DECONCINI MCDONALD YETWIN & LACY, P.C.
ATTORNEYS AT LAW

REAL ESTATE LAW UPDATE

OCTOBER 2020

TECHNOLOGY IS CAUSING CHANGES IN REAL ESTATE SALES AND PURCHASES

By Nathan Hannah

With lots of people now working remotely, I can't help wondering: is this going to have an impact on real estate?

I was already noticing advertising for new houses touting the inclusion of home office space.

Then I saw this headline: "Nearly 12 Million Square Feet of Vacant Office Space in S.F."

So yes, I think there might be new trends coming out of this. I think it's very possible that the huge shift toward working remotely will be around long term, and that it will result in long term trends of higher demand for residential space (larger living quarters), and lower demand for office space.

Remote work also means, in my opinion, that demand for both office and residential property may decrease in some formerly high-demand areas, since where you are when you're working doesn't matter so much (or maybe at all) anymore. That's another factor that could slow the rise in prices in some areas.

I'm just spitballing. Real estate prognostication is not part of my job description.

What is part of my job description, though, is the mechanics of real estate transactions. As I mentioned in last month's Update, signing contract documents electronically now seems to be the norm in residential sales and purchases. I suspect things will start moving in that direction in commercial sales and purchases as well.

If you buy or sell a house now, you probably won't have to physically sign anything until you sign the closing documents. Just about everything leading up to the closing, including the listing agreement, the purchase contract, and any other papers, will be signed electronically.

Another change that you might not notice is that title companies now have the ability to record deeds electronically. That means that the transfer of title to property happens without the deed ever leaving the title company's office.

And with the advent of remote online notarization, it's probably only a matter of time until deeds get signed and notarized electronically, too.

As residential real estate sales and purchases become more automated, and therefore more efficient, transaction costs should go down. This could be expected to offset, at least to some degree, the rise in residential prices that should be the natural result of increased demand.

The mechanics of commercial transactions are surely going to change, too, but it will probably take longer, and the way forward is probably going to be less predictable.

In the meantime, I'm no prognosticator, but I'm glad I don't own an office building in San Francisco.

Now a note about last month's Update: due to a production glitch, the last paragraph got left off, so we're reproducing the whole thing on the reverse side this month.

DECONCINI MCDONALD YETWIN & LACY, P.C.
2525 E. BROADWAY BLVD., SUITE 200
TUCSON, ARIZONA 85716
(520) 322-5000

VIRTUAL NOTARIZATION IS NOW A THING IN ARIZONA

By Nathan Hannah

In November of last year, I wrote about new laws that make it possible to have an electronic will. Statutes that authorize the use of electronic wills are now in effect in Arizona and a few other states. In my newsletter on this topic, I predicted that the idea wasn't likely to catch on until the required electronic verification and storage facilities for electronic wills are in place. So far, that prediction has held. I still have not heard of anyone in Arizona who's actually equipped to do electronic wills.

Electronic signing of some other kinds of documents, such as contracts, is another story. Electronic signatures have very quickly become common in certain circumstances. The situation where I have seen electronic signatures with increasing frequency is in real estate transactions. My impression is that electronic signatures are now the norm for all contract documents in residential real estate sales.

The signatures on residential real estate contract documents don't have to be notarized, however. In the same way that electronic wills won't really get off the ground until virtual platforms to facilitate them are in place, the use of e-signatures for documents that require notarization isn't likely to take off until electronic notarization becomes widespread. That means that processes and platforms for a notary to electronically affix their notary seal to a document must be readily available.

The good news is that those processes and platforms are apparently on the way, and laws allowing their use are in place. Under Arizona law, virtual notarization can happen in two forms: electronic notarization and remote notarization.

Electronic notarization is essentially the electronic analog to traditional notarization. It's a way for a notary to electronically notarize an electronically signed document. After the document signer has electronically signed the document, the notary electronically signs it and affixes an electronic notary seal. The interaction between the signer of the document and the notary cannot be virtual, however. The document signer must physically appear before the notary. The notary verifies the signer's identity in the traditional ways, *e.g.* via identification such as a driver license or passport, or by being personally acquainted with the document signer.

Remote notarization, also referred to as remote online notarization, takes the virtual process one step further, as you might guess from the name. For a remote notarization, the document signer and the notary communicate via audio-visual technology. The document signer signs the document electronically, after which the notary signs electronically and affixes an electronic notary seal. There are rules that the notary must follow to verify the signer's identity. The document is transmitted from the signer to the notary through a remote online notarization service provider, using a remote online notarization (RON) platform.

I don't know any notaries that are using these virtual processes yet, but I'm pretty sure they are out there. Now that I know more about it, I'm going to look into getting set up for it myself.

QUOTE OF THE MONTH

If I were to say, 'God, why me?' about the bad things, then I should have said, 'God, why me?' about the good things that happened in my life.

Arthur Ashe, American athlete
(July 10, 1943 - February 6, 1993)