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**Q&A:
COVID-19 PUBLIC HEALTH ORDERS
IN MARIN COUNTY**

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Advisory Note: The information contained herein is believed accurate as of April 29, 2020. It is intended to provide general answers to general questions and is not intended as a substitute for individual legal advice. Advice in specific situations may differ depending upon a wide variety of factors. Recognize that during this State of Emergency, publicly available information changes not just daily, but sometimes hourly. Therefore, readers with specific questions should seek the advice of an attorney.

Introduction:

EFFECTIVE AT 11:59 PM ON SUNDAY MAY 3, 2020, A NEW PUBLIC HEALTH ORDER WILL GO INTO EFFECT AND WILL REMAIN IN EFFECT UNTIL 11:59 PM ON SUNDAY MAY 31, 2020, UNLESS THE HEALTH OFFICER AMENDS OR EXTENDS IT.

WHAT FOLLOWS IS FROM THE EXECUTIVE SUMMARY OF MAY 4, 2020 NEW ORDER, POSTED AT <https://coronavirus.marinhhs.org/executive-summary-may-4-2020-shelter-order>

Most of the Prior Order's restrictions from April 29, 2020 will remain in place. However, the new Order makes a number of significant changes, which are highlighted below:

Essential Businesses as of May 4, 2020:

- Commercial as well as residential real estate transactions are allowed to fully resume, but with continued restrictions on in-person viewings and appointments. Marin County continues to amend its Shelter-in-Place Order, having recently added residential real estate to the list of "essential businesses" whose workers have limited permission to legally work outside the home as necessary during the time the Shelter-in-Place Order remains in effect. Links to the County's Order and to the FAQ the County has provided are included below. County websites and the Order are currently being updated frequently, so be sure to check them regularly.
- Under the new Order, all construction projects can resume, provided they comply with the Construction Project Safety Protocols issued as part of the Order. (These protocols replace the COVID-19 Construction Field Safety Guidelines applicable to the Prior Order).

Social Distancing Protocols for Businesses as of May 4, 2020:

- All business facilities operating in the County, including businesses carrying out minimum basic operations, must comply with the requirement to create a Social Distancing Protocol. (Note: construction activities must instead comply with the Construction Project Safety Protocols.)
- In their Social Distancing Protocols, businesses must now ensure that personnel and customers wear face coverings when entering their facilities (except those customers for whom face coverings are not recommended, like very young children).
- All existing Social Distancing Protocols must be updated to reflect the new requirements.
- We encourage businesses that are not yet allowed to operate to focus on planning to effectively implement social distancing and related measures in their facilities so they are ready to safely reopen when allowed.

Essential Activities and Travel as of May 4, 2020:

- All residential moves are now allowed to proceed.

The essence of the current Shelter-in-Place Order (the “Order”), which are laws enforceable by fines, imprisonment, or both, are simple: **It is NOT business as usual, despite the County’s Order having deemed residential real estate to be an “essential business.”** Real estate brokers, agents, and their employees are allowed to participate in “essential activities”, but **only** to the limited extent that it is not possible (as opposed to being very inconvenient) for you to do a particular work task from home. The Order is vital for our health and that of our families, friends, business associations, and for the health and safety of the general public.

Before conducting any business transactions under the Order, agents are advised to **first consult with their brokers** and adhere to specific rules and guidelines established by their brokers, as well as the requirements set out in the Order discussed below.

Social Distancing Protocols; Immediate Signage Posting Requirements:

The County of Marin has posted the following form to be used to complete your own mandatory, business-specific Social Distancing Protocol. By law, the Protocol for your business must be filled out and posted at your office and under some interpretations of the Orders, anywhere else you conduct your business, including while you are working in the field, and at residences whenever you have in-person meetings or showings. Some of the posting deadline dates have already passed, so attend to this immediately, but first see if your broker has any rules or guidelines you need to follow in completing your Protocol. The Social Distancing Protocol must be substantially in the form linked below:

<https://coronavirus.marinhhs.org/file/65>

The Order generally requires the following:

- You must post the Social Distancing Protocol you complete for your business at each public entrance to any facility from which you do business. That means your office, and if a virtual showing of a listed property or virtual meeting about the property is truly not possible and an in-person showing is thus permitted, or if an essential service provider must enter the unit to perform such a service and you are permitted to be present, then to be prudent, your Social Distancing Protocol should be on your person anywhere else you conduct your business, including while you are working in the field, and it should also be posted at the doors of the residential unit, whether occupied or not, and whether vacant or not, when any form of in-person activity is to take place there that relates to a residential real estate transaction in which you are involved.
- “Businesses must implement all applicable measures listed below, and be prepared to explain why any measure that is not implemented is inapplicable to the business.”
- You must also post signage at each public entrance of the facility to inform all employees and customers that they should: avoid entering the facility if they have a cough or fever; maintain a minimum six-foot distance from one another; sneeze and cough into a cloth or tissue or, if not available, into one’s elbow; and not shake hands or engage in any unnecessary physical contact.

