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Remote Online Notarization: What You Need to Know

"Digital closing are the norm, here’s how to prepare and serve your clients."

Why this is important: Remote Online Notarization, or RON, is the use of audio/visual technology to complete a notarial act when the principal is not in the same physical location as the notary public. Digital closings have become the norm in many states and localities, and you need to prepare and serve your customers and clients

Prior to 2020 and the COVID outbreak, many legal, banking, and real estate professionals contemplated a digitized world for transaction closings. Prior to COVID, E-signatures and RON were being widely adopted in many states and used by many professionals. As of the beginning of 2021, 29 states, including Pennsylvania and Virginia, have laws that enable their notaries to conduct remote notarizations, and other states have enacted emergency rules to permit remote notarizations during the COVID crisis.

As a result of COVID, more lenders, real estate agents and other professionals better understand the importance of remote online notarization as an essential service. With Americans adjusting to limitations of in-person meetings and closings at unprecedented rates during the pandemic, digital closings have been the transformative solution for Americans looking to safely pursue business opportunities such as the purchase and sale of real estate. RON is facilitated by the use of a technology vendor designed for the purpose of facilitating remote notarizations. It is important for lenders, real estate professionals and others to identify a vendor that can assist them in this process -- there's no turning back the clock. --- Bryce J. Hunter

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Covid, Payday Loans, Student Debt — Here are the Issues Biden’s Consumer Bureau May Tackle

"The Consumer Financial Protection Bureau is expected to become a more aggressive consumer watchdog under the Biden administration."

Why this is important: The CFPB has wide-ranging authority reaching nearly every corner of consumer products in the financial industry. Its new leader is a "longtime consumer advocate" with a deep knowledge of the agency (he is the former ombudsman for the student loan sector). The new Director takes over at a time when the pandemic has highlighted the potential financial insecurity facing millions of Americans. While there are a multitude of issues that consumer advocates argue need attention, the first three to six months of the Director's tenure will provide insight into those matters he feels are most pressing and the direction the CFPB will be heading under the new administration. Creditors and collectors should pay careful attention to announcements and policy changes. --- Angela L. Beblo

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Seriously Delinquent Mortgage Loans Up 1.7 Million in 2020

"The number of seriously delinquent homeowners in 2020 hit 2.6 million—according to Black Knight, that's a 250-plus% increase in 90-day default activity."

Why this is important: This article gives insight into the effects of moratoriums and forbearances on collecting and foreclosures. At the end of 2020, there were 2.15 million "seriously delinquent" loans (defined as 90+ days late). Throughout 2020, that number had reached as high as 2.6 million. However, foreclosures are at an all-time low as a result of moratoriums and forbearances. Both foreclosure starts and completed foreclosures fell dramatically. Foreclosure starts were down 67 percent from 2019, while completed foreclosures were down more than 70 percent from 2019. This points to a possible deluge of foreclosures, lawsuits, and counterclaims if the more than 2 million seriously delinquent borrowers don't catch up their loans before the moratoriums and forbearances end. --- Nicholas P. Mooney II

Watch for Covid Scammers Targeting Small Businesses

"The latest Covid scams are going after small business owners by pretending to offer SBA loans."

Why this is important: While U.S. employment data suggests that many are facing difficulties finding work during the COVID-19 pandemic, scammers have not been slowed by it. The newest scam is targeting small businesses, instead of individuals, stating that these businesses are eligible for a loan of up to $250,000 from the "Small Business Administration Office of Disaster Assistance." What makes scams like this so scary is that it involves an actual, rather than fictitious, government office. Consumers can take certain measures to protect themselves against this, and any "government imposter" scam. First, consumers should be wary when contacted directly from a government agency and told "that you're automatically eligible for a big loan." Next, if the communication requests sensitive information, such as your date of birth or social security number, it is likely a phishing attempt. Finally, consumers should trust their instincts. If something sounds too good to be true, it likely is. Instead of responding to these requests for information, consumers should contact the government office directly. However, verify that the website ends in ".gov" before disclosing any sensitive information. --- Kellen M. Shearin

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CFPB's New Seasoning Rule is Already Showing Promise

"The seasoning rule provides a conditional pathway for rebuttable presumption and nonqualified mortgages to become safe harbor loans."

Why this is important: In late December, the CFPB issued a rule to be effective July 1, 2021, providing a safe harbor for previously non-qualified mortgages. The rule change allows rebuttal presumption or non-qualified mortgages a safe harbor if certain requirements are met over a three-year period, including a requirement that there be no 60-day delinquencies and only two 30-day delinquencies. In a recent article, the authors argue "that a three-year seasoning pathway to safe harbor could increase lending in this segment. Higher-rate-spread conventional lending, especially in the non-GSE space, is a crucial source of credit for racial and ethnic minorities, first-time homebuyers, households with limited means, or others who do not qualify for government-backed lending, including self-employed and gig-economy workers with nontraditional sources of income." Lenders and financial institutions should pay careful attention to how the new administration handles this new safe harbor provision. --- Angela L. Beblo

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White House and Colleagues Introduce Medical Bankruptcy Bill Amid Raging Pandemic

"Legislation covers bankruptcies triggered by medical debt or financial hardship caused by public health-related shutdowns."

Why this is important: Several Democratic U.S. Senators introduced the Medical Bankruptcy Fairness Act of 2021 that would reform the current bankruptcy code due to the COVID-19 pandemic. Specifically and using the theory that medical debt is involuntary, it would waive procedural hurdles such as the credit counseling requirement, permit the discharge of student loans which cannot be erased in bankruptcy for most debtors, and increase protection for homes by allowing the retention of at least $250,000 of home equity. --- Bryce J. Hunter

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CFPB Doubles Down on Mortgage Servicing Enforcement

"Uejio laid out his vision for the coming months, saying that his top two prioities are relief for consumers facing hardship due to COVID-19 and the related economic crisis and racial equity."

Why this is important: The change in presidential administrations has led to a change in CFPB leadership and the bureau's focus. The new acting director of the CFPB recently advised staff that the bureau will direct its attention to focus on "aggressive action" toward mortgage servicers, who he believes have failed to properly administer consumer relief. The acting director identified relief for consumers affected by the pandemic and racial equity as his two top priorities. Signaling a change from the CFPB under the Trump administration, former CFPB director Cordray stated that he anticipates the bureau's activity over the next four years will resemble his time as the director. --- Nicholas P. Mooney II

Featured Spilman Attorney Profile

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Corey's primary area of practice includes public finance, government relations, economic development, banking, bankruptcy, and general commercial transactions. Corey assists clients in general corporate matters, including loan transactions involving banks and other lenders, corporate entity formation, tax matters, and asset purchases. In addition, he is well versed in public finance transactions regarding the issuance of tax-exempt bonds for issuers such as governmental entities, higher education institutions, and medical facilities. He assists bond counsel and disclosure counsel with tax-exempt financing for higher education facilities, state roads, state parks, and various economic development projects. Corey also assists counsel with financing and development of infrastructure and economic development projects, including tax increment financing and public-private partnerships. Corey's government relations practice has provided him with the opportunity to serve as per diem counsel for the West Virginia Senate Committee on Finance for the Regular Legislative Session for two years.

He is a member of the National Association of Bond Lawyers. He is admitted to the West Virginia State Bar, West Virginia Supreme Court of Appeals, and the United States District Courts for the Northern and Southern Districts of West Virginia. He received his B.S. in Business Administration - Accounting from West Virginia University and his J.D. from West Virginia University College of Law.

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