

April 9, 2020

A memo to Brokers & Licensees:

These are uncertain times, and no one can predict how or when things will change. One thing we can be sure of is the resilience and creativity of REALTORS® will always find a way to continue to help consumers with their real estate needs.

The recent acceptance of the Alaska REALTORS® proposed COVID-19 Pandemic Action Plan for Essential Services by the Governor's office, has sparked a lot of discussion. The reason for this communication is to clarify a few things.

Before COVID-19, real estate sales were not explicitly identified as essential services under the definition put forth by the Department of Homeland Security. There were no clear guidelines to develop protocols and acceptable procedures for continuing to conduct real estate business in times of national crisis.

While many of us know that our industry is critical to the economy, it is often not apparent to those in government who issue mandates and orders designed to protect Americans.

Some states have deemed real estate a non-essential service, and therefore real estate in those states essentially has been shut down.

An advisory memorandum* published on March 28, 2020, by CISA (Cybersecurity and Infrastructure Security Agency) to identify "essential critical infrastructure workers" during COVID-19 response, including those needed to maintain "market operations to ensure the continuity of financial transactions and services" in the financial sector, i.e., real estate transactions.

REALTORS® in the state of Washington most recently convinced their elected officials and Governor Inslee to change the State's position on real estate as an essential service. Much of what we have learned is a result of their hard work.

Governor Dunleavy's Administration determined that real estate activity is a part of the critical infrastructure of the State of Alaska and must continue, taking whatever steps are reasonably feasible to protect operations, personnel, and the public during the pandemic.

On March 31, 2020, a task force of the Alaska REALTOR® (AR) leadership met with Lt. Governor Kevin Meyer, Governor Sean Parnell, Senator Mark Begich and members of the Governor's Economic Stabilization team to discuss the importance of the real estate industry and its effect on the economy.

Governor Dunleavy tasked the REALTORS® with maintaining the utmost focus on the health and safety of all licensees and consumers. The Governor also requested emphasis on the use of technology to facilitate the transaction process from beginning to end, including guidelines for listing, showing, negotiating, and closing while complying with shelter in place directives.

As a result of this meeting, an action plan was developed specifically for Alaska and sent to Alaska REALTOR® leadership, as well as NAR for legal review.

The resulting plan can be likened to the adage the Administration gave us the fences bordering the pastures we can work within. Alaska REALTORS® did not define the limitations. They were established for us at the direction of the Governor's team.

The proposed template was submitted to the Administration on April 2, and AR lobbyist, Heather Brakes, confirmed the Administration's acceptance on Monday, April 6.

The speed with which this program was developed, reviewed, presented, and accepted is unprecedented in light of the slow-moving governmental processes we are used to observing. It is indicative of how quickly things are changing on a weekly, daily, and hourly basis.

The Administration has advised businesses wishing to be deemed "essential" to submit a plan for safely operating while avoiding the spread of COVID-19 and protecting the lives of their staff, employees, and the communities in which they are located.

Therefore, if the template that has been provided does not contain provisions that a brokerage feels are essential for their continued operation, they can submit their own plan describing the basic operations they wish to perform. The plan would need to include a description of the controls in place for prevention, authorities for operating safely, and outlining allowable, prohibited, and conditionally allowed activities.

Please note, a Municipality or Borough can enact more stringent requirements, and some may have already.

Some states have deemed real estate a non-essential service, and the real estate industry has been effectively shut down.

The point is, each Brokerage is responsible for maintaining business at a level that meets state or local requirements with an approved plan submitted to and reviewed by the Administration.

Please see the information below for penalties and then make your decision as to how you wish to operate during this pandemic.

PENALTY FOR NONCOMPLIANCE. A violation of a State COVID-19 Mandate may subject a business or organization to an order to cease operations and/or a civil fine of up to \$1,000 per violation.

a. In addition to the potential civil fines noted above, a person or organization that fails to follow the State COVID-19 Mandates designed to protect the public health from this dangerous virus and its impact may, under certain circumstances, also be criminally prosecuted for Reckless Endangerment pursuant to Alaska Statute 11.41.250. Reckless endangerment is defined as follows:

i. A person commits the crime of reckless endangerment if the person recklessly engages in conduct which creates a substantial risk of serious physical injury to another person.

ii. Reckless endangerment is a class A misdemeanor.

b. Pursuant to Alaska Statute 12.55.135, a defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment of not more than one year.

c. Additionally, under Alaska Statute 12.55.035, a person may be fined up to \$25,000 for a class A misdemeanor, and a business organization may be sentenced to pay a fine not exceeding the greatest

of \$2,500,000 for a misdemeanor offense that results in death, or \$500,000 for a class A misdemeanor offense that does not result in death.

*It should be noted that the “advisory memorandum” is not, nor should it be considered, a federal directive or standard. State and local governments are responsible for implementing and executing decisions in their communities, and actions have been taken in varying degrees across the country.

Thank you,

2020 Alaska REALTORS® Board of Directors