

Date: March 18, 2020
To: All FNTI Agents
From: FNTI Underwriting Staff
RE: Procedures for Courthouse and Lender Closings during COVID-19 Epidemic

Procedures for Courthouse and Lender Closings during COVID-19 Epidemic

Due to the continued impact of COVID-19, we recognize the likelihood that some courthouses may (or in some case have already) temporarily close, or otherwise have limited staffing, during the pandemic. The counties that have e-recording will have different posting abilities than a county that manually records and posts recordings for access by abstract plants. Similarly, lenders and banks will have varied responses to the current environment depending on size and location, which may affect an agent's ability to obtain current payoff statements.

This bulletin will set out First National Title Insurance Company's ("FNTI") current requirements regarding:

- 1) A New Schedule C Notice/Schedule B Notice for ALTA states
- 2) The ability to record documents post-closing.
- 3) The ability to downdate the abstract plant.
- 4) The ability to obtain payoff statements.

Please be advised that due to the unprecedented nature of this world event, underwriting requirements will likely be very fluid in anticipation of or reaction to changes related to the pandemic. Please continue to monitor and read all bulletins.

1. Schedule C Notice/Schedule B Notice for ALTA states

All Commitments issued on FNTI during the pandemic should contain the following Schedule C Notice/Schedule B Notice for 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."

This Underwriting Bulletin becomes a part of the principles and practices with which you are to comply under the terms of your Underwriting Agreement with First National Title Insurance Company. Should the content of this bulletin address the closing and escrow function, this information should be considered a directive and part of the principles and practices if non-compliance would result in liability to FNTI under either the insured closing service letter or policy of title insurance notwithstanding that the Underwriting Agreement does not include the closing and escrow functions of your agency.

2. The ability to record documents after closing

FNTI will continue to insure transactions that close with the temporary inability to record the documents due to a closed county recorder's office. This is subject to the following conditions:

- a) All parties to the transaction must execute an Escrow Closing Acknowledgement, a sample of which is attached. This form requires the parties to acknowledge their understanding that the title company is closing without the most current title search and/or without the ability to immediately record the documents pertaining to their transaction. The lender must also execute the acknowledgment and agree that the Loan Policy of Title Insurance will not issue until all payoffs have been remitted and all required instruments have been recorded.
- b) The seller and/or borrower(s) must execute a Nothing Further Affidavit and Indemnity, a sample of which is attached. This form requires sellers and borrowers to certify that they have had no liens, involuntary liens (such as judgments, child support liens, mechanic lien claims or federal tax liens) and/or bankruptcies or lawsuits and lis pendens or divorce decrees filed against them and/or instituted by them in the last 60 days.
- c) The transaction **may not be** a construction loan and/or an Interim going into Perm. In these situations, please contact an Underwriter for specific guidance.
- d) The policy amount will not exceed One Million Dollars (\$1,000,000.00).
- e) A current tax certificate must be obtained, and any delinquent and/or supplemental tax issues must be addressed at the closing. If the County tax office is closed and payment cannot be tendered immediately, contact an Underwriter for further guidance and the amount to be escrowed.

3. The ability to downgrade the abstract plant

FNTI will insure on title evidence that is no more than 30 days prior the closing date. This will primarily be applicable to counties that do not electronically record and post.

4. The ability to obtain payoff statements

Payoffs for mortgages as well as for tax liens, judgments and other involuntary liens may become difficult to obtain. In those situations, FNTI is generally willing to continue with a closing subject to the following conditions:

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- a) The escrow officer obtains the necessary written consent from customers to communicate directly with the lienholder to secure payoffs as necessary once normal business hours and practices resume. Each title company must commit to rigorously follow up with payoff statements and payoffs for these situations. Customers should also be advised that they must rigorously follow up with obtaining any necessary payoff statements needed to complete the closing once normal business hours and procedures resume.
- b) An escrow of at least twice the face amount of the outstanding lien must be created and monitored by the title company. If the item has a face amount of less than \$5,000, an escrow of three times the face amount must be secured. All escrow agreements must be in writing and signed by the parties. A Consent to insure around must also be signed per promulgated state regulations. It is essential that the title company commit to obtaining the necessary payoff statements and making the payoff as soon as possible once the particular lienholder re-opens for business. Please be advised that the process of escrowing for a lien is a business decision for each title agent. A decision to escrow as outlined herein will require that the title agent diligently monitor all affected escrow files and accounts to ensure that current payoffs are obtained as soon as available from the lien or judgment holder and paid immediately upon receipt. This responsibility should be carefully considered by the title agent prior to entering into an escrow arrangement for this purpose. **Any postponement, delay of and/or failure to take action or obtain the payoff statement and tender the payoff that results in the escrow becoming insufficient will be the responsibility of the title agent.**

FNTI is committed to partnering with and assisting our agents in continuing to transact business in this unprecedented environment. Should you have any questions, comments, or concerns regarding this bulletin or any other business practice concerns during this time, please do not hesitate to contact any one of us here at FNTI.

