



Frequently Asked Questions (“FAQS”) during State of Emergency in NB

Disclaimer: Please note that any instructions for best practices could change based on updates from the Provincial/Federal Government and Public Health Authorities. The answers below are general approaches to frequently asked questions. Each real estate transaction is unique, and individuals involved in a transaction should also rely on guidance from their respective Agent/Manager and legal/public health advice whenever possible.

1. Is it mandatory there should be no face-to-face open houses or showings during the Covid-19 State of Emergency?

NBREA has recommended there should be no open houses or any onsite showings at this time. Unfortunately, we can only recommend no face-to-face interaction (Open Houses, showings, client meetings, listing appointments, writing offers, etc.). We have certainly encouraged the use of virtual tools and urged members to consider no face-to-face real estate transactions during the State of Emergency.

2. Did the mandatory “no face-to-face” rule of law come from FCNB and NBREA as co-regulators or another level of government and if so who?

This is not mandatory under NBREA or FCNB legislation. It is compliance with Public Health Directives and recommendations from the Chief Medical Officer for New Brunswick. In addition, Public Safety in charge of COVID-19 strategy has been touch at the most senior level of government. Public Safety stated the following to us:

“Government of New Brunswick is receiving a tremendous volume of inquiries from business seeking official assurance that they’re doing all the right things, and a lot of calls and emails from New Brunswickers wanting an investigation into some person or business they’re concerned is not taking all the precautions they’d like.

Every business is being asked to make a real effort to find a balance – it can’t be business as usual, especially where that means human interaction within 6 feet, so many will have to adapt. The orders require very few businesses to cease operations, but challenge most to adapt to reduce risk. Your guidelines show a genuine effort to find balance. Some of your members and their clients will find them

excessively cautious, and some New Brunswickers will be angry you're doing any business at all. Please, pursue balance, exercise due diligence, and press on!"

3. If it is recommended that no showings occur face-to-face, what are the penalties if they occur? Fines? No insurance coverage? Suspension of license? Hearing before the Registrar?

This question falls under the orders laid out in the State of Emergency and social distancing. As you may know, law enforcement could issue fines for non-essential gatherings (e.g. A scenario where a REALTOR® is having a face-to-face showing and a whole family shows up in 2-3 cars).

Through the Office of the Registrar, who we consulted also with your question, we offer the following: There are no administrative penalties to be incurred at this time with respect to the complaints and discipline process surrounding the recommendation to restrict real estate transactional activities to essential activities only. Suspension of licencing would have to be assessed or commented on by FCNB as that is not a function of the Office of the Registrar.

With respect to hearings, should a member of the public be affected by a positive test result of COVID 19, and directly link this result to a real estate transaction which was deemed non-essential by NBREA, there is the possibility of a case being made for negligence on the part of the REALTOR®. Any complaint filed by a member of the public, despite our current perspective on professional misconduct under the REALTOR® Code, will have to be assessed through the complaints and discipline mechanism. We cannot guarantee that such a complaint would not make it to a disciplinary hearing. That decision and determination would be made by the complaints committee as outlined by the Act.

4. If it is recommended that no showings are to be done face-to-face, does this directive also apply to private marketing firms, and Kijiji sales as well?

State of Emergency directives would be for all gatherings, regardless if you are licensed or not, so it would apply to anyone. For example, we are aware of a well-known for sale by owner marketing firm in this province who has moved to virtual services due to the State of Emergency.

5. If it is not mandatory and it is not against the law to show certain properties, could a waiver be signed by all parties (Buyer, Seller, Buyers Agent, Sellers Agent, Buyers salesperson, Sellers salesperson) advising all showings are to continue during the crisis, however if it is suspected or confirmed Covid-19 was transmitted to one of the other parties above by means of the showing process, all those involved in said showings are doing so at their own risk and all parties are released from liability/ litigation and court damages?

We can not endorse any forms for waiver as it goes against all recommendations in a State of emergency. As well, previous legal perspective has stated to us that those kinds of waivers do not provide the legal protection members would be looking for. Waivers do not meet the spirit of State of

Emergency. It is about stopping the spread of contracting Covid-19. It is truly unfortunate, but it is not business as usual right now.

6. Can I show vacant properties? Because they are vacant, if everyone during a showing can respect the 6-foot rule, there is probably less chance of catching Covid-19 in a vacant home.

We respectfully suggest that it is not the fact a property is vacant or empty, it is the face-to-face interaction between the REALTOR® and the buyer and the potential transmission through frequently touched surfaces such as doorknobs and other possible areas of contact.

7. On vacant properties can these be treated differently from Seller occupied homes and can we do showings if we wear proper protective gear?

No. See question # 6 answer for rationale please.

8. Video tours and pictures are only as good as the taker. By not being able to be physically present to view the property, and with offers that need to be written, what clauses do we need in the contract to protect the REALTOR® and the client they represent? Do you have clauses that we can put into a purchase and sale agreement which lawyers reviewed at which moves the liability away from us?

Buyers have always had the ability to make offers sight-unseen. Although this adds more liability in the transaction, the Buyers agent can write a clause subject to a in-person viewing. We are examining some clauses for consideration to assist our members. This will be provided to members in a separate dispatch.

