

## **COVID-19 FREQUENTLY ASKED LEGAL QUESTIONS**

(Subject to continuing revision)

***Q: Can REALTORS® continue to show houses now that Mississippi is under a “stay-at-home” quarantine?***

A: While “real estate services” have been identified as an Essential Service by Governor Tate Reeves in his emergency orders, all real estate activity should be conducted with great caution and consistent with guidance from Mississippi Department of Health, the Centers for Disease Control (CDC), and Executive Orders issued by Governor Reeves. If a REALTOR® decides to facilitate a showing, any effort must be in accordance with social distancing protocols and best practices as identified by local, state and federal guidance. As property professionals and community champions, we commit ourselves to the safety and wellbeing of our clients and the community. As REALTORS®, we must continue to lead by example and practice social distancing directives.

***Q: Can REALTORS® keep their offices open under the “stay-at-home” quarantine order?***

A: Governor Tate Reeves’ executive orders to date dealing with COVID-19 designate “real estate services” as an Essential Service that may continue to be undertaken during the “shelter-in-place” quarantine period. Essential Services “may remain open and shall operate at such level as necessary to provide essential services and functions.” All businesses are permitted to conduct those activities necessary for the business to maintain the condition of the facilities, premises and equipment, value of business inventory, payroll, employee benefits, security and to facilitate employees of the business or operation to continue to work remotely from their residences. Any decision to keep a REALTOR’S® office open should take into consideration the essential nature of the office remaining open in the conduct of “real estate services,” including consideration of workable alternatives that protect the safety and health of persons involved and comply with local, state and federal guidance relating to social distancing and other safety best practices.

***Q: What about REALTOR® office staff?***

A: Governor Tate Reeves’ executive orders to date dealing with COVID-19 permit individuals to leave their residences only to perform “Essential Activities,” which include performance of work providing essential products and services at Essential Businesses. Any decision to keep an office open and have staff report to work should take into consideration the essential nature of the office remaining open in the conduct of “real estate services,” including consideration of workable alternatives that protect the safety

and health of persons involved and comply with local, state and federal guidance relating to social distancing and other safety best practices.

***Q: What about people who want to see a listing? Are they prohibited from leaving home under the “stay-at-home” quarantine order?***

A: Individuals may leave their residences only to perform Essential Activities. Travel by individuals is allowable when necessary to conduct Essential Services. The Governor’s orders do not specifically say individuals may leave their homes and travel to a real estate showing or transaction, but these orders generally seem to imply that travel related to conduct of Essential Services should be permitted. Any individual leaving home to conduct real estate services should carry whatever proof they have that their business is related to an Essential Service covered under the Governor’s orders. Each individual, and not the REALTORS® involved, is responsible for getting to and from any real estate business activity using their best judgment and exercising caution in accordance with local, state and federal guidance.

***Q: What should REALTORS® do to prove they are conducting “Essential Services” when they are working on a real estate-related matter that requires them to leave their home?***

A: Enforcement of the emergency orders is reserved to the State Department of Health and all local and statewide law enforcement, so if a member is stopped while performing Essential Services they should have something with them to prove that they are a real estate agent (or employee) and be prepared to explain exactly what Essential Service they are performing. To be safe, a member performing Essential Services should have with them either their MREC registration card, a letter from their broker (on company letterhead) saying they are an employee of X firm performing essential real estate services, or a copy of their real estate license (not the actual license!). For those who get questioned and do not have their card, a letter or copy of their license, a business card might suffice.

Those performing Essential Services or engaging in Essential Transportation are still required to comply with CDC and Mississippi Department of Health recommendations regarding social distancing (no less than 6’ separation from others, avoidance of groups larger than 10 people at all times, sending sick employees home, and separating and sending home employees showing any COVID-19 symptoms [fever, chills, abdominal pain, dry cough]).

***Q: I have a contract pending with an inspection contingency where we cannot secure an inspection within the 10-day period. What should I tell my client to do?***

A: First, remember that even during a crisis, a real estate licensee may not under any circumstances engage in the unlicensed practice of law, so avoid giving “legal” advice to your clients or customers, even if they ask questions relating to a MAR form. With that in mind, MAR has created a COVID-19 Addendum to the F1 Contract for the Sale and Purchase of Real Estate that provides some relief to a Seller and Buyer by relaxing the “Time is of the essence” provision of the Contract and acknowledging the parties’ right to cooperate in good faith and make reasonable allowances for delays due to quarantine or closure related to the COVID-19 state of emergency. This addendum, if signed by Seller and Buyer, allows for them to agree to alter deadlines and contingencies as the parties may agree, subject to the right of either party to terminate the Contract if more than 30 days elapses past the Closing Date in the contract.

