

OPEN HOUSE, SHOWING & FAIR HOUSING GUIDANCE FOR COVID-19

This is general guidance only. The highest priority of every Missourian and real estate licensee, in the midst of this pandemic, is to take every precaution available to limit the exposure and spread of the coronavirus. Even more important than the job of selling a home is the duty to strictly adhere to governmental orders and the spirit of those orders, which is, undeniably, to limit all accidental and known exposures to the virus.

The coronavirus pandemic, like the various orders and approaches taken to curb its spread, is constantly evolving and individual situations and local conditions can and do greatly differ. Each real estate professional must determine whether they will provide any services during this time. Members should always consult their brokers, legal counsel, public health information, and applicable executive orders and agency guidance on conducting real estate-related activities during COVID-19.

To address issues that come up in your day-to-day business, we urge members to find answers that ensure first-class service to clients, while also demonstrating care for the health and well-being of clients, agents, and the greater public welfare in reducing the spread of COVID-19.

Should we continue to hold open houses during the COVID-19 pandemic?

REALTORS® are strongly urged to use virtual showings and to limit in-person activity in all other respects to the greatest extent possible, even where real estate is deemed an “essential service” and Stay at Home orders have expired. Adherence to applicable state and local executive orders is a minimum requirement, and in some instances, may even preclude open houses, in-person showings and limit the number of individuals permitted at a showing. Regardless, REALTORS® have the special responsibility and mandate to take all necessary health and safety precautions, and should lead by example by conducting their services in a responsible manner, which includes leveraging virtual technology solutions and avoiding in-person contact to the greatest extent possible in order to prevent the continued spread of COVID-19 in their communities.

If a “Shelter In Place” Order or similar order is still in effect in my geographic area, can a broker require their agents to stop holding open houses and conducting other in-person real estate activities?

Yes. Brokers can and should enforce executive orders with all agents, including independent contractors. While the statewide “Stay Home Missouri” order has expired, in accordance with the guidelines from the President and the Centers for Disease Control and Prevention (CDC), at a minimum, **every person and business in the State of Missouri is required to abide by social distancing requirements, including maintaining six feet (6') of space between individuals.** **This order currently expires on May 31, 2020.** Brokers and agents must also be familiar with any more strict compliance criteria that may be in effect in their geographic area, and how local order(s) may impact the permissibility of conducting in-person real estate-related activities. This varies widely across the State of Missouri.

What anti-discrimination laws apply to housing during the COVID-19 pandemic?

Federal and state fair housing laws remain intact during the COVID-19 pandemic. Those laws make it unlawful to discriminate on several protected bases, including disability and national origin. The pandemic provides a unique set of circumstances for navigating federal antidiscrimination provisions. First, each real estate professional must determine whether they will provide any services during this time. If you continue to make services available, the Fair Housing Act applies. Such services should be provided on an equal basis while recognizing that no one is required to engage in any transactions that put their health or safety, or the health and safety of others, at risk. If reasonable accommodations can be made to provide housing or services to individuals with COVID-19, without threatening the health or safety of others, the federal Fair Housing Act calls for such accommodations to be made.

Are individuals who have COVID-19 covered under the national origin protections of the federal Fair Housing Act?

Yes. 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 discrimination. REALTORS® may not discriminate against individuals on the basis of their national origin, even if they are from other countries that have also been hit particularly hard by the COVID-19 pandemic.

Can I ask someone if they have been diagnosed with COVID-19 or if they have had known or potential exposures to the virus before providing services to them?

While anti-discrimination laws would generally prohibit certain questions about a person's disability, in light of the fact that COVID-19 is widespread, highly contagious, and potentially very dangerous, some federal agencies have issued guidance relaxing this prohibition. For example, the EEOC and CDC, have each issued guidance to employers and homeless shelters, respectively, permitting symptom-related questions to be asked upon entry to a facility. This guidance suggests that it is permissible for real estate professionals to ask someone to self-disclose any symptoms or known or potential exposures to the virus. While such questions may permit REALTORS® to take necessary safety precautions, remember that many individuals with COVID-19 are asymptomatic, so reasonable precautions should be taken regardless of whether someone knows that they have the virus or is exhibiting symptoms. Although it is permissible to ask that an individual self-disclose their exposure to or symptoms related to COVID-19, the COVID-19 crisis does not provide a basis to ask someone non-COVID-19-related health or medical questions.

May I require an individual complete a COVID-19 screening questionnaire before working with that individual?

