



April 28, 2020

Susan S. Muranishi, County Administrator  
1221 Oak Street  
Oakland, CA 94612

Donna Ziegler, Alameda County Counsel  
1221 Oak Street, Suite 450,  
Oakland CA 94612

Colleen Chawla, Director Alameda County Health Care Services Agency  
1000 San Leandro Blvd #300,  
San Leandro, CA 94577

Dr. Erica Pan  
Alameda County Public Health Department Headquarters  
1000 Broadway Suite 500  
Oakland, CA 94607

Dear Ladies:

The real estate industry thanks you for the dedicated assistance you have provided us during the current pandemic. After operating under the Order issued March 31, 2020 for a month, we have reason to request you consider the modifications discussed in this letter.

Current interpretation of the Order has prevented Agents and Buyers from entering an occupied home to conduct statutory mandated inspections. Consumers in need of housing are placed in the untenable position of inspecting the home for the first time when they close escrow. By that time, they have become a consumer saddled with a sizable mortgage and no way to unwind the transaction following the discovery of the actual condition of the property.

Sellers, some of who were compelled to sell because of the COVID 19 pandemic due to loss of jobs, loss of a family member or other cause, live in fear that following the close of escrow a buyer with remorse may seek to address their remorse through litigation claiming there has been deception by the seller because the buyer could not inspect the residence. The public policy of this state requiring buyers to inspect may be set aside by courts because of the Order and courts may hold seller to a higher standard than sellers are held to in other parts of the state and transactions outside the scope of the Order.

We suggest, after input from many of our over 11,000 professionals, that both the concerns of the buyers and sellers and the need for a Public Health Order can be accommodated without compromising the spirit and intent of the Order. Our suggestions are based upon compliance with both the Order and existing law:

1. When the listing agent obtains a signed Listing Agreement from the seller, the listing agent is required by *California Civil Code*, Section 2079<sup>1</sup> to conduct a competent in-person visual inspection of the property so the agent can competently complete the statutory mandated Transfer Disclosure Statement, *California Civil Code*, Section 1102.6.
2. Buyers need to access the property because most people will not purchase a home based upon a video. If a buyer does make an offer on a property it must be based upon a actual inspection and if this cannot occur until the closing it sets up a right of rescission and negatively impacts both buyer and seller. By way of example, seller will need to return the proceeds of the sale and this may be impossible if the funds were used to pay off a lender. Rescission is not a viable option as a tool to allow an inspection and cancellation after the closing.
3. When a buyer and seller enter into a written Purchase and Sale Agreement, the buyer and persons performing sales transaction services for the buyer, need access to residential property for the purpose of conducting the inspections buyers are expected to perform in accordance with *California Civil Code*, Section 2079.5<sup>2</sup>.

Our agents have been instructed and will continue to abide by the measures adopted by Government agencies, including the following:

1. None of the parties or agents have symptoms or knowledge of being exposed to a communicable disease.
2. All applicable provisions of Appendix A are followed.
3. Face coverings, shoe coverings, gloves, and sanitizing materials are used when accessing the property.
4. Assuring the property is properly sanitized by wiping all touched surfaces with a disinfectant before leaving.

These changes are necessary because the current language of Paragraph 13.f, subparagraph x of the Order compels buyers in need of housing to forego their statutory rights of inspection, which in many cases disclose defects or problems not observable from a video recording. Our proposed changes encourage sellers to be careful and honest in completing the Transfer Disclosure Statement because they know the buyer will be carefully inspecting the property. Agents need access when taking the listing to

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<sup>1</sup> (a) It is the duty of a real estate broker or salesperson, licensed under Division 4 (commencing with Section 10000) of the Business and Professions Code, to a prospective buyer of residential real property improved with one to four dwelling units or a manufactured home as defined in Section 18007 of the Health and Safety Code, to conduct a reasonably competent and diligent visual inspection of the property offered for sale and to disclose to that prospective buyer all facts materially affecting the value or desirability of the property that an investigation would reveal, if that broker has a written contract with the seller to find or obtain a buyer or is a broker who acts in cooperation with that broker to find and obtain a buyer. *California Civil Code*, Section 2079.

<sup>2</sup> Nothing in this article relieves a buyer or prospective buyer of the duty to exercise reasonable care to protect himself or herself, including those facts which are known to or within the diligent attention and observation of the buyer or prospective buyer. *California Civil Code*, Section 2079.5

assure both parties are protected and understand the importance of disclosures and items that must be disclosed. The Code places a specific burden on the agents to perform their inspection and allow the parties to rely upon their inspection.

By allowing these changes the buyer will have a chance to exercise a due diligence period and avoid potential litigation later. Without this change there remains a high risk of litigation because buyers will be purchasing a home sight unseen and will discover defects and problems they otherwise would have discovered with an in-person inspection.

We also request you consider including commercial property within the definition of an essential service. There are many people trying to recover from the current economic impact in need of space to operate businesses. Some commercial property also contains residential units. The risk in a commercial setting is lower than in a residential setting because it is easier to separate people and follow the requirements of Appendix A.

We appreciate you considering an amendment to the Order of March 31, 2020, paragraph 13.f, Subparagraph x similar to the following consistent with what another Bay Area County has adopted, but maintaining key aspects of Contra Costa's Order:

*Service providers that enable residential and commercial transactions (including rentals, leases, and sales of property), including but not limited to real estate brokers and agents, escrow agents, notaries, title companies, professional inspection services (including home inspectors), appraisers and photographers and videographers. Residential viewings should occur virtually as much as possible. In person residential viewings shall be by appointment only, with no more than two visitors at a time residing within the same household or living unit and one individual showing the unit. In person visits are not allowed when the occupant is still residing in the residence unless gloves, cloth face coverings and shoe coverings are worn during the visit, there is no contact of personal property during the showing, and the seller or landlord cleans the property after the visit with products on the Environmental Protection Agency's approved list of disinfectants, paying attention to any areas that may be commonly touched, such as door knobs, handles, and counter tops.*

We appreciate consideration of these proposals to address some of the issues consumers have encountered in attempting to purchase housing during the current pandemic. Please do not hesitate to contact us to discuss and implement this proposal.

[SIGNATURES ON NEXT PAGE]



Sincerely,

A handwritten signature in black ink that reads "Tina Hand".

Tina Hand, 2020 President  
Bay East Association of REALTORS®

A handwritten signature in black ink that reads "Tangie R. Leverett".

Tangie Leverett, 2020 President  
Contra Costa Association of REALTORS®

A handwritten signature in black ink that reads "Angela Johns".

Angela Johns, 2020 President  
Delta Association of REALTORS®