



## FAQs about Real Estate and Emergency Order #12 Safer at Home

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The WRA Legal Team has created a list of frequently asked questions relating to Gov. Evers' Emergency Order #12 Safer at Home Order (Order). The WRA Legal Team will continue to update this document as new information is gathered.

### 1. How long is the Order in effect?

The Order, issued on March 24, 2020, is effective at 8:00 a.m. on Wednesday, March 25, 2020, and will remain in effect until 8:00 a.m. on Friday, April 24, 2020, or until a superseding Order is issued.

### 2. Is real estate an Essential Business under the Order?

Yes. Real estate brokerage services and most services related to real estate transactions are currently allowed to continue during the duration of the Order.

The Order defines "Essential Business" to include the following services related to the real estate industry:

- Real estate services
- Accounting
- Appraisers
- Building trades (carpentry, electrical, HVAC, plumbing, moving and relocation services, etc.)
- Construction (essential business and housing)
- Home inspection
- Insurance companies
- Legal
- Lenders (banks and credit unions)
- Property management
- Title companies

Per Emergency Order #12 Safer at Home Order

13. Essential Businesses and Operations. All entities described in this section shall meet Social Distancing Requirements between all individuals on the premises to the extent possible. Essential Businesses and Operations shall, to the greatest extent possible, use technology to avoid meeting in person, including virtual meetings, teleconference, and remote work (i.e., work from home). For the purposes of this Order, Essential Businesses and Operations means Healthcare and Public Health Operations, Human Services Operations, Essential Infrastructure, and Essential Governmental Functions, and the following:

n. Critical trades. Building and Construction Tradesmen and Tradeswomen, and other trades including but not limited to plumbers, electricians, carpenters, laborers, sheet metal, iron workers, masonry, pipe trades, fabricators, finishers, exterminators, pesticide application, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, HVAC, painting, moving and relocation services, forestry and arborists, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, Essential Governmental Functions, and Essential Businesses and Operations.

u. Professional services. Professional services, such as legal or accounting services, insurance services, real estate services (including appraisal, home inspection, and title services). These services shall, to the greatest extent possible, use technology to avoid meeting in person, including virtual meetings, teleconference, and remote work (i.e., work from home).

### 3. Does this Order apply to both residential and commercial construction?

Yes. However, there may be services or questions relating to construction that were not contemplated by the Order. The Order referenced below includes critical trades as well as Essential Business construction. However, specific questions about construction should be directed to the WRA Legal Hotline or to private legal counsel.

Per Emergency Order #12 Safer at Home Order

Essential Infrastructure. For purposes of this Order, individuals may leave their residence to provide any services or perform any work necessary to offer, provide, operate, maintain, and repair Essential Infrastructure.

Essential Infrastructure includes, but is not limited to: food production, distribution, fulfillment centers, storage facilities, marinas, and sales; **construction (including, but not limited to, construction required in response to this public health emergency, hospital construction, construction of long-term care and assisted living facilities, public works construction, school construction, Essential Business and Operations construction, construction necessary for Essential Governmental Functions, and housing construction, except that optional or aesthetic construction should be avoided); building management and maintenance;** airport operations; operation and maintenance of utilities, including water, sewer, gas, and electric (including power generation, distribution, production of raw materials, and Wisconsin Department of Natural Resources-certified and registered drinking water and wastewater testing laboratories); Wisconsin Home Energy Assistance, Low Income Home Energy Assistance Program, and Public Benefits Energy Assistance Program offices, customer service centers, and public intake centers; distribution centers; oil and biofuel refining; roads, highways, railroads, and public transportation; ports; cybersecurity operations; flood control; solid waste and recycling collection and removal; and internet, video, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services).

**Essential Infrastructure shall be construed broadly to avoid any impacts to essential infrastructure, broadly defined.**

n. Critical trades. Building and Construction Tradesmen and Tradeswomen, and other trades including but not limited to plumbers, electricians, carpenters, laborers, sheet metal, iron workers, masonry, pipe trades, fabricators, finishers, exterminators, pesticide application, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, HVAC, painting, moving and relocation services, forestry and arborists, **and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences**, Essential Activities, Essential Governmental Functions, and Essential Businesses and Operations.

Emphasis added.

### 4. Do I have to practice under this Order?

No. You are not required to risk your safety to provide real estate services. However, you should speak to your supervising broker about any of the current listing or buyer agency agreements you have entered on behalf of your firm.

### 5. Can we still travel around to provide our services?

Yes. If the travel is essential to perform the professional service of an Essential Business.

Per Emergency Order #12 Safer at Home Order

15. Essential Travel. Individuals engaged in any Essential Travel must comply with Social Distancing Requirements to the extent possible. For the purposes of this Order, Essential Travel includes: a. **Any travel related to the provision of or access to Essential Activities**, Special Situations, Essential Governmental Functions, Essential Businesses and Operations, or Minimum Basic Operations.

