

Commercial Real Estate Closings Move Forward During COVID-19 Pandemic

Coronavirus Legal Advisory

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Although the COVID-19 pandemic is requiring changes in standard practices, many commercial real estate transactions are continuing to close—albeit with various logistical adjustments. To help keep closings on track, we discuss below steps that may require more planning.

Title Company: Contact the title company as soon as possible. Items to cover include:

- Ensuring the title company is able to search title records online and provide title commitments, copies of deeds and encumbrances of record, and rundowns;
- Coordinating how escrow arrangements and document recording will be handled;
- Checking which municipal, county, or state recording offices are closed to the public;
- Ascertaining whether electronic recording capabilities are being put in place or are already available; and
- Confirming the title company can issue title policies with GAP insurance coverage (either through an endorsement or otherwise) to provide the insured with title insurance coverage over any lien or encumbrance that may become of record between the date of closing and the recording of such documentation in the public records. This is particularly important in jurisdictions where the recording office is closed and electronic recording is not available.

Documentation Process: Plan ahead concerning the document signing, notarizing, and witnessing process.

The parties to the transaction should discuss and agree on how and when to sign, notarize, and witness documents; this process may take longer than usual given many stay-in-place orders in effect. To reduce delays and timing issues, the parties should also consider whether closing electronically with PDFs or DocuSign documents is possible. While overnight delivery couriers continue to operate, their operations may change or slow down significantly in the coming weeks. Consequently, if parties agree ahead of time on the process, they can better build in sufficient time to get signature pages to their attorneys in advance of closing. States may differ on options available.

- Federal: Bill S.3533, which would establish minimum standards for electronic and remote notarizations, is pending. SI thin
- **[UPDATED April 15, 2020]** New Jersey: New Jersey attorneys may notarize documents. In addition, on April 14, 2020, New

Jersey enacted Bill A3903, which permits New Jersey notaries to remotely acknowledge most documents for the duration of the COVID-19 public health emergency, provided certain conditions are met.

- New York: Attorneys can notarize only if they have applied to become a notary; consequently, other arrangements may be needed. New York Governor Andrew Cuomo signed Executive Order No. 202.7, permitting notarizations to be performed using audio-video technology through April 18, 2020, provided certain conditions are met.
- Connecticut: Connecticut Governor Ned Lamont signed Executive Order No. 7K permitting notarizations to be performed through June 23, 2020, using an electronic device or process that allows the notary public and the remotely located individual to communicate with each other simultaneously by sight and sound provided certain conditions are met. A copy of that order is available [here](#).
- Massachusetts: Massachusetts has pending a similar bill, which would permit notarizations to be completed via electronic video conferencing in real time. On April 6, 2020, this was referred to the committee on House Rules.
- Other jurisdictions: Some jurisdictions are permitting electronic signatures for recording.

Loan Closing Contingencies: For loan closings, make contingencies for delays in obtaining required third-party due diligence documents and reports.

Required items—such as surveys, appraisals, insurance, and environmental reports—may take longer than usual to obtain when nonessential employees are required to stay home. If such reports are not complete, the parties may want to consider whether to make certain items post-closing deliverables or rely on other documents instead. Parties should check their jurisdiction for a list of essential workers.