

Wealth Planning Insights

Real Estate Closings in the Current Environment



Andrew M. Feder
Head of Real Estate Advisory

Mary Pat Moriarty
Real Estate Operations Associate

Highlights

- Residential real estate sales and purchases — which generally require the direct interaction of numerous people — have become increasingly challenging given the imposition of social distancing and other restrictions in recent weeks.
- The participants and the interactions they rely on to close real estate transactions are swiftly evolving to adapt to these rapidly changing circumstances.
- In this piece, we discuss how real estate transactions can be impacted by current restrictions and point to some possible ways of accomplishing the necessary tasks — as well as other considerations involved.

So much of what we accomplish in our daily lives, personally and in business, requires direct interaction with other people. This is especially true for residential real estate sales and purchases — from a potential buyer touring a property with a real estate broker to a closing attended by many of the involved parties (e.g., attorneys, closing agents, notaries, buyer, seller, and realtors). Over the past several weeks, the implementation of state and local government restrictions is rapidly creating an evolving patchwork of accommodations to facilitate

ongoing real estate business. For buyers and sellers eager to close a sale, the many participants and interactions they rely on are swiftly evolving to adapt to rapidly changing circumstances.

If you are negotiating a sale or purchase or currently under contract, an array of hurdles and concerns caused by social distancing may impact your ability to close. The ability of the parties and the professionals engaged in a typical contract process to perform their tasks or meet contractual obligations is in constant flux. Governmental restrictions on travel, in-person interactions, and “non-essential” business operations may impact home inspectors, lenders, appraisers, title companies, attorneys, brokers, buyer, and seller. Because the established practice is constantly changing, parties must be flexible, and extra care should be taken to ensure transactions can be properly completed.

Considerations:

- **Pre-closing.** Limitations by state or local authority may make some pre-closing activities impossible or inadvisable to perform.
 - **Home inspections.** Obtaining a home inspection is a typical contract term for buyers, allowing for a licensed professional to evaluate the physical condition of the building structures and major systems. The opportunity to have this done may depend on whether a state considers it an “essential” service. We do not recommend buyers waive their right to a home inspection, but there are possible alternatives that can be considered. For instance, in some circumstances, it may be appropriate to agree to a reasonable post-closing escrow to address potential inspections issues.
 - **Appraisals.** Transactions by trusts, estates, or with financing, require an appraisal to provide an objective third-party valuation of the property. An appraisal depends on a detailed in-person interior

and exterior assessment of the subject property performed by a licensed appraiser. Like home inspections, the capability of an appraiser to visit a property may be substantially curtailed. Some lenders, like Fannie Mae and Freddie Mac, have eased their appraisal requirements, allowing exterior only or “drive-by” inspections and/or sole reliance on tax assessor records in certain circumstances. If you are financing a purchase, you should discuss this issue with your bank or mortgage broker as early as possible. If selling with a financing contingency, you should verify if this is an issue for the buyer or their bank.

- **A final walk-through.** Final walk-throughs are typically conducted a day leading up to the closing. The buyer, often accompanied by their real estate broker, visits the property to ensure the seller has met all obligations under the contract. Government restrictions may prohibit the ability to conduct a final walk-through given social distancing protocols. Some brokers have been able to offer buyers virtual walk-throughs with live video conferencing via cell phone to complete walk-throughs without in-person contact, but parties should be aware of its limitations and the potential that something could be inadvertently overlooked.
- **Closing.** Conducting in-person closings is currently not feasible or prudent, and the inability to do so may create multiple issues pertaining to the execution of the various closing documents buyer and seller are obligated to sign and attest to for proper recording of title and reporting to governmental entities. It should be noted that closings for cooperative apartments and condominiums involve additional parties, such as managing agents and boards, which may pose added challenges.
- **Potential recording issues:**
 - **E-filing.** Most states allow e-filing of deeds, mortgages, and other documents. Since the ability to accept electronic records typically varies on a county-by-county basis, this should be verified well before closing.
 - **Notarization.** A notary is typically required to verify the identity of the signer of a document. When the notary and signer are not physically

in the same place, there is an inherent challenge for the notary to perform these verifications. Electronic notarizations or remote online notarizations (RONs) are authorized in all 50 states by two federal statutes, but as of April 6, 2020, only 13 states have adopted permanent legislation allowing remote online notarizations. Given the preference to perform in-person notarial acts, even in these states, RONs tend to be largely untested, making its functional mechanics somewhat of an unknown. In recent days, nearly every other state has commenced or has enacted emergency legislation or executive orders due to COVID-19 permitting *temporary* RONs. For instance, on March 7, New York Governor Andrew Cuomo signed an executive order authorizing RONs, but only through the end of April. Other states have limited what types of transactions or circumstances for which a RON can be used. Rules and regulations are evolving quickly in this area, and the attorney or title closer will need to verify with the lender and county clerk that remote notarizations are accepted for executing loans and recording documents.

- **Closing attendance.** For years, most commercial closings have been completed through escrow process and without in-person attendance. The residential market is understandably more personal and traditional. Some states, such as California, have long used escrow closing for most residential transactions, so fewer changes to current process will be needed. However, for most states and jurisdictions, current real estate closing practices have experienced major disruptions, and the accommodations discussed above are not always universally accepted. Accordingly, ongoing communication with each of the participants or institutions should be taken to confirm their willingness to rely on and utilize these alternative means to complete these important transactions.

All of these restrictions and adaptations affecting real estate transactions are rapidly evolving on a daily basis. Real Estate Advisory is here to help you navigate this changing landscape.

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