



UNDERWRITING BULLETIN

To: All Florida Agents of WFG National Title Insurance Company

From: WFG Florida Agency Department

Date: May 21, 2014

Bulletin No.: FL 2014-5

Re: HB 489 to Require Disclosure of Retained Subsurface Rights

Last year, one of the large home developers generated publicity when it was reported that they had been retaining Oil, Gas and Mineral Rights under new subdivisions. Questions were raised about the adequacy of the disclosure being made to ultimate home purchasers. That developer did the “right thing” and caused the retained mineral interests to be transferred to their home-buyers.

However the Florida legislature felt the need to more closely regulate the disclosure of retained mineral interests and, by unanimous vote in both the Florida House and Senate, adopted [HB 489](#). **That bill was signed into law by Governor Scott on May 12, 2014. It will become effective on October 1, 2014.**

The law created Sec. 689.29, F.S. which requires the seller to give written notice to the prospective buyer at or before the execution of a contract for sale if the seller (or an affiliated or related entity of the seller) has previously severed or retained, or will sever or retain, any of the subsurface rights or right of entry on the property being sold. The notice may be provided in the sales contract itself or may be provided in a separate notice incorporated by reference into the sales contract. The form of disclosure notice is set forth in the law. The notice must be conspicuous, in boldface type, and in substantially the following form:

“SUBSURFACE RIGHTS HAVE BEEN OR WILL BE SEVERED FROM THE TITLE TO REAL PROPERTY BY CONVEYANCE (DEED) OF THE SUBSURFACE RIGHTS FROM THE SELLER OR AN AFFILIATED OR RELATED ENTITY OR BY RESERVATION OF THE SUBSURFACE RIGHTS BY THE SELLER OR AN AFFILIATED OR RELATED ENTITY. WHEN SUBSURFACE RIGHTS ARE SEVERED FROM THE PROPERTY, THE OWNER OF THOSE RIGHTS MAY HAVE THE PERPETUAL RIGHT TO DRILL, MINE, EXPLORE, OR REMOVE ANY OF THE SUBSURFACE RESOURCES ON OR FROM THE PROPERTY EITHER DIRECTLY FROM THE SURFACE OF THE PROPERTY OR FROM A NEARBY LOCATION. SUBSURFACE RIGHTS MAY HAVE A MONETARY VALUE.”

This law only applies to real estate zoned for residential use (including other zoning categories, such as Agriculture, where residences are permitted) **AND** on which a new dwelling is: (a) being constructed; or (b) will be constructed pursuant to the contract for sale with the seller; or (c) has been constructed since the last transfer of the property. As (c) is phrased, the requirement may potentially affect sellers other

than builders and developers, such as farmers, ranchers and even individual homeowners if they have built on their property during their time of ownership.

The law is very broad in defining "Subsurface rights" to include "all minerals, mineral fuels, and other resources." It then includes some examples such as oil, gas, coal, oil shale, uranium, metals, and phosphate" but is not limited to those examples. This definition is sufficiently broad that it probably includes water rights, well sharing agreements as well as the right to remove dirt, topsoil, lime rock, marl and similar surface products.

The seller, not the title agent, is responsible for preparing and giving the required notice. This responsibility will however impact attorney-agents and Realtors as they prepare contracts. There is no statutory right of rescission or right to "unwind" a transaction for failing to give the required notice. We expect the courts to view the appropriate remedy for any violation as a claim for damages.

These notices are your reminder that something less than fee simple interest is to be conveyed. So when preparing deeds and other conveyance instruments, you need to exclude whatever interests are to be retained by the seller, or they could be inadvertently conveyed. Your standard form of deed will need to be modified to accomplish this. The traditional language reserving mineral interests is along the lines of the following:

(to be inserted after the paragraph identifying the Real Property)

Grantor reserves [an undivided _____% interest in] [all of] the oil, gas and other minerals in and under and that may be produced from the Real Property. Grantor [further reserves] [waives and releases] the right of ingress and egress at all times for the purpose of mining, drilling, exploring, operating, and developing the land for oil, gas, and other minerals, and storing, handling, transporting and marketing the same.

In consideration of the next examiner, we recommend that this paragraph be set off by itself in bold print.

You must make an exception in the commitment and subsequent policy for any subsurface or other interests that are not being conveyed as part of the transaction.

As always, if you have questions about any of this, please feel free to reach out to your WFG underwriter.

NOTE: This Bulletin should not be interpreted as reflecting negatively upon the character of an individual or entity and is for the sole purpose of establishing underwriting positions reflecting WFG National Title Insurance Company's best business judgment. The information contained in this Bulletin is intended solely for the use of employees of WFG National Title Insurance Company and its agents. Disclosures to any party not described above are prohibited unless approved in writing by the WFG National Title Insurance Company's Underwriting Department.



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