

COVID-19 Guide for Open Houses and Showings

At C.A.R., we are trying to keep REALTORS® informed about how COVID-19 impacts you and your clients. Our biggest priority is making sure you are taking every precaution to ensure the safety of yourself and your loved ones. Know that the decision to host an open house remains at the discretion of you and your seller. In addition, local government and health authorities may alter what is permissible in a given area at a given time. For example, in the Bay Area there should probably be no open houses held for the next three weeks. Here is a guide to help you and your clients understand the environment around open houses:

COVID-19 Guide for Open Houses and Showings

Concerns over the spread of the COVID-19 are impacting the real estate industry and leaving agents and brokers with a host of questions, especially regarding showing property and holding open houses.

What should I tell clients who are reluctant to hold an open house because they don't want people coming through their homes?

A real estate licensee should:

Inform a seller that their wishes will be honored. Have an open and honest conversation about the possible impact that limiting access to the listed property could have on the amount of time it will take to sell, the eventual purchase price, and the marketing plan. Discuss feasible alternatives such as three-dimensional interactive property scans, video tours and other methods to virtually tour a property.

Ask the seller to put the instructions in writing, or the licensee should document the discussion and instruction and provide a copy to the seller. If the broker has a marketing plan and the broker's right to conduct open houses is an integral part of that marketing plan, that plan should be amended, in writing, following a property owner's instruction to limit access to the property.

What exactly does the Residential Listing Agreement (RLA) authorize and permit in terms of marketing the property?

Paragraph 7 of the Residential Listing Agreement establishes the basic duties of the broker and seller. Paragraph 7A authorizes the broker to market the property by any method selected by broker, unless seller gives broker written instructions to the contrary. In paragraph 7B, the seller agrees to make the property available for showings, but that obligation is limited by the seller's duty to act in good faith to accomplish the sale of the property. Given the current environment surrounding COVID-19, a seller's legitimate concerns about strangers entering the property would most likely be a good faith objection to that marketing practice.

If an open house is being held, what types of precautions should be taken?

If you do hold an open house, consider requiring the following: Ask visitors to disinfect their hands upon entering the home, limit the amount of people in the home, provide alcohol-based hand sanitizers at the entryway and soap and disposable towels in bathrooms. If you decide to do any cleaning at your client's home, be sure to check with your client in advance about any products you plan to use. After the open house, recommend that your client clean and disinfect their home, especially commonly touched areas like doorknobs and faucet handles.

Can an agent inform their older clients of the Governor's recommendation to self-quarantine for those aged 65 or older?

Yes. Governor Newsom has suggested Californians take extensive precautions to avoid the spread of the coronavirus including the self-isolation of those aged 65 or over, as well as those with pre-existing conditions. The real estate licensee may bring this issue up with seller clients. As real estate licensees have a relationship with the community at large, informing sellers who are 65 or over of the self-quarantine guideline provides a service not only to the client but the public.

Can a broker refuse to hold an open house or show a property?

Yes. As indicated above, the RLA authorizes the broker to market the property by any method selected by the broker. Given the current environment surrounding COVID-19, it would certainly be reasonable to refuse an open house or show a property. But the broker is agreeing under the terms of the RLA to exercise reasonable effort and due diligence to achieve the purpose of the listing — which is to sell the property. The broker should discuss alternative ways to market the property other than holding the open house.

Ultimately, a listing agreement employs a broker to sell the property. In both of these scenarios, a disgruntled seller may fire the broker, and then it would be at the discretion of a judge whether the seller had good cause to do so.

What unique issues does coronavirus present to the real estate industry?

When an infectious disease, such as coronavirus, 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 California's own fair housing laws and be sure not to discriminate against any particular segment of the population. While the coronavirus outbreak began in Wuhan, China, that does not provide a basis for treating Chinese persons or persons of Asian descent differently.

May I ask clients at an open house or others I interact with in my real estate business if they have any respiratory illness?

