



WRA Legal News Weekly

March 30, 2020

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Legal Hottips:

- Showing and inspecting rental property
- Evictions and emergency maintenance
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Top News

Coronavirus Guidance

WRA Coronavirus (COVID-19) Resources and Information

Be sure to regularly visit the WRA Coronavirus (COVID-19) Resources and Information page at www.wra.org/Coronavirus. There you will find information from the WRA legal team regarding Gov. Evers' "safer at home" emergency orders, forms to assist with transactions in these unprecedented times and video information. There is also information regarding the WRA's operations, links to resources from the NAR and service providers, as well as technology tips.

- ◆ Forms: "Addendum CV – Coronavirus (COVID-19) Provisions" addresses potential delays that might arise, while the "Coronavirus (COVID-19): Showings and Inspections Agreement" reminds everyone of the responsibility to take safety precautions and provides real estate licensees are not liable for damages relating to showings or inspections conducted during the COVID-19 pandemic.
- ◆ FAQs about Real Estate and Emergency Order #12 Safer at Home: The WRA legal team created a list of frequently asked questions relating to Gov. Evers' Emergency Order #12 Safer at Home Order. This document has been updated multiple times as guidance and additional orders have been issued by the governor's office. Be sure to visit www.wra.org/Coronavirus/Legal frequently for the latest on Wisconsin's Safer at Home directives.

Coronavirus Aid, Relief, and Economic Security (CARES) Act

Congress passed a \$2 trillion COVID-19 economic relief package on March 27, 2020, with overwhelming bipartisan support, and the president signed it into law. This legislation covers a wide array of measures providing financial relief to REALTORS® and consumers. Here are some highlights. Be sure to review the NAR summary at <https://narfocus.com/billdatabase/clientfiles/172/21/3613.pdf> or www.nar.realtor/political-advocacy/coronavirus-aid-relief-and-economic-security-act.

Unemployment Benefits for Self-Employed

- Self-employed individuals, independent contractors and other individuals who are unable to work as a direct result of COVID-19 public health emergency and would not qualify for regular unemployment benefits under state law may be eligible to receive "Pandemic Unemployment

Assistance.” This excludes individuals who have an ability to telework with pay or individuals who are receiving sick leave or other paid leave benefits.

- The unemployment assistance is available to individuals who are unemployed, partially unemployed or unable to work for the weeks impacted as a result of COVID-19 between January 27- December 31, 2020.
- These benefits will be administered by the states, in accordance with this new federal law.
- There is a maximum of 39 weeks of assistance, where the amount is equal to what is authorized under the state unemployment compensation law, plus an additional \$600 per week for up to four months.

Mortgages, Evictions, Business Loans

- Borrowers of government-backed mortgages (Fannie Mae, Freddie Mac, HUD, VA and USDA) can request up to 360-day payment forbearance without proof of hardship.
- Owners of multifamily properties who were current on their mortgage payments as of February 1, 2020, and have federally insured, assisted or supplemented loans (Fannie Mae, Freddie Mac, FHA or any loans backed or assisted by any branch of the federal government, including LIHTC) may request forbearance for 30 days due to financial hardship, with extensions of up to a total of 90 days. Borrowers receiving the forbearance may not evict or charge late fees to tenants for the duration of the forbearance period.
- Americans with incomes below the thresholds will receive cash payments from the federal government in the amount of \$1,200 per adult plus \$500 for each child under the age of 17. These payments should be sent out starting in April.
- REALTORS® with retirement accounts, including IRAs, can take early withdrawals of up to \$100,000 from those accounts without paying the 10-percent early-withdrawal penalty. Withdrawn funds can be recontributed over three years or one can keep the money and pay the tax on the withdrawals over a three-year period.
- Moratorium on eviction filings, or fees or penalties for tenants for nonpayment of rent for 120 days on properties insured, guaranteed, supplemented, protected or assisted in any way by HUD, Fannie Mae, Freddie Mac, the rural housing voucher program, covered by the Violence Against Women Act of 1994.
- \$1.25b for Section 8 voucher rental assistance for seniors, the disabled, and low-income working families, who will experience loss of income from the coronavirus.
- The CARES Act dramatically increased the role of the Small Business Administration (SBA) in efforts to assist U.S. businesses impacted by the COVID-19 crisis. The two main vehicles for these relief efforts are the SBA 7(b)(2) loans – Economic Injury Disaster Loans – and the SBA 7(a) loan program. Both loans are available to businesses with 500 or fewer employees that have been negatively impacted by the crisis.
- Expands broadband by providing \$100 million for the reconnect pilot program, which provides grants, overseen by the Department of Agriculture, to fund construction and upgrade costs of broadband networks in rural areas. This will promote economic growth and increase opportunities for home sales. Studies have concluded that in communities where there is access to high speed internet, property values are 6 percent higher.

