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**TO: North Carolina Chicago Title Approved Attorneys**

**FROM: Chicago Title, North Carolina State Office**

**DATE: May 6, 2020**

**RE: COVID-19, North Carolina Register of Deeds office closures and Title Coverage**

As discussed in our earlier March 19, 2020 Chicago Bull, and as we are all now painfully aware, we continue to prepare in the event of temporary closing of local recording offices in an effort to mitigate the spread of Novel Coronavirus (COVID‐19) across the country and disruption to the recording process.

The North Carolina Land Title Association (“NCLTA”) adopted suggested form requirements and a gap indemnity. Chicago Title is adopting these forms to try to clarify the process in the event your closing occurs and the parties want to proceed, but your recording is delayed due to a register’s office having suspended recording, possibly for an indefinite period.

**REMEMBER:** *So long as the register’s office is accepting recording, whether electronic or wet-ink paper original presentation, and you will not disburse unless and until you have completed your title update and recording, this procedure does not apply because you will actually be recording!* If a county recording office is closed to the public, but retains the ability to accept documents for recording (electronically or on paper), Chicago Title will insure closings and titles, so long as the ability to search titles using a continuously‐updated web based records information service is still intact for any public records normally examined in a title examination, including register of deeds and AOC/Clerk’s records. To be clear, in the event a county’s online or accessible search platforms do not allow certain records to be searched, CONSULT Chicago Title counsel for further guidance.

**DISTINGUISH:** *This is not a commercial “gap” closing* in which the registry is actively recording, but disbursement may precede recording. Consult Chicago Title counsel for those applicable requirements.

Our standard Commitment requirement so long as the register is currently open at the time of your preliminary but *may suspend recording* before you actually close will be simple and straightforward. If you are NOT going to close unless you can complete the update and record prior to disbursement, this will be moot and can be deleted.

*IN THE EVENT THAT, AT TIME OF CLOSING, THE REGISTER OF DEEDS HAS DISCONTINUED ALL RECORDING OR THE ABILITY TO EXAMINE OR UPDATE PUBLIC RECORDS IS PREVENTED BY CORONAVIRUS STATE OF EMERGENCY OFFICE CLOSURES,* ***BUT ALL PARTIES DESIRE TO CLOSE BEFORE DELAYED RECORDING WHEN REGISTER RESUMES RECORDING,*** *CONTACT THE COMPANY FOR FURTHER REQUIREMENTS.*

In the event you actually anticipate that you *will be closing without completing recording first,* then you should:

1. CONSULT CHICAGO TITLE STATE COUNSEL for approval prior to closing;
2. Follow the guidelines of the more extensive detailed requirement in attached EXHIBIT and on-line at [www.nclta.org](http://www.nclta.org) , AND
3. Provide a satisfactory COVID-19 focused gap indemnity form, below, -- available from your Chicago Title issuing office or agent, OR on-line at:

EITHER:

NCLTA FORM: **AFFIDAVIT OF UNDERSTANDING AND INDEMNITY AND HOLD HARMLESS AGREEMENT DUE TO THE CORONAVIRUS PANDEMIC AND THE COVID-19 STATE OF EMERGENCY – on-line at** [*https://www.northcarolina.ctic.com/newmostrequested.htm*](https://www.northcarolina.ctic.com/newmostrequested.htm) *or* [*www.nclta.org*](http://www.nclta.org)

OR (as provided earlier):

CHICAGO TITLE FORM: **AFFIDAVIT OF UNDERSTANDING AND INDEMNITY AND HOLD HARMLESS AGREEMENT DUE TO CORONAVIRUS PANDEMIC – on-line at** [*https://www.northcarolina.ctic.com/newmostrequested.htm*](https://www.northcarolina.ctic.com/newmostrequested.htm)

Given the unusual circumstances, NCLTA members felt it was better more clearly spell out expectations and concerns so that attorneys could have a better understanding. So this form identifies the “gaps” at issue and addresses searching all available public records, retaining the original documents in a safe secure location, and recording as soon as possible once the register resumes recording, among other issues. The detailed ***NCLTA SUGGESTED COVID-19 GAP INDEMNITY REQUIREMENTS IF CANNOT RECORD (4-2-2020)*** is set forth in the attached Exhibit.

Insofar as the inability to record and resulting delay in recording may be inconsistent with provisions in **closing instructions**, it is strongly recommended that the lender be contacted for direction and approval prior to closing or settlement.

