

March 24, 2020

Aloha Members of the Honolulu Board of REALTORS®:

As many of you may know, Mayor Kirk W. Caldwell issued March 22, 2020 Emergency Order No. 2020-02 (“City Order”), and Governor David Y. Ige issued March 23, 2020 his Third Supplemental Proclamation (“State Proclamation”) (collectively “Orders”), both of which essentially constitute stay-at-home/work from home orders. We understand there are many questions, concerns and confusion as to how these Orders apply to our Members.

After careful consideration by HBR leadership, taking into consideration (i) the health and safety of our Members, their families and loved ones, clients and customers, and the general public; (ii) good faith compliance with the aforementioned Orders; (iii) maintaining the highest levels of professionalism and ethics among our Members in serving clients, customers, and the community; and (iv) the duties and responsibilities of our Members to continue providing essential real estate services in order to fulfill obligations to clients and customers during these times, HBR wishes to provide this release of information to assist our Members in making prudent decisions concerning health and safety and the professional delivery of real estate services during these difficult times.

All Members must understand that the current situation involving coronavirus is fluid and changing, and HBR may accordingly modify or revise the information provided below.

Members are strongly encouraged to work cohesively within your respective brokerage firms and confer with your Principal Brokers (“PB”) or Brokers-In-Charge (BIC”) on any and all matters concerning compliance with the aforementioned Orders. Additionally, PB’s and BIC’s are urged to consult with your own firm legal advisors and other consultants on the best course of action to take under the current circumstances in this environment. This release is solely for information purposes only and is not intended to provide any legal advice or legal opinion.

**A. Health and Safety**

1. Use common sense in protecting yourselves, your families, your clients and customers, the general public, and all others with whom you transact in the delivery of real estate services from the spread of coronavirus. Members are urged to consult with your PB’s and BIC’s on all current firm policies and procedures concerning these matters.



2. Continue to work together as one team within your respective brokerage firms in this effort and refer frequently to the CDC’s website for up-to-date information about coronavirus and health and safety measures (<https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>). Also, refer to the State of Hawaii website for further information concerning recommended protection and safety measures. <https://health.hawaii.gov/docd/advisories/novel-coronavirus-2019/#do>.

## **B. Compliance with Orders**

1. The City Order essentially requires all individuals anywhere in the City to shelter in place—that is, stay at home and work from home—except for certain essential activities and work that provide essential business and government services. The City Order took effect at 4:30 PM this day, March 23, 2020.

See [http://www.honolulu.gov/rep/site/may/may\\_docs/Emergency%20Order%20No.%202020-02.pdf](http://www.honolulu.gov/rep/site/may/may_docs/Emergency%20Order%20No.%202020-02.pdf)

2. The State Proclamation essentially requires the same on a statewide basis, which will take effect 12:01 AM, March 25, 2020.

See [https://dod.hawaii.gov/hiema/files/2020/03/2003162-ATG\\_Third-Supplementary-Proclamation-for-COVID-19-signed.pdf](https://dod.hawaii.gov/hiema/files/2020/03/2003162-ATG_Third-Supplementary-Proclamation-for-COVID-19-signed.pdf)

3. There are nuances between the City Order and the State Proclamation, which for now are beyond the scope of this notice of information. Suffice it to say that the State Proclamation provides that “in the event of any inconsistency, conflict or ambiguity between this Third Supplementary Proclamation and any county emergency order, rule, directive or proclamation, the relevant documents shall be read to allow for maximum flexibility so that essential businesses and operations continue unimpeded.”

4. As an exception to the “stay at home and work from home” mandate, the City Order creates an exception for individuals who may leave their residence to perform only “Essential Activities,” which includes those involved in “Essential Businesses”, which include “professional services, such as legal or accounting services, insurance services, real estate services (including appraisals and title services) when necessary to assist in compliance with legally mandated activities.” City Order, Subsection II. F.19. The State Proclamation provides a similar exception for “professional services, such as legal services, accounting services, insurance services, real estate services (including appraisal and title services).” State Proclamation, Subsection I.A.19. Bottom line, a plain reading of the Orders collectively indicates that “real estate services” are deemed to be “essential activities,” which are an exception to the stay at home, work at home mandates of the Mayor Caldwell and Governor Ige.

5. Unfortunately, there are no additional rules or regulations that clarify how these provisions might be applied on a practical day-to-day level. The definition of one engaged in the delivery of real estate services either as a real estate broker or a real estate salesperson is broadly defined in HRS 467-1.

6. Based on the above, HBR believes that the overall intent of the City Order and the State Proclamation is to defeat the spread of the coronavirus now. HBR wholeheartedly supports this underlying intent of our city and state government officials. In the spirit of these Orders, HBR encourages all its Members to conduct themselves while engaged in the delivery of real estate services in a manner that earnestly supports these mandates.

7. HBR urges its Members to continue to work in coordination with your PB's and BIC's in the delivery of real estate services in a manner consistent with the City Order and State Proclamation. HBR encourages all Members to take the proper precautions as recommended by CDC, the Hawaii Department of Health, and the National Association of Realtors® while providing any such essential real estate services to clients, and customers, or in connection with service providers and the general public.

**C. Professionalism**

1. We are reminded that while engaging in the delivery of any real estate services to clients and customers at all times, and particularly during these times, the professionalism of our Members as Realtors® or Realtor-Associates® is paramount. How our Members act during these particularly difficult times will undoubtedly define who we are as real estate professionals. Should there be any questions concerning your ethics or professionalism, we encourage Members to confer with their brokerage firm leadership or to contact HBR for guidance.

