

MEMORANDUM

Unfortunately, COVID-19 has the potential to create unavoidable problems with many real estate transactions.

Contract law has an established doctrine, called Force Majeure, which allows a party to a contract to suspend performance if such performance would be impossible or impracticable, under circumstances which were generally unforeseeable at the time of contracting and are beyond the control of the party. COVID-19 events probably qualify as Force Majeure events.

The North Dakota Association of REALTORS® has developed the enclosed form for the use of members in addressing this issue. With this form, the parties have the opportunity to agree that, in the event that persons essential to the real estate transaction are affected by a COVID-19 event, such as quarantine, hospitalization, unavailability of necessary professional and government services, and other causes directly related to COVID-19, either party will have the right to trigger an extension, for a length as agreed by the parties at the time of signing the form, for any yet-unexpired deadlines in the purchase agreement and for closing. At the end of the agreed extension, if the COVID-19 event is not yet resolved, either party can terminate the agreement (subject, of course, to the right of the parties to agree to another extension).

The form can be used as an addendum in future purchase agreements but is also set up so that, if parties so desire, the form can be used as an amendment to an existing purchase agreement. In either event, members are reminded to make specific reference to the addendum form in the agreement.