



# QUERIN LAW, LLC

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## MEMORANDUM

**TO:** Portland Metropolitan Association of Realtors®

**FROM:** Phillip C. Querin, QUERIN LAW, LLC

**DATE:** March 23, 2020

**RE:** Governor's Executive Order No. 20-12 ("Order")

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A copy of the Order is available here: <https://govstatus.egov.com/or-covid-19> It should be closely reviewed. Below is a general summary. If the summary is different from the online information above, the latter should be followed.

### **General Rules:**

- Avoid all groups or crowds in all venues (private or public);
- Observe social distancing at all times and all occasions, i.e. at least six feet from any person who is not a member of your immediate household;
- Comply with other social distancing requirements issued by the Oregon Health Authority (<https://www.oregon.gov/oha/pages/index.aspx>);
- Outdoor recreational activities are permitted so long as (a) there is no contact, and (b) social distancing observed;
- Certain businesses for which close personal contact is difficult or impossible (e.g. amusement parks, galleries, malls, studios, activity centers, etc.) are required to be closed.
  - Restaurants and bars offering take-out or delivery service are permitted.

### **Workplace Restrictions:**

- All businesses and nonprofits are to facilitate work at home and telework to the maximum extent possible;
- When this is not possible, the business is to do the following:
  - Designate an employee or officer to *establish, implement* and *enforce* social distancing policies per Oregon Health Authority guidance;



- The policies *must address how* the social distancing protocols will be maintained for business-critical visitors;
- Failure to comply will result in closure of the business.

**Travel:**

- Travel is to be minimized;
- Essential travel (to/from home, workplace, essential business services) is permitted;
- Don't travel with your clients.

**REAL ESTATE BROKERAGE SERVICES**

The Order does not expressly designate “Essential” businesses that may continue to operate. It merely imposes certain “Workplace Restrictions” on those that, because of the nature of their business, teleworking and working-from-home are not available options.

PMAR is an industry organization composed of real estate licensees that either practice by themselves, or in associations of two or more persons. In all cases, a supervising principal broker is responsible for one or more other brokers. In most cases, brokers are independent contractors, not employees. The nature of PB supervision is regulatory in nature, and nothing more.

PMAR is in no position to dictate how its members comply with the Order. At best, this is up to company policy to decide.<sup>1</sup> Thus, the decision as how to its members should comply with the Order is a matter beyond PMAR's authority or jurisdiction.

Accordingly, the choice for licensees and their affiliated companies is to either close down entirely, or to continue engaging in professional real estate activity (at one level or another) in compliance with the Order.

It does not appear that Realtors® are expressly prohibited from engaging in most of the activities they normally do, such as listing of property, preparing a property for sale, or showing a home to prospective customers – so long as it is in compliance with the spirit and intent of the Order.

Accordingly, below are some guidelines for those members who may elect to continue on some level, listing, selling, and marketing real estate.

- ***Have a Written Policy.*** First, if it is going to involve interacting with other members of the public, before doing so, the brokerage must *designate* a managing principal broker to develop

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<sup>1</sup> However, an argument could be made that each licensee, as an independent contractor, has a legal right to practice their livelihood, assuming that it does not violate the Order or other laws, rules, or regulations.



a written policy (“Policy”) that addresses (a) its social distancing policy (per Oregon Health Authority guidance, see above) e.g. minimum 6-foot distances, etc., with all clients before, during, and after showings, and (b) how they are to be enforced (e.g. a printed handout to customers);

- The Policy should be distributed to all company brokers and employees, and should be posted on its website;
  - The Policy should define who/what constitutes “business critical visitors” and make sure all brokers are familiar with these rules;
  - Remember that prospective customers are “business critical visitors” – others that are not essential, should not visit the home, the owners, or prospective buyers.
- Policy tips regarding marketing of homes:
- Do not hold open houses; do showings by appointment only;
  - Put this Policy in all listings, marketing material, and the brokerage’s website;
  - Avoid personally meeting with customers if possible – use email, texting, or phone;
  - Policy when preparing a property for sale:
    - Make sure all visits to the home are with client’s prior consent;
    - Sanitize all hard surfaces after the visit;
    - Confirm with owner they are satisfied with the process, and change if necessary for their comfort level.
- Policy tips when showing a property:
- Make sure to have the owner’s express consent in advance;
  - Show them the Policy and make sure they approve;
  - Establish a time limit for visits inside the home and make sure prospective buyers are advised;
  - Don’t travel with clients;
  - Engage in social distancing *at all times* inside and outside the home;
  - Consider providing Purell or similar sanitizers at the home;
  - Make sure the home’s hard surfaces (counters, etc.) are sanitized before and after the visit;
  - Follow up with homeowners to make sure they are satisfied with the process, and change if necessary for their comfort level.
- Do not permit others, e.g. assistants, to have access to the home without the listing broker’s consent and consent of the owner. Make sure they are provided with a copy of the written Policy before any visit.