



# SETTLEMENT — AMID — COVID-19

## SETTLEMENT AMID VA STATE OF EMERGENCY DUE TO COVID-19

### MARCH 12, 2020:

GOVERNOR NORTHAM ENTERED DECLARATION OF A STATE OF EMERGENCY DUE TO NOVEL CORONAVIRUS COVID-19.

### MARCH 27, 2020:

THE SUPREME COURT OF VIRGINIA SUSPENDED ALL NON-ESSENTIAL, NON-EMERGENCY COURT PROCEEDINGS UNTIL APRIL 26, 2020. RECORDING LAND RECORDS REMAINS AN ESSENTIAL FUNCTION OF THE CLERKS' OFFICES.

### SETTLEMENTS ARE STILL HAPPENING

There may be a delay or interference in title searches but courts are still recording and indexing records.

### COMMUNICATION IS KEY

## SETTLEMENT AMID STATE OF EMERGENCY:

**Closings can continue:** The Supreme Court clearly stated that recording, indexing and scanning of land records is an essential function of Circuit Courts.

The Supreme Court's most recent order specifies *"If a court finds it necessary to limit access to the court clerk's office for any time during the scope of this order, the clerk's office shall, nonetheless remain accessible during regular business hours by telephone and email, with such contact information posted on the Internet and at any public entrance(s). If available, drop boxes should be used for any conventionally filed documents and clerks shall take steps to safely accommodate any individual(s) requiring access for important matters, including but not limited to, title or record searches, and recordation of land records."*

Title companies and settlement agents are likely also considered an essential service.

Each county has its own protocols.

Each clerk's office may change their processes to handle recordings while protecting staff.

## GAP CLOSINGS:

If permitted, "gap coverage" closings may provide fewer interruptions in closing.

A gap indemnity is an agreement from the seller to the title company assuring that the status of title has not changed since the date of the title commitment.

Some lenders will close and allow funding even though the deed has not been recorded if the title company will provide insurance coverage from the date of title commitment until the date of recordation.

## SUGGESTIONS FROM REIN'S LEGAL COUNSEL:

- **Communication will minimize stress and uncertainty of delivery of keys, possession and payoffs.** Listing and selling agents, their clients and customers should regularly discuss with the settlement agent the expected process - *from execution of documents to recordation of transfer documents and deeds of trust and timing of closing* - to avoid unexpected consequences or delays in recording.
- **Possession Agreements may be necessary or appropriate** to address gaps between delivery of documents and recordation and disbursement if it is clear there will be a delay in recordation of the deed and deed of trust.

