

January 12, 2021

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

By: Jeremy L. Olsan, Olsan Law, Inc.
General Counsel for the Marin Association of REALTORS®
jeremy@olsanlaw.com | www.olsanlaw.com | (707) 385-6252
2751 4th Street, Ste 220, Santa Rosa, CA 95405

Advisory Notes

- The information contained herein is believed accurate as of January 12, 2021. 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.
- **IN MARIN COUNTY YOU ARE STILL PROHIBITED FROM HAVING BROKER OPENS AND PREVIEWS OF PROPERTY, AND YOU REMAIN LIMITED IN THE MANNER IN WHICH PROPERTY MAY BE ACCESSED AND SHOWN. THE MARIN COUNTY ORDER STILL CONTAINS THE FOLLOWING LANGUAGE:**

*Service providers that enable real estate transactions (including rentals, leases, and home sales), including, but not limited to, real estate agents, escrow agents, notaries, and title companies, are allowed to operate provided that **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).***

More details on this from the County of Marin's FAQ are in the Q&A below.

UPDATE

EXECUTIVE SUMMARY:

1. **THE STATE OF CALIFORNIA'S REGIONAL "STAY-AT-HOME ORDER" REMAINS IN EFFECT. IT TEMPORARILY SUPERCEDES THE LESS-STRINGENT COUNTY OF MARIN RISK-REDUCTION ORDER (SEE BELOW). THE STATE STAY-AT-HOME ORDER APPLIES WHENEVER THE BAY AREA'S ADULT INTENSIVE CARE UNIT (I.C.U.) BED CAPACITY IS LESS THAN 15%, AND FOR FOUR WEEKS THEREAFTER. "BAY AREA" FOR THIS ORDER INCLUDES THE FOLLOWING COUNTIES: ALAMEDA, CONTRA COSTA, MARIN, MONTEREY, NAPA, SAN FRANCISCO, SAN MATEO, SANTA CLARA, SANTA CRUZ, SOLANO, AND SONOMA. FIND THE ORDER HERE:**

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Regional-Stay-at-Home-Order-.aspx>

THE I.C.U. CAPACITY IN THE BAY AREA AS OF JANUARY 12, 2021 WAS 4.7%. ACCORDINGLY, THE COUNTY OF MARIN'S RISK-REDUCTION ORDER IS TEMPORARILY SUPERSEDED BY THE STATE OF CALIFORNIA'S STAY-AT-HOME ORDER, THROUGH AT LEAST FEBRUARY 9, 2021.

2. ALL CALIFORNIANS HAVE BEEN ORDERED TO DO ALL WORK FROM HOME UNLESS WORKING FROM HOME IS (A) NOT PRACTICAL, AND (B) THE WORK FALLS INTO ONE OF THE VERY LIMITED ASPECTS OF REAL ESTATE WORK THAT ARE DEEMED "ESSENTIAL".

ONLY the following real estate activities are "ESSENTIAL", and then ONLY to the extent that these activities cannot reasonably be done from home:

- Workers responsible for the leasing of residential and commercial properties to provide individuals and families with ready access to available housing.
- Residential and commercial real estate workers, limited to scheduled property viewings to a potential buying party. This does not extend to open-house viewings, nor viewings with more than one buying party at a time.

3. THE RULE ON FACE MASKS:

UNTIL FURTHER NOTICE, ALL PERSONS IN THE STATE OF CALIFORNIA MUST PROPERLY WEAR A SUFFICIENT MASK AT ALL TIMES WHEN OUTSIDE THEIR HOME, WITH LIMITED EXCEPTIONS. THERE ARE NO EXCEPTIONS THAT APPLY SPECIFICALLY TO REAL ESTATE INDUSTRY WORKERS.

4. HOW TO SHOW PROPERTY, IN THE VERY LIMITED CIRCUMSTANCES WHERE IT IS PERMISSIBLE:

THE C.A.R. WEBSITE INCLUDES THE FOLLOWING GUIDANCE: "COMPLYING WITH THE INDUSTRY GUIDANCE SHOWING RULES", AVAILABLE HERE:

<https://www.car.org/-/media/CAR/Documents/Transaction-Center/PDF/QUICK-GUIDES/Quick-Guide--Complying-with-the-Industry-Guidance-Showing-Rules-1721-revised.pdf?la=en&hash=22BB4AF29C852CB498713542357BC94B1EFE68C3>

