



SUPPLEMENT TO UNDERWRITING BULLETIN ISSUED OCTOBER 26, 2010 RE INSURING TITLE BASED ON  
FORECLOSURES

DATED NOVEMBER 5, 2010

On October 26, 2010, the Williston Financial Group underwriters issued an Underwriting Bulletin entitled "Insuring Title Based on Foreclosures" which emphasized the use of indemnities from lenders and servicers who acquired title by foreclosure as a safe harbor for agents. Subsequently, it has become apparent that we will not obtain such indemnities although we continue to work with major national lenders to obtain such indemnities.

At the same time, a number of actions in the foreclosure world have occurred that should significantly reduce the affect of the issues in the foreclosure process that have been identified in the press. Several major lenders and servicers have undertaken voluntary reviews of their procedures and documentation. Courts and state regulators have imposed additional requirements to make sure that the processes are correct. Most important, the Federal Housing Finance Agency, primary regulator of Fannie Mae and Freddie Mac, has published a "Four-Point Policy Framework For Dealing with Possible Foreclosure Process Deficiencies" (copy attached). Accordingly, we will insure titles based on foreclosures based on the following general guidelines to be supplemented by state-specific guidelines:

**1. Direct Foreclosure Sales.**

**a. Foreclosing Lender or Related Transferee.** We will not insure either foreclosure sales where the foreclosing lender is the successful bidder or transfers by the foreclosing lender to related parties ("related transferees"), whether by virtue of an assignment of bid, a foreclosure deed without assignment of bid or a post-foreclosure deed.

**b. Good Faith Purchasers.** We will consider insuring good faith purchasers at the foreclosure sale upon thorough review and approval of the foreclosure and all related documentation by local WFG underwriting counsel.

**2. Sales and Mortgages From Foreclosure Purchaser.**

Upon satisfactory review of the foreclosure sale and the related documentation, we will also insure arm's-length sales and mortgages (or deeds of trust) from parties who acquired title in or through a

foreclosure to unrelated third parties for full value. This includes so-called REO sales from the foreclosing lender who “bought back” the title at foreclosure or from a related transferee.

### **3. General Guidelines.**

- a. Compliance with all applicable state-specific requirements under local statutes, regulations, case law and WFG underwriting guidelines.
- b. In states where applicable, all appeal and redemption periods must have run.
- c. There must be a careful examination of the foreclosure documentation, including the court file if it is a judicial foreclosure, with particular emphasis on confirming that the foreclosing party clearly has the right to foreclose in accordance with local law and practice. Any irregularities should be brought to the attention of your local WFG Underwriter.
- d. If the sale price exceeds the amount of the debt foreclosed (using the face amount of the mortgage or deed of trust as a rough benchmark) plus any subordinate liens extinguished by the sale, please contact your local WFG underwriter.
- e. The premises must be vacant other than for tenants lawfully in possession and not in default of rental payments or any other terms or conditions of the tenancy and for whom exception will be taken in Schedule B of the title insurance policy. Depending on the state, affidavits and/or physical inspections will be necessary.
- f. If a bankruptcy appears to be involved, then the relevant bankruptcy documents must be reviewed. If you have any questions about the effect of those documents on the foreclosure at issue, please review them with your local WFG underwriter.

### **4. Foreclosures in the Back Chain of Title.**

Finally, we will continue to insure sales and mortgages from parties whose titles are derived from a prior foreclosure in the chain of title, provided there are no known issues relating to the prior foreclosure that could affect the validity of the foreclosure and there is an existing owners policy covering the title of the seller or borrower or you have reviewed the foreclosure with your local WFG underwriting counsel.

### **5. WFG’s Commitment to You.**

Consistent with sound underwriting principles, we want to serve the needs of our agents and insureds and do our part to facilitate the sales of foreclosed properties. Please contact any of the WFG Underwriters or myself with any questions or comments. Communication is one of the three pillars of WFG’s commitment to you. Any suggestions you would like to offer on how we can improve our approach to this issue will be greatly appreciated.