For photos and videos, the buyer could ask for such things as a more detailed video walk through. The Seller can do this and send to their REALTOR®. We will be finalizing some best practice details on this process in coming days. We appreciate the challenges and frustration as it is not business as usual.

9. How can a member do a pre-closing inspection if there is a recommendation for no face-to-face?

NBREA has issued a best practices recommendation on pre-closing inspections. Please visit our website for further details through the information documents and videos. Add hyperlink.

10. As it relates to tenant's rights under COVID-19, if a property is sold and the buyer wanted vacant possession, can the tenant be given notice to vacate during the State of Emergency, and if so, how much is required?

According to the NB Government, nothing has changed in landlord-tenant law, except specifically in relation to eviction for non-payment of rent. All other tenant and landlord rights and obligations remain unchanged. [Click here for declaration of state of emergency](#)

11. My Seller is from out of town and wants to sell their vacant property in NB. Can I list and show it?

We are suggesting all face-to-face interactions for real estate be discontinued. This would apply to REALTORS® meeting with Buyers to show properties. Regardless if those properties are vacant or if the seller had left the house for a few hours. Social distancing best practices outlined by the Chief Medical Officer would indicate that non-essential face-to-face should be discontinued. If the property is vacant and has not had anyone enter the property in the last 4 days (which is the current best practice recommendation), you could visit and take video of the property and rooms for use for virtual showings.

12. My client's lawyer needs them to sign the documents to complete the closing. How can they do it without being face-to-face?

One of the issues the Law Society had until recently was the obligation to witness the signatures of the client on certain documents. (Deed and anything that goes to Land Registry).

The Law Society of NB recently made recommendations on how to do that through video call where the lawyer can witness the signature over the video conversation, followed by the client immediately sending the document to the lawyer electronically or by courier.

We have created a specific dispatch we created on this question which you can find [here](#).

This is different scenario than using electronic signatures, as the lawyer would not be able to visually see them sign. Although the lawyers can use e-signature for many of their internal documents (invoice, statement of disbursements, etc.), they are bound by a few other Legislative Acts that require witnessing the original.

13. My client is from out-of-province and needs to sign the document to close, how can this be done?

In talking to lawyers over the last few days, the limitation with the option to witness via video call is only applicable to clients who reside in NB as they are governed by NB Law. The lawyers can not apply this to out-of-province signatures. Those clients would be under the jurisdiction of whatever province or state they are in. The clients and lawyers' obligations are governed by the laws of the province in which that lawyer is practicing. In summary, if you have an out of province client, they need to seek out guidance from that province's law society or lawyer on signing documents during a State of Emergency.

14. How can I show a property virtually?

A lot depends on how much is already available with photos, videos, brochures, etc. If a buyer is interested in seeing more of the property or needs to get an understanding of the layout, the seller or listing agent can provide some very basic but useful items. A simple diagram of the floor plan would be helpful so that the buyer knows where each of these rooms are located in relation to each other. A more complex solution would be a 3D diagram of the floor plan. There are software companies that can provide this.

A recent article in the CREA Café provides some additional details. <https://www.creacafe.ca/how-proptech-is-changing-the-real-estate-game/>

Photos and videos can fill in the blanks to showcase the marketable features of the home. For any areas not already photographed or videoed, the seller can provide these through the listing agent to you and your buyer. Follow up questions can assist everyone with understanding any missed areas or areas requiring further detail (i.e. basement cold rooms, attics, furnace room or any room that contains the mechanicals of the home).

15. Will my general liability policy respond to COVID-19?

Please click [here](#) for valuable information provided by your insurer, ToolePeet

Any other questions regarding your General Liability policy coverage should be directed to:

Adam D Thomson, CIP
Account Executive
Toole Peet Insurance
Phone: 1.888.838.6653
Email: athomson@toolepeet.com

16. Will my Errors & Omissions policy respond to COVID-19?

Questions regarding Errors & Omissions policy coverage should be directed to:

RJ Tougas, LL.B.
Centra Claims Management Inc.
Phone: 204.318.2005
Email: ritougas@centraclaims.ca

17. Will all properties that don't currently meet the requirements of essential need to be pulled from the system?

This is not required. The local real estate boards do have rules in place for properties that can not be shown. However, under the State of Emergency circumstances, properties that are available for sale can be shown virtually.

18. Will the government prevent or instruct lawyers not to close transactions?

NBREA has no jurisdiction over lawyers and what they can and can not do. They are currently deemed essential. They are handling all types of client interactions; not just real estate and the Law Society has already made adjustments to handle the signing of documents without face-to-face contact.

19. Are REALTORS® allowed to assist, in any fashion, in the trading of non-essential Real Estate sales?

Absolutely. REALTORS® can list properties, show properties, write offers, do CMA's (with limited info) all virtually. There are no restrictions on providing services to clients in this manner. The recommendation remains to avoid all face-to-face interactions.

20. Are there any conditions or forms that a REALTOR® can use to address issues that have come up as a result of the Covid-19 State of Emergency in NB (ie. delayed closing, extension of conditions, methods of transferring closing funds, etc)?

NBREA is currently working on conditions and possible forms to assist members with handling transactions that may require an amendment. Any new offers written should focus on a longer closing dates and longer condition timeframes where possible to allow sufficient time to complete these requirements.