



CALIFORNIA ASSOCIATION OF REALTORS®

What Brokers Want to Know About COVID-19

During these challenging times, the utmost priority is to ensure the health and safety of California REALTORS®, their clients, and the general public. We also recognize that we have a duty to the membership to do what we can to assist members in their businesses and help provide shelter for their communities under safe conditions. As you are aware the Governor issued an Executive Order to Stay-in-Place and many local governments have enacted stricter orders. Members must abide by the Governor's order and any stricter orders that may have been enforced by your local government. C.A.R. is working on several fronts with the government to get clarity and find ways on how California REALTORS® can continue their businesses in a safe manner and assist clients virtually and/or with other specific conditions during this unusual environment.

On March 20, 2020 – C.A.R. conducted a town hall virtual meeting with over 300 leaders of large brokerage firms from across the state. The following are the questions that were asked by the brokerage community and the answers from the legal and professional services team at C.A.R.

Please reach out to Sara Sutachan, Vice President of Industry Relations at C.A.R. if you have any questions or concerns.

“Stay at Home” & Real Estate

Q: Are real estate sales an “essential service” in the context of the Bay Area’s “Shelter-in-Place” order and/or Governor Newsom’s “Shelter-in-Place” statewide order?

No. Governor Newsom’s Executive Order N-33-20 requires all Californians to stay home except as needed to maintain continuity of operations in 16 infrastructure sectors. This supersedes all existing local, city and county orders that are less restrictive. The real estate industry is not exempt from this prohibition except as needed to maintain “continuity of operation ... of ... construction, including housing construction.” Therefore, for the health and safety of our members and their clients, REALTORS® should cease doing all in person marketing or sales activities, including showings, listing appointments, open houses and property inspections. Clients and other consumers are also subject to these orders and should not be visiting properties or conducting other business in person.

Full C.A.R. Guidance on Stay-at-Home is found [here](#).

Q: Are real estate offices allowed to stay open?

Not unless there you are conducting essential business under the Cybersecurity and Infrastructure Security Agency (CISA) guidelines.

Q: Is C.A.R. saying that there is no exception for real estate? The governor's order references the federal exemptions -- and real estate is in there. What's the scope?

Yes, for Property Management and repair work there is an exception because activities that generally involve maintaining sanitary and safety conditions are permissible.

Q: If we are not exempted as an essential industry, are we to send our staff home immediately?
Yes.

Q: Are agents allowed to hold open houses if they follow social distancing rules?

Agents should stop holding open houses or any in person activities.

Q: Can home inspections still be performed?

Agents should stop any in person interaction including inspections.

Q: Are we allowed to do private showing if the property is vacant?

No, not at this time.

Q: Can we do final walk-throughs?

No, not at this time.

Q: Can C.A.R. issue guidelines on what specific activities can and cannot be performed by Realtors? Can you please provide these interpretations in writing and address "essential business" in concert with the Governor so we can have more clarity for the whole state on all these topics - showings, lockbox showings, inspections, appraisals, notaries, etc.

Yes, it is found here: [Statement on Stay-at-Home Order | Coronavirus](#)

Q: What if my city or county deems real estate as essential but the state of California does not?

The state of California supersedes all local ordinances.

Q: Is C.A.R. advocating for us to be an "essential business?"

C.A.R. is working diligently with the Governor's office to have real estate classified as an essential service. That will clear up the confusion over what is and is not allowed with respect to real estate activities. If successful we will be in the company of several other states who already have this classification for real estate.

However, until we get confirmation of any change from "non-essential" to "essential" our official advice is unchanged. Specifically, for the health and safety of our members and their clients, REALTORS® should cease all in-person marketing or sales activities, including showings, listing appointments, open houses and property inspections. The state executive order supersedes all existing local city and county orders that are less restrictive. The real estate industry is not exempt from this prohibition except as needed to maintain "continuity of operation ... of ... construction, including housing construction. That is today. coronavirus situation and order restricting behavior continue to rapidly shift. We are committed to keeping you updated immediately as the situation evolves and policies change.

But please remember that the health and safety of human lives is of the utmost importance as you are continuing to conduct business as safely as possible.

Your Brokerage & Agents - Pertinent Information for Broker/Owners Found Here: [For Broker/Owners | Coronavirus](#)

Q: Do we close businesses even if we are a small business?

