



**COVID-19 UPDATE:  
THE STATUS OF TRANSACTIONS DURING  
“NEW YORK ON PAUSE” EXECUTIVE ORDER**

Hudson Gateway Association of Realtors, Inc. (“HGAR”) is hoping that all of its members, staff and family are staying as safe as possible during these trying times. It is important, for the welfare of everyone in our communities, that we remain vigilant and take all necessary precautions and take appropriate actions to protect everyone in our communities, including clients, colleagues, family and yourself.

During this difficult period, HGAR believes that it is essential to provide our members with frequent updates and resources so that they can continue to work, albeit on a limited basis, within the parameters of the Executive Orders issued by Governor Cuomo as well as recommended Federal guidelines. It is imperative that REALTORS utilize technology to conduct their business and restrict all in-person contact during the current State of Emergency.

***100% of Non-Essential Businesses and Services Ordered to Work from Home***

Under Executive Order 202.8 (see <https://on.ny.gov/2UkhyKw>), Governor Cuomo mandated that:

***“All businesses and not-for-profit entities in the state shall utilize, to the maximum extent possible, any telecommuting or work from home procedures that they can safely utilize. Each employer shall reduce the in-person workforce at any work locations by 100% no later than March 22 at 8 p.m.”***

Under Governor Cuomo’s mandate **ALL** “non-essential” personnel must stay and work from home in order to help stop the spread of the Novel Coronavirus 2019 (COVID-19).

**All** physical real estate offices must be closed and “telecommuting” and remote “work from home” options must be implemented until further notice.

Under Governor Cuomo’s Executive Order **real estate services** are **NOT** deemed to be essential.

**This means all REALTORS must immediately suspend all in-person business operations, including but not limited to conducting showings (for sales or rentals), assisting with walkthroughs, and holding open houses, attending closings, and other in-person contact, and must leverage technology to ensure business continuity.**

New York State has released specific guidance (see <https://on.ny.gov/2WXbLfZ>) for businesses to determine whether their business or service is “essential” and whether that business or service is subject to the Executive Orders. The list of essential businesses and services is updated on a continuous basis and should be reviewed frequently.

Additionally, under Executive Order 202.10 (see <https://on.ny.gov/3any0iU>) issued on March 23, 2020, Governor Cuomo has mandated at **ALL** “*Non-essential gatherings of individuals of any size for any reason...are canceled or postponed at this time.*”

### ***Fines and Penalties for Violations of Executive Orders***

If any REALTOR violates these Executive Orders they may be liable for a civil penalty of up to \$2000 per occurrence, including being charged with a misdemeanor and potential revocation of a REALTOR’s license.

The penalty can be increased up to \$5000 for each and every subsequent violation if it causes a serious threat to the health and safety of an individual, and if a person suffers serious physical harm to a patient, the fine can be increased up to \$10,000.

It is imperative that REALTORS understand that the intent of the Governor’s mandate is to **stop** the unintended spreading of this deadly virus, and to prevent as many deaths as possible.

This PAUSE, while difficult for everyone, is important for the health and welfare of all citizens. Compliance with these Executive Orders, is not only **mandatory**, but is necessary, so that everyone can get back to work as soon as possible and as soon as it is safe, so that everyone can get back to “business as usual.”

It is incumbent upon all REALTORS to do their best to remain home and significantly reduce the movement of the general population. The main goal of the Executive Orders is to reduce the spread of this horrific virus and to limit in-person contact as much as possible.

### ***CAN REALTORS STILL CONDUCT BUSINESS?***

While REALTORS must remain home and restrict all in-person contact, many REALTORS still have business that is pending. Many transactions are in contract and need to close. REALTORS can still be involved in trying to assist with the closing process, however, they must work closely with the attorneys for both the buyers and sellers to come up with a potential closing procedure that allows a transaction to close, but above all to ensure that it is done in a safe manner.

Again, the focus should be to keep business going via video conferencing and other available technology and eliminating in-person contact.

Below are examples of potential closing options that can be implemented in certain, but not **all** circumstances.

It is important to note that the following options are to be discussed with the attorneys for the sellers and purchasers, as well as all of the other parties involved, and ***must*** at all times be in full compliance with any Executive Order issued by the Governor and any other restrictions in effect at the state or federal level.

