

Gap Coverage and Disbursement of Funds pursuant to COVID-19 (Revised May 5, 2020)

The NC attorney must contact the appropriate Register of Deeds (“ROD”) office each day they are closing in order to confirm if the office is open and if so, in what capacity, i.e. in person recording, online recordings only or a drop box.

If the ROD is open that day or is open but limited to accepting online recordings or accepts recordings via a drop box, we will insure any gap created between the day of closing when the attorney records (online or drop box) and the date of the actual recordation of the insured documents. The attorney must reflect on their Final Title Opinion the day they submitted documents online or via drop box and the recordation date of the documents. The attorney must record as soon as the ROD is re-opened and may not rely on gap coverage to delay any recordations.

The attorney must also state whether additional offices or systems were unavailable at the time of final update/recordation. For example, Special Proceedings, Estates, Clerk’s Office; AOC or County Tax Office.

Requirements regarding mechanics liens are still in effect as www.liensnc.com should not be affected by COVID-19 issues.

For commercial transactions, where we are requiring a Gap Indemnity, you are still required to get authorization from ORT to use a Gap Indemnity in that transaction.

Finally, per the Good Funds Settlement Act (NCGS 45A), an attorney may not disburse funds on a residential transaction until the deed or deed of trust is of record unless the disbursement falls under the exception as set forth in Session Law 2020-3, COVID-19 Recovery Act, Section 4.12(a).

Chapter 45A of the North Carolina General Statutes, Good Fund Settlement Act, is amended in NCGS 45A-4.1, through August 1, 2020 only, to allow an attorney in a real estate transaction involving a one to four family residential dwelling or a lot restricted to residential use to disburse closing funds from the attorney’s trust or escrow account prior to recording the deeds, deeds of trust, and any other loan documents in the Register of Deeds upon written consent of the parties involved.

Authority to disburse prior to recording is limited to areas under a declaration of emergency issued by the Governor or General Assembly where the Register of Deeds is closed to the public and unable to accept documents for electronic recording. The lender’s closing instructions must authorize disbursement of closing funds prior to recording. All parties must agree in writing to all of the following: (a) waive the requirement of NCGS 45A-4 that disbursement may not occur until recordation; (b) acknowledge recordation date may not be known on the date of closing and date of recordation is governed by subsection (d); (c) 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 title in law or equity; and (e) any other terms the parties or the closing instructions require as a condition of disbursement of closing funds prior to recording. See NCGS 45A-4.1 for particular reference.

The North Carolina attorney is still bound by ethics opinions issued by the North Carolina State Bar that makes him or her personally liable for any loss resulting from disbursement prior to recording

Our previous statement below is still in effect:

During this period of uncertainty, regarding the closing process specifically, Old Republic Title is dedicated to ensuring the gap created by an initial and temporary inability to record should the Register of Deeds in the county where the property is located, close in response to COVID-19. When an Old Republic Title Insurance Commitment, Preliminary Report, and Closing Protection Letter has been appropriately issued by an authorized Old Republic Title agent, prior to the closure of the Register of Deeds, our policy and closing letter protections will remain in force as if the transaction was properly recorded on the date of closing by the licensed North Carolina attorney certifying title and conducting the closing. All appropriate recordings must be accomplished as soon as the Register of Deeds reopens.

For transactions that are commercial, the seller or borrower must execute the attached Gap Indemnity. You must require receipt of the executed Gap Indemnity for any commercial transaction where funds will be disbursed prior to closing and you may qualify your requirement to that effect.

The statement above may not apply to those transactions (residential or commercial) started after the closure of the appropriate county offices and Register of Deeds needed in order to search/certify title or record and where a title certification cannot be made. In those instances, we may not insure the transaction until the offices reopen. Please contact NC State Counsel, Candice Redhead for confirmation at credhead@oldrepublictitle.com.

As these matters develop or change, Old Republic Title may modify parameters or guidelines as circumstances warrant. We would not change our position materially without prior notice. In most cases, Old Republic's normal underwriting guidelines will remain unchanged.