**GOOD FUNDS SETTLEMENT ACT NOTICE and**

**DIRECTIVE TO PROCEED**

**Notice**

**Background**

In response to the outbreak of the COVID-19 pandemic and the declared state of emergency at the national, state and local levels, the availability to access title documents and record Deeds, Security Instruments and other title instruments at the Register of Deeds and County Clerk of Court offices is severely limited and is subject to further change.

**North Carolina Good Funds Settlement Act**

The North Carolina Good Funds Settlement Act (codified in Chapter 45A of the North Carolina General Statutes), normally requires recordation of the deed, any deeds of trust, or other title documents prior to disbursement of closing funds. Our standard procedure is in full compliance with this statute. Absent the State of Emergency, following your closing, we would normally update the status of title, present recorded instruments to the Register of Deeds and disburse closing funds only after receiving confirmation the documents are of record.

Given the potential limited availability and functionality of the local Register of Deeds and county Clerk’s offices, our ability to update title and record could be delayed – perhaps by only a few hours but possibly for an extended and indefinite period of time.

**What are *some* of the Risks Associated with Disbursing after a Delayed Recording?**

1. Loan payoffs cannot be made, and additional interim interest and fees could attach increasing the payoff amount. Additionally, depending upon the delay, the payoff statement may need to be updated, again causing additional delay and expense.
2. Loan closing instructions typically require all settlement functions, including disbursement, to be completed within a discrete period. An extended delay in disbursement may require our office return all loan funds to the lender making them unavailable for closing. A new rate-lock may be required and extensive delay could occur.
3. In purchase transactions, keys are typically only exchanged after disbursement.
4. Checks to others, including realtors, mortgage brokers, taxing authorities, and others cannot be provided.

These are only some of the risks associated with delaying disbursement. Our office would be glad to discuss this in more detail over the phone should you have any questions.

**Title Insurance Response**

In response, and to allow your closing disbursement to be completed in a normal time frame, \_\_\_\_\_\_\_\_ Title Insurance Company has taken the extraordinary step of agreeing to insure the transaction without exceptions related to our office’s limited ability to update title and record. There are very specific steps which must be completed, including the execution of an affidavit and/or indemnity agreement, the most recent copy of which is attached. Please understand this document was not prepared by my office and could potentially change prior to closing.

**What are *some* of the Risks Associated with Disbursing prior to Updating Title and Recording?**

The purpose of updating title immediately prior to recording is to make sure the record title holder remains the owner of the property and that no new liens, judgments or other encumbrances impact the status of title. If we are unable to timely update and record, it is possible another purchaser, creditor or taxing authority will go on record before the instruments in your transaction are recorded. In North Carolina, the party appearing of record first is generally in superior title position.

As mentioned above, the title insurer in this transaction agreed to provide a Title Policy without exception related to our office disbursing prior to updating and recording. This provides a great deal of protection to the buyers and/or lenders in the transaction, but only up to the face amount of the policy and subject to the terms, conditions and exclusions of the policy. As an example, should title fail, title insurance does not cover incidental and consequential damages such as moving expenses and the cost of temporary housing. Our office expressly is not taking responsibility for such items should the parties elect to proceed under the terms of this directive.

These are only some of the risks associated with disbursement prior to updating title and recording. Our office would be glad to discuss this in more detail over the phone should you have any questions.

**Can the Good Faith Settlement Act be Waived?**

Our office has received an opinion the provisions requiring disbursement be made only after recording can be waived with the informed consent of all parties in the transaction. However, this is far from a settled area of law, and there is no case law directly on-point. As such, should we not be able to timely update and record, we will only proceed with disbursing funds should all parties in the transaction direct us to proceed.

**Do I have to sign this form and What if I have questions?**

We do request you acknowledge receipt of this notice by signing immediately below and to make an election in the Directive to Proceed. If you direct to not to disburse until all recordable instruments are of record, we will still attempt to update and record in our normal matter, even if substantial delays develop.

You are welcome to contact our office via telephone or email to discuss this form. Additionally, you may engage outside counsel to review this document at your own expense.

By signing below, all the parties acknowledge receipt of this Notice

BUYER(S)/BORROWERS SELLERS:

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Directive to Proceed**

Buyer/Borrower

□ In the event the closing attorney is unable to timely update the status of title and record, it is my express directive that settlement funds may be disbursed prior to all recordable instruments being of record.

□ It is my express directive that settlement funds only be disbursed after all recordable items are of record.

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Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Seller

□ In the event the closing attorney is unable to timely update the status of title and record, it is my express directive that settlement funds may be disbursed prior to all recordable instruments being of record.

□ It is my express directive that settlement funds only be disbursed after all recordable items are of record.

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Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_