***Q: A pending transaction I am involved with is experiencing difficulty securing an appraisal. What has the government done regarding this situation?***

A: Availability of appraisal services has not been limited or restricted by federal or state authorities. Governor Tate Reeves designated as “Essential Services” all “real estate services (including appraisal and title services)” in Executive Order No. 1463 (March 24, 2020). Most lenders are reportedly still requiring full appraisals but have some latitude to vary requirements based upon the type of loan. The Mississippi Banking Association advises that the Federal Financial Institutions Examination Council (FFIEC) is working to have some clarity regarding appraisals within 3-5 days from March 25, 2020. The Federal Housing Finance Agency (FHFA) has directed Fannie Mae and Freddie Mac to allow use of appraisal alternatives to reduce the need for appraisers to conduct interior property inspections for eligible mortgages through May 17, 2020. The VA and FHA approved similar measures on March 27, 2020

***Q: What about use of a remote (virtual) closing if someone is unavailable for an in-person closing?***

A: The problem with remote closings is securing of original notary signatures, required for documents to be filed in Mississippi land records. Mississippi law does not recognize electronic or remote notarization as of this date, and the Legislature has suspended their session indefinitely. Legislation may be introduced when the Legislature returns to work to address this situation. In the meantime, MAR is advised by state officials that remote notarization may be authorized in the days to come by administrative order, but until then current Mississippi law does not permit anything other than in-person notarization. The U.S. Congress is currently considering legislation that could enable remote notarization nationwide, but that solution is not available at the present time. As in the past, *soft* closings can be achieved where parties can secure notarizations in the normal fashion where they are located and then get original documents into the hands of a closing agent prior to the time of closing.

***Q: What if a buyer in a pending contract loses their job or has to close their business and this causes them to lose their financing for closing?***

A: The Mississippi REALTORS® Contract for the Sale and Purchase of Real Estate (F1) form includes an optional Loan Contingency that provides some protection to a seller, but after this contingency is waived the buyer is obligated to close. Loss of a loan due to COVID-19 is not covered by any other provisions of the MAR contract, and failure to close would constitute a breach of contract by buyer. Mississippi REALTORS® has created a COVID-19 Addendum to the F1 Contract that offers the seller and buyer an option to cover the situation where a buyer loses their financing due to COVID-19 loss of income after the loan contingency has been waived. If seller and buyer execute this Addendum, either party may terminate the Contract. The parties are always free to otherwise amend a pending Contract in writing on any terms they agree upon. If they consider amendment, they should be encouraged to seek competent legal advice before acting.

***Q: What is the current situation with Mississippi banks? Are buyers still able to secure loans?***

A: Mississippi banks are free to determine their lending practices, except where federal or state regulations have been altered due to the pandemic. The Federal Housing Finance Agency (FHFA) has directed Fannie Mae and Freddie Mac to allow use of appraisal alternatives to reduce the need for appraisers to conduct interior property inspections for eligible mortgages through May 17, 2020; similar exceptions have been made for FHA or VA mortgage loans. Mainline banks in Mississippi are open for business, with restrictions on personal access to service areas (most by appointment only); drive-through business remains available in most locations.

***Q: Can I refuse to show houses to someone who has been in an area with higher numbers of COVID-19 cases?***

A: NAR has provided guidance that says you may ask all clients and potential clients if they have traveled recently or are showing signs of respiratory illness; however, you want to make sure that you ask ALL individuals the same question to avoid claims of discrimination. Refusing to engage with a client or potential client who may be at risk could lead to a potential Fair Housing Act complaint under current law, which has not been revised in light of the pandemic.

