



## UNDERWRITING BULLETIN

### INSURING TITLE BASED ON FORECLOSURES

Foreclosures are always high risk events in any title. Good title practice requires a careful review of the documentation and court files, if any, before insuring a title that is based on a foreclosure of any lien. Any defects encountered in the foreclosure review must be shown on any preliminary report, binder, commitment or policy. These practices and requirements are not new and have always been part of an adequate search and examination of any title based on a foreclosure.

The recent revelations and allegations concerning the documentation and processes being used by a variety of large lenders, servicers, and others involved in the foreclosure process raise issues that are difficult to determine by a traditional title and foreclosure examination. We believe that the litigation and possible losses based on the activities of foreclosing parties should be borne by the foreclosing parties, not title agents examining titles and title insurers insuring titles after the foreclosure is apparently complete. In order to protect everyone involved in sale transactions after a foreclosure, WFG National Title Insurance Company has adopted the following specific safe harbors for our agents.

When you are asked to insure either the purchaser at a foreclosure sale or the purchaser from the lender or servicer that acquired title through the foreclosure process, you must obtain one of the attached indemnities. These forms are based on a model form that was prepared by the American Land Title Association in consultation with the Federal Housing Finance Authority, the primary regulator of Fannie Mae and Freddie Mac. The first form, labeled "Blanket" should be used if the lender/servicer is willing to sign an indemnity covering all of their foreclosures – past, present and future. We are in conversations with a number of lenders and hope to be able to sign national indemnities that will relieve the agent from this requirement. We will keep you posted.

The second form, labeled "Individual" should be used if the selling lender/servicer is unwilling to sign the blanket indemnity but is willing to sign an indemnity for the specific transaction to be insured.

If the selling lender/servicer is unwilling to sign either form, please consult with WFG underwriting personnel to determine how best to proceed.

Beyond the possible issues with the foreclosure process, there have been significant issues in several markets where the foreclosed parties or others are in actual possession of the property. Since none of us want to be involved in an eviction proceeding, please make sure that the property is vacant or identify who is in possession and take the appropriate exception. Verification of possession takes on a special importance with foreclosed properties. Again, neither agent nor underwriter is well-served by litigation over matters that could be addressed prior to closing.

In a foreclosure or REO sale situation, In addition to the customary mechanics-liens/parties-in-possession Title Insurance Affidavit to be signed by the seller, please also have the buyer sign the attached WFG National Title Insurance Company Buyer Affidavit as often the person signing the seller affidavit has never actually visited the property and the buyer is in the best position to know both whether work has recently been done on the property and whether there are parties in possession or any evidence of any parties in possession. You may also want to consider having a discussion with the real estate broker about these issues if it is a brokered sale and your office is in contact with the broker or the broker attends the closing.

Finally, we will continue to insure sales and mortgages from parties who are not the foreclosing lender/servicer or related to the foreclosing lender/servicer, provided there are no known issues relating to the foreclosure in the chain and there is an existing owners policy covering the title of the seller or borrower or you receive written permission (by email or fax) to insure after review of the foreclosure with your local WFG underwriting counsel.