



MICHIGAN REALTORS®

Safely Reopening Real Estate Toolkit

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Table of Contents

- 1. Changing the Way Realtors® Conduct Business Page 1
- 2. Showings Addendum Page 2
- 3. Showing Certification..... Page 4
- 4. Legal FAQ..... Page 5



CHANGING THE WAY REALTORS® CONDUCT BUSINESS

As of May 7, 2020, Michigan Realtors® may once again conduct in-person listing appointments and showings. However this does not, of course, mean business as usual.

Requirements of Executive Order:

1. All in-person meetings with sellers and showings must be done by appointment.
2. No more than four persons may be at the property at one time. No in-person open houses are permitted.
3. All persons must maintain a 6-foot social distance at all times.
4. Landlords/property managers may not arrange in-person showings of a rental unit until after the current tenant has vacated.

Additional mitigation measures to consider:

1. Consider limiting in-person showings to potential buyers who have been pre approved for financing. Use photographs, virtual showings and floorplans to help buyer clients narrow down their housing needs and wants prior to any in-person showings.
2. Realtors® are encouraged to work together to avoid consecutive multiple showings in order to avoid overlapping appointments.
3. Consider providing marketing materials and other information relevant to the home electronically in advance of the showing.
4. Encourage sellers not to be present during the showing. Ask sellers to turn on all of the lights and leave interior doors, drapes and blinds open. This will ensure that anyone entering the home will not need to touch the light switches and doorknobs throughout the home.
5. Ask sellers to clean and disinfect all frequently touched surfaces prior to and after the showing.
6. Agents conducting a showing are encouraged to meet their clients at the home rather than drive their clients to the showing. If you are meeting your clients at a home, ask them to wait in the car for your arrival.
7. Discourage anyone who does not need to view the home from attending a showing.
8. Encourage the use of masks and gloves while viewing a home.
9. Ask buyers to refrain from touching any surfaces in a home (including light switches and interior doorknobs). Do not share phones, pens or tablets.
10. Minimize the time physically present at the home. After a showing, rather than engaging in a discussion with your clients while still at the property, consider waiting to discuss the home via email or phone.

COVID-19 SHOWINGS ADDENDUM/AMENDMENT TO LISTING AGREEMENT

The following terms are hereby incorporated in and made a part of the Listing Contract for:

Seller(s): _____

Brokerage Firm: _____

Property Address: _____

Date: _____

The Governor of the State of Michigan has declared that in-person showings of property offered for sale may be resumed as of May 7, 2020. Broker and Seller wish to agree in writing as to the circumstances, if any, under which in-person showings of the Property shall be conducted.

1. (Select One)

_____ Seller authorizes in-person showings and access to the Property by potential buyers, cooperating agents, inspectors, appraisers and others as may be necessary to complete the sale of the Property. Seller acknowledges that it is impossible for Brokerage or its agents to screen and/or monitor all such individuals. Accordingly, Seller assumes the risk and hereby agrees to release, defend to hold harmless Brokerage, any cooperating brokers and their respective agents and employees from any and all claims and liability resulting from exposure to COVID-19.

_____ Seller elects to have the Property noted in the MLS that there will be no in-person showings of the Property of any kind until subsequently authorized by Seller.

2. Before and after any showing, Seller agrees to employ precautions recommended by the Centers for Disease Control and Prevention ("CDC") available [here](#), the State of Michigan and any applicable local health department in order to minimize COVID-19 exposure to themselves and persons entering the Property.

3. Seller agrees to notify Brokerage if any person occupying or entering the Property has been exposed to, diagnosed with or quarantined as a result of COVID-19 or is experiencing fever, cough, shortness of breath or other cold or flu-like symptoms. In such event, no in-person showings of the Property shall be permitted until the end of the quarantine period recommended by the CDC and the State of Michigan.

4. Additional Provisions: _____

5. In the event of any conflict between this Addendum/Amendment and the Listing Agreement, this Addendum/Amendment shall control.

Accepted by:

(REALTOR®)

(Seller)

For:

(Brokerage Firm)

(Seller)

Recommended Practices for Sellers Permitting Showings

If at all possible, Sellers should not be present during showings.

Prior to any scheduled showing, please turn on all lights and leave interior doors, drapes and blinds open. This will ensure that anyone entering the home will not need to touch light switches/doorknobs.

Prior to and after any showing, clean and disinfect all frequently touched surfaces, such as doorknobs, handles, light switches and countertops.