## ***Where Can a Closing Take Place?***

If a physical closing needs to take place then a closing can ***only*** take place at a location that is open for business (i.e., a business that is designated as an “essential business” or provides an “essential service”). Under the “Essential Business” Guidance issued for Executive Order 202.6 (see <https://on.ny.gov/2WXbLfZ>) the only essential businesses that relate to real estate which are expressly permitted to continue to operate are as follows: insurance companies, banks and lending institutions.

In addition to those businesses or services that are expressly listed as “essential”, the FAQ issued in conjunction with the “Essential Business” Guidance provides limited exceptions for those companies that provides “support” services to an “essential” business. See FAQ # 11 below:

**11. QUESTION: What if my business is NOT an “Essential Business” listed on ESD’s guidance but provides services, materials, supplies or other support to an Essential Business?**

**ANSWER: If your firm is a vendor, supplier or provides other support to an Essential Business that is required for the Essential Business’s operation, then your business is exempt from the employment reduction provisions contained in Executive Orders 202.8. However, only those employees necessary to support the Essential Business are exempt from the employment reduction requirements of Executive Orders 202.8 and your business is still required to utilize telecommuting or work from home procedures to the maximum extent possible.**

Therefore, a lender’s closing attorney would be permitted to open for the limited purposes of closing the transaction.

Since a large percentage of real estate transactions involve financing and title insurance, the attorneys for the parties should contact the lenders and/or title insurance companies to see if they, or the bank’s attorney, would be willing to host a closing. It is important to note that some businesses, even if they are permitted to operate under the “essential business” exemption, may not be willing to take on the responsibility to allow individuals to utilize their offices.

It is important to note that lawyers and law firms are ***not*** deemed “essential” under the “Essential Services” Guidance. Therefore, unless a lawyer is acting as bank attorney, the attorney is prohibited from opening his or her office, and must try to utilize the title company’s office or attempt to utilize a remote closing procedure (see below **Virtual/Escrow Closings**).

If the essential business, or the business that offers support services to an essential business, do agree to hold a closing, the business must still adhere to the guidance on cleaning and disinfection of facilities issued by the New York State Department of Health Interim Guidance for Cleaning and Disinfection of Public and Private Facilities for COVID-19 ([see https://on.ny.gov/2JkGyuS](https://on.ny.gov/2JkGyuS)).

At this time, closings **cannot** take place at a real estate office.

### *Escrow/Virtual Closings*

To eliminate the possibility of exposure to necessary parties at a closing, many attorneys have taken the steps to implement “escrow” or “virtual” closings.

In “escrow” or “virtual” closings, the participants will agree in advance upon a procedure to close a real estate transaction either by mail and/or to utilize the services of a third party (i.e. an attorney, title insurance company, escrow company or settlement company) that will act as an “escrow agent” for the parties so they do not have to attend a physical closing. While these options may be available to minimize the number of persons who attend a closing, when a loan is involved, lenders may still require that documents are signed simultaneously at the closing and may require limited attendance of the purchaser.

In light of the current restrictions, the parties to a real estate transaction must come up with creative and safe ways to allow a real estate closing to occur.

- Seller’s attorneys can prepare the deed, transfer tax documents, and request all of the necessary title affidavits from the title company, in advance, and overnight them to the seller in advance for execution before a notary public. The seller’s attorney is now permitted to notarize the documents for the client by video conference. Governor Cuomo issued Executive Order 202.7 ([see https://on.ny.gov/3alacfq](https://on.ny.gov/3alacfq)) which allows for notarization by utilizing audio-visual technology.
- Purchaser’s attorneys may also request the purchaser’s lender or lender’s attorney to send the loan documents in advance and will also request the title company to provide any required affidavits in advance. One common issue is that the lender’s or lender’s counsel do not have the documents available until the same day as the closing. If the documents are able to be generated and are able to be emailed to the purchaser’s attorney in advance, then the same video notarization option above may be utilized. It is important to note that some banks will not issue the documents in advance and will not allow the video notarization. This should be discussed in advance as soon as possible.
- Another option is to have parties stay at their homes or stay in a safe location (e.g., their own cars) and have the title company send a title closer to each of the locations, pick up documents, notarize, pick-up and drop off checks and do whatever else may be necessary to close the transaction.

