

WFG Underwriting Bulletin



To: All Illinois Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: August 7, 2017
Bulletin No: IL 2017-05
Subject: Proof of Service in Mortgage Foreclosures

REMINDER – Proof of Service in Mortgage Foreclosures

To all of our Illinois agents,

The following is a reminder regarding review of the most common forms of service in Foreclosure files and REO files to avoid post-foreclosure jurisdictional challenges:

1. The Foreclosure Summons - Illinois Supreme Court Rules 101 and 131 require that the caption of the heading in the summons identify each defendant by name, in addition to being directed to the specific defendant. If a name is omitted in the caption, the summons uses "et al." in the caption, or lists the names in an attached addendum rather than the caption itself, then the summons has no effect as to the defendants not listed in the caption.
2. Process Servers - Under Illinois Rules of Civil Procedure, process is generally served by a sheriff (in counties under 2,000,000 civil personnel appointed by the sheriff), a county coroner, or, in counties under 2,000,000, a private detective licensed or registered under the Private Detective, Private Alarm, Private Security, and Locksmith Act of 2004. However, in Cook County, a private detective must have special appointment by the court in order to serve process.
3. Service on Corporation and Limited Liability Companies - Under 735 ILCS 5/2-204, service on a corporation may be given by leaving a copy of the process with the registered agent or any officer or agent of the corporation. Pursuant to 805 ILCS 5/5.05, the registered agent of a dissolved corporation may still be served for a period of five years commencing from the date of dissolution. However, under 805 ILCS 180/1-50, a limited liability company shall be served either upon the registered agent or the Secretary of State. The Secretary of State is irrevocably appointed as the agent of a dissolved limited liability corporation.
4. Service by Publication - 735 ILCS 5/2-206 (and compliance with Cook County Circuit Court Rule 7.3), where service was by publication, the record should be reviewed to confirm that there was a diligent inquiry regarding the place of residence of the defendant, that the clerk filed the notice in a newspaper that is in the county, or if there is none, a paper from an adjoining county

that has circulation in the county where the action is taking place, and that the clerk also sent a copy of the publication to the defendant's last known residence.

5. Substitute Service - Under 735 ILCS 5/2-203(a), substitute service or abode service, you must confirm that: a copy of the summons was left at the defendant's usual place of abode, with some person of the family or a person residing there, of the age of 13 years or upwards, and informing that person of the contents of the summons, provided the officer or other person making service shall also send a copy of the summons in a sealed envelope with postage fully prepaid, addressed to the defendant at his or her usual place of abode.

As it relates to an insured owner, it is only when a defect is apparent from the record that title is subject to divestiture. Otherwise, the owner is entitled to the protections afforded a *bona fide* purchaser for value under 735 ILCS 5/2-1401(f). Subject to certain case-specific exceptions, each of the defects identified above has been found to be apparent.

- If any of these defects are identified in the review of the foreclosure file, the defect should be raised as an exception to title.
- The exception should read - *Consequences of the failure to properly name and serve the following parties: (list the names of the defendants who are not properly listed in the caption of the summons). The summons should be corrected to properly list these defendants in the caption of the summons.*
- If any of these defects are identified in the review of an REO file, contact your underwriter.

If you have any questions relating to this or other bulletins, please contact your Illinois underwriting counsel Stanley J. Czaja at (773) 706-3779 or via email at SCzaja@wfgnationaltitle.com

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