

COVID-19 FAQs

Below are some common questions that we have received regarding the Governor's "Stay-at-Home" Orders. Please know that we fully appreciate the hardships created by the limitations discussed below. However, the Governor's Office has repeatedly made it clear that real estate service providers are not "critical infrastructure workers." We will certainly update/supplement these FAQs as we receive new information.

1. **QUESTION:** Can I conduct "in-person" showings of listed properties?

ANSWER: No. The Governor's Order issued on April 24, 2020 does not permit a real estate licensee to visit a seller's home for any purpose.

2. **QUESTION:** What are the rules for a real estate licensee's participation in closings that occur while the Governor's Order is in place?

ANSWER: A real estate licensee can only attend the closing remotely (via phone or video conference). You should review the closing documents prior to closing so that you can fulfill your Occupational Code obligation to make certain that the transaction is closed consistent with the purchase agreement.

3. **QUESTION:** I have a new listing and want to take photographs of the inside of the home. Can I do that if I arrange to do it when there is no one home?

ANSWER: No. The Governor's Order provides that "all individuals currently living within the State of Michigan are ordered to stay at home or at their place of residence" other than as expressly permitted under the Order. Permitted travel (listed in Section 7 of the Order) for persons who are not critical infrastructure workers is limited to trips for things such as getting food and critical supplies.

4. **QUESTION:** I am a broker and want to go to my office in order to handle banking matters, pay bills etc. Is this permissible?

ANSWER: Yes, the Governor's Order states that all types of businesses may have designated persons who travel to the place of business as necessary to take care of minimum basic operations, which includes essential tasks such as taking care of payroll and employee benefits. The following language may be used by brokerages and associations for very narrowly permitted travel under the Governor's Executive Order 2020-59. Please note that this language is not intended to permit travel to

showings, open houses, or other work that is otherwise not permitted under the Executive Order.

[Permitted Travel Letter](#)

5. QUESTION: I have a closing taking place tomorrow. I am looking for ideas as to how to get the final walkthrough completed.

ANSWER: It is our opinion that the Governor's Order does not permit a walkthrough. If the contract requires a final walkthrough, either the buyer must waive that requirement (in writing so as to protect the agent) or the closing must be delayed until the walkthrough can happen.

6. QUESTION: Can a buyer with a purchase contract in place have an inspection done if the seller agrees?

ANSWER: Yes. According to the March 30th Department of Insurance and Financial Services ("DIFS") Bulletin 2020-11-BT/CF/CU, inspectors are considered critical infrastructure workers. Please note that in a subsequent FAQ, DIFS made clear that inspectors are included in "financial services" only if there is a purchase agreement in place that requires an inspection as a condition of closing. Inspectors may not, for example, visit a home on behalf of the listing broker/sellers at the time the home is listed or on behalf of potential buyers before they sign a purchase agreement. [\[Link to FAQ\]](#)

7. QUESTION: Can my buyers attend the inspection of the home that they are purchasing?

ANSWER: Under the Order, home inspectors are critical infrastructure workers, which means that their business has been deemed to be a business or to support a business that "is necessary to sustain or protect life." Under the Order, individuals may leave their home to obtain "necessary services or supplies." "Necessary services" would be "services necessary to sustain or protect life" which has been deemed to include home inspections. That being said, individuals who are allowed to continue to work must "adopt social distancing measures and other mitigation measures to protect workers and patrons." It is up to each critical infrastructure worker (title company, appraiser, inspector) to make its own rules as to how to best mitigate risk in compliance with the Order.

We continue to receive a number of questions as to the right of buyers to attend home inspections. First of all, MR has no position as to whether inspectors should or should not allow buyers to attend home inspections. This is a decision that needs to be made by the home inspector (and of course the buyer and seller). All we have said is that we do not read the Governor's Order as prohibiting a buyer from attending in all instances.

8. QUESTION: My buyers want out of their purchase agreement because of their overall uncertainty about the effect of the coronavirus pandemic. My buyers have decided they don't want to make a large purchase now, even though they can afford it. Given the circumstances, can my buyers unilaterally terminate the purchase agreement?

ANSWER: As a general legal matter, there is no right to unilaterally terminate a contract due to a change in circumstances – even a really significant change in circumstances.