***Q: Can a seller or buyer terminate a contract because of COVID-19?***

A: There is nothing in the Mississippi REALTORS® Contract for the Sale and Purchase of Real Estate (F1) form that gives either party the right to terminate because of COVID-19. MAR has created a COVID-19 Addendum to the F1 Contract for the Sale and

Purchase of Real Estate that gives the seller and buyer the option to terminate or amend a pending contract due to COVID-19 issues. As usual, the parties are free to agree to any other amendment they reduce to writing and sign. Without the Addendum or some other amendment to the Contract being executed by seller and buyer, a seller's decision to terminate a pending contract would constitute a breach of the contract by seller, as would a buyer's failure to close in the absence of an applicable contingency that affords a buyer the right to terminate.

***Q: I have a tenant in a rental property under the MAR F3 Residential Lease Agreement who says they are sick with COVID-19 and cannot move out before the end of the lease term, which is approaching. What should I do?***

A: Governor Tate Reeves' Executive Order No. 1466 (April 1, 2020) specifically suspended all evictions statewide during the "shelter-in-place" period that continues at least until April 20, 2020 (subject to extension). The Governor's order does not suspend a Lessee's obligation to pay rent or comply with other obligations under the Lease. The Residential Lease Agreement does not contain any automatic extension of the Term and must be amended in order for the end date of the lease to be extended and avoid the Lessee becoming a "hold-over" tenant. MAR created a COVID-19 Addendum to the Mississippi REALTORS® Residential Lease Agreement (F3) that enables the Lessor and Lessee to make allowance for a quarantine due to COVID-19 that specifically provides a basis for payment of rent during any period that occupancy stretches beyond the Lease termination date.

***Q: Can my seller/client refuse to allow access to show their home?***

A: A seller, as owner, can make that decision, but there may be consequences. If the house is under contract, the contract may have provisions to provide access, as with inspections, appraisals, etc. If the house is listed, a decision to restrict access may require a change in status in the MLS, which may in turn require removal of the property from active listing, which triggers other things like removal from active marketing venues. MAR has created a COVID-19 Addendum to the Mississippi REALTORS® Listing Agreement (F4) that enables a member to deal with these issues in the context of an existing listing. Whatever the owner does, they need to remember that they are bound by laws like the Fair Housing Act, requiring them to avoid discrimination in prohibiting some but not others from access.

***Q: What should I do about open houses during this time period?***

A: Pursuant to Governor Tate Reeves' "shelter-in-place" order effective April 3, 2020, all persons are required to cancel or reschedule public and private social and other non-essential gatherings in groups of more than 10 people in a single space and at the same time where individuals are in close proximity (less than 6 ft.) to each other. The

Mississippi REALTORS® Listing Agreement (F4) does not specifically require a listing broker to conduct open houses. This is discretionary with the broker, working with the owner. NAR has issued a revised “Open House Guidance During COVID-19” (March 30, 2020) including strong encouragement “to consider the advisability of continuing to hold open houses at this time, especially in light of the guidance and actions of federal, state and local authorities, including ‘The President’s Coronavirus Guidelines for America’ recommending that gatherings of ten or more persons be avoided.” NAR’s Open House Guidance is available at <https://www.nar.realtor/open-house-guidance-during-covid-19> . According to NAR, “[m]embers have reported temporarily ceasing open houses to restrict traffic into listed homes, to practice social distancing, and to ensure potential buyers are taking recommended precautions.” The Mississippi REALTORS® has links to these and other COVID-19 resources on its website.

***Q: I have a tenant in a rental property under the Mississippi REALTORS® Residential Lease Agreement (F3) who says they have lost their job and are unable to continue paying rent. What should I do?***

A: Governor Tate Reeves’ Executive Order No. 1466 (April 1, 2020) specifically suspended all evictions statewide during the “shelter-in-place” period that continues at least until April 20, 2020 (subject to extension). The Governor’s order does not suspend a Lessee’s obligation to pay rent or comply with other obligations under the Lease. The Lessor must decide whether they wish to consider failure to pay rent under these circumstances a default or whether they wish to try to accommodate the Lessee in this situation. MAR has created a COVID-19 Addendum to the F3 Residential Lease Agreement that provides a form for the Lessor and Lessee to agree to terminate the Lease if the Lessee wishes to move to an alternate residence. If a Lessor does not wish to accommodate a Lessee who cannot pay rent and the Lessee refuses to move out during the “shelter-in-place” quarantine, the Lessee has the right to stay in the premises but has to pay rent and otherwise honor the Lease.