Unless specified otherwise, the answers below are from one of the following County of Marin authorities:

1. The language of the April 29, 2020 Order of the Health Officer of the County of Marin at ;
2. From this FAQ from the County of Marin: <https://coronavirus.marinhhs.org/marin-public-health-order-april-29-2020> . Please check back on this link frequently as responses are being added and updated; or
3. From the Marin County COVID-19 Response Staff at COVID-19@marincounty.org; and from
4. County Counsel for the County of Marin:

The County’s Order states (in part):

“...appointments and other residential real estate viewings must only occur virtually or, if a virtual viewing is not feasible, by appointment with no more than two visitors at a time residing within the same household or living unit and one individual showing the unit (except that in person visits are not allowed when the occupant is present in the residence)”

Q: What does the Order mean by “not feasible”?

A: [Marin County Counsel] “not feasible” means “a virtual viewing is either not possible or is not practical or reasonable for the situation.”

Q: What does the Order mean by “virtual” and “virtual viewing”?

A: [Marin County Counsel] these mean by still photo, video, or a streaming virtual tour.

Q: Can real estate agents show residences in person? Or if I just closed on a home, can I do a walk-through of the home with the agent or seller?

A: [Marin County FAQ and April 29, 2020 Revised Order] Generally, no. Real estate agents, escrow agents, and other service providers that facilitate residential transactions like home sales and apartment rentals are essential workers, but all appointments and viewings must happen virtually (via video or livestream). Only if a virtual viewing is not possible, then in-person showings can occur by appointment with no more than two visitors at a time from the same household, and only one agent showing the unit. In-person showings or walk-throughs are not allowed when an occupant is present in the residence.

Q: May a house be shown as long as it is vacant if there is no virtual tour available?

A: [Marin County Counsel and April 29, 2020 Revised Order] Yes. The house does not need to be vacant, but no occupants may be present in the residence.

Q: If a buyer has virtually toured an occupied property and then made an offer, is it possible for the potential buyer to visit the property in order to confirm their desire to purchase the previously unseen property? The visit would be conditioned upon no occupants being present, the Social Distancing Protocol being posted and complied with, utilizing all other appropriate safety measures, and only by appointment with no more than two visitors at a time from the same household, and only one agent showing the property.

A: [Marin County Counsel and April 29, 2020 Revised Order] Yes.

Q: May all houses be shown to potential buyers or renters if no occupants are present, or does the fact that a home for sale or rent have a still photo, video, or streaming virtual tour option mean that the home may not be shown?

A: [Marin County Counsel and April 29, 2020 Revised Order] Homes may be shown when a virtual viewing is not feasible, meaning a virtual viewing is either not possible or is not practical or reasonable for the situation, and no occupants are present, Social Distancing Protocols are posted and adhered to, only by appointment with no more than two visitors at a time from the same household, and only one agent showing the property.

Q: Is still photography considered “Virtual”?

A: [Marin County Counsel] Yes.

Q: Can an agent go on-site to a property in person if it is not for a showing? If so, when?

A: [by Jeremy Olsan] The language of the Marin County FAQ says “all appointments and viewings must happen virtually (via video or livestream)[add to virtual definition ‘still photos’ per County Counsel]” and “In-person showings or walk-throughs are not allowed when an occupant is present in the residence.”

Given the extraordinary nature of the current health risks and the broad application of the Shelter-in-Place Order, agents should not expect to conduct business as usual by just going to a residence even if the occupants are not there. The premise of the Orders is that even essential businesses and their employees must always work from home unless one has a permissible reason to leave, and then only to perform a certain task that cannot be done via still photos, video or livestream.

Until the County gives clarification or alters the Order, an agent would want to have a good reason why they need to make an in-person visit to the property at all, even to meet an essential business service provider like an exterminator or electrician (see below), in this age when the seller or occupant or the service provider can show the agent any issues or features of the property, including interiors and exteriors via Facetime, Zoom, WhatsApp, Skype, etc. in addition to the agent getting an overview via Google Earth or other mapping sites. The agent can also rely on the actual written reports by permitted inspectors and service providers even if the agent is not present (virtually, of course) for the inspection.

Q: Are real estate inspectors, stagers, photographers or videographers permitted to enter an occupied residential unit to take photos and video for a virtual showing or marketing purposes?

A: [Marin County FAQ] Yes, to the extent they are service providers that enable residential transactions. To the extent these services can be accomplished without anybody else in the home, they should be. If someone else must be present, then it is permitted only if those persons present follow all required Social Distancing Protocols.