5. THE PEAD-V FORMS MUST BE USED IN ANTICIPATION OF ALL SHOWINGS AND IN-PERSON VISITS TO PROPERTY. C.A.R. HAS ISSUED THE FOLLOWING "QUICK GUIDE" ON HOW TO USE THE PEAD-V FORM:

<https://www.car.org/-/media/CAR/Documents/Transaction-Center/PDF/QUICK-GUIDES/Quick-Guide--Using-the-CAR-PEADV-Form.pdf?la=en&hash=82CA2645FC9759C67395AEBF88BF12C0515BD641>

C.A.R. ALSO HAS ISSUED THE FOLLOWING Q&A ON THE PEAD-V FORM:

<https://www.car.org/en/riskmanagement/qa/advertising-folder/IndustryGuidanceShowingRulesFAQ>

Including: **Q10. Who must sign the PEAD-V?**

A10. “Every person entering the property including clients, appraisers, inspectors, stagers, contractors, repairmen and even buyer’s agents.”

Q11. Does the PEAD-V have to be signed electronically?

A11. Yes. Another Industry Guidance rule is that all information must be delivered electronically. Further, agents must discontinue providing handouts or other types of promotional or informational materials. So, the PEAD-V must be signed electronically.

6. YOU MUST HAVE A MARIN-COUNTY-COMPLIANT SITE-SPECIFIC PROTECTION PLAN (“SPP”) FOR EACH OFFICE LOCATION. DOING SO PROPERLY WILL ALSO SATISFY THE STATE OF CALIFORNIA REQUIREMENT TO IMPLEMENT A “WORKSITE SPECIFIC PLAN”.

THE C.A.R. WEBSITE CONTAINS A TEMPLATE SPP FOR REOPENING A REAL ESTATE OFFICE:

<https://www.car.org/-/media/CAR/Documents/Transaction-Center/Word/COVID-19/July-2020-Sample-RE-Office-Workplace-COVID-Plan.docx?la=en&hash=15B7936A1B74CE04EB915914DE68EB662B231C11>

Here is a link to the Marin County Site-Specific Protection Plan guidance and templates:

<https://marinrecovers.com/site-specific-protection-plan/>

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 guidelines.

7. YOU ARE STILL PROHIBITED FROM HAVING BROKER OPENS AND PREVIEWS OF PROPERTY, AND YOU REMAIN LIMITED IN THE MANNER IN WHICH PROPERTY MAY BE ACCESSED AND SHOWN.
8. **THE CURRENT MARIN COUNTY RISK-REDUCTION ORDER:** The first Shelter-In-Place Order for Marin County went into effect starting 11:59 p.m. on Monday, March 16, 2020. Since then, the County’s Shelter-In-Place Order has been extended multiple times, and was rescinded and replaced by the Risk-Reduction Order effective October 27, 2020. This Risk-Reduction Order incorporates the State’s Blueprint framework, associated orders, and guidance and will remain in effect until amended or rescinded.

The 10/27/2020 Marin County Risk-Reduction Order can be found here:

<https://coronavirus.marinhhs.org/risk-reduction-order>

NOTE: THE COUNTY’S RISK-REDUCTION ORDER IS TEMPORARILY SUPERSEDED BY THE STAY-HOME ORDER, THROUGH AT LEAST JANUARY 7, 2021. THE GUIDANCE BELOW WILL ONLY RESUME ONCE THE STAY-HOME ORDER EXPIRES OR IS RESCINDED.

Here is a link to the current Marin County Guidance for the Real Estate Industry:

- <https://marinrecovers.com/real-estate/> ,which incorporates the State Department of Public Health/CAL-OSHA requirements, found here:
 - <https://files.covid19.ca.gov/pdf/guidance-real-estate--en.pdf>





9. **CALIFORNIA ASSOCIATION OF REALTORS® FORMS** (*Requires C.A.R. Forms Subscription):

- **CORONAVIRUS PROPERTY ENTRY ADVISORY AND DECLARATION (“PEAD”) FORMS:**

Coronavirus Lease/Rental Property Entry Advisory and Declaration - Owner/Occupant - 7/20 - PEAD-LR - (CAR)
 Coronavirus Lease/Rental Property Entry Advisory and Declaration - Owner/Occupant(1) - 7/20 - PEAD-LR-1 - (CAR)
 Coronavirus Property Entry Advisory and Declaration - Seller/Occupant - 7/20 - PEAD-S - (CAR)
 Coronavirus Property Entry Advisory and Declaration - Seller/Occupant(1) - 7/20 - PEAD-S-1 - (CAR)
 Coronavirus Property Entry Advisory and Declaration - Visitor - 7/20 - PEAD-V - CAR
 Coronavirus Property Entry Advisory and Declaration - Visitor(1) - 7/20 - PEAD-V-1 - (CAR)


