



To: All California Policy Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: January 03, 2018
Bulletin No. CA 2018-01
Subject: SB2

By now, you have heard a great deal about SB-2, California's new \$75 per real estate instrument, per parcel, per transaction addition to standard recording fees that goes into effect January 1, 2018. You have also been told that SB-2 was not a "model of drafting clarity" and that the various Recorder's offices have interpreted key provisions differently.

Rather than publish yet another bulletin that quotes an ambiguous law, we thought it might be more helpful to our agents to share how we are directing our internal staff to handle SB-2. We know that we don't know the answers, that there is a risk that SB-2 charges will be charged back to us later (possibly with interest and penalties), and that our internal direction will evolve as we get more authoritative interpretations from the Department of Revenue.

To a large extent, we are relying on the county-by-county interpretations being published on the CLTA website. <http://www.clta.org/general/custom.asp?page=SB2> While those are the only semi-authoritative guidance we have at this point, they can't all be "right." So we know there is risk of overcharging or undercharging in following those directions – but we feel that is the best approach to getting documents recorded and protecting our customers and insureds through the recording act.

You are welcome to borrow our internal guide – which appears below – or develop your own policies. But please note, the below may not be the final interpretation by the State of California.

Escrow Instructions:

We're adding this language to our standard escrow instructions in California, both to inform our customers about the changes, and to obtain authorization to disburse SB-2 fees in amounts we can't even estimate until we've seen how the documents are titled.

Recordation Surcharge. California has enacted the Building Homes and Jobs Act (California Civil Code 27388.1). Under this law, effective January 1, 2018 and subject to some exceptions, an additional \$75.00 is charged per real estate instrument, per single transaction and per parcel of real property over and above the normal recording charges.

As drafted, the law has significant ambiguities which have not yet been clarified. Different county recorders are interpreting the requirements in different ways. «OfficeName» is authorized to collect its best estimate of the total recording charges including amounts due

under the Building Homes and Jobs Act, and to pay same to the pertinent recording office as a part of the closing.

The undersigned understands and acknowledges that the interpretation of this law is still evolving. The fees charged by Escrow Holder for the fees have been calculated and collected based on the best available information at closing and may not be exact. Should additional charges be found due with regard to the closing, the undersigned agree to deliver said fees to Escrow Holder upon request. Should it be found that the fees charged were in excess of those actually due, the undersigned agree that their sole recourse will be to seek repayment from the recorder or the State of California.

Resales:

1. Resales will USUALLY be exempt transactions for documents recorded concurrently with a transfer deed – but watch for trailing document issues.
2. If Document Transfer Taxes (DTT) are being paid on the transaction –
 - a. All instruments filed at the time of the recording of the document on which DTT is paid are exempt from the SB2 fees
 - b. A County specific coversheet, marked to show the applicability of the DTT exemption, must be attached OR exemption declaration language added to face of each document to be recorded.
 - i. Escrow is primarily responsible for attaching the coversheet. Recordings may be delayed if a recordable document is sent to title without a coversheet.
3. Resales without DTT. The Owner-Occupier exemption may or may not apply. The file should be escalated to an internal expert. See discussion of the Owner-Occupier exemption under Refinances.
4. Trailing documents – May or may not trigger separate SB2 fees. See discussion below

Refinances:

1. Refinances will RARELY be exempt transactions.
 - a. Add \$225 for fees to estimated recording charges for use in the Loan Estimate.
 - b. Plan to adjust fees when you see the recordable documents and determine how many \$75 fees may be involved. See “How Many \$75 fees are due on One Document?” below.
 - c. No coversheet is required for recording.
2. Trailing Documents may trigger additional SB-2 Fees, even if \$225 is paid on first recording. See discussion below.
3. Why doesn't the “transfer to an Owner-Occupier” exemption apply to a refi with a deed?
 - a. We agree that the language of SB-2 is regrettably uncertain – and it is possible the Department of Revenue will eventually provide greater clarity. We look forward to being able to adjust our position.
 - b. Our interpretation is that most of the deeds we record in connection with a refinance are not changing ownership, but clarifying vesting. For example:
 - i. A deed from a single name to a married name – doesn't “transfer” any ownership. It merely clarifies the record as to the name change.
 - ii. A quit claim from a spouse to confirm “sole and separate” status also doesn't “transfer” anything.
 - iii. Same with a deed from a person to add or remove an initial or middle name, or into an “also known as name.” The same person owns it before and after.

- iv. Transfers out of trust and back in. California doesn't treat ownership by an estate planning trust as a separate entity. The trust is a "fiduciary relationship" and the "beneficial ownership" of the property is still with the settlor/beneficiaries even though "bare legal title" may be transferred to or from a trustee (or often the same persons in the capacity of trustee).
 - v. If filing a quit claim deed to yourself (under any of these scenarios) was sufficient to exempt all related documents from SB-2 fees, it would gut the tax collections. No matter how ambiguously the law is phrased, that can't have been the legislature's intent in passing this law.
4. If you think you have a true "transfer" of title in connection with a refi, which doesn't also trigger DTT, reach out to your internal expert.

