Based on information available as of 4 p.m. on Tuesday, March 24 from the Pennsylvania Association of REALTORS®
Can I still show homes to individual clients?

(rev. 3/24) Only virtually; not in person. The main thrust of the Governor’s order is to minimize physical interactions as much as possible, and the latest guidance refers to suspending all “in-person, physical operations” of affected businesses. In-person property showings involve several people gathering together in an off-site location, which is exactly the sort of behavior currently being discouraged.

To comply with the governor’s closure order issued to mitigate the spread of the coronavirus, Realtors® must not perform in-person real estate services and should only offer services that can be done remotely without in-person, physical interaction. Brokers should consult with brokerage counsel on how to keep their business in compliance with the governor’s order, and with questions about whether specific services are or are not in compliance with the order. Enforcement of the order began at 8 a.m. Monday, March 23 and will be handled by the Pennsylvania State Police along with other state and local authorities.
My buyer client is demanding that I arrange a showing of a listed property despite the Governor’s closure order. Am I legally or contractually obligated to take my client to see that property?

• (3/21) No. While it is true that a contracted buyer agent has a fiduciary responsibility to work in the best interests of his or her client, a client does not have any authority to dictate actions that may be illegal or unsafe. For example, you would not be obligated to obey a client directive to lie, even if the client believed it to be in their best interests.

• The Governor’s order indicates that businesses which are not life-sustaining (including real estate services) must cease their “in-person, physical operations”. Arranging an in-person showing is likely to be both a violation of that order and a possible public health risk, and no broker or agent would be obliged to obey that directive. It is ultimately a decision for you and/or your broker whether you feel comfortable continuing to work with a client who makes such demands.

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Can I still hold open house events?

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What if I just go to the property and...

• (3/24) No. The latest guidance refers to suspending all “in-person, physical operations” of affected businesses, including real estate. If you go to a place outside of your home to provide real estate services you are, by definition, engaged in the “in-person, physical operation” of your real estate business and not providing services remotely or virtually. It doesn’t matter what the service is or whether anyone else is there – the governor’s closure order says you can’t do it.
What about vacant properties?

(3/24) No. The latest guidance refers to suspending all “in-person, physical operations” of affected businesses, including real estate. If you go to a place outside of your home to provide real estate services you are, by definition, engaged in the “in-person, physical operation” of your real estate business and not providing services remotely or virtually. It doesn’t matter what the service is or whether anyone else is there – the governor’s closure order says you can’t do it.
My broker is instructing me that I can’t do any in-person services for clients. But I’m an independent contractor; can she do that?

Yes.

Pretty much every independent contractor agreement will contain a provision requiring the contractor to follow relevant laws and regulations. But even without that the broker can absolutely require that affiliated agents obey the law and follow the terms of the governor’s closure order.
Will other providers participating in a real estate transaction be able to complete their tasks related to the transaction?

- (3/23) Every real estate transaction incorporates multiple service providers of various sorts. Some of those providers appear to be listed as businesses that should be shut down and can’t really be done remotely (e.g., residential contractors). Some such as lenders are able to stay open for business as best as they can. But many other providers, including some such as appraisers and home inspectors are not specifically included on either list. It will ultimately be up to each provider to determine whether and how they are willing and able to perform while maintaining compliance with the Governor’s order. The best advice we can provide at the moment is to be in close contact with all providers and determine how their decisions may affect any transaction.

- ** On March 23 the Governor's office denied an exclusion request made by a home inspection company. The denial restated that the Governor’s order prohibits operating a place of business for a non-life-sustaining business, even if the business is not open to the public, implying that the presence or absence of the consumer doesn’t affect their decision in any way. It is expected that this same analysis would apply to all home inspectors, and would likely be applied to many other service providers not explicitly listed in the order.

- If the transaction cannot move forward for whatever reason PAR has published new (Form COVID) and updated forms (Form CTA) the parties can use to pause the transaction so everyone can let the current situation settle a bit and see what can be done in the upcoming days and weeks. This is a very fluid situation and PAR will provide more information at PARealtors.org/coronavirus as we get it.
Can we do remote closings in Pennsylvania?

- (3/21) The biggest hang-up with a remote closing is notarizing signatures. Pennsylvania law allows for electronic notarization, but not for remote notarization. This means that a signature can be notarized via electronic means (instead of a physical stamp), but that the signer still must be present in front of the notary. A number of states do allow for remote notary services, but Pennsylvania is not one of them.

- A bill has been introduced in the U.S. Senate that would work towards enabling remote notarization nationwide, and PAR has been in contact with Pennsylvania legislators about the possibility of introducing enabling legislation in the state. Keep in mind that even if a bill were to pass right away it would still take time for notaries to acquire the appropriate software and training to enable them to provide this service.

