



CATIC AGENT INFORMATION BULLETIN

CATIC has sent out recent Agent Alerts in order to provide you with the most current information concerning CATIC's procedures and underwriting guidance.

We understand that both you and your clients have questions that have arisen over the past several weeks. This bulletin is the fourth in an ongoing series of bulletins and other communications designed to answer them.

CLOSING AT A DISTANCE

Avoiding groups while following the directives on social distancing are important ways of protecting yourself, your staff and your clients. Even as closings continue, the methods of closing are evolving – allowing you to minimize close personal contact while continuing to perform essential activities and transfer vital information.

The real estate conveyancing industry has been compelled to find new and innovative ways to keep transactions on track and moving forward. With creativity and determination, it is certainly still possible to have a smooth real estate closing. This bulletin will address some effective closing options for you to consider.

- **Can I continue to meet with clients in person?**

While it remains a matter of personal choice to work in the office when it is open, and while you and the client can still choose to have the client sign documents there while, for example, you each sit at opposite ends of a table, there are other alternatives.

Window-separated or porch signings

Attorneys, notaries and signers justifiably concerned about meeting face to face during closings can also adopt a process called window-separated signing or porch-signing, in which closings are conducted through a window or doorway, at a safe physical distance. If the law firm is located in a building with glass doors to the office or the building itself, for example, a table and chair can be placed on the outside of the glass door for the client to use to execute the deed or mortgage.

The National Notary Association has published [guidelines](#) for performing window-separated signings. For example, a notary must follow all federal, state and local guidelines for social distancing, health protection and sanitization when meeting with signers and handling documents, IDs or other materials. When items are passed between the signer and notary, one person should place the item in a neutral area and then step back and provide safe distance to allow the other person to pick it up. Firms adopting this process may also consider purchasing additional pens so that after the

signing, the clients can simply take their pens with them or dispose of them on the way out. After the closing, the staff should wipe down all touched hard surfaces.

The curbside closing

Another efficient and straightforward closing procedure is the curbside or drive-by closing. The relevant documents in the closing package are either e-mailed to the client to be printed out at their home or sent to the client via overnight mail through FedEx, UPS or USPS. Via telephone or video-chat, you can review the package with your client and the client can execute any documents that do not require notarization during this review process. That will typically leave the deed, mortgage and perhaps an affidavit or two unsigned. The client can then drive to the law office with the package. Through the window of their car, the client can present you with verification of identity and then execute the deed or mortgage and any of the remaining documents while you are able to see and hear the client, so that you can confirm that the signing of the documents was the client's free act and deed. You can then enter the law firm to allow the client to exit their vehicle and leave the closing package outside the office, in a neutral area, to be picked up by you for the completion of the acknowledgment or oath

- **Must any members of my staff be present at the closing to sign any deed or mortgage as a witness?**

Thanks to the temporary suspension of witness requirements contained in Executive Order 7Q, for the time being there is no legal requirement to witness a deed, mortgage or other conveyancing document. While you may have other reasons for wanting staff people to be in the office at certain times, they do not need to be there for the sole purpose of acting as a witness to a signature, unless another party to the transaction (for example, a lender) continues to require witnesses for certain documents.

- **Can my client sign documents and still avoid coming to my office or the closing?**

There are at least three different ways that a client can execute the documents required for a purchase or loan transaction and still avoid having to appear at your office, in your home or at another location. These include:

1. Pre-signing all of the closing documents, though some of these would need to be acknowledged by a notary, and sending the fully executed documents to you by mail or overnight delivery, or delivering those fully executed documents in person and leaving them in a drop box or other location outside of your office;
2. Appointing you as the client's agent to execute documents using a power of attorney, either by way of a power of attorney (POA) that has been fully executed, acknowledged, and delivered as above, or by executing the POA inside or outside your office in the manner previously discussed; or

3. Utilizing the remote notarization procedure recently authorized by Connecticut Executive Order 7Q.

- **Can I use a power of attorney to sign all conveyancing documents on my client's behalf?**

A power of attorney is a simple way of enabling you to act in place of your client in the sale, purchase or financing of real estate. Its use is appealing now because it can obviate the need for the client to attend the closing. The power of attorney appointing you as the client's agent can be executed at a local bank or various copy and shipping centers that typically offer notarization services. The fully executed POA can then be mailed, sent by overnight courier or dropped off at your office mailbox and neither you nor a member of your staff need to personally meet with the client in order to receive it. You can then execute the necessary closing documents on behalf of the client.