We are exploring what we can do to. Forwarding your mail is advisable. There is no confusion that you need to send your employees home because real estate has been deemed non-essential at this time. For more guidance for employers please see: [Guidance for Employers | Coronavirus](#).

Q: What if I need an emergency Small Business Loan?

The U.S. Small Business Administration is offering low-interest federal disaster loans for working capital to California small businesses suffering substantial economic injury as a result of the Coronavirus (COVID-19), SBA Administrator Jovita Carranza announced today. SBA acted under its own authority, as provided by the Coronavirus Preparedness and Response Supplemental Appropriations Act. This legislation, recently signed by the President, declares COVID-19 a disaster following a request received from Gov. Gavin Newsom's designated representative, Director Mark S. Ghilarducci of the Governor's Office of Emergency Services on March 13, 2020.

Q: Can Realtors receive benefits from stimulus benefits? Independent Contractors need help now.

On March 19th, C.A.R. sent a letter to the California Congressional Delegation asking Congress to include benefits and forgivable SBA loans for self-employed independent contractors in the next bill addressing the coronavirus crisis.

[C.A.R. and NAR ask Congress for aid for REALTORS®.](#)

Additionally, thanks to the first round of stimulus (Coronavirus Preparedness and Response Supplemental Appropriations Act) – REALTORS® are qualified if they are “small businesses” as defined impacted by COVID-19 since Jan. 31, 2020. They can apply online for these Economic Injury Disaster Loans (EIDL) [SBA Disaster Loan Assistance](#).

(N.B. Under California's order real estate sales, rental leasing, and all ancillary industries directly involved in sales and leasing transaction will come to an immediate halt. An SBA loan, even with zero interest rate, won't help most independent contractors if they are unable to perform their work to pay the loan back.)

Q: Large brokerage, more than 50% of our agents receive their mail at the office. There is a skeleton crew there right now trying to figure out how to go remote. There are 100 pieces of mail every day, how do we handle that?

No legal interpretation. Reasonable to have one person go to the office to collect mail and placed in a location to access it. And reroute your mail elsewhere.

In Contract & Force Majeure

Q: If I can still close a transaction but can't do a home inspection, how do I close?

A buyer is not legally required to have a home inspection as part of the purchase process. In other words, it is legal to close escrow without first having a home inspection conducted. Of course, there are risks associated with this course of action. Agents should discuss the situation with their buyer clients and let the client decide if they are comfortable closing the purchase without a home inspection. If the buyer elects to proceed, the agent should confirm this choice in writing. C.A.R. Form BIW – Buyer Inspection Waiver – can be used for the buyer to confirm their choice to waive inspections.

Q: So, if we can't do an inspection how do we close? Can we do a virtual inspection?

As discussed above, transactions can close without inspections. With respect to the Agent Visual Inspection, this is generally required and not typically waivable. However, it is unlikely that a Realtor would face consequences for failing to conduct an Agent Visual Inspection when they were legally prohibited from doing so. If possible, conducting an inspection virtually (presumably with the cooperation of a seller) may be the best option at this time.

Q: Is Force Majeure in the RPA?

No, there is no Force Majeure clause in the RPA. However in some extraordinary circumstances (such as pandemic perhaps) California Civil Code Section 1511.2 will excuse parties from their contractual obligations.

Q: What form gives the right under force majeure?

If the parties want to introduce a form of Force Majeure clause into the contract, they may -use the new C.A.R. Form CVA – Coronavirus Addendum/Amendment.

Q: Who wrote the amendment/addendum is consultation with whom, and why? Force majeure protections were already there for buyers if appropriate without damaging sellers with a "free out" for buyers.

The new Form CVA was created by C.A.R. because there is not currently a force majeure clause in the RPA or any other C.A.R. purchase agreement. The form is designed to give clarity to a buyer and seller regarding what will happen if the transaction cannot be closed. The form can be used as an addendum if the parties are not yet in contract or as an addendum if they are already in escrow but either way the form is optional, and no one is required to sign it.

Q: What about release of deposits once contingencies are removed?

If contingencies have been removed, the seller may still be entitled to the earnest money deposit in the event the buyer does not close escrow. Any rights for the buyer to reclaim the deposit may depend on the specific circumstances of the transaction and buyer involved. As always, escrow will almost certainly require mutually executed instructions by both buyer and seller before releasing the deposit to either side.

Q: Will currently scheduled appraisals be curtailed or are those considered part of the financial sector?

