



# Frequently Asked Questions Regarding the COVID-19 Stay Home, Stay Healthy Order

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## Contents

INTRODUCTION.....	2
SUMMARY OF KEY PROVISIONS .....	3
What is the Stay Home, Stay Healthy Order?.....	3
What are the additional real estate activities allowed in Phase 2? .....	3
What are the required protocols for any permitted in-person activity during Phase 2? .....	4
What in-person real estate brokerage services are permissible in Phase 2?.....	4
May real estate firms re-open their offices in Phase 2 of the Order?.....	5
Can lenders, title, and escrow continue to operate during the Order?.....	6
May brokers physically preview or show properties in Phase 2 of the Order? .....	6
May members input new listings in the CBA system during the Order? What about property photos? .	6
May inspectors and comparable experts conduct feasibility studies during Phase 2 of the Order? .....	7
May appraisers conduct in-person appraisals during Phase 2 of the Order? .....	7
May buyers’ brokers conduct “walk-throughs” prior to closing during Phase 2 of the Order? .....	8
May brokers retrieve and provide keys or access to a buyer pursuant to a transaction during Phase 2 of the Order? .....	8
May notaries or mobile notaries function outside their home in Phase 2? .....	8
May real estate brokers input new listings in the MLS system during Phase 2 of the Order? .....	8

Can professional photographers take photos and create virtual tours during Phase 2 of the Order? ....8

May stagers stage and remove furniture from a property during Phase 2 of the Order? .....9

May moving companies move buyers into a property and move sellers out of a property? .....9

May brokers hire signs installers during Phase 2 of the Order? .....9

May contractors make repairs associated with an inspection response during the Order? .....9

Are property management services allowed in Phase 2 of the Order? .....9

What are Force Majeure Clauses?.....9

What do my clients do if their lease or purchase and sale agreement does not include a “Force Majeure” provision? .....10

What if my buyer or seller has questions about their rights and obligations under their purchase and sale agreement or lease? .....10

How do I to stay up to date with matters affecting real estate brokerage and avoid being misled by false rumors? .....11

## INTRODUCTION

On May 1<sup>st</sup>, Governor Inslee announced an extension of the "Stay Home, Stay Healthy" order (the “Order”) and introduced a four-phased approach to re-open business in Washington which affects Commercial Real Estate Brokerage. All counties start in Phase 1 and will be admitted into Phase 2 by the Governor based on epidemiological and other indications specific to each county.

On May 19<sup>th</sup>, in cooperation with Washington Realtors, Governor Inslee announced [modifications](#) to the Order for real estate activities in counties that have been approved for Phase 2 re-opening, provided specific protocols are followed. The Phase 2 protocols include:

- Commercial brokers may engage in the same in-person services as residential brokers;
- All real estate firms may open their offices in a limited fashion;
- Three persons are allowed on site for permitted in-person real estate activities for both residential and commercial brokerage (for both improved and unimproved property); and
- Sign installers may install real estate marketing signs.

Phase 2 in-person real estate activities, real estate brokers and industry partners (e.g. appraisers, inspectors, consultants, photographers, stagers, etc.) must wear cloth face coverings and should encourage clients and customers to do the same.

Public and broker open houses and similar invitations to view a property without an appointment are not Phase 2. Only previews and showings by appointment are allowed.

Brokers must adhere to the “phase” protocols for the county where the property is located, regardless of the location of the broker’s office or home. Brokers conducting real estate activities in a Phase 1 county, must continue to abide by the Phase 1 protocols.

**Please carefully review the following updated FAQs for a more detailed description of the requirements associated with in-person commercial real estate brokerage in Phase 2 counties.**

A list of counties approved and those eligible to apply for Phase 2 (as of May 19, 2020) is available [here](#).

## SUMMARY OF KEY PROVISIONS

### What is the Stay Home, Stay Healthy Order?

To help prevent the spread of COVID-19 (Coronavirus), on March 25th, Governor Inslee issued a statewide "Stay Home, Stay Healthy" order (the "Order"). The Order required the closure of all "non-essential critical infrastructure businesses." Workers considered non-essential, who did not have in-person contact with others, could continue to work remotely from home only.