There is a legal doctrine under which a party can terminate a contract if after the contract is signed, it has become objectively impossible to perform. But this doctrine would mean that performance was impossible, not simply significantly more difficult. While it might be impossible to close a particular deal right now, in light of the Governor's Order, a court could easily conclude that this temporary impossibility means that your buyers are entitled to a reasonable extension, not a termination.

9. QUESTION: My sellers are willing to extend the contract but are concerned that the Governor's Order will be extended beyond May 15th, so do not want to agree that the contract will terminate after 30 days.

ANSWER: There is nothing magic about a 30-day extension and the parties can certainly agree to a longer period. However, there needs to be an outside date, after which the contract automatically terminates or either party has the option of terminating. The amendment should not provide that the contract will be extended until the crisis "is over" or until this "all dies down."

[\[Link to download\]](#)

10. QUESTION: The signed purchase agreement states that my buyers will pay cash for the home. They have now produced a document signed by their financial advisor stating that due to market conditions, they no longer have sufficient funds to buy the home. Can my buyers terminate the purchase agreement?

ANSWER: If a purchase agreement calls for a cash purchase, it is not contingent upon the purchasers having available cash. Rather, by agreeing to a cash purchase, the purchasers are representing that they have the available funds. Purchasers are not excused from performing under the contract if, due to market conditions, they no longer have enough money to close. Rather, under these circumstances, the purchasers would be in breach of contract.

11. QUESTION: I know that the Governor's Office has indicated that real estate agents are not considered "critical infrastructure workers" unless they represent someone with "a genuine and emergent need for shelter." I represent sellers who have sold their home and need to find somewhere else to move. Do these sellers qualify?

ANSWER: The exception referenced by the Governor's Order refers to persons who provide food, shelter and necessities of life for commonly disadvantaged or otherwise needy individuals, or individuals who need assistance as a result of this emergency. Your sellers do not appear to fall within either of these criteria.

12. QUESTION: What is the rule on possession for closings? Can people move? Do they have to "shelter in place" until the Governor's Order expires?

- ANSWER: Under Governor's Order 2020-59, moving is listed as a "resumed activity." The Order also expressly states that individuals are permitted to move to a new residence.
13. QUESTION: Do the same rules apply for vacant properties as for occupied homes?
- ANSWER: The same rules apply for vacant homes and occupied homes. A real estate agent cannot visit a vacant home in order to take photographs, install a lockbox etc. And buyers cannot be given a lockbox code and be permitted to tour a vacant home on their own.
14. QUESTION: Can I place signs in a seller's yard if I am careful not to interact with the seller while I am at the home?
- ANSWER: No. A real estate licensee may not travel to a seller's home to install signs.
15. QUESTION: Can appraisers continue to appraise homes while the Governor's Order is in place?
- ANSWER: Yes. Financial services providers have been deemed to be critical infrastructure workers. DIFS has issued a bulletin in which it has indicated that "financial services" includes title companies, appraisers, surveyors, registers of deeds and notaries.
16. QUESTION: If I own two residences in different parts of the state, may I travel from one to the other?
- ANSWER: Yes. As of April 24, 2020, Michigan residents may travel from one residence to another.
17. QUESTION: Can the sellers show their own home?
- ANSWER: No. The Governor's Order prohibits sellers from opening their home to potential buyers and potential buyers from visiting the sellers' home.
18. QUESTION: I have been asked to help find housing for a number of medical workers who are working in the area on a short-term basis. Can I help them?
- ANSWER: Yes. The Governor's Order allows persons to help "individuals who need assistance as a result of this emergency" find shelter. The Order specifically allows persons to advertise and rent short term vacation properties to health care professionals or volunteers aiding in the response to the crisis (but for no other purpose).
19. QUESTION: I am a Realtor® living in Indiana near the Michigan border. I hold a real estate license in both states. Can I continue to show homes in Michigan if permitted under Indiana "stay at home" order since I am a resident of Indiana?
- ANSWER: No. Governor Whitmer's order applies to all real estate activities taking place within the State of Michigan.
20. QUESTION: My buyers had an inspection that disclosed that there was window with a broken seal. The buyers are willing to go ahead with the purchase if the sellers will have the window replaced prior to closing. If the sellers are willing to do so, can they have this work done so that the closing can proceed?

ANSWER: No. Under the Governor's Order 2020-59, the only repair work that can be done is work that is necessary to "maintaining the safety, sanitation and essential operation" of a residence. The replacement of the window does not appear to qualify. This situation will need to be handled either through a credit to the purchase price, or an extension of the time to close.