



LONG ISLAND BOARD OF REALTORS®

@ HOME, TOGETHER AGAIN

A DISCUSSION WITH
LIBOR LEGAL COUNSEL

WEDNESDAY, APRIL 29TH
12PM EST



#LIBORCARES

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NEW YORK
STATE OF
OPPORTUNITY™

**Empire State
Development**

Understanding the ESD Guidelines for Real Estate

What IS included in the most recent written ESD Guidelines for Real Estate?

- Real Estate Services are deemed Essential with “Severe Restrictions”.
- Real Estate Services shall be conducted Remotely for all transactions including:
 - Title searches
 - Appraisals
 - Inspections
 - Permitting
 - Recordation
 - Legal services
 - Financial services; and
 - Other services necessary to complete a transfer for real property.
- A Real Estate Service may be conducted **in-person only if “legally necessary”** and in accordance with safety protocols.
- No Brokerage office is to be open to the public

What is NOT included in the ESD written Guidelines?

- There have been many differing opinions and interpretations of this ESD Guidance since specific real estate activities and questions are not covered.
- There also terms used that have not been defined. For example, “legally necessary” has not been defined. As a result, differing opinions have developed causing inconsistency and some confusion.
- NYSAR has provided the field with answers to some frequently asked questions based on conversations NYSAR had with various governmental agencies.
- However, the ESD has not set forth any written guidance confirming what was told to NYSAR over the phone.

The Guidance Is Not Entirely Clear There is a Grey Area

- Therefore, each agent, in consultation with their broker, and each broker in consultation with their attorney, must decide whether to follow the strict wording of the Guidance (which states that all RE Services must be conducted remotely and only if legally necessary can a service be performed in-person) or rely on what the ESD verbally told NYSAR.

So, let's get to some of those
frequently asked questions



Can a licensee go to a vacant or unoccupied home or vacant land to view it or take photographs for a listing?

- NYSAR states that based on conversations with ESD the answer to this question is YES as long as you have the informed consent of the seller.
- NYSAR advises that if the property is not vacant or unoccupied upon arrival, the licensee should stop taking photographs or videos and leave the property.
- NYSAR advises against the use of a third-party photographer or videographer as they are not an essential business.
- Licensees and or the homeowner can take the pictures or video.

Can a licensee travel to a property and unlock the door so a consumer may enter the property for an unaccompanied showing?

What if the licensee unlocks the door and waits in the driveway or out in the road until the buyer leaves?

- No.
- NYSAR does not recommend that a licensee travel to the property in order to permit access to a member of the public.
- Any licensee choosing to travel to the property for this purpose is doing so at their own risk.

Can a licensee do an in-person showing?

- No.
- All showings must be conducted virtually.
- NYSAR states that if the home is occupied the licensee can only do the virtual showing if the homeowner leaves the property since there cannot be any person to person contact.

Can a licensee list a property and post it as “unaccompanied showings only”?

- NYSAR recommends that licensees should not be involved in coordinating an unaccompanied showing.
- NYSAR states that if the seller demands the buyer be permitted to view the property the licensee should not be involved in the process.
- NYSAR states that a licensee can give the buyer the seller’s phone number if the seller instructs the licensee to do so.

Can a licensee conduct a final walkthrough with the purchaser?

- No.
- Licensees are prohibited from going to a property with their customer or client.
- NYSAR recommends the buyers and seller speak with their attorneys about scheduling a final walkthrough without the licensee being physically present.
- The licensee may communicate with their client or customer via phone or video conferencing during the final walkthrough.

Can the purchaser be present during the inspection?

- No.
- NYSAR states that ESD advised that the inspector can perform the inspection but may only communicate with the purchaser virtually.

Does the Governor's new Executive Order requiring individuals to wear face coverings, permit licensees to have in-person contact if they abide by the requirement of the Executive Order?

- No.
- The new EO does not lift the restrictions on in-person contact between licensees and members of the public.

NYSAR's COVID-19 Disclosure



COVID-19 DISCLOSURE

On January 30, 2020, the World Health Organization (WHO) designated the novel coronavirus, COVID-19, outbreak as a Public Health Emergency of International Concern. On January 31, 2020, the United States Health and Human Services (HHS) Secretary declared a public health emergency for the entire United States and on March 7, 2020, Governor Andrew Cuomo declared a State disaster emergency for the entire State of New York (the "Emergency"). By Executive Order, Governor Cuomo has directed that all businesses shall utilize, to the maximum extent possible, any telecommuting or work from home procedures in order to reduce the in-person workforce at any work locations by 100%. Essential businesses or entities providing essential services or functions to an essential business are not subject to the in-person restriction to the limited extent necessary to provide such service or function.