On March 28<sup>th</sup>, in cooperation with Washington Realtors, the Governor agreed to certain modifications to the Order for the **residential** real estate industry and several of the original restrictions on in-person activities were revised – provided that strict protocols for social distancing were implemented. The modifications do not allow 'business as usual' in residential transactions. Rather, they allow for very specific real estate services and only if strict adherence to social distancing and hygiene protocols are met. The modifications to the Order DO NOT APPLY TO COMMERCIAL REAL ESTATE.<sup>1</sup>

On May 1<sup>st</sup>, the Governor adjusted and extended the Order, introducing a four-phased approach to re-open business in Washington. The business of "real estate" is permitted in Phase 2 under protocols applicable to all businesses and protocols unique to the real estate industry. Counties will be admitted into Phase 2 by the Governor based on epidemiological and other indications specific to each county. Thus, some counties will be in Phase 2, while other counties will remain in Phase 1.

On May 19<sup>th</sup>, in cooperation with Washington Realtors, the Governor announced additional [modifications](#) to the Order for real estate activities, provided specific protocols are followed, in counties that have been approved for Phase 2 re-opening.

### What are the additional real estate activities allowed in Phase 2?

The modifications for Phase 2, assuming the required protocols are followed, include:

- Real estate firms may open their offices in a limited fashion;

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<sup>1</sup> "Commercial real estate" means a fee title interest or possessory estate in real property located in this state except an interest in real property which is (a) improved with one single-family residential unit or one multifamily structure with four or less residential units, or (b) unimproved and the maximum permitted development is one to four residential units or structures under the county or city zoning ordinances or comprehensive plan applicable to that real estate, or (c) classified as farm and agricultural land or timberland for assessment purposes pursuant to chapter [84.34](#) RCW, or (d) improved with single-family residential units such as condominiums, townhouses, timeshares, or stand-alone houses in a subdivision that may be legally sold, leased, or otherwise disposed of on a unit-by-unit basis.

- Commercial brokers can engage in the same in-person activities as residential brokers;
- Three persons (as opposed to two persons) are allowed on site for permitted in-person real estate activities for both residential and commercial brokerage (for both improved and unimproved property); and
- Sign installers may install real estate signs.

For both Phase 1 and Phase 2 in-person activities, real estate brokers and industry partners (e.g. appraisers, inspectors, photographers, stagers, etc.) must wear cloth face coverings and should encourage clients and customers to do the same.

Some counties have already been approved for Phase 2, while other counties have been approved to apply for a variance to move to Phase 2. The list of Phase 1 and Phase 2 counties will change over the next few weeks. A map showing the status of each county is available [here](#). If you have any questions regarding the Phase 2 status or eligibility of your county, please contact the Washington State Department of Health.

### What are the required protocols for any permitted in-person activity during Phase 2?

*Brokers must adhere to the “phase” protocols for the county where the property is located, regardless of the location of the broker’s office or home.*

The protocols that must be followed for permitted in-person activities, during Phase 2, include:

- In-person activities must be by appointment only;
- Real estate brokers and industry partners (e.g. appraisers, inspectors, photographers, stagers, etc.) must wear cloth face coverings and should encourage clients and customers to do the same.
- No more than three people, including the broker(s), may be at the property at any one time;
- Those three persons must strictly follow social distancing guidelines by remaining at least six feet apart at all times; and
- No real estate open houses or similar invitations to view a property without an appointment, shall be permitted.

A broker may not leave a third party unattended in a property. Accordingly, brokers may only bring two other persons at a time into the property.

### What in-person real estate brokerage services are permissible in Phase 2?

Provided the above protocols are followed for any permitted in-person activity, residential and commercial real estate brokers may:

- Conduct listing presentations, take photos, and create virtual tours for new listings;
- Facilitate signing of contract documents;
- Preview and show listings by appointment only; and
- Facilitate inspections, appraisals, buyer “walk-throughs,” and other activities typically required to complete a real estate sale or lease.

Real estate brokers may not:

- Conduct any business outside of their home (with the exception of the above noted activities);  
or
- Hold an open house or facilitate similar invitations to view a property without an appointment.

Note that any broker who violates the Governor's order not only puts himself/herself and his/her family at great personal risk, but also puts the broker's real estate firm and his/her clients at risk. Any violation of the order is a gross misdemeanor and a violation of the real estate license law (RCW 18.85).

**REMINDER:** In RCW 18.86 and these FAQs references to "buyer" includes "tenant" and references to "seller" includes "landlord".

