

Real Estate Transactions in Maine & COVID-19

Q & A: by Hannah McMullen, MAR Legal Counsel

(Updated May 28, 2021)

Part I. State & Local Restrictions

Q. What are the current guidelines for real estate activities in Maine? (Updated 5/28/21)

- A. Maine Governor Janet T. Mills recently issued Executive Order (39 FY 20/21) that repealed the statewide requirement for face coverings in public settings except for schools and childcare settings. This order is effective as of Monday, May 24, 2021. **In addition, the Department of Economic and Community Development (DECD) has confirmed that all of the current COVID-19 Prevention Checklists for businesses retired on May 24, 2021, including the Guidelines for Real Estate as an Essential Business.** DECD has general guidance recommendations available on their website, along with a link to the U.S. CDC guidance for businesses. Please check the COVID-19 tab on the MAR website (<https://maineraltors.com>) for updated links to this information.

For the most up-to-date information on communications from the Governor's office, including a list of Executive Orders, please refer to the website:

<https://www.maine.gov/governor/mills/>

Q. Can my real estate office require any mitigation strategies even though they are not state mandated? (Added 5/28/21)

- A. Each business is permitted to make their own office policies for any COVID-19 mitigation strategies. Each real estate company may develop their own health and safety protocols as they deem necessary for the best interests of their agents, employees, and clients. Similarly, agents should be cognizant of their clients' needs and requests when it comes to showings and other business interactions. General guidance is available from the DECD: <https://www.maine.gov/decd/general-guidance>

Part II – Contract Delays, Extensions & Terminations

Q. Is the COVID-19 Addendum provided by MAR mandatory?

- A. No, like any other contingency, this document is not mandatory. This addendum may be incorporated into new transactions or added to ones that are already under contract. In addition, if your agency or franchise has provided you with a different addendum you may use that instead. Please remember the addendum can only be utilized by agreement

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of all parties. Therefore, it is important to encourage clear communication between the parties about how the COVID-19 virus could potentially impact the transaction.

Q. What should I say if my seller asks why they should agree to the COVID-19 Addendum?

- A. Sellers may be impacted in a variety of ways: They can't close on their next house, they are now subject to quarantine, there is a title issue that can't be resolved due to closures, etc. This form protects all parties by extending deadlines in the transaction for a period of time while matters get resolved.

Q. What if there is a delay for the buyer's inspections or appraisal? (Updated 5/28/21)

- A. Speak with your client about the possibility that home inspectors or appraisers may be unwilling or unable to perform services in a timely manner during this period. Consider adding an extension to the deadlines in the Purchase and Sale Agreement when necessary.

Q. What happens if one of the parties is unable to attend closing because they are quarantined or unable to travel due to COVID-19 issues?

- A. If the closing agent is able to perform the closing by mail or other means, closing can still occur, even if one of the parties is not able to be there in person. Speak with the closing agent about how best to address these issues prior to closing.

Q. What happens if one of the parties does not want to attend closing because they are a member of a high-risk population or have underlying health concerns?

- A. The closing agent may be able to perform the closing by mail or may be able to schedule separate times to meet with each party to limit the group gatherings. Speak with the closing agent about how best to address these issues prior to closing.

Q. Can a buyer (or seller) terminate a contract because of Coronavirus?

- A. There is nothing in the Purchase and Sale Agreement that would give either party a right to terminate solely because of the COVID-19 virus. However, it is possible that the contract may be terminated under a different provision – for example, if a buyer loses their job and can no longer get financing, the buyer would be able to terminate if they were subject to a financing contingency. In addition, if the parties agree to use the COVID-19 Addendum, there is a termination option not otherwise available in the Purchase and Sale Agreement.

Q. If a buyer (or seller) terminates a contract because of Coronavirus, is the buyer entitled to return of the Earnest Money Deposit?