- Many of the payments can also be made by wire transfer. So, once all of the documents have been approved and delivered, then wires can be initiated to all parties concerned, including mortgage payoffs to existing lenders.
- Once all of the parties have signed and have had notarized their respective documents, the escrow agent then collects (which usually occurs by overnight delivery) all the documents and monies (either by wire transfer or physical checks) on behalf of the parties and holds them in “escrow”. Once all the signed documents and funds are delivered to the escrow agent, and all the closing conditions are met, the transaction “closes” and checks are released (or wire transfers are initiated) and documents are then recorded.
- For new transactions, various provisions relating to “escrow” or “virtual” closings can be included in contracts so that all of these procedures can be agreed to in advance, so there are no issues once a closing occurs.
- Walkthroughs are also an extremely important element of all real estate transactions. It is customary for REALTORS to assist with and to schedule walkthroughs. Under the current Executive Orders, REALTORS are **strictly prohibited** from conducting a walkthrough or having any in-person contact with clients. Therefore, it is imperative that the attorneys for both the purchaser and seller coordinate access to the premises so that a purchaser may conduct the walkthrough. REALTORS, however, should still be involved and should utilize video calls so that they can conduct the walkthrough with the purchaser and provide the purchaser with the usual guidance from afar.

No matter what form of virtual or escrow closing procedure is utilized, it is still extremely important to ensure that any and all safety precautions are taken, such as wearing gloves, masks, limiting contact, practicing social distancing, and following all of the guidelines and practices issued by New York State (see <https://coronavirus.health.ny.gov/home>) and the CDC Guidelines (see <https://www.cdc.gov/coronavirus/2019-ncov/>).

### ***Other External Activities***

As noted earlier, these Executive Orders have been put in place with the intent to curb the spreading of the COVID-19 virus. Unless all New Yorkers comply, the purpose of self-quarantining will be delayed or even defeated. This means that lives are jeopardized and getting back to “business as usual” gets further delayed. That is why all REALTORS must avoid the temptation to look for loopholes to allow themselves to leave the house to conduct real estate activities. It is clear from the Executive Order that all “non-essential” activities must stop and this mandate should be taken seriously.

While NYSAR has sent a request for clarification to the Governor’s office on some real estate activity (i.e. unaccompanied showings, virtual tours, appraisals, photographs, etc.) as there are no concrete answers to these questions, REALTORS must continue to use common sense and what is best for the communities in which they live. There must be a PAUSE. If a REALTOR goes out to conduct business to gain a competitive advantage against others, aside from potentially

severe fines, criminal charges, and loss of licensure, by allowing other parties into a home unattended it exposes the REALTOR and the brokerage to liability and lawsuits arising from negligence, as well as potentially exposing the REALTOR, the homeowner, the potential buyer, and all related family members and third-parties to serious illness and even death. What is clear is that all non-essential workers, which clearly include real estate agents and photographers, are not permitted to conduct their activities at this time outside their respective homes.

## ***Cold Calling***

General Business Law §399-z(5-a) provides as follows:

***“It shall be unlawful for any telemarketer doing business in this state to knowingly make an unsolicited telemarketing sales call to any person in a county, city, town or village under a declared state of emergency or disaster emergency as described in sections twenty-four or twenty-eight of the executive law.”***

In light of this law, a REALTOR cannot solicit listings at this time if there is no prior relationship. A REALTOR may call a FSBO if they have an identifiable purchaser interested in the property; however, a REALTOR is prohibited from calling the FSBO to solicit the listing. Further, contacting expired listings, off market listings, as well as canceled and withdrawn listings, without a preexisting relationship is prohibited. All other types of marketing such as mailers, billboards, social media, internet etc. are permitted.

What is paramount is that all precautions are taken to ensure the health and well-being of all parties. This includes the cleaning of all surfaces, handles, writing implements, paperwork, and any other materials that may contact parties. Parties should remain at least six feet apart and completely separated if possible.