Court News ...

2020-05-01-01

The Supreme Court of South Carolina

RE: Participation in Closings of Real Estate Transactions

ORDER

On March 13, 2020, the President of the United States declared a national emergency, and Governor Henry McMaster issued Executive Order No. 2020-08 declaring a State of Emergency, both based on a determination that the Coronavirus/COVID-19 ("COVID-19") poses an actual or imminent public health emergency. Since the declaration of the State of Emergency, Governor McMaster has issued subsequent Executive Orders curtailing public life in order to facilitate "social distancing" practices to slow the spread of COVID-19. The Chief Justice has likewise directed that judicial proceedings should be conducted using remote communication technology to minimize the risk to the public, litigants, lawyers, and court employees.

We have determined that the Rules of Professional Conduct impose certain requirements on the closing of real estate transactions that pose a substantial risk of harm to all participants. As a result, we find that the public health emergency created by COVID-19 requires changes to the usual operation of the Rules of Professional Conduct in terms of the normal functioning of real estate transactions.

Therefore, in order to protect the health and safety of our State's citizens,

IT IS ORDERED, that to the extent the Rules of Professional Conduct[1] may require an attorney to be physically present at the closing of a real estate transaction and in close proximity to the parties to the transaction, in light of the current crisis and need for social distancing, an attorney may participate in and supervise the closing of a real estate transaction by way of a video conference;

IT IS FURTHER ORDERED, that necessary persons to a real estate transaction may, under the direction of the supervising attorney, similarly participate in the real estate closing by way of a video conference, provided any necessary person so consents; further, the supervising attorney shall ensure that the attestation of a recordable instrument is accomplished, which may be satisfied by use of real-time audio-visual communication technology, provided the identity of any necessary person is confirmed and a notary attests the signature of any necessary person. The supervising attorney shall consult with any lender(s) and any participating title insurance company to ensure that the real estate closing measures taken are acceptable to the applicable lender(s) and title insurance company.

This Order is effective immediately and remains in effect until August 1, 2020, unless earlier modified or rescinded by order of this Court. If “social distancing” guidelines remain in effect beyond August 1, 2020, this Court may consider extending this Order for an additional period of time.

[1] The Court orders the temporary suspension of any such requirement pursuant to the inherent power of the Court to regulate the practice of law. *See* S.C. Const. art. V, § 4; S.C. Code Ann. § 40-5-10. This order does not suspend any other provisions of the Rules of Professional Conduct, and nothing in this order is intended to relieve an attorney of his or her obligation to assume full professional and direct responsibility for the entire transaction.

s/Donald W. Beatty C.J.
s/John W. Kittredge J.
s/Kaye G. Hearn J.
s/John Cannon Few J.
s/George C. James, Jr. J.

Columbia, South Carolina
May 1, 2020