- A. Unless the parties agree otherwise, the standard Default paragraph of the Purchase and Sale Agreement applies. If the buyer does not have a contractually valid reason for termination, then they would not be entitled to return of the Earnest Money Deposit. As a reminder, if there is a dispute about the return of the Earnest Money Deposit, be sure to provide proper written notice of the dispute. The standard remedies of mediation and/or court action still apply. Keep in mind that the parties are free to negotiate this matter and it is important to maintain open communication among parties to encourage cooperation during this health crisis and challenging economic climate.

Part III – Interactions with Clients, Showings & Open Houses

Q. May I ask clients or others I interact with in my real estate business if they have traveled recently, or have any signs of respiratory illness?

- A. Yes, you may ask clients or others about their recent travel, particularly to areas identified as having an increased risk of coronavirus. You may also ask if the person has a cold, influenza or other contagious respiratory illness. Agents are not required to put themselves at risk. *To avoid potential fair housing issues, however, be sure to ask ALL clients the same screening questions based on current, factual information from public health authorities.* If you are concerned about exposure, you can always take additional precautions if your client has recently traveled to a location where there is higher risk of exposure or has signs of respiratory illness.

Q. Can I conduct in-person showings? (Updated 5/28/21)

- A. Yes, in-person showings are permitted without restrictions for all property types. While the removal of all showing restrictions is positive news for Maine's real estate industry, please continue to take any precautions you feel necessary for your own health and safety and that of your clients. Remember that not everyone around you is in the same situation as you, not everyone has the COVID-19 vaccine (including children), and some people may have underlying conditions that increase their health risk. You should be cognizant of your clients' needs and requests when it comes to showings and other business interactions.

Q. May I conduct open houses on my listed properties? (Updated 5/28/21)

- A. Yes, there are no current restrictions on showings or open houses.

Q. Are there any risks or potential liability to showing a property to a buyer virtually?

- A. Buyers have purchased properties “sight unseen” for a variety of reasons long before this pandemic (There is a “Sight Unseen Waiver” in Zipforms). However, where a buyer purchases a property without physically visiting, relying only on photos, livestreaming, or online virtual tours, it may be a good idea to include language in the purchase and sale agreement where the buyer acknowledges that the buyer – not the listing broker, agent or seller – is responsible for personal verification, walk-throughs and professional inspections to confirm condition and that the property is satisfactory.

Q. Can my seller restrict access to their house? (Updated 5/28/21)

- A. It depends. If the house is not under contract, the seller can restrict access to their house, but it needs to be done in a uniform manner to prevent fair housing issues. A seller generally has control over how their property is shown, and has agreed to certain marketing activity in the listing agreement. If the seller desires to prohibit in-person showings, be sure to get those instructions in writing. If your seller has concerns about exposure to COVID-19 and wants to prohibit all access to the home for a period of time, you should withdraw the property from the MLS for that duration. If the house is already under contract, the seller must allow access as called for in the contract including for inspectors and appraisers among other service providers. However, the seller may take precautions and may require individuals to follow certain protocols when visiting the property. Please note that if a seller chooses to require any safety protocols or restrictions for showings in their home, they must be sure to treat everyone equally to avoid fair housing discrimination and have a plan in place for accommodations if requested by buyers who may be members of protected classes. Furthermore, a buyer who is a member of a protected class may request an accommodation for a showing in accordance with fair housing laws.

Part IV – Rental Properties

Q. Is a tenant required to allow entry into a property for purposes of showing it when the tenant fears being exposed to the coronavirus? (Updated 5/28/21)

- A. The seller needs to make the property available for showings or take it off the market if showings are not available. It is the seller’s responsibility to deal with any issues they may have with their tenant. It is ultimately up to the seller/landlord to determine whether to push to enforce the provisions of a lease or to take another approach. Although a tenant may not prevent showings in general, in these unique circumstances, it is imperative that you consider everyone’s health and safety first and consider exploring alternative options like virtual tours if necessary.

