

MAY 25, 2020

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

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Advisory Notes

- The information contained herein is believed accurate as of May 25, 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.
- **WHERE COUNTY ORDERS ARE MORE STRINGENT THAN THOSE OF THE STATE OF CALIFORNIA, THE COUNTY ORDERS APPLY. IN SOME RESPECTS, THE MARIN COUNTY ORDER IS MORE STRINGENT THAN THOSE OF THE STATE, AND IN SOME RESPECTS THE STATE ORDER IS MORE STRINGENT THAN THE COUNTY OF MARIN. READ THE UPDATE BELOW CAREFULLY SO YOU KNOW WHAT TO DO IN ORDER TO COMPLY WITH BOTH.**

UPDATE

EXECUTIVE SUMMARY:

1. **IF BY JUNE 1, 2020 YOU HAVE REPLACED YOUR SOCIAL DISTANCING PROTOCOL WITH A MARIN-COUNTY COMPLIANT SITE-SPECIFIC PROTECTION PLAN (SPP), YOU WILL HAVE ALSO MET THE STATE OF CALIFORNIA REQUIREMENT TO IMPLEMENT A “WORKSITE SPECIFIC PLAN”.**
2. **IF YOU IMMEDIATELY START POSTING C.A.R.’S NEW “RULES FOR ENTRY ONTO PROPERTY AND PICTOGRAM” (REVISED AS OF 5/25/2020), AND IF YOU AND YOUR CLIENTS FOLLOW THE REQUIREMENTS IN IT, INCLUDING MAKING SURE THAT ANY VISITOR HAS DELIVERED A SIGNED C.A.R. FORM PEAD TO THE LISTING AGENT PRIOR TO ENTERING THE PROPERTY, YOU WILL HAVE MET THE STATE OF CALIFORNIA REQUIREMENT TO POST RULES AND A PICTOGRAM AT EACH PROPERTY WHEN ANY VISITOR, INCLUDING POTENTIAL BUYERS AND SERVICE PROVIDERS, ARE PRESENT.**

THE CURRENT MARIN COUNTY PUBLIC HEALTH ORDER:

- AT 11:59 p.m. ON MAY 17, 2020 A NEW MARIN COUNTY PUBLIC HEALTH ORDER WENT INTO EFFECT AND WILL REMAIN IN EFFECT UNTIL IT IS RESCINDED, SUPERSEDED, OR AMENDED IN WRITING BY THE HEALTH OFFICER.
- JUNE 1, 2020: DEADLINE FOR REPLACING SOCIAL DISTANCING PROTOCOL WITH SITE-SPECIFIC PROTECTION PLAN (SPP).

IF YOU COMPLY WITH THIS CHANGE BY HAVING A SITE-SPECIFIC PROTECTION PLAN IN PLACE BY JUNE 1, 2020, YOU WILL AUTOMATICALLY BE IN COMPLIANCE WITH THE STATE OF CALIFORNIA REQUIREMENT THAT YOU DEVELOP A “WORKSITE SPECIFIC PLAN” (see below).

Under this new Order, Essential Businesses which were permitted to operate prior to May 18, 2020, and are currently following the Public Health Order’s prior Appendix A “Social Distancing Protocol” may continue to conduct business consistent with that protocol until June 1, 2020. However, effective June 1, 2020, Essential and Outdoor Businesses shall comply with the updated Appendix A “COVID-19 Site-Specific Protection Plan Guidance & Template for Developing Your Own Plan.”

Here is a link to the new Marin County Guidance and Template:

https://coronavirus.marinhhs.org/sites/default/files/2020-05/final-covid-19-site-specific-protection-plan-for-re-opening-businesses_05152020_v2_0.pdf

It says:

“The Site-Specific Protection Plan (SPP) template combines state-level guidance published in the California State Resilience Road map and local Marin County public health policies. The State of California requires all businesses to:

1. Perform a detailed risk assessment and implement a site-specific protection plan (SPP)
2. Train employees on how to limit the spread of COVID-19, including how to screen themselves for symptoms and stay home if they have them
3. Implement individual control measures and screenings
4. Implement disinfecting protocols
5. Implement physical distancing guideline

THE COUNTY OF MARIN’S “MARIN RECOVERS” WEBSITE WILL INCLUDE REAL-ESTATE INDUSTRY SPECIFIC COUNTY GUIDELINES AND PROTOCOLS FOR REOPENING YOUR BUSINESS WHICH ARE NOW BEING DEVELOPED. SIGN UP FOR NOTIFICATIONS FOR ISSUANCE AND UPDATES TO THOSE GUIDELINES/PROTOCOLS HERE:

