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# What Does the Closure of Clerk and Recorder's Offices Mean for Real Estate Closings and Title Insurance Coverage?

With the continuing spread of COVID-19, many clerk and recorder's offices have announced closures. Some offices are closed to the public, while still allowing mail-in and e-filing, and others are closed for all filings. The inability to record documents or a delay in timely recording documents can lead to issues with title insurance coverage. Often clients request, and the title companies provide, gap insurance whereby the title company covers the gap and potential exposure to a title claim between the time of closing and the time the documents are actually recorded. This coverage is commonly known as gap coverage.

At this point in time, title insurance companies are willing to continue to provide insurance when they are able to e-record the documents. Most are also willing to provide coverage if they can submit the document for recording, even if they are not actually able to record at this time. However, title companies are requesting a gap affidavit and indemnity from the seller and buyer in order to provide the gap insurance. The affidavits required are generally similar to owner's affidavits, but also include an acknowledgement regarding the uncertainty for the timing of recording. Title companies are also requiring that the seller, or borrower in the case of a refinance, make an affirmative statement that they will not record any other documents and indemnify the title company for any losses that the title company may experience due to the recording of a document against the property. This requires a financially viable entity to provide the indemnity. Lenders must also accept that it is not clear when recording offices will reopen and documents will be recorded.

Title companies are assessing their willingness to provide gap coverage on a case-by-case basis, so any atypical things in a closing such as nontraditional financing, a seller who is in financial distress or the inability to obtain payoff information will make it less likely that the title company will provide gap insurance. The amount of coverage can also affect the ability to receive gap coverage at this time.

Due to the risk of recording priority, at least one major title company is not insuring construction loans at this time. Another will still consider providing gap insurance for construction loans based on the timing of the closing. Closings that are imminent may be delayed due to the additional underwriting approval required. Closings scheduled to occur further out in time are more likely to receive gap insurance, at least for counties with the ability to still record

documents electronically, as title companies are expecting recording times to return to normal.

Any buyers looking to quickly resell the property or refinance the property should be aware that they likely will not be able to do so until the deed is recorded, as they will not be shown as the owner of record.

Ultimately, the underwriting on gap insurance varies on a case-by-case basis and for each title company; however, at this time closings are generally able to proceed with title companies providing gap insurance for any recording delays.

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*This document is intended to provide you with general information regarding the impact on title insurance coverage and real estate closings from the closure of clerk and recorders' offices during the coronavirus pandemic. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.*