



Real Estate COVID-19 Dial Guidance

Frequently Asked Questions Related to Real Estate Services - Level Red

Background:

Effective November 28, 2020, Governor Jared Polis issued [Executive Order D 2020 265](#), establishing directives for the COVID-19 Dial Framework due to the increased presence of COVID-19 in Colorado. The Executive Order combined Protect Our Neighbors, Safer at Home and in the Vast, Great Outdoors, and Stay at Home orders into [this dial framework](#), which recognizes unique local circumstances and visualizes a community's success in containing the spread of COVID-19. Each county or region is subject to corresponding directives based on its level on the dial.

Additionally, a statewide mask ordinance remains in place [via Executive Order D 2020 245](#).

Sector-specific resources, guidance for non-healthcare employers, and safety information also has been made available via CDPHE's [public health guidance & resources](#) website.

DORA recognizes that these orders, while detailed, do not necessarily reach the level of specificity many of our regulated professions desire during this unprecedented period. Additionally, we know that businesses and professionals are being asked to absorb information from a wide variety of sources. In an effort to provide not only additional clarity on industry and business-specific safety measures, but also to synthesize information from many state of Colorado sources, we have compiled the following guidance. Please note that while these orders do not come directly from DORA, we are endeavoring to provide them as a further resource to you, our regulated professions.

The license law requires real estate brokers to be geographically competent to transact real estate in such a manner as not to endanger the interest of the public. While the below FAQs answer questions regarding the Executive and Public Health Orders, County or municipal health authorities may impose restrictions more stringent than those imposed by the state. To that end, real estate brokers that practice in multiple jurisdictions or locales are expected to know and comply with the applicable public health orders where they are transacting real estate business.

****For purposes of these FAQs, references to Seller’s Brokers also apply to those Brokers representing Landlords. References to Buyer’s Brokers apply to those Brokers representing Tenants.**

Q: When does a “real estate transaction” start and end?

A: A “real estate transaction” begins as soon as a broker is engaged to perform real estate brokerage services. This includes listing appointments, sign calls and requests for showings. A real estate sales transaction usually ends with the closing and the property being transferred among parties. However, if there is a post-closing occupancy agreement in place, a sales transaction does not end until the post-closing occupancy agreement has concluded. If the real estate transaction involves property management, those are usually long term real estate transactions that conclude when the management agreement expires.

Q: Are real estate brokerage activities permitted under Level Red of the Colorado COVID Dial?

A: Yes, real estate brokerage activities are permitted under Level Red. Pursuant to Public Health Order (“PHO”) 20-36, “real estate transactions” are considered a “Critical Business” and real estate activities that take place “in the field as opposed to a company property, including third party private properties, such as a third-party household” are defined as “Field Services.”

Q: Are Open Houses permissible to be performed by a real estate licensee under Level Red?

A: Yes, but there are restrictions. Only one group of buyers from the same household, and only those individuals who will be the parties to a contracting agreement, may attend an Open House. The broker holding the Open House is responsible for tracing who has entered the property during the open house and asking the parties if they have shown symptoms of COVID-19 or been in contact with someone who has been diagnosed. If the party(ies) answer yes to either, the broker must not allow entrance onto the property. The broker must ensure that all parties are wearing masks and gloves, and practice social distancing. After one group of potential buyers has completed their viewing of the Open House, the broker is responsible for sanitizing and disinfecting commonly touched surfaces, and any other areas touched by the potential buyers.

Q: Are there specific limitations on real estate Brokerage Firm offices under Level Red of the Colorado COVID Dial?

A: Yes. Brokerage Firm offices may operate at 10% of their posted occupancy limit, but remote work is strongly encouraged. Brokerage Firm offices that choose to remain open must adhere to distancing requirements, face coverings are required pursuant to the Public Health Order, and disease prevention measures for the workplace, employees and customers must be adhered to. See [PHO 20-36](#).

Q: Are property showings allowed under Level Red?

A: Yes, with limitations. Real estate brokerage activities include the showing of a property on behalf of a client with whom a Colorado real estate licensee maintains an established brokerage relationship.

