

WFG Underwriting Bulletin



To: All South Carolina & Georgia Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: March 23, 2016
Bulletin No. SC2017-01 & GA2017-02
Subject: WFG Underwriting Bulletin Gap Period and Recording Dear Agents

There are a number of circumstances that may create a "gap" - unknown title matters in the period between the examination of title (the Effective Date of the commitment) and the Date of Policy coverage. The following are examples:

- The recorder's office may delay in recording instruments after the instruments are filed or presented to the recorder for recording.
- At the time of the examination, there may be a lag in the posting of instruments to the title company's plant.
- The Issuing Office may close a transaction, file the documents for record or issue a policy, without down dating, extending or continuing its prior search to the extent practicable.
- The Issuing Office may close the real estate transaction but fail to file the instruments promptly.
- The Issuing Office may not continue the examination of title when a mortgage is filed for record after a three day right of rescission expires on an applicable residential loan.

Some gaps may be unavoidable. For example, if there are backlogs in recorder's office, intervening matters affecting the title may be awaiting recording or indexing, but may be unavailable for review.

Some gaps can be avoided or reduced. For example, the gap between the closing and the filing of the instruments can be reduced by promptly presenting the documents to the recorder's office for recording. Where permitted by the recorder's office, submitting the documents electronically, by eRecording, can reduce this gap to hours or even minutes, rather than days. Prior to the closing, the gap between the date of examination and the closing can be reduced or eliminated by continuing (bringing down) the search. In some jurisdictions, it is possible to continue the search to the actual time of recording, or within a few hours of that time. Even in jurisdictions where there is a significant recording

lag, the act of continuing the search to the extent practicable reduces the exposure to intervening matters.

Gap Coverage in Policy Forms

The ALTA Commitments do not provide gap coverage, unless modified. They are subject to defects, liens, encumbrances and other matters created, first appearing in the public records or attaching subsequent to the Effective Date of the commitment.

However, the following forms, where available, automatically provide or require gap coverage, unless a specific exception is included:

- ALTA Short Form Residential Loan Policy (6/16/07)
- ALTA Homeowner's Policy of Title Insurance
- ALTA Expanded Coverage Residential Loan Policy and Short Form Loan Policy
- ALTA Owner's Policy 2006 and ALTA Loan Policy 2006
- A "markup" of the commitment at closing to delete the exception to subsequently recorded or attaching matters
- Gap coverage required by regulation
- Gap endorsement

Gap practices vary, depending on the state, size of transaction and parties. It is customary to require gap indemnities in some areas in order to provide gap coverage, but indemnities are not requested in other jurisdictions.

Company Policy

We will address two GAP periods. First, the GAP from the time of the last title continuation until the date of closing. Second, the GAP from the date of closing until the time of recording.

The GAP from the time of the last title continuation until the time of closing should not exceed two (2) business days. The two days run from the last available date a search can be obtained from the official records. We realize courthouse searching dates will be behind and will vary from county to county. However, your search should indicate when the last update was completed and indicate the courthouse effective date to reflect how current the information is. This procedure will help prevent issues when auditing the files.

The GAP from the date of closing to delivery for recording should also be two (2) working days **but no more than five (5) working days**. In the case of a refinance, the two days would start at the end of the rescission period when funds are disbursed. We realize that not all agencies have the ability to hand deliver recording documentation on a daily basis because of the relative location of the agency and court house. This is especially true for out-of-county closings. But your file should reflect that the documents were directed from your office to the recording office within two business days of the date of closing or disbursement, whether that be by FedEx/UPS/USPS receipt, or date of cover letter in your

file, or whatever means you use to document that act. We recognize that not all recording offices are current, and our focus is on the date the documents are directed to the recording office. Where permitted by the recorder's office, you should utilize eRecording in order to minimize the gap between closing and recording.

If the agent is aware of any unusual risk such as a final judgment, or the recording of a mechanic's lien, or in Georgia, such as a final judgment not yet reduced to a *writ of fieri facias* or the recording of a claim of lien in the Recording Gap, the closing should be held in escrow until all open matters are settled and written underwriting approval has been obtained.

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.