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NOTHING FURTHER AFFIDAVIT AND INDEMNITY

(Agent **must** obtain signed affidavit and indemnity from **all** Sellers and Buyers/Borrowers)

Date: _____

Guaranty File: _____

Indemnitor: _____

Property Address:

Indemnitor has requested First National Title Insurance Company (“FNTI”) to issue policy(ies) of title insurance and/or title commitment(s) to a proposed insured covering the above describe Property prior to the recording of the deed, mortgage, deed of trust and/or other instruments required to be recorded as part of the insured transaction (collectively referred to hereinafter as the “Closing Documents”) without taking exception in the policy(ies) to instruments that are recorded, or matters which may arise, between the Effective Date on the title commitment last issued to the proposed insured and the actual time and date of recording of the Closing Documents (“Gap Period”), which instruments and/or matters may be an encumbrance on or affect title to the Property.

NOW, THEREFORE, in consideration of FNTI issuing its policy(ies) of title insurance or title commitment(s) as of the date of recording of the Closing Documents without taking exception to matters which may arise during the Gap Period, Indemnitor hereby affirms and/or agrees: 1) that Indemnitor has had no liens, involuntary liens (such as judgments, child support liens, mechanic lien claims or federal tax liens) and/or bankruptcies or lawsuits and lis pendens or divorce decrees filed against them and/or instituted by them in the last 60 days; 2) agrees to promptly remove, release, bond or otherwise dispose of, to the satisfaction of FNTI, in its sole discretion, all liens, encumbrances or other objectionable matters filed or recorded against the Property during the Gap Period, and 3) indemnify, defend and hold FNTI harmless against all claims, costs, losses, liabilities, damages and expenses, including without limitation, attorney’s fees and expenses, arising out of or relating

to all such instruments or matters and the failure to promptly remove, release, bond or otherwise dispose of them, to the satisfaction of FNTI, in its sole discretion.

Executed this _____ day of _____ 20 ____

Indemnitor(s) (Seller(s)):

Sign Name

Print Name

Sign Name

Print Name

Indemnitor(s) (Buyer/Borrower(s)):

Sign Name

Print Name

Sign Name

Print Name

Sworn to before me, by _____ this ____ day of _____, 20 ____.

Notary Public

[ADD ADDITIONAL JURATS AS MAY BE NECESSARY]

ACKNOWLEDGEMENT OF ESCROW CLOSING
DELAYED RECORDING OF DOCUMENTS
INDEMNITY AND HOLD HARMLESS

Date: _____

GF No. _____

Referenced Transaction: _____ (“Seller”) to _____ (“Purchaser”)

Lender: _____

Property Address: _____

The undersigned parties to the above-referenced transaction hereby acknowledge that the title company will not be able to immediately record the documents pertaining to their real estate transaction, including but not limited to Deeds, Deeds of Trust and Releases of Lien, due to the closure of the County Recorder’s office and/or operations.

The Seller, Purchaser, Borrower and/or Lender, as the case may be, have requested that Escrow Agent close the referenced transaction and retain the unrecorded documents in escrow. The parties desire to execute the legal documents, settlement statement or Closing Disclosure for the referenced transaction but agree to the delayed completion of the closing by recordation of the real estate documents until Escrow Agent is able to make the necessary filings at the County Recorder’s office.

The parties hereby agree to indemnify and hold harmless the title company and its underwriter-in-interest from and against any and all consequences, expense, costs, liability, damages, interest, penalty and/or attorney fees that may arise in connection with and/or relating to the closing of the referenced transaction and retaining the real estate documents in escrow per their request and/or any liability or increased expense arising as a result of any delay in the completion of closing of the referenced transaction by recordation of the real state documents.

The Lender hereby agrees that the Loan Policy of Title Insurance will not issue until the real estate documents being held in escrow are recorded at the County Recorder's Office.