Emphasis added.

**6. Can buyers and sellers still travel around relating to the purchase?**

Yes. If the travel is essential and related to the Essential Business.

Per Emergency Order #12 Safer at Home Order

15. Essential Travel. Individuals engaged in any Essential Travel must comply with Social Distancing Requirements to the extent possible. For the purposes of this Order, Essential Travel includes: a. **Any travel related to the provision of or access to Essential Activities**, Special Situations, Essential Governmental Functions, Essential Businesses and Operations, or Minimum Basic Operations.

**7. Do I need any proof or evidence that I'm an Essential Business under the Order if law enforcement asks?**

There is nothing in the Order that references any evidence required of someone who is providing a service and traveling as an Essential Business under the Order if asked by law enforcement. However, the WRA created a letter to WRA members regarding "Essential Business," communicating that as a provider of an Essential Business you are able to conduct your business. A copy of the letter can be found at [www.wra.org/coronavirus](http://www.wra.org/coronavirus).

Real estate agents are also strongly encouraged to make sure they have copies of business cards and if desired could show proof of licensure by accessing the DSPS license look up tool at <https://licensesearch.wi.gov/>.

**8. If real estate is an Essential Business under the Order, are we exempt from social distancing?**

No. If you decide to provide these services, you must continue to maintain social distancing requirements (a minimum of 6-feet between people), follow reasonable health and safety protocols, and follow all other public health recommendations issued by the State Department of Health Services and U.S. Centers for Disease Control, which can be found on the WRA's coronavirus webpage at [www.wra.org/coronavirus](http://www.wra.org/coronavirus).

Per Emergency Order #12 Safer at Home Order

16. Social Distancing Requirements. For purposes of this Order, Social Distancing Requirements includes maintaining social distancing of six (6) feet between people; washing hands with soap and water for at least 20 seconds as frequently as possible or using hand sanitizer; covering coughs or sneezes (into the sleeve or elbow, not hands); regularly cleaning high-touch surfaces; not shaking hands; and following all other public health recommendations issued by DHS and the U.S. Centers for Disease Control.

**9. Should I try to use technology as much as possible to encourage social distancing?**

Yes. All businesses, including Essential Businesses and Operations, shall, to the greatest extent possible, use technology to avoid meeting in person, including virtual meetings, teleconference and remote work (i.e., work from home). Businesses may not engage in door-to-door solicitation, regardless of its purpose or status as an Essential Business or Operation.

**10. Does the WRA have an addendum addressing social distancing and showings?**

The WRA has created the Coronavirus (COVID-19): Showings and Inspections Agreement to assist in addressing showings, inspections and social distancing relating to COVID-19. A copy is available on [wra.org/coronavirus](http://wra.org/coronavirus) and soon on ZipForm.

## **11. Can we conduct open houses under the Order?**

While real estate is deemed an Essential Business under the Order, the Order also strongly encourages that the services use technology to avoid meeting in person. Whenever possible, virtual tours or other technology are encouraged to allow prospective buyers to view the property.

The Order prohibits gatherings of any number of people that are not part of a single household or living unit are prohibited, except for the limited purposes expressed under the Order. This would suggest that having multiple buyer groups/families in attendance at an open house at one time is contrary to the Order. While real estate is deemed an Essential Business, the Order does not clearly authorize open houses. Therefore, to encourage social distancing, the WRA strongly advises firms to avoid conducting traditional open houses.

Per Emergency Order #12 Safer at Home Order

Professional services. Professional services, such as legal or accounting services, insurance services, real estate services (including appraisal, home inspection, and title services). These services shall, to the greatest extent possible, use technology to avoid meeting in person, including virtual meetings, teleconference, and remote work (i.e., work from home).

Prohibited activities. All public and private gatherings of any number of people that are not part of a single household or living unit are prohibited, except for the limited purposes expressly permitted in this Order. Nothing in this Order prohibits the gathering of members of a single household or living unit. Landlords or rental property managers shall avoid entering leased residential premises unless emergency maintenance is required.

## **12. Can we conduct showings under the Order?**

The Order prohibits gatherings of any number of people that are not part of a single household or living unit are prohibited, except for the limited purposes expressed under the Order. Therefore, if a showing is to occur, then only those who are part of a single household should attend. However, agents are encouraged to be creative in using technology to conduct showings to encourage social distancing.

Per Emergency Order #12 Safer at Home Order

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## **13. Are real estate photography services, home staging, drone services, virtual tour services, etc. deemed Essential Businesses?**

There is nothing in the Order that clearly excludes or includes these services under the Order. However, the WRA will attempt to gain clarity as to the intent of the Order. In the interim, if a provider of these services cannot conduct these services using technology to avoid meeting in person, then the provider may want to consult with private legal counsel about the risks of conducting the services in person.

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#### 14. How does the Order impact landlords and tenants?

