

TOP COVID-19 QUESTIONS FROM LONG ISLAND REALTORS®

Below are the most frequently asked questions from our members on the impact of COVID-19 to REALTORS® and their businesses. Please check back often as these answers may change based upon updated guidance from the government. LIBOR reminds everyone that each member's specific circumstances are different and therefore each member should contact their own legal and financial advisor for answers to questions pertaining to their specific situation.

1. What does it mean that New York has listed real estate an “essential” activity?

The Empire State Development (ESD) deemed real estate services essential but it has done so “**with extensive restrictions**”. ESD issued guidance on April 9, 2020 that “**real estate services shall be conducted remotely for all transactions**” and that services “**may be conducted in-person only to the extent legally necessary** and in accordance with appropriate social distancing and cleaning/disinfecting protocols.” NYSAR advises that it is unaware of any scenario where a licensee would be “legally necessary” to have in-person contact. Therefore **licensees should not be having in-person contact with any members of the public**. Licensees must utilize alternative methods of conducting business to avoid person to person contact with members of the public. ESD has also made clear that and nothing within its guidance “should be construed to allow brokerage and branch offices to remain open to the general public (i.e. not clients).”

2. Can licensees still take listings?

Yes. Licensees may take listings. However, ESD's guidance is that that “**real estate services shall be conducted remotely for all transactions**”. Licensees must make every effort and explore every alternative to avoid person to person contact with members of the public. This can be done a number of ways including utilizing alternate means such as virtual listing appointments, electronic transmission and signing of documents. A licensee may also mail or use a courier (UPS, FedEx, DHL) to deliver documents to a consumer to sign.

3. Can licensees perform in-person showings or open houses?

No. Pursuant to the most recent guidance from New York State Empire State Development, **licensees must conduct all showings “virtually”**. NYSAR interprets “virtual” to mean no in-person contact when conducting a showing. Licensees should conduct the showing alone and use a tool such as video conferencing with the buyer, and virtual showings must be done with the seller's knowledge and informed

consent. NAR has compiled a list of links and resources to help you with virtual showings: <https://www.nar.realtor/virtual-showings-and-virtual-tours>.

4. Can a licensee travel to a property and unlock the door so a consumer may enter the property for an unaccompanied showing? What if the licensee unlocks the door and waits in the driveway or out in the road until the buyer leaves? [Added 5/01/2020]

No, NYSAR does not recommend that a licensee travel to the property in order to permit access to a member of the public. Any licensee choosing to travel to the property for this purpose is doing so at their own risk.

5. Can licensees go to a vacant or unoccupied home or vacant land to view it or take photographs for a listing? [Added 5/01/2020]

NYSAR advises that, yes, with the knowledge and informed consent of the seller. In the event the property is not vacant/unoccupied upon arrival, the licensee should cease taking photographs/video and leave the property. The licensee is not permitted to have person-to-person contact.

6. Can a professional photographer and/or videographer take photos or video of a property? [Added 5/01/2020]

NYSAR advises that, in the event the photographer/videographer has received approval for real estate photography as an essential business from Empire State Development (ESD) and provides a copy of such approval, the activity is permitted. Such approvals are on a case-by-case basis and it is currently NYSAR's understanding that photography/videography as a whole has not been deemed an essential business, only those individuals receiving the letter from ESD.

7. Can licensees make cold calls?

The Governor's declared disaster state of emergency in New York based on the COVID-19 outbreak means that unsolicited cold calls to New York residents by brokers and agents are prohibited until September 7, 2020 unless the state of emergency is lifted sooner. New York recently passed an amendment to its do-not-call registry law which made it unlawful to make an unsolicited telemarketing sales call to any person in New York under a declared state of emergency. It is unclear whether courts interpreting the amended law would treat unsolicited text messages as telephone calls. Accordingly, real estate offices, brokers and agents should **avoid** making any unsolicited telemarketing sales **calls** or sending unsolicited **text** messages to any person within New York until the current state of emergency is lifted.

8. What kind of marketing can licensees do?

All other types of marketing such as mailers, billboards, social media, internet etc. are permitted. NYSAR is advising that you may call a FSBO if you have an identifiable purchaser interested in the property. However, you are prohibited from calling the FSBO to solicit the listing. NYSAR is also advising that you may still perform business to business calls so long as you are calling the number provided as the business number. Email communication is also permitted, so long as it complies with any other relevant laws.

9. What is the liability if a licensee violates the Governor's executive orders regarding essential businesses?

Penalties can range from a fine of \$2,000, being charged with a misdemeanor and possible license suspension or revocation.

10. Does the fact that some real estate related activities may continue remotely impact a licensee's ability to seek Pandemic Unemployment Assistance (PUA)?

