

COVID-19 Recommended Practices to Facilitate Remote Real Estate Closings Using Technology

In these difficult times, the Real Estate Board of New York (REBNY) is committed to protecting the health and safety of all New Yorkers. With that in mind, there are many aspects of the real estate business that have traditionally required person-to-person contact that need to be adjusted to account for the Coronavirus (COVID-19) crisis.

To help with that process, REBNY has developed the following recommendations to provide the boards of directors of cooperative housing corporations ("co-ops"), the boards of managers of condominium associations ("condos"), managing agents, brokers and attorneys with best practices to help facilitate remote real estate transactions using technology.



SALES AND LEASES IN CO-OP AND CONDO BUILDINGS

It is important, even during the Coronavirus crisis, that apartment owners can sell or lease their apartments. The halt of sales and leasing:

- could lead to an increase in defaults,
- will reduce the transfer fee revenue that certain co-ops and condos collect to cover increased expenses, and as a result of lower values,
- diminish an owners' ability to refinance at current low interest rates.

All of these scenarios threaten to create considerable hardship for owners, buyers and tenants.



ELECTRONIC HANDLING OF BOARD PACKAGES AND MINUTES

Board packages used to screen potential purchasers or tenants should be distributed to Board members without person-to-person contact. Several options exist to do this through electronic document exchange services that ensure security and efficiency (for example, Board Packager). The same principle of using technology should be utilized for the purchaser's review of the Board minutes, which can also be done under confidentiality agreements.



BOARD INTERVIEWS

Board interviews can occur using alternative and reliable communications systems such as FaceTime, Skype, Zoom or Google Hangout, among others without the interview being recorded. Please coordinate the tool of choice with all parties involved and schedule Board interviews accordingly.

Important Note: These Best Practices should not be construed as offering or providing legal advice in any form. The information contained herein is for informational purposes only and is not intended to be exhaustive or complete. This document is not intended to replace the reader's need to speak with their own attorney regarding the issues presented. All readers should seek independent legal advice where they have specific legal questions pertaining to specific legal circumstances or where otherwise appropriate.

CLOSINGS

To eliminate the exposure of parties at a closing, all parties should take steps to implement “escrow” or “virtual” closings.

In “escrow closings,” the participants utilize the services of a third party (i.e. an attorney, title insurance company, escrow company or settlement company) that acts as an “escrow agent” for the parties so they do not have to attend a physical closing. Under this type of closing, each party to the transaction signs and has notarized their respective documents when convenient for them. The escrow agent then collects all the documents and monies on behalf of the parties and holds them in escrow. Once all the signed documents and funds are delivered to the escrow agent, and all closing conditions are met, the transaction “closes.”

“Virtual closings” are similar to “escrow” closings in that the parties do not physically gather to close a transaction. In virtual closings, however, the parties do not utilize a third-party escrow agent. Rather, the parties utilize various electronic means to sign documents and exchange funds. A major impediment to virtual closings in New York State is the requirement that notaries be physically present when a person signs a document. However, this has changed as a result of a temporary executive order during the COVID-19 crisis.

On March 19, 2020, Governor Andrew Cuomo released an executive order to allow virtual notarization of documents. This temporary order goes into effect March 20, 2020 to April 18, 2020, and it specifies the following:

- Any notarial act that is required under New York State law is authorized to be performed utilizing audio-video technology provided that the following conditions are met:
- The person seeking the Notary’s services, if not personally known to the Notary, must present valid photo ID to the Notary during the video conference, not merely transmit it prior to or after;
- The video conference must allow for direct interaction between the person and the Notary (e.g. no pre-recorded videos of the person signing);
- The person must affirmatively represent that he or she is physically situated in the State of New York;
- The person must transmit by fax or electronic means a legible copy of the signed document directly to the Notary on the same date it was signed;
- The Notary may notarize the transmitted copy of the document and transmit the same back to the person; and,
- The Notary may repeat the notarization of the original signed document as of the date of execution provided the Notary receives such original signed document together with the electronically notarized copy within thirty days after the date of execution.

While having the ability to utilize escrow or virtual closings is very helpful in significantly reducing the number of people that must attend a closing, there are still challenges in creating an environment free of physical interactions. For example, most government recording offices in New York State do not currently accept e-documents. Therefore, paper documents must still be signed and delivered to the government recording offices.

At a time of unprecedented uncertainty, it is our civic responsibility to ensure that the industry take every measure possible to protect the health of our community by conducting business using technology.

STAY IN TOUCH

Please share this information with your colleagues and follow REBNY for updates on best practices for conducting business during the Coronavirus crisis. REBNY will continue to keep you up-to-date during this rapidly changing situation.

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Acknowledgements: These guidelines are the result of a collaborative industry effort between REBNY, Stuart M. Saft, Partner and New York Real Estate Practice Group Leader, Holland & Knight LLP; Neil B. Garfinkel, REBNY Broker Counsel and Partner at Abrams Garfinkel Margolis Bergson LLP; REBNY’s membership leadership from the Residential Brokerage and Management Divisions.

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