Rental property management is an Essential Business per the Order. However, the Order does specifically provide that landlords and rental property managers shall avoid entering leased property unless emergency maintenance is required.

Per Emergency Order #12 Safer at Home Order

3. Prohibited activities. All public and private gatherings of any number of people that are not part of a single household or living unit are prohibited, except for the limited purposes expressly permitted in this Order. Nothing in this Order prohibits the gathering of members of a single household or living unit. **Landlords or rental property managers shall avoid entering leased residential premises unless emergency maintenance is required.**

Emphasis added.

#### 15. How does the Order apply to properties for sale that are occupied by tenants?

The Order designates real estate services as an Essential Business and generally prohibits landlords and property managers from entering leased residential dwelling units. Accordingly, the Order permits those who need to enter leased premises for the purpose of a purchase/sale real estate transaction to do so, as long as they follow the safety standards outlined in the Order.

However, if a tenant refuses entry into the leased premises, the parties are encouraged to respect the wishes of the tenant and try to find alternative solutions to show, inspect or appraise the premises for the purpose of a sale transaction.

Per Emergency Order #12 Safer at Home Order

3. Prohibited activities. All public and private gatherings of any number of people that are not part of a single household or living unit are prohibited, except for the limited purposes expressly permitted in this Order. Nothing in this Order prohibits the gathering of members of a single household or living unit. **Landlords or rental property managers shall avoid entering leased residential premises unless emergency maintenance is required.**

Emphasis added.

## 16. Can a tenant waive the Order to allow the landlord to enter to the leased property that is not for sale to conduct non-emergency maintenance such as painting?

The Order is in place to protect Wisconsin's citizens and therefore they arguably cannot waive any "rights" under the Order. For these reasons is why the Order specifically creates exemptions for certain types of business and acts. A landlord conducting non-emergency maintenance is deemed a prohibited activity under the Order.

Per Emergency Order #12 Safer at Home Order

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Emphasis added.

## 17. Can a landlord evict a tenant under this Order?

Order #12 does not address evictions. However, on March 27, 2020, the governor issued Executive Order #15, Temporary Ban on Evictions and Foreclosures banning all residential and commercial evictions and foreclosures for 60 days. A copy of Order #15 can be found at <https://evers.wi.gov/Documents/COVID19/EO15BanonEvictionsandForeclosures.pdf>.

Generally, Order #15:

- Prohibits Landlords
  - From serving any notice terminating for failure to pay rent.
  - From serving any notice terminating a tenancy unless the notice is accompanied by an affidavit attesting to the reasonable belief that without an eviction proceeding imminent threat of serious physical harm to another person will result.
  - From commencing a civil action of eviction unless the following are met: 1) the eviction is not based on failure to pay rent, and 2) the judicial action seeking an eviction is accompanied by an affidavit attesting to the reasonable belief that without an eviction proceeding imminent threat of serious physical harm to another person will result.
  - Delivering a writ of restitution to the sheriff, nor may the sheriff act on eviction unless the following are met: 1) the eviction is not based on failure to pay rent, and 2) the writ is accompanied by an affidavit attesting to the reasonable belief that without an eviction proceeding imminent threat of serious physical harm to another person will result.
- Prohibits Mortgagees
  - From commencing a civil action to foreclose upon real estate.
  - From requesting or scheduling a sheriff's sale of the mortgaged premises.
- Prohibits Sheriffs
  - From conducting sheriff's sales of mortgaged premises.
  - From acting on any order of foreclosure or execute a writ of assistance relating to foreclosure.
- Does not impact the operation of Wis. Stat. § 704.25, "Effect of holding over after expiration of lease: removal of tenant." A copy of Wis. Stat. § 704.25 can be found at <https://docs.legis.wisconsin.gov/statutes/statutes/704/25>.
- Does not impact Wis. Stat. § 846.102, "Abandoned Properties." A copy of Wis. Stat. § 846.102 can be found at <https://docs.legis.wisconsin.gov/statutes/statutes/846/102>.

**18. What are the penalties if the Order is violated?**

Local law enforcement officials, including county sheriffs, have authority to enforce the Order. A violation or obstruction to the Order is punishable by up to 30 days imprisonment, or up to \$250 fine, or both.

Per Emergency Order #12 Safer at Home Order

17. Enforcement. This Order is enforceable by any local law enforcement official, including county sheriffs. Violation or obstruction of this Order is punishable by up to 30 days imprisonment, or up to \$250 fine, or both. Wis. Stat. § 252.25.

**19. Can local units of governments, counties, towns, cities or villages also have similar Orders?**

Yes. However, local Orders cannot conflict with the governor’s orders. Therefore, local units of governments that previously had created Orders will likely need to update them if they are inconsistent with the Order.

Per Emergency Order #12 Safer at Home Order

Supremacy. This Order supersedes any local order that is in conflict with this order.