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**VIA E MAIL AND UPS OVERNIGHT**

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Re: Clarification of Essential Service Providers for Real Estate Transactions

Ladies and Gentlemen :

I am writing on behalf of Bridge Association of REALTORS®, Bay East Association of REALTORS® and Contra Costa Association of REALTORS® with regard to the “Essential Service” exception provided to “Service Providers” engaged in residential transactions. Because we represent over 14,000 real estate professionals, and we have received differing interpretations, it is essential we provide common guidance in the City of Berkeley and Alameda and Contra Costa Counties on the safe delivery of real estate services during the current pandemic.

### **NEED FOR CLARIFICATION**

The sale of residential property, irrespective of the size or neighborhood, is a complex transaction involving compliance with many laws, standards of care and several disciplines. Most people are familiar with the commencement of a transaction when the real estate agent obtains a listing agreement. This is followed by placing the listing in the MLS, bringing prospective clients to the property, obtaining a sales agreement and participating in the closing of the transaction.

In addition to the agent, several other disciplines are critical to properly and successfully closing a residential transaction. California law contains several provisions addressing the right and need for a visual inspection of the property. By way of example, *California Civil Code*, Section 2079 requires a real estate broker or salesperson “to conduct a reasonably competent and diligent visual inspection of the property.” *California Civil Code*, Section 2079.5, requires a buyer to exercise reasonable care to protect himself or herself... during the course of the transaction. There is a well-recognized obligation of a buyer to inspect a property intended for purchase. 1 Miller & Starr, *California Real Estate*, 4<sup>th</sup> ed., Section 168.

In California, buyers fulfill their obligation of inspection through the use of professional home inspectors. The normal course of events is a home inspector will spend several hours looking at and testing components of the home, prepare a written report and then provide it to the prospective buyer. Based on the report, a buyer may cancel the transaction, agree with the seller on repairs or take the property “as is”. Most home inspectors have traditionally conducted home inspections with clean jump suit coveralls, gloves and head cover. Some already use face masks. Given the long and not so proud history in California of consumers being damaged by the failure or inability of having professional assistance in completing their obligations, this has become a critical aspect of the residential real estate transaction.

Most buyers require financing to complete the purchase of a home. Lenders do not traditionally lend without an appraisal completed by a licensed and professional appraiser. An appraiser must gain entrance to a home to measure and assess the interior improvements, condition of the interior and other matters that will affect the value and desirability to lend. Lenders have to answer to their investors and the appraisal is an essential piece of the decision to lend.



Photographers, including videographers, take photographs that are used by buyers in their decision-making process. Though never a substitute for an in-person inspection, photographs reduce the need for unnecessary showings and return inspections. A photograph or video shown to a prospective buyer may reveal interior features or the lack thereof that formerly would have only been seen upon an in-person inspection.

The “Need” at this time is to reduce the number of contacts between people. There is a need to be safe and not spread the deadly virus. At the same time, we have people moving to and from the Bay Area for health, jobs and a variety of other reasons. The community of disciplines that participate in a real estate transaction are all vital to assuring a safe landing and one without subsequent physical and emotional damages.

### *THE ISSUE*

Governor Newsom’s Order Number 33-20 of March 19, 2020 directed all Californians to stay in their home or residences except for essential services as set forth by the federal government in their list of critical infrastructure. At the time of Governor Newsom’s Order real estate services were not on the list. On March 28, 2020, the federal government revised its critical infrastructure list and included residential and commercial real estate services. On March 31, 2020, Bay Area Counties and the City of Berkeley issued an Order that included certain exemptions for essential services. One of those listed essential services is “service providers that enable residential transaction”. The exemption lists four examples: real estate agents, escrow agents, notaries and title companies. It specifically states these four categories are “including, but not limited to”. The Order mandates virtual transactions, but recognizes that when not feasible, a viewing may take place by no more than two visitors living in the same household and one showing individual. It states that in-person visits are not allowed when the occupant is still residing in the residence.

In order to enable a residential real estate transaction, the home inspector and appraiser are just as essential as a title company or escrow. Photographers are essential for a different reason: their pictures reduce the need for unnecessary showings or follow up showings when under contract.

If the Order intends to restrict real estate agents from doing their statutorily mandated in-person inspection, then it is essential for the buyer to complete a home inspection by a trained professional using the protective measures of Appendix A of the Order.

If the Order wants to enable residential transactions, then most buyer will need a loan. This requires having a licensed appraiser having access to the residence and complying with Appendix A.

As most homes are placed on the market, especially during the stay in place orders affecting Bay Area residents, with people living in the home, it makes no sense to admit or not admit the home inspector, photographer or appraiser based on whether the property is “vacant”. The occupant does not need to be present during these entries and a real estate agent can let the service provider in while complying with Appendix A.

### **PROPOSED RESOLUTION**

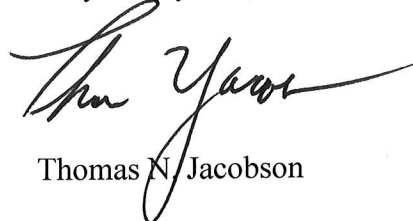
At this time, it is submitted the proposed resolution should be as follows:

Paragraph 13.f.x. is clarified as follows:

1. “Service Providers” includes home inspectors, appraisers and photographers.
2. Entry into a residential unit by a Service Provider identified in paragraph 1 above shall be made only under the following circumstances:
  - a. The Service Provider and Listing Agent providing access shall not be showing symptoms or have been diagnosed with a communicable disease.
  - b. The persons, if any, residing in the residence shall not be showing symptoms of or diagnosed with a communicable disease
  - c. The Listing Agent shall be the person providing access to the residence.
  - d. All residents must be absent from the residence and premises of the residence no less than 30 minutes prior and 30 minutes after the time for the visit.
  - e. All Service Providers and real estate agents must comply with no less than the requirements set forth in Appendix A to the Order of March 31, 2020.
  - f. Prospective buyers may not attend the viewing with the home inspector, appraiser or photographer.
3. This Clarification does not change the intention of the County that real estate viewings should be virtual and that all aspects of the transaction, whenever possible, should be accomplished without direct human contact. Viewings by Buyers may only be performed when:
  - a. It is not feasible to have a virtual viewing
  - b. Only when the residence is vacant with no one living or residing in the unit.
  - c. Only attended by no more than two persons residing in the same household or living unit and one real estate agent.

We thank you in advance for this important consideration. We are aware there is a tremendous strain on public services during this pandemic and appreciate your willingness to quickly address this matter so that we can address many of the disciplines necessary to complete these transactions and provide shelter for our residents.

Very truly yours,



Thomas N. Jacobson