Tax Changes for REALTORS® and their Clients and Businesses

- Americans with incomes below the thresholds will receive cash payments from the federal government in the amount of \$1,200 per adult plus \$500 for each child under the age of 17. These payments should be sent out starting in April.
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- REALTORS® aged 70 1/2 or older do not have to worry about taking required minimum distributions from retirement plans in 2020, or to pay the taxes on those distributions.
- REALTORS® who make donations of up to \$300 in charitable contributions in 2020 can deduct them whether they itemize or not.

- If your business has 100 or fewer employees, you can claim a refundable employee retention tax credit against payroll taxes of up to \$5,000 per employee under certain circumstances. Larger employers also can claim the credit, but with more restrictions.
- Employers and self-employed individuals can delay the payment of the employer-portion of the FICA (Social Security) payroll taxes or one-half the SECA (self-employment taxes) until after 2020 – one half is due at the end of 2021 and the other half at the end of 2022.

NAR Transaction Guidance During COVID-19

The transaction guidance discusses showings, virtual showings, access to common areas, closing extensions, remote closings and other topics commonly occurring as a result of our public health emergency. Visit www.nar.realtor/transaction-guidance-during-covid-19.

NAR's goal is to keep members informed about the evolving COVID-19 pandemic, its impact on the real estate industry, and to provide guidance on the many difficult decisions members are tackling on a daily basis. Consider how you may continue providing first-class services to clients, while also exemplifying REALTORS® as community leaders by demonstrating care for the health and well-being of clients, colleagues and the greater public welfare in reducing the risk of exposure to, and spread of, COVID-19.

Hotline

COVID-19 – Showings

QUESTION:

A property is under contract for sale and the parties are in the inspection period. The property is leased, and the tenant is saying he doesn't want to let agents or inspectors into the property because of the coronavirus. Is the agent still able to give notice and enter anyway for inspection and to show the property to buyers? Or are there now rules that prohibit against this?

ANSWER:

Essential Business Under "Safer at Home" Order

Although a landlord cannot show a leased property to prospective tenants for the duration of the governor's order, the property can be shown to prospective buyers for a sale upon proper notice. The order (a) designates real estate services as an "essential business," (b) emphasizes the great importance of real estate transactions to the state's economy by exempting generally most services (brokers, appraisers, home inspectors, etc.) related to real estate transactions from the "safer at home" order, and (c) generally prohibits landlords and property managers from entering leased residential dwelling units. The order specifically states, "Landlords or rental property managers shall avoid entering leased residential premises unless emergency maintenance is required."

Accordingly, the order indicates that those who need to enter leased premises for the purpose of a purchase/sale real estate transaction are allowed to do so, as long as they follow the safety standards outlined in the order. However, if a tenant refuses entry into the leased premises, parties are encouraged to respect the wishes of the tenant and try to find alternative solutions to show, inspect or appraise the premises for the purpose of a sale transaction.

READ MORE ABOUT IT:

See Gov. Evers' Emergency Order #12 – Safer at Home at <https://evers.wi.gov/Documents/COVID19/EMO12-SaferAtHome.pdf>.