- **RULES FOR ENTRY ONTO PROPERTY AND PICTOGRAM (REVISED AS OF July 2020):**

**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, remote controls, thermostats, switchboxes, 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.
- 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:**
 - o 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;
 - o 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;
 - o 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
 - o 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**




WASH YOUR HANDS WITH SOAP AND WATER OR USE HAND SANITIZER



PRACTICE SOCIAL DISTANCING BY KEEPING AT LEAST SIX FEET BETWEEN YOURSELF AND OTHERS



WEAR A PROTECTIVE FACE COVERING



AVOID TOUCHING KNOBS, FAUCETS, TOILETS AND TOILET HANDLES, COUNTERS, LIGHT SWITCHES, AND OTHER SUCH ITEMS

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.

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Q&A

Introduction:

The essence of the current State and local government health officer orders (the “Orders”), which are laws enforceable by fines, imprisonment, or both, is simple: **It is NOT a time for 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.

Unless specified otherwise, the answers below are from a publication of the State of California or the County of Marin.

Q1: Must all licensed brokers, agents, and unlicensed real estate office and field staff (such as assistants) wear a mask 100% of the time?

A1: **YES**, properly fitted masks must be worn, and worn correctly, during all showings, site visits, and in person meetings of any kind, whether held inside or outside. The only time a mask is not required is if one is all ALONE in the office, or if one is outside and more than 6 feet from all other persons.

Q2: Can real estate agents show residences in person?

A2: **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. In-person showings or walk-throughs are not allowed when the occupant is present in the residence.** [Marin

Q3: Can real estate agents hold a “Broker Open” or “Preview” or “Open House”?

A3: **NO**. Any visit to a property for any reason must comply with both the State and Marin County Guidelines. This requires either an appointment or a digital sign-in process prior to entry, including completing and delivering C.A.R. PEAD form(s) electronically prior to the visit.

Any such showings still must follow these rules:

1. 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).
2. Have protective equipment like masks and hand sanitizer made available.
3. Thoroughly clean all shown properties and disinfect commonly used areas such as doors and doorknobs, cabinet handles, switches, etc.
4. Control the number of people in the house
5. Adjust or modify showings to provide adequate time for proper cleaning and disinfecting as outlined in the State COVID-19 Industry Guidance for Real Estate Transactions
6. All showings require appointments OR digital sign-ins.

Based on these rules, an advertisement using the term "Open House" or "Broker Open" or "Preview" deceptively implies entry is available on a walk-in basis without the mandatory appointments/PEAD forms/digital sign-in protocols, which are not typically used in an "Open House", "Broker Open", or "Preview."

Q4: What does the Order mean by “virtual” and “virtual viewing”?

A4: [per Marin County Counsel] these mean: by still photo, video, or a streaming virtual tour.

Q5: Is still photography considered “Virtual”?

A5: [per Marin County Counsel] Yes.

Q6: Can an agent go on-site to a property in person if it is not for a showing? If so, when?

A6: [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.

Q7: Are real estate inspectors, stagers, photographers or videographers permitted to enter an occupied residential unit to do their work?

A7: 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 Site Specific Protection Plans (SPPs).

Q8: 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?

A8: Yes, provided no occupants are present, you carry your 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.

Q9: Can one move to a new residence?

A9: The Orders allow one to move residences, but the Marin County Order 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."

Q10: 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?"

A10: 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.

Q11: Can residential and commercial landscaping, gardening, and other commercial outdoor services continue while this Order is in place?

A11: 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."

Q12: Does wiping down the interior of the house with disinfectant wipes meet the requirement for cleaning a property after someone has been in it?

A12: No. See State of California Department of Health/CAL-OSHA Real Estate Industry Guidance: <https://files.covid19.ca.gov/pdf/guidance-real-estate--en.pdf>

Q13: 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?

A13: 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>

Q14: Can professional housecleaners continue to work under the Shelter-in-Place Order?

A14: [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.

Q15: Is a pool repair or maintenance business an “Essential Business” under the Shelter-in-Place Order?

A15: [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.