In-person “Field Services” activities are defined as a “Critical Business” as it relates to brokerage activities associated with a real estate transaction. Based on the heightened concerns related to a county’s designation as Level Red, adherence to the following guidelines will be anticipated by the Colorado Division of Real Estate for all licensees performing brokerage services in a Level Red jurisdiction:

- Eliminate in-person activities to the extent that any broker, buyer, seller, landlord, tenant, or other party that may be impacted by in-person “Field Services” may request.
- To the extent practical, preference should be given to “virtual” tours over “in-person” showing activities.
- Limit “in-person” activities to ONLY THOSE INDIVIDUALS who are parties to any contracting instrument and/or their real estate brokerage representative. There should be no more than four individuals, including the real estate broker, in a property for a showing at one time.
- Maintain strict and explicit adherence to all social distancing requirements, mask and glove requirements, and cleaning/sanitation requirements currently in place and further described below. Masks and gloves must be worn by all parties prior to entering the property for viewing. The real estate broker showing the property must be able to provide contact tracing information for any party(ies) who have been shown the property.

Q: Who is responsible for cleaning and disinfecting occupied properties between showings?

A: Both Seller’s Brokers and Buyer’s Brokers are considered “Field Services” workers under the PHO 20-36 and share responsibility to make sure cleaning and disinfection occur between showings. Seller’s Brokers need to make arrangements with any occupants to clean and disinfect between showings. Likewise, Buyer’s Brokers need to clean and disinfect behind their buyers while showing the property.

Q: Who is responsible for cleaning and disinfecting after showings if the property is vacant?

A: Seller’s Broker’s should give Buyer’s Brokers specific instructions about cleaning after their showing, but should also make arrangements to ensure the property is clean and disinfected regularly.

Q: Can showings continue if the Seller’s Broker or seller receives notice that someone who tested positive for COVID-19 within a medically relevant timeframe has previously entered the home?

A: Maybe. When possible, in-person “Field Services” with any individual or within any property environment should immediately cease if an individual or property environment has been compromised by positive exposure to COVID-19. However, if it is not possible for the seller to limit access to the property due to contractual or legal obligations, Appendix E requires field service workers to exercise caution. Seller’s Brokers should advise potential buyers or other professionals entering the property about the elevated risk of COVID-19 after getting permission from the seller.

Q: What kind of procedures should a Brokerage Firm have to monitor for symptoms and report to management.

A: We realize it is unrealistic for every single broker to report their health status to the Brokerage Firm daily. Therefore, Brokerage Firms must have a policy in place that requires brokers meeting people in-person to check themselves for fever both before and after meeting with people. The policy should also require that any broker with symptoms or a fever report the symptoms or fever to the Brokerage Firm.

Q: What should a Brokerage Firm do if a Broker, employee or customer, who was previously in the office, tests positive for COVID-19?

A: The Brokerage Firm should notify their local health authority and anyone that came into contact with the individual that tested positive for COVID-19. The individual that came into contact with the individual that tested positive should quarantine themselves for 14 days, get tested per their health provider's instructions and stay out of the office. The Brokerage Firm should also close the office to allow time to disinfect and clean the office completely.

Q: Can Buyer's Brokers shuttle buyers around to showings in their car?

A: No. Due to the Social Distancing Requirements, buyers and brokers should each take separate cars and should remain at least six feet away from each other at all times.

Q: Who should be providing gloves and masks for showings?

A: It is recommended that brokers encourage buyers to bring their own masks and gloves. Both Buyer's Brokers and Seller's Brokers are encouraged to attempt to provide masks and gloves. However, if buyers show up to meet a Buyer's Broker without masks and gloves, the Buyer's Broker must either: 1) provide masks and gloves; 2) check to see if the Seller's Broker has provided masks and gloves; or 3) tell the buyers they will need to reschedule the showing until the buyers have masks and gloves.

Q: Who must inquire as to whether any occupant in a property is symptomatic for COVID-19 or have been in contact with known positive cases?

A: The Seller's Broker must ask the occupants if anyone is symptomatic or has been in contact with known positive cases of COVID-19. Access to the property should cease unless there are contractual or legal obligations requiring the seller to continue to grant access.

Q: Should the Buyer's Broker ask the buyer if they have symptoms or have come into contact with known positive cases of COVID-19?

A: Buyer's Brokers must ask the buyers they are working with if they have symptoms or have come into contact with known positive cases of COVID-19. If the answer is yes, Buyer's Brokers must decline to schedule any in-person showings with the Buyer during the medically relevant timeframe. Buyer's

Brokers can utilize virtual options available to show the property to the buyer, or the buyer or leasee can elect to submit an offer to purchase or lease the property prior to viewing.

Q: Does a Seller's Broker need to keep a detailed log of all the buyers that enter the property?

