



To: All Louisiana Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: June 17, 2020
Bulletin No.: LA 2020-12
Subject: 2020 Louisiana Legislative Session

Despite the shortened 2020 Regular Legislative Session due to the coronavirus, the Louisiana Legislature passed several laws which will have significant impact on the title industry. Unless otherwise specified, the laws take effect August 1, 2020. Key legislation is summarized here by topic:

REMOTE ONLINE NOTARIZATION

ACT 254 (HB 274) – This was a Law Institute bill. After numerous failed attempts, RON will be legal in Louisiana. BUT NOT TODAY. The effective date for the new law is complicated. By default, RON will be authorized for use beginning February 1, 2022. This will allow the Secretary of State, with input from key stakeholders, to implement administrative regulations. However, if the U.S. Congress enacts the SECURE Notarization Act (H.R. 6364 or S. 3533), which would authorize the use of RON in every state, the Louisiana law will take effect at that time in order to preserve the special provisions in our act.

Please note that the Louisiana law does not permit the use of RON for authentic acts, donations, trust instruments, wills, matrimonial agreements and certain acts related to spousal support. Because of these restrictions, RON will have limited use in real estate transactions. We will provide detailed underwriting guidelines when RON becomes effective. Until further notice, you may not insure any transaction involving RON.

ACT 131 (HB 122) – this law ratifies Governor Edwards’ temporary authorization of RON via proclamations, 37-JBE-2020 and 41-JBE-2020. This only applies to RON transactions conducted from March 11 through April 30 in accordance with the terms of those proclamations, which expressly excluded authentic acts from its provisions. See WFG Bulletins LA 2020-07 and LA 2020-09. This law took effect June 9, 2020.

INSURANCE PRODUCERS

ACT 310 (SB 180) – this is the so-called “brick & mortar” bill. It amends provisions of the title insurance law and imposes new qualifications for licensure:

1. Requires an individual producer to be a Louisiana resident, or a fulltime employee of a licensed agency producer whose principal place of business is physically located in this state.
2. Eliminates the title insurance exemption from pre-licensing education requirements.
3. Requires an agency producer to be a Louisiana entity with its principal place of business physically located here, or a foreign entity registered to do business here and whose principal

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place of business within Louisiana is suitable for conducting the business of title insurance and real estate closings.

4. Requires an agency producer to employ at least one licensed individual producer designated with responsibility to ensure compliance with this law.
5. Requires an agency producer to maintain an appointment from a title insurer.
6. Requires a producer to maintain records in a location fully accessible from or physically existing in Louisiana.

The act is effective January 1, 2021. At this time, the Department of Insurance has not announced how it intends to implement these changes. The law does not state that it applies retroactively. It is unclear whether it will apply only to new applicants for producer licenses or whether any of these new requirements will apply to existing licensees upon renewal.

ACT 283 (HB 614) – This new Insurance Data Security Law requires all licensees, including title producers and insurers, to: (1) develop and maintain a comprehensive written information security program, which includes risk assessments, training, and access controls like encryption and multi-factor authentication; (2) investigate cybersecurity breaches and maintain records of such events for five years; and (3) notify the Department of Insurance without unreasonable delay but no later than three business days after discovery of a cybersecurity event.

Licensees with less than 25 employees, less than \$5 million in gross annual revenue or less than \$10 million in year-end total assets are exempt from the infosec program requirement, but not the investigation or notification requirement. Agents may already be subject to similar privacy and data security requirements under federal or other state law. The law takes effect August 1, 2020. However, the requirement to adopt an infosec program, if applicable, is largely effective as of August 1, 2021.

PRESCRIPTION

ACT 162 (HB 805) – this law, effective June 9, 2020, ratifies Governor Edwards’ suspension of prescription and legal deadlines by proclamation during the COVID-19 public health emergency. See WFG bulletins LA 2020-08, LA 2020-09 and LA 2020-10. It also extends the period of suspension through July 5, 2020 (from June 15 as provided in the most recent proclamation, 75-JBE-2020). Any judgment, lien, claim or other adverse matter which would have prescribed between March 17 and July 5 shall now expire on July 6, 2020. You may treat such a matter as prescribed after that date, if not timely reinscribed and if appropriate under normal underwriting guidelines.