<https://marinrecovers.com/Real-Estate>

THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH AND CAL-OSHA HAVE ISSUED REAL-ESTATE INDUSTRY SPECIFIC GUIDELINES AS WELL (<https://covid19.ca.gov/pdf/guidance-real-estate.pdf>). THESE REQUIRE EACH REAL ESTATE BUSINESS TO DEVELOP AND IMPLEMENT A “WORKSITE SPECIFIC PLAN”. THIS REQUIREMENT HAS BEEN SUBSUMED INTO THE COUNTY OF MARIN REQUIREMENT THAT YOU DEVELOP AND USE A SITE-SPECIFIC PROTECTION PLAN (SPP) BY NOT LATER THAN JUNE 1, 2020 (see above)

CALIFORNIA ASSOCIATION OF REALTORS®

On May 25, 2020, C.A.R. released the “Real Estate Best Practices Guidelines and Prevention Plan for Showings During COVID-19 – Stage 2 Expansion”, and previously released several new forms, including:

- **CORONAVIRUS PROPERTY ENTRY ADVISORY AND DECLARATION FORM (Form PEAD)**; and
- **RULES FOR ENTRY ONTO PROPERTY AND PICTOGRAM** (REVISED AS OF 5/25/2020)

These forms are intended for posting at properties when any visitor, including service providers, are present. The “Rules” state “PRIOR TO ENTERING THIS PROPERTY, YOU MUST HAVE ALREADY SIGNED A CORONAVIRUS PROPERTY ENTRY ADVISORY AND DECLARATION FORM (C.A.R. Form PEAD) AND DELIVERED A COPY OF THAT SIGNED FORM TO THE LISTING AGENT....”

[Get access to the Pictogram Sign here.](#) (Requires C.A.R. Login)

ALL PERSONS ENTERING THIS PROPERTY AGREE TO THESE POSTED RULES

Prior to entering this property, you must have already signed a Coronavirus Property Entry Advisory and Declaration form (C.A.R. Form PEAD) and delivered a copy of that signed form to the Listing Agent. The PEAD form is your agreement that you will take all reasonable and necessary precautions to protect yourself and others from the spread of COVID-19.

- You agree to the following:
 - Washing your hands with soap and water or using hand sanitizer immediately upon entry and before touring or inspecting the property.
 - Wearing a protective face covering.
 - Practicing social distancing by keeping at least six feet between yourself and others, and not gathering in groups.
 - Avoid touching surfaces or items in the property. All persons on property for in-person showings should avoid touching knobs, faucets, toilets and toilet handles, light switches, garage door opener buttons, handles and pulls, alarm system controls, fan pulls, remotes, thermostats, switchplates, gates and gate latches, window locks and sashes, pool coverings, counters, door and cabinet handles, sinks, and other such items. If you believe it necessary to touch surfaces or items in the property, consider the risks of doing so; and
 - Discarding any disposable gloves, face coverings, or shoe coverings worn during the visit, upon exiting the property.
- You will exercise care to protect yourself, and assess your own risks, by considering your age, underlying health conditions, recent travel, possible exposure to COVID-19, doctor's recommendations, and local, State and Federal recommendations. You agree and understand that it is your responsibility to evaluate the risks and protect yourself.
- You will follow all Federal, State, and local laws and Stay Home Orders, even though such laws and orders may be changing rapidly.
- For the safety of all, you represent that:**
 - To the best of your knowledge, you are not currently afflicted with, and have not knowingly, within the last 14 days, been in contact with someone afflicted with, COVID-19;
 - You are not experiencing a fever, or signs of respiratory illness such as cough, shortness of breath or difficulty breathing, or other COVID-19 symptoms;
 - You understand that persons may be afflicted with COVID-19 and: (i) not exhibit symptoms; (ii) not be aware that they are afflicted or (iii) may not voluntarily agree to disclose their condition; and
 - You will inform Broker if, after the date this document is signed, there is a change in your health condition or knowledge that potentially puts others at risk.

THIS NOTICE IS POSTED TO COMPLY WITH THE REQUIREMENTS OF THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH. ADDITIONAL NOTICE OR ENTRY STANDARDS MAY BE REQUIRED BY LOCAL LAW.

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ALL VISITORS TO THE PROPERTY MUST ABIDE BY THE FOLLOWING RULES

- 6 ft.**
PRACTICE SOCIAL DISTANCING BY KEEPING AT LEAST SIX FEET BETWEEN YOURSELF AND OTHERS
- WASH YOUR HANDS WITH SOAP AND WATER OR USE HAND SANITIZER
- WEAR A PROTECTIVE FACE COVERING
- AVOID TOUCHING HANDS, FAUCETS, TOILETS AND TOILET HANDLES, COUNTERS, LIGHT SWITCHES, AND OTHER SURFACES
- AFTER VIEWING, DISCARD ANY DISPOSABLE GLOVES, FACE COVERINGS, OR SHOE COVERINGS WORN DURING THE VISIT

IF YOU ARE CURRENTLY AFFLICTED WITH, OR WITHIN THE LAST 14 DAYS, HAVE BEEN IN CONTACT WITH SOMEONE AFFLICTED WITH COVID-19, OR HAVE ANY SYMPTOMS SUCH AS FEVER, COUGH OR DIFFICULTY BREATHING, PLEASE DO NOT ENTER THE PROPERTY.