A: No. Seller's Brokers do need to keep a Showing Log about all showings on the property which must include the name and contact information for the Buyer's Broker showing the property along with the date and time of the showing. The Buyer's Broker is responsible for maintaining a record of showing attendees for the purposes of contact tracing.

Q: Does a Buyer's Broker need to keep a log?

A: Yes. All Buyer's Brokers must maintain a log which includes the name, address, email and/or phone number for the buyer along with the dates, times and addresses of all the properties the buyer visited.

Q: Is it ok to have more than one potential buyer in the property at a time for a showing?

A: No. In order to prevent unnecessary contact, showings must be limited to only one buyer group at a time with sufficient time to disinfect the property between showings.

Q: Is there a limit to the number of buyers I can show the property to if they have all been quarantined together?

A: Showings are limited to those individuals who will be signing the purchase contract and are capped at four individuals, including the real estate broker, per showing. Additionally, sellers may impose other restrictions such as requiring that buyers be pre-qualified, further limiting the number of buyers in the property or prohibiting showings until a contract is executed by both buyer and seller.

Q: Is there best practices for what a seller can do to protect themselves while allowing showings?

A: Yes. Have a wash place with antibacterial soap or a sanitation station for buyers to wash/sanitize their hands upon entering and exiting the property. Sellers should turn on all lights and open all doors prior to any showing. Open any cabinets, window coverings or anything else that Seller's Broker may think appropriate to minimize the amount of touching needed by the Buyer's Broker or the buyers. Sellers should also clean and disinfect the property, in particular all high-traffic areas such as countertops, door knobs or light switches before and after each showing.

Q: Does the occupant need to leave the property for showings?

A: No. Occupants are permitted to remain in the property during all showings. However, occupants should wear masks and gloves and maintain six feet of distance from everyone while other people are in the property. Brokers cannot require occupants to leave the property.

Q: Should Seller's Brokers get waivers of liability, releases, indemnities, etc. from potential buyer's before allowing the potential buyer to enter the property for a showing?

A: Brokers that have waivers of liability, releases, indemnities or other like documents drafted by a Colorado licensed attorney are permitted to use them, however Seller's Brokers should consult with their Colorado licensed attorney regarding the risks or enforceability of such contract forms. Seller Brokers using such waivers must advise their sellers to seek legal counsel about these risks as well as the risks regarding a buyer's unwillingness to look at their property because of the waiver. Additionally, Buyer's Brokers must advise all buyers to have such contract forms reviewed by legal counsel before allowing buyers to sign such contract forms.

Q: Are there best practices for what a buyer can do to protect themselves while visiting properties?

A: Yes. Buyers must wear masks and gloves at all times while visiting a property, unless the buyer is accompanied by a child ten years or younger, or the buyer cannot medically tolerate a face covering. Guidance regarding wearing masks can be found [here](#). Buyers should wash and sanitize hands both at the beginning and end of seeing a property and minimize the number of people the buyer brings to see the property. Showings are restricted to no more than four individuals, including the broker, at a time.

Q: Does a buyer have to see the property before they can make an offer?

A: No. All buyers, especially Vulnerable Individuals, should be encouraged to do as much research finding a property as they can virtually. This might include getting a contract signed by both buyer and seller prior to the buyer ever seeing the property. In these cases, the buyer may want to consider adding a contingency to the contract that the contract is contingent upon the buyer viewing and approving the property after the contract has been executed.

Q: Does the seller have to allow showings?

A: No. Seller's Brokers should explain to all sellers, especially Vulnerable Individuals, their options for selling their property without allowing or minimizing showings. This might include having a virtual tour of the property created, asking for pre-qualifications of buyers before allowing them to see the property, or requiring buyers to make an acceptable offer that is signed by the seller before allowing anyone into the property.

Q: Can a buyer still sign a contract or deliver earnest money in person?

A: While clients can still sign contracts or deliver earnest money in person, brokerage firms are required to take measures to reduce or negate the need for paper and attempt to provide contactless payment options.

Q: Can other real estate professionals, e.g. photographers, inspectors, appraisers who perform Field Services, access the property to perform their duties?

A: Yes. Those professionals must comply with the PH 20-36 by wearing masks and gloves, practicing social distancing, and disinfecting any surfaces touched.

Q: Can the buyer or the Buyer's Broker attend the property inspection?

A: Yes. The buyer or the Buyer's Broker, or both, may attend the property inspection. All parties must wear face masks (unless exempt) and gloves, practice social distancing, and disinfect any surfaces touched.