COVID-19 – Showings; Landlord/Tenants – Showing Rental Properties

QUESTION:

1. The “safer at home” order specifically states, “Landlords or rental property managers shall avoid entering leased residential premises unless emergency maintenance is required.” What is considered an emergency? What if the maintenance is not an emergency but both the landlord and the tenant are willing to let the landlord in for a repair?
2. Can the landlord show leased properties to potential future tenants if existing tenants agree?
3. Can landlords evict tenants during the order?

ANSWER:

1. Non-emergency maintenance

The order does not define what counts as an emergency for maintenance purposes. It is possible that this will have to be determined on a case-by-case basis guided by the intent of the order, which is presumably to allow tenants to minimize contact by keeping others outside of their residences. If the tenant and the landlord agree to proceed with maintenance that might not be an emergency, they might be in violation of the order and should certainly observe all CDC and DHS precautions.

2. Showings with consent

The order does not address showings of rental units to new tenants if existing tenants consent, but the order does say that landlords and property managers shall avoid entering leased residential premises unless emergency maintenance is required. Additionally, the order prohibits “All public and private gatherings of any number of people that are not part of a single household or living unit,” which would seem to prohibit showing a rental unit even with the tenant’s consent. A landlord wishing to show existing rental units should consult with the landlord’s own legal counsel.

3. Evictions

On March 27, 2020, Gov. Evers issued Executive Order #15, Ban on Evictions and Foreclosures, prohibiting landlords from evicting tenants for failure to pay rent. Evictions are allowed only if a failure to evict will result in an imminent threat of serious physical harm to another person. This order is in effect for 60 days.

READ MORE ABOUT IT:

See Gov. Evers’ Emergency Order #15 – Temporary Ban on Evictions and Foreclosures at https://content.govdelivery.com/attachments/WIGOV/2020/03/27/file_attachments/1412941/EO%2015%20Ban%20on%20Evictions%20and%20Foreclosures%20PDF.pdf and the WRA Updated FAQ Document Regarding Safer at Home Executive Order at www.wra.org/Coronavirus/Legal.

COVID-19 – Offer to Purchase

QUESTION:

When using the WRA Addendum CV, and generally, would an agent need the written consent of a party for the disclosure of their medical status if assisting a party in giving notice of a coronavirus isolation or quarantine situation?

ANSWER:

Although any notice of a coronavirus situation pertaining to a party presumably will be a notice coming from and signed by the party, best practice would be to have an express written consent from the party to disclose the medical situation. Others in the transaction then can be apprised, depending upon the circumstances, and notice extending deadlines may be given. Party consent may be procured by amending the listing contract or any buyer agency agreement to modify the confidentiality section to make the coronavirus-related information non-confidential and thus authorizing the disclosure of that information as required. This could also be addressed in a Disclosure to Customers form, or an amendment thereto, or in a separate notice. Licensees should be careful to not disclose private medical information to anyone unless absolutely necessary as a person’s health is confidential.

READ MORE ABOUT IT:

NAR has provided step-by-step guidance for situations where a buyer or seller reports COVID-19; see www.nar.realtor/sample-preparedness-plan-for-circumstances-relating-to-covid-19. The guidance also cautions to not reveal the seller or buyer's identity or the property address in any communication unless written consent is obtained.

COVID-19 – Miscellaneous; Offer to Purchase – Earnest Money**QUESTION:**

The broker takes care of the trust account and has been working from home. Can the office mail the earnest money check to her to deposit, which will delay it?

ANSWER:

Per Wis. Admin. Code § REEB 18.031(1), a firm must deposit earnest money into the trust account within 48 hours of receipt of the trust funds. However, due to the coronavirus (COVID-19), unusual circumstances and interruptions are occurring in real estate transactions and business practices.

To assist in social distancing, real estate offices are temporarily closing, limiting office hours or access to the office as well as encouraging agents and employees to work from home. However, current administrative rules and statutes do not automatically provide flexibility when a pandemic occurs. In these unusual circumstances, the office must try to do the best it can relating to meeting the current obligations under license law in response to the pandemic. Therefore, if the earnest money check arrives at the real estate office and then is forwarded to the home address to the person responsible for depositing the money, then the office should be prepared to provide evidence the delay occurred due to the pandemic.

