

## COVID-19: Title Insurance Requirements and Recording Office Closures

Article

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As a result of the COVID-19 pandemic, most county recording offices no longer accept documents for manual recording. Many offices are still accepting documents recorded electronically. However, that may change if the local or state government determines that it is no longer safe for workers to process e-recorded documents manually.

Title insurance companies have issued underwriting bulletins confirming they will provide title insurance coverage for transactions that occur when recording offices will not accept documents for recording. Each title company has its own requirements and limitations, so it is important to confirm those requirements on a closing-by-closing basis. Those requirements and limitations can include:

- **Cap on Transaction Amount.** Title insurance companies are capping the maximum amount of coverage they will provide during a recording office shutdown. Most will require a separate underwriter approval to exceed the cap.
- **Excluded Transactions.** Some title insurance companies may elect to not provide title insurance during the expanded gap in certain circumstances, e.g. property subject to a construction loan or on which there has been recent construction.
- **Acknowledgment of Recording Delay.** Title companies are requiring the insured purchaser and lender to sign a disclosure acknowledging the potential delay in recording documents, in the platting and development of the property, and in future resales or mortgage financing due to an inability to confirm record title in the purchaser.
- **Seller's/Borrower's Indemnification.** Most title insurance companies are requiring the seller or borrower to indemnify the title insurance company for any defect, lien, or other encumbrance recorded during the period between the effective date of the most recent title search and the date when the deed or mortgage is recorded. Some title companies may agree to limit these indemnifications to matters arising through the acts or omissions of the seller or borrower.

- **Buyer's Covenants.** Most title companies require the insured Owner to (i) not record any deed or other encumbrance on the property prior to recordation of the insured deed or mortgage, and (ii) indemnify and assist the title company in removing any such encumbrance on the property.
- **Record ASAP.** The documents should be sent for recording as soon as possible after the county recording office begins recording documents again.
- **Lender Closing Instructions.** Lenders may continue to use form loan documents and closing instructions that contemplate that the mortgage will be recorded immediately after execution. It may be necessary to modify that form language to accommodate delays in recording documents.

Be aware that title companies have different guidelines, some of which have been revised in the past few days. It is important to confirm and comply with the current guidelines for each transaction.

Please contact an attorney with any questions you may have regarding the applicable title insurance company guidelines and requirements.