



To: All Louisiana Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: August 9, 2023
Bulletin No.: LA 2023-07
Subject: 2023 Louisiana Legislative Session

The 2023 Regular Legislative Session ended in June. There were a few bills enacted with potential impact on the title insurance industry. Unless otherwise specified, the new laws took effect August 1.

ACT 38 (SB 55) – The Louisiana Land Title Association led the passage of this bill. It amends Code of Civil Procedure Article 3191 to authorize a succession representative – whether resident or nonresident, temporarily absent from the state or not – to appoint an agent under a power of attorney to alienate, acquire, lease or encumber succession property. The law sets forth specific requirements for the power of attorney and mirrors the delegation of authority by a trustee under the trust code.

Practice point: The power of attorney must refer to the principal in his or her capacity as administrator or executor of the particular succession, specifically describe the property (i.e., full legal description), and recite the specific terms of the transaction (e.g., sales price and buyer) or state that the succession representative has approved the terms. The power of attorney must be filed in the succession proceeding as well as filed in the conveyance records with the sale.

The succession representative may not use a general or typical real estate power of attorney that provides the agent with discretionary authority (e.g., “...on such terms and conditions as the agent deems proper in her sole discretion”). This law took effect July 1.

ACT 464 (HB 537) – This law enacts R.S. 9:2717.1 and prohibits a “foreign adversary” and a “person connected with a foreign adversary” from acquiring immovable property in Louisiana. It applies prospectively only. A “foreign adversary” is defined as an individual or government identified as such by a particular federal regulation, and a “person connected to a foreign adversary” means a juridical entity owned or controlled by a foreign adversary. The state law expressly excludes U.S. citizens, lawful permanent residents (i.e., green card holders) and any other natural persons acquiring 1-4 family residential property.

The act authorizes the attorney general to pursue forfeiture or disposition of property acquired by a prohibited person. Importantly for title purposes, the law protects the interests of innocent third parties including mortgagees and co-owners. Although the law allows for conclusive reliance upon an affidavit that a person is not a foreign adversary or a person connected with a foreign adversary, it also provides

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that no attorney, notary, title producer or title insurer, among others, shall have a duty to make any investigation as to whether a party to a transaction is a prohibited person nor liable for failing to identify a person as such.

Practice point: Because of the broad exclusions and protections in the bill as enacted, at this time, WFG will not require purchasers in every closing to execute a special affidavit certifying that they are not foreign adversaries nor persons connected with foreign adversaries. However, if you become aware that a party is subject to the statute or find a lis pendens filed by the attorney general's office, contact underwriting counsel for guidance and approval.

ACT 421 (HB 220) – A product of the Louisiana State Law Institute, this act revises petitory and possessory actions. It reduces the plaintiff's burden of proof in a petitory action, from "title good against the world" to the "better title" standard, unless the defendant has been in possession for at least 10 years, or one year with good faith and just title. It also distinguishes possession in fact from the right to possess. The law recognizes that a possessory action may be brought by a precarious possessor against anyone other than the person for whom she possesses, and clarifies that it may not be cumulated with either a petitory or declaratory action. Further, a judgment in a possessory action rendered in favor of the plaintiff cannot preclude an absentee defendant who appeared through a court-appointed attorney from asserting ownership beyond the limited period provided for in the code.

ACT 317 (HB 196) – This act, another product of the Law Institute, revises civil procedure related to summary judgment. It expands the type of documents that may be filed in support or opposition to a motion for summary judgment. It authorizes documents previously filed into the record to be referenced for consideration. It also requires electronic service of the motion and other documents.

ACT 5 (HB 230) – Also on recommendation from the Law Institute, this act provides for mostly technical corrections to the Code of Civil Procedure. Notably, it makes the lack of subject matter jurisdiction a peremptory, rather than declinatory, exception, and requires the court to address that exception, if filed, before ruling on other matters. The act also codifies the procedure for filing unopposed motions.

ACT 390 (SB 140) – This law authorizes and establishes procedures for online sheriff's sales. Online auctions are permitted, but not required. A sheriff may contract with an auction company to conduct an online auction, but may not delegate service duties. The notice of seizure and advertisements must provide information about the online auction if used. The sheriff also must provide the defendant with computer access to bid at no cost.

ACT 88 (HB 455) – This act makes largely technical corrections to the Mineral Code in Title 31 of the Revised Statutes. References to "liberative prescription" have been updated to "prescription of nonuse" to reflect revisions to the law of prescription. It also clarifies that security interests in minerals actually produced and the proceeds from their sale, unlike the mineral right itself, are governed by the Uniform Commercial Code.

The full text of the acts are available [online](#). If you have any questions or concerns, please do not hesitate to contact us.

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