

# NOTES FROM THE LEGAL HOTLINE

Massachusetts Association of Realtors®

**May 2020**

The ongoing COVID-19 pandemic continues to disrupt real estate transactions and has raised many questions from our members. These are just a few of the many questions we know you have. MAR is here to help you navigate through these uncertain times with the latest information and updates. Please watch for emails from MAR and check [www.MARCOVID19.com](http://www.MARCOVID19.com) for all the latest news. Also let us know what other concerns you have and any problems you are seeing in the marketplace as a result of the pandemic. And most importantly, stay safe.

- Q. My buyer does not want to take on the responsibility of obtaining a smoke certificate, but the seller says the law now makes it a buyer responsibility – is that true?**
- A.** No, the [emergency order](#) signed by the Governor on March 20 does not relieve a seller of their legal responsibility to provide a smoke certificate prior to closing. This order simply allows the buyer and seller to mutually agree to shift the responsibility of obtaining a smoke certificate to the buyer.

Buyers and their REALTORS® have raised concerns about the costs that may be affiliated with bringing a home into compliance. The financial concern may be alleviated by negotiating a credit or a holdback for the buyer to apply towards the costs, if any, of replacing the smoke and carbon monoxide detectors. The parties may also agree to use a third-party company for an unofficial inspection to determine what upgrades, if any, are required by Mass. General Laws Chapter 148, Sections 26F and 26F½ and to have the seller make any upgrades based on that inspection.

- Q. Are there any risks associated with virtual showings?**
- A.** While virtual showings are not new to the real estate world, they certainly have become much more commonplace over the last couple of months. Virtual showings allow for a seller to continue to market their property, while limiting the number of people who physically enter the property. The term “virtual showing” can mean different things to different people, so be sure to always verify that your client (and the other party to the transaction) understand how the virtual showing will occur – will it be still photographs, livestreamed, or recorded?

The following are some best practices to keep in mind when using virtual showings:

- Sign an agency disclosure as soon as possible, but before signing a contract to purchase;

- Be aware of potential wiretapping violations and introduce all people participating in the virtual showing;
- Consider the seller's privacy concerns and use private meeting links, or set permissions to allow only limited audiences;
- If working with a buyer, make sure to point out features and flaws that may not be clear through a camera lens (i.e. quality of workmanship, size of the room, other items that may be important to your client);
- Verify with the seller how a virtual showing or video tour may be shared;
- Any individuals who are physically in the home should follow health and safety guidelines and any additional instructions from the seller regarding protective equipment, sanitization, touching surfaces, etc.;
- If a contract is entered into prior to the buyer physically seeing the property, ensure that the contract includes language that the buyer is not relying on any representations made by the seller or any broker involved in the transaction. The MAR Contract to Purchase and Purchase & Sales Agreement contain this language.

**Q. Can my seller restrict access to the house to only adults?**

**A.** While there may be legitimate concerns with allowing children into a property for a showing, restricting showings to only adults likely runs afoul of Fair Housing law as children are a protected class in Massachusetts. A seller seeking to limit access to their property must do so in a way that is not discriminatory or would have a discriminatory impact. A seller's concerns may be alleviated by proposing alternative showing methods, such as virtual showings, or by temporarily withdrawing the property from the MLS.

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