

WFG Underwriting Bulletin



To: All Florida Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Florida Underwriting Department
Date: September 20, 2018
Bulletin No.: FL 2018-15
Subject: Fifth Revised Florida Mutual Indemnification Agreement

The Fourth Revised Florida Mutual Indemnification Agreement (“4th MIA”) has been revised to create the Fifth Revised Florida Mutual Indemnification Agreement (“5th MIA”) which became effective on September 1, 2018.

Three revisions were made to the 4th MIA to create the 5th MIA.

FIRST REVISION

The first revision is a clarification of when the relationship of Indemnitor and the Indemnitee is established under the 5th MIA. Under the 5th MIA (and previous versions of the Mutual Indemnification Agreement), the “Indemnitor” is the title insurance underwriter that has already issued a title insurance policy insuring the current owner of the property. The “Indemnitee” is the title insurance underwriter that will be issuing a new title insurance policy insuring over a potential defect covered by the 5th MIA. A sentence was added to the first page of the 5th MIA to confirm that the Indemnitor / Indemnitee relationship is established when the Indemnitee issues its policy without an exception for, or with affirmative coverage over, a “Potential Defect” covered by the 5th MIA.

SECOND REVISION

The second revision pertains to acknowledgements. As a refresher, an acknowledgement is a type of notarization where the signor appears before a notary public and acknowledges that the signature on the document is, in fact, the signor’s signature. The 5th MIA describes ten “Potential Defects” that are covered by the 5th MIA. The ninth [Roman numeral “IX”) Potential Defect pertains to acknowledgements. Under Florida law, a deed or a mortgage must be recorded to be enforced against subsequent purchasers and creditors. For a deed or mortgage to be recorded, Florida law requires it to be acknowledged by the signor. A deed or mortgage that is not acknowledged by the signor, is not legally entitled to be recorded. If a deed or mortgage contains an insufficient or incomplete acknowledgment but is recorded, it may not legally provide notice of the conveyance or mortgage to subsequent purchasers and creditors.

Potential Defect No. IX pertains to the possible failure of any recorded deed or mortgage to provide notice of its existence to subsequent purchasers or lenders due to an insufficient or incomplete acknowledgment. Potential Defect No. IX was revised to confirm that the 5th MIA does not cover the “absence of an acknowledgment” and only covers an incomplete or insufficient acknowledgement.

THIRD REVISION

Remote on-line notarization is when the signor is not in the same physical location as the notary public but appears before the notary by live interactive video. **As of the date of this Bulletin, Florida law does not authorize remote on-line notarization and does not recognize a remote on-line notarization performed under another State’s laws.** Therefore, an acknowledgment of a deed or mortgage where the signor and the notary are not in the physical presence of each other is not valid in Florida even if performed by a notary public in a state that authorizes remote on-line notarization. Potential Defect No. IX was revised to confirm that the Indemnity provided by the 5th MIA does not cover “***an acknowledgement taken remotely not expressly authorized by Florida Statutes and Rules***”. Therefore, you cannot rely on the 5th MIA to insure over a deed where the acknowledgement was performed by remote on-line notarization in any state. If you discover a deed in the chain of title that was acknowledged by remote on-line notarization, contact WFG’s Underwriting Department to determine what action to take.

Click [HERE](#) for a copy of the Fifth Revised Florida Mutual Indemnification Agreement

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.