No. While ESD has made clear that certain real estate functions may continue remotely without in-person contact, that does not automatically eliminate a licensee's ability to receive PUA benefits that are available for independent contractors. Whether an individual will be eligible for PUA depends upon whether or not that individual is able to work. The test is not whether someone is theoretically able to work, but rather whether someone is as a practical matter unable to work. For example, even though some real estate work could theoretically continue remotely, it may be that it is possible for the licensee to work, but as a practical matter, working is prevented by the practical reality that customers are absent and closings are unable to proceed.

11. How do I apply for PUA?

You can file a PUA application online at labor.ny.gov. For more information about PUA benefits, visit: <https://www.labor.ny.gov/ui/pdfs/ui-covid-faq.pdf>.

12. Would someone be ineligible for Pandemic Unemployment Assistance (PUA) if they were already receiving Social Security Benefits. [Added 5/01/2020]

You may be eligible to receive both PUA and Social Security Benefits depending on your specific circumstances.

According to NAR's Pandemic Unemployment Assistance FAQ (<https://www.nar.realtor/political-advocacy/coronavirus-pandemic-unemployment-assistance-faq>), you may be eligible to collect unemployment compensation if you are receiving social security benefits and was working prior to the COVID-19 pandemic.

Specifically, NAR's Q&A states:

May I collect unemployment compensation, if I am receiving social security benefits and was working prior to the COVID-19 pandemic public health emergency?

Yes, you may be eligible to receive pandemic unemployment assistance (PUA) benefits, if you are receiving social security benefits, and were working prior to the COVID-19 public health crisis. In determining your eligibility for PUA benefits, states will consider how your work has been impacted as a result of COVID-19. The state also may deduct the amount you receive in social security benefits from your unemployment compensation entitlement amount that is computed by the state.

Also, the New York State Department of Labor states that it does not reduce your unemployment benefits if you collect Social Security. Its FAQ (<https://www.labor.ny.gov/ui/claimantinfo/beforeyouapplyfaq.shtm>) states:

Does receiving Social Security affect my benefits?

A: We do not reduce your unemployment benefits because you collect Social Security. You must be able to work and be looking for work with no restrictions when you receive Social Security.

Finally, any benefits you get from unemployment insurance will not reduce your Social Security payments, as Social Security does not count unemployment benefits as earnings.

13. What potential assistance is available to licenses from the United States Small Business Administration (SBA) through the CARES Act?

The CARES Act created two new programs/grants through the Small Business Administration: the "Paycheck Protection Program" (PPP) and the Economic Injury Disaster Loan (EIDL) grant.

PPP loans are based on the average monthly payroll expenses of a business, multiplied by 2.5 and capped at \$10 million. PPP loans are intended to cover expenses for a business during any 8-week period between February 15, 2020 and June 30,

2020. They can be used for payroll costs, rents, mortgage interest, and utilities. If a business owner maintains a certain level of payroll expenses and employees during that 8-week period, the loan will be 100% forgiven. As employees go below those levels, the forgivable amount is phased out. Small businesses and sole proprietorships were eligible to begin applying for PPP loans with an approved SBA lender as of Friday, April 3, 2020. Independent contractors and self-employed individuals can apply beginning Friday, April 10, 2020.

EIDL loans are available for small businesses during a declared disaster that have suffered economic harm. The federal government has declared COVID-19 crisis an eligible disaster. The limit on these loans is \$2 million and there is no personal guarantee for loans under \$200,000. Applicants can receive up to a \$10,000 advance on their EIDL loans, which will be disbursed within three business days of applying. That \$10,000 advance would be forgiven, and applicants can get the advance even if they don't qualify for additional funds. EIDL loans can be used to provide paid sick leave to employees unable to work due to COVID-19, maintaining payroll, meeting increased costs due to supply chain disruptions, rent or mortgage payments, and repaying debt obligations.

NAR has provided a more detailed Q&A about the PPP and EIDL programs, which can be found at: <https://narfocus.com/billdatabase/clientfiles/172/26/3624.pdf>

14. Who is eligible for a PPP and EIDL loans?

Small businesses that meet current SBA requirements, any business with 500 or fewer employees, sole proprietors, independent contractors, self-employed workers, sole proprietors and “gig economy” workers qualify for PPP loans.

EIDL is available to any small business or business with 500 or fewer employees that experiences an economic hardship as a result of COVID-19, including sole proprietors and independent contractors.

15. Where do I go to apply for a PPP or EIDL loan?

The SBA does not itself issue PPP loans, but guarantees them to lenders. Applications must be made through a participating SBA lender, bank, or credit union.

EIDLs are administered directly by the SBA. You can apply for these loans directly through the SBA at www.SBA.gov/disaster. There is no need to make an appointment with a lending institution to start the loan process.

16. Can I apply for both PPP and EIDL loans?

Yes. You can apply for both types of loans, but you must put them toward different expenses. For instance, you can use PPP for short term working capital like employee payroll costs, interest on mortgages, rent under lease agreements and utilities; and EIDL for building renovations, equipment and growth-oriented initiatives. In addition, if you receive an EIDL advance grant as well as a PPP loan, the amount of the advance will be subtracted from the amount forgiven under the PPP loan.