Trailing Docs

1. Trailing Docs Being Recorded by your office.
 - a. The counties have given different guidance as to whether SB2 fees are due on documents recorded separately from the first recording of an exempt transaction or one in which the \$225 maximum fee has been paid.
 - i. San Diego and Placer Counties have taken the position that if an exemption applied to the primary transaction, trailing document recordings may also be claimed as exempt. In those counties, a coversheet claiming the exemption should be attached to each trailing document.
 - ii. In all other counties, if WFG is handling the recording of the trailing documents, the SB-2 fees should be computed and charged as to EACH expected trailing document to be recorded. Such amounts also need to be communicated to the lender for possible updating of the Loan Estimate. (see "How Many Fees for that Document")
2. Trailing Documents Not Being Recorded by your office.
 - a. Most institutional lenders record their own reconveyances when paid. This is their responsibility under California Civil Code § 2941
 - b. Those lenders are allowed to charge the actual recording charges (§2941(e)(1)) including any applicable SB2 fees, but the fee(s) must be added to the payoff Demand sent prior to closing. §2941(e)(3)
 - c. We are concerned that lenders will miss the opportunity to charge these fees and then neglect to record the reconveyances if their recordings are kicked back.
 - d. Therefore WFG's practice is:
 - i. Use the "Request for Payoff" form which includes a paragraph reading

"Effective January 1, 2018, California's Building Homes and Jobs Act (SB-2) will require an additional fee of \$75 for recording each instrument, per each single transaction per parcel of real property up to a maximum of \$225, unless exempt. Pursuant to California Civil Code §2941, these fees may be charged to the Trustor, but only if demand for the fees was included in the payoff demand statement. We encourage you to consider the potential applicability of SB-2 to recording any Substitution of Trustee and Reconveyance."
 - ii. If a Payoff Demand comes in that doesn't include an SB2 fee, to notify the lender involved by email.

- iii. Send the date and recording information of the DTT paid document to any known third party (lender) handling a trailing document recording.
- iv. If the paid off lender sends us a Recon for recording without the correct fees, to scan it into the file and send it back with a Letter.
- v. **CAUTION:** One Servicer is including this language in their payoff demand (which did not show any SB2 Fee: “all necessary legal documents will be forwarded to the trustee for Full Reconveyance upon receipt of payment in full. Borrower to have their own title company record reconveyance which we will provide AFTER funds are received.”

How Many \$75 fees are due on One Document?

That we even have to ask this question highlights the poor drafting of SB2. The \$75 fee is assessed for “every real estate instrument, paper, or notice,” “per each single transaction per parcel of real property.” Like so much in this Act, we don’t yet know how to interpret it, and the counties are reaching different conclusions.

1. Multiple Instruments in a single document?

Most counties have indicated that they will count the “titles” in a document in order to determine how many instruments are to be charged SB2 fees. Under this approach, a document entitled “Deed of Trust, Assignment of Rents and Leases, and Request for Notice of Default” would be counted as three instruments and be charged the maximum of \$225. A “Substitution of Trustee and Full Reconveyance” would be two instruments and charged \$150.

2. What is a Parcel?

Some counties have indicated that each APN constitutes a separate parcel, others that all contiguous properties are a single parcel.

If a county hasn’t specified their view, treat each non-contiguous lot or tract as a separate parcel. But treat contiguous lots/tracts as one parcel.

3. What is a Transaction?

The counties have given different guidance on this question also. San Diego and Placer Counties have taken the position that if an exemption applied to the primary transaction, trailing document recordings may also be claimed as exempt.

Other counties have defined transaction to “refer to an instrument, paper or notice presented together and related to the same parties and property.” For example a group of documents that relate to a sale or transfer transaction of real property. A batch of documents received from one party for recording may include multiple SB2 transactions.

Different Interpretations of the Same Law Can’t All Be Right?

No, they can’t all be right. And that’s the trap for us in handling closings.

Sooner or later, someone – probably the Department of Revenue – will audit the recording fees and direct the County Recorders to back charge us through our ACH recording accounts for the shortfalls. We’ll find it all but impossible to sort out the back-charges and apply them back to a specific file, and even if we could, asking our customers to pay those fees on a closed file would not be good customer relations.

These standards are evolving. Counties are updating their positions, and more counties are staking out their views. The California Land Title Association has a very good resource page for its members. It can be accessed at: <http://www.clta.org/general/custom.asp?page=SB2>. We urge you to check it regularly.

The Hazards.

1. As the title and escrow professionals who prepare the settlement statement, our customers expect us to get recording charges right. We will have a customer relations problem if we come back requesting additional fees later.
2. The SB-2 fees will often be large enough to trigger a tolerance violation under TRID rules. So good communication with our lenders will be critical. Expect pushback – particularly as to those files that may have been quoted prior to the first of the year.
3. Especially at first, we're going to see recordings rejected. Those go into a separate work-flow in our offices, and it's going to be of critical importance that we stay on top of those rejected recordings and get them recorded promptly, even if that means taking losses on the file.
4. In e-recording counties, we expect the recording office will draw additional funds from the ACH accounts to cover SB-2 shortages and those will be difficult to reconcile and post to specific files.

Information Bulletins are designed to provide our agents with information we think will help in managing their business or just being better title professionals, but which does not rise to the level of being an underwriting mandate and are not within the scope of the agency agreement.