



Q & A Procedures for Courthouse and Lender Closings during Covid-19 Epidemic & Remote Online Notary (“RON”) Bulletins

Q: Will FNTI allow the use of Remote Online Notaries?

A: Yes, provided that:

- 1) the county clerk where the property is located will accept documents for e-recording;**
- 2) you use a statutorily compliant third party platform such as NOTARIZE©; and**
- 3) you obtain consent by affidavit from all parties to the transaction for the use of RON, and consent to pass along charges on the CD if the agent is not covering the cost.**

Q: Is the use of SKYPE or FACETIME the same as RON?

A: No. RON is governed by statute. The use of SKYPE, FACETIME or any other live social media or video platform other than that which is allowed under the RON statute arguably results in a defective notary acknowledgment, which in turn is fatal to the constructive notice of a recorded document. It is also an improper notarization and could jeopardize the notary license.

Q: Can a traditional notary conduct an electronic or online notarization?

A: No, a different type of notary license is needed in addition the use of accredited software that processes a credential analysis and conducts an identity proofing process.

Q: Can we use RON procedures if the property is located in a state where RON has not gone into effect?

A: No. Use of RON in states where RON is not currently in effect results in a defective notary acknowledgment which in turn is fatal to the constructive notice of a recorded document. We are aware that other underwriters are allowing the use of RON in “non-RON” states. We will notify you if FNTI’s position changes.

Q: Are there any special exceptions that need to be added to the commitment/policy when using RON?

A: No.

Q: Are there types of transactions where RON may not be used?

A: Yes, In TEXAS, RON may not be used for Home Equity Loans, Power of Attorneys for home equity loans, and Reverse Mortgages, where the document are required to be executed at the office of the title company.

A. Yes, in FLORIDA, RON may not be used for a will nor a trust.

A. In New Mexico, Arizona, and Arkansas, RON may not be used at this time.

Q: Are there any special notice that need to be added to the commitment with respect to closing during the COVID-19 Pandemic?

A: Yes. The following notice should be added to Schedule C for Texas and Schedule B-I in ALTA States:

“The Company reserves the right to make exceptions and requirements prior to and following closing for issuance of a title policy(ies) based upon the specifics of the transaction, the review of the closing documents, and changes in recording and title searching capabilities resulting from the consequences of the COVID-19 pandemic and business and government office closures.”

Q: What will we do if county clerks start closing their offices and discontinue recordings?

A: If you receive notice that your county clerk is closing and not accepting any recordings, FNTI has agreed to continue to insure your closing under the conditions outlined in our bulletin:

- 1) All parties, including the lender, must execute an “Escrow Closing Affidavit”;**
- 2) the lender must agree in its affidavit that its Loan Policy will not be issued until such time as you can: (a) obtain all necessary payoffs; and (b) the clerk resumes accepting recordings and you have recorded the necessary instruments;**
- 3) the Seller and Borrower must execute a “Nothing Further Affidavit and Indemnity”;**
- 4) the transaction is not a construction loan or interim to perm loan; and**
- 5) the policy amount does not exceed \$1 million dollars.**

(See Bulletin 2020-02 for details and forms which can be found on the FNTI website

<https://www.fnti.com/agents/bulletins/underwriting-bulletins/> or

<https://www.fnti.com/wp-content/uploads/2020/03/Underwriting-Bulletin-2020-02-All-States-Procedures-during-COVID-3-18-2020.pdf>)

Q: How will delayed recordings or the inability to record at all affect our title work/down dates?

A: So long as your plant can obtain title evidence that is no more than 30 days prior to the closing date, FNTI will insure your transaction.

Q: Lenders are asking me if we are providing “gap coverage”. Are we?

A: Effectively, yes. However, the phrase “gap coverage” in this environment may have different meanings to different lenders. We have agreed, per above, that FNTI will insure a transition that closes in escrow, holding the recordable documents until such time as recordation is available, issuing the policy at the time of recordation. Under this scenario, FNTI is covering the “gap” between the Effective Date” on the last commitment provided to the lender and the Policy Date which should be the date on which the deed of trust is eventually recorded, provided that gap period does not exceed 30 days. To this end, it is imperative that while recordings capabilities are still available, you continue to update your commitment.

Q: What happens if we can’t obtain payoffs for mortgages, liens, judgments, etc.?

A: FNTI has agreed to allow you to escrow for these matters provided you withhold two times the face amount of the debt and obtain an escrow agreement signed by all parties evidencing their agreement to escrow and insure around the matter. If the face amount of the debt is \$5,000 or less, an escrow of three times the face amount is required. It is the responsibility of the Agent to monitor these escrows, follow up on obtaining payoffs and remitting payment.

Q: What counties have been given notice of abbreviated recording procedure or hours?

A: Presently, we know that Dallas County (Texas) will process e-recordings only between 8:30 a.m. and 1:00 p.m. on Tuesday through Thursday. Ector County (Texas) will only accept recordings via electronic submission and mail—no over the counter documents are being allowed. Many county courthouses in Texas are already closed to the public but documents placed in designated drop boxes that have been established at the courthouse doors or sent by US mail/FedEx/UPS are still being accepted. We expect to hear from more counties as the list of counties implementing “Shelter at Home” orders grows.

In Florida, Miami-Dade is only accepting recordings through on-line recording methods. At this time, all other counties are operating as usual.

As always, please contact an FNTI Underwriting Counsel with questions or concerns.