Empire State Development (ESD) has determined that real estate services shall be conducted remotely for all transactions, including appraisals, inspections and other services necessary to complete a transfer of real property; provided that any services and parts therein may be conducted in-person only to the extent legally necessary and in accordance with appropriate social distancing. It may become necessary in limited circumstances for a real estate licensee, inspector, appraiser or other third party to access the Property. Such access raises the possibility of potential liability resulting from exposure to COVID-19. By agreeing to permit such parties to enter the Property or by agreeing to enter the property, all parties acknowledge there is an assumption of exposure to COVID-19 and any and all consequences and/or injury which may result from

NYSAR has provided this COVID 19 Disclosure Form for the members to use if they so choose

- The form is OPTIONAL.
- You can choose to use it, or not.
- **If you use the COVID-19 Disclosure Form you still cannot perform in-person showings.**
 - In-person showings are **prohibited!**
 - Using this Disclosure Form **does not change that.**

The LIBOR Executive Committee decided not to have LIBOR co-brand the form or make it available on our Documents on Demand for the following reasons:

- The form is readily available from the NYSAR website.
<https://www.nysar.com/covid-19-resources/realtor-covid-faq/>
- Each Broker will have to decide whether or not to use the form.
- If a Brokerage decides to use the form, that brokerage can co-brand their name on the form.

If you decide to use the COVID-19 Disclosure Form, NYSAR asks that you please follow these guidelines:

- Each agent must have the permission of their broker before using the form.
- Each broker can decide to:
 - a) use the form;
 - b) use a form the broker prepared; or
 - c) not use any form.
- If broker decides to use the form, the form should be presented to the seller or buyer in the same manner an agency disclosure form is presented.
- Licensees should have the seller/buyer sign the form, print their name next to their signature and provide a signed copy to the seller or buyer and retain a signed copy for the broker's file.
- The form may be delivered in any manner currently permitted (paper, electronic transmission).

What Does the COVID-19 Disclosure Form do?

- The COVID-19 Disclosure Form notifies the seller and buyers of the risks associated with permitting an individual to enter the property or by entering another person's property.
- By signing the form, the seller or buyer acknowledges that by permitting such access or by accessing the property they assume the risk of potential exposure to COVID-19.
- NYSAR states that licensees should explain to the seller and/or buyer that the form outlines the risks of COVID-19 exposure and by signing the form they are acknowledging and assuming such risks.

NYSAR also advises the following regarding the COVID-19 Disclosure Form:

- In the event the seller and/or buyer is exposed to COVID-19 as a result of permitting or gaining access to the property, the form acts as a disclosure outlining the risks and having the party acknowledge that they are assuming such risk through their actions.
- If a licensee and/or broker were named in a lawsuit alleging exposure to COVID-19 by the seller and/or buyer (or a member of their household), the form could be used to show the seller and/or buyer were aware of the risks and assumed the risk of permitting access or gaining access to the property.

What if the buyer/seller refuse to sign the COVID-19 Disclosure Form?

- If the seller and/or buyer refuse to sign the COVID-19 Disclosure form you should follow the same procedure when a consumer refused to sign an agency disclosure form.
- If the seller and/or buyer refuse to sign the form, the agent shall set forth a written declaration of the facts of the refusal and shall maintain a copy for the broker's file.

Update on Financial Relief for REALTORS®



U.S. Small Business
Administration



**Department
of Labor**

Original CARES Act Funding

- Set aside \$349 Billion for loans with the Small Business Administration (SBA).
- SBA processed more than 14 years' worth of loans in less than 14 days, according to a joint statement from U.S. Treasury secretary Steven T. Mnuchin and SBA administrator Jovita Carranza.
- Funding was for Payroll Protection Program (PPP) and Economic Injury Disaster Loans (EIDL).

PPP vs. EIDL

- **PPP**
 - Offers loans of up to \$10 million for businesses to maintain payroll and related benefits, interest on mortgages and other debts, leases and utility payments.
 - Forgiveness available on a portion of the loan proceeds if employers retain employees during specified period.
 - Apply through SBA Approved Lender.
- **EIDL**
 - Expands eligibility to include private nonprofit organizations and small agricultural cooperatives.
 - Waives personal guarantees on loans under \$200,000.
 - Waives the “unable to obtain credit elsewhere” provisions.
 - Provides organizations with immediate funding of up to \$10,000 (\$1,000 per employee) upon application once eligibility has been verified.
 - Apply through SBA at www.SBA.gov/disaster.

What Happened to the Money?

- April 3rd – Initial PPP applications opened for certain businesses.
- April 16th – SBA reported funding had stopped.

Notice: Lapse in Appropriations

SBA is unable to accept new applications at this time for the Economic Injury Disaster Loan (EIDL)-COVID-19 related assistance program (including EIDL Advances) based on available appropriations funding.

Applicants who have already submitted their applications will continue to be processed on a first-come, first-served basis.

More Money is on the Way!