Additional Notes: If the seller has specific landlord-tenant questions, they should consult an attorney who is familiar with landlord/tenant law. Additional resources are available with the Consumer Protection Division of the Maine Attorney General’s Office

(https://www.maine.gov/ag/consumer/law_guide_article.shtml?id=27933) or Pine Tree Legal Services (www.ptla.org). Pine Tree Legal also has specific information on their website for landlord/tenant questions related to COVID-19, <https://ptla.org/covid-19-maine- eviction-rental-housing-faq#> , as well as for lending/foreclosure questions related to COVID-19, <https://ptla.org/home-foreclosure-and-covid-19-faq>.

Information on the Emergency Rental Assistance Program is available on the Maine State Housing Authority's website: <https://www.mainehousing.org/programs-services/rental/rentaldetail/covid-19-rental-relief-program>

Please note there are currently federal and state limitations on certain Forcible Entry and Detainer (eviction) actions. **If a seller has specific questions about evicting a tenant, they should consult with an attorney who is familiar with landlord/tenant law and the eviction process.** For more information on the Maine court process regarding eviction cases during the pandemic, please refer to the court's website: <https://www.courts.maine.gov/help/eviction/index.html>

Part V – COVID Positive Protocols

Q. What happens if a REALTOR® or someone else involved in the real estate transaction tests positive for COVID-19? (Updated 5/28/21)

- A. The person who tests positive should contact the Maine CDC and their healthcare professionals for instructions on how to proceed. If a REALTOR® tests positive, the REALTOR® should immediately self-isolate at home per Maine CDC guidance and notify their designated broker of this information as well. As an agent, you should be prepared to provide relevant information (i.e. client contacts, list of recent shown properties etc.) to your designated broker and the CDC if there is a need for contact tracing.
- For more information on the Maine CDC protocols, please visit their website: [https://www.maine.gov/dhhs/mecdc/infectious-disease/epi/airborne/coronavirus/general-information.shtml#:~:text=How%20can%20a%20person%20be,fever%2Dreducing%20medications\)%2C%20AND](https://www.maine.gov/dhhs/mecdc/infectious-disease/epi/airborne/coronavirus/general-information.shtml#:~:text=How%20can%20a%20person%20be,fever%2Dreducing%20medications)%2C%20AND)
 - Additional Note: Consult your own legal and business professionals to be prepared for this scenario. NAR has provided useful guidance on this topic and a sample preparedness plan:
 - <https://www.nar.realtor/coronavirus-resources-and-guidance-for-employers>
 - <https://www.nar.realtor/sample-preparedness-plan-for-circumstances-relating-to-covid-19>

Q. If a REALTOR® or one of their clients tests positive for COVID-19, when can they return to work and/or resume showings on properties? (Updated 5/28/21)

- A. The person should consult with their healthcare provider and the CDC for appropriate treatment and guidance on when to self-isolate and for how long. You should not visit

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the office, meet with clients, attend showings or closings during this time. The CDC has return-to-work guidance available for those who test positive for COVID and/or are experiencing symptoms of COVID:

<https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/returning-to-work.html>

<https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>

Q. What should a REALTOR® do if their seller client or a person living in the seller's home tests positive for COVID-19? (Updated 5/28/21)

A. The person who tests positive should consult with their healthcare provider and the CDC for appropriate treatment and guidance on when to self-isolate and for how long. If the person is required to self-isolate at home, **the property should not be shown during this time and the agent must withdraw the property from MLS until the person's isolation period ends.** For more information, please review CDC guidance, <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>

Q. What is the proper protocol after known exposure to someone who has tested positive for COVID-19? For example, if a REALTOR® and/or a client has contact with someone in the transaction (i.e. attending a showing or closing) before becoming aware that the person had a recent positive test. (Updated 5/28/21)

A. The person who has a known exposure should consult with their healthcare provider and the CDC for appropriate guidance on the quarantine process. You should not visit the office, meet with clients, attend showings or closings during this time.