



April 30, 2020

Hon. Lawrence K. Marks
Chief Administrative Judge
NYS Unified Court System Office of Court Administration
25 Beaver Street
New York, NY 10004

VIA EMAIL

Dear Chief Judge Marks:

Thank you for your leadership in ensuring continued court access during this unprecedented time of the COVID-19 pandemic.

We, the undersigned, represent various participants and interested stakeholders in commercial and residential real estate closings. The role of the county clerks is critical because they are responsible for recording the deeds, mortgages, loan agreements and other instruments that complete the successful transfer of real estate. However, there are numerous transfers across the state that have not been able to close for want of a county clerk to physically accept and record the various filings, thereby, preventing

the completion of many real estate transactions and the much-needed economic activity, including employment, that flow from them.

On April 9, Empire State Development amended the Guidance on Governor Cuomo's Executive Order 202.6 to deem real estate services as essential with certain restrictions. The Guidance provides, in pertinent part:

Real estate services shall be conducted remotely for all transactions, including but not limited to *title searches*, appraisals, permitting, inspections, and *the recordation, legal, financial and other services necessary to complete a transfer of real property*; provided, however, that any services and parts therein may be conducted in-person only to the extent legally necessary and in accordance with appropriate social distancing and cleaning/disinfecting protocols[.]¹ (Emphasis added.)

Presently, some county clerk offices are not equipped to either conduct title searches or accept filings remotely through electronic means. In-person service, which can be structured to accommodate social distancing protocols, or a process for recording documents by mail or overnight courier, provided that receipt of said documents can be confirmed with the county clerk, is needed to conduct title searches and to accept the filings to complete the transfer and financing, including construction financing, of real property.

However, pursuant to your Honor's Administrative Order, AO/78/20, county clerks may only accept filings in connection with certain designated litigation. We are writing to request that your Honor's order be amended to permit the filing of documents associated with the transfer or financing of real property, and that the county clerks be advised to permit in-person filing, with appropriate social distancing measures and by appointment only to limit office hours, or by mail or overnight courier, provided that receipt of said documents can be confirmed with the county clerk.

In addition, we are requesting that the order be amended to allow for in-person filing of documents associated with building loans and mechanics liens, or by mail or overnight courier, provided that receipt of said documents can be confirmed with the county clerk. By providing such limited in-person service, essential construction dependent on building loans may also proceed.² As you know, such financings are required to be filed with the respective county clerk pursuant to Lien Law §22. However, pursuant to your Honor's order, AO/78/20, some county clerks believe they are similarly not authorized to accept such filings.

Currently building activity is somewhat curtailed but the Guidance does allow for construction work to continue in support of essential services, such as health care, affordable housing, utilities and other areas, which all may involve financing transactions.

We are deeply concerned that there will be a processing backlog of building loans and amendments if such filings cannot be made until after the Executive and Administrative orders are lifted. Projects will also be further delayed, depriving our State of this important economic activity and job generation. This

¹ Empire State Development, *GUIDANCE FOR DETERMINING WHETHER A BUSINESS ENTERPRISE IS SUBJECT TO A WORKFORCE REDUCTION UNDER RECENT EXECUTIVE ORDERS* (enacted to address the COVID-19 Outbreak). (2020, April 28). Retrieved from <https://esd.ny.gov/guidance-executive-order-2026>

² Ibid, paragraph 9 – Construction.

same situation additionally prevents the filing of mechanics liens, placing contractors at risk and creating uncertainty about priority that will only further delay the building loan financings when they are able to resume.

Accordingly, we respectfully request that your Honor modify AO/78/20 to open county clerk offices for in-person service, or by mail or overnight courier, provided that receipt of said documents can be confirmed with the county clerk, to accept, file and process all instruments necessary to complete the transfer and financing of real estate, including building loans and mechanics liens, as contemplated by the Guidance cited above.

Once again, we thank you for your leadership and attention to this urgent matter.

Sincerely,

Building Owners & Managers Association of New York

Chicago Title Insurance Co

Council of New York Cooperatives & Condominiums

Downtown Alliance

Downtown Brooklyn Partnership

East Midtown Partnership

Empire State Mortgage Bankers Association

Fidelity National Title Insurance Company

General Contractors Association of New York

Grand Central Partnership

Mortgage Bankers Association of New York, Inc.

New York Building Congress

New York State Association of Realtors

New York State Land Title Association, Inc.

Real Estate Board of New York

Rent Stabilization Association