- **April 24th – President signed a bill to approve a total of \$370 billion in relief through the SBA.**
 - **PPP will receive \$310 billion**
 - **EIDL fund will receive an additional \$60 billion**
- **April 27th – PPP Application process reopened at 10:30 AM.**
- **Predictions are that this round of money may last only four to six days.**

Quick Guidance for REALTORS® on the PPP and EIDL

- **If you've already applied for an EIDL:** You do not need to reapply. The SBA is processing applications already in its system on a first-come, first-served basis.
- **If you have not already applied for an EIDL:** File on SBA website.
- **If you've already applied for a PPP loan through an SBA lender but have not been approved yet:** Check with your lender to see if it is maintaining a queue of applications during the lapse or if you will need to reapply.
- **If you have not applied yet for a PPP loan through an SBA lender:** Have the application form filled out and your documentation ready to provide to your lender.

Tips for filing your PPP application

- Get your documentation together
 - Company formation documents or details of business's legal organization
 - 2019 tax returns, as well as previous two years if available
 - Payroll records (1099-Misc if Independent Contractor)
 - Mortgage or rent documents
 - Documentation of utility expenses
 - Proof your business is in good standing
 - Documentation of how the coronavirus pandemic has negatively impacted your business
- Work with the right lender
 - If you have an existing relationship with an SBA lender, go to that lender.
 - But be prepared to try multiple lenders, which you can find on the SBA site.
 - Small businesses may find shorter lines and more personalized service if they work with smaller lenders.

Pandemic Unemployment Assistance (PUA) Update

- Last week, NYS Department of Labor launched streamlined application process.
- New Yorkers can apply for PUA without having to file for unemployment insurance.
- Since the COVID-19 crisis began, DOL has paid over \$2.2 billion in benefits to 1.1 million New Yorkers.
- Application call backlog prior to 4/8 reduced from 275,000 to 4,305.
- Simply fill out one form to get the correct benefits by going to <https://unemployment.labor.ny.gov/login>

Federal Reserve Main Street Lending Program

- Lending by Federal Reserve to small and medium-sized businesses that were in good financial standing before the onset of the COVID-19 pandemic.
- Alternative to the PPP and EIDL - not connected to SBA.
- No minimum company size requirement.
- Sole proprietors, self-employed business owners, and companies with fewer than 500 employees may apply.
- To be eligible, companies need to have at least \$250,000 in earnings before interest, taxes, depreciation, and amortization (EBITDA).

Federal Reserve Main Street Lending Program

- The interest rates range from 2.5 percent to 4 percent.
- 4-year repayment term.
- \$1 million minimum loan amount, but published reports that Congress may reduce minimum to \$50,000.
- The loans businesses get through the Main Street Lending Program originate at local banks.
- Speak to your local lender about your options.

Planning for the Eventual Reopen

**OPEN FOR
BUSINESS**

Practical & Legal Considerations

Engage in Active Planning

- **Real estate offices cannot open until the Governor allows for it.**
- However, be ahead of the curve.
- Establish a COVID-19 Re-entry Task Force or Plan.
- Now is the time to consider re-entry issues and develop workplace specific approaches to re-entry action items.
- Coordinate with landlord and/or property management company to determine any restrictions on visitors or modifying the physical workspace.

Protective Coverings, Hygiene and Cleaning Procedures

- **Protective Face Coverings** – Essential employers must currently provide face coverings. Will this apply to all employers in future? Will you need them for open houses & showings?
- **Hygiene** – Employers are advised to encourage and to consider requiring certain hygiene practices, such as frequent hand washing, coughing and sneezing etiquette, proper tissue disposal, use of hand sanitizers, and use of disinfectant wipes in their personal work space.
- **Cleaning Procedures** – Review existing cleaning procedures and consider enhancements, particularly for common areas.

Physical Changes to Offices

- No legal guidelines yet, but employers may need to consider:
 - **Creating Barriers** - Installing plexiglass or other solid screens or dividers may be an attractive option, particularly for employers with open concept office plans where employees sit in close proximity to one another.
 - **Reconfiguring Space** - Some employers may be able to move desks and workstations to create more distance between onsite workers.
 - **Limiting Equipment Use** - To the extent practicable, employers may prohibit the sharing of equipment and devices.

Social Distancing Rules

- **Limiting Gatherings** – Employers may consider utilizing in-office videoconferencing or conducting virtual planned conferences for large meetings, and limiting seating in places like meeting rooms and cafeterias.
- **Adjusting Schedules** – Employers may need to consider “staggered shifts” – i.e., having employees report at different times or on alternating days in order to limit the number of employees arriving or working on premises at the same time.
- **Guidelines for Showings & Open Houses** – Think about a plan to operate business if Social Distancing remains the norm.

Employee Testing & Monitoring

- Testing is a centerpiece of the Opening Up America Again framework.
- Employers may be called upon to check body temperature or require medical certification from employee's physician.
- Under recent Equal Employment Opportunity Commission (EEOC) and CDC guidance, the COVID-19 pandemic creates a sufficient risk to permit widespread testing based on the direct threat standard.
- However, confidentiality and privacy rights as well as anti-discrimination protections must be considered.
- Key will be communication – Make sure employees with positive results or symptoms stay home. Ensure that concerns can be elevated and dealt with effectively and efficiently.

Questions



Thank You!



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