The power of attorney can also be executed "curbside" at the law office. The client can present identification through the window of their car, be handed a clipboard containing the power of attorney, and execute the same in view of the attorney or notary who will then acknowledge the instrument.

On the date of the closing, the attorney can e-mail the client the closing package and review the same with the client via telephone or video-chat. Once the review is complete, the client can e-mail their authorization to proceed, although unless it is required by you, the lender or the client, this step will be optional as long as the POA has already provided you with the necessary authority.

Of course, another attorney or a notary will still need to acknowledge your signature on a deed or mortgage as the client's agent.

The notarial officer who takes the acknowledgment on the POA should not under any circumstances be the POA's agent (or even one of several agents).

There are considerations to address in order to be sure that a POA is a viable option to use in any given transaction:

1. Is the client comfortable appointing you as agent to act for the client in this transaction?
2. Are you comfortable acting as agent for the client?
3. If this is a purchase or a refinance where financing is involved and you represent the buyer/borrower, does the lender approve of your signing the mortgage as an agent for the borrower? Does the lender approve of your signing any other loan documents?
4. If you represent the seller, does the buyer or the buyer's lender approve of the deed being signed by you as agent for the seller?

- **What form of power of attorney should my client sign?**

In 2016 Connecticut's Uniform Power of Attorney Act (the "Act") went into effect, and it included both [long form](#) and [short form](#) statutory power of attorney forms. In most cases where the client is an individual who is selling or financing his or her real estate, the short form POA granting you as agent the general authority to act for the principal/client with respect to "Real property," as defined in the Act, will be sufficient to give you the power to sign a deed or mortgage for the client. See C.G.S. Sect. 1-351c. Granting authority in additional sections may be needed if the client needs you to sign other documents besides a deed or mortgage.

The benefit of using the statutory short form is that it incorporates authority described in specific sections of the Act by reference. For example, a reference in a power of attorney to general authority with respect to the subject addressed in one of those sections incorporates authority addressed in the entire section but a principal can still modify authority incorporated by reference.

While the Act includes statutory forms, it also expressly states that it does not bar the use of any other or different form of POA desired and used by the parties. If you are going to use a different form, however, the language will have to be clear and comprehensive enough to authorize you to act for and execute the necessary documents for the client.

- **What if the client is a partnership, corporation or LLC?**

While it is possible for a partnership, corporation or LLC to give a POA to you, that is not the simplest method of having an entity authorize you to sign a deed or mortgage on its behalf. Since the action to grant the POA would need a resolution from the partners or officers or members, a more direct and equally effective method where the entity is selling is to obtain a resolution from the entity authorizing both the sale and your acting on the entity's behalf in signing the deed.

The authorization should not be recorded.

The grantor in the deed will be the entity/owner. The entity on whose behalf you sign appears above the signature line, and beneath the signature line will be your name and the notation "duly authorized":

ONE HUNDRED MAIN STREET LLC

by: _____

Alice A. Attorney

Duly authorized

- **What if the client is a fiduciary of an estate or a trustee of a trust?**

In the situation where the client is a fiduciary and expresses interest in giving you a POA, please contact an Underwriter at CATIC.

A few reminders about using a power of attorney:

1. It terminates when the principal passes away.
2. It survives the incapacity of the principal if it is durable. Under the Act, a POA is presumed to be durable unless it provides otherwise. Older POA forms and those that are manuscripted rather than statutory must explicitly state that they survive the incapacity of the principal.
3. If it is being used by you so that you can sign a deed or mortgage, the POA must be recorded either before or contemporaneously with the recording of the deed or mortgage.
4. It can also be signed and notarized using the remote notarization procedure authorized by Emergency Order 7Q.

