

MEMO

Casey Chapman

April 7, 2020

Subject: Licensees traveling between North Dakota and Minnesota

Concern has been raised in eastern North Dakota regarding those agents who, as a result of the requirements of their real estate business, need to travel back and forth between North Dakota and Minnesota. In particular, agents wonder about the effect of the North Dakota Health Department's Confinement Order and the Minnesota Stay at Home Order. Those concerns are heightened by the fact that enforcement of the orders can be made through criminal proceedings.

In my opinion, the orders do not prevent a real estate agent from moving back and forth between North Dakota and Minnesota, as long as such travel is directly related to the provision of real estate services.

The starting point in North Dakota is Health Department Confinement Order, Order 2020-02, dated March 28, 2020; the actual order can be found at Internet link, <https://www.health.nd.gov/sites/www/files/documents/Files/MSS/coronavirus/HCW/SHO-Order.pdf>, or if a reader would prefer a less detailed summary of the order, that summary can be found at Internet link, <https://www.health.nd.gov/diseases-conditions/coronavirus/travel-quarantine-orders>. Clearly, the Confinement Order requires North Dakota residents, in most cases, to quarantine for 14 days upon reentry into North Dakota from a state identified by the CDC as having widespread disease. As of April 6, 2020, Minnesota was included in the CDC list of states with widespread disease. However, the North Dakota order also states that "essential critical infrastructure workers, as defined by the United States Department of Homeland Security, are exempt from this order." The Confinement Order then provides a direct Internet link to a memorandum produced by the Cybersecurity and Infrastructure Security Agency (CISA), a division of the Department of Homeland Security, <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>, for identification of those "essential critical infrastructure workers," who, by such reference, are exempted from the North Dakota Confinement Order. At the end of that CISA memorandum, a reader will find a number of headings, including the heading, "Other Community- or Government-Based Operations and Functions." The penultimate subparagraph under that heading specifically identifies "residential and commercial real estate services, including settlement services" within the category of "essential critical infrastructure workers." What is all this mean? Those persons offering residential and commercial real estate services are exempted from the North Dakota Confinement Order. As a result, it is my opinion that, absent other factors such as known contact with an infected person, a real estate agent from North Dakota, who crosses into Minnesota for purposes directly related to the agent's function of providing residential or commercial real estate services, is not required to enter a 14-day quarantine upon returning to North Dakota.

Some North Dakota agents are also residents of Minnesota. Minnesota Governor Walz has issued Emergency Executive Order 20-20, dated March 25, 2020, Internet link, https://mn.gov/governor/assets/3a.%20EO%2020-20%20FINAL%20SIGNED%20Filed_tcm1055-425020.pdf. That order is known as the Stay at Home Order. The content of the order is expressed in the title, i.e., it requires Minnesota residents to stay in their homes. However, the order also recognizes that there are certain essential functions, which must continue to move forward, and thus the order identifies certain work, which is exempted from the order. Thus, Paragraph 6, entitled "Exemptions - Critical Sectors," provides exemptions from the Stay at Home order for certain "critical services," and, in particular, Subparagraph hh of Paragraph 6 exempts "workers who facilitate and finance real estate transactions and real estate services, including appraisers and title services." A real estate agent is one

who facilitates real estate services and thus real estate agents appear to be exempted from the order. One might still ask, however, about the consequence of movement from Minnesota to North Dakota, and then back, in pursuit of that exempt real estate activity. Subparagraph e of the Stay at Home Order's Paragraph 5, entitled "Exemptions - Activities," says that individuals "may travel to exempted activities" and "may also travel into and out of Minnesota." Thus, a fair interpretation of the Minnesota Stay at Home Order is that, as long as a real estate agent's travel from Minnesota to North Dakota, and back, is directly related to the agent's provision of real estate services, that travel is exempted activity.

It is a basic understanding of legally sanctioned activity that an individual should not be punished for activity, unless the law, or in this case the legal orders, reasonably warn the individual that the activity is illegal. It is my opinion that, under a fair reading of both the North Dakota and Minnesota orders, the actions of a real estate agent, which are directly related to the provision of real estate services, are exempted from the orders and that, in addition, travel between North Dakota and Minnesota, where such travel is directly related to the provision of such real estate services, is also exempt from the limitations of both orders. Obviously, in the event that such travel results in direct contact with a person with a known infection, protective measures should be followed, in spite of the exemption.