The Real Estate Examining Board has not provided any guidance as to the application of the administrative rules and disciplinary actions that may be taken during usual practices that occur during the COVID-19 outbreak.

READ MORE ABOUT IT:

See Wis. Admin. Code § REEB 18.031 at https://docs.legis.wisconsin.gov/code/admin_code/reeb/18.

COVID-19 – Miscellaneous**QUESTION:**

Will licensees be violating any rules if they don't do inspections or see the property before writing the offer because of COVID-19?

ANSWER:

The WRA has communicated with the Real Estate Examining Board suggesting the board explore temporary suspension or provide guidance regarding the impacts to practice and the application of rules as they relate to COVID-19. Specifically, the WRA has asked about the application of Wis. Admin. Code § REEB 24.07 regarding inspections by real estate licensees prior to listing the property as well as inspections by the cooperating agent, and § REEB 24.13 regarding access to the property for showings.

Fair Housing – Protected Classes**QUESTION:**

In this uncertain employment time with COVID-19, it seems many sellers who receive offers are asking the question "what is the buyer's profession?" and are taking that into consideration when deciding on what offer to accept. For example: if a buyer is a public school teacher, most sellers consider that profession more advantageous and choose the offer from the teacher over an offer from another buyer in say a "service industry." Wouldn't asking what a buyer's profession is and then deciding on what offer to accept based on this information be discrimination based on "lawful source of income"?

ANSWER:

A seller may reject an offer so long as the seller's decision is not based upon the buyer's protected class status.

The federal Fair Housing Act makes it unlawful to indicate a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin. The Wisconsin open housing law includes the following protected classes: sex; race; color; sexual orientation; disability; religion; national origin; marital status; family status; status as a victim of domestic abuse, sexual assault or stalking; lawful source of income; age or ancestry. There may be additional protected classes based on local ordinance.

If the seller has specific questions about fair housing, or if there are allegations of a fair housing law violation, the broker may refer the seller to her attorney for any needed legal advice.

In the listing contract, the seller and the listing firm agree they will not discriminate against any prospective buyer based on race; color; sex; sexual orientation as defined in Wis. Stat. § 111.32(13m); disability; religion; national origin; marital status; lawful source of income; age; ancestry; family status; status as a victim of domestic abuse, sexual assault or stalking; or in any other unlawful manner.

Also, Wis. Admin. Code § REEB 24.03(1) similarly provides, "Licensees may not discriminate against, nor deny equal services to, nor be a party to any plan or agreement to discriminate against any person in any manner unlawful under applicable federal, state or local fair housing law."

A firm may consider refusing to provide brokerage services to a client requesting activity that limits equal services to certain people.

This WRA Legal Hottips document is provided by the WRA's Legal Affairs Department. The WRA Legal Hotline is an educational resource intended to keep the WRA abreast of legal developments affecting real estate practice in Wisconsin. The content included here should be considered a general statement of applicable legal principles. Given this format, it is impossible to fully address all potential legal issues that might apply in any particular situation. A determination of any individual's legal rights in a transaction can only be obtained after complete analysis of the law and its applicability to the particular fact situation. Therefore the answers to the questions above do not constitute legal advice and should not be relied upon as legal advice in litigation, arbitration or ethics matters. Neither these answers nor the communication with the attorneys associated with the Legal Hotline is intended to create an attorney-client relationship, and no information communicated to or by the attorneys associated with the Legal Hotline will be protected by attorney-client privilege or the work product doctrine. Private counsel should be consulted if legal advice is needed or if the member or a party is involved in litigation, arbitration or ethics matters.

The WRA Legal Hotline is a members-only service in which WRA members can submit a real estate-related legal question and receive information and feedback from WRA legal department staff. Visit www.wra.org/Hotline to fill out the online question form and for complete details about this service.



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