

WFG Informational Bulletin

From: Underwriting Department
Date: March 23, 2016
To: All LA Policy Issuing Agents of WFG National Title Insurance Company
Bulletin No. LA 2016-01
Subject: WFG Informational Bulletin

The 2016 Regular Session of the Louisiana Legislature convened March 14 and will continue through early June. Legislators have filed a number of bills of interest to our industry.

HB 549 (Rep. Jackson)/HB 720 (Rep. Garofalo): Recording Fees

These bills propose an overhaul of R.S. 13:844 and the recording fees charged by the clerks, albeit on slightly different terms. These changes, if adopted, could make it easier for settlement agents to estimate recording fee prior to closing. Both bills would replace the existing per page and miscellaneous fee schedule with a more simplified approach. They propose an incremental flat fee. For instance, under HB 549, the fee to record a six to 15-page document is \$200, whereas under HB 720, the fee to record an 11 to 20-page document is \$150. The fee under both bills includes the indexing of up to 10 names and receipt of one certified copy. A document recorded in both the mortgage and conveyance records would be separately assessed for each under the proposed fee schedule. There would be no additional fee to record a letter-size document under either bill, but a noncompliance fee of \$50 would be assessed for documents without a 2-inch top margin on the first page under HB 549.

HB 286/253 (Rep. Garofalo): Trust Code Revisions

The last legislative session saw the passage of a number of revisions to the trust code, and more changes have been introduced this session. These bills propose both technical and substantive changes. Most significantly, R.S. 9:2092 and 2262.2 would be amended to require the recordation of a domestic or foreign trust instrument, not just an extract, when the instrument contains a transfer of immovable property. HB 286 would also revise R.S. 9:1972 and 1973 to allow a trust instrument to shift a principal interest to the descendant of a deceased beneficiary or to another person if the beneficiary dies without descendants. However, in the case of a legitime in trust, the settlor may not provide for the shifting of the principal interest unless the beneficiary died intestate and without descendants. These bills also make some revisions to definitions and terminology.

HB 213 (Rep. Garofalo): Condo Association Lien

Under current law, a condominium association's lien against an owner's unit for delinquent assessments prescribes if notice of suit is not recorded within one year of the filing of the lien. This bill would amend R.S. 9:1123.115 to extend the duration of the privilege to five years from the date of recordation, matching the prescriptive period applicable to a homeowner's association lien under R.S. 9:1147.

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HB 288 (Rep. Garofalo): Cancellation of Judgments

R.S. 9:5175 currently provides a convenient mechanism to obtain a partial release of a pre-bankruptcy judgment following a Chapter 7 discharge with respect to property not owned by the judgment debtor at the time the bankruptcy was filed. This bill would extend the statute to Chapter 13 discharges as well.

HB 289 (Rep. Garofalo): Sale of Property by a Terminated Corporation

The Business Corporation Act was significantly overhauled in the 2014 legislative term. R.S. 12:1-1443(B)(4) presently provides that a corporation's juridical personality ends, except for limited purposes, upon the filing of articles or a certificate of termination. Under existing law, a terminated corporation continues to own undistributed assets. This bill would make it clear that a terminated corporation may dispose of immovable property pursuant to a board resolution.

HB 269 (Reps. Miller & Johnson); HB 736 (Rep. Abramson): Donations/Successions

Both bills would revise Civil Code Art. 1522 to expressly provide that a donation *inter vivos* or *mortis causa* by which a usufruct is given to one person and the naked ownership to another is permissible and not a prohibited substitution.

HB 269 would also revise Code of Civil Procedure Art. 3396.9 to provide that the concurrence to an independent administration by a successor who is an interdict may be made by the curator without the need for court authorization or the concurrence of the undercurator. The bill would expand the scope of the article, which currently addresses the concurrence of a successor who is an unemancipated minor.

HB 564: Public Use of River Banks

Civil Code art. 456 provides that the banks of navigable rivers and streams are private things subject to public use. This bill would amend that article to provide that public use includes but is not limited to fishing. The article, in its current form, does not contain any examples of permissible public uses. The bill appears to be an effort to address jurisprudence which has held that fishing is not a permitted public use of a private bank because it is not incidental to the navigable character of the waterway. *See, e.g., State v. Barras*, 602, So. 2d 301 (La. App. 3 Cir. 6/29/92).

SB 290 (Sen. Lafleur): Cancellation of Prescribed State Tax Liens

This bill would add a provision to R.S. 47:1577 requiring the clerk/recorder to cancel a state tax lien prescribed on its face upon written request to which is attached a certificate from the clerk stating that the lien had not been timely revived. Recorded state tax liens, like judgments in favor of the state, prescribe after 10 years. *See* R.S. 47:1581 and 9:5685.

The full text of the bills and their progress can be reviewed at the Louisiana Legislature's website: <http://www.legis.la.gov/legis/BillSearch.aspx?sid=current>. If you have any questions or concerns, please do not hesitate to contact us.

Your LA State Underwriting Counsel:

Irl R. Silverstein – isilverstein@wfgnationaltitle.com

David A. Silverstein – dsilverstein@wfgnationaltitle.com

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