- **How can a deed or mortgage be remotely notarized in Connecticut?**

Using the procedure authorized by [Executive Order 7Q](#) (the “Order”), a notary or commissioner of the superior court located in one place in Connecticut can notarize a document that is being executed by a signer in another Connecticut location. There are both legal and practical requirements for you, your client, and other parties having an interest in the transaction to consider before having a deed or mortgage remotely notarized.

First there are the legal requirements:

The Order authorizes a Connecticut notary or a commissioner of the superior court to conduct a remote notarization using communication technology under the following conditions:

1. The communication technology must allow the signer and the notary to communicate simultaneously by sight and sound (all references to a notary also refer to a commissioner of the superior court);
2. The signer must present satisfactory evidence of identity, unless personally known to the notary, in the form of:
 - a. at least two current documents, one issued by a federal or state government and containing the individual's signature and either a photograph or physical description, and the other by an institution, business entity or state government or the federal government and containing at least the individual's signature, both of which must be presented while connected to the communication technology, or
 - b. oath or affirmation of a credible person who is personally known to the notary and who personally knows the individual;

3. The notary must record the notarial act and retain a copy of the recording for ten (10) years;
4. The signer must affirm that he or she is in Connecticut at the time of execution;
5. The signer must send the notary the signed documents either by fax or electronic means on the same day the documents were signed;
6. The notary can then notarize the transmitted copy of the document and transmit the same back to the Signatories by fax or electronic means.

When the original document needs to be recorded in the Land Records, the notary must comply with the following additional requirements:

7. The notary must receive the original wet-signed document, together with the electronically notarized copy, within thirty (30) days after the date of its execution, and must repeat the notarization, this time by completing the acknowledgment section of the original signed document, including the notary's wet signature, as of the date of execution;

(The jurat in the acknowledgement block should reflect where the notary was located when the remote notarization took place.)

8. The notary must sign a [one-page certification](#) confirming the use of the remote notarization procedures in accordance with the Order and attach the certification to each remotely notarized document submitted for recording.

Then there are the practical considerations:

To conduct a remote notarization under this emergency order, you will need the following communication technology:

1. A webcam equipped with a microphone that will allow you and your client to simultaneously see and hear each other.
2. An internet connection that can support a video conference call. You should also use a secure connection, i.e., a private network that requires a password to access the network.
3. Access to or an account with a video conference provider. Since Connecticut Executive Order 7Q requires you to retain a copy of the remote notarization session, you must engage a video conference provider that offers this service. For more information about vendors, please refer to [CATIC's April 1, 2020 Agent Alert](#) addressing Frequently Asked Questions: Connecticut Executive Order 7Q Enabling Remote Notarization.

Remember you must be able to communicate by sight and sound. You must also have the ability to make a video recording of the complete notarial act, and that recording must be retained for 10 years.

If your client does not have a printer to create a hardcopy of the document for a wet signature, you may mail a copy to the client for execution. If your client has signed a hardcopy of the document but does not have a scanner to create a digital version to

electronically transmit back to you, the client may fax a copy of the documents or even send a photograph of the document by e-mail or text. At this time, CATIC requires wet signatures on all conveyance documents, unless the document can be eRecorded.

The client should also promptly send or deliver the original wet-signed document to you. While the Order permits originals to be sent within thirty (30) days of execution, your lender partners will likely want you to receive any signed loan documents much more quickly. You should notarize the original wet-ink copy of any document that must be recorded and submit that version for recording along with an executed certification, as required by the Order.

Finally, remember that if the transaction involves financing, make sure that the lender approves of executing a deed or mortgage without the need for witnesses or using the remote notarization procedure authorized by the Order before moving forward.

In conclusion, if you are practicing from an office, from home or from some other location, you can still close by either meeting with the client in person, acting on behalf of the client, or, thanks to recent and temporary changes in the law and available technology, meeting with the client even though you and the client are in different locations.

And remember, you can always contact a [CATIC Underwriter](#) if you have any questions.