### May real estate firms re-open their offices in Phase 2 of the Order?

Yes. Real estate firms can re-open offices located in Phase 2 counties in a limited fashion, so long as the firm adheres to the many [required protocols](#). Many real estate firms may choose to continue to operate remotely and wait to re-open their offices until a later date.

If a real estate firm chooses to re-open, designated brokers should carefully review the requirements to ensure compliance with all protocols. No office facilities may open for operations until they can meet and maintain all the requirements, including providing materials, schedules, and equipment required to comply. Some of the protocols are:

- Maintain minimum six-foot separation between all persons in all interactions at all times.
- Arrange furniture to encourage social distancing.
- Require clients/customers to make appointments for in-person services.
- Provide personal protective equipment (PPE) such as gloves and face masks to employees and independent contractors. Cloth facial coverings must be worn by every employee and independent contractor not working alone in the office.
- Ensure frequent and adequate hand washing with adequate maintenance of supplies. Use disposable gloves where applicable to prevent transmission on office supplies or other equipment that is shared.
- Establish a janitorial schedule that includes frequent cleaning and sanitizing with a particular emphasis on commonly touched surfaces.
- Screen individuals for signs/symptoms of COVID-19 before starting work. Make sure individuals who are sick stay home or immediately go home if they feel or appear sick. Cordon off any areas where an individual with probable or confirmed COVID-19 illness worked, touched surfaces, etc. until the area and equipment is cleaned and sanitized. Follow the [cleaning guidelines set by the CDC to deep clean and sanitize](#).
- All on-site employees and independent contractors must be trained on the worksite's policies, these requirements and all relevant sanitization and social distancing protocols. They must also be trained about COVID-19 and how to prevent its transmission.
- A site-specific COVID-19 monitor shall be designated at each location to monitor the health of individuals and enforce the COVID-19 job site safety plan.
- Develop and post at each location a comprehensive COVID-19 exposure control,

mitigation and recovery plan. A copy of the plan must be available at the location and available for inspection by state and local authorities.

- COVID-19 safety information and requirements, such as CDC, DOH, OSHA posters and the employer-owner written policies for COVID-19, shall be visibly posted at each location.
- Authorized access to the business should primarily be through the front door.
- Face shields or sneeze guards should be placed throughout the worksite at all places of potential interaction between service providers and clients
- Follow safety requirements outlined in the [Professional Services Phase 2](#) guidance for re-opening for office space working environments.

**REMINDER:** Phase 1 protocols limit office activities to “Basic Minimum Operations” only, including processing payroll and benefits, preserving equipment, ensuring security, and supporting brokers’ ability to work from home.

### Can lenders, title, and escrow continue to operate during the Order?

Yes. The “Financial Services Sector” has been deemed essential. This includes workers who are needed to process and maintain systems for processing financing transactions and services and insurance companies including mortgage lenders, escrow and title insurers. Because the Financial Services Sector is considered essential, real estate transactions that are under contract may be able to proceed to closing. Of course, there could be delays, which is why the parties should consider using the Force Majeure and Closing Addendum (CBA Form FMA) See discussion below.

### May brokers physically preview or show properties in Phase 2 of the Order?

Yes. In-person viewing and showing of properties are permitted if the required protocols are followed. Views must be by appointment, a total of no more than three people, including the broker(s), are permitted at the property at any one time, and those three people adhere to strict social distancing guidelines. Real estate brokers must wear cloth face coverings and should encourage clients and customers to do the same. Any previews or showings should be conducted as expeditiously as possible.

Real estate brokers may not leave a third party unattended in a property. Accordingly, brokers may only bring two people at a time into the property. Sellers should vacate the property prior to any preview or showing appointment. In addition, listing brokers should stagger any preview or showing appointments to avoid any overlap.

In lieu of physically showing the property, brokers and buyers can utilize virtual tours and videos that are included with the listing. Brokers should also consider virtual showings to further practice social distancing.

### May members input new listings in the CBA system during the Order? What about property photos?

Yes. During all phases of the Order, members are permitted to input new listings into the CBA system – from their home. However, brokers may not physically visit the property or otherwise leave their home to take or promote the listing until Phase 2. Likewise, professional photographers are not permitted to visit the property to take photos or create virtual tours or enter the property for any purpose during Phase I. However, the Order does not prohibit an owner permitted to be on the property from taking photos or gathering information and providing it electronically to the listing broker.