17. Are payments received under the Payroll Protection Program (PPP) taxable? [Added 5/01/2020]

No. They are not taxable. According to NAR's SBA CARES Act FAQ(<https://www.nar.realtor/political-advocacy/coronavirus-sba-cares-act-faqs>), PPP loan payments that are forgiven will not count as taxable income. Specifically, NAR's Q&A states:

Will forgiven loan amounts be counted as income for tax purposes?

No. Any forgiven loan amounts under the SBA 7(a) PPP program will not count as income.

18. If you collect the EIDL advance, EIDL Loan, and/or the PPP Loan does that affect your ability to receive PUA benefits or vice versa?

You cannot obtain an EIDL advance of up to \$10,000 unless you apply for an EIDL loan. As noted above, you can apply for both an EIDL loan and PPP loan, provided you do not use funds from both loans for the same purpose (e.g., you cannot use both for payroll costs in the same time period). According to NYSAR, it is still unclear whether you will be able to apply for both the loan programs and PUA, but to date, there has not been any guidance prohibiting individuals from applying for all of these programs. However, please note that a business cannot obtain a PPP loan and payroll tax credits (discussed below).

19. Are small business owners limited to what they can apply for as small business assistance? Is there a way of knowing what is correct to apply for?

NYSAR advises that individuals will need to determine which is the best option for themselves and their businesses. Since a self-employed, small business owner may not be able to receive both PUA and PPP, both programs should be assessed based

upon that individual's specific circumstances. We recommend that business owners should consult with their respective legal and financial advisors.

20. Can I get benefits from both the Payroll Protection Program (PPP) and Pandemic Unemployment Assistance (PUA)? [Added 5/01/2020]

There is no clear answer on this from the state or federal governments. However, PPP loans are intended to help businesses keep their workers on the payroll during the COVID-19 pandemic. Unemployment benefits are intended for workers who are no longer working and being paid. So, you may run into legal issues if you receive a PPP loan based on payments to yourself from your own business, and you also receive unemployment benefits for being out of work during the same period of time. Each member's specific circumstances will be different and therefore each member should contact their legal and financial advisor.

The most recent guidance from NAR (<https://magazine.realtor/news-and-commentary/feature/article/2020/04/your-guide-to-pua-benefits>) on this issue is as follows:

The PPP offers forgivable loans from the Small Business Administration designed to help small business owners and independent contractors cover payroll for their workers and to provide income for themselves. Whether you should apply for the PUA or the PPP depends on your particular circumstances. It is likely that an independent contractor with no employees, earning \$50,000 a year or less (after deducting business expenses), may find the PUA a better choice, while an independent contractor or business owner with multiple employees may find the PPP a better option. However, it is best to consult with a tax adviser or financial professional about the best approach for maximizing benefits.

On the topic of whether an independent contractor can apply for both, it is possible that you could apply for a PPP loan and use the benefits over its stipulated eight weeks and then apply for PUA funds after that benefit period ends. Again, discuss your options with a tax or financial professional.

21. Are there other COVID-19 economic relief programs available to small business owners?

Yes. In addition to PUA, EIDL and PPP, small business owners may also qualify for:

- a. Stimulus Checks – The majority of Americans, including small-business owners, are eligible for stimulus payments. These payments will be \$1,200 for individuals, \$2,400 for married couples, and an extra \$500 for each child younger than 18. The amount of the checks starts to phaseout for those earning more than \$75,000 (\$150,000 for joint returns and \$112,500 for heads of household). If the IRS does not have your banking information, it will mail your check to the address on your tax return. If your address has changed and you have concerns your mail will not be forwarded, you can go updated your address with the IRS by clicking here: <https://www.irs.gov/faqs/irs-procedures/address-changes/address-changes>
- b. SBA Loan Forbearance – If you already have one or more SBA loans in your business that you used for equipment, expansion or real estate, including your own building, the CARES Act requires the federal government to automatically make the payments for you over the next six-month period beginning April 1, 2020.
- c. Increased Access to Retirement Accounts – The CARES Act increases the dollar amount you can withdraw from your own 401(k) from \$50,000 to \$100,000. It also creates a penalty-free early distribution rule whereby taxpayers under age 59 ½ can take a penalty-free account distribution from their retirement account of up to \$100,000. We recommend that you consult with your tax and financial advisors to review the potential pros and cons of these options.
- d. Tax Credits – The Families First Coronavirus Response Act (the "FFCRA"), signed by President Trump on March 18, 2020, provides small and midsize employers refundable tax credits that reimburse them, dollar-for-dollar, for the cost of providing paid sick and family leave wages to their employees for leave related to COVID-19. More information concerning this program can be found here: <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>.

The CARES Act also included the Employee Retention Credit, which is designed to encourage businesses to keep employees on their payroll. The refundable tax credit is 50% of up to \$10,000 in wages paid by an eligible employer whose business has been financially impacted by COVID-19. More information concerning this tax credit can be found here: <https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>.