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The Quill – May 2020



THE QUILL ARTICLE:

COVID-19 Update: The Legislature Passes Two Real Estate-Related Temporary Measures

Session Law 2020-3 was passed by the Legislature on May 4th. It passed into law two measures intended to be temporary in response to the COVID-19 Crisis. I need to stress at the outset that these measures are TEMPORARY IN NATURE. By the express wording of the Session Law, they expire on August 1, 2020. (Side Note: the Legislature will reconvene on August 1st, so if the measures need to be extended they will be able to do so fairly easily). The two measures in questions are:

- 1) a change to Chapter 10B allowing for temporary remote notarizations and;
- 2) a change to Chapter 45A allowing for disbursement without the necessity for the prior recording of documents as required by the Good Funds Settlement Act. I will

discuss the changes in turn below:

Remote Notarization

The Legislature has allowed for the notarization of a document remotely through the use of video technology by amending N.C.G.S. § 10B-3. The change to the law adds a new paragraph 7(a) which now reads: “(7a) Emergency video notarization – . . .”. The requirements to properly notarize a document remotely using video are extensive and I encourage you to read the full statute for yourself (the link to the statute is contained in this article below). I will cover the highlights here:

- The notary must use video conferencing technology which permits her or him to observe each principal signing each document to be notarized.
- The notary must be satisfied that the principal(s) identity has been satisfactorily proven.
- The principal must state for the record which documents are being signed.
- Any principal signing the documents to be notarized, as well as the notary, must be physically present in the state of North Carolina and this must be apparent in the acknowledgment itself.
- A statement that the notarial certificate is being made pursuant to the emergency video notarization requirements contained in N.C.G.S. § 10B-25.
- The notary is required to retain a journal recording the use of emergency video notarizations, and must keep that journal for the required length of time set out in the statute.
- None of the requirements for recordation or filing of a document with the Register of Deeds, Clerk of Court, or other governmental office have changed in any way.

When videoconferencing technology is used for emergency notarizations, it must occur in real time and allow for the direct interaction between the principle executing the document and the Notary so that they may communicate simultaneously both seeing and hearing one another sufficiently. This video interaction must be capable of being recorded. As indicated above, the acknowledgment must indicate that the Remote Notarization provisions of the Chapter 10B were utilized.

Good Funds Settlement Act

Chapter 45A of the General Statutes is amended by adding a new section to read: “§ 45A-4.1. Disbursement during certain declarations of emergency.” The change to 45A allows for a disbursement of funds prior to recordation provided that on the date of closing the following circumstances exist:

- The recordation must take place in a County Recorder’s Office that is:
 - a. Located within an emergency area under G.S. 166A-19.20.
 - b. Is closed to the public as a result of the declaration of emergency.
 - c. Is unable to accept documents for recording by any method, including in-person or electronic recording.

- The lender's closing instructions authorize disbursement of closing funds prior to recording.
- All parties agree in writing to all the following:
 - a. To waive the requirement of G.S. 45A-4 that the settlement agent shall not disburse closing funds until the deeds, deeds of trust, and any other required loan documents are recorded in the office of the register of deeds.
 - b. That they acknowledge that the recordation date may not be known on the date of closing and the date of recordation by the settlement agent.
 - c. That 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 the title in law or equity.
 - e. Any other terms the parties or the closing instructions require as a condition of disbursement of closing funds prior to recording.

The change in the statute requires of the Closing Attorney that he or she complies with all conditions of the closing instructions and that he or she procures a commitment of title insurance providing for title insurance that includes indemnity coverage for the gap period between the date of disbursement of closing funds and the date of recordation of the necessary documents. Once the Register of Deeds in question re-opens, the Closing Attorney is expected to update the applicable title from the date of the preliminary title opinion to the time of disbursement using those public records reasonably available to the settlement agent on the date of disbursement.

Obviously, in order for the provisions of this Law to be applicable there must first be a barrier to recordation with a particular Register of Deeds office. If the Registry is physically closed, but is still accepting electronic recordings, the expectation is that the Closing Attorney will e-record rather than utilize this amendment to Chapter 45A. As of the date of this writing, we are unaware of a registry that is closed to recordings to the Public. So, this law is intended to address a set of circumstances that has not yet happened, but that may possibly happen at some point in the near future.

Anyone who wants to read the Session Law in its entirety, click [HERE](#). (Go to Page 31 for Remote Notarization and Page 40 for Good Funds Settlement Act).

One final word on the changes made by SL 2020-3. You are not required to use the opportunities presented by the changes to either Chapter 10B or Chapter 44A. You should view these as potential options during the pendency of the crisis to allow you to close transactions for your clients. If you are not comfortable breaking from the customary way we have done things prior to the current crisis, then don't do it.

CHEERS TO THE CLASS OF 2020



These are unprecedented times and we know things are even more weird for the class of 2020. We wanted to give a little shout out to all of you with kids graduating and share this inspiring video. If you haven't seen John Krasinski's 'Some Good News' videos you should definitely check them out. Click [HERE](#) to watch. P.S. Skip to minute 18:21 if you don't want to watch the entire video.

Congratulations Graduates!

THE QUILL RIDDLE:

Find the Movies Brain Teaser

There are 50 movie references in the picture below. How many can you find?



TESTIMONIAL:

What People Are Saying

"I needed a change on a binder. It was not needed until the next day (and I did request the change after 5pm) but Tiffany got it to me Monday night. Thank you!"

~Karen Pestillo, Pestillo & Von Peterffy

This mask won't protect you from COVID19, but it'll sure help with social distancing.



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