

WFG Underwriting Bulletin



To: All Florida Policy Issuing Agents of WFG National Title Insurance Company

From: WFG Underwriting Department

Date: January 22, 2020

Bulletin No.: FL 2020-04

Subject: Small Lien Foreclosures

WFG receives regular requests to insure a sale or mortgage of a property acquired by the borrower or seller through the foreclosure of a lien that is small in relation to the value of the property such as condominium or home owners' association foreclosures, construction lien foreclosures, judicial lien foreclosures, sheriff sales, and other small lien foreclosures ("Small Lien Foreclosure").

There is an extra risk involved with insuring title obtained through a Small Lien Foreclosure when the owner does not offer a defense to the foreclosure. The risk pertains to the question of why would an owner not defend against a lawsuit seeking to take away title to his/her property by foreclosing a lien that only represents a fraction of the value of the property? Service of process in many Small Lien Foreclosures is by constructive service i.e. by publication, instead of by personal service of process. The concern and risk is that the owner did not offer a defense in the foreclosure case because he/she did not receive good service of process of the lawsuit and may be unaware that the foreclosure is taking place.

UNDERWRITING GUIDELINES:

A. Association Foreclosures:

To insure a sale or mortgage of title to property acquired by the borrower or seller through a Condominium or Home Owners' Association Foreclosure, WFG requires:

1. Personal service of process (service of the summons and complaint) on the former titleholders. WFG will rely on statements in the small lien foreclosure docket that the summons and complaint were personally served on the former title holders.
2. Releases of all mortgages and other liens encumbering the property must be obtained regardless of whether the holders of those liens were joined in the foreclosure.
3. WFG may waive the requirement for releases of second mortgages and other liens that are inferior to the lien foreclosed as long as the holder of the second mortgage and the holder of the inferior lien were joined in the small lien foreclosure and the summons and complaint were served on them at the addresses listed in the second mortgage and in the inferior lien; and the

summons and complaint were served on their Registered Agents in Florida. If the second mortgagee and/or the inferior lien-holder do not maintain a Registered Agent in Florida, then service of process should also be obtained on them at their home offices. A waiver of the requirement for releases of second mortgages and inferior liens must be in writing from WFG's Underwriting Department.

4. An Association foreclosure cannot "wipe-out" a first mortgage so first mortgages must be released from the property.

5. WFG will rely on an association foreclosure resulting in a certificate of title recorded in the back chain of title at least seven years prior to the current transaction notwithstanding the lack of personal service of process on the former title-holders as long as constructive service of process was properly obtained on the former title-holders as disclosed by the association foreclosure docket.

B. Construction Lien Foreclosures:

WFG will not insure a sale or mortgage of title to property obtained in a Construction Lien foreclosure unless deeds are obtained from the former titleholders and releases are obtained from lenders and other lien holders.

C. Judicial Lien Foreclosures:

WFG will not insure a sale or mortgage of title to property obtained in a Judicial Lien Foreclosure unless deeds are obtained from the former titleholders and releases are obtained from lenders and other lien holders.

D. Sheriffs' Sales after Levy and Execution:

WFG will not insure a sale or mortgage of title to property obtained in a Sheriff's levy, execution, and sale of property unless deeds are obtained from the former titleholders and releases are obtained from lenders and other lien holders.

E. Other Small Lien Foreclosure Sales:

WFG will not insure a sale or mortgage of title to property obtained in any other Small Lien Foreclosure unless deeds are obtained from the former titleholders and releases are obtained from lenders and other lien holders.

ANY VARIANCE FROM THESE CONDITIONS WILL REQUIRE EXPRESS UNDERWRITING APPROVAL.

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.