*PLEASE NOTE:* There is no excuse for submitting photographs to CBA from third parties unless the broker has a license from the third party to do so. By submitting a photograph to CBA, the listing broker warrants that the broker has the legal right to do so, either because the broker owns the photograph and has the copyright, or the broker has a license from the copyright holder. Brokers who submit photographs that violate others' copyrights are liable to CBA and other members for any resulting claim or loss. Do not violate others' copyrights!

### May inspectors and comparable experts conduct feasibility studies during Phase 2 of the Order?

Yes. If site inspections/feasibility studies are required in a transaction, they may be conducted, provided that it is by appointment, a total of no more than three people, including the broker(s), are at the property at any one time, and those three people adhere to strict social distancing guidelines. Real estate brokers and inspectors must wear cloth face coverings and should encourage clients and customers to do the same. The work should be conducted as expeditiously as possible.

A pre-inspection of a property prior to mutual acceptance of an agreement is permitted, provided that it is by appointment, a total of no more than three people, including the broker(s), are at the property at any one time, and those three people adhere to strict social distancing guidelines. Real estate brokers and inspectors must wear cloth face coverings and should encourage clients and customers to do the same. The pre-inspection should be conducted as expeditiously as possible.

Because a broker may not leave a third party unattended in a property, the three people at the property for the inspection must include the broker. Sellers should vacate the property prior to the inspection.

### May appraisers conduct in-person appraisals during Phase 2 of the Order?

Yes. If an appraisal is required in a pending transaction, an appraisal may be conducted, provided that it is by appointment, a total of no more than three people, including the broker(s), are at the property at any one time, and those three people adhere to strict social distancing guidelines. Real estate brokers and appraisers must wear cloth face coverings and should encourage clients and customers to do the same. The appraisal should be conducted as expeditiously as possible. Sellers should vacate the property prior to the appraisal.

## May buyers' brokers conduct "walk-throughs" prior to closing during Phase 2 of the Order?

Yes. If a walk-through or the equivalent is required in a pending transaction, a walk-through may be conducted, provided that it is by appointment, a total of no more than three people, including the broker(s), are at the property at any one time, and those three people adhere to strict social distancing guidelines. Real estate brokers must wear cloth face coverings and should encourage clients and customers to do the same. The walk-through should be conducted as expeditiously as possible. Sellers should vacate the property prior to the walk-through.

## May brokers retrieve and provide keys or access to a buyer pursuant to a transaction during Phase 2 of the Order?

Yes. If keys to the property are not otherwise available to a buyer at closing, a broker in the transaction may make arrangements to retrieve and deliver the keys, provided that it is done so by appointment, a total of no more than three people, including the broker(s), are at the property or at the location of the key delivery, and those people adhere to strict social distancing guidelines. Real estate brokers must wear cloth face coverings and should encourage clients and customers to do the same.

## May notaries or mobile notaries function outside their home in Phase 2?

Yes, but their function is not considered essential for Phase 1. However, on March 24, 2020 by Proclamation 20-27, Governor Inslee made the provisions Senate Bill 5641, codified at RCW 40.45 which provides for electronic notarization of documents, effective immediately instead of October 1, 2020. The text of the law can be found [here](#).

## May real estate brokers input new listings in the MLS system during Phase 2 of the Order?

Yes. Real estate brokers are permitted to input new listings into the MLS system – from their home. Real estate brokers may conduct listing presentations, take photos of the property, and create virtual tours for new listings, provided that those activities are done so by appointment, no more than three people, including the broker(s), are at the property at any one time, and those people adhere to strict social distancing guidelines. Real estate brokers must wear cloth face coverings and should encourage clients and customers to do the same. In addition, a seller may take pictures of his or her own property and send those photos to the listing broker.

## Can professional photographers take photos and create virtual tours during Phase 2 of the Order?

Yes. Professional photography for listings is permitted. Like all other in-person activities, photos and virtual tours must be by appointment, no more than three people, including the broker(s), are at property at any one time, and those people must adhere to strict social distancing guidelines. Real

estate brokers and photographers must wear cloth face coverings and should encourage clients and customers to do the same. Sellers should vacate the property prior to any photography activities.

Note that creating virtual tours is an effective way to allow buyers to view the property without the need for an in-person showing.