C.A.R. states:

“On May 8, the Department of the Public Health issued its “Industry Guidance: Real Estate Transactions,” which among other things, **REQUIRES AGENTS TO POST RULES ON THE PROPERTY – WITH PICTOGRAMS -- that must be agreed to as a condition of entry by all people viewing the property.** C.A.R. is in the process of creating a comprehensive approach that will allow any brokerage to comply with all aspects of the new Industry Guidance.

As an interim measure, we are making this “Interim Rules Form” available. **Posting both this form and the PEAD form together at the entrance to a property, will assist agents and brokers in complying in part with the new Industry Guidance** until our comprehensive approach is released.”

Note the following warnings on the above Pictogram and in the C.A.R. Best Practices Guidelines and Prevention Plan:

THIS NOTICE IS POSTED TO COMPLY WITH THE REQUIREMENTS OF THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH. ADDITIONAL NOTICE OR ENTRY STANDARDS MAY BE REQUIRED BY LOCAL LAW.

And:



Check Your City or County for More Restrictive Local Shelter-In-Place Orders

If a city or county in which you do your business activity has an order with a more restrictive standard regarding what qualifies as an essential service, or more restrictions on activities, those guidelines will still govern the activities of a licensee. In other words, if there is a more restrictive local order, it must still be followed. That order may prevent or limit your ability to conduct real estate activity.

EXCERPTS FROM THE EXECUTIVE SUMMARY OF COUNTY OF MARIN MAY 4, 2020 ORDER:

<https://coronavirus.marinhhs.org/executive-summary-may-4-2020-shelter-order>

“Most of the Prior Order’s restrictions from April 29, 2020 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 and as of June 1, Site Specific Protection Plans (SPPs). (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 and as of June 1, Site Specific Protection Plans (SPPs).
- 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 JUNE 1, 2020, ALL SOCIAL DISTANCING PROTOCOLS MUST BE REPLACED BY A SITE-SPECIFIC PROTECTION PLAN (SPP). SEE ABOVE.**

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 and as of June 1, Site Specific Protection Plans (SPPs) 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 May 15, 2020 Order of the Health Officer of the County of Marin at <https://coronavirus.marinhhs.org/stay-home-order-effect-marin-county> ;
2. From this FAQ from the County of Marin <https://coronavirus.marinhhs.org/faq> . 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: Can real estate agents show residences in person?

A: [Marin County FAQ <https://coronavirus.marinhhs.org/faq/can-real-estate-agents-show-residences-person>] **Generally, no.** Real estate agents, escrow agents, and other service providers that facilitate real estate transactions like home sales, apartment rentals, and sale of commercial properties are essential workers, but all appointments and viewings must happen virtually (via video or livestream) to the greatest extent possible. **Only if a virtual viewing is not feasible, meaning that no virtual option exists or the existing virtual option has already been used and does not fully meet the needs of the situation (i.e. a post-closing walk through or a pre-purchase showing for qualified and serious buyers),** 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 property.

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: 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 visits are not allowed when the 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 do their work?

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 and as of June 1, Site Specific Protection Plans (SPPs).

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 (and as of June 1, Site Specific Protection Plans (SPPs)) 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: 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: [Marin County FAQ] Not for vacationing purposes. Short-term lodging including short-term rentals, hotels, motels, and bed-and-breakfasts, may continue for the limited purposes of either (1) COVID-19 mitigation and containment measures, including measures to protect homeless populations (examples include: isolation and quarantine or the housing of displaced persons); (2) housing workers performing essential business activities and essential government functions within

the County; or (3) housing individuals staying overnight in Marin to perform the essential activity of caring for the health and safety needs of a family member.

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: No. See County of Marin website at: <https://coronavirus.marinhhs.org/faq/how-should-i-cleandisinfect-my-home-prevent-spread-covid-19>

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: Yes, “but only as permitted under the State Shelter Order and only pursuant to the Construction Safety Protocols listed in Appendix B and incorporated into this Order by this reference.”

Appendix B-1: Small Construction Protocol: <https://coronavirus.marinhhs.org/appendix-b-1-marin-health-order-effective-may-4-2020>

Appendix B-2: Large Construction Protocol: <https://coronavirus.marinhhs.org/appendix-b-2-marin-health-order-effective-may-4-2020>

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.