This may depend on the escrow and appraiser involved. Many lenders and appraisers are continuing to proceed and consider themselves exempt from the current restrictions as part of the financial services sector. Agents are still advised not to schedule any face-to-face interactions at this time.

Q: Regarding the Coronavirus Addendum (CVA) items 2 and 3, per escrow they will still need the Cancellation of Contract (CC) form to be signed by all parties in order to cancel and refund deposits. They want that to be clear that they cannot do that with CVA alone.

Yes, escrow will still require buyer and seller to mutually execute cancellation instructions, such as C.A.R. Form CC, before cancelling the escrow and releasing the deposit to either party.

Q: Do we have any changes with virtual notaries? Are those permitted in CA? If not, can you push on that which would help with closings?

Virtual notaries are not currently allowed under California law. C.A.R. is working on emergency legislation that would allow for virtual notaries.

Q: I have a situation with a seller rent-back and the buyer should get the key by next Friday. Can buyer have seller move out and obtain the access? Can the buyer do an inspection/walk-through?

Some local cities and counties specifically allow moving companies to continue operation. However, there is no such allowance under the statewide rules, which are more restrictive and supersede the local ordinances. It's not clear however. If the escrow has closed it is probably ok to move out or move in. However, the walkthrough is probably not permitted.

Q: What about older clients who cannot do DocuSign? Is there a way to do a limited power of attorney with voice memo?

Current California law requires a Power of Attorney to be granted only via a notarized document or another written document signed by two witnesses. You may want to check with your escrow and title officer regarding specific requirements and what options may be available to your clients. The U.S. mail is always an option.

Q: I have a buyer who is cleared to close with loan docs ready. They now they say they do not want to buy the house. Can this be covered? Then there is a similar situation and the buyer is asking for a 500k price reduction. Is this extortion?

The rights of the buyer may be different depending on whether they are unable or simply unwilling to close. Requesting a price reduction is not typically considered extortion, but an aggressive form of negotiating.

The Market & Home Finance

Q: What about liquidity in the mortgage markets?

The Federal Housing Finance Agency (FHFA), Treasury and Federal Reserve are all taking

very significant steps to maintain market liquidity. The Federal Reserve cut interest rates to zero and announced that it would expand its balance sheet by \$700 billion, pledging to purchase \$500 billion of U.S. Treasuries and \$200 billion of mortgage-backed securities (MBS). FHFA is providing mortgage backed securities investors with short-term financing and has stated that landlords with government-backed loans wouldn't face foreclosure if they didn't evict their tenants.

At the same time, the concern remains that, depending how significant the loss in jobs, some borrowers will be unable to pay on their loans. Banks are facing pressures that will make it hard for them to step in by making or purchasing mortgages others are dumping. Corporate borrowers have been drawing down credit lines at banks, siphoning off cash and raising the prospect that the lenders will eventually incur losses.

Q: Are appraisers deemed essential?

Appraisers are not deemed essential at this time; however, the FHFA announced today they are allowing for greater flexibility to appraisal requirements for Fannie and Freddie loans.

Q: We are hearing of Automated Valuation Model (AVM) appraisals in lieu of in person appraising...There are some folks looking into FaceTime appraisals.... What is the status of this?

On Monday, March 23, the Federal Housing Finance Agency (FHFA) directed Fannie Mae and Freddie Mac to provide alternative flexibilities to satisfy appraisal requirements and employment verification requirements through May 17, 2020. For more information see [Public Affairs Detail | Federal Housing Finance Agency](#). As an example, Freddie Mac will accept either an appraisal with an exterior-only inspection or a desktop appraisal (as described below) in lieu of the interior and exterior inspection appraisal as released in their servicing bulletin here: [Bulletin 2020-2 Servicing](#)

Q: What about the loan doc signing? How do we handle that?

Guidance currently from Escrow & Title Notaries (Notes & Deeds sending via Fed Ex for now, remaining through DocuSign or other electronic signature) that have agreed to set up outside tables with sterile environment before and after client signings, and they keep the pen to avoid exposure for anyone. Avoiding, where possible, going into homes or having to have clients go into escrow offices. Looking into e-signing on camera and limited power of attorney to escrow.

Impact on MLS Statuses, Showing Instructions and DOM

Q: Can all MLS's freeze Days on market (DOM) effective today?