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

May I ask clients at an open house or others I interact with in my real estate business if they have recently traveled abroad?

Yes. However, real estate licensees should understand that they are not experts on where such outbreaks are occurring, nor should they be burdened with the task of constantly updating such knowledge. But in light of the coronavirus emergency, it may be reasonable to ask such questions. See the next question on how a screening question policy could be implemented.

Be aware, however, that such questions can lead to discrimination on the basis of ethnicity, national origin, primary language or race.

The U.S Centers for Disease Control and Prevention (CDC) has issued Level 3 Travel Warnings for all of China, South Korea, Iran and most countries in Europe, and a Level 2 Travel Alert for all other countries.

How does this fact impact a REALTOR®'s ability to inquire into a client or customer's travel activity?

The CDC's Travel Health Notices have two components. First, a Level 3 Health Warning advises against all non-essential travel. Secondly, for travelers returning from a Level 3 country, the CDC advises that a person stay home and avoid contact with others, and to not go to work or school for a period of 14 days. Here is the CDC link for travelers. A Level 2 Alert advises returning travelers to "limit contact with others and monitor your health for 14 days." (Even a Level 1 Watch advises a returning traveler to "Pay attention to your health ... for 14 days after you leave.")

Given the federal agency's documented advisories, a real estate licensee would not be exposed to a fair housing violation if the licensee relies on the most up-to-date information from the CDC before asking clients if they have traveled within the last 14 days to an affected country. The brokerage has discretion to permit its agents to ask this type of question.

Presently, the CDC's Level 2 Alert is a global warning. Travelers returning from any country abroad are advised to monitor their health and limit interactions with others for 14 days after returning to the United States.

The Most Important Part of a Screening Policy:

To avoid potential fair housing issues, be sure to ask all clients the same screening questions.

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

Yes. However, be sure that any change to your business practices is 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 the coronavirus (see the above three questions), 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 seatbelt latches, and to ask clients to use hand sanitizer when getting in and out of the car.

Is a tenant required to allow entry into a property for purposes of showing it when the tenant fears being exposed to the coronavirus?

Yes, the tenant is required to allow entry. There is no law that would give the tenant the right to refuse entry based upon an unfounded fear that a prospective buyer might infect them with the coronavirus. If the tenant is refusing entry on this basis, then the agent may obtain a statement from the prospective buyer that they have no signs of any cold, flu or other respiratory illness. This may reassure the tenant. But whether or not such a statement is given to the tenant, the tenant would still be required to allow entry.

Ultimately, an agent needs the cooperation of the tenant since the legal remedy against a tenant who refuses entry is to evict through an Unlawful Detainer action. This can be a lengthy and cumbersome process that most sellers are simply not going to undertake.

Is there a current moratorium on evicting a tenant?

There is no statewide moratorium, but there may be some localities that have imposed a freeze on all evictions. The Governor's state of emergency prohibits price gouging in the form of increasing rents above 10 percent. But the declaration of emergency on its own does not freeze evictions.

Landlords should carefully monitor laws passed at the local level since many cities are currently considering the adoption of a moratorium on evictions.

Can a landlord evict a tenant who is suffering from the coronavirus?

First, the statewide just cause eviction law does not list infectious illness as one of the 15 just cause reasons on which an eviction may be based. But even if the property were exempt from the state just case eviction law, a landlord could not evict on this basis since it would likely constitute illegal discrimination.

Additional Resources:

CAR has just released a new form called the Coronavirus Addendum/Amendment (Form CVA). It will be in zipForm tomorrow but in the meantime you can download it here and use it in your transactions. The form provides that when circumstances related to the coronavirus are affecting the closing date the Buyer and Seller agree to extend escrow for a default of 30 days. There is also an optional clause where the buyer and seller can mutually agree to cancel the Agreement and an additional optional clause where the buyer or seller can cancel even after removing the loan contingency if inability to fund is caused by Covid-19 related loss of income.

