

## **CATIC TITLE: AGENT INFORMATION BULLETIN**

### ***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 discuss some effective closing options for you to consider.

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

New York Empire State Development recently revised its [guidance](#) to include legal and real estate services as essential businesses under Executive Orders limiting business activity in New York State. Real estate transactions may be conducted in-person only to the extent legally necessary and in accordance with appropriate social distancing and cleaning/disinfecting protocols.

So while in-person closings may be permitted, there are 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

- **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 New York Executive Order 202.7

- **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, 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 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

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

[Executive Order 202.7](#) authorized the use of audio-video technology to conduct a notarization, under the following conditions:

1. The signer must present a copy of a valid photo ID to the notary during the video call, unless the signer is known to the notary;
2. The audio-video technology must allow the signer and the notary to have a direct interaction in real time. A notary could not rely on a pre-recorded video of a signer executing the document;
3. The signer must affirm that he or she is in New York at the time of execution; and
4. The signer must send the notary the signed documents either by fax or email on the same day the documents were signed.

If the above conditions are met, the notary may notarize the documents and transmit them back to the signer for use. The notary may also notarize the original document as of the date of execution if the notary receives the original document along with the executed electronic version within thirty (30) days of initial execution. This Executive Order expires April 18, 2020 unless extended by the Governor.

**Finally, remember that if the transaction involves financing, make sure that the lender approves of executing a deed or mortgage using a Power of Attorney and/or the remote notarization procedure authorized by the Executive 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.**