

WFG Underwriting Bulletin



To: All Florida Agents of WFG National Title Insurance Company
From: WFG Florida Underwriting Department
Date: July 19, 2016
Bulletin No. FL2016-09
Subject: New Signatory to the Third Revised Mutual Indemnification Agreement

On June 20, 2016, the Florida Land Title Association notified the Indemnitors under the Third Revised Mutual Indemnification Agreement (“MIA”) that there is a new signatory to the MIA by the name of First National Title Insurance Company.

For those of you not familiar with the MIA, it is an agreement among most of the title insurance underwriters doing business in Florida to indemnify each other for several title issues defined in the MIA as “Potential Defects”. Under the MIA, the Indemnitor is the underwriter who insured the current owner either under an owner’s policy or under a lender’s policy provided the lender foreclosed and has title. The Indemnitee is the underwriter in the current transaction who will be insuring a sale or mortgage by the Indemnitor’s insured. If the terms and conditions of the MIA are met, the indemnity provided by the MIA is automatic and no further confirmation is required.

The Potential Defects covered by the MIA are, as follows:

1. Homestead. Lack of joinder of a non-titled spouse on a deed or mortgage in the chain of title prior to the date of the Indemnitor’s policy.
2. Prior Judgments, Federal Tax Liens, and State Tax Warrants. Judgment liens, federal tax liens, and state tax warrants that may have attached to the subject property prior to the date of the Indemnitor’s policy. The lien(s) cannot be against the Indemnitor’s insured, the face amount of the lien(s) in the aggregate must be \$500,000 or less, and no levy proceedings to enforce the lien(s) can be pending.
3. Prior Mortgages. The mortgage(s) must be recorded prior to the date of the Indemnitor’s policy, have a face amount of \$500,000 or less, not be a credit line, and cannot be in foreclosure.
4. Due Process Issues. Lack of appointment of a guardian or attorney ad litem to represent a defendant served by constructive service (service by publication) in a probate, foreclosure, quiet title, partition, divorce or other lawsuit resulting in a final judgment affecting title to the subject property prior to the date of the Indemnitor’s policy. Deficiencies in or lack of a diligent search affidavit required for constructive service of process in the forgoing lawsuits.
5. Authority to Sign – Business Entities, Trustees, and Attorneys-In-Fact. Lack of sufficient proof of record to establish the authority of the person executing a deed or mortgage on the subject

property prior to the date of the Indemnitor's policy or insured by the Indemnitor's policy. Provided there is no recorded notice of a lawsuit seeking to set aside the deed or mortgage.

6. Lack of Recorded Death Certificate. Lack of a recorded death certificate to eliminate the interest of a person who held title to the subject property prior to the date of the Indemnitor's policy with a spouse as an estate by the entirety, with another person(s) as a joint tenant with right of survivorship, or who held a life estate interest.
7. Florida and Federal Estate Tax Liens. Lack of recorded proof that there are no Florida or Federal estate tax liens that could attach to the subject property due to the death of an owner prior to the date of the Indemnitor's policy.
8. Lack of Subscribing Witnesses. Any deed to the subject property prior to the date of the Indemnitor's policy not containing two witnesses.
9. Incomplete or Insufficient Acknowledgments. Deed or mortgage affecting the subject property prior to the date of the Indemnitor's policy that contains a defective acknowledgment due to the following matters: failure to include a notary stamp; failure to state that all parties signing the document appeared before the notary; failure to attach an English translation of an acknowledgment in a foreign language; failure of the notary to state the type of identification used to identify the signor; the acknowledgment was taken by a person without the authority to take acknowledgments; or use of a jurat rather than an acknowledgment.

The conditions for use of the MIA are listed on pages 1 and 4 of the MIA. Some of those conditions are, as follows:

1. The MIA applies to Florida properties only;
2. The Indemnitor's policy must be at least one-year old;
3. The liability of the Indemnitor is limited to the face amount of the Indemnitor's policy or \$500,000, whichever is less;
4. The Indemnitor's policy cannot have an exception for the Potential Defect.

A copy of the MIA submitted with the FLTA's notification can be downloaded at this hyperlink:

[Mutual Indemnification Agreement](#)

The FLTA website contains a list of contacts for most of the active Underwriters in Florida. You can use those contacts to request a Letter of Indemnity when the MIA does not apply or when a separate Indemnity Letter is otherwise required. A copy of the list of contacts from the FLTA website can be downloaded at this hyperlink:

[FLTA Indemnity Contacts](#)

NOTE: The information contained in this Bulletin is intended solely for the use of employees of WFG National Title Insurance Company, its title insurance agents and approved attorneys. Disclosure to any other person is expressly prohibited unless approved in writing by the WFG National Title Insurance Company's Underwriting Department.

The Agent may be held responsible for any loss sustained as a result of the failure to follow the standards set forth above.