



COVID-19 Emergency | Impacts on Land Use & Development in Virginia

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In response to the COVID-19 emergency, Governor Northam and various state and local officials have issued multiple orders and guidance concerning the continuance of critical state and local government functions during the pendency of the emergency. Many of these changes will affect the commercial real estate and building industry, including three notable functions: (i) local planning and building department operations, (ii) circuit court clerks and land records and (iii) public meetings of local governing bodies.

Local Planning & Building Department Operations ? Land Use Applications, Permits & Inspections

Local governments throughout the Commonwealth continue to promulgate revised procedures and protocols for maintaining core services while ensuring the health and safety of local government staff and the general public. For example, these revised policies may range from guidance for approved use of third-party inspection, as in the case of the City of Richmond, to inspections via video-conference technology, as in the case of Alexandria. While a limited number of jurisdictions have ceased accepting new applications during the period of the emergency, many continue to accept applications while the departments process them remotely. These policies and protocols are evolving by the day, and Williams Mullen continues to track these developments in the Virginia jurisdictions within its footprint.

The Virginia Department of Housing and Community Development has established a "Frequently Asked Questions" webpage ([available here](#)) to provide guidance to the building industry and local building officials. This page also includes a link to a directory of Virginia Locality Building Officials and any website that they have posted regarding updated policies during the COVID-19 emergency ([available here](#)).

Circuit Court Clerks ? Real Estate Closings & Processing of Local Land Records

While each circuit court clerk's office throughout the Commonwealth has adopted unique processes and procedures in response to the COVID-19 emergency, they continue to perform their essential land record function. Real estate transactions may continue during the emergency, subject to the impacts that these modified procedures may have on timing and other typical aspects of closing.

On Monday, March 16, 2020, at the request of Governor Northam, the Chief Justice of the Supreme Court of Virginia issued an order ([link here](#)) declaring a judicial emergency in all district and circuit courts of the Commonwealth. The Order suspended all proceedings in all circuit and district courts and tolled and extended all deadlines until Monday, April 6, with the right to "extend such order for the duration of the threat." The Order further provides that clerk's offices "shall remain operational and provide essential services," consistent with the Court's Pandemic Influenza Bench Book for Virginia's Court System (2010).

By order of the Chief Justice dated March 27, 2020, the Court exercised its right to extend the period of the emergency through April 26, 2020. Among other things, the amended order confirmed that land records shall remain open, providing that: "drop boxes should be used for any conventionally filed documents and clerks shall take steps to safely accommodate any individual(s) requiring access for important matters, *including but not limited to, title or record searches and recordation of land records*" (emphasis added).

Maintaining the land records has been deemed an essential function of circuit court clerk's offices. Per Appendix C of the Bench Book, accepting and timestamping documents to establish priority is listed among the "mission critical functions" of circuit courts, and "record, index and scan land records" is listed among the "essential functions" of circuit courts.

The Chief Justice's Order suspended proceedings, but did not close courthouses, which is a power reserved to the Chief Judge or Presiding Judge of each Judicial Circuit under Section 17-207 of the Code of Virginia (1950). The courthouses in a locality will be closed based on the circumstances in that area, and only if the Presiding Judge decides that "operation of the clerk's office, under prevailing conditions, would constitute a threat to the health and safety of the clerk's office personnel or the general public," in which case no official business may be conducted. In the event that a courthouse is closed, the Clerk may receive land records for recordation online or by alternative method, but the Clerk would not be able to actually record and index such land records during the period the local courthouse is closed by order of that court.

At this time, while some courthouses have closed for a day or two, we have not seen the widespread outright closure of courthouses by presiding judges. Most local court orders are implementing additional policies, as authorized by the Chief Justice's Order, which may include guidance for land records, such as online recording and limited means of dropping off documents for recordation. In the meantime, recordings continue, and searches may be conducted either in-person or online, depending on the applicable local order and implemented procedures.

Given these new processes and procedures, Williams Mullen's real estate practitioners continue to work with title insurers and examiners to facilitate closings in jurisdictions throughout the Commonwealth. The process varies from jurisdiction to jurisdiction and may involve exceptions to title coverage depending on the capabilities to run down title at closing.

Local Governing Bodies ? Legislative Action on Land Use Applications

Just as the staff of local governments and circuit court clerk's offices adapt their operations in response to the COVID-19 emergency, local elected bodies throughout the Commonwealth have reevaluated their public meeting procedures in light of public health recommendations. This raised the question of the extent to which the emergency affords special flexibility for local governments in complying with the typical public meeting requirements of the Virginia Freedom of Information Act.

Attorney General Herring issued an official advisory opinion on March 20, 2020 ([link here](#)), which clarified the manner in which public bodies may continue to conduct business during the current state of emergency. The advisory opinion makes the following determinations:

1. The Code of Virginia permits a public body to meet by electronic communication means for the duration of the declared emergency, but only for meetings whose purpose is to address the emergency.
2. The Code does not authorize local governing bodies to hold meetings solely by electronic communication during the pendency of the emergency.
3. The Code provides additional authority for localities to ensure continuity of government during the declared emergency.

Absent intervening action by the General Assembly, the advisory opinion concludes that, whether any particular action by a public body constitutes a matter that "must be made immediately and where failure to do so could result in irrevocable harm" is "a fact-specific inquiry that should be made in consultation with that public body's counsel." This has led to a divergence in approach from locality to locality.

Local governing bodies will meet to conduct business during the emergency, including action on land use applications, but their procedures for quorums and public participation must comply with statutory requirements, except as may be required by exigent circumstances outlined by the Attorney General's opinion. The manner and frequency of meetings may vary from their typical custom, as noted above. Williams Mullen continues to track these developments in jurisdictions within its footprint.

Conclusion

While local governments are adapting to the realities imposed by the COVID-19 emergency, most critical functions reflect new modifications to prior standard operating procedures. Williams Mullen's land use practitioners are in ongoing contact with local officials and stand ready to provide guidance on the process and protocols that apply to various local government jurisdictions.

Please note: This alert contains general, condensed summaries of actual legal matters, statutes and opinions for information purposes. It is not meant to be and should not be construed as legal advice. Readers with particular needs on specific issues should retain the services of competent counsel.

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