Q: If the occupant has not completely moved out, can the agent go to the property and open it for inspectors and/or other essential business service providers?

A: [April 29, 2020 Revised Order] Yes, provided no occupants are present, you carry your Social Distancing Protocol with you, and post it and the other required signage on the doors the inspectors and service providers will use to enter/exit the structures on the property, and comply with the other personal protection requirements of the Order.

However, the Order requires you to stay home unless it is not possible to get the inspector or service provider in without you being the one to do so. These same rules apply to your assistants and employees.

While under normal circumstances agents should strive to be present for all inspections and encourage buyers to do so, the Order simply does not allow for this to happen except in the rare event that it is not possible to get the information another way. You and the buyer can virtually follow the inspector around during the inspection if the inspector is willing, or you can review the inspector's photos and video after the inspection, or you can read their report after the inspection, or do some or all those things.

Q: Can one move to a new residence?

A: [Marin County FAQ and April 29, 2020 Revised Order] The Order allows one to move residences, but states "When moving into or out of the Bay Area region, individuals are strongly urged to quarantine for 14 days. To quarantine, individuals should follow the guidance of the United States Centers for Disease Control and Prevention."

Q: I have a contractor scheduled to begin a remodel next week. Can I go ahead with this project?

A: [Marin County FAQ] You must defer your remodel or renovation project unless it is necessary to restore your home to a safe, sanitary, and habitable space.

Q: I am midway through a remodel. Can my construction project continue?

A: [Marin County FAQ] Residential remodeling projects that are partly completed can continue if delaying completion would pose a safety, security, or sanitation risk to residents or impact the habitability of the residence; otherwise, they must be deferred.

Q: As an owner, is it still okay to operate a “Short-Term Lodging Facility”, defined as “vacation rentals, short-term rentals, timeshares, hotels, motels, bed-and-breakfasts, and other lodging facilities that are rented for 30 days or less?”

A: [April 29, 2020 Marin County Short Term Rental Order] Yes, but only for the following purposes, and not for vacationing purposes Lodging for the County's homeless population; Lodging for County residents who have been displaced and cannot return to their residence because there is a person residing at their residence that must isolate or quarantine or is at high risk of severe illness from COVID-19; Lodging for County residents who need to isolate or quarantine; Lodging to support Healthcare Operations, Essential Infrastructure, Essential Businesses, and Essential Governmental Functions as defined in the April 29 Order.

Q: Can residential and commercial landscaping, gardening, and other commercial outdoor services continue while this Order is in place?

A: [April 29, 2020 Revised Order] Yes, “Outdoor Businesses” are now Essential Services.

“Outdoor Businesses” means: The following businesses that normally operated primarily outdoors prior to March 16, 2020 and where there is the ability to fully maintain social distancing of at least six feet between all persons: Service providers that primarily provide outdoor services, such as landscaping and gardening services, and environmental site remediation services. For clarity, ‘Outdoor Businesses’ do not include outdoor restaurants, cafes, or bars.”

Q: Does wiping down the interior of the house with disinfectant wipes meet the requirement for cleaning a property after someone has been in it?

A [by Jeremy Olsan]: In the Social Distancing Protocol issued by the County of Marin at <https://coronavirus.marinhhs.org/file/65>, there are instructive sample provisions that address the basics of what to do to protect both employees and customers:

“Measures To Protect Employee Health” and “Measures To Increase Sanitization”. See also the County FAQ under the question “How should I clean/disinfect my home to prevent the spread of COVID-19?”: https://coronavirus.marinhhs.org/faqs?combine=&field_categories_target_id=All

Q: Can plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the habitability, sanitation, and operation of residences and Essential Businesses continue to do their work under the Order?

A: [April 29, 2020 Revised Order] Yes, but only: “Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the habitability, sanitation, or operation of residences and Essential Businesses” but not for cosmetic or other purposes.

Q: Can professional housecleaners continue to work under the Shelter-in-Place Order?

A: [by Jeremy Olsan] No, unless it is a service necessary to maintaining the safety, sanitation, and essential operation of residences, essential activities, and essential businesses. Routine housecleaning does not fall into this category.

Q: Is a pool repair or maintenance business an “Essential Business” under the Shelter-in-Place Order?

A: [by Jeremy Olsan] No, unless the pool repair or maintenance business is providing a service that is necessary to maintaining the safety, sanitation, and essential operation of residences, essential activities, and essential businesses.

ADDITIONAL RESOURCES:

- [CDC COVID-19 Guidelines](#)
- [New applicable zipForms®](#)

The Marin Association of REALTORS® are continuing to work with government and health agencies to keep you informed and provide updates on orders and their interpretations.
