



Remote Electronic Commercial Loan Closings and Workouts: A Summary Guide During COVID-19 Interruptions

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This is a summary of issues to be considered for commercial loan closings and workouts conducted by lenders'/borrowers' remote offices using documents signed and delivered via electronic means during COVID-19 business interruptions.[1]

For 20 years electronic signatures have been a legal method of conducting business in the United States so long as the parties to a particular transaction have agreed to conduct it by electronic means.[2] In spite of this enhancement to contract law, commercial lenders have continued to generally conduct dual-track closings, with signature pages signed in ink being scanned and circulated via email, to be followed by delivery of the inked versions for the lenders' files and recordation in public records. There are several reasons for such dual-track closings, including some lenders' pledging signed-in-ink promissory notes to such lenders' funding sources. COVID-19 interruptions and resultant remote operations present a pressing current need for lenders to reconsider dual-track closing policies and to consider relying on e-signature closings.

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[1] This commercial loan documentation guide is a summary only for states that have adopted the Uniform Electronic Transactions Act (all but NY, IL, and WA) and is not a substitute for legal advice from an attorney experienced in this area. Burr & Forman lawyers also have experience with other forms of electronically signed legal documentation and are available to assist for non-lending

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transactions.

[2] The Uniform Electronic Transactions Act does not apply to non-transactions, such as court pleadings or wills and estate documentation, among other exceptions.