***Q: What if a seller cannot move out of the house at closing because they are quarantined?***

A: If a seller is experiencing a medically-ordered self-quarantine due to possible or confirmed infection with COVID-19, there is no provision in the Mississippi REALTORS® Contract for the Sale and Purchase of Real Estate (F1) governing a seller’s inability to vacate the premises due to COVID-19 or otherwise. In these instances, the Mississippi REALTORS® Post-Closing Possession Addendum (F18) would be available to enable the parties to address the situation. This form requires inclusion of a date whereby the seller must vacate, requiring the parties to guess at how long a medical quarantine should last. For a seller with a suspicion of possible infection, the quarantine periods have been in the neighborhood of fourteen (14) days. For persons confirmed to be infected, the quarantine could last for an extended period

of time, especially as the scientific community is still not certain how long treatment may last, depending on multiple factors unique to each patient.

***Q: Regarding showings and liability, if REALTORS® are showing property and the buyer ends up testing positive for COVID-19 and someone in the seller household contracts it and the case is linked back to the buyer, is the REALTOR® liable? Should REALTORS® be asking sellers to sign a waiver if the seller insists the house be shown?***

A: Tort liability turns on a duty breached that proximately causes damage. The duty of a licensee would be the issue in any accusation since without a duty there can be no tort liability. Licensees always have a duty of disclosure of known facts. Under the current circumstances, it would be reasonable for a licensee about to show or enter any property to ask all parties involved if they or anyone on the premises or in their immediate family have travelled outside the country recently, tested positive for COVID-19, or are showing any symptoms (fever, cough, chest pain, per CDC). If they elect to ask such questions, they must ask everyone in the same manner and not be selective in order to avoid any Fair Housing Act discrimination accusations. If a REALTOR® does gain information that a particular person has or could have COVID-19, they should not disclose the name of that individual in respect of their privacy; the proper response to others whose business dealings are affected (*i.e.*, on a need to know basis) would be that confidential information has been received that precludes a showing at this time, or something to that effect. To help with these situations, Mississippi REALTORS® has created a COVID-19 Disclosure and Waiver Regarding Physical Property Showing or Inspection form that provides members an option for clarifying responsibility and risk among the owner, visiting parties (e.g., potential buyers, inspectors, appraisers, others), and the brokers and agents involved with a particular property.

***Q: What if one of my agents gets sick?***

A: Brokers should be diligent to implement protocols protecting the health and welfare of their clients, customers, agents, staff and the public. NAR has produced “Coronavirus: A Guide for REALTORS®” that defines the virus, points out risks and refers members to the “Sample Preparedness Plan” created by NAR specifically for assisting members with operating protocols during the crisis. The NAR General Guidance During COVID-19 is available at: <https://www.nar.realtor/coronavirus-a-guide-for-realtors#general-guidance> . MAR has links to these and other resources on its COVID-19 webpage.

***Q: What about my MLS rules and regulations during this crisis?***

A: Unless MLS rules and/or regulations are suspended or amended in response to the pandemic, normal rules continue in effect. NAR reports that some MLSs across the

nation are promoting use of virtual tours in open house fields, while some have disabled the use of open house fields altogether. Members should check their own MLS rules. NAR's MLS COVID-19 Guidance can be found here: <https://www.nar.realtor/mls-covid-19-guidance> .

***Q: What is the situation with Mississippi recording offices?***

A: Real property documents are filed for public record in the offices of the Chancery Court Clerk in each county. To date, the Mississippi Supreme Court, which oversees operation of these offices, has not issued any orders closing these offices. Currently, all offices are open, though some are restricting direct access to staff for recording purposes. Additionally, e-recording services are available only in Calhoun, DeSoto, George, Hancock, Harrison, Hinds, Itawamba, Jackson, Lafayette, Lee, Monroe, Pontotoc, Prentiss, Rankin, Tishomingo, and Union Counties.

