

MICHIGAN REALTORS®

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" under either Order 2020-21 or Order 2020-42. We will certainly update/ supplement these FAQs as we receive new information.

1. 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.

2. 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" 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.

3. 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 2020-42. 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

[Download Letter](#)

4. 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.

5. 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 ("DFIS") Bulletin 2020-11-BT/CF/CU, inspectors are considered critical infrastructure workers. Please note that in a subsequent FAQ, DFIS made clear that inspectors are included in "financial services" only to the extent an existing purchase agreement requires an inspection before a transaction can close. [Department of Insurance and Financial Services FAQ](#)

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

ANSWER: Yes, but only with the permission of both the inspector and the sellers. Inspectors, like other persons who have been deemed "critical infrastructure workers," are responsible for determining their own appropriate mitigation measures for protecting their patrons.

7. 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.

8. QUESTION: My sellers are willing to extend the contract but are concerned that the Governor's Order will be extended beyond April 30th, 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."

9. 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.
10. 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.
11. 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: It is our understanding that many movers continue to do business under the essential critical designation "employees supporting or enabling transportation functions" and "shipping workers." While it is no longer as clear as under the earlier Order, it is our opinion that patrons of the movers, sellers and buyers, are permitted to move from their prior residence to their current residence. DFIS has repeatedly made clear that the exemption for "financial services" is intended to permit the closing of residential real estate transactions. As part of that transaction, persons must be allowed honor their contractual obligations vis-a-vis occupancy.
12. QUESTION: Do the same rules apply for vacant properties as for occupied homes? Why can't a real estate agent visit a vacant home in order to take photographs, put up a sign, etc.?
- ANSWER: The same rules apply for vacant homes and occupied homes. The framework of the Governor's Order is that it limits the reasons for which any resident can leave their home. And the provision of real estate services by a real estate licensee is not one of those reasons.
13. QUESTION: Can I place signs in a seller's yard or remove signs from 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 for any reason.

14. 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. DFIS has issued a bulletin in which it has indicated that "financial services" includes title companies, appraisers, surveyors, registers of deeds and notaries.
15. QUESTION: I have two homes and have been told that I need to select one and remain in that home while the Governor's Order is in place. Is that true?
- ANSWER: Yes. As of April 10, 2020, Michigan residents with two residences may no longer travel from one residence to another.
16. 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.
17. 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).