### May stagers stage and remove furniture from a property during Phase 2 of the Order?

Yes. Staging a home and removing staging items is permitted. Like all other in-person activities, staging activities must be by appointment, no more than three people, including the broker(s), are at the property at any one time, and those people must adhere to strict social distancing guidelines. Real estate brokers and stagers must wear cloth face coverings and should encourage clients and customers to do the same. Sellers should vacate the property prior to any staging activities.

### May moving companies move buyers into a property and move sellers out of a property?

Yes. Moving companies are permitted to operate in both Phase 1 and 2 so long as all moving work is conducted with the fewest employees possible, following social distancing and sanitation measures.

### May brokers hire sign installers during Phase 2 of the Order?

Yes. Brokers may hire sign installers, provided that no more than three people are present at the sign installation and those people adhere to strict social distancing guidelines. Real estate brokers and sign installers must wear cloth face coverings and should encourage clients and customers to do the same.

### May contractors make repairs associated with an inspection response during the Order?

Construction practices are permitted and regulated under a separate order from the Governor. Brokers should advise the client to consult with any contractor hired to complete repairs to ensure that the contractor is in compliance with all protocols required of the contractor.

### Are property management services allowed in Phase 2 of the Order?

Yes. Both commercial and residential property management is permitted, so long as all protocols required for real estate activities are followed.

**REMINDER:** Phase 1 protocols do not allow commercial property management activities.

### What are Force Majeure Clauses?

“Force Majeure” is a French term that translates literally as “superior force”. A “Force Majeure event” is an event or effect that can be neither anticipated nor controlled. Many contracts, including many CBA forms, contain a Force Majeure clause allocating risk between the parties if

the contract becomes impossible or impractical to perform in the event of a Force Majeure. Common examples of Force Majeure events that may interfere with parties' ability to perform contracts include acts of nature, such as floods, earthquakes, hurricanes, tornadoes and the like, and acts of people, such as wars, riots or strikes and, of course, an epidemic/pandemic such as the current pandemic. While it is a near certainty that the COVID-19 pandemic is a Force Majeure, it does not excuse all contract obligations – on contract obligations that it renders impossible or impracticable to perform. Thus, it is always important to direct clients adversely impacted by a Force Majeure to legal counsel for advice.

Force Majeure clauses are not all the same and allocate risks differently. For example, CBA's leases provide that : “[t]ime periods for either party's performance under any provisions of this Lease (excluding payment of Rent) shall be extended for periods of time during which the party's performance is prevented due to circumstances beyond such party's control, including without limitation, fires, floods, earthquakes, lockouts, strikes, embargoes, governmental regulations, acts of God, public enemy, war or other strife.” Thus, the parties have agreed that a Force Majeure event can extend time frames but will not excuse the tenant's obligation to pay rent. Other Force Majeure provisions may differ. CBA's purchase and sale agreements do not contain a Force Majeure provision.

[What do my clients do if their lease or purchase and sale agreement does not include a “Force Majeure” provision?](#)

Think of a Force Majeure clause like a liquidated damages clause – just because a contract doesn't have a liquidated damages clause doesn't mean a party is not responsible for the damages their breach causes. Similarly, just because a contract does not have a Force Majeure clause does not mean that a party might not be excused from performance or timely performance as a result of the fact that it is impossible or impracticable for them to perform in accordance with their contract. Brokers have a nonwaivable duty to refer their clients to an expert to address matters in which the broker lacks expertise. Brokers lack expertise to advise their clients of their rights and obligations under a contract if it becomes impracticable or impossible to perform. Brokers must advise their clients to get the advice of a lawyer immediately if their performance is made impracticable or impossible as a result of COVID-19.

[What if my buyer or seller has questions about their rights and obligations under their purchase and sale agreement or lease?](#)

As always, brokers have a duty to refer their clients to experts regarding matters in which the broker lacks expertise. Particularly in matters affected by COVID-19 and the Stay Home, Stay Healthy Order, it is unlikely that brokers will have expertise and should advise their clients to seek the advice of an attorney.

How do I to stay up to date with matters affecting real estate brokerage and avoid being misled by false rumors?

There are false rumors and misinformation being circulated. Many brokers have acted in reliance on bad information to their embarrassment and detriment.

CBA's Washington Realtors and NWMLS communicate daily, and often more frequently to keep members informed of any developments affecting the industry. CBA's, Washington Realtors' and NWMLS's websites will continue to offer the latest and most accurate information possible. Please refer to them often as more changes are not on