SHOWING CERTIFICATION AND RELEASE (Buyers)

Brokerage Firm: _____

Property Address: _____

Date of Showing: _____

1. We have requested an in-person showing of property. We acknowledge that COVID-19 represents a serious health threat to persons exposed to it and assume the risks associated with possible exposure to COVID-19 during the showing.
2. We acknowledge that the law requires: (a) no more than four persons may attend a showing at any one time; and (b) all persons must maintain a 6 foot social distance at all times.
3. We certify to the best of our knowledge, information and belief that during the last 14 days, neither we nor any members of our household have been exposed to, diagnosed with or quarantined as a result of COVID-19 or have experienced a fever, cough, shortness of breath or other cold or flu-like symptoms. (In the event of such exposure, no in-person showings shall be permitted until the end of the quarantine period recommended by the CDC and the State of Michigan.)
4. We hereby agree to release, defend and hold harmless the Brokerage, the listing broker, and their respective agents and employees from any and all claims and liability resulting from exposure to COVID-19.

Buyer

Additional Person Present

Buyer

Additional Person Present

Recommended Practices for Buyers During Showings

Buyers attending showings/visits should meet their agents at the property and wait in their car for the agent to arrive.

Buyers should not bring anyone to the showing who does not need to view the property. All adults attending the showing shall be required to sign this Showing Certification and Release.

Do not touch any surfaces in the property. Do not turn off lights or close interior doors. Do not share phones, pens, tablets etc. with anyone else attending the showing.

Buyers are encouraged to wear gloves and masks while viewing a home. Use hand sanitizer immediately prior to entering the home and upon exiting prior to getting into your car.

Minimize the time physically present at the home.

COVID-19 FAQs

(Updated May 15, 2020)

Governor Whitmer has declared real estate activities and construction activities to be permissible resumed activities effective May 7, 2020. Attached are questions that we have received over the last few days about the Governor's latest order. Going forward, we will certainly update/supplement these FAQs as we hear from members and/or receive additional information.

1. **QUESTION:** Can I conduct in-person listing appointments and showings?

ANSWER: Yes. The Governor has declared that workers in the real estate industry (including brokers and agents) may resume activity as of May 7, 2020. The Governor's Order expressly authorizes potential buyers to leave their homes in order to view a real estate listing by appointment.

2. **QUESTION:** What requirements must be followed at any listing appointment or showing?

ANSWER: The Governor's Order 2020-77 requires:

 - (i) All real estate activity conducted at a property must be by appointment;
 - (ii) No more than four people may be in attendance; and
 - (iii) All persons must maintain a six-foot social distance at all times.

3. **QUESTION:** Now that real estate services are a "resumed service," is there any reason to use the Addendum to Purchase Agreement form?

ANSWER: The Addendum to Purchase Agreement form gives each party the right to a 30-day extension of a deadline in the event of a COVID created impossibility. This would still be useful if, for example, either party was under quarantine or conditions worsened such that the Governor temporarily suspended real estate services as a "resumed service."

4. **QUESTION:** Must everyone wear a mask during a listing appointment or showing?

ANSWER: The Governor's Order requires that masks be worn in "enclosed public spaces," which presumably would not include a private residence.

 That being said, the Governor's Order does state that those businesses conducting in-person activities must "adopt mitigating measures to protect patrons." While it is up to individual brokerages to adopt their own mitigation measures to comply with the order, the wearing of masks while visiting someone else's home appears to be sound practice. Sellers can require masks as a condition of permitting a showing.

5. **QUESTION:** Can I show rental properties to potential tenants?

ANSWER: Yes, unless the rental property is currently occupied. Landlords/property managers may not arrange in-person showings of a rental property until after the current tenant has permanently vacated the unit. A rental unit may not be shown while the tenant is temporarily out of town.

6. QUESTION: Can I show a multifamily building that I have listed for sale if it is occupied by tenants? Isn't this a "commercial" property?
- ANSWER: You may not show individual residential units that are currently occupied by tenants. While a multifamily building is "commercial" for tax purposes, it is not "commercial" in the context of land use. Governor's Order 2020-77 prohibits a showing of a residential property unless the residential property is either owner occupied or vacant. The purpose of such a requirement is to make sure that residential tenants are not required to allow strangers into their homes.
7. QUESTION: Can I show a home that I have listed for sale if there is an existing tenant in that home?
- ANSWER: No. The Governor's Order only permits private showings of any owner occupied or vacant residential property.
8. QUESTION: My seller is offering for sale a three-bedroom home that he currently leases to a family member. Can I arrange showings of the home if the tenant consents?
- ANSWER: The Governor's Order expressly authorizes showings of owner-occupied homes and does not answer the question as to whether and under what circumstances a tenant can authorize a showing. Sellers and their Realtors® should discuss the specifics of their situation with counsel prior to relying on any tenant authorization.
9. QUESTION: Does a rental unit need to be vacant before I can schedule an inspection or an appraisal?
- ANSWER: No. The Executive Order's requirement that the tenants have vacated the property only applies to private showings. However, if the current lease does not give the owner/landlord access for this purpose, then you must get the tenant's consent.
10. QUESTION: Is a seller required to allow in-person showings?
- ANSWER: No. A seller has the right to elect not to permit an in-person showing or to set conditions on such showings such as the wearing of masks/gloves or the existence of a preapproval letter.
11. QUESTION: Can I reopen my real estate brokerage office?
- ANSWER: Yes. The Governor's Order is not limited to listing appointments and showings but refers more broadly to "workers in the real estate industry." That being said, the Order does provide that resumed businesses must "promote remote work to the fullest extent possible."
- If a broker elects to open its office for in-person work, it must, at a minimum:
- (i) Develop a COVID-19 preparedness and response plan, consistent with recommendations in Guidance on Preparing Workplaces for COVID-19, developed by the OSHA and available [here](#). Such a plan must be available at company headquarters or the worksite.
 - (ii) Restrict the number of workers present on premises to no more than is strictly necessary to perform the in-person work permitted under this order.
 - (iii) Promote remote work to the fullest extent possible.