***Q: My local government has imposed restrictions on movement and operation of local businesses. Does Governor Reeves' executive order addressing the Coronavirus situation and deeming real estate services as "essential" override any local proclamations or ordinances to the contrary?***

A: Yes; Governor Tate Reeves designated as "Essential Business or Operation" all "real estate services (including appraisal and title services)" in Executive Order No. 1463 (March 24, 2020). This same executive order declares that "any order, rule, regulation or action by any governing body, agency or political subdivision of the state that imposes any additional freedom of movement or social distancing limitations on Essential Business or Operation, restricts the scope of services or hours of operation of any Essential Business or Operation, or which will or might in any way conflict with or impede the purpose of this Executive Order is suspended and unenforceable during this COVID-19 State of Emergency."

***Q: What if I need to access the courts during this crisis?***

A: The Mississippi Supreme Court, which governs the Mississippi state court system, has issued multiple emergency orders related to COVID-19. As of March 24, 2020, all courts remain open, with trial judges having wide discretion regarding handling of cases in their individual courts. Federal courts likewise remain open, with some procedural restrictions on proceedings in place to limit personal appearances and prioritize pending matters. Persons having pending or new claims should contact their attorney or an experienced attorney with a good working knowledge of court procedures, including emergency protocols in place.



***Q: Are independent contractors entitled to paid leave?***

A: Self-employed individuals may be eligible for paid leave administered through refundable tax credits if they meet the qualifications under the FFCRA's Emergency Paid Sick Leave Act if they were: subject to a quarantine or isolation order; has been advised to self-quarantine; is experiencing symptoms; or, must care for an individual who is subject to an isolation order or who is a quarantined employee; or is on leave to care for a son or daughter if the school or place of care for the child has been closed or the child care provider of the child is unavailable, due to COVID-19 precautions. Eligible self-employed individuals are able to claim a refundable tax credit equal to 100% of the qualified sick leave equivalent amount for those who must self-isolate, obtain a diagnosis, or comply with a self-isolation recommendation with respect to COVID-19. Eligible self-employed individuals caring for a family member or for a child whose school or place of care has been closed due to COVID-19 receive a credit equal to 67% of a qualified sick leave equivalent amount. **Source: NAR**

Supplemental note from NAR: Late on April 2, the SBA released its interim final rule on the SBA 7(a) Paycheck Protection Program loans, created by the CARES Act. This rule clarifies one of the biggest outstanding questions on the program for NAR members - whether or not independent contractors should be included in an employer's employee headcount, and payments to them included in their average monthly payroll costs calculations. Though there is some contradictory language in the rule, it explicitly states that because independent contractors have the ability to apply for their own paycheck protection program loan, they do NOT count for the purposes of a borrower's PPP calculation.

Small businesses and sole proprietors can apply for the loans beginning today, April 3; independent contractors and the self-employed can apply beginning next Friday, April 10. The applications should go directly through an SBA lender. You can find out more about this loan - eligibility requirements, what it can be used for, forgiveness requirements, plus links to the application and how to find an SBA lender - [here on NAR's FAQ document](#), which is being updated to reflect the latest information from the SBA.

***Q: Are Mississippi REALTORS® eligible for unemployment benefits?***

A: Real estate professionals will be eligible to apply for unemployment benefits, under the new "Pandemic Unemployment Assistance" temporary Federal-State program if they have been fully or partially unemployed due to an inability to work as a result of the COVID-19 public health emergency. This includes self-employed individuals and independent contractors. The CARES Act provides an additional \$600 per week (for up to four months) on top of the amount provided under a state's compensation law through December 31, 2020. Typically, states base compensation amounts on an individual's wages from their most recent complete tax year, and net income from all

self-employment that was reported on an individual's tax return. However, if an individual is eligible to telework with pay, or has paid sick leave or expanded family and medical leave, they are not eligible for unemployment assistance. These new benefits will be carried out through agreements between each state and the federal government, where states will be fully reimbursed for the compensation paid out, plus administrative costs. Therefore, individuals should check with their state labor department or employment commission to determine their options for unemployment. For individual state and local labor services, including claims filing, see [here](#). (Source: NAR). NAR's FAQ on the Coronavirus Aid, Relief, and Economic Security Act (CARES), including information on the new Small Business Administration (SBA) programs (the 7(a) Paycheck Protection Program loans and the Economic Injury Disaster Loans advance grants program) is available here: <https://www.nar.realtor/political-advocacy/coronavirus-sba-cares-act-faqs> .

If you have a question regarding unemployment or if you have an issue with your application, please contact your [State Representative](#) or [State Senator](#).