

WFG Underwriting Bulletin



To: Louisiana Policy Issuing Agents of WFG National Title Insurance Company
From: Irl Silverstein/David Silverstein, State Underwriting Counsel
Date: July 5, 2016
Bulletin No. LA 2016-03
Subject: Mechanic's and Materialmen's Lien Coverage

This bulletin addresses the potential risk associated with contemplated, ongoing or recently completed construction. The Private Works Act (La. R.S. 9:4801 *et seq.*) provides contractors, subcontractors, laborers and material suppliers with a “super priority” privilege on immovable property for the price of their work.

These privileges are effective against third parties (including prospective buyers and lenders) from the filing of a notice of contract or the start of work (i.e., placement of materials). But a statement of the claim or privilege is not required to be recorded until after notice of termination of the work is filed or substantial completion of the project. The lien filing period runs up to 70 days from the filing of the notice of termination or substantial completion, depending upon the type of claimant and whether a notice of contract was filed prior to the start of work. *See* La. R.S. 9:4822.

Because a subsequently recorded mechanic's lien could prime an insured's prior recorded mortgage, WFG commitments and policies (except the short form residential loan policy) contain the following standard exception:

Any claim, lien or privilege, or right to a claim, lien or privilege, imposed by law, for work, services, labor, material or parts, heretofore or hereinafter furnished for the improvement, construction, erection, reconstruction, modification, repair, demolition or other physical change of the property herein, or any part hereof, whether or not such claim, lien or privilege imposed by law is filed and shown by the public records.

If requested, you may delete this standard exception and/or provide affirmative coverage with an M & M endorsement at the applicable rate in accordance with the following guidelines.

No work in the last 70 days

1. Obtain a standard seller's/owner's affidavit & indemnity with “no work” language
2. Update title search prior to closing to verify no recorded liens or notices of contract.
3. Underwriting approval is required to delete the standard exception or provide affirmative coverage on an owner's policy.

Work ongoing or completed within last 70 days

1. Underwriting approval is required to issue a short form loan policy, or delete the standard exception and/or provide affirmative coverage on a long form loan or owner's policy.
2. Approval will be granted on a case-by-case basis and subject to review of additional information, which may include:
 - a. Affidavit & indemnity from owner and general contractor
 - b. Financial statements for owner and general contractor
 - c. List of all subcontractors, laborers and suppliers with lien waivers or proof of payment for each
 - d. Recorded notice of termination or substantial completion, or statement of scope and cost of remaining work with timeline for completion
 - e. Appraisal of subject property
 - f. Judgment and lien search of general contractor
3. WFG may require that funds or other security be posted to ensure payment of remaining or recently completed work.

Work contemplated but not yet commenced

1. Obtain and record a "no work" affidavit from surveyor pursuant to La. R.S. 9:4820.
2. Obtain a standard seller's/owner's affidavit & indemnity with "no work" language
3. Update title search prior to closing to verify no recorded liens or notices of contract.
4. Underwriting approval is required to delete the standard exception or provide affirmative coverage on an owner's policy.

If you have any questions about these guidelines, please do not hesitate to contact state underwriting counsel.

NOTE: This Bulletin should not be interpreted as reflecting negatively upon the character of an individual or entity mentioned herein and is for the sole purpose of establishing underwriting positions and policies 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, 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.