As noted in the Fannie Mae Lender Letter (LL-2020-03), Updated March 31, 2020, <https://singlefamily.fanniemae.com/media/22316/display>, a marked commitment or policy should not be needed at time of closing. In relevant part, the lender letter provides:

Title insurance

We understand that recording offices are closed in certain areas due to public health directives associated with COVID-19 and that such closures present challenges for lenders in complying with title requirements in Selling Guide Chapter B7-2. We are working to address these challenges, but in the meantime, we want to remind lenders that we accept lender’s policies of title insurance written on the 2006 ALTA loan title insurance form or a local equivalent. Covered Risk 14 in the 2006 ALTA form includes “gap coverage” for matters arising between the loan closing date and the mortgage recording date. We will accept this as long as there is no exception for this coverage under Schedule B of the policy

*CAUTION: Attorneys should retain screenshots or printouts of all searches done in register of deeds, clerk’s office or elsewhere, -- including reports that generate no results! Websites may be changed and are outside of your control. So the attorney should be sure to document even “clean” searches lest documents are later indexed and back-dated as if posted earlier.*

Ultimately, a “clean” policy through the final recording should suffice. The pre-approved gap coverage will apply, subject to the requirements of the Commitment, including the above detailed NCLTA requirement, and the Conditions and Exclusions of the applicable policy. However, if needed, a marked commitment or interim policy for date of closing can be issued upon receipt of the attorney’s title opinion through date of closing, copies of signed and notarized documents, verification of compliance with all requirements (other than recording), premium and above assurance from attorney that the documents are in recordable form, in a safe and secure place (along with recording fees) and will be submitted as soon as the registry resumes recording. A final title opinion through the actual recordation will be required, and final “clean” policy or endorsement of the interim policy will be issued to include the recording information.

With regard to the Good Funds Settlement Act affecting one-to-four family residential property closings, under Chapter 45A of the North Carolina General Statutes, S.L. 2020-3 (SB 704), on-line at <https://www.ncleg.gov/BillLookUp/2019/S704>, § 4.12, added G.S. 45A-4.1 (attached **Exhibit B** to this Bulletin), effective May 4, 2020, expiring August 1, 2020. In the event the applicable register of deeds of the county in which the property is located is not accepting any recordings during any regular business hours using any method of recording (personal delivery, e-recording, mail or overnight service) due to the COVID-19 state of emergency, and in the event all parties agree in writing, subject to the conditions noted, the parties can waive the requirement to record before disbursing. *See also* N.C. State Bar Ethics Advisory, Remote Notarization and Disbursing (March 27, 2020).

Additional information is available on the American Land Title Association (“ALTA”) website at: <https://www.alta.org/business-tools/coronavirus.cfm>

If the transaction we are being asked to insure does not conform to these guidelines, or if you have questions or require further assistance, please contact Chicago Title counsel for assistance.

We will continue to monitor these issues closely and will issue supplemental bulletins as needed as this national and state emergency develops.

**EXHIBIT A: NCLTA SUGGESTED COVID-19 GAP INDEMNITY REQUIREMENTS IF CANNOT RECORD (4-2-2020)**

**FOR COVERAGE OF THE “GAP” FOR RECORDING DELAYS  SOLELY DUE TO REGISTER OF DEEDS SUSPENDING RECORDING UNDER A COVID-19 STATE OF EMERGENCY, IF VESTED OWNERS AND BUYER/BORROWERS, AS APPLICABLE AGREE IN WRITING TO DISBURSEMENT PRIOR TO DELAYED RECORDING:** For coverage of the potential title search “gap” between last Commitment Date and Date of Closing/disbursing (Covered Risk #10 on Loan Policy) as well as between Date of Closing/disbursing through ultimate recording of the Insured Mortgage (Covered Risk #14 on Loan Policy and Covered Risk #10 on Owner’s Policy) caused by the COVID State of Emergency complete suspension of recordings by the registry of the county in which the Land is located on Date of Closing, subject to all exceptions in Schedule B-II of this Commitment other than Item #1, on Date of Closing, all parties agree to disbursement prior to recording, and subject to the following requirements:

* Relatively recent title examination and opinion of all Public Records in a normal title examination of the Land in the county and city in which located was submitted for this Commitment. Any limitation on the search due to Public Records office closures must be disclosed to and pre-approved by Company.
* Update of all available Public Records, whether available on-line or in office, up to the Date of Closing.  NOTE:  For counties in which no register of deeds records are on-line, or the on-line indexes are significantly delayed, prior approval must be obtained.  The Company reserves the right to take applicable exceptions or requirements regarding matters disclosed thereby.
* Verification by the certifying attorney that:
  + all title documents to be recorded:
    1. are in clearly recordable form and fully completed, including notarial certificates,
    2. will be maintained, with the applicable recording fees, in a safe and secure place and
    3. will be submitted for recording as soon as possible but in any event within 2 business days of the registry resuming recording, whether electronic or in person, and
  + a final update of Public Records will be performed at time of completed recordation and a final title opinion submitted as soon as reasonably possible thereafter.
* Verification that the Proposed Insured Lender’s written closing instructions do not contain a requirement for recording prior to disbursement or within a limited period of time, and that the Proposed Insured Lender has been notified of the county registry closure.
* From vested owner (if seller or borrower in refinance):  Signed and notarized **NCLTA** A**FFIDAVIT OF UNDERSTANDING AND INDEMNITY AND HOLD HARMLESS AGREEMENT DUE TO THE CORONAVIRUS PANDEMIC AND THE COVID-19 EMERGENCY [or Company form]** or satisfactory COVID-19 related state of emergency affidavit, agreement and indemnity.
* From Proposed Insured Owner:  Signed and notarized **NCLTA AFFIDAVIT OF UNDERSTANDING AND INDEMNITY AND HOLD HARMLESS AGREEMENT DUE TO THE CORONAVIRUS PANDEMIC AND THE COVID-19 EMERGENCY [or Company form]** or satisfactory COVID-19 related state of emergency affidavit, agreement and indemnity.
* [*TO BE Deleted if standard arms’ length transactions with no special considerations, defined below.*] The Company reserves the right to raise additional exceptions and requirements or determine that it will not issue a title policy based upon special considerations of the transaction, the review of the closing documents, and changes in recording and title searching capabilities resulting from the Coronavirus pandemic.  Any variance from the above must be by prior approval of Company counsel. “**Special considerations**” include but are not limited to:

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| * cash transactions without a lender involved depending on the local city or county stay at home order, * significant seller or borrower in ongoing litigation or financial distress, * commercial transactions, * construction loans, -- recent, ongoing or contemplated construction, * related parties conveying or lending to each other, | * non-arms’ length transactions, * flips or recent conveyances, * significant cash out, * entity authority issues, * special endorsements, * tenancies, or * subordinate matters for which subordinations are needed. |

**EXHIBIT B:**

**DISBURSEMENT OF FUNDS PRIOR TO RECORDATION OF DEED IN CERTAIN CIRCUMSTANCES**

**SECTION 4.12.(a)** Chapter 45A of the General Statutes is amended by adding a new section to read:

**"§ 45A-4.1. Disbursement during certain declarations of emergency.**

(a) Notwithstanding any other provision of this Chapter, in real estate transactions involving a one- to four-family residential dwelling or a lot restricted to residential use, a settlement agent may, in accordance with this section, make disbursement of closing funds prior to recordation of the deeds, deeds of trust, and any other required loan documents in the office of the register of deeds.

(b) No disbursement of closing funds prior to recordation shall be made under this section, unless all the following apply:

(1) On the date of closing, the office of the register of deeds where the deeds, deeds of trust, and any other required loan documents are to be recorded meets the following criteria:

a. Is located within the emergency area under G.S. 166A-19.20.

b. Is closed to the public as a result of the declaration of emergency.

c. Is unable to accept documents for recording by any method, including in-person or electronic recording.

(2) The lender's closing instructions authorize disbursement of closing funds prior to recording.

(3) All parties agree in writing to all the following:

a. To waive the requirement of G.S. 45A-4 that the settlement agent shall not disburse closing funds until the deeds, deeds of trust, and any other required loan documents are recorded in the office of the register of deeds.

b. That they acknowledge that the recordation date may not be known on the date of closing and the date of recordation by the settlement agent is governed by subsection (d) of this section.

c. That they are aware of the risks and implications of proceeding with disbursement of closing funds and, if applicable, transfer of possession of property prior to recordation.

d. That after disbursement of closing funds and prior to recordation, no party to the transaction will take any action to impair the quality of the title in law or equity.

e. Any other terms the parties or the closing instructions require as a condition of disbursement of closing funds prior to recording.

(4) The settlement agent does all the following:

a. Complies with all conditions of the closing instructions.

b. Procures a commitment of title insurance providing for title insurance that includes indemnity coverage for the gap period between the date of disbursement of closing funds and the date of recordation of the necessary documents.

c. Updates the applicable title from the date of the preliminary title opinion to the time of disbursement using those public records reasonably available to the settlement agent on the date of disbursement.

(c) In all transactions under this section in which the settlement agent makes a disbursement of closing funds prior to recordation, the settlement agent shall hold in a fiduciary capacity until the time provided in subsection (d) of this section all deeds, deeds of trust, and any other required loan documents that are to be recorded.

(d) The authority under this section for the settlement agent to disburse closing proceeds prior to recordation of the deeds, deeds of trust, and any other required loan documents shall terminate on the earlier of the date the office of the register of deeds reopens for the transaction of public business or begins to accept documents for electronic recording. Within three business days of the time set forth in this subsection, the settlement agent shall record all deeds, deeds of trust, and any other required loan documents being held under subsection (c) of this section and shall immediately notify all parties that the documents have been recorded."

**SECTION 4.12.(b)** This section is effective when it becomes law and expires August 1, 2020.