

FAQ: Real Estate Industry during COVID-19

Provided By:



From a fair housing perspective, what unique issues does coronavirus present to the real estate industry?

When an infectious disease, such as COVID-19, is associated with a specific population or nationality, fear and anxiety may lead to social stigma and potential discrimination.

REALTORS® must be mindful of their obligations under the Fair Housing Act and Arizona's own fair housing laws and be sure not to discriminate against any particular segment of the population.

May I ask clients at an open house or others I interact with in my real estate business if they have a respiratory illness or are showing other signs of sickness such as a fever?

Yes. It is allowable to ask if the person has a cold, influenza or other contagious respiratory illness. You may also ask whether the individual has recently traveled abroad. Agents are not required to put themselves at risk. However, such questions must be directed to all clients equally. Otherwise, agents could face claims of discrimination on the basis of ethnicity, national origin or race.

The most important part of any screening policy is to be sure to ask ALL clients the same screening questions.

Should we hold public open houses?

Arizona REALTORS® suggests that public open houses be limited and, if they are to occur, brokerages should take proactive steps to comply with the Governor's recommendation to avoid

mass gatherings of 10 or more people at one time. Suggestions include posting a notice on the door stating that entrance will be limited, and visitors should wait outside in a queue that includes enough space for social distancing. As always, consult with the property owner first about their comfort level with allowing public open houses and consider canceling open houses and instead providing private showings. Should you host open houses, be sure to follow the 10-person maximum capacity recommendation, have hand sanitizer available for anyone entering the home and frequently wipe down common surfaces.

I typically drive my clients to showings. May I refuse to drive potential clients to see homes?

Yes. However, be sure that any changes to your typical business practices are applied equally to all clients. You may refuse to drive clients who show signs of illness or reveal recent travel to areas of increased risk of COVID-19, or you may decide to stop driving clients in your car altogether and simply arrange to meet clients at a property.

If you do continue to drive clients in your car, it is a good idea to frequently clean and disinfect surfaces like door handles and seat belt latches, and to ask clients to use hand sanitizer when getting in and out of the car.

What should I do if I have been exposed to the virus but did not find out until after interacting with clients and customers?

You should communicate with those clients and customers with whom you came into close contact and let them know about the potential of a suspected case.

Can either party terminate an existing contract based on something related to COVID-19, such as illness, exposure, quarantine, etc.?

The Residential Resale Real Estate Purchase Contract does not expressly contain a termination provision triggered in the event of a pandemic or something of a similar nature. However, legal arguments may exist separate and apart from the language contained within the Purchase

Contract. REALTORS® should not discuss such options with their clients. Rather, the client should be advised in writing to seek independent legal counsel.

Is there a COVID-19 addendum that I can use in my contracts?

Unfortunately, many people have lost their job or experienced a sharp decrease in earnings as a result of COVID-19. Should this occur, it is likely that the buyer will be unable to secure financing, thereby triggering the loan contingency set forth in section 2c of the Residential Purchase Contract. Pursuant to this section, the Purchase Contract can be canceled, and Buyer shall be entitled to return of the Earnest Money if after diligent and good faith effort, Buyer is unable to obtain loan approval without PTD conditions.

Since there is no financing contingency in the event of an all cash sale, a cash-buyer that has lost their job or experienced loss of income may need to rely on the compassion of the Seller in order to recover their Earnest Money.

What if a buyer cannot close escrow due to loss of employment or decrease in income?

If a client expresses a desire to cancel their listing, the agent should determine the reason why and whether the client's concern can be addressed without the need for cancellation. We encourage listing agents to be patient with reluctant sellers in terms of showings and entering into contracts if they are uncomfortable with the uncertainty.

What if a client wants to cancel the listing contract due to COVID-19?

If a client expresses a desire to cancel their listing, the agent should determine the reason why and whether the client's concern can be addressed without the need for cancellation. We encourage listing agents to be patient with reluctant sellers in terms of showings and entering into contracts if they are uncomfortable with the uncertainty.

What if a tenant refuses to allow a showing?

The landlord-tenant relationship is established through the lease, subject to the underlying landlord-tenant act. A.R.S. § 33-1343 provides that a “tenant shall not unreasonably withhold consent to the landlord to enter the dwelling . . . or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors.”

If a tenant refuses to allow a showing, the landlord should be contacted and advised to consult independent legal counsel regarding the landlord’s rights.

To ensure health and safety and to reduce property owners’ potential liability, landlords or property managers may want to screen for COVID-19 exposure those wishing to view the property. If implementing a screening process, remember to adhere to fair housing guidelines, which dictate that landlords and property managers may not discriminate against anyone based on race, color, national origin, religion, sex, familial status or disability. Property managers should also encourage property owners to speak to their own risk advisors or attorneys on matters related to COVID-19.

What if someone living in the house has been diagnosed with COVID-19? Does it need to be disclosed?

Yes. The seller should disclose that someone living in the house has been diagnosed with COVID-19 so that any person entering the property may take necessary precautions. If the buyer is concerned, the parties may want to consider postponing Close of Escrow.

What steps can I take to best protect my buyers and sellers who are entering into a Purchase Contract?

First and foremost, check with your broker to see if they have approved language for insertion into an Addendum or the Additional Terms section of the Purchase Contract in the event that either Buyer, Buyer’s lender, Seller, Escrow Company or appropriate county recorder’s office becomes the subject of a voluntary or mandatory COVID-19 virus quarantine or closure prior to or at the time of Close of Escrow.

Second, consider an extended period of time for close of escrow. Third, inquire with third-party affiliates integral to the transaction such as home inspectors as to delays you can expect, and account for those delays in the Purchase Contract or an addendum. For example, an extended inspection period may prove necessary. Finally, stay in close communication with your client to best manage their expectations, answer their questions and assuage their fears.

What if a party is subject to quarantine and a mobile notary cannot be located to obtain the client's signature on the necessary closing documents prior to Close of Escrow?

Agents should discuss any such scenario with their broker. If the parties are agreeable, an addendum to extend the date for Close of Escrow is an option. Should a party want to cancel the Purchase Contract due to the other party's failure to close escrow, a Cure Period Notice should be sent, and independent legal counsel should be consulted.

How does COVID-19 affect my brokerage?

NAR has prepared an article titled [Coronavirus Resources and Guidance for Employers](#) to help brokerages comply with applicable laws. NAR has also prepared a Sample Preparedness Plan For Circumstances Relating To COVID-19, which is located at the same link.