to the guidance document, “Essential Services Necessary to Maintain the Safety, Sanitation and Essential Operations of Residences or Other Essential Businesses” are essential and include: building cleaners or janitors; general maintenance whether employed by the entity directly; and disinfection. The property manager should only staff the office with those employees necessary to perform those essential services while following all recommended health and safety precautions. Employees of the property manager should not be performing non-essential activities while in the office. According to the guidance document, “With respect to business or entities that operate or provide both essential and non-essential services, supplies or support, only those lines and/or business operations that are necessary to support the essential services, supplies, or support are exempt from the restrictions.”

Issues related to property currently under contract:

Q: *Are appraisers and home inspectors deemed to be an essential business?*

A: NYSAR is unable to provide guidance on this matter and has submitted a request to the State to have this activity deemed permissible. When NYSAR receives a response, members will be notified by email. NYSAR is aware that some lenders have been telling appraisers they are essential as they perform an essential function of the mortgage process but until definitive guidance is provided, this is only the opinion of the lender, not the State.

Q: *Notwithstanding the previous question, can I open the property for an appraiser or home inspector?*

A: NYSAR is unable to provide guidance on this matter and has submitted a request to the State to have this activity deemed permissible. When NYSAR receives a response, members will be notified by email.

Q: *Can the purchaser be present during the inspection?*

A: The home inspector would need to assess any potential violation of the Governor’s mandate if the purchaser is present.

Q: *Can I conduct a final walkthrough with the purchaser?*

A: NYSAR is unable to provide guidance on this matter and has submitted a request to the State to have this activity deemed permissible. When NYSAR receives a response, members will be notified by email.

Issues related to real estate closings:

Q: *Are closings permitted?*

A: Yes. However, the only parties that could attend a closing are the seller, purchaser, seller attorney, purchaser attorney, lender attorney and title agent. According to the guidance document issued by the Governor as well as guidance issued by the Empire Development Corp “Law firms and other providers of legal services are essential businesses only to the extent that their services are currently needed to support the essential functions of health care providers, utilities, state and local governments, the federal government, **financial institutions**, businesses that have been designated as essential; or to support criminal defendants in court proceedings or individuals in emergency family court proceedings; or to participate in proceedings concerning the imminent release or detention of individuals subject to criminal or civil detention under any applicable provision of state or federal law, or proceedings to address emergency risks to health, safety, or welfare.” As lawyers represent financial institutions at closings, they are deemed to be essential. It should be noted that remote notarization is now permissible under the Governor’s Executive Order 202.7. It is up to the aforementioned parties whether such remote notarization or other methods are used to avoid person to person contact.

Q: *Can I attend a closing?*

A: No, unless your presence is essential to the completion of the closing. In other words, if you are not physically there, the closing could not occur. If your presence is required, you should only be in the closing room for as long as you are required and then leave while taking all health and safety precautions recommended by the government.

Issues relating to the brokerage office

Q: *What if my business is not essential, but a person must pick up the mail or perform a similar routine function each day?*

A: The ESD has determined that a single person attending a non-essential closed business temporarily to perform a specific task is permitted so long as they will not be in contact with other people. Other employees or licensees are prohibited from going to the office.