**D. Essential Real Estate Services**

1. PB's continue to be ultimately responsible for all activities of their employees and agents in all matters concerning the delivery of real estate services, even during these times.

2. Essential real estate services are broadly defined. Refer to HRS, Section 467-1, Definitions, "Real estate broker" and "Real estate salesperson." Also, refer to HAR, Chapter 99, Real Estate Brokers and Salespersons.

3. PB's and BIC's are strongly encouraged to adopt the necessary policies and procedures that ensure compliance with the Orders, and that ensure the health and safety of our Members, clients, customers, service providers, vendors, and the general public. Refer to available guidance, policies, procedures, and protocols as recommended by the CDC, the State Department of Health, and the National Association of Realtors®. In this regard, PB's and BIC's are urged to consider the following general policies and protocols:

a. Closure of Offices. In light of the Orders, offices should be closed to the public, and agents and other staff members should work remotely from their homes. Office access should be kept to a minimum and used only for essential activities.

b. Listings, Promotions, and Advertising. To the extent that Members have an ongoing listing agreement with a client, presumably, the Members' obligations to promote, advertise and market the subject property remains in effect. However, under the current circumstances, Members should consult with their clients on the best means to fulfill their obligations under such listing agreement in a manner that supports the overall intent of the Orders and fulfills your duties and responsibilities to the client.

c. Open Houses and Showings. In an abundance of caution, in-person open houses must stop immediately. While Members may attempt to institute protocols for the safety of the Member and the visiting public to an open house, there is no reasonable level of certainty that can be achieved to ensure the safety and health of our Members and the public in this current environment. Members ought to consider other virtual means of conducting an open house. Private showings using virtual technology are encouraged. Needless to say, proper procedures, checklists, disclosures, and consents would be beneficial to properly document the virtual tour and possible consummation of a contract.

d. Escrows and Closings. Contracts in escrow should be critically reviewed for purposes of complying with the terms, conditions, contingencies, and covenants, representations and warranties, deadlines, etc. in said contracts. Open and frank communications with all parties on these matters must be conducted. Members should confer with your respective PB's and BIC's on all such changes and modifications. Supplemental addenda may be necessary to address the requirements of existing contracts.

(i) Closings are still being serviced by escrow and title companies. We encourage Members to refer to the appropriate escrow and title companies for their current policies and practices concerning the handling of such closings, including, but not limited to, the use of DocuSign, communications with escrow to coordinate signatures in a manner that ensures the safety and health of all individuals involved, the issuance of title insurance, and the secure wiring of funds.

e. Property Management. Members engaged in property management may refer to the National Association of Residential Property Managers Protocols for information concerning ongoing activities in the area of property management. <https://www.narpm.org/docs/COVID-19%20Statement%20NARPM%20031620.pdf>. In terms of legal proceedings for collection of rents, summary possession, evictions, and so forth, the Hawaii Supreme Court has postponed all such matters until after April 30, 2020. In terms of rent payments, consider creating payment plans, preserve the rights of your clients under the rental agreement and as permitted by law, and make sure all arrangements are in writing.

f. Cybersecurity. As Members are encouraged to utilize technology, virtual presentations, social media and networking, wire funding, and all other available cyber resources to fulfill your duties and responsibilities as real estate professionals, all Members are especially cautioned to ensure that all reasonable and practical security measures are in place to protect the confidentiality and security of all applicable transactions and personal information.

4. In the interest of protecting our Members, as well as the general public from the spread of coronavirus, and in compliance with the Orders, HiCentral MLS, Ltd. will suspend all open house information from the MLS starting at noon, March 24 until May 1, 2020. All existing open houses that are scheduled during this time will be deleted. While there are other means of promoting open houses, all Members are advised not to conduct public or broker open houses until further notice. Essentially, HBR and its subsidiary, HiCentral MLS, Ltd., effectively are taking steps to stop the invitation of the public to open houses, which arguably would be in contravention of the "stay-at-home, work from home" mandate of the overarching Orders. HBR and HCMLS encourages its Members to utilize other creative means of showing a listing for the

foreseeable future. HiCentral MLS will suspend enforcement of the rule prohibiting URLs for the public remarks to allow subscribers and participants to post links to either live or pre-recorded “virtual open houses.” This will allow our Realtors® to continue to market their client’s properties to the best of their ability during these unprecedented times.

Please understand that this release is provided solely for information purposes and is not intended to provide any legal advice or opinion. HBR strongly encourages its Members to work within your brokerage firms in coordination with your PB’s and BIC’s who are ultimately responsible for all activities within the firm. HBR also encourages Members to consult with their legal counsel and other advisors as may be necessary. HBR encourages its Members to refer to the available resources provided by the CDC, the State Department of Health, National Association of Realtors®, NARPM, and all other available and reputable resources concerning the battle against coronavirus while engaged in the delivery of real estate services.

As mentioned above, first and foremost, is the health and safety of all our Members, their families, staff, business associates, clients, customers, and the general public. HBR and its Members must join in the fight against coronavirus while engaged in the professional delivery of real estate services is an essential activity under the current Orders. These proactive measures are not an option, but are a necessity. The landscape concerning the coronavirus pandemic is constantly changing, and we may update this notice as we learn more about the situation.

Thank you for your time and attention to this matter. Please continue to stay alert to additional notices as more information becomes available.

Sincerely,

A handwritten signature in cursive script that reads "Suzanne Young".

Suzanne Young  
CEO