- A "mail away" closing could theoretically be possible if notarization is somehow not required or if the parties can get documents notarized on their own (which may be difficult in the current environment). You would ultimately need to check with the title company as to whether this is an option in any particular transaction.
If a transaction can be completed in compliance with the Governor’s closure order should I be advising my client to do the closing?

• (3/21) Each transaction will have to be addressed on its own terms. Even if all the stars align and a specific transaction can be closed, there may be various valid reasons why the parties would elect to not do so.

• For example, if your client is selling one property and buying another are they sufficiently certain that both transactions – and possibly others related to them – will be able to close in a timely manner? While this is a concern even in normal times, the odds of one or more related transactions failing is much greater in the current situation. Furthermore, the backup plans that might come into play in normal times may be harder to implement here. Buyers may be less likely to allow sellers to remain in a property after closing if it is unclear when the sellers would be able to finish their own purchase. A party temporarily without housing may have difficulty renting a property to bridge the gap, and may not be able to move in with family or friends based on travel or health concerns.

• You should discuss all issues and options with your client in detail before they make any decision to move forward or not, and you should advise them to speak with a personal attorney if they have any questions about options and potential problems.
Can brokers take new listings while this order is in effect?

• (rev. 3/22) Whether and how to solicit new business in this current environment is going to be a difficult question to answer. Even with the current order requiring brokers to cease all in-person business operations it’s certainly possible to interact with clients remotely and electronically sign relevant agency agreements. The bigger question is whether it makes business sense to take new clients at the moment – which is ultimately a business decision for each broker – and how that relationship would work under the various sets of rules currently in place.

• For example, if a broker signs a new buyer will the market conditions allow for that buyer to view properties to the extent that he or she would be comfortable making an offer? If a broker signs a new seller will conditions allow for appropriate marketing to attract a valid market-rate purchase offer? And even if the clients want to move forward, will all the other relevant service providers related to a transaction be able to perform their parts in a timely manner?

• The best advice at the moment is to have a detailed conversation with any potential client to lay out the potential roadblocks that exist in these uncertain times so they’re fully aware of potential issues and can make an informed decision. If you do decide to move forward with new clients, consider discussing with brokerage counsel whether and how to modify your practices and agreements to accommodate likely impediments.
Can appraisers continue to complete appraisal assignments?

- (3/24) Appraisers are not specifically listed in the list of businesses referenced in the Governor’s order, but since the main thrust of the Governor’s order is to minimize physical interactions as much as possible an in-person appraisal of the property is likely covered under the order and would be prohibited.

- On March 23, the Federal Housing Finance Agency (FHFA) ordered Fannie Mae and Freddie Mac to “provide alternative flexibilities to satisfy appraisal requirements and employment verification requirements through May 17, 2020.” Updated procedures from Fannie Mae and Freddie Mac have now been posted.

- Of course these rules would not apply to all underwriters, so appraisers and agents should be in touch with lenders to determine what rules may apply to a particular mortgage transaction.
Does PAR have a form to deal with transactional delays?

• (rev. 3/21) PAR has published Form COVID, which allows the parties to agree that either is permitted to extend the Agreement of Sale if performance becomes impossible (and to then do the extension if necessary). We've also updated the Change in Terms Addendum (Form CTA), which can be used to extend any date or alter other terms of the Agreement by mutual consent of the parties.

• Brokers may have developed their own forms with advice of brokerage counsel, but in no circumstances should licensees be writing their own addenda and engaging in the unlicensed practice of law. These will be very complicated times, and if you're unwilling or unable to use an existing attorney-drafted form you should refer your client(s) to private counsel for legal advice.

• New and updated forms should be available through most electronic forms vendors by close of business on March 20. PAR members who are unable to access forms through a vendor can download a PDF through the PAR website. The Guidelines for Preparation and Use are also available exclusively to members through the PAR website.
Who is the “notifying party” in the bottom section of PAR Form COVID?

(3/21) This form has two parts. In the top section both parties agree that a transactional delay may be necessary, and that either of the parties can trigger that extension unilaterally. The bottom section of the form then allows either of the parties to actually trigger the extension and notify the other party that it has been done. The “notifying party” is the party (either buyer or seller) who is invoking the extension and then notifying the other party that it’s been done. Because this is a unilateral extension, only the notifying party needs to sign.

For a more detailed explanation of the form PAR members can download the Guidelines for Preparation and Use.
For the most up-to-date information, be sure to continue to visit [PARealtors.org/coronavirus](https://PARealtors.org/coronavirus) for answers to the most pressing questions.