Impact on MLS Statuses, Showing Instructions and DOM In light of Governor's Order of 3-19-20, in many instances, these conditions will prompt listing agents, in accordance with seller's wishes, to change the MLS listing status to something like hold or withdraw – but if the listing agreement is still in effect, one would not select cancelled. Listing agents also have the option to maintain the listing in an active status, (or coming soon/delayed showing if such status is offered and appropriate under local MLS rules) albeit with an understanding of the limitation imposed on

all face-to-face activity. Agents will have to be mindful of the implications of each status selection within their local MLS rules.

Under these extraordinary circumstances, if so desired, an MLS in its discretion could elect to alter its usual Showing Instructions and/or DOM approach, either by taking a unilateral approach systematically in the MLS such as temporarily de-activating the field, or, as referenced above, simply continuing to offer participants the option to alter their status designation into a field that suspends showings and/or the clock ex: hold or other options in one's system. Under either scenario, it's a given that all California listings are subject to this same Order of 3-19-20 causing all listings, active or otherwise during this time, to be assessed in the same light.

If an MLS does alter or suspend the DOM, keep in mind, however, portals like Zillow, Realtor.com and others who also calculate their own DOM might not be changing their DOM calculations. That raises the concern of having 2 differing, publicly available DOM sources possibly causing the buying public to lose confidence in the MLS reporting and/or creating potential liability situations for agents for inaccurate reporting. Thus, if an MLS does decide to pause the DOM calculations, best practice would be to keep measuring things both way so that future evaluation of this current marketplace will be possible. When this is all over, it will still be important to keep an accurate tracking of what happened, so even if the DOM clock stops, the CDOM clock should keep going so the total picture is still there.

Also, this [Inman article](#) may be of interest regarding what some other MLSs are doing. Based on that set forth above, the MLS has various options to consider depending on what works best locally and within the fields and functionality of its system.

Q: Can we finally get a coming soon designation in the MLS for homes we have signed contracts on but cannot show or host open houses on? Also, this designation would not affect DOM or CDOM.

Impact on Open Houses and Showings

Per the Governor's Order of 3-19-20, traditional in-person, face-to-face marketing/sales activity should cease. That would include any traditional open houses and showings. Existing virtual tours and other digital images and information about the property will have to fill that gap during the stay at home order. Virtual activity is permissible and to be embraced, however, as it currently stands, following the issuance of Governor's Order of 3-19-20, heading to the property to commence or conduct virtual tours/showings via facetime or other technology would be a violation of the stay at home order, although listing agent could have the seller/occupant record one and make that available digitally.

Note: any transactions with a willing buyer and seller that can and will proceed and even close under the current conditions can do so. We expect that technology and process adaptation by the industry will facilitate some level of continued new listings, sales and closings throughout this pandemic period.

Q: Can we get NAR to postpone the Clear Cooperation Policy May 1st implementation?

They are not postponing at this time, but that could change.

The CCP Advisory Board conducted a previously scheduled meeting last week. In response to CAR's inquiry about postponing the deadline, the official response NAR gave on Friday is that they are sticking with the May 1st deadline. See their statement below:

"Members of NAR's MLS Technology & Emerging Issues Advisory Board met this week and discussed among several items the impact of COVID-19 on MLSs and the real estate industry more broadly. The Advisory Board members determined that it is important to maintain the May 1, 2020 implementation deadline for the Clear Cooperation policy. MLSs who have challenges implementing the CCP by the May 1 deadline as a result of the impacts related to COVID-19 are encouraged to contact NAR's MLS team for guidance and assistance."

C.A.R. is aware that as of Monday of this week, several brokers sent formal letters to NAR requesting postponement. If additional brokers feel the same way, they could also submit similar requests to NAR. We shall see if this changes things, but NAR's decision from as recently as last Friday is that the May 1st deadline stands.

Property Management Questions

Q: Does the Governor's order apply to Property Management?

A: Property management and repair work, which generally involves maintaining sanitary and safety conditions, is permissible. Additionally, many other aspects of the real estate industry can continue to occur without in-person contact, including documentation and signing, and in many circumstances, closings. Other activities may also be managed remotely, though there may be some difficulties.

Additional links/resources

Please visit <https://www.carcovidupdates.org/> for the most up to date information.

- For Brokers - [For Broker/Owners | Coronavirus](#).
- Every Tuesday members will receive the California Coronavirus Weekly Recap with a weekly digest of critical news for you and your clients. Check your inbox for an email from news@car.org on Tuesdays.