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Registry Closings/Electronic Notarization & Gap Insurance

The MMBA would like to thank Ruth Dillingham (Dillingham Consulting LLC) and [CATIC](#) for assisting us with providing you this information

What is the problem?

There are two main Massachusetts Laws that impact a mortgage consummation:

- M.G.L. Chapter 221, Section 46: Requires an attorney to preside over a residential property closing but this law does not require an in-person closing.
- M.G.L. Chapter 222, Sections 1 and 15: Requires a notarial act to appear in person and a notary seal/stamp with specific information including state seal, name and notary expiration. This law requires an in-person experience using a seal which cannot be generated electronically.

Bottom line - an attorney must preside over a closing, can act as the notary but the person (consumer/borrower) must appear personally in order to have the document notarized. The mortgage can't be recorded electronically because of the in-person and seal requirement.

A little understanding about the registry system in MA

- Each of the 21 registries are run independently with completely independent systems. 13 registries are directly overseen by the Secretary of state, the rest are under municipalities.
- Most but not all registries will accept e-recordings. Hours and procedures can change [daily](#).
- When a document is submitted electronically to the registry - it goes into a queue. An employee has to open the queue for processing in order for the electronic process to begin. That means that if a person is not physically inside the registry to start the process, it doesn't happen. Your mortgage is not on record until the registry opens the queue and processes the document. Only then is it officially on record.

Timing Issue Example: A mortgage is in first position because there are no other liens that have been recorded prior. During regular times when you are recording either in person or electronically, it is a quick and efficient process. However, we are not in normal times. There could be 500 documents in the queue waiting to be processed and there is a chance that another lien is in that queue which could inadvertently be recorded prior to your mortgage. There is also be a chance that no one is physically

inside the registry to open the queue and process that recording.

What is Gap Insurance?

Title insurance companies have started to provide insurance to the lender for a lien being recorded on record prior to your mortgage. The Gap insurance would take care of/pay off whatever lien was recorded before your mortgage. In the case of the example above -it could be days before your mortgage is on record because you have no idea what else is in that queue waiting to be recorded on the subject property.

What are the issues with Gap Insurance? Do you have to worry about anything else?

Yes - here are some considerations

Massachusetts has a "Good Funds Law" which requires that loan proceeds are to be available to the mortgagor and third parties upon consummation of the mortgage loan in a purchase transaction. That means that your funds need to be in the hands of the attorney and the sellers receive their funds - all before the mortgage and deed is "officially" on record. Are you, is your investor, your warehouse provider and Fannie Mae/Freddie Mac okay with this?

As of this writing, Fannie Mae and Freddie Mac have not released any guidance on this topic. We expect this guidance to be released as soon as today. Before deciding to make the decision to use gap insurance, you need to make sure that it is acceptable to your investors.

Where can I find out more about gap insurance?

- CATIC has a great [video](#) and [brochure](#) on gap insurance to explain the product in detail.
- Gap insurance is free to the lender and consumer

What's going on with electronic recordings and e-notarization?

There are several efforts ongoing at both the federal and state levels to allow for electronic notarization. The MMBA is working hard to support this initiative -details to follow on another email. In the meantime, we still need to have in-person encounters in order to notarize the mortgage and deed in order to record the documents.

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