- (iv) Keep workers and patrons who are on premises at least six feet from one another to the maximum extent possible.
- (v) Require masks to be worn when workers cannot consistently maintain six feet of separation from other individuals in the workplace, and consider face shields when workers cannot consistently maintain three feet of separation from other individuals in the workplace.
- (vi) Increase standards of facility cleaning and disinfection to limit worker and patron exposure to COVID-19, as well as adopting protocols to clean and disinfect in the event of a positive COVID 19 case in the workplace.
- (vii) Adopt policies to prevent workers from entering the premises if they display respiratory symptoms or have had contact with a person with a confirmed diagnosis of COVID-19.
- (viii) Adopt any other social distancing practices and mitigation measures recommended by the CDC.

12. QUESTION: If I open my real estate office, can I invite clients and potential clients to meet me there?

ANSWER: No. The framework of the Governor's Order is that it limits the reasons for which any Michigan resident may leave their home. In the real estate "resumed activities" context, the only permissible reason to leave one's home is "to view a real estate listing by appointment." So, while your office may be open to your agents, it may not be open to members of the public.

13. QUESTION: Can I attend a real estate closing with my clients?

ANSWER: You should first check with the title company as to its policies for conducting closings. A title company is responsible for adopting its own mitigation measures for the protection of its employees and patrons (i.e., buyers and sellers). Assuming that the title company allows you to attend, then you will need to make a determination as to whether you should attend the closing in-person or remotely, keeping in mind the requirement that businesses promote remote work to the fullest extent possible. The level of complexity of a particular transaction may dictate whether attendance in-person at a particular closing is required.

14. 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.

15. 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.

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: Now that real estate activities are permitted, can a seller hire someone to conduct an estate sale?
ANSWER: No. Estate sales which involve the sale of personal property are not traditionally viewed as real estate services. Under the Governor's Order, real estate services also need to involve no more than four persons on the premises.
18. 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: Yes. Like workers in the real estate industry, effective May 7, 2020, work in the construction industry/building trades is permissible resumed activity.
19. QUESTION: Can I hire a photographer to take photographs of my new listing, or am I required to take the photographs myself?
ANSWER: Yes. Although photographers are not expressly included as a resumed activity, the Governor's Order does cover workers in the real estate industry generally and specifically refers to photography and videography. We would interpret this to mean that photography work is exempt if it is being performed in the context of a real estate transaction – whether done by a licensee or the licensee's employee or independent contractor.
20. QUESTION: May local governments preempt the Governor's Executive Order and be more restrictive?
ANSWER: Yes. Local health departments and cities and townships may be more restrictive, although none have done so yet. Local health departments have all issued orders that are not more restrictive. They do provide useful details and practical advice for businesses that are open. Those are available through each health department's website. If a city or township were to consider stricter measures, local Realtors® should impress upon their local governments that Realtors® are employing best practices and safety measures.
21. QUESTION: One of my residential tenants has not paid rent for two months. Can I evict them?
ANSWER: No. On May 14, 2020, Governor Whitmer issued Executive Order 2020-85 that extends the prohibition on residential evictions until June 12, 2020. The only evictions that are permitted are in cases where the tenant poses a substantial risk to another person or an imminent and severe risk to property. The prohibition also protects land contract vendees/buyers.

22. QUESTION: Can a seller/listing agent prohibit children from attending a showing?

ANSWER: It is the position of both Michigan Realtors® and the National Association of Realtors® that prohibiting children from showings would likely be discriminatory in violation of the Fair Housing Act, since it could discourage families with children, a protected class, from buying the property.