

Memorandum

To: Businesses Lending in Vermont **Date:** April 24, 2020
From: Molly K. Langan
Subject: Closings Occurring During Covid-19 Pandemic

In these turbulent times of the Covid-19 pandemic, this memorandum is intended to summarize the issues and complications that we expect to encounter in connection with closings, especially those that involve real estate. Closings will continue to happen; however, they may be delayed. Our real estate team at Dinse P.C. is making the necessary adjustments and preparations to keep transactions on track. However, deal-specific factors (e.g., the town in which the property is located) may impact the *timing* of closings. Please note that this is a dynamic situation and we may need to revise this memorandum as circumstances change. We hope that this summary of the primary closing issues is helpful to you as you prepare your teams and customers for closings. Please don't hesitate to contact me with any questions or concerns.

Title Searches

The most likely source of a closing delay will be a town/city clerk's decision to close its office, even to title searchers (e.g., Bennington). For those towns that do not maintain online land records, the availability of the records to title searchers has been fluid, changing from week to week as guidance from the Governor's office and the Vermont Secretary of State is updated. Some towns allow limited title searches by appointment while others will not permit any access, but will provide information and documents from the land records upon request. The property location and the title insurance underwriter (see below) will determine whether a closing will be delayed due to an incomplete or out-of-date title search. We recommend that the title attorney call the town clerk or visit the town's website early in the planning process to obtain the most current protocol for title searches. The Secretary of State has also posted information on its website regarding [Town Clerk availability](#). We also recommend that the title attorney continue to stay in touch or monitor the town clerk's office as their availability may change as this situation continues to change.

Title Insurance

We have been tracking communications from three Vermont title insurance companies, for which our firm is an agent, with frequent changes in underwriting requirements and coverages that are available to lenders and buyers to assist with completing closings. For instance, depending on when a title search is completed, and whether the town clerk is open, Gap Coverage is very likely being offered by any of the title insurance companies doing business in Vermont. Additional documentation, underwriting and closing requirements apply. Therefore, making the title insurance arrangements will require more time and preparation than normal and

we recommend that you communicate with the title attorney early in the transaction to ensure that the required coverages will be available at closing.

Appraisals

We have heard that residential appraisers are refraining from visiting occupied homes at this time and are, instead, conducting “desk appraisals” whenever feasible (e.g., a refinance with the same lender). We are not aware of the position that commercial appraisers are taking at this time and whether appraisals are being conducted, and if so, under what conditions. If your transaction requires an appraisal, you should contact your appraiser early to discuss protocols as this could impact the timing of the closing.

Remote Closings

Closings should only occur remotely to discourage even small gatherings of people. Documents should be circulated electronically, as feasible, for execution a few days prior to closing. Original executed documents should then be delivered to the lender/settlement agent before closing and held in escrow pending completion of the closing. Closing funds should be wired to borrowers, settlement agents, and sellers to avoid the delays of distributing checks. Remote closings require additional time to arrange, especially the logistics of signing, notarizing and exchanging documents, so please begin those conversations early.

Signing Logistics

As was the case before Covid-19, loan documents may be signed, scanned and circulated electronically for closing, subject to your individual lender requirements. However, the “wet-ink” originals of certain critically-important documents (e.g., promissory notes and mortgages) must be delivered to the lender/settlement agent by closing (in escrow, as noted above). Documents requiring a notary (e.g., mortgages) may be executed using Remote Online Notarizations (outlined below).

Remote Ink Notarizations

The Secretary of State has passed emergency rules for the remote “wet ink” notarization of documents via online video conferences. To assist notaries public, it also issued a detailed Guidance document that describes the process ([Remote Notarization - Emergency Rules](#)). Please note that *electronic* notarizations, and the notarization of *electronic* signatures, are not permitted; the rules allow for “wet ink” signatures and notarizations only. In addition, these rules do not govern documents that are signed and/or notarized outside of Vermont. The rules of that state will apply. For documents remotely signed and notarized outside of Vermont, be aware that at least one title insurance company (and others will likely follow) is currently requiring that an attorney in the state in which the signing/notarization occurred provide a brief opinion stating that the document was properly executed. This will likely require additional time and expense.

In addition, the state legislature is currently working to amend the statute ([POA Statute](#)) to allow a Power of Attorney to be witnessed remotely. Currently, a witness must be in the same physical location as the signer of a Power of Attorney. Once passed, the amended statute will allow the flexibility of a remotely-signed (wet-inked), witnessed and notarized Power of Attorney that authorizes another person to execute closing documents locally. This will help to avoid the tedious process of signing and notarizing several documents, which may each contain several pages, via online video conferencing.