You may request that an individual self-disclose information about their COVID-19 status either verbally or in writing. A uniform practice in how this information is collected is advisable, and whether to request this information verbally or in writing is a business judgment. On the one hand, written documentation may prove useful in litigation should a future plaintiff make an argument about whether they were asked to disclose their illness, or whether the health questions

had been asked in a selective or particular manner. On the other hand, collecting and maintaining health data about individuals creates a risk that this sensitive data could be revealed, for example, through a data breach or subpoena. Making a verbal inquiry may achieve the same or a similar benefit as a written inquiry, and it may obviate the risk of such disclosure.

If you are considering collecting this information in writing, be sure to consult state law requirements regarding the preservation and maintenance of data.

Am I obligated to assist or show or provide housing to someone who has or may have COVID-19?

REALTORS® who choose to continue providing services during this time have an obligation to make reasonable accommodations to assist or provide housing to individuals who have COVID-19 when able to do so without posing a threat to the health and safety of themselves or others. The federal fair housing law makes an exception to the general anti-discrimination obligations where providing assistance or housing to someone would pose a direct threat to the health and safety of others. For example, when showing housing to such individuals would pose a direct threat to the broker's or others' health and safety, and when a reasonable accommodation to mitigate that threat is not possible, then the broker may decline to show the housing to the infected individual.

When determining whether a reasonable accommodation exists to mitigate the threat, it is important to make an individualized assessment about the risks posed by each individual and the extent to which a reasonable accommodation may be made for these individuals. For example, to the extent it is possible to assist or show or provide housing to an individual who has COVID-19 without threatening the broker's health or the health and safety of others, such measures should be undertaken.

What constitutes a “reasonable accommodation”?

The federal Fair Housing Act requires, to the extent possible, an assessment of whether a “reasonable accommodation” can be made to provide equal access to housing and services to individuals who have a disability. During the COVID-19 pandemic, homeowners may be quarantining in properties and clients, buyers, agents and other professionals may be seeking to enter occupied properties. Thus, the “reasonable accommodation” analysis must evaluate the need to provide housing or services to individuals who have the COVID-19 virus while also protecting the health of all parties to a transaction. This analysis should specifically take into account the fact that the virus is highly contagious and potentially very dangerous if contracted. Each circumstance should be analyzed individually in order to make the accommodation that is most suitable for the situation. Some examples of reasonable accommodations for which sound public health rationales may be advanced, may include offering virtual showings of properties; requiring that the individual requesting the accommodation send a proxy to view the property rather than view it themselves; or providing addendum options such as a contingency that the contract is subject to a later in-person visit at a specified later date in time.

REALTORS® should consider reasonable accommodations, like the examples above, to mitigate health risks while continuing to serve clients and ensuring compliance with all state and federal anti-discrimination laws. However, to the extent that accommodations for individuals who have the COVID-19 virus still present a risk to anyone's health and safety, impose undue financial and administrative burdens, or fundamentally alter your services, the Fair Housing Act does not require the provision of such accommodations.

My seller wants to stop in-person showings, what should I do? Are there any alternatives to in-person showings?

A seller generally has control over how their property is shown and has agreed to certain marketing activity in the listing agreement. If the seller desires to prohibit in-person showings, be sure to get those instructions in writing, and consider an addendum to the listing agreement to extend the listing.

At a time when in-person showings may be inadvisable, and even prohibited, let your client know about available alternative marketing opportunities that will allow you to continue to serve them and market their home. Three-dimensional interactive property scans; virtual tours or live tours using Skype or Facebook; and virtual staging to showcase a property are among the great alternative marketing opportunities you can offer your client.

There are apps that offer on demand open houses, and video tours. Some companies are making their technologies even more accessible, including these NAR REACH Companies:

- [Immoviewer \(link is external\)](#) has removed tour limits for Association/MLS partners. Their tour platform provides a “Live Tour” feature that allows agents to share tour links with potential clients and control movement through the tour, or to give tour control to the consumer to create a virtual showing.
- [FloorPlanOnline \(link is external\)](#) helps you hold virtual showings anytime through an easy to use point & click FloorPlan Tour with an exclusive 3D space designer or a more robust 360 WalkThrough Tour in select markets. Visit FloorPlanOnline for special discounts.

Be sure to secure proper [copyright permissions](#) before uploading any media to the MLS.

In the event the seller wants to cease all marketing efforts, consider placing the property in a “temporarily off market” status.