ACT 199 (HB 593) – this was an LLTA bill. The act amends R.S. 13:4291 to make clear that the effect of recordation of judgments and liens for past due child support shall prescribe 10 years from the date of the judgment or affidavit. The title industry generally interpreted the former version of the statute as providing for a 10-year prescriptive period beginning to run only from the age of majority of the affected child, thereby allowing for recordation to remain effective for up to 28 years. While effective as of June 11, 2020, the law provides for a 2-year grace period for lien affidavits previously filed by DCFS. If not prescribed under the “old” law, these lien affidavits will not prescribe until August 31, 2022.

PARTITIONS

ACT 281 (HB 594) – this is another LLTA bill. The act amends provisions in the Civil Code and Code of Civil Procedure to authorize a court to order a partition of immovable property by private sale in cases where a co-owner is an absentee or otherwise fails to consent. Prior to this change, the court could order a partition by private sale only if all co-owners agreed.

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The petition for partition must describe the terms of the proposed sale, identify the proposed purchaser and disclose specified conflicts with any co-owners. The sale cannot be for less than 2/3 of the appraised value nor occur before the advertisements required for judicial sales. A judgment ordering the private sale shall direct out of the proceeds reimbursement of taxes and other costs incurred by a co-owner, payment owed to a co-owner for a share of fruits and revenues received by another co-owner, and payment of closing costs. The law became effective on June 11, 2020.

SUCCESSIONS

ACT 107 (HB 499) – this act, effective June 9, 2020, amends Code of Civil Procedure Article 3396.1 to provide that the clerk, rather than the court, shall issue letters of independent administration or independent executorship. This change aligns the code articles addressing the issuance of letters in successions under regular and independent administration.

ACT 173 (HB 142) – this act expands the scope of a small succession. It amends the Code of Civil Procedure to provide that a small succession includes a succession of a person, presumably domiciled in Louisiana, who died testate, apparently leaving property in this state of any value but no immovable property, where the probate of the will would have the same effect as if the decedent died intestate (meaning that all of the legatees under the will are also all of the intestate heirs). The act requires a certified (not clear by whom) copy of the will, and not the original, to be filed with the small succession affidavit. A small succession affidavit for a Louisiana domiciliary who died testate cannot be used or relied upon to deal with real estate.

ACT 19 (HB 125) – this was a Law Institute bill. The act amends provisions of the Civil Code and Code of Civil Procedure. It makes largely technical or minor changes to succession articles. It also addresses the division of the forced portion among forced heirs.

MISCELLANEOUS

ACT 59 (SB 110) – this law enacts R.S. 9:1256 and 1257. It provides that a natural servitude of drain may be altered or extinguished by agreement of the owners of the dominant and servient estates, but shall not be adverse to the public interest and does not affect third parties unless filed in the appropriate conveyance records. It also provides that a conventional servitude of drain may be acquired by title, acquisitive prescription or destination of owner, and makes clear that the owner of the dominant estate may enter and use the servient estate to maintain the servitude.

ACT 20 (HB 126) – this act repeals R.S. 9:2948 and that portion of Civil Code Article 477 authorizing a bond for deed buyer to apply for a homestead exemption, which conflicted with Const. Art. VII §20(A)(7).

ACT 264 (HB 404) – this act appears to grant the La. Clerks' Remote Access Authority a more active role beyond simply housing a statewide portal, to facilitate communication from the various clerks of court and even establish an e-filing system of its own.

The full text of the acts can be reviewed [HERE](#). The 2020 First Extraordinary Session will run through June 30. We will update you as to any new, topical laws enacted. If you have any questions or concerns, please do not hesitate to contact us.

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