

**From:** NYSAR <nyrealtors@nysar.org>  
**Sent:** Wednesday, June 3, 2020 3:03 PM  
**Subject:** Flash Update - Phase 2 Re-opening FAQ's



**June 3, 2020**

Dear NYSAR members,

Below, please find additional frequently asked questions for the Phase 2 regional re-opening of "New York Forward." These are questions we have previously answered, however, the answers have been modified to reflect Phase 2 guidance. For frequently asked questions prior to, and including Phase 1, as well as Phase 2 questions, please visit [nysarcovidupdates.com](http://www.nysarcovidupdates.com).

***Q - How does the COVID-19 pandemic impact Fair Housing? Can I ask a client/customer/consumer if they have been exposed to COVID-19?***

A - Yes, the Interim Guidance Document provided by ESD and DOH includes permissible screening questions relating to COVID-19 exposure that must be asked of every seller/buyer/landlord/tenant.

***Q - Can a professional photographer and/or videographer take photos or video of a property under Phase 2?***

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A - Yes, if the photographer/videographer is operating in a region open under Phase 2.

**Q - How do I use the NYSAR COVID-19 Phase 2 Disclosure form?**

A - Below, please find instructions on how to use the Phase 2 form:

- The form is OPTIONAL
- You must have the permission of your broker before utilizing the form. Your broker may require you to either: a) use the NYSAR form; b) use a form the broker had prepared; or c) not use any form.
- The form has been provided to local boards, MLS' and brokers previously and they may have released the form already with their name and/or logo.
- Licensees should present the form to the seller or buyer in the same manner an agency disclosure form is presented.
- The COVID-19 Disclosure form notifies the seller and buyer of the risks associated with permitting an individual to enter one's property or by entering another individual's property.
- By signing the form, the seller or buyer acknowledge that by permitting such access or by accessing the property they assume the risk of potential exposure to COVID-19. Licensees should explain to the seller and/or buyer that the form outlines the risks of COVID-19 exposure and by signing the form they are acknowledging and assuming such risks.
- Licensees should have the seller and/or buyer sign the form, print their name next to their signature and provide a signed copy to the seller or buyer and retain a signed copy for the broker's file.
- The form may be delivered in any manner currently permitted (paper, electronic transmission).
- A copy of the COVID-19 Phase 2 Disclosure form can be found [HERE](#).

**Q - If I use the NYSAR COVID-19 Disclosure form can I perform in-person showings in a Phase 2**

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***region?***

A - Yes, so long as all requirements contained in the Interim Guidance Document are strictly followed.

***Q - What is the seller and/or buyer agreeing to when they sign the NYSAR COVID-19 Phase 2 Disclosure form?***

A - In the event the seller and/or buyer is exposed to COVID-19 as a result of permitting or gaining access to the property, the form acts as a disclosure notice outlining the risks and having the party acknowledge that they are assuming such risk through their actions. If a licensee and/or broker were named in a lawsuit alleging exposure to COVID-19 by the seller and/or buyer (or a member of their household), the form could be used to show the seller and/or buyer were aware of the risks and assumed the risk of permitting access or gaining access to the property.

***Q - What if the seller and/or buyer refuse to sign the COVID-19 Phase 2 Disclosure form?***

A - Licensees should follow the same procedure when a consumer refuses to sign an agency disclosure form. If the seller and/or buyer refuse to sign the form, the agent shall set forth a written declaration of the facts of the refusal and shall maintain a copy for the broker's file.

***Q - If a buyer/tenant refuses to sign the COVID-19 disclosure or answer the screening questions, can the seller/landlord refuse to show the property to that party?***

A - Yes, the seller/landlord can require compliance with both the COVID-19 Phase 2 Disclosure Form as a prerequisite before the showing. Consumers are not required to sign the COVID-19 Phase 2 Disclosure or answer the screening questions and if all parties are comfortable with that, a showing may occur.

***Q - If a seller/buyer/landlord/tenant answers yes to any of the screening questions, what***

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***should I do?***

A - If a seller/buyer/landlord/tenant answers yes to any question, it would be up to the parties as to whether they want to continue with the in-person showing assessing what risks they may be taking. For instance, a buyer is a health care worker and is exposed to COVID-19 as a result of their occupation. That would not disqualify them from the in-person showing if the seller is comfortable with the precautions being taken. If they are not comfortable, a licensee would not be required to conduct an in-person showing if any of the questions were answered "yes". This would be a scenario where it would be prudent to utilize the COVID-19 Phase 2 Disclosure Form.

***Q - Can a licensee perform an in-person open house in a region open under Phase 2?***

A - Yes, however the Interim Guidance Document only permits one party to be in the property at a time. As a best practice, licensees should schedule appointments for an open house in order to avoid having multiple parties present at the property and congregating outside waiting to see the property.

***Q - Can I have in-person contact with a member of the public in a region open under Phase 2?***

A - Yes. The Interim Guidance Document permits in-person contact with a member of the public so long as required health and safety measures set forth in the document are followed.

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

A - That would be up to the inspector and their interpretation of the Interim Guidance Document.

***Q - Can I conduct a final walkthrough with a consumer in a region open under Phase 2?***

A - Yes, so long as all requirements for a showing contained in the Interim Guidance Document are strictly followed.

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***Q - Can a licensee perform in-person showings in a region open under Phase 2?***

A - Yes, so long as all requirements contained in the Interim Guidance Document are strictly followed.

***Q - Can I attend a closing in a region open under Phase 2?***

A - Licensees should not be attending closings in-person.

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