If I'm allowed to continue in-person real estate activities, may I limit in-person showings to pre-qualified buyers?

Yes. Both listing and buyer's agents may ask if a buyer is pre-qualified to purchase and limit showings to qualified buyers but be sure to ask all buyers for a pre-qualification letter to avoid a potential Fair Housing violation. Keep in mind that it may be difficult for buyers just entering the market to obtain a pre-qualification letter given that many mortgage companies are currently handling high volumes of refinancing applications and other operational issues.

Should I use a COVID-19 hold harmless agreement to protect myself against a party contracting COVID-19 through in-person showings?

Agents should consult their brokers and legal counsel before using hold harmless agreements in order to assess the risk and effectiveness of such agreements. In general, a hold harmless agreement protects a party from liability if another party is injured on their property or is injured during an inherently dangerous activity. In the case of a pandemic where the risks associated are not only widely known, but is also widespread, easily transmittable, and may not show symptoms for days after exposure, proving causation may be nearly impossible from a legal standpoint.

With that said, individual situations and circumstances differ. For example, consider the plight of a health care professional who desires to sell his/her house. While some of the most heroic members of our society, they are amongst the group of people who would have to answer “yes” to the question *“Have you been exposed to somebody with the coronavirus?”*. This question is asked of every person before they are allowed to enter a hospital (and some other locations) because the mere fact that a person has been exposed to someone with coronavirus makes that person a potential carrier of the virus (and a risk for contaminating others). In other words, based on current medical advice, this type of seller could be a danger to those around him/her.

When a listing broker lists a property and invites people into a seller’s home, listing broker has an unavoidable duty to warn of known dangers within the home. A seller’s known exposure to the coronavirus must be disclosed so that buyers and buyer brokers can choose whether to accept the risk by entering (or avoid entering). In light of this risk, each broker should consider whether allowing any in-person showing of this property is tolerable. If listing broker is exposed, listing broker must quarantine him/herself away from family and all other clients (or risk exposure to them). If a member of the public is exposed to COVID-19 in a listed home, what is the legal liability?

A seller who is a medical professional could potentially be held to a higher standard than other sellers. Is there a warning that could sufficiently alert the public (including the brokerage community) to the danger? If a seller has contracted the coronavirus but not yet tested positive, could the home ever be properly disinfected to protect buyers and brokers who enter the home? If the seller is infected and listing broker learns that information after others have viewed the home, must listing broker notify all of those people and then must all of those people self-quarantine for 14 days? The questions of potential risk and liability are endless and none of them have known answers. Individual listing brokers and sellers must make these decisions.

Are there any risks or potential liability to showing a property to a buyer virtually?

Buyers have purchased properties “sight unseen” for a variety of reasons long before this pandemic. However, where a buyer purchases a property without physically visiting, relying only on photos, livestreaming, or online virtual tours, it may be a good idea to include language in the purchase agreement where the buyer acknowledges that the buyer – not the listing broker, agent or seller – is responsible for personal verification, walk-throughs and professional inspections to confirm condition and that the property is satisfactory.

What general safety precautions should I take when providing services?

Consider implementing safety precautions that protect not only against those persons known to have contracted the virus but also the many individuals who may be asymptomatic carriers of COVID-19. The widespread numbers of persons who may be asymptomatic carriers suggests REALTORS® should take safety precautions in every real estate transaction, regardless of whether any party is known to have or been exposed to COVID-19. If these measures are applied consistently, a REALTOR® can avoid the potential fair housing liability of selectively applying mitigation practices to only certain consumers believed to be of greater health and safety threat based on an unlawful purpose, such as the consumer's national origin.

The CDC has published safety guidance that includes recommendations to keep a distance from others and avoid close contact with people who may be sick. And most states have taken various measures to protect against the spread of the virus, including stay-at-home orders and requiring all non-essential businesses to close. Based on these measures, below is a non-exhaustive list of measures you may institute to mitigate health risks and the spread of the virus:

- requiring all people involved in a transaction to wear face masks or available face coverings, consistent with the CDC recommendation to that effect;
- declining to show occupied apartments and houses;
- asking individuals to view apartments and houses one at a time;
- asking individuals to maintain six feet from others and not to touch surfaces;
- ensuring that surfaces are cleaned often and thoroughly;
- using personal protective coverings;
- offering virtual showings of properties; and
- providing addendum options such as a Sight Unseen Rider or a contingency that the contract is subject to a later in-person visit at a specified later date in time.