

# Recommended Situational Guidelines for Real Estate Licensees

## During the Coronavirus (COVID-19) Crisis

The Real Estate Board of New York (REBNY) has put together the following recommended situational guidelines for real estate licensees to help ensure the safety of the public and members of the real estate community.

### New York State “On Pause” Executive Order is Still in Place

Governor Cuomo’s Executive Order 202.6 states that real estate licensees (“Licensees”) are expected to work from home. Subsequent Guidance from Empire State Development (“ESD”) states that:

“Real estate services shall be conducted remotely for all transactions, including but not limited to title searches, appraisals, permitting, inspections, and the recordation, legal, financial and other services necessary to complete a transfer of real property; provided, however, that any services and parts therein may be conducted in-person only to the extent legally necessary and in accordance with appropriate social distancing and cleaning/disinfecting protocols; and nothing within this provision should be construed to allow brokerage and branch offices to remain open to the general public (i.e. not clients).”

REBNY strictly interprets this Guidance to mean that any activity that a Licensee engages in which requires the Licensee to leave their home, and have in-person contact with others (whether direct or indirect), is not permissible under this executive order.

REBNY does not view any component of agent tasks to be “legally necessary” that would compel in-person activity.

We would like to provide guidance to our members to help navigate this directive. Please note that these are REBNY’s interpretations of the Executive Order, and in particular, driven by the unique density and the inherent public safety issues that face our membership and the NYC real estate industry. Please note that currently four of New York City’s boroughs are in the top ten localities with confirmed cases of COVID-19 according to the Johns Hopkins Coronavirus Resource Center.

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## SITUATIONAL GUIDELINES

### Can Licensees work?

Yes. Licensees can work from home and do as much work as possible in a virtual manner. We are interpreting “virtually” to mean that Licensees are using “electronic means” to work and market their services and they are not engaged in in-person contact with others (whether direct or indirect).

### Can Licensees conduct in-person showings and open houses if all parties present are wearing a face cover and other PPE?

No. In-person showings and open houses are strictly prohibited under the Executive Order, regardless of whether those present are wearing face coverings and other PPE. The restriction on in-person contact between Licensees and members of the public has not been lifted.

### Can Licensees visit vacant properties to take photos/videos or conduct virtual showings?

The issue is not about a property being vacant. It is about Licensees being at risk of contracting or spreading the virus when trying to get to the property given NYC’s density. For that reason, this activity is not recommended.

### Can Licensees unlock a property so a consumer may enter for an unaccompanied showing?

We do not believe Licensees should be encouraging consumers to visit properties. If a consumer insists on seeing a property, they are not acting in accordance with the Executive Order. While people are permitted to leave their homes for “essential” reasons (i.e. food shopping, exercise, visiting a doctor), viewing or shopping for properties is not deemed to be essential or legally necessary.

The purpose of the “stay at home order” is to limit the amount of contact that people have with each other to reduce the spread of the Coronavirus (COVID-19). **A real estate Licensee should not be encouraging the public to engage in these activities.**

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### **Can an outside party, such as a home inspector, appraiser or mover enter a property?**

Yes, home inspectors, appraisers and movers are considered essential services by Executive Order and their activities are permitted. Other essential services and activities may be found by [clicking here](#).

Other businesses and vendors, such as photographers, may have received an essential designation from ESD. A Licensee should request to see the letter issued by ESD deeming such a vendor as an “essential” business. A Licensee can arrange such activity between the consumer and the vendor, but the Licensee should not be involved with direct or indirect in-person contact in connection with the vendor’s activity. The vendor should also operate in strict accordance with appropriate social distancing and cleaning protocols.

### **Can a Licensee provide access to a property to a home inspector, appraiser or mover in order for them to enter a property?**

Because a home inspector, appraiser or mover has been deemed to be an essential business by ESD, a Licensee may be permitted to assist them in gaining access to a property if the Licensee is the only means to accomplish such access. This is a limited exception, per Executive Order, to the restriction on activities performed by Licensees and is based on the fact that the Licensee is facilitating the vendor’s ability to accomplish the essential service which they are legally permitted to provide. Licensees must still observe all social distancing and PPE protocols in connection with this activity.

### **Can a Licensee have someone (i.e. a superintendent for a building) open a property for a prospective tenant for them?**

A Licensee cannot ask someone to do something that they themselves cannot do. Additionally, a Licensee should not be encouraging the public to conduct in-person property visits.

### **Can Licensees conduct final walk-throughs with purchasers?**

No. The restriction on in-person contact between Licensees and members of the public has not been lifted.

### **If a Licensee cannot go to a property, how can they create “virtual” listings?**

Licensees can have the property owner take photos and videos of the property and send them to the Licensee so they can create virtual listings.

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## What is the liability if a Licensee violates the Executive Order?

Penalties can range from a fine of \$1,000 and possible license suspension or revocation from the Department of State. Under the Executive Order, businesses that violate the Executive Order's in-person workplace restrictions are punishable as set forth in Public Health Law Section 12, which imposes a fine up to \$1,000. Furthermore, those who violate the Executive Order are subject to the following: removal from the space or facility by a police officer; issuance of a summons for any applicable crime, including but not limited to a misdemeanor for violating the Public Health Law; and action by the local code enforcement official (i.e. issuance of an appearance ticket, notice of violation, order to remedy, and/or a Do Not Occupy Order to any owner, operator, or occupant).

## How can I file a complaint against a Licensee for violating the Executive Order?

There are a few options regarding how you can file a complaint for violations of the Executive Order.

- You can file a complaint with the Attorney General's Office. There is no complaint form specific to the Executive Order, but the Attorney General can be reached at 800-771-7755.
- Call the New York State Coronavirus (COVID-19) hotline at 888-364-3065.
- You can also file a complaint with the New York State Department of State using the complaint form, which can be [found here](#).

**REBNY will continue to update these situational guidelines as we receive further information.**

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