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April 17, 2020

To Our Real Estate Industry Partners:

HoganWillig was, I believe, the first law firm in Western New York to be designated as an “Essential Business.” Since that time, we have been working with the New York State Attorney General and the Empire State Development Corporation (“ESDC”) for clarification on exactly what we, our real estate clients, and others in our industry, can do during the COVID crisis. We have correspondence from both sources guiding us so that we can do our essential work while following the law, and maintaining the safety of our clients, employees, and the public at large.

Publicly, the ESDC has stated that:

Real estate services shall be conducted remotely for all transactions, including but not limited to title searches, appraisals, permitting, inspections, and the recordation, legal, financial and other services necessary to complete a transfer of real property; provided, however, that any services and parts therein may be conducted in-person only to the extent legally necessary and in accordance with appropriate social distancing and cleaning/disinfecting protocols. (ESD Guidance on Executive Order 2026, Section 14, April 9, 2020)

The following guidance is based on the above, pertinent Executive Orders, and the information obtained from the Attorney General and the ESDC. It directly addresses several of the questions sent to us in response to our Zoom Webinar on this subject, hosted on Wednesday April 8th. (If you could not participate in the Presentation, please contact [info@hoganwillig.com](mailto:info@hoganwillig.com) for a recorded copy.)

- **Real Estate Agents:** So long as you do everything possible to avoid or limit face-to-face interactions, you are complying with New York State legal requirements. If your seller will not agree for example, to only virtual tours, you may, if you are willing, personally show the home to a potential buyer. If your buyer insists that you accompany them on their final walk through, you may do so, if you are willing. You must follow all social distancing and sanitization procedures where possible, such as wearing a protective mask, maintaining six feet of distance and avoiding any physical contact, such as handshaking, while remaining on-site no longer than necessary.
- **Cold Calls:** Cold calling is prohibited during a health emergency such as COVID, and would be prohibited during all other declared emergencies as well.
- **Photographers and Other Support Vendors:** We received confirmation that our real estate clients may, for instance, allow photographers to take photos necessary to permit remote viewings by prospective purchasers and appraisal companies, as long as the photographers maintain social distancing, wear protective mask, and do not remain on location any longer than is necessary.

The ESDC FAQ document answers the question of support providers to Essential Businesses (#11): “If your firm is a vendor, supplier or provides other support to an Essential Business that is required for the Essential Business’s operation, then your business is exempt from the employment reduction provisions contained in Executive Orders 202.8.” This exemption would appear to cover photographers, within the scope of supplying images necessary for virtual tours / remote viewings.

- Landlords: Our landlord clients may continue to have their maintenance staff, whether employees or private contractors, perform necessary maintenance regarding the resolution of all hazardous conditions, electrical, plumbing, heating, and cooling. Routine functions, such as remodeling, and purely cosmetic attention, will of course have to abide the resolution of the COVID crisis. Such maintenance staff must maintain social distancing, wear protective masks, and remain on site no longer than necessary.

Real Estate support company staff such as appraisers, inspectors, photographers and property maintenance are urged to keep this letter with them in case they are approached by law enforcement, and we can provide those agencies with authorization letters we have received from the New York State Attorney General and the ESDC.

Sincerely,

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COREY J. HOGAN, ESQ.